Chapter 5

Democratic Decentralization in Jammu and Kashmir

5.1 Jammu and Kashmir Panchayats from 1935-1989

After decades, the system of Panchayati Raj emerged in Jammu & Kashmir after elections in 2011. The state of Jammu and Kashmir has its own unique history as regards Panchayats. The Panchayati Raj as an institution of local self-government in state of Jammu and Kashmir has not been thrust from outside but it is ingrained in the socio-political history of state.1 As in rest of country, traditional Panchayats also existed in Jammu and Kashmir and were not structured in modern sense but statutory recognition to Panchayats in the state was given in 1935 as in this year the roots of Panchayati Raj were planted by Maharaja Hari Singh by promulgation of Jammu and Kashmir Village Regulation No.1 of Samvat 1992 i.e.1935 A.D. With this regulation began the history of Panchayats in state of Jammu and Kashmir.2 Before statutory recognition, Panchayats comprised of lower level functionaries of Maharaja, Zaildars, Numberdars, Village heads, landlords and other influential people in rural areas. The functions which Panchayats used to perform were to settle petty disputes in the villages. The historical evaluation of these institutions reveals that they were manipulated by autocratic rulers and their collaborators for their own ends. With Jammu and Kashmir Village Regulation No.1, 1935 local self-government got introduced in the state.3 The Village Panchayats according to the preamble of the Regulation No.1 were to assist in the administration of civil and criminal justice and also to manage the sanitation and other common concerns of villages. A special department of Panchayats and Rural Department was created in 1936 to administer Regulation. This department got reorganized several times later on.4 The salient features of Jammu and Kashmir Village Regulation No.1 were:

4 Supra note 2.
1. The Regulation provided for election of Panches and of which, one Panch would be appointed by the Panchayat Officer or Wazir-e-Wazarat. The election would be held on an open stage, with a simple show of hands. The Panchayat officer was given the discretion to evolve rules and regulations for conducting the elections of Panches.

2. He might constitute a Panchayat for one village or a number of villages clubbed together in accordance with rules made by the government.

3. Each village was entitled to form one constituency and the larger villages had more than one constituency.

4. No Municipal Area, Town Area or Cantonment could be included in Panchayat. The Panchayat officer might include or exclude any area from the area of a Panchayat constituted as above.

5. The Sarpanch of a Panchayat had to be elected from among the Panches.

6. The number of Panches in a Panchayat was not less than 5 and not more than 11.

7. The majority of Panches must be elected. One Panch would be appointed by the Panchayat Officer.

8. There were qualifications prescribed regarding the right of franchise by the people in the villages and also right to be elected as a Panch i.e qualification were laid down in the Regulation for a voter as well as the person seeking election to a Panchayat. They were as follows
   a) Person should be hereditary state subject.
   b) Should be living in a rural area.
   c) Should not be insane and should be 21 years old.
   d) His revenue tax should be at least five rupees or more
   e) He should possess any kind of property valued at Rs,1000.
   f) His annual income should be at least Rs 700.
   g) He should be at least matriculate or possess an equivalent academic qualification.

9. A Panch held office for three years unless he was removed from his post earlier by the Panchayat officer or till his successor gets elected.
10. The Sarpanch (president of Panchayat) was nominated by the Panchayat officer and presided over all the meetings when he was present.

11. In the absence of Sarpanch, one of the Panches got elected to take the chair.

12. A Panch guilty of misconduct or neglect of duty might be removed from office by the Panchayat officer.

13. The Panch thus removed might file an appeal against such action of removal by Panchayat officer before an authority appointed to hear such appeals.

14. The Panch could be suspended for misconduct or neglect of duty.

15. There must be quorum of at least half the members in every meeting of the Panchayat.\(^5\)

Thus, due to these qualifications, a large number of people could neither vote nor seek election to any office of a Panchayat. These Panchayats were actually meant to be controlled and manned by small section of population i.e. privileged class who were beneficiaries of the autocratic rule of Maharaja. The common villagers had no say in matters related to Panchayats.\(^6\) This regulation was limited in its objectives and elitist in nature. The preamble itself reveals that the essence behind the promulgation was not to promote local self-governance but to use Panchayats as delivery arm of government for civil administration and criminal justice. There was no semblance of democratic character. There was economic and educational backward at that point of time in Jammu and Kashmir and keeping high literacy level and economic status as a yardstick for right to vote and to seek office in Panchayat only helped the rural elite owing allegiance to the rulers. These ruler elites used these institutions for the fulfillment of their own objectives.\(^7\) Apart from this Jammu and Kashmir was princely state and struggle against the autocratic rule of the Maharaja had already started. One of the reasons behind establishment of these Panchayat institutions was to diffuse the struggle for freedom and keep an eye on activities of Muslim Conference (National Conference) and also to marginalize the influence of the emerging parties for obvious reasons.\(^8\)

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\(^5\) Vidhya Bhushan, *op. cit.*, at 135.

\(^6\) *Supra* note 3 at 38.


The Panchayats consisted of elected as well as nominated members were assigned mainly the judicial functions. There were few non-judicial functions of Panchayats also but they remained mostly inoperative. Conceptually, the Panchayats and were neither meant to be institutions of self-governance nor for democratic representation of village people.\(^9\)

There were 58 provisions in Regulation and out of them 47 dealt with judicial functions. The judicial functions of the Panchayats were as follows.

i. The Panchayats were empowered to try suits for the recovery of movable property or cash and for the recovery of damages for misappropriation or willful injury to property, provided that value of suit did not exceed Rs.25/-

ii. Certain classes of suits were excluded from the cognizance of Panchayats irrespective of the value of the subject-matter of the suit.

iii. The Panchayats had also been given power to take cognizance of certain minor offences under the Ranbir Penal Code, Cattle Trespass Act of Samvat 1977 i.e. 1920 AD and some other Acts.

iv. The maximum punishment which a Panchayat could pass was a fine of ten rupees or the payment of twice the amount of actual damage suffered by the plaintiff, whichever was greater.

v. The Governor of the Province could empower the Panchayats to try civil suit up to the value of Rs.75/- and to exercise greater powers in trying of offences.

vi. The Panchayats were prohibited to try case which was being tried or had been tried by any Court of Law.

Section 47 of the Jammu and Kashmir Village Panchayat Regulation No.1 gave unlimited powers to allow compounding of cases and deciding civil cases by mutual agreement of the parties. A civil suit up to the value of rupees five hundred might be tried by a Panchayat if the parties thereto agreed to abide by its decision.\(^{10}\)

The non-judicial functions of the Panchayat mainly included supervision, Construction, and maintenance. The supervisory functions mentioned in the Regulation were related to supervision of village schools, supervision of work of village officials and labourers, supervision of

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\(^9\) Rekha Choudhary, Draft Report on Status of Panchayati Raj in Jammu and Kashmir, Department of Political Science, University of Jammu.

\(^{10}\) Supra note 2 at 135.
government and public property and supervision of construction of public buildings. The reason behind giving powers of supervision to Panchayats by Maharaja was to keep a tab on the village affairs on behalf of the government.\textsuperscript{11} The other functions of Panchayats were construction, improvement and maintenance of bridges and roads and the disposal of drainage water and sewage, construction and maintenance of source of water and supply and also reservoirs of water, establishment and maintenance of burial and burning grounds, elementary education, cleaning of streets maintenance of public libraries and maintenance of markets. Besides all these functions a Panchayat might also discharge some other functions including the planting and preservation of plants, relief to the poor and sick.\textsuperscript{12} Chapter VI of the Village Panchayat Regulation talks about Village Fund. It states that for every Circle in which a Panchayat has been established, there shall be ‘Village Fund’ which will be administered by the Panchayat for the improvement of the circle and for well-being of residents.

Under section 69 Panchayat officer or Wazir-i-Wazarat may at any time call for and inspect the registers and records of any Panchayat. Under Section 70 the Panchayat officer was empowered either on the motion of the Panchayat or otherwise

a. To suspend the powers of trial of the Panchayat in respect to any civil suit or criminal case.

b. To declare void any proceedings of a Panchayat at any stage and

c. To cancel or modify any order or decree passed by a Panchayat.

The Panchayat Officer thus exercised extensive powers of control and supervision over the Panchayats.\textsuperscript{13} Under this Regulation, Department of Revenue was given the responsibility for establishing Panchayats. But in 1936 Department of Panchayat and Rural Development was established and got affiliated to Revenue Department. This department was headed by a director who had the responsibility of formulating the general policy. The primary function of this department was to supervise the functioning of the Panchayats and provide necessary funds to them. Dehat Sudhar Committees (Village Reforms/improvement Committees) were also established under department to advise Panchayats. These Committees included the members other than the Panches also or others who were not in any way connected with

\textsuperscript{11} Riyaz Punjabi, \textit{op. cit.}, at 39.

\textsuperscript{12} Supra note 2 at 136.

\textsuperscript{13} Jammu and Kashmir Village Panchayat Regulation No.I of Samvat 1992 i.e. 1935 A.D
Panchayats or rural development.\textsuperscript{14} These committees ‘laid more emphasis on voluntary work (which was called \textit{Halshari} in local Parlance) in the villages. These committees were highly misused by the government, even by successive governments in the post-independence era, to harass and exploit the villagers and ignorant people in rural Kashmir. They had by and large became tools in the hands of undemocratic and repressive ruling regimes.\textsuperscript{15} Due to non-democratic nature of Panchayats, people lost faith in the Panchayats and as a result they remained more or less dysfunctional despite of the fact that the functions were well spelt out on the paper.\textsuperscript{16} The list of duties and functions of the Village Panchayats was very comprehensive and impressive, yet most of these functions had remained in abeyance, generally for no fault of the Panchayats themselves.\textsuperscript{17} The Sanitation Cess Board was also constituted to administer the Sanitation Cess Fund for local level improvement. This board was headed by Revenue Minister as chairman and there were other official members also. Village Panchayats were under extensive government control and to correct this defect, an Amendment Act was passed.\textsuperscript{18} The Panchayat Regulation was amended in 1941 to improve earlier legislation.

\textbf{5.2 The Amended Regulation of 1941:}

The various features of this amended Regulation of Svt. 1998 i.e 1941 A.D were as follows

1. The person to be elected as a Panch was disqualified if
   a. He was a whole-time government servant or
   b. Declared an insolvent by the competent court or
   c. He has been convicted of any offence or
   d. Subjected to any punishment by criminal court as would disqualify him in the opinion of the Panchayat officer from seeking election to Panchayat.

2. The Amended Regulation of 1941 empowered the Panchayats to levy taxes for the development of villages.\textsuperscript{19} The functions of Panchayats got increased under Amended Regulation so as to enable the Panchayats to execute certain works of improvement as regards

\textsuperscript{14} Supra note 9.
\textsuperscript{15} Riyaz Punjabi, \textit{op. cit.}, at 41.
\textsuperscript{16} Mohammad Aslam, \textit{op. cit.}, at 16.
\textsuperscript{17} Vidhya Bhushan, \textit{op. cit.}, at 140.
\textsuperscript{18} Ibid.
\textsuperscript{19} Supra note 3 at 40.
communication, water supply and sanitation. The amended Regulation gave power to Panchayats to construct, maintain and improve culverts, bridges and public roads, the disposal of drainage water and sewage, the excavation, maintenance and improvement of wells, ponds, springs and water reservoirs etc. The cleaning and maintenance of roads, regulating the sites of slaughter houses and examining and inspecting weights and measures was also assigned to Panchayats. The elementary and adult education was also the concern of village Panchayats.

From 1941-1942 A.D the Panchayats in Kashmir province undertook the most onerous task of purchasing ‘shali’ (rice crop) on the Khush-Kherid system. This brought Panchayats in open conflict with grain dealers. The most remarkable activity of Panchayats during this phase was the creation of food reserves in Kashmir province to meet the exigencies of food shortage in rural areas. The number of Panchayats increased and there was also increase in judicial work.

‘The local self-government through Panchayats was a very important ideal envisioned by the progressive leadership of Kashmir which in the period of 1930s and 1940s was involved in anti-feudal struggle. Seeking to abolish monarchy and other oppressive political and economic structures, this leadership under the banner of National Conference adopted the New Kashmir Manifesto as its ideological blueprint in 1944. ‘New Kashmir was a memorandum that Sheikh Abdullah, the leader of Kashmir’s leading political party the National Conference submitted to Maharaja Hari Singh, the ruler of Jammu and Kashmir state. It was the outline of a plan to convert the Jammu and Kashmir State from an absolute monarchy to a constitutional democracy with the Maharaja remaining as the Head of the State as the Monarch is in Britain. A detailed economic plan for the development of Jammu and Kashmir State was a part of this memorandum. It was subsequently adopted by the National Conference as its manifesto. The Naya Kashmir plan proved to be immensely popular in Kashmir as it was the blueprint for a welfare state far in advance of its times. The implementation of this proposal commenced without delay with the main thrust on land reforms. The Abolition of Big Landed Estates Act, passed in 1950, put maximum land holding at 22.5 acres; the rest went to the tenants. As most of the cultivable land in Kashmir belonged to the Maharaja directly or his Jagirdars and a small

20 Supra note 2 at 140
21 Riyaz Punjabi, op. cit., at 40.
22 Vidhya Bhushan, op. cit., at 141.
23 Supra note 9
class of landlords who mostly constituted Jammu Hindus, it created a sense of loss of economic power after the loss of political power”.\textsuperscript{24}

Regarding local organs of State i.e. Panchayats, the New Kashmir memorandum had provisions.\textsuperscript{25}

5.3 Post-1947 Developments

Among the states of India, Jammu and Kashmir has the distinction of introducing Land reform legislation of considerable magnitude. The intention to give land to the tiller and abolition of intermediary agencies of exploitation and landlordism was expressed in New Kashmir Programme of National Conference. The monarchical and autocratical rule failed to raise the living standards of the masses and there was large scale poverty, ignorance, illiteracy, unemployment. Instead of removing the sufferings of his subjects, Maharaja placated and fostered the interests of his own clan and a large body of courtiers by granting them huge chunks of land as jagirs. The agrarian economy was based on a feudal land system and there were no attempts to remodel. The economy of the state was completely paralyzed by the invasion of tribesmen. The peasants in most parts of the state had fled for safety, abandoning their homes and hearths and they sought asylum in forests and other places of safety. The people who had not


\textsuperscript{25} Article 45: In the Districts, Tehsils and Villages of the State the elected Panchayats would be the backbone of State Power. The elected Panchayats will supervise such administrative departments that are under them and would ensure the proper regulation of the governments administration and by vigilant supervision ensure that obedience to the law is maintained. They will act as guardians of the rights of the citizens. They will guide the development of local economy and culture in a planned fashion. They will help plan civic works and make local budgets. The elected Panchayats would have the power to pass bills regarding matters entrusted to them by law and issue orders for the same while remaining within the bounds of the law.

Article 46: The executive power of the elected Panchayats would vest in such administrative committees as would be elected by the Panchayats. These committees would have a President, Vice President, Secretary and a board of members. The administrative committees would be responsible to the Panchayats by whom they were elected. These committees will obey the directions of the Panchayats above them and the Council of Ministers of the State.

Article 47: The Democratic Panchayats will be elected by the people who come under their jurisdiction for a period of five years. The ratio of the elected members of the Panchayats would be determined by law.
fled, were handicapped from bringing the land under plough because their draught animals were killed and their agricultural implements and hamlets along with foodgrains were burnt by tribals. Due to these state of affairs, the then administration faced not only complex problem of maintaining law and order but also that of rehabilitation of the uprooted sections of the population. There was an urgent need to devise measures to ameliorate the conditions of these peasants who constituted more than 80 per cent of the population. Thus various reforms were introduced and first was enactment of legislation, *Big Landed Estates Abolition Act passed on July 13, 1950.* The main features of this legislation were:

i) Fixation of a ceiling on the holding of the proprietor at 22.75 acres (182 kanals) of land, excluding orchards, fuel and fodder reserves and cultivable wasteland.

ii) Transfer of surplus land to the tillers cultivating the land without any payment.

iii) Fixation of ceiling (at 160 kanals) on land including that, which was owned, and which has been leased out.

iv) Surplus lands which were not in the cultivating possession of any person, were acquired by the State.

As a result of the enforcement of the Big Landed Estates Abolition Act, 1950 as many as 9000 and odd landowners were dispossessed of 4.5 lakh acres of land held in excess of the ceiling. Out of this 2.31 lakh acres of land were transferred with ownership rights to cultivating peasants free of any encumbrances. This measure was first of its kind in the sub-continent and was lauded as it became a great milestone in the history of Jammu and Kashmir. The statutory recognition of proprietary rights of tillers over the lands tilled by them changed the whole socio-economic and political landscape of Kashmir. In this backdrop, there was a great opportunity for the Panchayati Raj system to play its role effectively and meaningfully. These reforms provided a sound base


for the Panchayati Raj system to ensure re-shaping of the rural economy. The Panchayats could oversee the developmental aspect of rural areas through a democratic process at the grassroots level.\footnote{Supra note 3 at 41.} As the 1935 Regulation and the Amended Regulation of 1941 did not provide any say for common man in the process of self-governance through Panchayats, it was realized that new law should be enacted. In line with the directive principles of the Naya Kashmir, the government replaced the Village Panchayat Act of 1935 (as amended in 1941) with 1951 Act.

### 5.4 Jammu and Kashmir Village Panchayat Act, 1951

The main features of the Village Panchayati Act V of Samvat 2008 (corresponding to year 1951) were as follows:

a. Panchayat was to cover five to seven villages which generally also constituted a revenue halqa.

b. The majority of Panchayat members were to be elected on the basis of adult franchise. Every person who ordinarily resides, carries on business, or personally works for gain within the Panchayat area, is not of unsound mind, and has completed twenty-first year of his age shall be entitled to vote in any election of the Panchayat.

c. Every Panchayat shall consist of such number of Panches not less than five and not more than eleven.

d. All the members of Panchayats were not to be elected, there was provision of nominations as well. The Panchayat officer was empowered to nominate some members. But all members of the Panchayat shall be elected if the government so directs by notification.

e. The Panchayat members, and not the electorate were entitled to elect the chairperson of the Panchayat, called the Sarpanch. Section 8 states that subject to the rules prescribed in this behalf every Panchayat shall elect one of its Panches to be its Sarpanch who shall
continue as such for a period of one year unless he dies, resigns, or is removed earlier but at the expiry of the term of one year the same person may be elected as Sarpanch. The Sarpanch shall be chairman of the Panchayat.

f. Under this Act, Panchayat had to perform administrative, developmental, civic and judicial duties. Chapter VII of the Act deals with administrative functions of the Panchayats like construction, maintenance, improvements and repairs of all village roads, repairs of all bunds and embankments on rivers, nallahs, streams and lakes, etc.

g. Under section 11 of the Act, if in the opinion of the Government a Panchayat is incompetent to perform or persistently makes default in the performance of a duty imposed on it or exceeds or abuses its power, the government may by notification suspend or abolish the Panchayat.

h. Introduction of Panchayat Board at each Tehsil level entrusted with certain specified judicial and developmental functions. The chairman of Board shall constitute from among the non-official members of the Board a bench of five members to be named as Judicial Committee to decide all cases mentioned in section 119. To assist the Panchayat Board in carrying out the administrative functions and duties the prescribed authority may authorize the chairman of a Panchayat Board to appoint Executive Committee. The Board was given some functions to perform and they were (i) to establish judicial Committee for deciding cases mentioned in section 118 (ii) to draw plans for development of the Tehsil in respect of improvement of communication, improvement of irrigation facilities, opening and locating of government dispensaries and Unani and Ayurvedic Hospitals, opening and location of new veterinary dispensaries, granting of stud-bulls for improvement of breeds of cattle, opening and location of dairy farms, poultry farms and bee-keeping centres, procurement for and distribution within the Tehsil of improved seed, chemical fertilizers, improved implements and other accessories calculated to improve agricultural practices therein; adoption of anti-erosion measures and making arrangements for the provision of technical assistance and guidance to the Panchayats for this purpose; opening and location of new schools.
i. Every Panchayat shall have a Fund to be called the Panchayat Fund and shall be utilized for meeting necessary expenditure and charges made and incurred in connection with performance of its duties and functions under the Act.

j. The special feature of the Act was provision for Joint committees of Panchayats which were empowered to perform mostly developmental functions. Under section 86, a Joint Committee of such number of Panchayats as the prescribed authority may determine shall be constituted for purposes in which they are interested and for any matter or matters for which they are responsible and for mutual help and co-operation in the discharge of all or any of the duties imposed under this Act. Such Joint Committee may undertake the execution and maintenance of any work in which more than one Panchayat is interested, provided the Panchayats concerned agree and contribute towards the cost of such work.  

k. Identification of sources of revenue for Panchayats. The various sources of Panchayat revenue were (i) fees levied in judicial cases i.e fees levied for the institution of suits and cases under section 40 (ii) fines and compensation imposed under the Act (iii) voluntary contributions from the people (iv) Receipts on account of taxes, tolls and fees levied under this Act (v) sanitation cess levied on the revenue paying land situated within the Panchayat Area (vi) contributions from government (vii) income from or sale proceeds of property vested in the Panchayat (viii) notwithstanding anything contained in the Jammu and Kashmir Village Sanitation Act, 1990, all fines realized under that Act within the Panchayat area.

This period also witnessed the advent of two important programmes of rural development. Post independence, the major development programmes launched in India were Community Development Programme, 1952 and National Extension Service. Core philosophy was overall development of rural areas and people’s participation. This Community Development Programme was formulated to provide an administrative framework through which the

29 [Jammu and Kashmir Village Panchayat Act No.V of 2008 (corresponding to year 1951)]
government might reach to the district, Tehsil / taluka and village level. All the districts of the country were divided into Development Blocks and a Block Development Officer (BDO) was made in charge of each block. Below the BDO were appointed the workers called Village Level Workers (VLW) who were responsible to keep in touch with 10-12 villages. So, a nationwide structure was started to be created. Thousands of BDOs and VLW’s were trained for the job of carrying out array of government programmes and make it possible to reach the government to villages. Before one could observe the results of these new development initiatives and the role which Panchayats could have played in them, there came the dismissal of state government in 1953. Due to this, local self-government entered a long phase of dormancy before it could be revived.\textsuperscript{31} The dismissal of Sheikh Mohammad Abdullah and his ministry and his subsequent arrest changed the whole scenario. The post-1953 period witnessed a continuous phase of undermining democracy and subverting of democratic institutions in the state. Under these circumstances, it was futile to expect democracy or Panchayats to function at the grassroots level.\textsuperscript{32}

The ouster of Sheikh Abdullah from the mainstream politics had serious implications for the democratic politics, within the state. Due to various factors like the central intrusion in local political processes, the loss of autonomy of the National Conference, the contested legitimacy of the political leadership that succeeded Sheikh Abdullah, the democratic processes were severely manipulated. The process of institutionalization of Panchayati Raj institutions got stalled.\textsuperscript{33} The new government which was formed after 9\textsuperscript{th} August, 1953 brought about many changes in its working and implementation of new schemes. In order to ascertain the views of the people with regard to improvement in rural areas and to associate them with the planning and execution thereof, conferences were convened from time to time of representatives of the people, Panchayats, cooperatives, prominent political workers and other interested people at central place in each Tehsil. The rights and duties of the villagers and their representatives were discussed. During the year 1955-1956, there were attempts to revitalize the Panchayats. The work relating to administration of Panchayats and enforcement of the Panchayat Act was a part of the assignment of the Rural Development Department and the Department of Community

\textsuperscript{31} Mohammad Aslam, \textit{op. cit.}, at 21
\textsuperscript{32} \textit{Supra} note 3 at 41.
\textsuperscript{33} \textit{Supra} note 9.
Project and National Extension Service. The Jammu and Kashmir was brought under the purview of CDP (Community Development Programme) in the year 1956 in conformity with all India pattern. The whole state of Jammu and Kashmir was divided into 53 blocks. Panchayats were established throughout the state for effective implementation of CDP. The jurisdiction of each Panchayat was co-terminus with that of a Revenue Patwar, serving 5-6 villages with a population of 2-3 thousand. Generally one Village Level Worker (VLW) is allotted to each Panchayat. On one hand association of VLW with the Panchayats helped the Panchayats in getting technical know-how and on the other VLW had at their disposal an organized and representative body of the people of the area through whom VLW could get the programmes implemented. In order to make the Panchayats an effective organ in the implementation for the CDP, the Panchayat Act Svt. 2008 i.e. 1951 A.D was revised in 1958. Thus Jammu and Kashmir Village Panchayat Act was passed in 1958 to make better provisions for the administration of Village Panchayats in the Jammu and Kashmir state. The introduction of the CDP in 1952 in India included J&K state. The main objective of this programme was to promote people’s participation. But that could not happen. At the central level Balwantrai Mehta Committee was constituted to find out the reason behind failure of these programmes. The Committee spelled out that, wastage of colossal amounts of expenditure and dismal failure of CDP to evoke public response, have rendered the experiments, CDP and NES, a frustrated one. Consistent with the Article 40 of the Constitution, the Committee has recommended the formulation three-tier Panchayati Raj Structure. The creation of Panchayati Raj Institutions in line with a three-tier structure was accepted by National Development Council, debated in Parliament and Planners and Public authorities of the country have substituted the words ‘Panchayati Raj’ for the name Democratic Decentralization. Before the Panchayati Raj system could be introduced in the whole country in 1959 based on the directional thrusts of the Balvantray Mehta Committee report, Jammu and Kashmir state took the lead and passed the Jammu and Kashmir Village Panchayat Act, 1958 upon the recommendations of the Balvantray Mehta Committee which repealed the earlier Acts.

34 Vidhya Bhushan, *op. cit.*, at 146-148.
5.5 Jammu and Kashmir Village Panchayat Act, 1958

The main features of the 1958 Act were as follows:

1. The government may by notification in Gazette, establish Panchayat for every village or group of villages. Under the 1951 Act government may by notification establish a Panchayat in any Panchayat Circle.

2. Every Panchayat shall consist of such number of Panches not less than seven and not more than eleven. Such number of Panches of a Panchayat shall be elected and rest shall be nominated. Majority of the Panches shall be elected. All members could be elected if the Authority so directs.

3. The term of office of every Panch shall be five years from the date of constitution of the Panchayat. Government may by notification extend the term of office of a Panch by such further period not exceeding six months.

4. Every person ordinarily resident within the Panchayat area for a period of six months and who is not of unsound mind and has completed twenty-first year of his age shall be entitled to vote in any election of the Panchayat.

5. Every Panchayat shall elect one of its Panches to be its Sarpanch. The term of office of the Sarpanch shall be the same as that of Panch.

6. The Naib-Sarpanch of the Panchayat shall be elected by the Panchayat from amongst its members and Naib-Sarpanch shall during the absence of the Sarpanch discharge all the duties of the Sarpanch.

7. All the administrative functions of the Panchayats are mentioned in Chapter III of the Act.
8. Under section 44, there shall be appointed a secretary for every Panchayat or a group of Panchayats.

9. Under section 66, for the administration of criminal and civil justice, there shall be constituted by notification in Government Gazette, a Panchayat Adalat for such number of contiguous Panchayats, not being less than five or more than seven in number.

10. Every Panchayat Adalat shall be composed of a panel of members equal in number to the number of Panchayats for which it is constituted. No person shall be qualified for being elected as, or for continuing to be a member of a Panchayat Adalat,

- if he is below twenty-five years of age or

- if he is not literate or

- if he is or becomes subject to any of the disqualifications mentioned in section 8; or

- if he is a Sarpanch, Naib-Sarpanch or Panch of a Panchayat or the member of any House of the state legislature or Parliament.

11. The Panchayat Adalat had both civil as well as criminal Jurisdiction. Every Panchayati Adalat shall be composed of a panel of members equal in number to the number of Panchayats for which it is constituted. Each Panchayat shall elect in the prescribed manner one member to the Panchayati Adalat constituted for its Panchayat from amongst its electors.

12. There shall be constituted a Block Panchayat Board of such number of Panchayats as the government may determine. Every Block Panchayat Board shall consist of one
representative from each Panchayat area in the Block and such persons as may be
ominated by the government from time to time.

13 The Board may co-opt one woman member interested in the work of women and children
welfare.

14 Under section 132 Panchayat Board has some functions to perform and they are to advise
on the development of the Block, improvement of communication, improvement of
irrigation facilities, opening of government dispensaries and Unani and Ayurvedic
hospitals, opening of new schools etc.  

Thus two-tier Panchayati Raj system with Gram Panchayat at the village level and Block
Development Boards at the block level was introduced. The government control on the
Panchayats operated in various ways. As mentioned above there was provision of nominated
Panches besides elected Panches. It was for the ‘Prescribed Authority’ to decide as to how many
were to be elected and how many were to be nominated. Moreover, the government had the
power to suspend, supersede or dissolve a Panchayat and the grounds on which this could be done
was default in the performance of duties or abuse of power. On similar grounds, the members of
Panchayat Adalat could also be removed. The 1958 Act, also failed to strengthen the Panchayat
Institutions because there was no mandatory provision for regular elections and there was lack of
financial autonomy also. Irony was that before Independence, Maharaja’s regime provided
sufficient financial assistance to Panchayats in Jammu and Kashmir. The assistance of the
government was in addition to the resources mobilised internally by Panchayats even though
both the enactments, 1951 and 1958 included the provision for financial assistance by
government. E.g. Section 52 of 1958 Act stated that Government shall contribute the sums grants-
in-aid to Panchayat Fund. The 1958 Act put emphasis on revenue resources through taxes
without any commitment on the part of government in this behalf. 

37 Supra note 9
5.6 Single Line Administration

Indira-Abdullah Accord, was signed by G. Parthasarathi and Mirza Mohammad Afzal Beg, as representatives of the then Prime Minister Mrs Indira Gandhi and Sheikh Mohammad Abdullah, at New Delhi on November 13, 1974, which paved the way for resumption of power by the latter on February 25, 1975. After assuming the power, Sheikh Abdullah introduced Single Line Administration in Jammu and Kashmir in 1976. This was an experiment in participatory administration and two hallmarks of this experiment are ‘Decentralization’ and ‘Participation’ for securing the involvement of the people in the process of development. In Single Line Administration there is reorganization of district administration at the area level with different departments reporting to a specified authority for functional, administrative and operational purposes rather than to a variety of the agencies for specified area of activity. This ensures horizontal and vertical coordination. The district officer in charge of district is redesignated as District Development Commissioner which characteristically embodies the role he is required to perform consequent to the vesting in him of the overall responsibility and control over all the development departments functioning in the district. This obviously is in addition to his normal and statutory functions as Collector, the revenue head of district, as the District Magistrate, concerned with law and order and other regulatory and protective functions and as Deputy Commissioner, exercising all residual authority as legatee of the state. All departments in the district have been brought under the administrative, functional and operational control of District Development Commissioner. This was one of the major decisions taken in the post-1947 era which relates to the restructuring of administration at the district level. Traditionally the Wazir-e-wazarat (later called the Deputy Commissioner) has been charged with responsibilities of administration, revenue and law and order, besides being considered, un-officially, the head of the administration of the district. The momentous decision regarding introduction of Single Line Administration was taken in 1976, making the Deputy Commissioner the Head of the administration and nodal officer with powers of the major head of the Department for implementation of the development works in the districts. Initially it was introduced in the Doda


district. Later in the same year, it was felt that this experiment could be introduced in all the districts of the State and, accordingly, the arrangement was extended to the other districts in December, 1976. The system of Single Line Administration has been instrumental in delegation of authority at the district level for speedy implementation of developmental programmes and enabling participation of the people in development process. Thus reversing the Top-Down/Bottom approach in Planning for development.\textsuperscript{40}

Moreover by this time i.e. 1975 Planning Commission had also recast the guidelines for district planning. Planning was decentralized with the constitution of District Development Boards for each district with adequate public representation and by making the district the planning unit.\textsuperscript{41} The Boards were constituted with the objective of associating legislators and other non-officials from different parts of district and through them the people in general, with the implementation of development programmes.\textsuperscript{42} The composition of Board is ministers, concerned officials, MLAs and MLCs belonging to district and selected non-officials. The functions of Board are:

1. The Board shall 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 uplift of the people of the district.
2. The Board shall periodically review the progress and achievement of developmental plans and schemes in operation and make such recommendations as it considers appropriate.
3. The Board shall function as a working group for formulation of periodic and annual plans for the district.

It was also realized that the concept of ‘participation’ should be broadened by carrying the principle of democratic decentralization right down to the grassroots level. It was realized that institutional structure devised for the achievement of decentralization has to be linked to lowest available organization at the village level, i.e. Panchayats, the members of which are elected by the community. For this purpose Block Development Committees constituted under Village Panchayat Act were renamed Block Development Boards evidently to harmonize with the name of similar agency at the district level. These boards at block level were visualized to have recommendatory, plan formulation and overseeing and monitoring

\textsuperscript{41} Supra note 30.
\textsuperscript{42} Government order no.1891-GD of 1978 dated 28.08.1978.
roles. However despite the decentralization of planning at the district level, the concept of Single Line Administration remained largely administrative in its basic character and did not incorporate the idea of participation of people. The reason being the composition of Board included one representative from amongst the elected Sarpanches by each Block Development Board of District. These Block level boards could not be constituted so there was no representation of Sarpanches in District Development Board. The BDB (Block Development Board) was to consist of Sarpanches of all Panchayats of the Block. In the absence of Panchayats these boards could not achieve the objective of participation of people. Inspite of all these well-meaning administrative measures, the Panchayats could not be revitalized and remained without any linkages to other institutional framework. It is in this back-drop the Jammu and Kashmir Panchayati Raj Act, 1989, was passed. The Jammu and Kashmir Panchayati Raj Bill was passed by both houses of state Legislature barely a month and a half before the Prime Minister of India introduced the Constitution (64th Amendment) Bill in Parliament on May 15, 1989, on the same subject. The later Bill authorized the state Legislatures to enact Laws about the Panchayati Raj Institutions. After the passing of this Bill the Constitutional Status was given to Panchayats. On account of Article 370 of Constitution of India, this Central law does not apply to state of Jammu and Kashmir, as it has in any case has to pass its own law without having to confirm to the new Constitutional provisions i.e. 73rd Amendment Act.

The political elite of the state seemed to have needed three decades to come up with alternative legislation i.e. Jammu and Kashmir Panchayati Raj Act, 1989 for the revitalization of Panchayati Raj System. It looks as if they were waiting and watching to see what initiative the Central government would take as when the Central government started taking initiative to give power to the people by Constitutional Amendment in the late 1980s, by a strange coincidence the Jammu and Kashmir government considered the introduction of Panchayati Raj Act, 1989 with a similar propensity as was noticed in 1958, when Balvantray Mehta Committee, constituted by Centre was in the process of recommending ‘Panchayati Raj’ as an instrument of self-governance in India. The Jammu and Kashmir Act had generated considerable interest at that point of time among the advocates of decentralization. It was hailed as an Act ‘imaginatively conceived’ which would definitely infuse a new enthusiasm of self-reliance and self-dependence in the minds of people and this Act was appreciated for novel and bold idea of Panchayat Adalat. This legislation assumed special significance because it came as a sequel to the

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43 Sushma Choudhary, op. cit., at 39.
44 Supra note 9.
45 Supra note 3 at 43
47 Mushtaq Ahmad, Panchayati Raj Institutions in India, Law, Policy and Practice 86 (Dilpreet Publishing House, New Delhi, 2010).
efforts in the states like West Bengal, Karnataka, Andhra Pradesh to take a fresh look at the working of PRIs as instruments of devolution of power to the people at the village level. In fact, then Minister for Agriculture and Rural Development Mohammad Shafi, had visited Karnataka state to study the working of its Panchayati Raj.\(^\text{48}\) For the first time an Act was named a ‘Panchayati Raj Act’ rather than a Village Panchayat Regulation or Village Panchayat Act. The former implies the promotion of PRIs in the state (at village, Block and District levels), whereas the latter was confined to Panchayats at the Panchayats at the village level alone. This was certainly a landmark positive development.\(^\text{49}\)

5.7 The Jammu and Kashmir Panchayati Raj Act, 1989

The Preamble of the Act states that “An Act to provide for the Constitution of Halqa Panchayats, Block Development Councils and the District Planning and Development Boards and matters connected therewith. Whereas it is expedient to promote and develop Panchayati Raj in the State as an instrument of vigorous Local Self-Government to secure the effective participation of the people in the decision making process and over-seeing implementation of development programmes.” Thus the preamble itself makes it clear that this Act was passed with the intent to establish healthy PRIs at village, Block and District level and to involve and promote the participation of people in decision-making with regard to issues concerning them and these institutions will have the responsibility to over-see the implementation of development programmes.

5.8 The Salient Features of The Jammu And Kashmir Panchayati Raj Act, 1989

The Act provides for a three-tier Panchayati Raj System (Village, Block and District level).

1. The Institutions thus created would be called Halqa Panchayat, Block Development Council and District Planning and Development Board respectively.

2. Halqa Majlis for every Halqa Panchayat. Halqa Majlis means all the voters of Halqa Panchayat.

\(^{49}\) *Supra* note 8.
3. Every Halqa Panchayat would have 7 to 11 Panches and a Sarpanch (who would lead the Halqa Panchayat). The Sarpanch and Panches would be elected directly by the people. There would also be another person by the name of Naib Sarpanch and he is nominated by all the Panches of a Halqa Panchayat. Naib sarpanch would perform the same duties as the Sarpanch in the event of Sarpanch not being in a position to fulfill his/her duties. Village level worker would be the secretary of the Halqa Panchayat.

4. In a given block, all Sarpanches would collectively constitute the Block Development Council (BDC). The chairperson of the BDC would be elected by all the Sarpanches and Panches of that block. The Block Development Officer would act as secretary of the BDC. Similarly, all the Block Chairpersons would together constitute the District Planning and Development Board (DPDB). In addition to the Block Chairpersons, the DPDB would have MPs, MLAs, MLCs and chairpersons of Municipalities/Notified Area Committees as members. The chairperson of the DPDB would be elected by the members of District Development and Planning Board from amongst its members. The Deputy Commissioner of the district would be the Chief Executive Officer (CEO) of DPDB.

5. Reduction of voting age from 21 to 18 years.

6. This Act envisages Panchayat Adalat for every Halqa.

7. Holding of elections within six months of supersession.

8. There shall be Panchayat Advisory Committee.

9. The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections under this Act shall vest in State Election Commission.


5.9 Review of the Jammu and Kashmir Panchayati Raj Act, 1989:

The Jammu and Kashmir Panchayat Act 1989 is the latest on the democratic laundry-list of the State. The Act of 1989 was considered to be harbinger of the second democratic upsurge in the Jammu and Kashmir State, the first being of course the radical land reforms. This Act is applicable at present. When this Act was introduced it was perceived to be a radical initiative as it went beyond the concept of delegation of authority rather it encompassed the concept of sharing of power by democratic decentralization at the grassroots level. This was for the first time, a three-tier structure of PRIs at the halqa level, block and district levels were to be introduced by this enactment. This Act is still not at par with 73rd Amendment and has structural and operational weaknesses.

5.9.1 Halqa Majlis (Gram Sabha)

At the lowest level is Halqa Majlis which forms the base of three-tier system. Halqa Majlis means all the voters of Halqa Panchayat i.e. Halqa Panchayat shall comprise of all the persons whose names are included in the electoral roll for such Halqa Panchayat. It is the foundation on which edifice of Panchayati Raj system is built. The Sarpanch shall convene at least two meetings of Halqa Majlis in a financial year. The powers of Halqa Majlis are not separately specified in the State Act. But its role as regards budget and annual report is mentioned i.e. every Halqa Panchayat shall prepare and lay for sanction before the Halqa Majlis the budget estimates of income and expenditure for the year commencing on 1st day of April, of Halqa Panchayat incorporated therein future development programmes and plans for the relevant year. If any Halqa Panchayat fails to present its budget or annual report in a meeting, the Prescribed authority shall prepare the budget and annual report and present the same before an extraordinary general meeting of Halqa Majlis called for this purpose and Halqa Majlis shall consider the budget and

54 Section 2(j) defines Halqa ‘as area comprising a village or such contiguous number of villages as may be determined by the Election Authority from time to time.
55 Supra 51 at Section 4(2).
annual report and draw up developmental plans for Halqa Panchayat. The Gram Sabha (GS) or Halqa Majlis is the cornerstone of the entire scheme of democratic decentralization. Hence, the success or failure of the Panchayati Raj system largely depends on how powerful and effective the GS is at the decentralized level to fulfill the desires and inspirations of the people. Article 243 (A) of the Constitution says that the Gram Sabha may exercise such powers and perform such functions of the village level as the Legislature of a State may, by law, provide. It is in the light of this that State legislatures have endowed certain powers to this body relating to the development of the village. In State of Jammu and Kashmir there is no clarity with regard to role of Halqa Majlis. The institution of Gram Sabha as envisaged by the 73rd Amendment of Constitution of India is considered heart and soul of the Panchayati Raj system, where people are provided an opportunity to participate in the process of self-governance. Similarly the concept behind giving primacy to the Halqa Majlis is that this should work like the ‘general body’ of the village and the Halqa Panchayat should function as its ‘Executive Committee’. It is the foundation of Panchayati Raj system to perform functions and powers entrusted to it by the State Legislature but no fixed quorum is provided under the Act.

There was no provision as regards Halqa Majlis in the State Act of 1989. It was by way of Jammu and Kashmir Panchayati Raj Amendment Bill, 1997 the provision was added for the establishment of Halqa Majlis. Since Halqa Majlis is required to pass a resolution but neither the Act of 1989 nor the rules of 1996 provide for quorum i.e. how many voters of Halqa Panchayat are required to pass a resolution or when the annual report or budget is laid before the Halqa Majlis for sanction, how many voter’s gathering is required for that. The Act does not state whether the recommendations given by the Halqa Majlis are binding legally and cannot be tampered with. The identification of beneficiaries, selection of development interventions, social auditing, planning and execution of development schemes, monitoring and evaluation of the development schemes, all these important functions are done by Halqa Majlis. Neither in the 1989 Act nor in the rules, social audit is mentioned. Halqa Majlis which should have been the most powerful body demanding accountability from the Panches and Sarpanches, remains

56 Id. at Section 21.
58 Supra note 47
subordinate to the Panchayat. Halqa Majlis is conducted once in a blue moon and that too by some Panchayats only. The meetings of the Village Assembly could have helped in cultivating the debating skills of women and other voters in voicing their concerns and creating role models.\(^5^9\) Article 243A of Constitution of India provides that ‘A Gram Sabha may exercise such powers and perform such functions at the village level as the legislature of state ,may by law provide. But in 1989 Act these powers,functions responsibilities of Halqa Majlis are not specifically mentioned.

5.9.2 Halqa Panchayat

‘Halqa’ means the area comprising a village or such contiguous number of villages as may be determined by government from time to time. Provided that the halqa shall be determined in such a manner that the population of any halqa does not exceed 3,000 in the hilly areas and 4,500 in the plain areas. The section 4 of the Act states that there shall be a Halqa Panchayat for every Halqa and every Halqa Panchayat shall bear the name of the place where it is headquartered. Every Halqa Panchayat shall consist of such number of Panches not less than seven and not more than eleven including the Sarpanch. Earlier before the Jammu and Kashmir Panchayati Raj Amendment Act,2004 the government had the power to nominate 33\% women members and other weaker sections like SCs/STs to Halqa Panchayat if the prescribed authority was of the opinion that they were not adequately represented. But after Amendment the nomination was replaced by reservation of 33\% seats for women and SCs /STs . The Sarpanch shall be directly elected by the electorate of Halqa Panchayat but the Naib -Sarpanch shall be elected by the Panches of the Halqa Panchayat from amongst themselves at the first notified meeting of the Halqa Panchayat after its constitution. The Panches shall be elected from the constituencies delimited by the Prescribed Authority. The Village Level Worker or Multipurpose Worker or Gram-Sevika shall be the secretary of the Halqa Panchayat.\(^6^0\)


\(^{60}\) \textit{Supra} note 51
5.9.3 Secretary of Halqa Panchayat

The Secretary has many functions to perform. The Village Level Worker or MPW (Multipurpose Worker) or Gram Sevika of concerned Halqa Panchayat shall function as secretary in addition to his own duties. The Sarpanch/Panch subscribe an oath or affirmation and this is being forwarded to the concerned Secretary of Halqa Panchayat. The Secretary with the approval of Sarpanch or in his absence the Naib –Sarpanch shall prepare the agenda for the meeting and he shall record the proceedings of every meeting. When the Sarpanch and the Naib-Sarpanch are removed from their offices they shall make over charge of their respective offices to the Secretary of the Panchayat who shall hand over the charge to the person/persons who may be elected in accordance with Act and Rules. The secretary Panchayat at all the three levels i.e. village Panchayat level, block level, district level is a government official. Village Level Worker or Multipurpose worker or Gram Sevika at the Halqa Panchayat level, Block Development Officer is secretary of the Block Development Council, District Development Commissioner as the Chief Executive of the District Planning and Development Board. Gram Sevikas are women but they are government servants and not elected representatives. The Panchayati Raj Institutions are institutions of self-governance and they should not be administrative extensions of government. They should be autonomous bodies of self-governance. Provision of a government functionary at halqa level, intermediate level and the district level should be reviewed.

5.9.4 Women’s Reservation

As mentioned earlier the 1989 Act provided for nomination of women. If a Prescribed Authority is of the view that women are not adequately represented in the Halqa Panchayat, it may nominate such number of women as members as it may deem fit but the number of women members to be nominated shall not exceed 33% of the total number of elected Panches. In 2004 an amendment was made to the 1989 Act and now there is 33% reservation for women. But this reservation was available for the position of Panch only and not Sarpanch. Again in 2014 an

amendment was made and this reservation is available to women for the position of Panch as well as Sarpanch. But this reservation of seats for women is made at the level of Halqa Panchayats. There is no provision for reservation of seats for women in the other levels of Panchayat i.e. Block Development Council and District Planning and Development Board.\(^63\) Block Development Council elections scheduled to be held in October 2012 were postponed abruptly on the pretext of bringing reservations for women and the Scheduled Castes and Scheduled Tribes in BDC. Since then it was never conducted.\(^64\)

5.9.5 **Panchayat Advisory Committee (PAC)**

The Act envisages the constitution of Panchayat Advisory Committee. The government may by notification supersede Halqa Panchayat if in the opinion of it the Halqa Panchayat is incompetent to perform or defaults in the performance of its duties imposed on it. But no order of supersession shall be passed unless the Halqa Panchayat is called upon to show cause. The explanation tendered by Halqa Panchayat shall be forwarded to Panchayat Advisory Committee for its consideration and recommendation.\(^65\) There was no provision with regard to Panchayat Advisory Committee in 1989 Act. The Act was amended in 1999 and Section 8-A was inserted and Section 9 was amended.\(^66\) The High Powered Committee, was constituted by the State Coalition Government (Congress and National Conference) in 2013 to give recommendations for incorporating suitable provisions of 73rd amendment of Constitution of India into the Panchayati Raj Act of the State. The four-member committee comprising Commissioner Secretary Rural Development Department (RDD), Director Jammu RDD; Director Kashmir and Secretary Law Department, submitted its final report to then Rural Development Minister, to be placed before the Cabinet. The committee had opposed the suggestions that supersession of Halqa Panchayat should not take place through Panchayat Advisory Council and instead there should be a Cabinet decision for the same. Moreover, the committee said PAC is advisory in nature and will further recommend the proposal to the Department of Rural Development and

\(^{63}\) *Supra* note 9


\(^{65}\) *Supra* note 51 at Section 8-A and Section 9.

\(^{66}\) Inserted vide Act III of 1999 dated 16-4-1999.
While the Congress has opposed the constitution of Panchayat Advisory Committee (PAC), the State government felt that the proposed Committee is only advisory in nature and the final decision is to be taken by the Government. The recommendations of the PAC as per Section 9 of the Act would assist the Government in arriving at just and fair decision. The Madhav Lal Committee recommended that the devolution of functions and functionaries be reviewed periodically by the Panchayat Advisory Committee.

5.9.6 Disqualification for membership

A person shall be disqualified to be a member of Halqa Panchayat, if he

a) is not a permanent resident of the state; or (b) is in the employment of the government or any other local body; or (c) is under twenty-one years of age (the age was twenty-five before Jammu and Kashmir Panchayati Raj Amendment Act, 2014); or (d) is of unsound mind and stands so declared by a competent court; or (e) has been adjudged insolvent by a competent court; or (f) is a salaried servant of a Halqa Panchayat; or (g) is a Lambardar or Village Chowkidar; or (h) has been dismissed from the service of the government, a local body or a Halqa Panchayat; (i) has been convicted of and sentenced for an offence (other than an offence of a political nature) punishable with imprisonment for not less than two years, unless a period of three years, or such less period as the government may allow in any particular case has elapsed since his release; provided that this clause shall not apply to an offender who has been released under the provisions of section 562 of the Code of Criminal Procedure, Samvat 1989 or under the Jammu and Kashmir Probation of Offenders Act, 1966. (2) No person shall be qualified to be chosen as a member of Halqa Panchayat unless his name is included in the electoral roll of such Halqa Panchayat. (3) A person who becomes a member of a Halqa Panchayat on the basis of a false Schedule

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Caste or Scheduled Tribe certificate, shall be disqualified from the date on which it is found that he had become such member or office bearer on the basis of such false caste certificate and shall continue to be disqualified for further period of six years.\footnote{Supra note 51 at Section 6}

5.9.7 Tenure and Removal of Sarpanch and Naib-Sarpanch

The term of office of Sarpanch, Naib-Sarpanch and Panch is five years but Sarpanch, Naib-Sarpanch could be removed from his office, if resolution expressing want of confidence in him is passed by majority of not less than 2-\textsuperscript{3rd} of total number of Panches of Halqa Panchayat is passed at a meeting specifically convened for this purpose. The grounds of removal are gross misconduct; neglect of duty; any disqualification prescribed under section 6; failure to attend six consecutive meetings of the Halqa Panchayat. But the failure to attend the meetings shall not render him liable to removal if such failure is due to reasons beyond his control.\footnote{Id. at Section 7.} Whenever a vacancy occurs by the death or resignation of Panch or Sarpanch, it shall be filled by election or nomination provided vacancy is for a period of more than six months. A Sarpanch, Naib-Sarpanch, a Panch of a Halqa Panchayat may by writing under his hand, addressed to such authority as may be prescribed give resignation from his office and his office shall thereupon becomes vacant.\footnote{Id. at Section 8 & Section 11.}

5.9.8 Supersession of Halqa Panchayat

Moreover, as mentioned earlier also the Halqa Panchayat could be superseded by government but within six months of supersession elections should be held and when the order of supersession is passed the government makes arrangement for carrying out the work of Halqa Panchayat for such period as it may specify but not exceeding six months. In case of supersession, the Sarpanch and Panch of that superseded Halqa Panchayat shall vacate their office. The funds and other property vested in the Halqa Panchayat shall during the period of supersession vest in such person/body entrusted with this function by government.\footnote{Id. at Section 9.} Besides this every Sarpanch shall be entitled to monthly honorarium and every Panch shall be entitled to such
sitting fee as may be specified. The honorarium was never given to Sarpanches and Panches. Finally the government agreed to give honorarium. Panchayats being ‘local government’ is a State subject and as such the payment of honorarium/salaries/perks to the members of Panchayati Raj Institutions (PRIs) is left to the discretion of States, and State Governments take decisions regarding provision of honorarium/salaries/perks to members of PRIs. A request for providing central assistance of Rs. 75.00 crore per annum for making payments of remuneration to their Sarpanches and Panches was received from Government of Jammu & Kashmir by Ministry of Panchayati Raj government of India. As remuneration to Sarpanches and Panches is a State responsibility and the Ministry has no such provision under its schemes, no funds were provided. The government of Jammu and Kashmir announced that the Sarpanch will get an honorarium of Rs 2000 and Panch Rs 1000 per month respectively. This amount is too meager when the inflation has reached its peak. Its difficult for elected representatives at the grassroots level to sustain their families with this meagre amount as honorarium.74

In Kerala there is Kerala Panchayat Raj (salaries and Allowances to Representatives of People) Amendment Rules, 1996. The Kerala government not only gives salary but also allowances. While salaries and perks of members of Parliament and state assemblies are revised at regular intervals, this is not the case with members of local bodies. Better pay would lead to an increase in the efficiency of elected representatives in the state. Fifth State Finance Comission in Kerala recommended hike in salaries. It recommended that the salary of Panchayat president be increased to Rs 19,000 from Rs 6,600 and that of vice president to Rs 15,900 from Rs 5,300. The members’ salaries may be raised to Rs 7,000 from Rs 3,500.75 In comparison to Kerala which is considered model state as regards Panchayati Raj Institutions, in Jammu and Kashmir Panchayat Sarpanches and Panches get paid a pittance.

5.9.9 Powers and functions

The powers and functions of Halqa Panchayat are subject to availability of funds. The Act gives wide ranging powers to the Halqa Panchayat. The various functions of Halqa Panchayat are as follows:

(i) to prepare the plans for the development of the Halqa
(ii) to undertake measures for the implementation of the developmental plans
(iii) to specifically deal with the problems of soil conservation, water management, social forestry, rural industrialisation, agriculture, sheep and animal husbandry, sanitation, health and other welfare programmes.
(iv) regulations of buildings, shops and entertainment houses and checking of offensive or dangerous trades.
(v) construction and maintenance of slaughter houses, regulation of sale and preservation of meat and processing of skins and hides.
(vi) regulation of sale and preservation of fish, vegetables and other perishable articles and food.
(vii) regulation of fairs and festivals.
(viii) preparation and implementation of special developmental plans for alleviating poverty and employment generation through and besides programme, like Integrated Rural Development Programme, National Rural Employment Programme, Rural Landless Employment Guarantee Programme and Housing of Scheduled Castes and Backward Classes.
(ix) all matters involving regulation, supervision, maintenance, and support, incidental to, or necessary for the more efficient discharge of the above functions and those which may be entrusted to Halqa Panchayat under the provisions of the Act.

(2) The Halqa panchayat shall be involved in the implementation of scheme of universalisation of elementary education and other educational programmes.

(3) 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 constituted. The Sub-section (3) of Section 12 is enabling i.e government may assign or entrust to the PRIs any more functions and duties from time to time. In other states the functions of the Village Panchayat are

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76 Supra note 51 at Section 12.
77 Supra note 69 at 5.
mentioned in schedule and functions are divided into mandatory functions, General functions and Sector-wise functions.

It is the only tier having power of taxation. But the Halqa Panchayats could not work effectively due to non-availability of sufficient funds. Centre had assured the release of Rs 460 crores worth grants for the Panchayats. The funds would be released in favour of the Panchayati Raj Ministry of the State, which, in turn, would distribute funds among every elected Panchayat to the tune of Rs 10 lakh. The Panchayats (by majority or Deh Majlis i.e. Panchayat members with majority of local people) would identify the development works to be executed in their areas with the help of local people. The works would be executed by the Panchayats only and not the MLAs. The Government of India hasn’t made it clear as to whether Rs 10 lakh worth grants to Panchayats would be one time grant or made every year. Union Minister for Rural Development had asked the State Government to submit a detailed proposal on number of total elected Panchayats in the State, the number of elected Panchayat members in each Halqa, the funds being provided to them by the State Government and the procedure to be adopted for expenditure of Rs 10 lakh worth Constituency Development (CD) grant to each Panchayat Halqa of the State by the Government of India.78

But this amount has not been given to Panchayats as yet. From 2001-2016 Halqa Panchayats have been the only democratically constituted layer of three-tier Panchayati Raj system, they have not been empowered and are powerless because of lack of funding and nor were these directed to raise their own resources. If Panchayats remained functional, these were only in relation to Centrally Sponsored Schemes and only funding that was available to the Panchayats was that tied with Centrally Sponsored Schemes.79

According to Madhav Lal Committee report the Panchayats can not be expected to deliver in the absence of assured resources. They need to be encouraged to raise resources on their own but besides that they will require appropriate devolution and grants for carrying out the functions assigned to them. In the Thirteenth Finance Commission of India Award, an amount of Rs 918 crore was given for rural local bodies of the State. Out of this, Rs 600 crores falls under General Basic grant and Rs 318 crore falls under General Performance Grant. For accessing the General

79 Supra note 62.
Basic Grant, the elected local bodies have to be in position and utilization of funds has to be made as per the guidelines laid down by the 13th CFC, including submission of utilization certificates from time to time. The withdrawal of performance grants is also subject to certain governance reform measures required to be taken by state government like adoption of an accounting framework, inclusion of PRI’s budget statement in the State Budget document, adoption of eight data base formats, CAG being given TG&S (Technical guidance and support) or audit of PRI’s, appointment of local body ombudsman, electronic transfer of funds to PRIs, prescribing the qualifications for the State Finance Commission Members and enabling provisions for empowering local bodies to levy property tax. Under the 12th Finance Commission Award an amount of Rs 281 crore was earmarked for PRIs. But due to non-fulfillment of prescribed conditions State government could not secure 81% of the earmarked amount. Therefore it is important that the reform measures mandated by the Finance Commission should be taken so that entire amount could be utilized by the Panchayats.  

“Moreover, 14th Finance Commission has also recommended in 2015 the whopping Rs 4161.86 crore for the PRIs and Urban Local Bodies (ULBs) for five years beginning from 2015-2016 and the Union Finance Ministry has forwarded the guidelines for the utilization of these grants. Out of this total amount, 3117.36 has been earmarked for Rural Local Bodies. If State performs strictly as per the laid down norms it would be able to get additional financial assistance of Rs 607.50 crore performance grant during this period. Out of this Rs 607 crore, 346.37 crore has been fixed for rural local bodies. Keeping in view this amount, it becomes obligatory on the part of the PDP-BJP (current dispensation in power) to hold elections of the Panchayats which were due in April 2016 as the basic purpose of this grant is to strengthen rural local bodies. This grant is again Basic Grant and Performance Grant. It is mentioned in the guidelines that State should release the grants to rural local bodies within 15 days of it being credited to their account by Union Government. In case of delay, the State government would have to release the installment along with the interest at the rate of Reserve Bank of India to be paid from state’s own funds and a certification to this effect would have to be reflected in the Utilization Certificate to be furnished by the State Government. The Finance Ministry has laid down several pre-requisites for the release of grants to local bodies in order to ensure financial regulations and accountability. The grants will be released in two installments in June and

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80 Supra note 69 at 7.
October every financial year, while 50 per cent of the Basic Grant for the year will be released to the State as the first installment of the year, the remaining Basic Grant and the full Performance Grant for the year is to be released as the second installment for the year. However, the Performance Grant will be released from 2016-17 onwards as recommended by the 14th Finance Commission. The Finance Ministry has made it clear that release of second and subsequent installments of grants (both Basic and Performance) will be subject to receipt of Utilization Certificate for the previous installment.\(^{81}\)

As per the Section 42, J&K Panchayati Raj Act, 1989, the election to the Halqa Panchayat shall be held one month prior to the expiry of the term. After the elections in 2011 the Panchayats were notified on 14th July, 2011, with a term of five years. As per the law, the new Panchayats will have to be in existence on or before 14th July, 2016. Government has decided of not holding these polls in view of state budget session of the Legislature starting from May 25, 2016 in Srinagar and thereafter there is Amarnath Yatra. Either these polls will be held later this year or in the next year. Uncertainty has been looming large over holding of elections of Panchayat bodies. The inordinate delay has been costing state hundreds of crores in the form of Centre’s funding that gets lapsed with each passing year.\(^{82}\) This delay and uncertainty is proof of the fact that constitution of Rural Local Body is still not a priority in Jammu and Kashmir as this is only statutory obligation which is flouted. Had there been Constitutional backing to PRIs then it would have been difficult for State government to delay the elections.

### 5.9.10 Property of Halqa Panchayat

(1) The following shall constitute the property of Halqa Panchayat

(i) public village road, within the Halqa Panchayat area other than those under the control of any department of the government.

(ii) property movable and immovable which has been transferred to a Halqa Panchayat by the government, any public body or an individual.


(iii) buildings, slaughter houses, manure and night soil, dumping sites, structures and water reservoir built by a Halqa Panchayat from its own funds or from contribution by Government, any public body or an individual.

(iv) rubbish, sewage, filth, bones, village cleaning, dead bodies of animals and other matters collected by the Halqa Panchayat under this Act.

(v) trees and grass growing on property belonging to the Halqa Panchayat, fruit and other produce thereof and windfalls thereon.

(vi) drains, tanks, ponds, wells, springs, streams, khuls, ghats, nullahs and quarries in the Halqa Panchayat area which do not belong to any person or a group of persons or to the Government and declared to be such property by a resolution of the Halqa Panchayat.

(vii) all public lamps or lamp posts and apparatus connected therewith or appertaining thereto.

(viii) any property which a Halqa Panchayat may acquire.

(2) The Halqa panchayat shall have power to acquire, hold and dispose of the property and enter into any contract in accordance with the laws and rules in force.  

5.9.11 Halqa Panchayat Fund

Every Halqa Panchayat shall have a fund to be called “Halqa Panchayat Fund” which shall comprise the following :-

Taxes, fee levied by Panchayat; proceeds from the property and enterprises run by Halqa Panchayat; Court fees, fines and compensation paid to Halqa Panchayat; donations and contributions paid by public for works undertaken by Halqa Panchayat; proceeds of the sanitiation cess collected by the Government on revenue being loaned within Halqa Panchayat area; grants from the Government for general purposes on per capita basis and also for specific functions; loans from Government or other agencies approved by the government or other financial institutions; all other incomes of Halqa Panchayat and such grants as may be assigned to the Halqa Panchayat by the Government, keeping in view the topography and backwardness of the areas. There is no time limit for the transfer of funds to Halqa Panchayat Fund in State of Jammu and Kashmir. It should be made obligatory for the State government to release Funds within a time limit. The 10 lakh which was supposed to be given to Halqa Panchayat has not been transferred so far. The allocation of loan from government or

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83 Supra note 51 at Section 13.
84 Id . at Section 14.
other agencies is important for development purposes. “The fact is that State governments are starved of funds due to the imbalances in the Indian fiscal federal system tilted towards the Union Government. So State governments are reluctant to give away their meagre resources to the Panchayats. In Jammu and Kashmir, as in the case of other States, the only funding that is available to the Panchayats is tied with some centrally sponsored schemes. Other than that, neither are the Panchayats provided basic funding by the State nor are these directly empowered to raise their resources through taxation even though the power of taxation is detailed in the Act”.  

5.9.12 Power of Halqa Panchayat to levy Tax, Fees

Following Taxes and Fees can be levied by Halqa Panchayat but State government has power to modify or cancel any tax or fees imposed under this section.

5.9.12.1 Taxes:

(i) Taxes on any trade, calling or profession within the jurisdiction of Halqa Panchayat.

(ii) A tax payable by owner on animals and vehicles kept within the area of Halqa Panchayat and plied for hire.

(iii) Tax on rice husking, brick kilns and oil mills.

There used to be tax on boats, pilgrim tax, tax on gharats, hawkers and pheriwalas. But that is deleted by The Jammu and Kashmir Panchayati Raj (Amendment) Act, 2014.

5.9.12.2 Fees

Fees on persons exposing goods and animals for sale in market or melas belonging to or under the control of Halqa Panchayat; fees for the use of slaughter houses and encamping grounds; Fees for temporary occupation of village sites, roads and other similar public places or parts thereof in the villages; fee on Application for creation or re-creation of building; Adda fee; (xii) Fee for grazing of cattle in the grazing lands vested in Halqa Panchayat; Fee for grazing of cattle in the grazing lands vested in Halqa Panchayat; Fee on cattle pounds; Fee on tongas, and such other tax or fee as may be approved by the Government. The power of taxation is given to Halqa Panchayats only and not to Block development Council and District Planning and Development Board.

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85 Supra note 52.
86 Supra note 51 at Section 15
5.9.13 Finance Commission

The State Act 1989 did not have any provision for Finance Commission. The Jammu and Kashmir State Finance Commission for Panchayats and Municipalities Act, 2011 was passed. The Constitution 73rd Amendment Act provided for constitution of Finance Commissions in every state to review financial position of the Panchayats and make recommendations for the grant of funds to the respective State governments. Therefore, in 2011 this Act was passed and section 10 lays down the power and functions of State Finance Commission as regards Panchayats. It states that, the Commission shall perform all or any of the following functions and shall make recommendations to the Government as to:—

(i) the distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them and the allocation between the Panchayats at all levels of their respective shares of such proceeds;

(ii) the determination of taxes, duties, tolls and fees which may be assigned to, or appropriated by the Panchayats;

(iii) the grants-in-aid to the Panchayats from the Consolidated Fund of the State;

(iv) The measures needed to improve the financial position of the Panchayats.

The exact proportion of grant to be given to each level of Panchayat is not specifically mentioned in the Act. There is no mechanism to review the implementation of SFC recommendations either in Panchayat Act of 1989 or in State Finance Commission Act.

5.9.14 Annual Budget

Every Halqa Panchayat shall prepare and lay for sanction before the Halqa Majlis the budget estimates of income and expenditure for the year commencing on 1st day of April, of Halqa Panchayat incorporating therein future developmental programmes and plans for the relevant year. The copy of the budget estimates of income and expenditure and the annual report of the working of the Halqa Panchayat stating their future developmental programmes and plans for the next year shall be forwarded to the prescribed authority for record within three days after its

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87 The Constitution of India, 1950, Article 243(I)
89 Supra note 9.
sanction. If any Halqa Panchayat fails to present its budget or annual report in the meeting, the prescribed authority shall prepare the budget and the annual report of such Halqa Panchayat and present the same before an extraordinary general meeting of Halqa Majlis specially called for this purpose and the Halqa Majlis shall consider the budget and the annual report so prepared and presented, and draw up developmental plans for the Halqa Panchayat area. The approved budget for the Halqa Panchayat shall be duly publicized and the record of the Halqa Panchayat pertaining to the funds and development activities shall be open for examination of the voters of Halqa Panchayat concerned. 90 There is no mention in State Act 1989, about the preparation of budget for the BDC and DPDB. Apart from this State Act does not specify the format for keeping Panchayat accounts. 91

5.9.15 Block Development Council

The Block Development Council is the second tier of Panchayati Raj system. The Act envisages constitution of BDC for every block in the State. For every block in a State, government may by notification constitute a Block Development Council bearing the name of the block. The BDC shall be a body corporate, having perpetual succession and common seal and shall by its corporate name, sue and be sued. It shall consist of a chairperson (before 2014 Amendment Act it was chairman) and all Sarpanches of Halqa Panchayats falling within the block. The chairman of Marketing Society within the jurisdiction of block used to be part of BDC but now after 2014 Amendment Act, he/she is not member of BDC. Clause (iii) has been deleted. If in the opinion of Prescribed Authority, women, Scheduled Castes or any other class are not represented in BDC, then the Prescribed Authority may nominate not more than two persons to be members. This nomination of women or SCs or any other class has been done away with by the The Jammu and Kashmir Panchayati Raj (Amendment) Act, 2014 and now the proviso which states that offices of chairpersons of Block Development Councils shall be reserved for

(a) the Scheduled Castes and
(b) the Scheduled Tribes

in every district and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of offices of chairpersons to be filled by direct election in that

90 Supra note 51 at Section 21
91 Supra note 9.
district as the population of Scheduled Castes in that district, or of the scheduled tribes in that district, bears to the total population in that district and such offices may be allotted by rotation to different Block Development Council constituencies in a district in such manner and by such authority as may be prescribed. The proviso further provides that (a) not less than one-third of the total number of offices of chairpersons reserved under the above proviso shall be reserved for women belonging to the Scheduled Castes or as the case may be, the scheduled tribes; and

(b) not less than one-third of the total number of offices of chairpersons to be filled by direct election in the district shall be reserved for women (including the number of offices of chairpersons of BDCs reserved for women belonging to the Scheduled Castes or Scheduled Tribes) and such offices may be allotted by rotation to different constituencies in a district by such authority and in such a manner as may be prescribed.

Provided further that in the case of Districts of Leh and Kargil the Councilors of any Council Constituted under the section 3 of the Ladakh Autonomous Hill Development Council Act, 1997 representing the area falling in any block shall be ex-officio members of Block Development Council for such block.\(^92\) This intermediate Panchayat body shall consist of chairperson who shall be Sarpanch or a Panch in any Halqa Panchayat of that Block. The Sarpanch or Panch shall vacate his office on becoming chairperson. The BDC shall have a vice-chairperson who shall be elected by the members of the BDC from amongst themselves. The Block development officer shall be secretary of BDC and chairperson shall be entitled to monthly honorarium and vice-chairperson shall be entitled to sitting fee. Before the The Jammu and Kashmir Panchayati Raj (Amendment) Act, 2014, any person qualified to be a Panch could become chairman of the BDC but after this amendment only Sarpanch or Panch could become chairperson and this amendment has also introduced the clause for honorarium for chairperson and vice-chairperson.\(^93\) There is no direct election of BDC chairperson i.e. chairperson is elected but process of election is not direct but indirect –electoral college comprised of Sarpanches and Panches. The term of BDC shall be co-extensive with the term of Halqa Panchayat of that Block and term of vice-chairperson and other members of the BDC shall be co-extensive with the term of their office as Sarpanch of the concerned Halqa Panchayat. The chairperson could be removed from his office.

\(^92\) Supra note 51 at Section 27.
\(^93\) Id. at Section 28.
if no confidence motion is moved against him by any member on grounds like gross misconduct, neglect of duty and disqualification prescribed under Section 6.94
The disqualifications mentioned in Section 6 are mentioned below.95

5.9.15.1 Powers and Functions of the Block Development Council
The Block Development Council was entrusted with following questions
(i) constructions, maintenance and supervision of inter-halqa Panchayat communication system
(ii) Administrative and technical guidance to Halqa Panchayats and review of their work;
(iii) To supervise plans relating to agriculture, rural development, animal husbandry/sheep husbandry, social forestry, education and public health
(iv) Supervise and monitor the implementation of poverty alleviation programmes like Integrated Rural Development Programme, National Rural Employment Programme, Rural Landless Employment Guarantee Programme
(v) Undertake measures for effective supervision and monitoring of various developmental programmes
(vi) to carry out such other functions as may be entrusted to it by the Government or by the District Planning and Development Board.96
The chairperson and in his absence vice-chairperson shall preside over the meeting of the Block Development Council and would also exercise general control and supervision over the staff and affairs of the BDC.97 The clause with regard to honorarium to chairperson was already there i.e. Section 28 but the Jammu and Kashmir Panchayati Raj (Amendment )Act,2014 has again

94 Id. at Section 29 & 30.
95 Under 6 the grounds of disqualification are;
(a) is not a permanent resident of the State ; or
(b) is in the employment of the Government or any local body ; or
(c) is under twenty-one years of age ;or
(d) is of unsound mind and stands so declared by a competent court ; or
(e) has been adjudged insolvent by a competent court ; or
(f) is a salaried servant of a Halqa Panchayat ;or
(g) is a Lamberdar or Village Chowkidar ; or
(h) has been dismissed from the service of the Government, a local body or Halqa Panchayat ;
(i) has been convicted of and sentenced for an offence (other than an offence of a political nature) punishable with imprisonment for not less than two years, unless a period of three years, or such less period as the Government may allow in any particular case, has elapsed since his release ; provided that this clause shall not apply to an offender who has been released under the provisions of section 562 of the Code of Criminal Procedure, Samvat 1989 or under the Jammu and Kashmir Probation of Offenders Act, 1966.
96 Supra note 51 at Section 31.
97 Id at. Section 32.
introduced the clause with regard to honorarium to chairperson in Section 33 which is superfluous. The members will get sitting fee but how much would they get is not specifically mentioned.

The BDC shall have power to acquire, hold or dispose of property and enter into contract in accordance with the rules in force and the Act proposes that for every BDC there shall be constituted a Block Development Fund comprising of grants made by the government having due regard to the number of Panchayat Halqas in a Block and revenues assigned by District Planning and Development Board. The remarkable feature of BDC is exclusion of members of Legislature and Parliament from holding any office in it. Other than that the Chairperson of the BDC shall be elected by electoral college consisting of Sarpanches and Panches. Earlier there was direct election of chairperson and any one who was qualified to be Panch could contest election for the office of chairperson. Besides this before 2004 only elected Panches and Sarpanches constituted the electoral college and nominated were not included. In 2004 this nomination was done away with and word elected in Section 41 was also omitted.

In other States the list of functions of the intermediate Panchayat Body are specifically mentioned in the Schedule of the Act but not in Jammu and Kashmir Panchayati Raj Act. The powers and functions of Council are quite vague. As far as Jammu and Kashmir Panchayati Raj Rules, 1996 are concerned, Rule 103 states that ‘Not more than 30 days after the first meeting of the Panchayat, the returning officer shall announce the date for holding the elections of BDC and shall notify the date to all members of the Panchayat and other voters accordingly. The elections were supposed to be held in 2011 but no initiative was taken. Finally the elections were decided to be held in November 2012 but again put off due to demand for reservation for SCs, STs and women as regards BDC. An ordinance was passed to put off the elections and since then this matter has been kept on back-burner and no elections have been held despite of the fact that term of BDC is co-extensive with the term of Halqa Panchayat and Halqa Panchayat term expires in July 2016. Had the 73rd Amendment Act been applicable to J&K or had the Jammu

\[98\text{Id. at Section 34.}\]
and Kashmir Panchayats been given constitutional backing this delay would not have been there.99

There is arbitrariness in the constitution of three tiers of Panchayats in the State despite of the fact that Act and Rules provide for continuity of Panchayats. First Panchayat elections after passing of 1989 Act, were held in 2001. Then in 2006 the elections were supposed to be held but were held in 2011. Since 2001, Block Development Council and District Planning and Development Board elections were never held and hence these institutions never got formed. It is important to ensure the continuity of Panchayats and not hold their existence to the whims and fancies of the government in power. This is possible by strengthening the provision of continuity in the State Act or by mandating it in Constitution of Jammu and Kashmir.100

5.9.16 The District Planning and Development Board

The Panchayati Raj Act, 1989 envisages the constitution of District Planning and Development Board. According to Act,

(1) Each district shall have a District Planning and Development Board to be constituted by the government by notification in the Government Gazette.

(2) Each District Planning and Development Board shall comprise of

(i) Chairperson of the Block Development Councils of the district
(ii) Members of Parliament representing the area
(iii) Members of the State Legislature representing the areas within the District (iv) Chairman of the Town Area Committees at the district; (v) President of the Municipal Council, if any.

(3) The Chairperson of the Board shall be elected by the members of District Development and Planning Board from amongst themselves in such manner as may be prescribed:

Provided that the offices of Chairpersons shall be reserved for (a) the Scheduled Castes; and (b) Scheduled Tribes, and the number of offices of Chairpersons so reserved shall bear, as nearly as may be, the same proportion to the total number of offices of Chairpersons to be filled by direct election in the State as the population of Scheduled Castes in the State, or of the Scheduled tribes in the State, bears to the total population of the State and such offices of Chairpersons may be

100 Supra note 9.
allotted by rotation to different districts in the State in such manner, and by such authority as may be prescribed.

Provided further that (a) not less than one-third of the total number of offices of Chairpersons reserved under the above proviso shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes; (b) not less than one-third of the total number of seats to be filled by direct election in the State shall be reserved for women (including the number of offices of chairpersons reserved for women belonging to Scheduled Castes or Scheduled Tribes) and such seats may be allotted by rotation to different districts in the State by such authority and in such manner as may be prescribed.

There vice-chairperson of the Board shall be elected by members of District Planning and Development from amongst themselves in such a manner as may be prescribed. The District Development Commissioner shall be the chief executive of DPDB and he shall be assisted by District Level Heads in discharge of functions. The chairperson of DPDB shall be paid monthly honorarium and term of DPDB shall be co-extensive with the term of BDCs and Halqa Panchayats of the concerned District. The DPDB would be the highest authority in the power structure of the proposed Panchayati Raj system. Again in case of DPDB the members are not directly elected. Before discussing the DPDB features, it is important to discuss District Development Boards in Jammu and Kashmir.

The Jammu and Kashmir State has the distinction of being amongst the first few states in the country to introduce micro-level planning. In early sixties on a pilot basis district level planning was introduced in the form of Single Line Administration. Consequent upon the success of this arrangement the state government in 1976 extended this micro level planning to other districts of the State and since 1986 District Development Boards have started functioning in all districts of the State. The District Development Commissioner has been assigned the role of Chief Coordinator as the chairman of the DDBs. The SE (Superintendent Engineer) of the district is being made vice-chairman of DDB. Besides, all MLAs and MLCs of the district, one elected Sarpanch from each Block Development Board of the district and representatives of

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101 Supra note 51 at Section 45.
weaker sections, backward areas and women nominated by government are also members of DDB. The Deputy Director Planning (Statistics) is the Member Secretary of the DDBs. The board has been conceived as a local authority with the blend of administrative capability and planning expertise. The District Development Commissioner is overall incharge of the development of district and exercises powers of major Heads of departments in respect of development departments functioning in the district. All such departments in the district have been placed under his administrative and operational control. The administrative approvals, technical and financial sanctions of the schemes to be implemented at the district level are vested with District Development Commissioner and the Superintending Engineer of the district. The DDB enjoys the rare privilege of power to determine plan priorities for the district development and it also guides the formulation of development plans for the district. The DDB is responsible to ensure speedy development and economic upliftment of the people of the district. The Board periodically reviews the progress and achievement of developmental plans and schemes in operation and makes such recommendations as it considers appropriate. The Board also functions as a working group for the formulation of periodic and annual plan for the district. The DDB meets at least three times in a year. The first meeting is generally held in the beginning of the year for formulation of the annual plan. The second meeting is held for the mid-term appraisal of the plan and third meeting is held to review the performance of annual plan at the close of year. There are District Planning Cell and District Statistical Agency to help DDB. The District Planning Cell assists the District Development Commissioner in the formulation, implementation and monitoring of the district plan.” 102

As the decentralization of planning process was new upcoming developmental slogan at that time, so the State government introduced Single Line administration and constituted District Development Boards to secure the participation of people through their representatives in the developmental process. Even this could not invigorate the Panchayati Raj system but this innovative model led to realization that there is human potential at the grassroots level. This led to desire to have a sound institutional framework to give a definite and positive role to the community in the matter of self-governance and hence this provided a sense of urgency for restructuring the institutional framework of Panchayati Raj. This realization led to the introduction of

102 Mumtaz Thaha, Status of Micro Level Planning in India 33-34 (Daya Books, 1993)
Jammu & Kashmir Panchayati Raj Act, 1989. But these Boards could not secure the participation of people as was desired. No elections were held so the Panchayat representatives never got elected. Therefore we have Boards already functioning at the district level and if District Planning and Development Boards get constituted they would replace these District Development Boards and would ensure people’s participation.

In Jammu and Kashmir there are 20 District Development Boards (DDBs) in present times and these are an interim arrangement pending constitution of District Planning and Development Boards but DPDB can’t be constituted without the existence of BDC as DPDB consists of chairpersons of BDCs also. In present times, in practice the DDBs are headed by Chief Minister (in capital cities) and by Cabinet Ministers and district annual plans are finalized and implemented by DDBs. They review the progress of ongoing development works and give nod to new development works to be undertaken in the districts.

5.9.16.1 Powers and Functions of District Planning And Development Board

The DPDB shall exercise and perform the following powers and functions:
(i) 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
(ii) to review periodically progress and achievements of development plans and schemes and make recommendations as it considers appropriate
(iii) to function as a working group for formulation of periodic and annual plans for the district
(iv) to formulate and finalize the plan and non-plan budget for the District
(v) to lay down the policy guidelines for the Block Development Council and Halqa Panchayat
(vi) to approve the budget of the Block Development Council and supervise and co-ordinate their work

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103 Supra note 7 at 240.
(vii) to undertake special measures for alleviating poverty and employment generation and extending assistance to Halqa Panchayats in this behalf

(viii) to promote and assist co-operative institutions

(ix) to perform such other functions and duties as may be assigned or entrusted to it by the Government from time to time.\(^{105}\) All the funds provided by the Government or any other agency, meant for the Development of district will flow through the District Planning and Development Board as per the District plans and DPDB shall set up committees to handle specialised jobs.\(^{106}\)

In other States third-tier at the apex of the Panchayats consists of elected members whereas in case of Jammu and Kashmir, the third tier i.e. DPDB has overwhelming majority of government officials and politicians who did not find place in Halqa Panchayat and BDC. On one hand there is an attempt to decentralize the power to democratically constituted Panchayat Institutions but on the other hand the real fountainhead is more like an extension of the government machinery than a real local self-government institution. The ex-officio membership of MPs and MLAs in the DPDB has to be relooked as it is illogical that MPs and MLAs become a party to decision-making in local self-government bodies, on whose working and reports they sit in judgement at the state and national levels. They could continue to be members but should not be given voting rights.\(^{107}\) “The DPDB has been empowered by the Act to guide the formulation of developmental plans for the districts, which means that programmes will virtually be formulated by such Boards and the priorities will remain in their hands. In case the planning and development programme are guided and considered by DPDB, the same Board has to finalise the plan and non-plan budget, approve the budget of the BDC and is to be funding agency. Being dominated by government officials and politicians, it is not clear who will wield power in new structure. The Balvantray Mehta Committee report suggested advisory role of collector and he should not be controlling authority over the working of Panchayati Raj Institutions.”\(^{108}\)

Moreover, the Madhav Lal Committee also recommended an amendment to Section 45 of the J&K Panchayati Raj Act so as to create a provision for election of the Chairperson of DPDB by

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\(^{105}\) Supra note 51 at Section 46.

\(^{106}\) Id. at Section 47


electoral college of Panches, Sarpanches of Halqa Panchayat and Chairpersons of Block Development Councils. The Jammu and Kashmir Panchayati Raj (Amendment) Act, 2014, introduced change in Section 45 but that is with regard to election of Chairperson, i.e. The chairperson of the Board shall be elected by the members of the Board from amongst themselves. The vice-chairperson shall also be elected by the members of the Board from amongst themselves. Therefore, a lot remains to be done as regards DPDB to make them democratic body.

5.9.17 State Election Commission

The 1989 Act did not provide for State Election Commission for conduct of elections under this Act. Section 36 of the 1989 Act stated that the election to Panchayat Halqa and Chairman of Block Development Council shall be held under superintendence, direction and control of Chief Electoral Officer. As there was no State Election Commission, so the elections of 2001 and 2011 were held by Election Department of the government. The Jammu and Kashmir Panchayati Raj (Amendment) Act, 2011 was passed and that introduced changes in Section 36 of the 1989 Act. This amendment provides for constitution of State Election Commission for superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections under this Act. The State Election Commission shall consist of State Election Commissioner to be appointed by Governor on the recommendation of Committee consisting of the –

(i) Chief Minister Chairperson

(ii) A senior Minister to be nominated by the Chief Minister Member

(iii) Speaker of Legislative Assembly Member

(iv) Minister Incharge of Panchayats Member

(v) Leader of Opposition in Legislative Assembly Member
The Jammu and Kashmir Panchayati Raj (Amendment) Act, 2011 not only amended the Section 36 of the 1989 Act but it also introduced new Sections like 36A, 36B, 36C, 36D which deal with term of office and other conditions of service of State Election Commissioner, his removal from office, Officers and other staff of State Election Commission and powers of State Election Commissioner. Despite of this amendment no State Election Commission has been constituted as yet even after the lapse of five long years. The term of Halqa Panchayat will end in July, 2016 and it was important to constitute the SEC at the earliest so that electoral rolls could be prepared, rural voters could be segregated and elections could be held and to look after each and every aspect of Panchayat elections before July, 2016. Due to the death of Chief Minister, Governor Rule was imposed in Jammu and Kashmir and Governor on February 25th, 2016 declared that Panchayat Polls will be held on time. As the Governor enjoys legislative powers in Governor rule and Assembly remains in suspended animation, and State Election Committee could not be constituted to recommend the name of State Election Commissioner for Panchayat elections, so he amended the State Panchayati Raj Act by Ordinance and designated the CEO (Chief Electoral Officer) as the State Election Commissioner for the Panchayat Elections and the elections will now be held under the superintendence, direction and control of CEO. It is to be seen whether the State government (Coalition of PDP-BJP) now constitutes the State Election Commission which would hold the elections in July, 2016 or not. The power of the SEC to decide on disqualifications of candidates and elected PRI members has not been specifically mentioned in the Act and apart from this how much salary shall be paid to State Election Commissioner, that is also not mentioned.


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110 Supra note 9.
5.9.18 Panchayat Adalat

Article 50 directs the state to take steps to separate judiciary from the executive. At the time of adoption of Constitution a few states had village courts. Later on other states also established Nyaya Panchayats. The distinctive features of Nyaya Panchayats are, Firstly they are established by the government to deal with civil and criminal cases arising in the villages. Secondly, their procedure is simple and is based on broad principles of natural justice. Third, they are separate from village Panchayats. Fourth, they are not required to follow CrPC, CPC, Evidence Act or other procedural laws. Fifth, there is no requirement of legal practitioners and fifthly, they dispense justice to the villagers with speed, economy and effectiveness. In Jammu and Kashmir, Village Panchayat Act was passed in 1958 and this Act envisaged the constitution of Nyaya Panchayats, which are known as Panchayat Adalat in Jammu and Kashmir. Each Panchayat Adalat was to be established for five to seven Panchayats in each Block. Each Panchayat Adalat was composed of a panel of members equal in number to the number of Panchayats for which it is constituted. Such Panchayat adalats were empowered to try some specified offences under the Ranbir Penal Code, 1989 (Smt) and certain civil suits as mentioned in Schedule I and II of the Act. The Chapter VI and Chapter VII and Schedule I and II which deal with Panchayat Adalats were substituted by amendment to the 1958 Act. This amendment was made in 1973.

The Jammu and Kashmir Panchayati Raj, Act 1989 also incorporated the provisions with regard to Panchayat Adalat. The idea of Panchayat Adalat at the grassroots level is an innovative one and it is not only the administration, even the judiciary needs decentralization. The 1989 Act, envisages that there shall be Panchayat Adalats for every Halqa and it shall comprise of five members who shall be nominated by the Prescribed Authority out of the Panel prepared and recommended by Halqa Panchayat out of its electorate. The qualifications required for member are – he should be literate; (ii) has attained the age of 30 years; (iii) is not Sarpanch, Naib-Sarpanch, or Panch; (iv) is not under the employment of the Government or any local body or corporation.

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112 Supra note 36 (Act V of 1973)
The term of Panchayat Adalat shall be five years and three members shall form the quorum. The members shall be entitled to sitting fee.\textsuperscript{113} The members of the Panchayati Adalat shall elect any member from amongst themselves to be chairperson of such Panchayat Adalat and secretary of Halqa Panchayat shall act as judicial clerk to the Panchayat Adalat for recording the proceedings and decisions and such other duties as may be prescribed.\textsuperscript{114} The section 56 and Section 66 deal with the criminal and civil jurisdiction respectively. These Panchayat Adalats which ensure speedy disposal of the local disputes at the door steps of the people, have not been established so far across the State. There are differences among the Panchs and Sarpanchs in large number of Panchayats over panels as each and every Panchayat is required to prepare and recommend a panel of seven persons out of its electorate to the Director, Rural Development and Panchayati Raj Department, who shall nominate five names from each panel strictly as per the parameters laid down under the Panchayati Raj Act.\textsuperscript{115} The members are nominated whereas in other states they are elected and there is no provision with regard to reservation of SC, ST and women in case of Panchayat Adalat.\textsuperscript{116} Even the Nyaya Panchayat Bill, 2009 envisages direct election of members. The Ministry of Panchayati Raj, Government of India have prepared the Draft Nyaya Panchayat Bill, 2009 that aims to revitalize the concept of participatory grass roots level dispute resolution by mediation, conciliation and compromise outside the formal judicial system. The Bill provides for the establishment of Nyaya Panchayats at the level of each village Panchayat or cluster of Village Panchayats. The Bill has not been passed as yet.\textsuperscript{117} The Jammu and Kashmir State lags behind on this front also. It will have to take measures to give concrete shape to Panchayat Adalats and to strengthen them so that they could function effectively.

Moreover at the national level the debate concerning return to traditional models of dispute resolution to provide justice to rural litigants has been going on for a long time. The Nyaya Panchayats more or less vanished in 1970s in States where they were functioning. After their

\textsuperscript{113} Supra note 51 at Section 48.
\textsuperscript{114} Id. at Section 50 and 51.
\textsuperscript{116} Supra note 9
extinction, the District and Taluka/Tehsil courts were the only state forums for dispute resolution available to rural litigants for many years. This situation continued until 2008, when the Parliament of India passed the Gram Nyayalayas Act. This Act sought once more to create a system of decentralised and accessible judicial institutions for rural litigants at the village level. At the time of the passage of the Act, over 5,000 of these institutions were sought to be established, one for each Taluka in the country.  

On the pattern of Gram Nyayalayas in other States of the country, State Government has decided to establish Dehi Adalats (Rural Courts) in order to provide access to justice to the people at their doorsteps and to ensure that opportunity of speedy justice is not denied to any citizen by reason of social, economic and other disabilities. As the Gram Nyayalayas Act, 2008 enacted by the Parliament is not applicable to Jammu and Kashmir the State Government has decided to establish Dehi Adalats in the State at the grassroots level on the pattern of Gram Nyayalayas in other States of the country. Jammu and Kashmir Dehi Adalats Bill, 2013 has been passed but in practice no such Dehi Adalats have been constituted. Therefore in J&K neither the Panchayat Adalats nor Dehi Adalats have become a reality. Although the Dehi Adalats do not come under Panchayat Act but they are important for resolution of disputes at village level. What would be the linkages between Panchayat Adalat and Dehi Adalat is nowhere clearly defined. This was the detailed analysis of the provisions of the Jammu and Kashmir Panchayati Raj Act, 1989 which clearly shows that Panchayati Raj is still ineffective in this State and political will is required to strengthen them.

5.10 The Post 1989 Phase of Panchayati Raj in Jammu and Kashmir

The Act, 1989 could not be implemented immediately due to militancy as in 1989 political situation started deteriorating and Legislative Assembly was suspended in 1990. The upsurge of insurgency meant that the Assembly elections could not be held in the state till 1996. On further deterioration Governor’s rule was replaced by President’s rule from 1990-1996. In Assembly elections of 1996 National conference won. But Panchayati Raj Act could not be implemented


as the focus was to maintain law and order and it was not feasible to divert attention towards other issues.\textsuperscript{121}

Moreover in the beginning of that decade when the J&K State was dealing with insurgency, Parliament passed landmark Constitution (Seventy-third) Amendment Act, 1992. The Amendment provided a Constitutional status to the Panchayati Raj Institutions in India and left no discretion with the State governments in several important matters pertaining to these Institutions. The State governments were then required to enact revised Panchayati Raj Acts as per the provisions of the amended Constitution. It provided a uniform pattern to be followed by all States. However, 73\textsuperscript{rd} Amendment Act could not be extended to Jammu and Kashmir due to Article 370. The State has the prerogative to decide whether to extend the 73\textsuperscript{rd} Amendment Act or not. The Panchayats in J&K do not have constitutional backing and are regulated by just Legislation and Rules. It is a constitutional mandate for other States to organize the PRIs in conformity with the provisions laid down in Article 243 of Constitution of India. There was demand to incorporate the provisions of 73\textsuperscript{rd} Amendment in 1989 Act. Keeping in view those provisions 1989, Act was amended but 73\textsuperscript{rd} Amendment of Constitution of India as such was not extended to Jammu and Kashmir. Article 243 G of Constitution of India also mandates for devolution of powers and responsibilities upon Panchayats at the appropriate level with respect to preparation of plans for economic development and social justice and for implementation of schemes for economic development. The Eleventh Schedule of Constitution of India lists such matters for which powers are to be devolved to the Panchayats. But no such provision in support of devolution of powers has been incorporated in Constitution of Jammu and Kashmir. The comparison between 73\textsuperscript{rd} Amendment Act and 1989, reveals that there are gaps in the 1989, Act vis-à-vis Seventy-third (Amendment) Act although amendments of the Jammu and Kashmir Panchayati Raj Act, 1989 have filled several gaps but still a lot remains to be done.

- The central Legislation i.e. 73\textsuperscript{rd} Amendment Act provides direct election at all levels. The State Act provides direct election at Halqa Panchayat level. In case of BDC and DPDB there is electoral college to elect chairman. The MLAs and MPs are \textit{ex-officio}

\textsuperscript{121} Supra note 9.
members of DPDB with voting rights and it seems that DPDB is administrative body.

- The Central Legislation provides reservation for women and SCs and STs. There was no reservation for women, SCs and STs but now 33% reservation has been introduced by amendment in 2004.
- The 73rd provides for constitution of Finance Commissions to review financial position of Panchayats and make recommendations to respective governments for grant of funds and Election Commissions to conduct elections in every State. There were institutional deficiencies under State Act like provisions for State Finance Commission and State Election Commission have been removed. The Legislation for constitution of State Finance Commission has been passed and provisions with regard to State Election Commission have been incorporated in 1989, Act.122

5.10.1 The Post 1996 Scenario

The Panchayati Raj Act was passed in 1989 but no rules could be formulated due to ongoing unrest in the State till 1996. This political unrest overtook the state and had precluded normalization of all facets of life in the State including the conduct of Panchayat elections. When National Conference formed the government, it framed the Jammu and Kashmir Panchayati Raj Rules, 1996 and notified them. The ideal time to hold the Panchayat elections was immediately after the 1996 Assembly polls but that did not happen and in 2000-2001 Panchayat elections were held for the first time after the passing of 1989 Act. After forming government holding of Panchayat elections was one of the first announcements and all formalities required to be done were declared completed, but still the elections got postponed. The panchayat elections in Jammu and Kashmir were held in three phases between December 2000 and March 2001. The last Panchayat elections were held during Sheikh Abdullah’s period as Chief Minister in 1978 and after a gap of 32 years elections were held in 2000-2001.123 Even a Conference was organized in 1998 on ‘Restoration of Panchayats in J&K by Institute of Social Sciences, in Srinagar to discuss the status of J&K Panchayati Raj. The Conference was attended by State leaders, the administration, Officials of the Rural Development Department, national level

122 Ibid.
experts, faculty of Jammu University and Kashmir University and members of NGOs. There were many recommendations of Conference and most important was to hold the Panchayat elections at the earliest. The Conference was assured by government that elections would be held at the earliest. This Conference succeeded in generating interest of State government to reconsider the State Act 1989, and conduct Panchayat elections.  

Thus elections were held in first quarter of 2001. It was an achievement as elections were held despite of hostile circumstances and adverse security scenario. Out of 2700 Panchayats, however, only 1693 Panchayats could be constituted. These elections were held on non-party basis and this was the first time elections were held through secret ballot. The earlier ones, the last was in 1978, were by a show of hands in a meeting. Elections were free and fair and no force was used and there were not many complaints. There were 952 Panchayats out of total of 1470 in Kashmir Division against 55 out of 1230 in Jammu Division which were not notified by the government. Similarly, there were 428 Sarpanch vacancies in Kashmir Division against 34 in Jammu Division. The Kashmir Division had 5303 Panch vacancies out of total of 10458 against 376 out of 10090 in Jammu Division. Thus in Kashmir more than 50% Panch seats remained vacant. In the Ladakh area, elections were normal. In Jammu also, there was enthusiastic response (voting percentage was 75-80) except in 10-15 Panchayats in the blocks of Banilal, Warwan and Marwah in Doda district. In the Kashmir division, there are 64 blocks and 1,470 Halqa Panchayats and here 1,042 Sarpanches were elected. Of the 10,458 Panches (members), 5,155 got elected leaving 5,303 vacancies.

The 2001 elections resulted in constitution of Halqa Panchayats mostly in Jammu and number was very less in Kashmir. From 2001 to 2006, though the Halqa Panchayats were the only democratically constituted layer of Panchayat, these were not empowered. There were no steps

128 Supra note 126.
taken to constitute Block Development Council and District Planning and development Board.
The elections also revealed that something more needs to be done so that women, SCs, and STs could be appropriately represented in the Panchayati Raj Institutions. Thus in 2004 Panchayati Raj was amended and nomination was done away with and reservation was introduced. The Halqa Panchayats completed their term in 2006. As per the 1989 Act, Panchayats are supposed to have perpetual succession so new Panchayats have to be formed before the existing ones term expires. There was a period of vacuum as regards Panchayats till 2011 when the election process for election was started.\textsuperscript{129} There are several reasons due to which the Panchayats could not function after 2001 elections. They are as follows

- The killing of Panchayat representatives and this caused sense of insecurity.
- The development programmes continued to be implemented by departmental functionaries and Panchayats were starved of funds which made the functioning impossible.
- The Sarpanch and Panch seats which remained vacant were not filled and those in place hardly functioned due to paucity of funds.
- The devolution of authority, functions and finances did not take place.
- There was political and bureaucratic interference. According to 1989, Act Halqa Panchayats were entrusted to prepare plans to be consolidated at block and district levels, but in practice, they had to be vetted by the MLAs and at times to be replaced by MLAs own plan.
- Capacity Building of Panchayat representatives was not given importance.\textsuperscript{130}

5.10.2 Report of the Working Group on Good Governance

The Indian government had appointed five working groups on Kashmir, which have already submitted their reports. These groups are: Strengthening Relations across LOC, Confidence Building Measures Across Segments of Society in the State, Economic Development of Jammu and Kashmir, Ensuring Good Governance and autonomy issues in the context of Centre-State

\textsuperscript{129} Supra note 127.
\textsuperscript{130} Ibid.
The working Group was constituted in implementation of decision concerning the establishment of five working groups announced by Prime Minister of India at the Round Table Conference held at Srinagar on 24th and 25th May, 2006. The group had following agenda before it.

To consider the effective measures to:
- Increase responsiveness, accountability, and transparency of administration.
- Strengthen local self-government
- Effectively monitor development programmes
- Institute zero –tolerance for human rights violations
- Strengthen right to information
- Provide adequate security to all segments of society, particularly minority communities.

The recommendation seventh of the working group was to strengthen local self-government. The Panchayati Raj Act,1989 should be implemented in letter and spirit and Panchayats should be given appropriate devolution of State revenue. As per advice of State Finance Commission. Godbole Committee Report suggested the extention of 73rd Amendment to J&K should be examined, there should be capacity of Panchayat representatives by organizing training courses, effective transfer of funds, functions and functionaries would have to be taken up on priority basis, Activity Mapping exercise being followed in other States and rationalization of schemes to be implemented by PRIs,mobilization of community to be partners in local governance has to be taken up through local leadership. Unfortunately these recommendations have not been fulfilled as Panchayats are still not effective in this State.

5.10.3 Ladakh and Kargil Hill Development Councils

The concept of Hill Development Council was first fructified in Leh District in 1995 when Ladakh Autonomous Hill Development Council ,Leh (LAHDC) was established on the pattern of Darjeeling Hill Development Council as there was demand for autonomy. But in 2003 it was established in Kargil also as Ladakh Autonomous Hill Development Council, Kargil.


Each council is composed of 30 Councilors of which 26 are directly elected and 4 are nominated members. The executive arm of the council consists of an executive committee composed of a Chief Executive Councilor and four other Executive Councilors. The Chief Executive Councilor also serves as the chairman of the council and the Deputy Commissioner, Leh/Kargil serves and holds the power of Chief Executive Officer LAHDC.

The democratic constitution of the Council has brought democratic decentralization of planning process with the involvement of people at the grassroot level. Due to the difficult geographical problems, the need for greater public participation in the planning and development process was important. The Panchayat Act was enacted in 1989 but first elections were held in 2001 and then Halqa Panchayats were constituted. Whereas, LAHDC, was established in 1995. As per the law under which LAHDC was constituted the council should be considered the district planning and development board. Panchayati Raj Act says that in the case of districts of Leh and Kargil the Councilors of any Council Constituted under the section 3 of the Ladakh Autonomous Hill Development Council Act, 1997 representing the area falling in any block shall be ex-officio members of Block Development Council for such block. But BDC has not been constituted. Before the Councils were founded, all plans and policies for Ladakh were formulated by leaders and bureaucrats and there was centralized top-bottom approach and local people were not taken on board. But Hill Development Councils is being considered great step towards involving local people. In Ladakh almost all Panchayats were constituted and they did function for five years although there was paucity of funds. Therefore, if in Ladakh region, Halqa Panchayats and hill councils can perform well, one fails to understand why that is not possible in other parts of Jammu and Kashmir.

The Panchayat elections were held in Jammu and Kashmir in 16 phases, commencing on April 13, 2011 and ending on June 18, 2011 after a gap of ten years instead of mandatory five years. Two other important initiatives were also taken in 2011 as regards Panchayats and they were enactment of legislation for constitution of State Finance Commission and amendment of 1989 Act so that Sate Election Commission could be established. These elections have great

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135 Supra note 50.
significance for women and SCs/STs because of 33% reservation for women and for SCs/STs. The elections were held on non-party basis and voter turnout was over 80%. In 2006 reorganisation of districts and Blocks had taken place and due to that number of blocks increased from 121 to 143 and number of districts was increased from 14 to 22. The government had appointed a Delimitation Commission under the chairmanship of Shri A.G. Shahbaz to freshly delimit the number of Panch/Sarpanch Constituencies. The number of Panch and Sarpanch constituencies got changed. Electors’ photo identity cards (epic)/alternate documents were used for elections. The boxes were used instead of electronic voting machines.

The number of Sarpanch constituencies had gone up to 4130 from 2702 in 2011. There were 29719 Panch constituencies compared to 20559 in 2001. In the Panchayat elections 2011, 4130 Sarpanches got elected and 29,719 Panchs. There is 33% reservation for women as regard the position of Panch, so 9424 women Panches got elected. There was no reservation for women for the post of Sarpanch, so 28 women got elected. The elections were peaceful and people defied the threats, boycott calls and even assassination of woman candidate. The high turnout suggested that this election is about local issues, and grassroots growth. The improved law and order situation gave confidence to the general public to participate in elections. The Government had appointed a Delimitation Commission under the chairmanship of Shri A.G. Shahbaz to freshly delimit the number of Panch/Sarpanch Constituencies. The number of Panch and Sarpanch Constituencies determined after the delimitation is given in the tables 5 and 6 below which reflect the comparative figures of Sarpanch and Panch Constituencies and Blocks and number of electors in 2001 and 2011.

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138 Supra note 127.
## Comparative Figures of Sarpanch and Panch Constituencies and Block 2001 and 2011

<table>
<thead>
<tr>
<th>Province</th>
<th>No. of Sarpanch Constituencies</th>
<th>No. of Panch Constituencies</th>
<th>No. of Blocks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kashmir</td>
<td>1472</td>
<td>2164</td>
<td>10469</td>
</tr>
<tr>
<td>Jammu</td>
<td>1230</td>
<td>1966</td>
<td>10090</td>
</tr>
<tr>
<td>Total</td>
<td>2702</td>
<td>4130</td>
<td>20559</td>
</tr>
</tbody>
</table>

### Table: 5


### Number of electors comparative figures 2001 and 2011

<table>
<thead>
<tr>
<th>Province</th>
<th>2001</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kashmir</td>
<td>1859311</td>
<td>2519024</td>
</tr>
<tr>
<td>Jammu</td>
<td>1942991</td>
<td>2549951</td>
</tr>
<tr>
<td>Total</td>
<td>3802302</td>
<td>5068975</td>
</tr>
</tbody>
</table>

### Table: 6

5.11 The Post-2011 Phase of Panchayati Raj in Jammu and Kashmir: Although there was huge turnout in 2011 Panchayat elections but there are still many challenges for Panchayats. Many initiatives were taken to implement the Act in letter and spirit in Post-2011 phase of Panchayat elections but they were half-hearted attempts as there is lack of will to make the Panchayats as effective institutions of local self-governance.

5.11.1 Elections of BDCs and their Cancellation

After the constitution of Halqa Panchayats, the Block Development Council and District Planning and Development Board were to be constituted but that did not happen. The five years have ended but these institutions have not come into existence. The elections were notified and were expected to be held in November, 2012 but were put off on the pretext of amendments to 1989, Act to be made. Election process of the Block Development Councils (BDCs), was cancelled which had been set into motion on October 3, 2011 with issuance of notification, on the basis of recommendations made by National Conference-Congress Core Group that the elections should be held only after implementation of reservations for Scheduled Castes, Scheduled Tribes and women. The Government had decided to cancel it by bringing an ordinance and the ordinance had to be issued by the Governor on request of the State Cabinet. Emergency Cabinet meeting was held in which decision to postpone the elections was taken and meeting also approved the Ordinance that would ensure reservation of SC/ST and women in BDCs. On October 16, 2012 an Ordinance was promulgated by the Governor to cancel the notification regarding general elections for the chairman of BDC. BDC elections were to take enough time as for the implementation of reservations, the administration in every district had to undertake the exercise for identification of the blocks to be reserved for SCs, STs and women based on the population as per latest Census figures. This was time consuming process and hence no election have been conducted so far although the requirement of identification of blocks to be reserved has been fulfilled. Without BDC elections Panchayati Raj System in J&K would not be complete (as the Chairpersons of BDC constitute the DPDB also) and effective.

140 Supra note 127.
5.11.2 Recommendations of Madhav Lal Committee (2011)

Underlying its commitment towards empowering the Panchayati Raj Institutions (PRIs), the State government constituted a Committee under the chairmanship of the Chief Secretary to chalk out road map for the empowerment of the PRIs in the State and to make recommendations on other matters related thereto. The State government Vide Government Order No. 447-GAD of 2011 dated 13.04.2011, constituted this Committee. This report specifically dealt with the following:-

- Devolution and assignment of functions to the PRIs;
- Matters relating to devolution of funds to the PRIs;
- Issues connected with personnel and human resources;
- Power and functions of the Chairman and Vice-Chairman of the District Planning and Development Board;
- Organizational changes/strengthening in the Rural Development Department; and
- Amendments required to be made in the J&K Panchayati Raj Act, 1989.\(^{141}\)

The Committee recommended devolution of the major functions as contained in the 73\(^{rd}\) Amendment i.e., against 29 subjects listed in 73\(^{rd}\) Amendment, the committee has recommended devolution of 23 functions of 14 key departments to PRIs. The other recommendations were the term of DPDP shall be co-extensive with term of BDC and Halqa Panchayats, a member of Panchayat Adalat shall be entitled to sitting fee, etc. Many recommendations of the Committee got accepted. As a result the 1989 Act was amended by the Jammu and Kashmir Panchayati Raj (Amendment) Act, 2014 so as to strengthen the Panchayati raj system and make it more democratic and participatory in nature.

5.11.3 Ombudsman for Panchayats

The Panchayats are elected bodies and there has been a need to have an institutional mechanism to deal with maladministration and corruption in Panchayats to ensure a fair, just and corruption free Panchayati Raj Institutions (PRIs) in the State. There has been need to bring in the elected representatives of the Panchayats as well as the Government officials working under the

\(^{141}\) Supra note 69.
Panchayats within the ambit of such an institution so as to regulate their functioning in accordance with law, justice and fair play in discharge of their duties. It is in this context that the Jammu and Kashmir Ombudsman for Panchayati Raj Act, 2014 was enacted to create an institution of Ombudsman who shall be authorized to conduct investigation or inquiries in respect of any action involving corruption, maladministration, irregularities in the discharge of administrative functions by the PRIs either appointed in the Panchayats itself or by an employee or an officer working under the PRIs either appointed in the Panchayats itself or transferred to such PRIs or by any elected member of the local self-government. The primary objective for creation of the institution of Ombudsman is to address the complaints which may arise during the discharge of function by the PRIs and to look into the instances of favoritism, nepotism, lack of integrity, excessive action, inaction or abuse of position on the part of officials and elected representatives of the Panchayats. This institution would ensure better administration for the local authorities. The Governor shall appoint a person as Ombudsman on the advice of Chief Minister provided that a person shall not be qualified to be appointed as Ombudsman unless he has been a Judge of a High Court or eligible to be appointed as Judge of High Court or officer retired from the rank of Commissioner/Secretary to government. The Ombudsman shall hold office for a term of three years. The Jammu and Kashmir Ombudsman For Panchayats Act, 2014 was passed in 2014 and this Act came into force in June 2014 but no Ombudsman has been appointed so far. The State government has not woken up as yet to the necessity of enforcing accountability in the Panchayati Raj system especially in the functioning of the elected representatives of these democratic institutions at the grassroots level.

5.11.4 Assasination of Sarpanches and Panches

Militants (unidentified gunmen) have targeted several Panchayat members in the valley since the Panchayat elections were held in April 2011. Posters were put up by militants many times warning Sarpanches to quit. After the elections in 2011 Sarpanches and Panches started getting killed by suspected unidentified gunmen. This systematic killings of members of Panchayat Institutions has triggered a mass wave of resignation by Sarpanches and Panches. There is demand by Panchayat members to provide security to them.

These killing of Sarpanches and Panches is actually killing of Panchayats in Jammu and Kashmir as fear will lead to resignation and ultimately murder of democracy at grass roots level.
If the State Government as well as Central Government continue to neglect this issue then dream of grassroots democracy will never get fulfilled. Before empowering the Panchayats, it is important that security should be provided to Panchayat members which will give them sense of security and hence they will work for promotion of local self government without any fear.

**Figure:F**

available at: http://www.downtoearth.org.in/coverage/the-panchayat-outrage-39576
In *Shabina v. State of Jammu and Kashmir*, the Jammu and Kashmir High Court on December 18, 2016 directed the State Home secretary and Director General of Police seeking status report about the killing of ex-Sarpanch. The writ petition was filed by the wife of deceased who submitted that her husband was murdered by SHO and he was never involved in any militant activity. He was involved in frivolous case and was given bail by the court but despite of being bailed he was kept in continuous detention and was killed subsequently by state managing of fake encounter. She averred that she tried to lodge FIR but it was not filed. This case is still sub-judice and has not been finally decided. The figure E below reflects the consequences of threat perception and killing of elected representatives. Although the security situation has improved in the valley but the sporadic violence every now and then still gets reported in different parts of valley.

5.11.5 Amendment to Jammu and Kashmir Panchayati Raj Act, 1989

There were demands from various quarters to strengthen the J&K Panchayati Raj Act, 1989 by providing reservations at all the three tiers of the Panchayati Raj and further democratization of the institution of District Planning and Development Board by providing election for the post of Chairman from amongst the members of the DPDB. There were also demands to decrease the age of Panches and Sarpanches from the present 25 years to 21 years so as to provide opportunity to the youth of the Jammu and Kashmir to participate in the election process for the constitution of democratic institutions at the grassroots level. This led to Jammu and Kashmir Panchayati Raj (Amendment) Act, 2014. This amendment led to changes in many sections like Sections 4, 6, 15, 27, 28, 29, 36D, 45 and 48.

Moreover, Governor gave assent on December 19, 2016 to Jammu and Kashmir Panchayati Raj (Amendment) Bill, 2016 for holding indirect election to Sarpanches. Only the Panches will be elected directly now and these Panches will elect the Sarpanches. When the Bill was introduced there was strong opposition for this bill and Governor had earlier returned the bill with certain queries. But after getting replies of these queries, Governor gave nod to the Bill and

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Jammu and Kashmir Panchayati Raj (Amendment) Act, 2016 was passed. This Act brought changes in the Sections 4, 40, 42-A and 43.\textsuperscript{144}

5.12 Judicial Response to Panchayati Raj in Jammu and Kashmir: Under the Jammu and Kashmir Panchayati Raj Act, 1989 the elections were held in 2001 for the first time. The term of the Halqa Panchayats ended in 2006 but no elections were held and after ten years Panchayat elections were held in 2011. Thus, Panchayat elections were held twice after the enactment of the 1989 Act. The major failure with regard to Jammu and Kashmir Panchayati Raj has been non-conduct of elections and inordinate delay in ensuring regular elections.

5.12.1 Election Disputes and other issues
The Section 43 of the Jammu and Kashmir Panchayati Raj Act, 1989 deals with disputes regarding elections. It states that the election of a person as Sarpanch, Panch of Halqa Panchayat or as a Chairman of the Block Development Council shall not be called in question except by an application presented to such authority within such time and in such manner as may be prescribed on the grounds that:–
(a) the election has not been a free election by reason that the corrupt practice of bribery or undue influence has extensively prevailed at the election; or (b) that the result of the election has been materially affected either (i) by the improper acceptance or rejection of any nomination; or (ii) by gross failure to comply with the provisions of this Act or the rules framed there under.

In \textit{Suraj Prakash v. Returning Officer & Ors.}\textsuperscript{145} In this case it was held that authority constituted to try a dispute pertaining to election has to decide the dispute in a quasi-judicial manner by following the norms normally followed by a judicial or quasi-judicial authority; that even if something has not been brought to the notice of the Returning officer that cannot debar that party to urge something before the authority trying the election petition and that the authority must pass a speaking order. It was also held further that there was failure of authority to take supplementary affidavits of record and not giving opportunity to parties to cross examine, normal procedure which is being followed by a quasi-judicial authority was against Principles of natural justice.

\textsuperscript{144} The Jammu and Kashmir Panchayati Raj (Amendment) Act, 2016.
\textsuperscript{145} AIR 2002 J&K 93.
In *Lal Singh v. State & Ors.* the challenge in this petition was made under Section 43 of the Panchayati Raj Act, 1989 that election of returned candidate should be cancelled on the ground that 76 voters were not allowed to cast their votes as their names were not on the voter’s list. It was decided in this case that merely because some voters could not cast their votes on account of shifting of polling booths would not affect the result of election.

The dispute raised in *Kuldip Singh & Ors v. State of J&K & Ors.* petition was pertaining to the construction of a Panchayat Ghar. The petitioner through this petition questioned the construction of Panchayat Ghar and alleged that place has been selected under the influence of local MLA which is not a central place. But the court held that majority of the elected members i.e. eight out of nine through resolution decided to construct at other place for better utility of public at large as the same place was centrally located. The same place was made available by the Sarpanch through gift deed. The Panchayat Ghar is a place where members of the Panchayat are required to transact business under the provisions of the Panchayati Raj Act. The court held that where Panchayat Ghar should be located is the question which has to be decided by the members of the Panchayat itself.

In *Gh. Rasool v. State & Ors.* Rule 47 of the Panchayati Raj Act 1989, states that Sarpanch shall cause the votes to be counted there and shall declare the Panch having secured the largest number of votes to be duly elected. In case of equal number of votes being given in favour of two or more Panches, selection shall be made by draw of lot. In this case it was held by the court that on counting of votes there was a tie and petitioner was a consenting party to the method of tossing of the coin and petitioner cannot be permitted to back track. The question was whether on the basis of tossing of coin fate of the candidates could be sealed. The court decided that words ‘draw of lot’ as employed in Sub-rule 2 of the Rule 47 of the J&K Panchayati Raj Rules are to be liberally construed and there is no hard and fast rule for adopting a particular method vis-a-vis ‘draw of lot’. Draw of lot would take into its sweep tossing of coin as well.

In *Zaffar Ahmad Wani v. State of Ors.* Petitioner filed Writ Petition seeking restraint on respondents for re-tendering the Plantation beat and also a writ of mandamus commanding respondents to issue formal allotment order in favour of petitioner for Plantation beat. The Rule

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146 JKI[HC] 2003(1) 127.
147 SLJ 2004 45
148 AIR 2012 J&K 56.
149 JKI [HC] 2012(4).
59 states that Panchayat shall be responsible to get the contract auctioned at highest possible amount by all its means. The auction shall be concluded by Sarpanch or Naib-Sarpanch, Secretary and other three or more Panches authorised by the Panchayat and while closing the bid all such record their signatures on the bid sheet which should also invariably bear the signatures of the bidders. After the close of the bid the Panchayat shall announce by beat of drums and issue a notice indicating that the bid can be reopened within ten days of the close of the bid; provided the bid is increased by 10% more in each case of the respective previous bid and display the same at least 5 conspicuous places in its area. The court held that provisions of the Act nowhere provide that respondents are within their powers to cancel the concluded contract that too without hearing the highest bidder. The respondents have admitted that nobody appeared and offered more than 10% within ten days, meaning thereby that the offer and the contract was concluded, therefore they had no option but to issue allotment order in favour of the petitioner.

In Prithvi Raj Bhagat v. State & Ors.\textsuperscript{150} the dispute raised in the writ petition was about election of Sarpanch. The petitioner was candidate in the elections but lost the same. The Rule 43 of the Panchayati Raj Rules states that an appeal against the election of a candidate as Sarpanch or Panch shall lie to the authority as may be notified by the Government within a period of 30 days from the date of declaration of result. The appeal was dismissed and this led petitioner to file Writ Petition wherein he challenged the election of respondent as also the order of the appellate authority. The petitioner alleged that his signatures were on Form PEL-17 were obtained under duress and that his agents were not permitted to enter premises where votes were to be counted. The Writ Petition was also dismissed on the grounds that petitioner’s signatures were not taken under duress as the petitioner had stated before appellate authority that his signatures were obtained on blank paper and no averment was made that signatures were obtained under duress and pressure. The further contention of the petitioner that the agents were not permitted to enter into the premises where the votes were to be counted cannot be accepted in view of the mandate contained in Rule 35(1) of the Panchayati Raj Rules 1996, which provide that counting of the votes shall commence in the presence of the candidates or their agents. The court held that since the petitioner was himself present at the time of counting of the votes, so there was no requirement of allowing the agents to enter into the counting premises.

\textsuperscript{150} JKJ [HC] 2013(2) 323.
In *Ab. Subhan Lone v. State of J&K & Ors.*\(^{151}\) The Writ Petition was filed against order passed by the Appellate Authority holding that appeal was not maintainable since both the appellant and respondent opted and accepted for drawing of lots. There is no provision either in the Act or in the rules framed there under, envisaging or contemplating draw of lots in the event there is a tie between two candidates for the post of Sarpanch. The Writ court set aside the order of the Appellate Authority and disposed of the Writ petition holding and observing that elections are to be conducted strictly in accordance with Panchayati Raj Act and Rules and Appellate Authority was directed to rehear the case and pass orders in accordance with law. It was also held that Appellate Authority must have considered the methodology contemplated by the instructions contained in Clause 11 under Chapter XIV, viz. Counting of Votes, of the Handbook for Conduct of Panchayat Elections, 1997 issued by the Election Authority under Section 36 of the Act read with Rule 3 of the J&K Panchayati Raj Rules, 1996.

*Krishan Lal v. State of J&K & Ors.*\(^{152}\) is a case about election of Sarpanch. An appeal as permissible under Section 43 was made to Appellate Authority for verification of votes after the election results. On verification it was found that out of 19 rejected votes, three valid votes cast in favour of appellant, without any recorded reason, had been taken as rejected votes, and by adding these three votes, appellant was declared as elected by Appellate Authority. The writ petition was filed against this decision of Appellate Authority. The court held that inclusion of three polled votes with rejected votes has materially affected the result of election. In accordance with Rule 36(3) of the Panchayati Raj Rules, if a ballot paper is rejected reasons for such rejection were to be recorded on such ballot paper. No reason has been recorded, therefore, Rule 36 (3) is offended. So a clear cut case of failure to comply with the said rule, violation thereof falls within the ambit of Section 43(1) (b) (ii) of the Act. The judgment of the Single judge was upheld by the division bench.

In *Gh. Mohd Lone v. State of J&K & Ors.*\(^{153}\) case the Assistant Returning Officer declared the petitioner elected and issued certificate that petitioner secured 262 votes against 261 of private respondent. On recounting one vote was rejected and draw of lots to resolve situation arising out of tie has fallen in favour of private respondent. An appeal was made to the Appellate Authority but it held that the private respondent has been rightly declared elected to

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\(^{151}\) JKJ [HC] 2013(3) 88.

\(^{152}\) JKJ[HC] 2013(2) 98.

\(^{153}\) JKJ[HC] 2014 (1) 423.
the office of Sarpanch and dismissed the appeal. The writ petition was filed. It was argued by the
counsel of the petitioner that Returning Officer had neither power nor authority to settle the tie
,by resorting to draw of lots, which resulted in declaring the private respondent elected to the
office of Sarpanch But the counsel appearing for elected candidate submitted that in the Act of
1989 and Rules of 1996, there is no provision for settling the issue of tie between the competing
candidates but in the absence of instructions issued by the Election Commission and in the
absence of any provision in the Act of 1989 and Rules of 1996, an anomalous situation would be
created which in law cannot be countenanced. The counsel for private respondent referred to the
judgment of the Hon’ble Supreme Court in A.C. Jose v. Sivan Pilla & Others154 and submitted
that Election Commission has power and authority to pass orders in respect of conducting of
elections, however such orders cannot be passed in breach of provisions of Act and Rules made
there under. The Handbook instructions for Returning Officers was issued by Election Authority
and there is a provision Clause 15.19(III) which provides that in case of tie viz., candidates
securing the highest number of votes which are equal, the Returning officer shall decide the
winner by draw of lots i.e., the candidates on whom, the lot falls, shall be declared winner.
Hence, in view of the Handbook instructions for Returning Officers, the power to settle the
dispute by draw of lots between the candidates who secure equal number of votes is legal. For
the above stated reasons, writ petition was dismissed.

Uttam Chand v. State of J&K & Ors.155 The writ petition was filed against the order of
the Appellant Authority upholding the election of Sarpanch, challenged on ground of corrupt
practices in the process of election in so far as a voter had cast his vote twice and other
irregularities in the election process. Appellant Authority having dealt with all the points raised
in the appeal in detail and opportunity of being heard was given to the appellant, dismissed the
appeal holding that casting vote twice would not be enough to declare the result of election as
null and void. The court held that all the issues were dealt with in extenso by the Appellate
Authority, the impugned order does not suffer from any illegality. Therefore, writ petition was
dismissed.

154 AIR 1984 SC 921.
The petitioner and respondent were the two candidates in fray for election to the post of Sarpanch. After the counting of votes the petitioner was elected as the Sarpanch. As per the statement of counting of votes, petitioner secured 608 votes and respondent secured 604. The petitioner, thus, won the election by four votes. Feeling aggrieved by the result, respondent filed appeal under Section 43 of the Jammu and Kashmir Panchayati Raj Act, 1989 before the Appellate Authority. He sought cancellation of certificate issued in favour of petitioner. The respondent challenged the result of election primarily on the grounds that some votes were wrongly rejected at the time of counting and there was no proper arrangement at the time of counting of the votes inasmuch as appellant was not given proper timing for verification of the rejected votes and that the Returning officer completed the whole process in haste. He also alleged that bogus/proxy voting was allowed in the election. The appellate authority allowed the appeal and certificate issued in favour of petitioner was declared null and void and respondent was declared winner. The petitioner filed the writ petition against this order of Appellate Authority seeking its quashing by issue of writ of certiorari and to declare the petitioner as winning candidate. The court held that Appellate Authority has exceeded its jurisdiction and can be said to have acted unfairly and arbitrarily and order passed by him cannot sustain. Writ petition was allowed.

All these cases make it clear that in order to maintain the sanctity of the Panchayat elections, the court have always intervened and would intervene so as to instill confidence in the electorate and contesting candidates about the fair conduct of the elections but irony is that elections have been held only twice since 1989.

**5.13 Panchayati Raj in Jammu and Kashmir; Step towards Good governance**

The concept of Panchayati Raj, in theory, is a stepping stone towards good governance, as it ensures people’s participation at grassroots level but in reality the practice of this concept is distant dream. Governance, in last seventy years has largely adopted an approach which lacked accountability and transparency. This resulted in increase of dependency among people thereby leading way for representative governance rather than participatory governance. The lack of awareness of Panchayati Raj Institutions, lack of role clarity, inadequate funds etc have hindered the achievement of ‘democratic governance’ in true sense. The Gandhian concept of ‘Swaraj’ is
still a distant reality in Jammu and Kashmir. Decentralization of responsibilities has gained momentum but actual decentralization in the form of devolution of finances and various authorities to Panchayats is to gain momentum.\(^{157}\)

As mentioned earlier chapters, good governance demands respect for human rights, rule of law, strengthening of democracy, promoting transparency, accountability, participation, responsiveness of state and its institutions to the needs and aspirations of people as imperatives to good governance. Good governance is an essential ingredient for socio-economic development of the people. For developing strong Panchayati Raj Institutions, it is essential to improve good governance and delivery of services which involves redistribution of power, institution building and development process that improve accountability to the people.\(^{158}\) A powerful Central government or a powerful state government can make good schemes but success of the schemes for the socio-economic development of the rural people lies not only in people’s participation but the people should also extend their active and complete support. Hence, activating local government is an essential prerequisite for good governance. The local democracy or grassroots democracy popularly known as Panchayati Raj is essential for integrated rural development as local democracy ensures people’s participation essential and without people’s participation and support good governance is not possible.\(^{159}\)


\(^{159}\) Anil Kumar Thakur, *Economics of Good Governance* 85(Deep and Deep Publications, 2009)