



RESEARCH ARTICLE

Political Parties and Devolution of Power in Punjab after the 18th Amendment

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Abstract

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In Pakistan, there has been an interesting relationship between the political parties and the local governments, marred by distrust and suspicion. Political parties see the local governments as the rivals due to the historical ties of the latter with the military regimes. In the democratic periods, the political parties have changed the power dynamics by taking off the municipal powers from the local governments and handing them back to the provinces. Even after the 18th amendment, in Punjab, there was a weak devolution of fiscal and administrative powers during the PML-N era. Article 140A has remained a hollow constitutional promise due to lack of interest and reluctance of political parties in devolution of power. The PTI government in Punjab dissolved the existing local government in March 2019 through an ordinance. The Punjab Local Government Act (PLGA) 2021 was introduced by the PTI government with a promise of devolution and community development. The province with a population of almost 110 million is being governed through the offices of the district commissioners. This paper is based on qualitative research which aims to find out the factors responsible for barring the ruling political parties from empowering the third tier of the government in Punjab.

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Introduction

The fundamental questions of human rights, constitutionalism, and democracy demand the attention of the citizens of any state. Lord Ripen, the founder of Local Government (LG) in India, explained the concept of LG in these words, “these councils will serve as the school of democracy.”¹ The advocates of the devolution of powers see the LGs as the agents of change, expecting them to bring more efficiency and effectiveness to the local governance.² The modern LG systems all over the world advocate enabling the citizens at the grass-root level to have a meaningful role in shaping their destiny.³ Being the third tier of the governance, LG justifies being reasonably autonomous.⁴

Political parties are agents for translating the public will into an organized political mandate. Globally, the mainstream political parties have their roots in well-established local governments. In addition, they use LGs to strengthen democracy and provide leadership in countries such as Brazil, Turkey, and India.⁵ There is a dismal picture in the case of Pakistan as the present political parties need democracy within them and have become family-run businesses.

Pakistan has a federal parliamentary structure with three tiers of government. The 18th Amendment was ratified in April 2010 and hailed as a turning point in our constitutional history. The framework of the study is that Article 140A of the Constitution was introduced by the General Musharraf government through the 17th Amendment. This constitutional progress elevated the status of local government from "statutory" to "constitutional" institutions. This also contained the objective of protecting them from frequent dissolution. In 2010, in the 18th amendment, a sub-article was added

¹ M. Zahid Islam, *Development of Local Government in Pakistan 1947-2011* Lahore: Sangat-Foundation Lahore, 2011, 12.

² Syed Mohammad Ali, “Devolution of power in Pakistan,” United States Institute of Peace, last modified March 28, 2018, accessed June 22, 2021, <https://www.usip.org/publications/2018/03/devolution-power-pakistan/>.

³ Zulqarnain Hussain Anjum and Nuzhat Ahmad, “New local government system: a step towards community empowerment?” *The Pakistan Development Review* (2001), 845.

⁴ PILDAT, “Comparative Analysis of Local Government Laws in Pakistan,” Pakistan Institute of Legislative Development and Transparency, published March 15, 2019, accessed on June 24, 2021, <https://pildat.org/political-parties1/comparative-analysis-of-local-government-laws-in-pakistan/>.

⁵ Ms. Imrana Tiwana, etc. Versus. Province of Punjab, etc., Case No: W.P. No.7955/2015, (2015), 4.

to this article ensuring the elections at regular intervals through the Election Commission of Pakistan (ECP).⁶

After nearly 12 years of ratification, the provincial government and ruling parties are hesitant to transfer significant power, resources, and responsibilities. Now, our country, comprising over 220 million people, is being governed without the LGs. The tenure of local governments in KPK and Balochistan was completed in 2019. At the same time, the Punjab government has dissolved the existing local government system through an ordinance. The LG of Sindh was disbanded on September 1, 2020, after the completion of its term. The significance of this paper is to point out the importance and necessity of the LG for the most populous province of Pakistan. Having a population of almost 110 million, more than any of the European or African countries, the power of the local government in Punjab is vested in the three dozen Pakistan Administrative Service (PAS) officers.

The objective of this research is to find out the factors that have barred the governments of the ruling democratic parties, after the 18th Amendment, from devolving powers in Punjab. This paper tries to find out why the democratic parties in Punjab have been reluctant to devolve powers to the third tier of the government. This study has focused on the point of devolution to the grass-roots level. The constitution emphasizes the third tier of the government with devolution of significant power, resources, and responsibilities. The democratic political parties are impeding this process of devolution in various ways. The purpose of this paper is to identify the factors that prevent democratic political parties from devolving power to the people.

Literature Review

This study is composed of a theoretical and historical review of the international and local literature on devolution, decentralization, the role of political parties in the devolution process, the 18th Amendment, Article 140A, and the local government systems in Pakistan. Books, journal articles, briefing papers, newspapers, and special reports are taken as the source for the review of the literature. The work of eminent international and local scholars on the topics of local government and political parties has been assessed.

⁶ Umer Gillani, "The Case Against Dissolution of Local Governments," published on September 17, 2019, accessed on July 2, 2021, <https://courtingthelaw.com/2019/09/17/commentary/the-case-against-dissolution-of-local-governments/>.

Marguerite J. Fisher and Donald G. Bishop called the local governments the most important tier of governance. They say that this tier deals with the daily lives of the people. People's feelings toward the government are thus expressed through their experiences with governance in their local communities.⁷ Richard Meredith Jackson regards LG as basis of the national self-government. As a matter of historical fact, English LG took its present form and was made more democratic, because the Parliament had become more democratic. Primarily LG is provided with the task of getting various services run for the benefit of the community.⁸

Gerry Stoker describes the French system as follows: "The first point is that the French local authorities are in a real sense organ of state; they are part of the hierarchy of administration with special duties... in several instances, the competent higher authority is Parliament, but when a local authority is acting as an executive agency, it is subject to the executive." The doctrine of separation of powers in France means that the executive has its own rights and status with which Parliament cannot interfere except with legislation.⁹

Colin Copus has the viewpoint that a general body of opinion and feelings can be effective in a complex society only if it is organized. As a result, the organization, or the party, is critical to society. It is by no means universal for the LG councils to be run along party-political lines. To be effective, a council ought to follow a consistent policy. Consistency is provided by party politics. The alternative to party politics is personalities like the traditional leaders, lords, squires, chiefs, landlords, employees, or anyone who can carry weight.¹⁰ Richard Batley and Gerry Stoker while discussing the local government systems in Europe, say that the structure of tiers can be used so that each level is subordinate to the one above. The recasting of English LG in the 19th century led to a very different doctrine, which is that the local authorities have only those powers that have been given to them. According

⁷ Marguerite J. Fisher and Donald Gordon Bishop, *Municipal and Other Local Governments* (New Jersey: Prentice-Hall, 1950), 33.

⁸ Richard Meredith Jackson, *The machinery of local government* (London: Macmillan, 1965), 21.

⁹ Gerry Stoker, *The politics of local government* (New York: Macmillan Publishers, 1991), 141.

¹⁰ Colin Copus, *Party politics and local government* (Manchester: Manchester University Press, 2004), 51.

to German law, a local authority may do anything that is not prohibited or reserved for other authorities.¹¹

Anil Kumar Vaddiraju is of the view that the main characteristic of a federalist structure is that powers are divided. Each legislature and government of each state are supreme within their own spheres, and the federal legislature and government are supreme within theirs. Yet, these states are not called the LG, for a local government is thought of as a subdivision of a state. The reason for this is more historical than a result of logical analysis. In federal and quasi-federal systems, LG is usually a state matter, so the law establishing and supervising the LG is state law, and the administrative control that may be exercised over the LG is exercised by the state ministers and officials.¹²

The literature review at the national level shows that the local governments in Pakistan are strengthened by the military regimes and the democratic parties when came into power, they showed reluctance in strengthening the LG system, but also delayed the existing LG elections. Ahmed Mushtaq postulates that most political parties in Pakistan have the illusion that they only can bring democracy to this country. They exercise the state power to repress their opponents. This trend is highly dangerous for democracy to flourish in Pakistan.¹³ In the same way, Roger Myerson expresses his views by raising the point that the political parties in Pakistan take less interest in the empowerment of the local democracy. He says that local democracy helps in making national politics more competitive. So, the national democracy should also play its part in strengthening the local polity. This can be done when the elections at the local level are conducted on a party basis.¹⁴

Nasira Jabeen and Muhammad Zafar Iqbal put forward their thoughts on the local government system introduced by the government of Zulfikar Ali Bhutto by saying that this system was never implemented due to the bureaucratic hurdles and centralist tendencies of the Bhutto government. They point out that the first democratically elected government presented an altogether different local government system in Pakistan from the previous one. The People's Local Government Ordinance paved the way for this LG

¹¹ Richard Batley and Gerry Stoker, *Local government in Europe: trends and developments* (New York: Macmillan Publishers, 2016), 79.

¹² Anil Kumar Vaddiraju, *Federalism and local government in India* (Delhi: Studium Press, 2017), 14.

¹³ Ahmed Mushtaq, *Politics of Crisis* (Karachi: Royal Book Company 1987), 32.

¹⁴ Roger Myerson, "Local foundations for strong democracy in Pakistan," *Social Science and Policy Bulletin* 1, no. 2 (2009), 3.

system. But no elections were conducted due to the bureaucratic hurdles and lack of interest of the existing political parties in empowering the people at the grass-root level.¹⁵

Islam opines that in the 1990s, LG institutions in Pakistan experienced a tendency toward centralization. The democratically elected governments attempted to exert control over LGs through nominated administrators or elected representatives.¹⁶

Munawwar Alam and Muhammad Abuzar Wajidi postulate that alternating civilian and military rule is the paramount attribute of the polity of Pakistan. During the period of each military government, a new brand of grassroots democracy was introduced and promoted. So, speaking broadly, military governments nurtured local democracy, whereas democratic governments replaced the LGs with an unelected structure being run by hand-picked bureaucrats.¹⁷ Niaz Murtaza and Saeed Ahmed Rid opined that local governments have remained dysfunctional during Pakistan's previous civilian democratic rules. They present the reason for this behavior of the civilian governments towards the LG as the political elites in the National Assembly and Provincial Assemblies of Pakistan have remained skeptical of the LGs, as they view them as their competitors.¹⁸

According to Kalsoom Sumra, civilian governments, both at the provincial and federal levels, see local representation as a burden that they use to favor their pocket constituencies. She says that one reason for not empowering the LG system is the role of the development funds at the provincial and federal levels. Governments use discretionary funds to win elections because they can easily divert resources to specific voter constituencies.¹⁹ Sanwal Hussain Kharl, Khizar Abbass, and Numan Oghai believe that the civilian democratic

¹⁵ Nasira Jabeen and Muhammad Zafar Iqbal, "Gender and local governance in Pakistan: Promoting participation through capacity building," *South Asian Studies* 25, no. 2 (2010), 264.

¹⁶ Islam, *Local Government in Pakistan 1947-2011*, 51.

¹⁷ Munawwar Alam and Mohammad Abuzar Wajidi, "Pakistan's Devolution of Power Plan 2001: A brief dawn for local democracy?" *Commonwealth Journal of Local Governance* 12 (2013), 21.

¹⁸ Niaz Murtaza and Saeed Ahmed Rid, *Local governance in the federal capital: A review of the 2015 Islamabad local government system* (Islamabad: INSPIRING Pakistan, 2016), 17.

¹⁹ Kalsoom Samra, "For a democratic Pakistan, more power needs to be given to local governments," *Dawn*, published on December 19, 2017, accessed on April 16, 2022, <https://www.dawn.com/news/1377577/>.

governments take less interest in establishing and empowering the institution of LG in Pakistan. They argue that the military government under General Musharraf and the newly elected civilian government took no interest in empowering the LGs that were initially established by General Musharraf. Rather, it preferred to run the system through the MNAs and the MPAs.²⁰

Syed Muhammad Ali carries the notion that even after the passage of the eighteenth amendment, the provincial governments are still hesitating to devolve their powers further to the lower level. He opined that the politicians prefer to rely on the existing top-down and patronage-based structure to deal with another tier of governance at the municipal level.²¹

Zahid Husain has the stance that the political parties of Pakistan, even those who call themselves the champions of provincial autonomy, are not willing to devolve power to the grass-roots level. He states that even though the establishment and empowerment of the local government is a constitutional obligation, the LG system has never been a priority for the civilian governments of the past.²² According to Aasiya Riaz Political Parties and Devolution of Power in Punjab after the 18th Amendment, civilian governments see local governments as their alternatives and dictators' tools. She takes the position that the political parties perceive the LGs as their substitutes. They see grass-roots democracy as a tool used by dictators to undermine political parties' positions. They also view LG as an institution introduced by the British government in colonial times as an alternative to full democratic governance.²³

Inayatullah Khan has the perspective that the elite culture in Pakistan is causing a hindrance to the empowerment of the local governments. He postulates that unlike elsewhere in the world, Pakistan did not establish an

²⁰ Sanwal Hussain Kharl, Khizar Abbass and Numan Oghai, "Governance decentralization in Pakistan: An analysis of district council and its power," *International Journal of Latest Research in Humanities and Social Science (IJLRHSS)* 1, no. 5 (2018), 59.

²¹ Syed Mohammad Ali, *Devolution of power in Pakistan* (Washington, DC: United States Institute of Peace, 2018), 13.

²² Zahid Husain, "Revitalizing devolution," *Dawn*, published on May 08, 2019, accessed on April 16, 2022, <https://www.dawn.com/news/1480953/>.

²³ Aasiya Riaz, *Comparative Analysis of Local Government Laws in Pakistan* (Islamabad: PILDAT, 2019), 7.

empowered LG system due to the unholy alliance of autocratic politicians, myopic local elites, and powerful bureaucracy.²⁴

Nouman Ahmed seems not very happy with the democratic governments in all the provinces of Pakistan regarding the empowerment of the local governments. He holds the view that it is an unfortunate situation that all the provinces in Pakistan want to keep the LGs under their thumb. This results in poor governance and causes the breakdown of the service delivery system.²⁵

Ali Cheema opines that the Punjab Local Government Ordinance undermines the spirit of Article 140A of the constitution, as this ordinance turns proportional representation on its head (mayor). He argues that the mayor can become an elected despot, as this system favors the concentration of powers in the hands of the mayor regarding money matters.²⁶ Umair Javed opines that the democratic political parties are not interested in the devolution of power, but rather are more inclined towards the centralization of authority. He asserts that the centralization of political and bureaucratic powers at the provincial level in both Punjab and Sindh has resulted in counterproductive interventions in the basic areas of LGs.²⁷

The review of international and national literature on LG supports the idea that the LG system is essential for devolution to the grass-roots level. However, most scholars who have worked on the LG system in Pakistan, particularly in Punjab, have focused on provincial governments as a factor in the unwillingness to devolve powers. Democratic political parties act as the mouthpieces of the locals. The behavior of democratic ruling parties and mainstream parties has never been pro-LG. As a result, the qualitative research was based on the hypothesis that "political parties in Punjab have been hesitant in devolution of powers even after the 18th amendment."

²⁴ Inayatullah Khan, "Dysfunctional local government," *The News International*, published on March 2, 2020, accessed on April 22, 2022, <https://www.thenews.com.pk/print/622312-dysfunctional-local-government/>.

²⁵ Nouman Ahmed, "An empowered public," *Dawn*, published on March 15, 2022, accessed on April 21, 2022, <https://www.dawn.com/news/1680077/>.

²⁶ Ali Cheema, "Local democracy or elected despotism?" *Dawn*, published on January 31, 2022, accessed on April 21, 2022, <https://www.dawn.com/news/1672434/local-democracy-or-elected-despotism/>.

²⁷ Umair Javed, "Reservation or devolution?" *Dawn*, published on February 7, 2022, accessed on April 22, 2022, <https://www.dawn.com/news/1673768/>.

Theories of Local Governments

Local government formation, necessity, and constitutional status have given rise to several theories known as theories of local governance. Several schools of thought have emerged to present their theoretical frameworks on local governance. The prominent schools of thought are the Democratic Participatory School, the Efficiency Service School, and the Development School.

According to the Democratic Participatory School, local government exists to advance democracy, offer opportunities for political participation, and inform and educate the general public.²⁸ This school's philosophy is based on John Stuart Mill's utilitarianism, which held that representative government was the best type of government because it promoted liberty, equality, and fraternity, compelled people to look beyond their own immediate interests, acknowledged other people's just needs, and encouraged political participation and education.²⁹ This school believes that local governments provide the ground for political activities and social interactions. It also asserts that LGs perform the functions of representing all the people and governing the localities through consultations and participation.

The Efficiency Service School asserts that local governments are established to perform the function of public service delivery.³⁰ This school is of the view that at local level narrow sectional interests, rather than a democracy, matter in politics. The core postulate of this theory is that the main idea of the local government is to provide service to the people at local level in an efficient manner.

The third school, the Developmental School, views the local governments as a system that can provide political integration and civic consciousness in developing societies. This school asserts that local government can positively advance the national growth in an ethnically plural society.³¹ This tier of

²⁸ Jeffrey D. Hilmer, "The state of participatory democratic theory." *New Political Science* 32, no. 1 (2010), 45.

²⁹ J. T. Makinde, A. O. Hassan and A. Olaiya Taiwo, "Theory, principle and practice of local governance in Nigeria," *The Journal of Developing Areas* (2016), 307.

³⁰ *Ibid.*, 308.

³¹ *Ibid.*, 307.

governance can stimulate initiatives, encourage experimentation, and perform as per the needs and aspirations of the locals.

The views of these theories can be summed up by saying that local governments have theoretical and practical purposes. This tier of government intends to promote democratic ideas, stimulate political participation, work for national integration, help in socio-economic growth, and provide leadership for the national level of governance.

Brief History of Devolution in Punjab

The institution of local government has a long history in the territory that became Pakistan in 1947. This can be traced back to the first millennium B.C. when the Aryans introduced the LG system to the subcontinent.³² Muslims ruled the Indian Subcontinent after the 8th century AD. The Arabs, the Ghaznavids, the Khiljis, the Tughlaqs, and the Afghans made no changes to the LG system during their reign.³³ It was the Mughals who introduced the “Zamindari System” in India. The “zamindar” was assigned the task to collect the revenue, maintain law and order, provide social services, and perform the judicial functions on the behalf of the kingdom.³⁴

India witnessed a colonial local government system in the days of the British Raj. It was the central and coercive system over the diverse region of the subcontinent.³⁵ The East India Company introduced the first formal LG institution in 1688 by introducing a Municipal Committee in Madras, now called Chennai. The Punjab Municipal Act of 1873 appointed 5-7 heads of clans or tribes to each town committee, who were nominated by the state authority. This is an example of function delegation. The Punjab District Boards Act of 1882 established three levels of LG in Punjab. Limited representation was given to the local elites, and the bureaucracy controlled the councils.³⁶

The colonial legacy persisted even after the end of the British Raj. The governments and the Muslim League did not pay any heed to the local government in the early years after independence. In the 1956 Constitution of

³² Harold F. Alderfer, “Local Government in Developing Countries”, *Journal of Contemporary Asia* (1964), 371.

³³ M. Malik and A. Rana, “The History of Local Governance in Pakistan: What Lessons to Learn?” *Journal of International Politics*, 1 (3), (2019), 31.

³⁴ Islam, *Local Government in Pakistan 1947-2011*, 33.

³⁵ Malik and Rana, “Local Governance,” 49.

³⁶ *Ibid.*, 34.

Pakistan, the chapter on Directive Principles of State Policy (Articles 23 to 32) covered a lot of ground, but the institution of the LG was not mentioned.³⁷ The first local government system was introduced by the military government of General Ayub Khan through an ordinance of “Basic Democracies” in 1959. This system failed to empower the people at the grass-root level.³⁸ This aimed at legitimizing the reign of General Ayub Khan by nominating the “Basic Democrats” as the electoral college for the election of the President, National Assembly, and Provincial Assemblies.³⁹

The Constitution of Pakistan of 1973 gave constitutional recognition to the local government institutions through Article 32 in the chapter on Principles of Policy. Article 32 states that, "the State shall encourage local government institutions composed of elected representatives of the area concerned, and in such institutions, special representation will be given to peasants' workers and women." The Bhutto government did not strengthen the institutions of the local government. General Zia-ul-Haq revived the institution of LGs through the Local Government Ordinance.⁴⁰

The elections of LGs were conducted on a non-party basis during the military regimes of General Ayub Khan and General Zia-ul-Haq. This practice has had a long-lasting impact on Pakistani politics. Because the contestants were unable to engage people on party lines, they had to rely on clans and castes for support. local government elections.⁴¹ The elections of the National and Provincial Assemblies in Zia's regime were also conducted on the non-party system. A conflict arose as the members of the National and Provincial Assemblies started perceiving the representatives of the LGs as subordinate regarding the developmental funds. As a result of this, the civilian

³⁷ Gillani, “Dissolution of Local Governments.”

³⁸ Harry J. Friedman, “Pakistan's experiment in basic Democracies,” *Pacific Affairs* 33 (2) (1960), 107-125, (p.112).

³⁹ Asim Ijaz Khawaja, “Decentralization in Pakistan: Context, Content and Causes,” HKS Working Paper No. RWP05-034, issued in April 2005, accessed on July 12, 2021, <https://www.hks.harvard.edu/publications/decentralization-pakistan-context-content-and-causes/>.

⁴⁰ Syed Shahid Zaheer Zaidi, “Local Government Under Army Rule: A Comparative Analysis of Zia ul Haq and Pervez Musharraf Local Government System,” *Journal of Economics and Sustainable Development* 10, no. 6 (2019), 134.

⁴¹ Malik and Rana, “Local Governance,” 61.

governments after 1988 resisted any meaningful efforts to devolve power and authority.⁴²

General Pervaiz Musharraf introduced a new local government system through the Local Government Ordinance (LGO) in 2001. He also used this institution to legitimize his rule like his predecessors. The LGO 2001 gave constitutional cover to the local governments by inserting Article 140A in the constitution through the 17th amendment. Significant reforms were made in this LG system as a special quota was introduced for women and minorities. The administrative, financial, and political powers were devolved to the elected officials in the local councils.⁴³ The Provincial Finance Commission (PFC) was introduced to provide an institutional framework to distribute resources between provinces and local governments. General Musharraf also followed the military regime's tradition of non-party elections, which further encouraged the politics of personalized patronage based on the "baradari" system. The 18th Amendment was introduced in April 2010 which can be called the turning point in our constitutional history. Article 140A was strengthened by the addition of Sub-Article 2, which mentions the Election Commission of Pakistan conducting LG elections in all provinces of Pakistan.⁴⁴ Each province introduces its own local government law after this amendment.⁴⁵

The elections for the local governments were conducted on the orders of the Supreme Court of Pakistan (SCP). The provinces and the ruling parties showed reluctance toward the devolution of power and responsibilities. Even after the Supreme Court intervened, it took nearly two years for the local bodies of Punjab and Sindh to take oaths. The PTI government in Punjab dissolved the functioning local government system in Punjab in 2019. The elections, which were promised within 120 days in May 2019, have not been conducted until today. Punjab is under the Administrative *Raj* nowadays.

The Reluctance of Political Parties in Devolution of Power

⁴² Andrew Wilder, *The Pakistani voter, electoral politics and voting behavior in the Punjab* (Karachi: Oxford University Press Karachi, 1999), 133.

⁴³ Malik and Rana, "Local Governance," 78.

⁴⁴ Gillani, "Dissolution of Local Governments."

⁴⁵ Asmat Kakar, "Local government and Pakistan's reluctant political elite," published on March 16, 2017, accessed on June 21, 2021, <https://blogs.lse.ac.uk/southasia/2017/03/16/local-governments-and-pakistans-reluctant-political-elite/>.

Devolution means an irreversible transfer of rights, and this is how it is defined in the dictionaries and in the text of the constitution. Devolution of power and authority is critical in the countries like Pakistan, where a large segment of society is governed by the centralist and patronage-based governance structure.⁴⁶

According to Carl Schmitt, there are two ways the state controls its territory. In a unitary state, the center has the territorial articulation of power over the whole state and has monopolized control. Whereas in the federal state, the central control is distributed between the whole and the parts, and everything, including the center, depends on the parts. Federalism divides sovereignty. It also allows for and accommodates the widely divergent political realities. Marvin Olasky says that "if it is mandatory to turn to government, go first to the city, then to the country, then to the state, and only then to federal offices."⁴⁷

A United Nations documentary on public administration defines the local government as a "political subdivision of a nation or state which is constituted by law and has substantial control of affairs, including the power to impose taxes or to enact prescribed purposes."⁴⁸ In the words of W.A. Robson, "the Local Government may be said to involve the conception of a territorial, non-sovereign community possessing the legal right and the necessary organization to regulate its own affairs."⁴⁹

Decentralization is defined as "the process of transferring responsibility, authority, and accountability for specific or broad management functions to lower levels within an organization, system, or program" by LHC."⁵⁰ Devolution is the ambitious form of decentralization where the central government devolves responsibility, authority, and accountability to sub-national governments with some degree of political autonomy.⁵¹ Local government demonstrates the intrinsic values of democracy, so it is termed the key element of democracy.

⁴⁶ Ali, "Devolution of power in Pakistan."

⁴⁷ Tiwana, etc. Versus. Province of Punjab, etc., 7.

⁴⁸ Ibid., 8.

⁴⁹ Tiwana, etc. Versus. Province of Punjab, etc., 8.

⁵⁰ Ibid., 12.

⁵¹ World Bank, *Decentralization in Client Countries: An Evaluation of the World Bank Support: 1990-2007*, (Washington, D.C: The World Bank, 2008), 11.

Pakistan is a federal state. Local government is the institution that strengthens federal democracy. Local governments are seen as the constitutional vision of the federalist states. It supplies leadership of good repute. LGs have a critical role in providing leadership for the higher tiers in countries like China, the United States, Turkey, and India. Objective Resolution, called the Magna Carta of the Constitution of Pakistan, grants socio-political justice to the citizens, and it became the substantive part of the Constitution under Article 2A. This article supports the idea of vertical separation of powers. Article 17(2) of the constitution supports the vertical separation of power as it mentions that every citizen has a fundamental right to form or be a member of a political party so that he/she can participate in the political life of the country.⁵²

Charter of Democracy was signed between the two major political parties, the Pakistan People's Party (PPP) and the Pakistan Muslim League Nawaz (PML-N), as a mechanism to bring back democracy in Pakistan. Item 10 of this charter states that "the elections of the local bodies will be held through the provincial election commissions." It also says that constitutional protection will be given to the local bodies to make them autonomous.⁵³ After the 18th amendment, Article 140A clearly defines LG as the third tier of governance.

The manifesto of the PML-N in the 2013 elections also emphasized the local government system. "The imperative of democratic governance can only be fulfilled through further decentralization by devolving administrative and financial powers to elected representatives at the district and lower level," it was stated.⁵⁴ Here in the manifesto, the word "devolve" was used for the powers of the local government. PML-N won the election with many of the seats in the National Assembly and Punjab Assembly. But, in government, PML-N showed reluctance to devolve powers. The Punjab Local Government Act 2013 (PLGA 2013) also did not devolve the power as it was mentioned in the manifesto of the ruling party in Punjab. The provincial government of PML-N retained almost all powers and authority.⁵⁵

⁵² Tiwana, etc. Versus. Province of Punjab, etc., 14.

⁵³ *Dawn*, "Text of Charter of Democracy," published May 16, 2006, accessed June 28, 2021, <https://www.dawn.com/news/192460/text-of-the-charter-of-democracy/>.

⁵⁴ *Web Desk*, "PML-N launches its election manifesto," *The Express Tribune*, published on March 7, 2013, accessed on August 12, 2021, <https://tribune.com.pk/story/517200/pml-n-launches-its-election-manifesto/>.

⁵⁵ Sukhera, "A new local government system?"

Health and education are considered the significant works of the local government, but PLGA 2013 provided these powers to the District Health and Education Authorities. These authorities were chaired by the non-elected technocrats, appointed by the provincial government. This also denotes the centralist tendency of the provincial government. The Punjab Local Government Commission was established under PLGA 2013. This commission was chaired by the local government minister of the province and had two members from the government and one member from the opposition. Two technocrats and provincial secretaries were also part of the commission. But there were no members of the district councils or local governments. Its works were to be inspected, as was the work of LG. It also has the power to suspend the mayor or deputy mayor for 90 days.⁵⁶ This commission could affect the fair and free working of the local governments. This is also one of the tools to have power in the hands of the province. Weak fiscal autonomy was given to the LG by PML-N in Punjab.

PFC consisted of provincial ministers and public servants. There was the nominal representation of the MPAs and representatives of LG. The Punjab government could review and ratify the LG budget. There was also no power given to the local government to impose and collect taxes. LG was not allowed to take loans or debt without the permission of the provincial government. LG could not spend the surplus funds without the permission of the provincial assembly. The provincial government was also given the authority to change the PFC's recommendations as part of the PLGA 2013.⁵⁷ The financial powers rested with the Deputy Commissioners' Offices. As the representatives of the provincial governments, they had the authority to release funds and audit Zila Councils.⁵⁸ There cannot be effective local governments without fiscal and administrative devolution.

Although the PLGA was formed in 2013, the provincial government did not hold elections for the LG for two years. After the intervention of the SCP, the elections were conducted. Again, on the intervention of SCP, the LG representatives took charge in 2016 and 2017. Considering that PML-N won the LG elections in 2015 with many of the seats in almost all the districts, the ruling party in Punjab was reluctant to devolve powers to the representatives

⁵⁶ PILDAT, "Local Government Laws in Pakistan," 9.

⁵⁷ *Ibid.*, 11.

⁵⁸ Kalsoom Sumra, "For a democratic Pakistan, more power needs to be given to local governments," *Dawn*, published on December 19, 2017, accessed on August 2, 2021, <https://www.dawn.com/news/1377577/>.

who won on their party ticket. Shahbaz Sharif, Punjab's continuous Chief Minister from 2008 to 2018, relied on the bureaucracy for development and megaprojects.⁵⁹ District Nazim had the authority to write the Annual Confidential Reports (ACRs) of the District Police Officers (DPOs) and District Coordination Officers (DCOs) during the Musharraf era. Shahbaz Sharif's government reserved that with the Commissionerate or DPO system.⁶⁰

There is a contradiction in the paperwork and policy steps of the political parties regarding the autonomy of the local governments. The political parties are also less interested in conducting the elections of LGs on a party basis. The first party-based elections of the LG were held in 2015 in Punjab. These were conducted on a party basis due to the ruling of the Lahore High Court on November 7, 2013, in favor of party-based elections.⁶¹

Under PLGA 2013, indirect elections were held for the reserve seats in the local governments. The model for selecting the candidates for reserved seats bars women, minorities, or labor rights groups from nominating and voting for candidates of their choice. Women councilors remain dependent on the political parties to secure the reserved seats since very few of them have been able to directly contest elections on the general seats. It seems that the reserve seats strengthen the exercise of patronage and the hold of the dominated political parties over the local government system instead of allowing disempowered, and potentially dissident groups to have the seats.⁶² The youth councilors also showed their concern that they were not given even minimal local government resources.

PLGA in 2013 lacked independence and autonomy as the LG was given the subordinate status in this Act.⁶³ PTI came into power in the province of

⁵⁹ Gillani, "Dissolution of Local Governments."

⁶⁰ Ather Naqvi, "The benchmark is Article 140A and Article 32," *The News*, published on October 14, 2018, accessed on August 4, 2021, <https://www.thenews.com.pk/tns/detail/566472-benchmark-article-140a-article-32#:~:text=They%20didn't%20call%20it,Article%2032%20of%20the%20Constitution.&text=In%20Punjab%2C%20they%20managed%20to,various%20authorities%20and%20task%20forces/>.

⁶¹ Rasul Bakhsh Rais, "Why we need party-based local bodies elections," *The Express Tribune*, published on November 13, 2013, accessed on August 4, 2021, <https://tribune.com.pk/story/630432/why-we-need-party-based-local-bodies-elections/>.

⁶² Ali, "Devolution of power in Pakistan."

⁶³ Sukhera, "A new local government system?"

Punjab in 2018. On May 3, 2019, all the local governments were packed up through the legislation passed by the Punjab Assembly. PTI's Punjab Local Government Bill 2019 received the assent of the Governor and was passed on July 3, 2019. Under Section 3(1), all existing local governments were automatically dissolved.⁶⁴ This was the 10th time since 1972, when something like this happened in this province.

PTI wants to consolidate its power and strengthen the party in Punjab, which has been otherwise ruled for 10 years by the PML-N. As a result, it is a method of strengthening the government by removing the opposition from the seats that they held.⁶⁵ There is another reason that if PTI provides funds to the existing local governments, then it will face opposition from within the party. In Article 140A, the term "establish" is used. So, the legislative powers of the provinces under Article 140A cannot be used for the opposite purpose, i.e., to "dissolve" local governments and usurp their powers. A dissolution is an act of provincial legislation that would violate Article 140A.⁶⁶

The second main term in Article 140A is "government." The terms "government" and "local authority" possess a long history in our law. These terms can be traced back to the General Clauses Act of 1898. Section 2 of the General Clauses Act defines the term "government" as referring exclusively to the two sovereign entities of the time: the central government of British India and various princely states which were in the alliance with British India. "Local authority" was defined as including the likes of district boards and municipal committees i.e., bodies that were established to subordinate to the government and enjoy only such powers as the relevant government had entrusted to them.⁶⁷

Article 138 of the constitution is about the conferring functions on the subordinate authorities. Before Article 140A came in, the provincial assemblies used to set up the local governments through legislation under Article 138. As there was the delegation of the functions by the principal to an agent, the delegated functions and powers could be withdrawn at any time. Local government is called "government" in Article 140A, not the local authority or local body. So, it is the third tier of the government, and it cannot be treated as a subordination body. As mentioned above, Article 140A was introduced to change the status of local governments from "statutory" to

⁶⁴ Gillani, "Dissolution of Local Governments."

⁶⁵ Sukhera, "A new local government system?"

⁶⁶ Gillani, "Dissolution of Local Governments."

⁶⁷ Ibid.

“constitutional” institutions and to protect them from frequent dissolution.⁶⁸ The sub-article (2) says that elections of local governments will be held through the Election Commission of Pakistan, a federal body. This was added in Article 140A in 2010 to reduce the provincial leverage over the local governments.

PML-N criticized the move of the PTI government to dissolve the local government system. PML-N remained in power in Punjab for 8 years after the 18th amendment terms and it retained all the powers. It did not dissolve powers in the true sense and did not provide constitutional protection to the local governments through PLGA in 2013.

The PLGA in 2019 has some good grounds, like the devolution of CDA, WASA, and TEPA. Close list proportional representation in local government elections will strengthen party politics. The first-ever direct election of the mayor in the history of South Asia is also an appreciable move, as the mayor would be elected by hundreds of thousands of votes instead of tens of thousands of votes. It has reaffirmed the urban ruler divide within the district through the tehsil councils and urban municipalities.⁶⁹ But, there have been no elections until now for the new local governments. Punjab has been run by three dozen PAS officers. Because it is easy for the provincial government and CM to have a patron-based government through the bureaucracy. It seems that there is a lack of political will among the ruling party, which is causing the delay of the local government elections. There will be non-party elections at the village council level. This step will promote the patron-client relationship among the local politicians and candidates at the village level. This will also promote baradarism (caste system), as Pakistan is already facing ethnic-based issues.

Suggestions

There is a dire need for a complete and comprehensive framework for the local government systems in the Pakistani constitution. There is such a framework in the Indian and South African constitutions. Because local governments are the third tier of government, the tenure, constitutional protections, fiscal, administrative, political powers of the National Assembly, and Provincial Assemblies should be explicitly mentioned in the constitution.

⁶⁸ Ibid.

⁶⁹ Umair Javed, “Litmus tests for devolution,” *Dawn*, published on May 6, 2019, accessed on August 12, 2021, <https://www.dawn.com/news/1480571/>.

The constitution should also state that local governments cannot be packed up by provincial governments, and the power to dissolve the LG should be taken away from the provincial governments. The arbitrary powers of the provincial assemblies should also be reduced.

Through the National Finance Commission, the federal government distributes resources to the provinces. The federal government should establish an institution to oversee the process of devolution to the provinces. This institution should also spread awareness of the local governments and their significance through national television, radio, and social media, as well as by organizing seminars on this topic. The Provincial Finance Commission should also be reformed. It should be akin to the NFC and award enough fiscal space and autonomy to the local governments for their better performance. There should be a defined percentage of funds for LG in the annual budget of the provinces.

A council should also be developed to impose the levy on municipal taxes. LG should also have the autonomy to utilize its surplus funds without the permission of the provincial government. The small cottage industry grew rapidly in the 1960s, but it is now on the defensive. Local governments should also be assigned the work of helping this industry financially and in other ways. The micro-credit banks should join hands with the local governments to provide soft loans to this industry.

Training the local government representatives is mandatory for a better LG system. Former Prime Minister Imran Khan had the vision to turn the PM House and the Governor Houses into universities. These should be turned into universities that have schools of parliamentary studies and local government studies. Training for the LG representatives should be held there. This will make them aware of their functions and boost their performance.

The Election Commission should make it mandatory for the political parties contesting the general elections to have a full chapter on the local governments. The ECP should also emphasize the importance of political parties for intra-party elections at the grass-roots level following the fixed tenure.

Health and education should be devolved to the grassroots, and LG should be given these responsibilities. This will help Pakistan fight illiteracy and improve the health structure at the local level. This can increase the enrollment of children in schools. Through this, child mortality and poliovirus cases can be resolved.

There should be direct elections for the reserve seats for women and other marginalized segments of society. This will encourage more female participation and aid in closing the gender gap. The party-based elections should also be held at the village level. This will enhance party-based politics and lower the patron-client relationship. This will also help avoid conflict between the local and provincial governments.

Conclusion

This article demonstrates explicitly that political parties have been hesitant in the devolution process even after the 18th Amendment. In Punjab, the PML-N, which remained in power for almost 8 years after the 18th Amendment, showed fewer concerns about the empowerment of the local government. Instead of empowering them, the PML-N provincial government relied on bureaucracy to carry out development projects. The authorities were established by CM Shahbaz Sharif and are run by bureaucrats. PML-N did not fulfill its promise in the charter of democracy and its own manifesto for the 2013 elections as regards the local government. PTI Chairman, the then Prime Minister Imran Khan has repeatedly stated his support for devolution. The PTI defeated the existing PLGA with 58,000 elected representatives who did not serve their terms. PTI introduced its PLGA in 2019, though two years have passed since the passing of this act, the government has not given any date for local government elections. PTI has also followed the traditional tactics of consolidating power by packing up the local government. The steps of rural-urban division and non-party elections at the village level are also against the concept of democracy. If the current government fails to empower local governments, Article 140A will remain a hollow constitutional promise.