

Panchayat Raj in Jammu and Kashmir: Theory and Practice

Panchayat Raj also known as grassroots democracy or democracy at the local level is essentially empowerment of people by transfer of power to grass roots from the State government by creating institution of empowered local government with devolution of Functions, Funds and Functionaries (3Fs) to give people not only the voice, but the power of choice as well to shape the development best suited to their needs and priorities. The essence of panchayat raj is participatory local governance with bottom up inputs into political institutions and development process. It is part of a broader strategy of new ways of looking at and implementing the development discourse from delivered development to participatory development in the light of a fresh parameter of 'inclusion' in governance and the importance it has assumed for the State to ensure people participation for equitable development and social empowerment in a transparent and accountable manner. The participatory local governance is particularly important in a state or region marked with socio-economic and geographical diversity because the diversity of population and the challenges that vary from place to place makes the 'one size fits all' approach irrelevant. So the challenge that diversity poses to the decision making is addressed through decentralized structure of participatory local governance by creating space for local initiatives and ideas.

Jammu and Kashmir is called miniature India. It comprises two distinct regions and each region has sub-regions marked with diversities in terms of geo-climatic conditions, endowments of natural resources, and politico-economic aspirations. Faced with these challenges defies any centralized or uniform model of governance instead demands multi-level institutional governance to cater to the needs of different regions and sub-regions and guard against the feelings of deprivation and underdevelopment.

J&K has a long history of PR it was Introduced in 1935 by Maharaja Hari Singh, the preamble of the act, states "it is expedient to establish in Jammu and Kashmir state the village panchayats to assist in the administration of the civil and criminal justice". Every village or a group of villages had a panchayat comprised of panches numbering between 5-7. Majority of them were nominated, the sarpanch was also nominated by the wazir-i-wazarat (deputy commissioner). But the system was in no sense close to the concept of people's empowerment because the act prescribed restrictive qualifications like education and property for the voters as

well for the contesting candidates. Only 3 percent population could vote and stand for the election. In 1941, the village panchayat Act 1935 was amended and the scope of panchayats was enlarged to cover civic and development functions. The system was in tune with the feudal set up meant to further penetrate the feudal values in the countryside and to marginalize the National Conference.

Post 1947 Scenario

In 1947, Jammu and Kashmir made transition from autocratic to democratic rule. However, its transition was not smooth; the erstwhile State came under tribal attack that forced on the Maharaja the decision to accede to India Dominion. The accession to India became a matter of dispute as Pakistan has never accepted it. After tribal invasion was cleared, Maharaja Hari Singh formed an interim government and appointed Sheikh Mohammad Abdullah as formed prime minister on 5th March 1948. The transition was expected to herald a new era of democratic rule as was promised to the people during freedom movement. Naya Kashmir Manifesto that was adopted by National Conference in 1944 and was to form the basis of its governance once Kashmir is freed from Dogra rule. It envisaged a decentralized democratic set up Article 17 of the Naya Kashmir Manifesto reads:

“The political power shall be equally distributed among the regions of the state and would be further decentralized at lower levels like, districts, blocks and panchayats. The appropriate institutions by the people shall be set up at the respective levels to exercise political power that may be delegated to them.

In line with the long commitment of the party towards democratic decentralization Sheikh Mohammad Abdullah headed government passed the Jammu and Kashmir Village Panchayat Act 1951 providing for the establishment of village panchayats on democratic principles and repealed the Village Panchayat Regulation of 1935 and 1941. The Act was enacted to reshape panchayat raj to transform them into autonomous village republics to work for the upliftment, well-being and development of the village. Each panchayat it was envisaged will have requisite administrative and fiscal autonomy, to promote the development of village in agriculture and allied sectors, and implement welfare schemes of the government. By 1941 540 panchayats were

established in the state in tune with the new realities of the time engaged in dehat sudhar(village improvement) works like repairmen of roads, deepening and widening of irrigation canals, distribution of ration, resolution of local disputes pertaining to land, theft, family feuds and inter village disputes. It is pertinent to mention that panchayat raj was a part of the democratic reform project to liquidate the remnants oppressive and exploitative social structure of dogra legacy in villages in order to link people with a new dawn. In the absence of breaking of social oligarchies for creating an enabling environment needed to usher in democratic governance creating and creating a democratic space to allow the panchayat raj institutions to function would have remained an elusive.

This reform project, however, was derailed after Sheikh Abdullah's government was removed from the office and he was imprisoned in August 1953. This was the result of the growing mistrust that Centre government had developed with regard to how Sheikh Abdullah was administering the state in view of the political uncertainties that state was faced with. Sheikh Abdullah's dismissal had a negative bearing on the politics of the state, the quality of the democracy was diluted and his successors were guided by the centre with defined boundaries to preserve pro-Delhi orientation. In order to give a semblance of popular legitimacy to these leaders' farcical elections were held after mandated intervals. The post 1953 system catered to the needs of vested interests and was based on patronage and clientalism, hence devoid of people's participation despite massive pumping of central money for the development a purpose to wean away people from popular discourse. This can be gauged by the fact that panchayat raj was mention in non-justiciable part IV of the State constitution that was adopted on 17 November 1956 by the State Constituent Assembly and came into force on 26 January 1957. Article 16 says that State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. It was against the basic spirit of Naya Kashmir further it was more honoured in the breach than the observance. Although the government passed Jammu and Kashmir panchayat raj act 1958 providing two tier panchayat raj system, halqa panchayat at the village level and block panchayat board at the block level. However, elections to panchayat raj institutions were not held and panchayats were superseded for a long time and remained without any devolution of powers. Practically there was no panchayat raj in the state from 1953 onwards. The state implemented the

Community Development programme through development committee's constituted at village and tehsil levels comprised of lower rung officials and legislators representing the area.

- However, the State Constitution which was promulgated on 26 January 1957 reiterated the decentralized governance through panchayat raj institutions. But it was incorporated in part IV of the constitution dealing Principles of State Policy (DPSPs) a non-justiciable part of the constitution, honoured in breach and not in observance by political and Bureaucratic class at will.

Following Sheikh Mohammad Abdullah's return to power after Indira-Abdullah Accord in 1975, his government introduced various administrative reforms with regard to decentralization; he introduced Single Line Administration (SLA). Under SLA planning and decision making powers with regard to a certain plan size was decentralized from state capitals to district level. It is still in operation with some amendments District Development Boards –as an institutional mechanism were established in each district to prepare district plans as per the needs and priorities relevant to each district. The SLA replaced the 'one size fits all approach' or top down model of planning that was in operation in the state.

Before the introduction of Single Line Administration (SLA) much of the development would suffer, funds would often lapse owing to the different technical aspects involved for getting the approval from the state capitals. However, over a period of time the institutional structure of the District Development Boards has been changed rather diluted and it has turned into "Multi-Line" and its autonomy has also been compromised, affecting its efficacy.

In 1989 state took a leap forward when the Jammu and Kashmir Panchayat Raj Act, 1989 was passed by the State Legislature. For the first time three tier panchayat raj system was envisaged in the state at district, Block and village levels. The Jammu and Kashmir Panchayati Raj Act, 1989 made a significant departure from earlier Panchayat Raj Acts. This was for the first time since 1935, that an act was named as the "Panchayati Raj Act, rather than a "Village Panchayat Regulation Act". The former implies the promotion of three tier panchayati raj (at village, block, and district levels) in the state; in contrast the latter was confined to the promotion of one tier Panchayat raj at village level under (1935 & 1941 Panchayat Acts) and then two-tier panchayati raj at village and at Block level under (1951 & 1958 Panchayat Acts). The provisions

of the act were thoroughly discussed in a seminar organized by the Ministry of Agriculture and Rural Development Government of Jammu and Kashmir at Srinagar in 1988 that was attended by the people with vast experience in local governance. The Act was in line with the thinking at the national level and defined panchayats as institutions of local self-government.

The main features of the Act are as follows:-

- The Act provides for a three tier panchayat raj in the state, Halqa Panchayat at village level (for a group of villages); consisting panches numbering seven to eleven directly elected by the people and a sarpanch who is elected by panches from amongst themselves. Earlier the head of a halqa panchayat was directly elected by the electorate of the panchayat. In 2016 the Act was amended and by now onwards the sarpanch will be elected by the panches from amongst themselves. (it 2018 it was again reversed to direct election.
- Block Development Council- at intermediate level; consisting of chairman and all the sarpanches falling within the block as its members.
- At the apex is District Planning and Development Board- at the district level (to replace the existing District Planning Boards),
- It also provides Panchayat Adalat (Panchayat Court) for each halqa panchayat to settle petty local disputes
- The Act provides that each halqa panchayat shall have Halqa Majlis (called Gram Sabha in other states) consisting of all the registered voters of halqa panchayat. It shall be convened twice in a financial a year by the sarpanch.
- The Act made it mandatory for the State government to hold elections after every five years and within six months in case if panchayats are superseded or dissolved before the expiry of their stipulated five years term
- It Provides 33% reservation for women in general category and also for women belonging to the scheduled castes and scheduled tribes in proportion to their population. In 2014 through an amendment the reservation has been extended for the post of sarpanch also.

- Under the Act, the state government has to appoint a State Election Commission for conducting the elections to panchayat raj institutions.
- The Act provides for the constitution of State Finance Commission to be constituted once in every five years (it was provided by virtue of an amendment Act, 2011, however, it is yet to be constituted). The commission will examine the financial position of the local governments in the state;
- The Act provided for the constitution of a Panchayats advisory committee consisting of four members with financial commissioner revenue as its chairperson for the purpose of carrying out provisions of the Act;
- The Act reduced the voting age from 21 to 18;
- The Act also empowered the panchayats to prepare and implement developmental plans.

The Act is designed to take democracy to the grassroots level and make people an integral part of the democratic set up by giving them a space in planning and decision making to draw up plans, prioritize their needs in accordance with their area specific needs.

Operational Constraints

Despite some lacunas the Panchayati Raj Act, 1989 was indeed a positive step towards infusing new life to dormant panchayats and institutionalize local governance which was envisaged by the leaders in Naya Kashmir Manifesto in 1944. The Act, however, remained non-operative owing to the rise of insurgency in the state that brought democracy to standstill. The elected government headed by Farooq Abdullah was dismissed and the state was put under Governor's rule followed by the imposition of President's rule. However, it is believed that elections could have been held at least in some districts of Jammu province (Jammu Udhampur and Kathua districts), Kargil and Leh districts of Ladakh region which were not affected by militancy. But the politicians and bureaucrats whose vested interests are not served by local governance took advantage of the situation and with the result elections were not held.

It was in 2001, that panchayat elections were held the attempt could not bore fruits as elections turned out to be a mere 'paper exercise' half of the panch and sarpanch seats remained vacant in Kashmir region owing to the election boycott call by militants and Hurriyat Conference. In all 1601 panchayats were notified out of 2701 halqa panchayats in the state

predominant of them were in Jammu and Ladakh regions where elections carried relevance as people participated in large number and elected their local representatives. The shifting of power to grassroots could not happen in Kashmir region, the position in Jammu and Ladakh was similar to that of Kashmiri panchayats were without any functional and fiscal empowerment, and functions delegated to them were in practice implemented by line departments.

In 2006 panchayats formed in 2001 were dissolved, instead of holding fresh election as mandated by the J&K Panchayati Raj Act, and in line with its commitment agreed upon in the Common Minimum Programme by then PDP-Congress Coalition government transferred powers to panchayat secretary (village level worker) and he/she was instructed to draw local plans through convening of Gram Sabha. This in practice meant facilitating 'Party worker raj' at the local level with Halqa President ruling the roost and distributing patronage. In the absence of panchayats line departments were enjoined vide Govt. order No.05-RD of 2006, dated 06.07.2006 to extend due courtesies to MLAs/MLCs and communication received from them should be invariably acknowledged and responded to. By not holding panchayat election, the state preferred to lose central funds. It failed to avail Rs 228 crores out of Rs 281 crores amounting to 81 percent of the total grants under 12th Finance Commission grants for the state (2006-2010).

Panchayat Election -2011: One step forward

In 2011 the first real panchayat elections was held in the state after a gap of 33 years, 77.79 percent people exercised their franchise. In all 33,000 panchayat representatives were elected to 4128 halqa (village) panchayats. However, the real challenge was to transform these institutions into effective democratic institutions and make people stakeholder in the planning and decision making process to ensure participation in actual governance

After the election, government transferred powers to three tier panchayat raj institutions based on the recommendations of Madhev Lal Committee constituted during the elections and it submitted its report to the government in July 2011. By virtue of Cabinet Order the functions pertained to 14 line departments namely Agriculture, Animal husbandry, Food and civil supplies, Health, Rural Development, Forestry, Health Revenue, and Social Welfare. All field level functionaries were transferred to respective three tier panchayats based on the activity mapping.

Empowerment in Practice

The opportunity offered by Panchayat election-2011, to transfer power to grass roots level and empower public representatives in letter and spirit in new local government system turned out to be a missed opportunity. The government failed in the management of the transition process, from centralized to decentralized governance. No enabling environment was created for panchayats to function (Harmonizing the existing laws in operation promoting centralized control (departmental control) with panchayat raj Act 1989), issuance of fresh orders and by-laws for smooth functioning of panchayats

Cabinet order pertaining to delegation of powers (Empowerment) remained a mere paper edict; it was not honoured by the departments. A strong lobby by political and bureaucratic who saw panchayats as a threat to their partogance and clintalism blocked the Government failed to establishment Block and District panchayats. Financially had no own source of revenue and were dependent on state government. Further, lack of capacity building and poor panchayat infrastructure, defunct Gram Sabha (People's participation could not be institutionalized, hence no accountability mechanism was put in place) and politicization of panchayats-lead to killings of panchayats representatives and undermined the project.

Certainly, the government failed to manage the transition sane harping on the rhetoric that it has put an empowered panchayat raj in place with requisite funds and functionaries. Failure in the management of the transition process, from centralized to decentralized governance absence of an enabling environment for panchayats to function like harmonizing the existing laws in operation promoting centralized control (departmental control) with panchayat raj Act 1989), issuance of fresh orders and by laws for smooth functioning of panchayats reflected a deep discontent for these institutions of local governance.

Panchayat Election-2018: Two Steps Backward

Panchayat Raj Institutions (PRIs) formed in 2011, completed their five years term in office in July 2016 and were subsequently dissolved. As per the section 9 of the Jammu and Kashmir Panchayat Raj Act, 1989 fresh elections to PRIs have to be held within six months in

case panchayat are dissolved or superseded. Panchayats should have been in place before July 2016 or by January 2017. However, whole summer of 2016 was appropriated by civil protests and freedom marches from every nook and corner of the Kashmir. The state was at war with people and holding panchayat election was beyond any possibility. The government could not even conduct the by-election for Anantnag Lok Sabha Constituency due to mass protests and heightened militant attacks in the area.

After facing a delay panchayat elections-2018 were held in 9 phases from 17 November to 11 December for 4,490 halqa (Village) panchayat 58, 12,429 electorates were eligible to exercise their franchise to elect 4,490 sarpanches (in Jammu and Kashmir sarpanch is directly elected people) and 35,096 panches. Although elections were held on non-party basis, however, both NC and PDP continued their boycott policy (citing assault on article 370 and 35-A that grant special status to the states, both these Articles were then sub judice in the apex court). In reality it was the grim ground situation that forced the two regional parties to stick to their boycott strategy. The Hurriyat Conference also urged people to stay away from the polls and observe a strike on polling day in poll bound areas. The militants issued threat calls to people against participating in the election either as contesting candidate or as a voter. The Chairman of Hurriyat Conference (M) Mairwaiz Umar Farooq said that “no one is averse to elections, as it is an accepted democratic practice across the globe, where people exercise their choice and decide how and by whom they want to be ruled. This, however, is not the case in Kashmir, where elections are used as a means to continue forced rule of New Delhi over the state. Elections he said will continue to be a futile exercise in Kashmir unless democracy is not restored and allowed to flourish in the real sense.”

Election to establish panchayat raj was sold as an instrument to bring development and change in these areas through flow of funds under various centrally sponsored schemes and funds earmarked for the erstwhile state under Fourteenth National Finance Commission(2015-2020) spent through panchayat raj institutions. The governor administration gave a wide publicity to panchayat elections in print and electronic media linking establishment of panchayat raj with flow much needed funds for the development. The election saw a positive response from Jammu and Ladakh regions with more than 80 percent participation by the people. However, in Kashmir it was a paper exercise as 60 percent seats (12,766 out of 21,208) in remained vacant,

around 30 percent candidates won unopposed election after people disowned the election and nobody turned to file his/her nomination papers. Also large numbers of candidates were brought from Jammu and other places under security, made to file nomination papers, declared elected and taken back to their respective places under security cover. Even in central Kashmir's Budgam and Ganderbal district traditionally considered as high voting turnout districts there was near boycott.

After elections the State Administrative Council headed by the then Governor Satya Pal Malik transferred the powers to panchayats, they pertained to more or less the same subjects recommended by Madhav Lal Committee report (2011). However, panchayats could not operate in the Kashmir in the context of extremely fragile security situation. Further, their writ does not carry any weight especially in areas where they were imposed on people and their representative character decisions was devoid of any legitimacy. Majority of the candidates filed their nominations on the late day after being sure of 'unopposed win' during evening timings that too in the office of the deputy commissioner where returning officer headquarter was posted, and not at the designated office of the returning officer placed in the nearest schools/panchayat ghars to receive nomination papers.

The security situation since panchayat election was held has further deteriorated making the job of panchayat representatives in Kashmir even more difficult especially since 5 August 2019 following the abrogation of Article 370 and 35-A and bifurcation of State into two Union Territories (UTs), the Union Territory of Jammu and Kashmir and Union Territory of Ladakk. Given this scenario it remains to be seen how panchayats will operate in the context of extremely fragile security situation for their next three and a half yeras. Further will their writ prevail especially in areas where they were imposed on people? Will people accept their decisions? In other words will people approach them for the redressal of their grievances when there was no campaign and hence no poll promises on the part of those who are now peoples 'representative'?

Given the absence of a well functioning panchayat raj in the erstwhile Jammu and Kashmir State it remains to be seen how Centre will move towards effective participatory local governance system in the two newly created Union Territories. How will it create a conducive and enabling environment for panchayat raj institutions to function amidst the complex security situation on ground and the changed political situation.

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