

Jammu And Kashmir Panchayati Raj Act, 1989

11 of 1989

[08 July 1989]

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Jammu And Kashmir Panchayati Raj Act, 1989

11 of 1989

[08 July 1989]

An Act to provide for the constitutions of Halqa Panchayats, Block Development Councils and The District Planning And Development Boards and matters concerned therewith.

Be it enacted by the Jammu and Kashmir State Legislature in the Thirty -Ninth Year of Republic of India as follows :-

CHAPTER 1 PRELIMINARY

1. Short Title, extent and Commencement :-

- (1) This Act may be called as the Jammu and Kashmir Panchayati Raj Act, 1989.
- (2) It extends to the whole of the state of Jammu and Kashmir.
- (3) It shall come into force on such date as the Government may by notification in the Government Gazette, appoint in this behalf.

2. Definitions :-

In this Act, unless the context otherwise requires,-

- (a) "Block" means area comprising such contiguous number of Halqas as may be determined by the Government from time to time;
- (b) "Block Development Council" means Block Development Council constituted under section 27 of this Act;
- (c) "Building" includes any shop, house, hut, out-house, shed, stable, sub-structure and land appertaining to a building whether used for the purpose of human habitations and otherwise and whether of masonry, bricks, buildings, wood, mud, thatch, metal or any other building material and includes a wall and wall but does not include mud-wall built around agricultural land not abutting on the public road;
- (d) "Case" means a criminal proceedings in respect of an offence tried by a Halqa Panchayati Adalat;
- (e) "Chairman" means the chairman of -
 - (i) the Panchayati Adalat;
 - (ii) the Block Development Council;
 - (iii) The District Planning and Development Board;
- (f) "Constituency" means a ward for which a member is to be or has been elected;
- (g) "District Planning and Development Board" means a District Planning and Development Board constituted under this Act;
- (h) "Election Authority" means Chief Electoral Officer for the state;
- (i) "Electoral Roll" means the rolls as may be prepared in accordance with the provisions of this Act;
- (j) "Halqa" means the area comprising a village or such contiguous number of villages as may be determined by the Government from time to time;
- (k) "Halqa Majlis" means all voters of a Halqa Panchayat;
- (l) "Halqa Panchayat" means a Halqa Panchayat constituted under section 4 of this Act;

- (m) "Naib-Sarpanch" means the Naib-Sarpanch of the Halqa Panchayat;
- (n) "Paanch" means member of Halqa Panchayat whether elected or nominated under this Act;
- (o) " Panchayat Advisory Committee" means a Panchayat Advisory Committee constituted under section 8-A;
- (p) "Panchayati Adalat" means a Panchayati Adalat constituted under section 47 of this Act for the purpose of trials of suits and cases;
- (q) "Prescribed" means prescribed by rules made under this Act;
- (r) " Prescribed Authority" means authority as may be appointed by the Government, by notification , for all or any of the provisions of this Act;
- (s) "Rules" means the rules made under this Act;
- (t) "Sarpanch" means the Sarpanch of the Halqa Panchayat;
- (u) "Schedule" means the schedule appended to this Act;
- (v) "Suit" means a civil suit;
- (w) "Vice Chairman" means the Vice chairman of -
- (i) the Block Development Council.
- (ii) The District Planning and Development Board.
- (x) "Village " means a part or parcel of the land having a separate name and known limits in the Revenue Department.
- (2) In this Act, the expressions "decree", "decree-holder", "judgement-debtor" , "legal representative" and "movable property" shall have the same meaning as is assigned to them in the Code of the Civil Procedure Act, Samvat 1977.

3. Act to over-ride other laws :-

The provision of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or instrument having effect by virtue of any such law.

CHAPTER 2 HALQA PANCHAYAT

4. Establishment and Constitution of Halqa Panchayat :-

- (1) There shall be a Halqa Panchayat for every Halqa.
- (2) Every Halqa Panchayat shall bear the name of the place where it is headquartered.
- (3) Every Halqa Panchayat shall have Halqa Majlis comprising of all the persons whose names are included in the electoral roll for such Halqa Panchayat.

(4) The Sarpanch shall convene at least two meetings of Halqa Majlis during a Financial year;

(5) Every Halqa Panchayat shall consist of number of Paanches not less than seven and not more than eleven including the Sarpanch as the prescribed authority may, from time to time fix in this behalf.

Provided that the Paanch Seat shall be reserved for -

(a) the Schedule Castes; and

(b) the Schedule Tribes.

(6) The Sarpanch shall be elected directly by the electorate of Halqa Panchayat in such manner as may be prescribed.

(7) The Paanches shall be elected from the constituencies delimited by the prescribed authority in accordance with the rules.

(8) The Village Level Worker or Multi Purpose Worker or Gram Savika shall be the Secretary of the Halqa Panchayat.

5. Term of Office :-

The Sarpanch, the Naib Sarpanch and every Paanch of the Halqa Panchayat shall hold the office for a period of five years from the date.

6. Disqualification for Membership :-

(1) 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 of under twenty-five 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 Lambardar or Village Chowkidar ;or

(h) has been dismissed from the service of the Government , a local body or a Halqa Panchayat.

(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.

7. Removal of Sarpanch and a Naib Sarpanch of a Halqa Panchayat :-

A Sarpanch or a Naib Sarpanch shall be deemed to have vacated his office forthwith if a resolution expressing want of confidence in him is passed by a majority of not less than 2-3rd of the total No. of Paanches of Halqa Panchayat at a meeting specifically convened for the purpose in the prescribed manner on the following grounds

-

- (i) Gross misconduct;
- (ii) neglect of duty;
- (iii) Any disqualifications prescribed under section 6;
- (iv) Failure to attend six consecutive meetings of the Halqa Panchayat.

8. Filling Vacancies in Halqa Panchayat :-

(1) Whenever a vacancy occurs by the death or resignation of Paanch or Sarpanch the vacancy shall be filled by election or nomination as the case may be.

(2) No vacancy in the Halqa Panchayat shall render its proceedings illegal so long as the number of Paanches is not reduced below 50% of the total number of members of the Halqa Panchayat.

9. Panchayat Advisory Committee :-

There shall be Panchayat Advisory Committee comprising such members as may be prescribed.

10. Supersession of Halqa Panchayat :-

(1) If in the opinion of the Government a Halqa Panchayat is incompetent to perform or persistently makes default in the performance of duties imposed on it by or under this Act, the Government may, by notification, supersede such Halqa Panchayat.

(2) The period of supersession shall not exceed six months during which the election shall be held.

(3) When an order under sub-section(1) is passed, the Government may by order in writing make arrangements for carrying out the work of the Halqa Panchayat for such period as it may specify ,but not exceeding six months

(4) If a Halqa Panchayat is superseded -

(a) the Sarpanch and Paanch of the Halqa Panchayat shall, from the date of notification ,vacate their office.

(b) The funds and other property vested in the Halqa Panchayat

shall , during the period of supersession , vest in the person/body entrusted with the function under sub-section (3).

11. Remuneration to Sarpanch and Panchs :-

- (1) Every Sarpanch shall be entitled to such monthly honorarium as may be specified by the Government.
- (2) Each Panch shall be entitled to such sitting fee as may be specified by the Government.

12. Resignation :-

A Sarpanch, Panch ,Naib-Sarpanch of a Halqa Panchayat may by writing under his hand, addressed to such authority, as may be prescribed, resign his office and his office shall thereupon become vacant.

CHAPTER 3 POWERS AND FUNCTIONS

13. Powers and functions :-

(1) Subject to the duty of this Act, it shall be duty of each Halqa Panchayat to make provision for the following subject to availability of funds at its disposal -

- (i) to prepare the plans for the development of the Halqa;
- (ii) to undertake measures for the implementation of the development plans;
- (iii) to specifically deal with the problems of soil conservation ,water management, social forestry , rural industrialization , agriculture , sheep and animal husbandry , sanitation , health and other welfare programs;
- (iv) regulations of buildings, shops and entertainment houses and checking of offensives 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;
- (viii) preparation and implementation of special development plans for alleviating poverty and employment generation through and besides programme like Integrated Rural Development Programme, National Rural Employment Programme ,Rural Land less Employment Guarantee Programme and Housing for Scheduled Castes and Backward Classes;

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

(3) The Halqa Panchayat shall also perform such other functions and duties as may be assigned to it or entrusted by the Government , the District Planning and Developmental Board and the Block and the Block Development Council with in the area of which Halqa Panchayat constituted.

CHAPTER 4 PROPERTY

14. Property of Halqa Panchayat :-

The following shall constitute the property of a Halqa Panchayat :-

(i) Public Village Road within the Halqa Panchayat area other than those under the control f the Government;

(ii) Property movable and immovable which has been transferred to Halqa Panchayat by the Government, any public body or 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 ,nallahs and other quarries in the Halqa Panchayat area which do not belong to any person or a group of persons or to the Government and declare 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 require.

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

15. Halqa Panchayat Fund :-

(1) Every Halqa Panchayat shall have a fund to be called "Halqa Panchayat Fund" which shall comprise the following :-

- (i) Taxes, fees levied by the Panchayat.
- (ii) Proceeds from the property and enterprise run by Halqa.
- (iii) Court fees, fines and compensation paid to the Halqa Panchayat.
- (iv) Donations and contributions paid by public for works undertaken by Halqa Panchayat.
- (v) Proceeds of the sanitation Cess collected by Government on the revenue being loaned within Halqa Panchayat area;
- (vi) Grants from the Government for general purposes on per capita basis and also for specific functions.
- (vii) Loans from the Government or other agencies approved by Government, or other financial institutions.
- (viii) All other income 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 area.

16. Imposition of taxes on fees :-

Subject to such rules as may be made by the Government in this behalf, Halqa Panchayat may impose one or more of the under mentioned taxes and fees.

Taxes :

- (i) Taxes on any trade, calling or profession within the jurisdiction of Halqa Panchayat subject to the maximum limited as indicated -
 - (a) on person up to Rs. 50/- per annum.
 - (b) In the case of theatre, cinema and other places of entertainment up to RS. 25/- per diem.
- (ii) A tax payable by owner thereof on animals and vehicles kept within the area of Halqa Panchayat and piled for hire at the following maximum rates :-
 - (a) in the case of animals, not exceeding Rs. 20/- per animal per annum;
 - (b) in the case of vehicle, not exceeding Rs. 50/- per vehicle per annum;
 - (c) in the case of tractor, not exceeding Rs. 100/- per tractor per annum;
- (iii) tax on boats;
- (iv) pilgrim tax;
- (v) A tax on gharats, rice husking mills, brick kilns and oil mills;
- (vi) Tax on hawkers and pheriwalas.

Fees:

- (vii) fees on persons exposing goods and animals for sale in market or melas Belonging to or under the control of Halqa Panchayat;

- (viii) Fees for the use of slaughter houses and encamping grounds;
 - (ix) Fees for temporary occupation of village sites, roads and other similar public places or parts thereof in the village;
 - (x) Fee on application for erection or re-erection of building;
 - (xi) Adda fee;
 - (xii) Fee for grazing of cattle in the grazing lands vested in Halqa Panchayat;
 - (xiii) Fee on cattle ponds;
 - (xiv) Fee on Tongas.
- Any other tax:
- (xv) Such other tax or fee as may be approved by the Government.

17. Power of Entry for the purpose of valuation of taxation :-

The Sarpanch may authorize any person after giving twenty -four hours notice to the occupier, or if there be no occupiers, to the owner of any building or land at any time between sunrise and sunset,-

- (i) to enter, inspect and measure any building for the purpose of valuation;
- (ii) to enter and inspect any stable, coach house or other place wherein there is a reason to believe that there is any vehicle, vessel or animal liable to taxation under this Act , or for which a license has not duly taken out.

18. Appeal against levy of tax or fee :-

- (1) An appeal against the levy of tax or fee by the Halqa Panchayat shall lie to the prescribed authority;
- (2) Where it is brought to the notice of the prescribed authority that a tax, rate of fee has not been imposed on any person on whom it should have been imposed, it may after hearing him, direct the Halqa Panchayat to impose it on that person or persons and the Halqa Panchayat shall thereupon act accordingly.

19. Recovery of dues as arrears of land revenue :-

Subject to such rules as may be made by the Government in this behalf, all the taxes or fees levied under this Act by the Halqa Panchayat and the moneys recovered as arrears of land revenue.

20. Revision of Taxation orders :-

Any person dissatisfied with the assessment under this Act, may within such time as may be prescribed, apply to the prescribed authority in writing for a revision of the assessment and the prescribed authority may amend or confirm the same.

21. Audit of Panchayat Funds :-

The prescribed authority shall get the accounts of every Halqa Panchayat audited every year in the manner prescribed.

22. Exemption from tax :-

Subject to any rule made under this behalf, the Government may, by order, exempt in whole or in part from the payment of any tax imposed under this Act, any person or class of persons or property or description of property.

23. Levy of fees on market etc :-

It shall be lawful for a Halqa Panchayat to lease by public auction or private contract the collection of any fees which may be imposed under this Act, provided that the lessee shall give security for the due fulfillment of the conditions of the lease.

CHAPTER 5 CONDUCT OF BUSINESS

24. Meetings of the Halqa Panchayat :-

(1) Every Halqa Panchayat, shall hold at its meeting at least once a month.

(2) The meetings shall be convened by the Sarpanch and in his absence Naib-Sarpanch ; providing that the first meeting after the constitution of Halqa Panchayat shall be convened by the prescribed authority, after notifying the date therefor.

(3) The procedure for the conduct of business and maintenance of records, shall be such as may be prescribed.

25. Functions of Sarpanch and Naib-Sarpanch :-

(1) The Sarpanch shall preside over the meeting of the Halqa Panchayat and shall be responsible for maintenance of the records of Halqa Panchayat.

(2) The Sarpanch shall be generally responsible for the financial and executive administration of the Halqa Panchayat and shall exercise administrative supervision and control in accordance with

the rules framed in this behalf, over the staff of the Halqa Panchayat.

(3) In the absence of the Sarpanch, the Naib Sarpanch shall reside over the meeting of the Halqa Panchayat and discharge the functions of the Sarpanch with regard to the financial and administrative matters.

26. Staff :-

(1) Subject to such rules as may be made in this behalf, a Halqa Panchayat may employ such staff as is necessary for carrying out the duties imposed on it by this Act and may suspend, dismiss or otherwise punish such servants.

(2) A Halqa Panchayat will pay the remuneration to such servant out of the Halqa Panchayat Fund.

CHAPTER 6 BLOCK DEVELOPMENT COUNCIL

27. Constitution for Block Development Council :-

(1) For every Block in the state, Government shall, by notification, constitute a Block Development Council bearing the name of the Block.

(2) Every Block Development Council shall be a body corporate having a perpetual succession and a common seal and shall, by its corporate name, sue and be sued , subject to such conditions or restrictions as Government may prescribe.

(3) The Block Development Council shall consist of -

(i) a Chairman;

(ii) all Sarpanch of Halqa Panchayat failing within the Block; and

(iii) Chairman, Marketing Society within the jurisdiction of the Block.

28. Chairman Vice-Chairman and Secretary :-

(1) Every Block Development Council shall have a chairman who shall be a person qualified to be elected as a Panch and shall be elected in accordance with the provisions contained in section 41;

(2) Every Block Development Council shall have a Vice-Chairman who shall be elected by the members of the Block Development Council from amongst themselves.

(3) The Block Development Council shall be the secretary of the Block Development Council.

29. Term of Office :-

(1) The term of office of the chairman of the Block Development Council shall be five years from the date he is declared elected as such by the Election Authority.

(2) The term of the office of the chairman and other members of the Block Development Council shall be co-extensive with the term of their office as Sarpanch of the concerned Halqa .

CHAPTER 7 POWERS AND FUNCTIONS

30. Powers and Functions of the Block Development Council :-

The Block Development Council shall perform the following functions :-

(i) Constructions ,maintenance and supervision of Inter-Halqa Panchayat Communication System;

(ii) Administrative and technical guidance of Halqa Panchayats and review of their work;

(iii) To supervise plans relating to agriculture, rural development and animal husbandry/sheep husbandry ,social forestry, education and public health;

(iv) Supervise and monitor the implementation of poverty alleviation programme 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 other functions as may be entrusted to it by the Government or by the District Planning and Development Board.

31. Powers and Functions of the Chairman and the Vice-Chairman :-

(1) The chairman and in his absence, the Vice Chairman, shall preside over the meeting of the Block Development Council.

(2) The chairman and in his absence, the Vice Chairman ,shall exercise the general control and supervision over the staff and affairs of the Block Development Council.

32. Remuneration to chairman and members :-

(1) The members of the Block Development Council shall be

entitled to such sitting fee, as may be prescribed from time to time.
(2) The chairman of the Block Development Council shall be paid such honorarium as may be prescribed, from time to time.

CHAPTER 8 PROPERTY AND FINANCE

33. Property and Finances of the Block Development Council :-

(1) Block Development Council shall have the power to acquire, hold or dispose of property and enter into a contract in accordance with the rules in force.

(2) For every Block Development Council, there shall be consisted a "Block Development Council Fund" comprising grants made for the Government having due regards to the number of Panchayat Halqas in a Block and the revenue assigned by the District Planning and Development Board.

CHAPTER 9 PROCEDURE FOR CONDUCT OF BUSINESS

34. Meetings :-

(1) Every Block Development Council shall hold its meeting once in a month. The meeting shall be convened by the Chairman, and in his absence by the Vice-Chairman.

(2) The procedure for the conduct of business and maintenance of records of the Block Development Council shall be such as may be prescribed.

CHAPTER 10 HOLDING OF PANCHAYATS

35. Section 35 :-

The election to the Panchayat Halqa and chairman of the Block Development Council shall be held under superintendence, direction and control of the Chief Electoral Officer.

36. Electoral Roll :-

For every Halqa Panchayat there shall be an electoral roll, which shall be prepared by the Election Authority in accordance with the provisions of this Act.

37. Section 37 :-

There shall be no bar of holding of election on party lines.

38. Disqualification for Registration in an Electrol Roll :-

A person be disqualified for registration in an electrol roll, if he -

- (i) is not a permanent resident of the state;
- (ii) is of unsound mind and stands so declared by a competent court;
- (iii) has not attained age of 18 years.

39. Elections of Sarpanchs of Halqa Panchayat :-

Sarpanchs of Halqa Panchayats shall be elected by electorate of the Halqa Panchayat.

40. Election of the Chairman of the Block Development Council :-

The Chairman of the Block Development Council shall be elected by the Electoral College comprising of Panchs and Sarpanchs of Halqa Panchayat falling with in block. The election shall be held in the manner as may be prescribed.

41. Holding of Elections :-

- (1) The election to the Halqa Panchayat shall be held one month prior to the expiry of term or within six months from the date of supersession as the case may be .
- (2) The election of the chairman of the Block Development Council shall be held one month prior to the expiry of the term.

42. Nominations of candidates for election :-

(1) Any person may nominate himself as a candidate for election of Panch or Sarpanch of a Halqa Panchayat if his name is included in the electrol roll of such Halqa Panchayat.

(2) On or before the date appointed for submission of nomination papers by the Election Authority, every candidate for election of Panch or Sarpanch of a Halqa Panchayat or Chairman Block Development Council shall deliver or cause to be delivered through his agent to the Returning Officer a nomination paper completed in the prescribed form and signed by the candidate.

(3) A candidate shall not deemed to be duly nominated for election from a Panchayat Constituency or Block Development Council

unless he deposited or causes to be deposited such amount of security, as may be prescribed , for the election of the Panch, Sarpanch or Chairman Block Development Council as the case may be.

43. Forfeiture of Security Deposit :-

The security deposit of a candidate shall be liable to be forfeited if he polls less than 1/6th of the total valid votes polled.

44. Disputes regarding elections :-

(1) the election of a person as Sarpanch, Panch of a 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 times 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;

(b) that the result of the election has not been materially affected :-

(i) by the improper acceptance or rejection of any nomination; or

(ii) by gross failures to comply with the provisions of this Act or by the rules framed thereunder.

CHAPTER 11 MISCELLANEOUS

45. Power to make Rules :-

The Government may make rules for carrying out the purposes of this Act. In particular and without prejudice to the generality of the foregoing power, such rules may, provide:-

(i) for all matters expressly required or allowed by this Act to be prescribed by rules; and

(ii) for the procedure for exercise of civil and criminal jurisdiction; imposition of penalties by the Panchayati Adalat;

(iii) procedure regulating the conduct of elections to Panchayat Halqas and Chairman Block Development Council;

(iv) That a contravention of any rule made under this Act shall be punishable with a fine which may extend to fifty rupees.