

PANCHAYATI RAJ INSTITUTIONS IN JAMMU AND KASHMIR: A CRITICAL ANALYSIS

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ABSTRACT

Panchayats as traditional institutions were seen in India as almost sacred with their Panchas (members) referred to as 'Panch Parmeshwar' (member as God) with expectations of fairness and justice in their role of settlement of local inter-personal and community disputes. The genesis of the new panchayats can be traced to the attempts made in colonial India. The State of Jammu and Kashmir (J & K) has its own unique history as far as Panchayati Raj is concerned. In Jammu and Kashmir, the Panchayati Raj Institutions are established under the Jammu & Kashmir Panchayati Raj Act, 1989. However, the provisions of 73rd Amendment Act were not extended to the State owing to the special status of Jammu and Kashmir under Article 370. Although the State Government has adopted various provisions of 73rd Amendment Act, the Jammu & Kashmir Panchayati Raj Act, 1989 has many loopholes.

Introduction

The Panchayati Raj is an indigenous and time-honoured concept in our country. The form may vary, but the spirit has always been part of our socio-cultural ethos. Its origin can be traced back to ancient ages where community spirit was the main force not only to keep village communities united but to help them manage local affairs independently. Sir Charles Metcalfe characterised them as small "republics having nearly everything that they want within themselves" (Aslam 1996).

The genesis of the new panchayats can be traced to the attempts made in colonial India with the panchayat laws enacted in the provinces and princely states in 1920 and thereafter. These laws sought to create panchayats as local bodies dealing with sanitation, regulation and maintenance of buildings, roads, etc., and to be endowed with judicial powers for settlement of

petty disputes. The next stage of legislative action about panchayats was in 1940s when the Congress governments elected in the provinces under the Government of India Act 1935 legislated for more broad-based panchayats (Buch 2010).

It is, however, in Independent India that we see panchayats in their present incarnation as local bodies with substantial development orientation. Article 40 of the Constitution of India provides that the State shall take steps to organise village panchayats and endow them with such powers and authority to enable them to function as units of local self-government. The two milestones in the evolution of Panchayati Raj Institutions (PRIs) were the reports of two Committees set up by the Central government in 1957 and 1978, namely, the B.R. Mehta Committee of 1957 and the Asoka Mehta Committee of 1978.

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However, even after the recommendations of the Balwant Ray Mehta Committee and Asoka Mehta Committee on panchayats had been put into force, several ills continued to afflict the Panchayati Raj system in the country in the post-Independence period. There were long delays in holding of panchayat elections, frequent suspension/supersession/dissolution of the panchayat bodies, lack of functional and financial autonomy, inadequate representation of marginalised and weaker sections and meagre and occasional government grants. This crippled the functioning of panchayats and did not allow them to function as institutions of local self-government as envisaged in the Constitution.

Thus an imperative need has accordingly emerged to enshrine in the Constitution of India, certain basic and essential features of local self-government so as to enable local bodies to function as institutions of self-governance both in planning and implementation of development programmes. Consequently, Constitution (73rd Amendment) Act, 1992 was passed and was brought into force with effect from 24 April 1993. The passage of the 73rd Constitution Amendment Act, 1992 marks a new era in the federal democratic set-up of the country and provides Constitutional status to the PRIs.

The main features of the Act are –

- a three-tier system of Panchayati Raj for all States having a population of over 20 lakh;
- panchayat elections are to be held regularly every five years;
- reservation of seats for Scheduled Castes (SCs), Scheduled Tribes (STs) and women;
- constitution of an independent State Election Commission to hold panchayat elections on a regular basis;
- appointment of an independent State Finance Commission to make recommendations as regards the financial resources of the panchayats;

- legal status to Gram Sabhas; and
- inclusion of Eleventh Schedule to the Constitution listing 29 Subjects within the jurisdiction of PRIs.

Panchayati Raj in Jammu and Kashmir

The State of Jammu and Kashmir (J & K) has its own unique history as far as Panchayati Raj is concerned. The political crisis that has been occupying it for a long time now has not allowed any positive social reconstruction projects to go smoothly in a planned direction. The vision of grassroots empowerment in J & K emerged as part of the national movement that took the shape of an organised mass movement since 1931. It was under the pressure of this popular movement that the Maharaja's government initiated a series of reforms. It promulgated the J & K Village Panchayat Regulation Act No. 1 in 1935.

The National Conference that spearheaded the freedom movement in the valley provided for the institutional arrangement for grassroots empowerment in its party agenda 'New Kashmir Manifesto' adopted by the party in 1944. The National Conference came to power in March 1948. At that point of time, the development scenario of the State was characterised by economic stagnation and educational backwardness. The Zamindars had accumulated large chunks of land through manipulation. The majority of the people were impoverished. In view of this situation, abolition of landlordism became the top priority of the Government. It resulted in the introduction of Big Landed Estates Abolition Act, 1950. This was a landmark in the history of J & K as it was the first experiment of its kind in land reforms in the sub-continent. It provided a sound base for reactivation of the Panchayati Raj system in reshaping the rural economy in the State (Aslam 1977).

Realising this, the Government replaced the Panchayat Act of 1935 (as amended in 1941)

with Act-V of Samvat 2008 (corresponding to year 1951). The main features of this Act were:

- Majority of the panchayat members were to be elected on the basis of adult franchise;
- Panchayats were to perform administrative, developmental, civic and judicial functions;
- Introduction of concept of Halqa Panchayat comprising 5-7 villages;
- Introduction of Panchayat Board at each Tehsil (Mohammad 1995).

On the one hand, the Government was busy materialising the objectives set for democratic decentralisation through Panchayati Raj and the State Government joined rest of the country in introducing Community Development Programme throughout the State in 1952 on the other. Though local self-government entered a long period of dormancy after dismissal of Sheikh Abdullah government in 1953, the Constitution of the State that was adopted in 1957 reiterated the commitment to the establishment of the Panchayati Raj.

The introduction of Community Development Programme (CDP) and the National Extension Services (NES) occupied the full attention of the Central and the State Governments during the 1950s. Towards the end of the decade, it was realised that the expectations raised by these programmes were not getting fulfilled, and that one of the main reasons was lack of people's participation in the planning and execution of these development schemes. At the national level, it was the Study Team on Community Development Projects and National Extension Services headed by Balwant Ray Mehta (1957) which expressed concern about the lack of people's participation and made a strong plea for devolution of power to lower levels through Panchayats.

Before the Panchayati Raj system could be introduced in the whole country, the J & K State took a lead by passing 'the Jammu and

Kashmir Village Panchayat Act of 1958', and repealed its earlier Acts. This Act of 1958 did not however differ much from 1951 Act.

The panchayats as local institutions of self-government remained dysfunctional over a long period of time. Wherever they existed, they were at the village level only without any functional linkages with the developmental institutional structures that existed at the block and district levels. It took almost two decades for the State Government to realise that without people's participation, the developmental process could not achieve desired objectives. The decentralisation of planning process was new and upcoming developmental slogan at that point of time. The State Government took a bold step by introducing an innovative concept of 'Single Line Administration' to secure participation of the people through their representatives in the developmental process. "The twin objectives of the Single Line Administration was to secure a mechanism for developing the planning process at the district level to take full account of the resource endowments, the potentialities and structural needs and also to initiate a process of equitable development of various areas within the district" (Choudhary 1990).

However, the implementation of this innovative model led to the realisation that "human potential which is available at the grassroots level should be mainstreamed into the movement of development to provide a sound and strong basis to the democratic structure. It was in this context that the desire to have a sound institutional framework to give a definite and positive role to the community in the matter of self-governance has provided a sense of urgency for restructuring the institutional framework of Panchayati Raj" (Choudhary 1990). This realisation led to the introduction of Jammu and Kashmir Panchayati Raj Act, 1989.

The Jammu & Kashmir Panchayati Raj Act, 1989

The Jammu & Kashmir Panchayati Raj Act, 1989 was passed in March 1989. The Governor gave his assent to the bill in July 1989. For the first time an Act was named a "Panchayati Raj Act" rather than as "Village Panchayat Regulation Act". The former implies the promotion of Panchayati Raj in the State (at village, block and district levels) whereas the latter was confined to panchayats at the village level alone. This is certainly a very positive development.

Three-Tier Model: The Act provides for a three-tier system consisting of:

- Halqa Panchayat
- Block Development Council and
- District Planning and Development Board.

In addition, the Act provides for a Panchayati Adalat for every Halqa.

Halqa Panchayat : The Halqa Panchayat comprises such number of panches not less than seven and not more than eleven including the Sarpanch as the prescribed authority may fix from time to time. The panches are elected from the constituencies delimited by the prescribed authority. While the naib-sarpanch is elected by the panches of the Halqa Panchayat from among themselves, the sarpanch is elected directly by the electorate of the Halqa Panchayat. The Halqa Panchayat continues to function for a period of five years from the date of its constitution. If it is dissolved for any reason before this period, elections will be held within six months. A sarpanch or naib-sarpanch can be removed by a vote of no-confidence passed by a majority of not less than two-thirds of the total number of panches of the Halqa Panchayat.

The other features of the Act in respect of Halqa Panchayats include:

- If the prescribed authority is of the opinion that women are not adequately represented

in the Halqa Panchayat, it may nominate such number of women to be members thereof, as it may deem fit. Provided further that their number does not exceed 33 per cent of the total number of panches.

- The Village Level Worker (VLW) shall be the secretary of the Halqa Panchayat.
- If, in the opinion of the Government, a Halqa Panchayat is incompetent or persistently makes default in the performance of duties imposed on it by or under the Act, the Government may by notification supersede such a Halqa Panchayat.

The Act provides for various powers and functions to the Halqa Panchayat which enables it to become the cutting edge of all the development efforts, but all this is subject to availability of funds at its disposal. The important powers and functions allocated to Halqa Panchayats as enshrined in the Act are:

- to prepare and implement the plans for the development of the Halqa ;
- preparation and implementation of special developmental plans for alleviating poverty and employment generation;
- the Halqa Panchayat shall be involved in the implementation of scheme of universalisation of elementary education and other educational programmes;
- the Halqa Panchayat shall also perform such other functions and duties as may be assigned or entrusted to it by the Government, the District Planning and Development Board and the Block Development Council within the area of which Halqa Panchayat is located.

Block Development Council : The Act provides for the constitution of a Block Development Council consisting of:

- a chairperson,
- all sarpanches of Halqa Panchayats falling within the block, and

- Chairpersons of marketing societies within the jurisdiction of the block.

However, if the prescribed authority is satisfied that women or scheduled castes or any other class are not represented in the Council, it may nominate not more than two persons to be the members of the Block Development Council. The Block Development Officer is the secretary of the Block Development Council. The chairperson of Block Development Council will be a person who is qualified to be elected as a Panch. Every Block Development Council also has a vice-chairperson who is elected by the members of the Block Development Council from amongst themselves.

The main functions of the Block Development Council are:

- construction, maintenance and supervision of inter-Halqa Panchayat communication system;
- administrative and technical guidance to Halqa Panchayats and review of their work;
- to supervise plans relating to agriculture, rural development, animal husbandry/sheep husbandry, social forestry, education and public health;
- to supervise and monitor the implementation of poverty alleviation programmes;
- to carry out such other functions as may be entrusted to it by the Government or by the District Planning and Development Board.

District Planning and Development Board : Further, the Act provides for the constitution of a District Planning and Development Board (DPDB) comprising:

- Chairpersons of the Block Councils of the District;
- Members of Parliament representing the area;

- Members of the State legislature representing the area;
- Chairpersons of the Town Area Committees of the District; and
- President of the Municipal Council (if any)

The chairperson of the DPDB is nominated by the Government from amongst the members of the DPDB. The vice-chairperson is elected by the members from amongst themselves. The District Development Commissioner is the Chief Executive of the Board to be assisted by district level heads.

The main functions of the DPDB are:

- to consider and guide the formulation of development programmes for the district and indicate priorities for various schemes and consider issues relating to the speedy development and economic upliftment of the district;
- to review periodically progress and achievements of development plans and schemes and make recommendations as it considers appropriate;
- to function as a working group for formulation of periodic and annual plans for the district;
- to formulate and finalise the plan and non-plan budget for the district;
- to lay down the policy guidelines for the Block Development Councils and Halqa Panchayats;
- to approve the budget of the Block Development Council and supervise and coordinate their work;
- to undertake special measures for alleviating poverty and employment generation and extending assistance to Halqa Panchayats in this behalf;
- to promote and assist cooperative institutions;
- to perform such other functions and duties as may be assigned or entrusted to it by the government from time to time.

All the development assistance meant for the development of the district flows through the District Planning and Development Board. The DPDB has to set up committees to handle specialised jobs. The number and manner in which they shall be constituted are decided by the DPDB.

Panchayati Adalat: Panchayati Adalat is another important feature of Jammu & Kashmir Panchayati Raj Act. The idea of Panchayati Adalat is an innovative one, particularly at the grassroots level. As per the provisions of the Act, the Adalat shall comprise five members to be nominated by the government out of the panel prepared and recommended by the Halqa Panchayat out of its electorate. The person so recommended for a term of five years shall be literate, shall have attained the age of 30 years, not be a sarpanch or a panch and not be in the employment of the government or local body or corporation. The members of a Panchayati Adalat shall elect any member from amongst themselves as the chairperson. The secretary of the Halqa Panchayat shall serve as the judicial clerk to the Panchayati Adalat. The Panchayati Adalat shall not be competent to impose on any person convicted of an offence tried by it, any sentence other than a sentence of fine not exceeding one thousand rupees.

Limitations of the Jammu and Kashmir Panchayati Raj Act, 1989

The Jammu & Kashmir Panchayati Raj Act of 1989 cannot in any way claim to decentralise power or create a democratic environment at the grassroots level. One of the most serious flaws in the Act relates to government intervention in the composition of panchayats. Unlike the 73rd Amendment to the Constitution that provides that all the seats in the panchayats shall be filled by persons chosen by direct election from territorial constituencies in the panchayats, this Act provides for nominations at every level – the Halqa Panchayat, the Block Development Council and the District Planning and Development Board.

The principle of direct election of panchayats is applied only at the village level. Neither the Block Development Council nor the District Planning and Development Board comprise directly elected representatives of the people. It is only the chairman of the Block Development Council who is elected but the mode of election is indirect i.e., the electoral college comprised the panches and sarpanches within that block. Similarly, there is no provision for direct election to the District Planning and Development Board. It is only the vice-chairperson of the Board who is elected, the electoral college comprises the members of the Board itself.

Provision for nomination was aimed at compensating for another critical flaw of the Act – its inability to provide for reservation of seats for women, scheduled castes and the scheduled tribes (SCs/STs). Unlike the 73rd Amendment of the Constitution which provides for reservation of 33 per cent seats for women through direct election, the State Act empowers the government to nominate women to the panchayats if it feels that their representation is needed.

Panchayati Adalats have been used in many States to supplement the formal judicial system by reviving and legitimising the traditional system of justice. Union Government has also passed Gram Nyayalayas Act recently to provide justice at grassroots level. But by empowering the State Government to nominate the members of the Panchayati Adalat, and to remove its chairperson or any member, the State law robs independence of the institution of justice at the grassroots level. It amounts to supplementing the judicial system and the traditional system of justice, both supposed to be independent of the executive, by a third sector of justice controlled by the State government.

The principle of nomination not merely goes against the democratic nature of panchayats but also changes the nature of rights

enjoyed by the nominated members of the panchayats. The representation of nominated members is at the discretion of the State Government and not a Constitutional right for any of these groups. In fact, the discretion can easily be used by the government to influence the autonomous working of panchayats.

Nomination or co-option has two consequences. Firstly, this meant presence of only token women and nomination by the dominant party already in power meant selection of pliant or kinswomen. Secondly, the political parties and ruling party groups interested in controlling panchayats ensure that women did not contest even if some of them express interest, so that they could bring their 'own women' later through nomination after getting only male candidates elected. Thus, co-option was not only based on a view of women as a weaker and incapable of contesting elections, it also became an instrument of patronage for the dominant political or social groups who act to retard progress in women's representation in election.

A study on panchayats in Maharashtra in 1983 recorded, "A respondent, who was ambitious and had successfully contested previous election, said that her party had prevailed upon her during the last Zilla Panchayat (ZP) election, not to stand for elections because her winning the election would deprive the party of an extra seat in ZP as well as the Panchayat Samiti. In case a woman contestant is elected, there is no room for co-option and the co-opted member enjoys the same privileges of voting as elected members. Political parties, therefore, utilise the statute regarding co-option as a means of gaining votes and strengthening their party position in the panchayat body and not for promoting effective representation of active women" (D'Lima 1983).

In order to deal with these limitations of 1989 Act, the State Government has adopted many positive features of 73rd Amendment Act

over the years. The various important changes made in the original Panchayati Raj Act of 1989 are:

Halqa Majlis : Halqa Majlis is the equivalent of Gram Sabha in Jammu and Kashmir. Earlier the provision of Halqa Majlis was not prescribed in the Act. But its provision was made in the Jammu and Kashmir Panchayati Raj Rules, 1996. It has been prescribed that every Halqa Panchayat shall have Halqa Majlis comprising all the persons whose names are included in the electoral roll for such Halqa Panchayat. The sarpanch has to convene at least two meetings of Halqa Majlis during a financial year.

Every Halqa Panchayat need to 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. At least 20 days notice shall be given for calling a meeting of Halqa Majlis. Any voter present in the Halqa Majlis may also raise any matter of public importance which shall be discussed and shall be accepted or rejected by a majority vote and the budget shall be recast accordingly.

Provision for Reservation : The J & K Panchayati Raj (Second Amendment) Act, 2003 was solely passed with the objective to strengthen the representative character of the Halqa Panchayats, and also to ensure effective participation of women and scheduled castes/scheduled tribes (SCs/STs) in the functioning of grassroot level democratic institutions. State government agreed to adopt this important provision of 73rd Amendment -although partially as only panch seats are reserved- because representation of women in panchayats that set up after 2001 elections was very less. In 2001 panchayat elections out of the 1230 sarpanch and 10090 panch constituencies in Jammu Division only 166 women panch and 7 sarpanch were able to win elections. It means that the representation

of women candidates elected is quite dismal, ranging from 0.5 per cent in respect of sarpanch to 1.70 per cent in respect of panch positions.

The statute provides that the Panch seats shall be reserved for the scheduled castes and the scheduled tribes in every Halqa Panchayat in proportion to their population in rotation to different constituencies in such manner and by such authority as may be prescribed. Provided further that not less than one-third of the total number of panch seats reserved under this arrangement shall be reserved for women belonging to the scheduled castes or, as the case may be, the scheduled tribes, and not less than one-third of the total number of seats to be filled by direct election in every panchayat shall be reserved for women (See Govt. of Jammu and Kashmir, Civil Sect., Rural Development Department, Notification, Srinagar, the 18th June, 2004).

This amendment does not talk about reservation of seats for the post of sarpanch, which seems to be a flaw and retrograde step as it is sarpanch and his/her able guidance that leads to the success of panchayat and development of the village.

State Election Commission : The absence of provision for State Election Commission in the Jammu and Kashmir Panchayat Act was one of the main lacunae of the Act. In 2011, the J & K government however decided to amend the Act and thereby provision for State Election Commission was made. State Election Commission was entrusted with the responsibility of superintendence, direction and control of the preparation of electoral rolls for and the conduct of, all elections under panchayat Act.

State Finance Commission : A pre-requisite of the success of the Panchayati Raj system is its financial viability and autonomy. The 73rd Amendment to the Constitution provides for appointment of a Finance Commission by the State Governments to make recommendations for

- determination of the taxes, duties, tolls and fees which may be assigned to panchayats;
- distribution between the State and panchayats of the net proceeds of taxes, duties, etc;
- grant-in-aid to the panchayats by the States.

The J & K Panchayati Raj Act neither fixes minimum amount of grant-in-aid by the State to the panchayats nor provides for an autonomous machinery for objective allocation of funds. Due to political and public pressure, the State government agreed to create the State Finance Commission by bringing in a separate bill in 2011. The Jammu and Kashmir State Finance Commission for Panchayats and Municipalities Act, 2011 was passed accordingly.

This Act provides that the Government shall, as soon as may be from the commencement of the Act, and thereafter at the expiration of every fifth year, constitute a "State Finance Commission for Panchayats and Municipalities" to review the financial position of panchayats and municipalities and to exercise the powers conferred upon and to perform the functions assigned to it, under the Act (The Jammu and Kashmir State Finance Commission for Panchayats and Municipalities Act 2011).

The main functions of Commission regarding panchayats are-

- the distribution between the State and the panchayats of the net proceeds of the taxes, duties, tolls and fees leviable by the State;
- the determination of taxes, duties, tolls and fees which may be assigned to, or appropriated by, the panchayats;
- the grants-in-aid to the panchayats from the Consolidated Fund of the State;
- the measures needed to improve the financial position of the panchayats.

Panchayat Elections in 2011

The panchayat elections in Jammu and Kashmir were announced after a gap of 10 years,

and the process began in early 2011. The last panchayat elections were conducted in the State in 2001-02 after a gap of 23 years.

The panchayat elections were held in 16 phases starting from April 13 to June 18 for the election of 4130 sarpanches—2164 in Kashmir and 1966 in Jammu, and 29,719 panches—15,959 in Kashmir and 13,760 in Jammu. About 29,000 polling stations were set up for conducting these elections, and more than 50 lakh people were eligible to cast their votes in these elections. These panchayat elections created great enthusiasm among rural masses. They have shown great interest and participated vigorously in these panchayat elections. Over 79 per cent of the electorate exercised their right to vote.

These elections were very important because for the first time reservation was provided to women and SCs/STs in panch seats. Due to reservation out of 28248 panchs elected across the State, 9424 are women i.e., 33.3 per cent of elected panches are women. But in case of sarpanch posts, the fairer sex in Jammu and Kashmir has failed to break into male-dominated politics of the State. Out of 4,113 sarpanch posts in the 22 districts of the State, only 28 women managed to win the elections- a dismal success rate of 0.68 per cent. It is because of the fact that there was no reservation for women in sarpanch constituencies.

Conclusion

The Panchayati Raj Institutions in Jammu and Kashmir State continue to suffer both from structural as well as operational weaknesses. Structurally, the Panchayati Raj Act 1989, despite the recent amendments (including the 2004 amendment in relation to reservation; 2011 amendment to provide for the State Election Commission and; more recently passed Act in relation to the State Finance Commission), remain flawed and do not serve the purpose of making the panchayats the units of self-governance.

Due to lack of Constitutional guarantee to PRIs, there is a degree of arbitrariness in the constitution of panchayats in the State. Due to this fact, although the Act provides for the continuity of panchayats by mandating that before the expiry of the term of panchayats, the next elections are to be conducted, the government may ignore this provision and may not conduct the elections before the expiry of the term of panchayats. Since 2006, for five years, there was a vacuum with no elected panchayats in place.

In another manner also, the arbitrariness is clearly reflected. Though the Act provides for the three tiers of panchayat, the government while holding the elections for the village panchayats, was not under any obligation to constitute the Block Development Councils (BDCs) and District Planning and Development Boards (DPDB) immediately. The BDCs and DPDBs, therefore, were not constituted in 2001-2006 period and almost two and half years have passed since the last panchayat elections were held but BDCs and DPDBs are still to be constituted.

At the operational level, the biggest issue remains the absence of powers for the panchayats. From 2001 to 2006, though the Halqa Panchayats were the only democratically-constituted layer of panchayats, these were not empowered. If panchayats remained functional, these were only in relation to the Centrally-sponsored schemes for which it was mandatory that the panchayats be involved. If there was anything more pathetic than the lack of powers for the panchayats, it was the absence of funding. Again, the only funding that was available to the panchayat was the funds of some Centrally-sponsored schemes. Except this, neither the panchayats were provided basic funding by the State nor were these directed to raise their own resources.

This scenario, more or less, remains the same even after the 2011 elections. There are

pronouncements regarding devolution of powers and empowerment of panchayats like 22 September, 2011 General Administration (GAD) Order mentioning devolution of functions of 14 departments to PRIs, and yet, the panchayats remain powerless.

Similarly, when the provision for Halqa Majlis (Gram Sabha) was incorporated in the Act, the powers of the Gram Sabha were not detailed.

Gram Sabha which should have been the most powerful body demanding accountability from the panches and sarpanches, remains subordinated to the panchayats. Thus, the present status of Panchayati Raj Institutions demands serious interventions from the higher government for their empowerment. The State Government must move towards adopting the key provisions of 73rd Constitution Amendment in this regard.

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