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## DECENTRALISATION THROUGH PANCHAYATI RAJ IN JAMMU AND KASHMIR. A CRITICAL ANALYSIS

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### ABSTRACT:

Decentralisation actually means that sub national or sub state units of government are given discretion to engage in effective (as opposed to illusory) decision making process that affects the lives of the people residing within sub national or sub state jurisdictions Panchayati Raj plays an important role at grass-root level in Indian democracy. In Jammu and Kashmir Panchayati Raj was enacted in Act of 1989 before four years of Panchayati Raj Amendment Act of 73rd of Indian union in 1993. Under this Act the first Panchayat election was held after a gap of 12 years in 2001 was not successful due to armed conflict. Recently in 2018 Panchayat election was held in J&K is successful compared to last Panchayat Elections under pressure from violence. In present study various challenges are discussed before actual decentralisation of power through Panchayati Raj in Jammu and Kashmir.

**KEYWORDS:** Decentralisation actually, jurisdictions Panchayati Raj.

### INTRODUCTION

Decentralisation of decision making for planning and development of local government is critically dependent upon the political will. Deepening of democracy at local level through decentralisation promotes transparency and accountability in local decision making process. It also promotes accountability for decision makers to fully bear the cost of decisions taken by them. In the recent past a number of democratic and the erstwhile command economies have decentralized decision making for planning and development to the sub national governments for increased economic growth, inclusive development and

promoting government accountability, India is no exception to this. A big initiative was pushed through in early 90s through enactment of the constitution (73rd and 74th) Constitution amendment Act 1992. Divided into two parts, this article very briefly deals with conceptual overtures of decentralisation and its forms and its very applicabilities in the state of Jammu and Kashmir. This is done especially drawing lessons for proper designing and strengthening the process of decentralisation in Jammu and Kashmir.

In simple terms decentralisation is an obverse of centralisation. It is perhaps because of this attribute that very often this term is used to mean so many things, some of which are quite diverse. Shifting of administrative machinery from the centre to the periphery, granting some power to the functionary

down below the top level in the administrative hierarchy, dispersal of branches from the head quarters are quite frequently expressed to connote decentralisation. Decentralisation actually means that sub national or sub state units of government are given discretion to engage in effective (as opposed to illusory) decision making process that affects the lives of the people residing within sub national or sub state jurisdictions (Wolman and McCormick 1994). A seminal report on community projects and national extension service in India submitted in the late 50s of the last century defined it as 'a process

whereby the government divests itself completely of certain duties and responsibilities and devolves them on to some other authority'(India 1957). It connotes divesting of certain responsibilities and their devolution to sub nationals in varying forms and degrees especially as has been observed after the demise of the erstwhile centrally planned economies. Rondinelli specifies 'responsibilities' to be devolved as 'authority to plan, make decisions or manage public functions' and these, under decentralisation have to be transferred to the lower levels of government (Rondinelli 1981). Decentralisation thus connotes dispersion of political decision making from the centre to periphery, from the national to subnational units of government. There are few important constituents of decentralisation. These are (i) extent of delegation of powers (ii) formal legal responsibilities and (iii) political resources. The wave of decentralisation that emerged in 1980s swept across several states due to variety of motivations emanating from the process. Economic efficiency and accountability, increased resource mobilisation, more equitable and efficient service delivery through better use of local knowledge, improved governance driven by local responsiveness and political participation. Developed countries are taking fresh looks in re designing their inter governmental relations in wake of globalisation and decentralisation. Developing and transitional states are also engaged in decentralizing governance and tax authority for enhancing national economic development and improving quality of life of their citizens. There are various forms of decentralisation after demise of centrally planned economies.

The State of Jammu and Kashmir has its own unique political and legal history as far as the process of decentralisation is concerned. The political crisis, which has engulfed the state since 1947, has not given, the required space for an effective empowerment at grassroot level. The exercise of decentralisation bears its history since 1930. Under public pressure, the ruler of the state had initiated certain measures for empowering the masses. It promulgated the Jammu and Kashmir Village Panchayat Regulation Act No. 1 in 1935. The National Conference that spearheaded the freedom movement in the valley provided for the institutional arrangement for grassroots empowerment in its party agenda 'New Kashmir Manifesto' adopted by the party in 1944. The National Conference came to power in March 1948, at a time, when the state was in grip of economic stagnation. Large areas of land were under control of big landlords, who enjoyed luxuries at the cost of toil of workers, working on their farmlands. In such circumstances, State Government went ahead for abolishing the middle man system or Zameindari system. It resulted in the introduction of Big Landed Estates Abolition Act, 1950. This was historic, in the sense of being a first experiment regarding land reforms in the sub continent. It provided a sound base for reactivation of the Panchayati Raj system in reshaping the rural economy in the State (Aslam 1977). Realising this, the Government replaced the Panchayat Act of 1935 (as amended in 1941) with Act-V of Samvat 2008 (corresponding to year 1951). The main features of this Act were: Majority of the panchayat members were to be elected on the basis of adult franchise; Panchayats were to perform administrative, developmental, civic and judicial functions.

### **Introduction of concept of Halqa Panchayat comprising 5-7 villages;**

Introduction of Panchayat Board at each Tehsil (Mohammad 1995). On the one hand, the Government was busy standardising the objectives set for democratic decentralisation through Panchayati Raj and the State Government joined rest of the country in introducing Community Development Programme throughout the State in 1952 on the other. Though local self-government entered a long period of dormancy after dismissal of Sheikh Abdullah government in 1953, the Constitution of the State that was adopted in 1957 reiterated the commitment to the establishment of the Panchayati Raj. The introduction of Community Development Programme (CDP) and the National Extension Services (NES) occupied the full attention of the Central and the State Governments during the 1950s. Towards the end of the decade, it was realised that the expectations raised by these programmes were not getting fulfilled, and that one of the main reasons was lack of people's participation in the planning and execution of these development schemes. At the national level, it was the Study Team on Community Development Projects and National Extension Services headed by Balwant Ray Mehta (1957) which expressed concern about the lack of people's participation and made

a strong plea for devolution of power to lower levels through Panchayats. Before the Panchayati Raj system could be introduced in the whole country, the J & K State took a lead by passing 'the Jammu and Kashmir Village Panchayat Act of 1958', and repealed its earlier Acts. This Act of 1958 did not however differ much from 1951 Act. The panchayats as local institutions of self-government remained dysfunctional over a long period of time. Wherever they existed, they were at the village level only without any functional linkages with the developmental institutional structures that existed at the block and district levels. It took almost two decades for the State Government to realise that without people's participation, the developmental process could not achieve desired objectives. The decentralisation of planning process was new and upcoming developmental slogan at that point of time. The State Government took a bold step by introducing an innovative concept of 'Single Line Administration' to secure participation of the people through their representatives in the developmental process. "The twin objectives of the Single Line Administration was to secure a mechanism for developing the planning process at the district level to take full account of the resource endowments, the potentialities and structural needs and also to initiate a process of equitable development of various areas within the district" (Choudhary 1990). However, the implementation of this innovative model led to the realisation that "human potential which is available at the grassroots level should be mainstreamed into the movement of development to provide a sound and strong basis to the democratic structure. It was in this context that the desire to have a sound institutional framework to give a definite and positive role to the community in the matter of self-governance has provided a sense of urgency for restructuring the institutional framework of Panchayati Raj" (Choudhary 1990). This realisation led to the introduction of Jammu and Kashmir Panchayati Raj Act, 1989.

### **The Jammu & Kashmir Panchayati Raj Act, 1989.**

The Jammu & Kashmir Panchayati Raj Act, 1989 was passed in March 1989. The Governor gave his assent to the bill in July 1989. For the first time an Act was named a "Panchayati Raj Act" rather than as "Village Panchayat Regulation Act". The former implies the promotion of Panchayati Raj in the State (at village, block and district levels) whereas the latter was confined to panchayats at the village level alone. **Three-Tier Model** : The Act provides for a three tier system consisting of: *Halqa Panchayat Block Development Council and District Planning and Development Board*. In addition, the Act provides for a Panchayati Adalat for every Halqa. Halqa Panchayat : The Halqa Panchayat comprises such number of panches not less than seven and not more than eleven including the Sarpanch as the prescribed authority may fix from time to time. The panches are elected from the constituencies delimited by the prescribed authority. While the naib-sarpanch is elected by the panches of the Halqa Panchayat from among themselves, the sarpanch is elected directly by the electorate of the Halqa Panchayat. The Halqa Panchayat continues to function for a period of five years from the date of its constitution. If it is dissolved for any reason before this period, elections will be held within six months. A sarpanch or naib-sarpanch can be removed by a vote of no-confidence passed by a majority of not less than two-thirds of the total number of panches of the Halqa Panchayat. The other features of the Act in respect of Halqa Panchayats include: If the prescribed authority is of the opinion that women are not adequately represented in the Halqa Panchayat, it may nominate such number of women to be members thereof, as it may deem fit. Provided further that their number does not exceed 33 per cent of the total number of panches. The Village Level Worker (VLW) shall be the secretary of the Halqa Panchayat. If, in the opinion of the Government, a Halqa Panchayat is incompetent or persistently makes default in the performance of duties imposed on it by or under the Act, the Government may by notification supersede such a Halqa Panchayat. The Act provides for various powers and functions to the Halqa Panchayat which enables it to become the cutting edge of all the development efforts, but all this is subject to availability of funds at its disposal. The important powers and functions allocated to Halqa Panchayats as enshrined in the Act are: to prepare and implement the plans for the development of the Halqa ; preparation and implementation of special developmental plans for alleviating poverty and employment generation; the Halqa Panchayat shall be involved in the implementation of scheme of universalisation of elementary education and other educational programmes; the Halqa Panchayat shall

also perform such other functions and duties as may be assigned or entrusted to it by the Government, the District Planning and Development Board and the Block Development Council within the area of which Halqa Panchayat is located. Block Development Council : The Act provides for the constitution of a Block Development Council consisting of: a chairperson, all sarpanches of Halqa Panchayats falling within the block, and Chairpersons of marketing societies within the jurisdiction of the block. However, if the prescribed authority is satisfied that women or scheduled castes or any other class are not represented in the Council, it may nominate not more than two persons to be the members of the Block Development Council. The Block Development Officer is the secretary of the Block Development Council. The chairperson of Block Development Council will be a person who is qualified to be elected as a Panch. Every Block Development Council also has a vice-chairperson who is elected by the members of the Block Development Council from amongst themselves. The main functions of the Block Development Council are: construction, maintenance and supervision of inter-Halqa Panchayat communication system ; administrative and technical guidance to Halqa Panchayats and review of their work ; to supervise plans relating to agriculture, rural development, animal husbandry/sheep husbandry, social forestry, education and public health ; to supervise and monitor the implementation of poverty alleviation programmes; to carry out such other functions as may be entrusted to it by the Government or by the District Planning and Development Board. District Planning and Development Board : Further, the Act provides for the constitution of a District Planning and Development Board (DPDB) comprising: Chairpersons of the Block Councils of the District; Members of Parliament representing the area; Members of the State legislature representing the area; Chairpersons of the Town Area Committees of the District; and President of the Municipal Council (if any) The chairperson of the DPDB is nominated by the Government from amongst the members of the DPDB. The vice-chairperson is elected by the members from amongst themselves. The District Development Commissioner is the Chief Executive of the Board to be assisted by district level heads. The main functions of the DPDB are: to consider and guide the formulation of development programmes for the district and indicate priorities for various schemes and consider issues relating to the speedy development and economic upliftment of the district ; to review periodically progress and achievements of development plans and schemes and make recommendations as it considers appropriate ; to function as a working group for formulation of periodic and annual plans for the district; to formulate and finalize the plan and non plan budget for the district ; to lay down the policy guidelines for the Block Development Councils and Halqa Panchayats; to approve the budget of the Block Development Council and supervise and coordinate their work ; to undertake special measures for alleviating poverty and employment generation and extending assistance to Halqa Panchayats in this behalf ; to promote and assist cooperative institutions; to perform such other functions and duties as may be assigned or entrusted to it by the government from time to time. All the development assistance meant for the development of the district flows through the District Planning and Development Board. The DPDB has to set up committees to handle specialised jobs. The number and manner in which they shall be constituted are decided by the DPDB. Panchayati Adalat : Panchayati Adalat is another important feature of Jammu & Kashmir Panchayati Raj Act. The idea of Panchayati Adalat is an innovative one, particularly at the grassroots level. As per the provisions of the Act, the Adalat shall comprise five members to be nominated by the government out of the panel prepared and recommended by the Halqa Panchayat out of its electorate. The person so recommended for a term of five years shall be literate, shall have attained the age of 30 years, not be a sarpanch or a panch and not be in the employment of the government or local body or corporation. The members of a Panchayati Adalat shall elect any member from amongst themselves as the chairperson. The secretary of the Halqa Panchayat shall serve as the judicial clerk to the Panchayati Adalat. The Panchayati Adalat shall not be competent to impose on any person convicted of an offence tried by it, any sentence other than a sentence of fine not exceeding one thousand rupees.



### ***Limitations of the Jammu and Kashmir Panchayati Raj Act, 1989***

The Jammu & Kashmir Panchayati Raj Act of 1989 cannot in any way claim to decentralise power or create a democratic environment at the grassroots level. One of the most serious flaws in the Act relates to government intervention in the composition of panchayats. Unlike the 73rd Amendment to the Constitution that provides that all the seats in the panchayats shall be filled by persons chosen by direct election from territorial constituencies in the panchayats, this Act provides for nominations at every level – the Halqa Panchayat, the Block Development Council and the District Planning and Development Board. The principle of direct election of panchayats is applied only at the village level. Neither the Block Development Council nor the District Planning and Development Board comprise directly elected representatives of the people. It is only the chairman of the Block Development Council who is elected but the mode of election is indirect i.e., the electoral college comprised the panches and sarpanches within that block. Similarly, there is no provision for direct election to the District Planning and Development Board. It is only the vicechairperson of the Board who is elected, the electoral college comprises the members of the Board itself. Provision for nomination was aimed at compensating for another critical flaw of the Act – its inability to provide for reservation of seats for women, scheduled castes and the scheduled tribes (SCs/STs). Unlike the 73rd Amendment of the Constitution which provides for reservation of 33 per cent seats for women through direct election, the State Act empowers the government to nominate women to the panchayats if it feels that their representation is needed. Panchayati Adalats have been used in many States to supplement the formal judicial system by reviving and legitimising the traditional system of justice. Union Government has also passed Gram Nyayalyas Act recently to provide justice at grassroots level. But by empowering the State Government to nominate the members of the Panchayati Adalat, and to remove its chairperson or any member, the State law robs independence of the institution of justice at the grassroots level. It amounts to supplementing the judicial system and the traditional system of justice, both supposed to be independent of the executive, by a third sector of justice controlled by the State government. The principle of nomination not merely goes against the democratic nature of panchayats but also changes the nature of rights enjoyed by the nominated members of the panchayats. The representation of nominated members is at the discretion of the State Government and not a Constitutional right for any of these groups. In fact, the discretion can easily be used by the government to influence the autonomous working of panchayats. Nomination or co-option has two consequences. Firstly, this meant presence of only token women and nomination by the dominant party already in power meant selection of pliant or kinswomen. Secondly, the political parties and ruling party groups interested in controlling panchayats ensure that women did not contest even if some of them express interest, so that they could bring their 'own women' later through nomination after getting only male candidates elected. Thus, co-option was not only based on a view of women as a weaker and incapable of contesting elections, it also became an instrument of patronage for the dominant political or social groups who act to retard progress in women's representation in election. A study on panchayats in Maharashtra in 1983 recorded, "A respondent, who was ambitious and had successfully contested previous election, said that her party had prevailed upon her during the last Zilla Panchayat (ZP) election, not to stand for elections because her winning the election would deprive the party of an extra seat in ZP as well as the Panchayat Samiti. In case a woman contestant is elected, there is no room for co-option and the co-opted member enjoys the same privileges of voting as elected members. Political parties, therefore, utilise the statute regarding co-option as a means of gaining votes and strengthening their party position in the panchayat body and not for promoting effective representation of active women" (D'Lima 1983). In order to deal with these limitations of 1989 Act, the State Government has adopted many positive features of 73rd Amendment Act over the years.

### ***Impediments to the Panchayati Raj in the state***

The Panchayat election 2018 in J&K was the overall enthusiasm of the people, as stated above, is a positive message regarding the resilience of democratic politics. Around 74% voter turnouts were recorded. . The young people especially were quite participated in the electoral process with many of

them joining the election trying their luck as the candidates for Panch and Sarpanch constituencies. Unfortunately 2018 elections were held in a situation when the armed conflict was still a reality in Jammu and Kashmir. The elected Panchs and Sarpanchs are worried about their lives because many Panchs and Sarpanchs were killed after election 2011 by unknown gunmen in J&K. The tragic killing of some Sarpanchs in the state has created an atmosphere of fear and insecurity. After killings, many Sarpanchs and Panchas were declared resignation in recent past. In South Kashmir districts many Sarpanch and panch constituencies were declared vacant. The threat has created a dire need of protection for Sarpanchs and Panchs life and their own families.

People's participation is very important for making good democracy not only at state or union level but also at grass-root level. Participation of all is necessary, whether directly or indirectly, to make the system more accountable and transparent. Participation helps to promote and enhance their leadership qualities and self-confidence. It will help them to perform better in the Panchayats to ensure their participation in the meetings. Unfortunately a huge chunk of the population in J&K do not participate in assembly or Panchayati elections because of conflict. Conflict created fear among the peoples of J&K. During Panchayati election 2018, there were reports that posters had pasted outside mosques and other important places in some districts of the Valley forbidding people not to participate in the polls. Hence, they wanted to get rid of participation in elections either parliament or assembly or Panchayati election.

Like Jorgen, education is not regarded as an important factor for political participation but still some others regard education as the most decisive factor for political participation. Education has significant positive effects on both voting behavior and contacts with politicians in both stable democracies and post-communist states. Panchayat election was held in year 2018 by which Panchs and Sarpanchs were elected. Large numbers of these elected representatives are illiterate and less educated. Illiterate or less educated leaders are one of the great issues before our Panchayat system. They lack understand the rules and regulations about Panchayat system. They could not properly work for the welfare of the people. They lack understanding of government procedures, finance and accounts, implementing works, judicial processes or the Constitutional provisions. Most of them are unable to sign or write their name and rely on thumb impression.

Majority of the population is disinterested in the system or unaware of the benefits of the said system if implemented properly. The bureaucratic delays, political interference, economic reasons and social pressures which made the Panchayati Raj dysfunctional can be controlled if common man comes to know about the system. The constructive and other social welfare works that are handed to the panchayats and the running body i.e. Panchs and Sarpanchs by the government can improve the level of the villages and increase the faith of the every native towards nation and national integration and may make their participation certain in the government works if people are aware of the system. Their awareness may help to elect the best possible persons of the society as their leaders. But it is only their lack of knowledge and disinterest that they don't participate and the persons who are interested to lead are no way worth but are selected and hence rule as per their choice which has made the system ineffective.

## CONCLUSION

The Panchayati Raj Institutions in Jammu and Kashmir State continue to suffer both from structural as well as operational weaknesses because of lack of political will on part of the political parties in the state. The very political culture of the state seems to be working at odds with the concept of decentralisation. Structurally, the Panchayati Raj Act 1989, despite the recent amendments (including the 2004 amendment in relation to reservation; 2011 amendment to provide for the State Election Commission and; more recently passed Act in relation to the State Finance Commission and providing more powers to Panchayati Raj Institutions by Governor Administration), remain flawed and do not serve the purpose of making the panchayats the units of self governance.

Due to lack of Constitutional guarantee to PRIs, there is a degree of arbitrariness in the constitution of panchayats in the State. Due to this fact, although the Act provides for the continuity of

panchayats by mandating that before the expiry of the term of panchayats, the next elections are to be conducted, the government may ignore this provision and may not conduct the elections before the expiry of the term of panchayats. Since 2006, for five years, there was a vacuum with no elected panchayats in place. In another manner also, the arbitrariness is clearly reflected. Though the Act provides for the three tiers of panchayat, the government while holding the elections for the village panchayats, was not under any obligation to constitute the Block Development Councils (BDCs) and District Planning and Development Boards (DPDB) immediately. The BDCs and DPDBs, therefore, were not constituted in 2001,2006 period and almost two and half years have passed since the last panchayat elections were held but BDCs and DPDBs are still to be constituted. At the operational level, the biggest issue remains the absence of powers for the panchayats. From 2001 to 2006, though the Halqa Panchayats were the only democratically constituted layer of panchayats, these were not empowered. If panchayats remained functional, these were only in relation to the Centrally sponsored schemes for which it was mandatory that the panchayats be involved. If there was anything more pathetic than the lack of powers for the panchayats, it was the absence of funding. Again, the only funding that was available to the panchayat was the funds of some Centrally sponsored schemes. Except this, neither the panchayats were provided basic funding by the State nor were these directed to raise their own resources. This scenario, more or less, remains the same even after the 2011 elections. There are pronouncements regarding devolution of powers and empowerment of panchayats like 22 September, 2011 General Administration (GAD) Order mentioning devolution of functions of 14 departments to PRIs, and yet, the panchayats remain powerless. Similarly, when the provision for Halqa Majlis (Gram Sabha) was incorporated in the Act, the powers of the Gram Sabha were not detailed. Gram Sabha which should have been the most powerful body demanding accountability from the panches and sarpanches, remains subordinated to the panchayats. Thus, the present status of Panchayati Raj Institutions demands serious interventions from the higher government for their empowerment. The State Government must move towards adopting the key provisions of 73rd Constitution Amendment in this regard.

#### REFERENCES;

- 1 Laxmikanth M, Indian Polity. Tata McGraw Hill Education Pvt. Ltd New Delhi.
2. Bennett, R. 'An overview of Developments in Decentralisation'
3. Cheema, Shabbir G and Dennis a Rondinelli(eds) Decentralisation and Development; Policy Implementation in Developing countries, Beverly Hills; Sage Publications, 1983
4. Government of Jammu and Kashmir, Rural Development Department notification 18<sup>th</sup> June 2004
5. Government of Jammu and Kashmir 2011. Panchayati Raj act 1989 Panchayat Raj Rules 1996 amended upto 2018
6. The Jammu and Kashmir State Finance Corporation for Panchayat and Municipalities Act, 2011.
7. Aslam, M. (1996), 'Local Self-Government in India: Retrospect and Prospects', Published in Role of Local Self-Government in Rural Development, Proceedings of International Workshop, Hyderabad, 27 November - 3 December 1995, New Delhi, AARRO Publications.
8. Choudhary, Sushma (1990), 'Does the Bill Give Power to People?', in George Mathew: Panchayati Raj in J & K (ed.), New Delhi, Concept Publishing House.
9. Mohammad, Sultan (1995), 'Jammu & Kashmir', Status of Panchayati Raj in the States of India 1994, ISS, New Delhi, Concept Publishing House.



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