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**Devolution of Power:
Pathways to Actualization**



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PAKISTAN



Development Advocate Pakistan provides a platform for the exchange of ideas on key development issues and challenges in Pakistan. Focusing on a specific development theme in each edition, this quarterly publication fosters public discourse and presents varying perspectives from civil society, academia, government and development partners. The publication makes an explicit effort to include the voices of women and youth in the ongoing discourse. A combination of analysis and public opinion articles promote and inform debate on development ideas while presenting up-to-date information.

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Deepening Democratic Governance

An integral part of the modern democratic system, the presence of local government aids in better knowledge and management of local issues through engagement with communities, and helps foster sustainable solutions for development.

Through local governance, delays in the delivery of municipal services is minimized. The presence of local government also ensures equitable distribution of resources, helps in mobilizing far more resources for development, gives the people a sense of ownership, ensures more responsiveness and increased accountability, and helps in strengthening national integration. This strengthened federalism and integration also aids in achieving national goals and agendas, specifically the Sustainable Development Goals (SDGs).

Since 1947, Pakistan has seen a variety of governance mechanisms including, centralized political leadership, military rule and democracy. However, despite all these forms and tiers of governance, and multiple efforts to streamline, there still remains an inequitable distribution of resources. This inequality can, in part, be addressed through the establishment of effective local government which will allow for increased participation of marginalized groups by providing them with easy access to decision making tiers.

Through a restructuring of state governance mechanisms, empowered local governments can foster political economy by enhancing equity and egalitarianism by preventing elite capture. This would allow all segments of society, including the marginalized, to have a greater say in governance. Local government is especially important for a heterogeneous country like Pakistan, where differences in ethnicity, economic status, social disparities and regional variations require an approach to balance out all these bumps.

Since the introduction of the first local government system in 1959, local representative governments have been created and disbanded several times in Pakistan. The passage of the 18th Amendment (2010) was a major accomplishment, when the formation of local governments was mandated. This was a big step as it allowed the people to come closer to the government and attain a more pro-active role in the decision making process. At present, no local government elections have been held as yet.

Despite the fact that local government acts have been formulated by each provincial government, local governments in all provinces still do not house adequate political, fiscal, and administrative power needed to fulfill their functions.

Revenue generation for local governments is heavily dependent upon transfers from the federal and provincial governments.

They have limited power and capacity to generate resources. The LG Act 2013 made it mandatory that 30 percent of the development spending of the provincial government would be given to local governments via the Provincial Finance Commission. Over the course of four years, PKR 70 billion were transferred to the local government, even though the amount was roughly half of the due share.

Revenue generation is also interlinked with capacity. Indigenous capacity may allow local governments to raise more financial resources and help them address the needs of their constituencies more efficiently. Increased human resource capacity, will also mean that local government representatives are better able to administer the equitable distribution of social services. However, with local governments still in a transitional phase, these capacity and resource constraints leave them with limited power to formulate and implement policies and provide other basic services.

Another issue that requires attention is the lack of direct citizen involvement with the municipal system. While there exist informal dispute resolution systems but there is nothing formal or systematic at the moment, often leading to grievances within the community.

And finally, grey areas in administration exist. The local governments fall under the purview of the district administration which will be reporting to the provincial government. The two tiers of tehsil and village/neighbourhood have been retained. While the former is mandated to look after municipal and social services, it is surprising that the devolved departments at the tehsil level will also be reporting to the district administration. As a result, either the tehsil mayor would be rendered helpless before the district administration, or there would be constant back and forth between the two entities. This would impact service delivery.

While establishing a central coordination authority to ensure uniformity and accountability would be useful, this can only function at its best if local governments are provided requisite funds, house the necessary technical and human resource capacity and are sufficiently politically empowered to take action on their own. Moreover, it is also important that local government elections are now held so a systematic administration can come into power and set the system into flow.

The success of Pakistan's devolution process is critical to the long-term prospects of democracy and the cultivation of new generations of democratic leaders. There is more work that needs to be done at multiple levels, given local governance is vital for a populous country like Pakistan, to achieve democratic governance.

Local Governance: 10 Years After the 18th Amendment



Zafarullah Khan

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Background and Context

Devolution of Power to the federating units and empowered sub-national tiers of governance is a foundational dream and aspiration in Pakistan. It calls for increased provincial autonomy and control over resources, besides a desire for effective local government.

Owing to four disruptions of democratic rule since its creation, Pakistan has experienced multiple trajectories aimed at devolution and on occasions, denial of devolution of power to one or the other tier. To accurately dissect this reality is a tricky proposition. However, no one can deny that since 1947, instead of having a well-defined vertical devolution of power among the federal-provincial and local tiers, along with a clear-cut horizontal delineation of power among the three pillars of the state namely; the legislature, the executive and the judiciary-the country has always struggled to evolve a final consensus and institute a viable constitution as a compatible software for the statecraft.

During the democratic discontinuities, centralization efforts discounted the provinces and privileged the local government, only to exacerbate disparities and grievances among the federating units caused by the creation of One Unit in 1954. During the democratic dispensations, the local was ignored and whatsoever was devolved from the

federal, got parked at the provincial. Both were wrong paths. Meanwhile, the privileged local during the aberrations, was not only used as a surrogate for decentralization bypassing the provincial elite, rather it also served as a ladder for legitimacy of the regime, first as electoral college, and later as an agency to manipulate single candidate referendums in 1984 and 2002. On the other hand, the parking of powers at the provincial capitals, especially after the 18th Amendment, alienated the marginalized secondary communities in every province who consider the local as their prime domain in the electoral contest based on First Past the Post (FPTP) system.

The Constitution of 1973 was a post-conflict democratic consensus to avoid the mistakes of the past. It was a renewed focus on federalism, provincial autonomy, and rebuilding the nation. The constitution created important forums-such as the Council of Common Interests, National Economic Council, and National Finance Commission-to mediate federal-provincial and inter-provincial conflicts and distribute resources equitably. However, historically, many of them have been dysfunctional for a long time.

The Constitution also acknowledged the local tier in Article 7 and 32 in 1973 and 140-A after the 18th Constitutional Amendment. The 18th Amendment to the Constitution, adopted in 2010, is a paradigm shift and has revived and reinvigorated these forums, but stakeholders are still reluctant to operationalize them fully. The constitution mandates that these forums meet a minimum number of times on a set schedule, but to date, their meetings have been infrequent and irregular. The provinces have the power to requisition meetings at these forums, but they have yet to do so. Communication and coordination vectors among the three tiers of government are weak, with each institution seeking to dominate the process.

Weak Legs of Local Governance

The areas that constitute Pakistan always had a rudimentary tradition of formally structured or informally organized local level institutions like 'Panchayats',

'Zamindari' etc. comprised of local nobility to manage and run the affairs of the community. However, the journey towards structured local self-government was fathered by Lord Ripon towards the end of the 19th century. At that time, the twin objective was to bring in administrative efficiency at grassroots and provide for political education. The initial municipal institutions were described as the 'schools of democracy'.

At the time of independence, Pakistan inherited three types of nominated local institutions: Municipal Committees in urban areas, District Boards for rural areas and Cantonment Boards for military areas. Owing to multiple problems at hand, such as making of the constitution, during the first decade (1947-1958) of Pakistan, very little attention was paid to indigenize, democratize or simply make them representative of citizens' aspirations in a free country. Nevertheless, the Constitution of 1956 talked about 'local authorities' (Article 3) in the context of fundamental rights. However the Federal Legislative List assigned 'local self-government in cantonment areas' to the federal government and 'local government-constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration' as a competence of provinces under entry 15 of the Provincial List.

The original Constitution of 1962 was quite minimalist about local government. Initially, it only mentioned the local self-government in cantonments in the Central Legislative List. As the chapter of fundamental rights was initially missing in this Constitution, therefore there was no role of local authorities in the 'Principles of Law Making' that were considered the substitute of fundamental rights. In this way, the local-self-government was a residual subject-meaning thereby 'an exclusive provincial competence'. Whereas, the ground reality was the highly centralized system of 'Basic Democracy' introduced in 1959 through a central institution-Bureau of National Reconstruction (BNR)-and a central Basic Democracy Order, 1959. Later, these 'Basic Democrats' also served as 'Electoral College' for the presidential

and all legislative elections. The system of 'Basic Democracy' collapsed with the departure of its architect in 1969.

The Constitution of 1973 made promotion of local government institutions a Principle of Policy (Article 32) saying, 'The State shall encourage Local Government institutions composed of elected representatives of the areas concerned and in such institutions special representation will be given to peasants, workers and women.' In the new constitutional scheme, the establishment of local government was a provincial competence. However, during 1973-1977 no tangible progress was made in this regard. Again, it was during 1979-third democratic disruption-that non-party based local governments were established. The system continued in one way or the other till 1993. Afterward, only the province of Punjab opted for local government election in 1998.

During the fourth democratic disruption in 2000, a federal institution, the National Reconstruction Bureau (NRB), attempted to redesign the governance structure and system of Pakistan, especially the devolution to the grassroots. Under the stewardship of the NRB, new provincial Local Government Ordinances were promulgated in 2002 and were protected in the erstwhile Sixth Schedule (deleted through the 18th Constitutional Amendment, 2010) of the Constitution-first through Legal Framework Order 2002 and later through the 17th Constitutional Amendment. This was the first time that the long-awaited police reforms were also clubbed with reforms in the local level governance and the Police Order 2002 was promulgated to replace the colonial Police Act of 1861. The 17th Constitutional Amendment incorporated a new Article 140-A in the Constitution that stated, "Each Province shall, by law, establish a local government system and devolve political, administrative, and financial responsibility and authority to the elected representatives of the local government".

This article establishes that moving forward, local governments are no more merely an executive concern to decentralize at will and that too which can be tinkered with through more executive orders whenever required, rather now it is a constitutionally protected 'devolution' that can only be changed through a constitutional amendment that requires two-third majority in both Houses of the Parliament-ostensibly a difficult proposition. Although the NRB has been dissolved but this first-ever full-fledge article on the local government in the Constitution of 1973 was retained by the historic 18th Constitutional Amendment in 2010. In 2017, the Parliament enacted the Election Act that specified the periodicity for mandatory local government elections within 120 days-either after the completion of term or premature

dissolution. These unique constitutional and legislative developments epitomize that politics has finally recognized the need of vibrant, representative and accountable local governance at the grassroots within the broader debates and discussions on devolution. However, much needs to be done to walk the talk.

Current State of Devolution

After a decade of democratic devolution through the historic 18th Constitutional Amendment today, despite categorical constitutional commands, provincial grievances are there and grassroots democracy remains a disrupted dream. Presently, there is practically no elected local government except one in the federal capital-Islamabad. Once again, it reflects the classical paradox of decentralism amid dictatorships and lack of devolution during democracy.

The literature on devolution/decentralization offers a wide range of empirical evidence that the citizens could be served well in terms of effective service delivery at the local level. In the context of governance, most of the citizens' centric day to day transactions (e.g. water supply, sewerage, waste management, markets management, health care, primary education etc.) happen at the level of the local government. The quality of this experiential relationship influences the trust matrix vis-à-vis the nation's democratic processes. This principle of subsidiarity has guided the designers of governance architecture in many societies. In pure political terms, the local government system acknowledges the citizenry's right to be governed democratically at the local level. Pakistan opted for the party-based local government elections for first time in its turbulent history during 2013-2019. Ideally, this should have opened up opportunities for the political parties to effectively organize themselves at the grassroots. But now, the system has been put on a reverse gear.

In Pakistan, the federating units, are once again struggling to cobble-up a viable democratic system of local government according to the constitutional command of Article 140-A. In Punjab 'The Punjab Local Government Act' and 'Punjab Village Panchayats and Neighbourhood Councils Act' were passed in 2019 and the existing local governments were prematurely dissolved on 4th May, 2019. After more than a year, the new elections are still pending and the new law has been amended twice. In Balochistan, the term of local governments expired on 27th January 2019, in Khyber Pakhtunkhwa it expired on 28th August 2019, and in Sindh in August 2020. Balochistan has amended its law one time, and Khyber Pakhtunkhwa four times. On 7th October 2020, the Cantonment Boards were dissolved.

The local elections are pending ostensibly on pretext of the non-notification of the pending results of the Census-2017, that has caused legal lacunas in the delimitation processes. However, the trend of frequently altering the laws has also produced uncertainties in the system. This trend is not new as in 2009 as well, all the four federating units namely; Punjab, Sindh, Khyber-Pakhtunkhwa and Balochistan, repealed their provincial local government laws authored by the National Reconstruction Bureau (NRB) in 2000. Later, it was during a Supreme Court of Pakistan's hearing on 'law and order situation in Balochistan' in 2010, that the missing vigilant governance at the local level was identified as one of the contributing factors in the chaotic situation on ground. The 2015 local government elections were held after the verdicts by the Supreme Court of Pakistan and the provincial High Courts, which reminded the federal and the provincial governments to implement the Article 140-A in its true spirit. Unfortunately, the provinces that had been yearning for increased autonomy since 1947 also proved to be quite lethargic in operationalizing whatever was given to them in the wake of the democratic devolution in 2010.

Analysis of Article 140-A

The historic 18th Constitutional Amendment in 2010 attempted to change the course and entrusted the provinces to design and develop their own local government systems by suggesting three distinct benchmarks. These benchmarks are political, administrative and financial responsibility and authority for the local governments. And it calls for the 'elected' local government.

There are four critical interpretations:

- Local government elections: Instead of a proactive political decision, the elections for local government were held in the provinces in 2013 (only in Balochistan) and in 2015 (in Punjab, Sindh, Khyber-Pakhtunkhwa, Islamabad and the Cantonments) on deadlines and decisions given by the Supreme Court of Pakistan. Now once again, there are petitions in the courts to push for new local government elections. Instead of the courts, the provinces should have been proactive and the political class should have exhibited their political will to offer a better governance deal to the citizens at the grassroots.
- Defining political devolution: After the 18th Amendment, Balochistan was the first province to pass its local government law i.e. The Balochistan Local Government Act, 2010 (Act no V of 2010), on 10th May 2010. The law initially opted for 'non-party based' elections, but after the 2013 Election, the coalition government announced to hold the first-ever party-based local

government election on 7th December 2013. Sindh and Khyber-Pakhtunkhwa also opted for party based local elections when they passed their respective Local Government Acts in 2013. However in Khyber-Pakhtunkhwa, the lowest tier i.e. Village/Neighbourhood Councils, were to be elected on non-party basis and this design was challenged by the Awami National Party and Jamiat-Ulema-i-Islam in the Peshawar High Court, but their pleas were rejected.

- However, in case of the Punjab and the Cantonment Boards, the Lahore High Court had to interpret that 'political devolution' connotes party based elections in the light of Article 17 of the Constitution (The Article acknowledges Right to association including the right to form political party). The opposition dominated Upper House-the Senate of Pakistan amended the Islamabad Capital Territory Local Government Act, 2015 to make it party-based. Despite all these odd facts, the historic development is that for the first time in a country's history, the local government elections were held on party basis and made the local institutions nurseries to nurture future leaders.
- Administrative devolution: Most of the old and new local government laws are quite miser in terms of administrative devolution. Ideally, this provision shall result in creation of a full-fledge local/municipal services cadre. The Balochistan law talks about Local Council Service, the Sindh law contains provision for Sindh Council Unified Grades, and the Khyber Pakhtunkhwa law talks about servants of local council. Ambiguities about the 'Administrative Devolution' calls for urgently taking-up the long awaited civil services reforms so that every tier of governance in the country has its own well trained human resources with clearly defined roles and responsibilities.
- Fiscal/Financial authority: With the exception of the Balochistan Local Government Act and the Federal Capital and Cantonment laws, the other laws talk about Provincial Finance Commissions (PFCs). However the PFCs do not mention any multi-factor resource distribution formula among the districts on the pattern of the 7th National Finance Commission Award-2009. Besides

the Provincial Finance Commissions, all Local Government Acts provide for fees/user charges, fines over municipal violations, special provincial grants and share in sales tax as the potential sources of income for the local government institutions. The members of local governments in all federating units and Islamabad, had been protesting on denial of adequate financial resources.

Unless a broader consensus is developed on interpretation of these constitutional benchmarks, meaningful administrative and fiscal devolution will remain a dream. Presently, there is a great disequilibrium in distribution of resources among the districts. With these broken wings, smooth flight to serve the citizens at the local level well will remain a distant possibility. Another gray area is that Article 140-A is silent about local government in the federal capital.

Linkage of the Local with Development Model

It is not a secret that there are huge development deficits and alarming regional disparities that continue to plague quality of life and effective service delivery in Pakistan. In federally organized countries, usually two models exist. First; policy, regulatory and delivery domains are clearly allocated and defined in the Constitution, and the second approach is that of 'joined-up' or concurrent mechanisms. Various constitutional schemes in Pakistan since 1947 have experimented both routes and the net outcome is a boulevard of shattered development dreams.

Besides other factors, this development dilemma exists because the local tier has very little say and connection in terms of planning and designing of various approaches, strategies and projects. Many mega projects in public transport, education, health, and water etc. are not designed by the districts, rather they come either from the provincial government or through federal grants. Sometimes they are devoid of ground realities; hence very little local ownership is seen at work.

A brief mapping and dissection of various development approaches, programs and projects privileged since 1947 reveal that the local tier had its role limited only to implementation. The first Village Cooperative Movement in 1950 was designed by the provincial Cooperative

Department. In 1952, the Village Agricultural and Industrial Development Program (Village-AID) was designed by donors like the USAID and Ford Foundation. It later on became a war of turf and territory among departments and was replaced in 1961 with the Basic Democracies System. With the return of democracy in 1970s, culture of political branding of development initiatives started. The Peoples Works Programme (1972-1977) was placed under the Federal Ministry of Finance and Planning while it was catering to local development needs. The Programme was resurrected again in 1988. The government elected through non-party based elections in 1985 introduced its own 'Prime Minister's Five Points Programme.' Later on "Tameer-e-Wattan" and "Khushal/Roshan Pakistan" were the regime-specific top-down development programmes. Now the brand of "Insaf" in health etc. is in vogue. Even in the context of Sustainable Development Goals (SDGs), we have the Prime Minister's Global SDGs Achievement Programme since 2016.

Ideally, the local governments shall be in the driving seat of district-specific long-term planning and corresponding development initiatives. Pakistan is the fifth populous country in the world with significant diversities. One size fits all formulas can hardly capture these diversities. Punjab in terms of area is the size of Belarus and in terms of population, equivalent to the size of Mexico (13th populous country). Sindh is the size of Tajikstan in terms of area and of Colombia (30th populous country) in terms of population, Khyber Pakhtunkhwa, post-merger of the erstwhile Federally Administered Tribal Areas, is the size of Cuba and in terms of population equivalent to Morocco (41st populous country). Balochistan in terms of area is of the size of Germany but in terms of population is the size of Rawanda (78th populous country). Even Islamabad is bigger than Bahrain in area and has more population than Gambia (147th populous country). Imagine the size and scale of reforms to meet the expectations of the citizens.

In order to have the best possible route to developing authentic development plans and strategies, we have to accommodate regional realities and offer asymmetrical models to address these diversities. In this regard, culture of performance based premiums and incentivized grants might work well.

Table 1: Understanding the Provinces

| Province/ Area | Current Administrative Creation/ Assemblies | Districts | Population (207,774,520; 6 th populous; Census-2017) | Parliamentary Population | Gender Gap | Urbanization |
|---|--|-----------|--|---|--|--------------------------------|
| Punjab 205,344 sq.km (size of Belarus) | Colonized: 1849 Carved after partition in 1947 Provincial Assembly: 1937 | 36 | 110,012,442, 13th after Mexico Population Growth rate: 2.13% | National Assembly: 174 (141 General, 33 Women) Senate: 23 Provincial Assembly: 371 Local govt: Dissolved since May 2019 Voters: 60,697,418 Political trend: PTI led coalition | Population: 49.12% (W) 50.88% (M) Gap: 1.76% Voters: 44.49% (W) 55.51% (M) Gap: 11.02% | Rural: 63.28% Urban: 36.72% |
| Sindh 140,914 sq.km (size of Tajikistan) | 1936 after separation from Bombay Provincial Assembly: 1937 | 29 | 47,886,051, 30th after Colombia Population Growth rate: 2.41% | National Assembly: 75 (61 General, 14 Women) Senate: 23 Provincial Assembly: 168 Local govt: Term completed August 2020 Voters: 22,394,212 Political trend: PPP | Population: 47.93% (W) 52.07% (M) Gap: 4.14% Voters: 44.46% (W) 55.54% (M) Gap: 11.08% | Rural: 47.97% Urban: 52.03% |
| Khyber Pakhtunkhwa 101,741 sq.km (size of Iceland) | 1901 WATA merger 2018 Provincial Assembly: 1937 | 33 | 35,525,047, 41st after Morocco Population Growth rate: 2.65% (2.41% WATA, 2.89% KP) | National Assembly: 48 (39 General, 9 Women) Senate: 23+8 WATA= 31 Provincial Assembly: 145 Local govt: Term completed August 2019 Voters: 17,839,845 Political trend: PTI (These figures change in 2019, 2021 & 2023) | Population: 49.26% (W) 50.74% (M) Gap: 1.48% Voters: 42.71% (W) 57.29% (M) Gap: 14.58% | Rural: 83.47% Urban: 16.53% |
| Balochistan 347,190 sq.km (size of Germany) | 1970 Provincial Assembly: 1973 | 32 | 12,344,408, 78th after Rawanda Population Growth rate: 3.37% | National Assembly: 20 (16 General, 4 Women) Senate: 23 Provincial Assembly: 65 Local govt: Term completed Jan. 2019 Voters: 4,302,304 Political trend: BAP led coalition | Population: 47.47% (W) 52.53% (M) Gap: 5.06% Voters: 42.18% (W) 57.82% (M) Gap: 15.64 % | Rural: 72.45% Urban: 27.55% |
| Federal Capital- Islamabad 906 sq.km (size of Sao Tome and Principe) | 1960 | 1 | 2,006,572, 147th after Gambia Population Growth rate: 4.91% | National Assembly: 3 Senate: 4 Local govt: Party based Voters: 766,460 Political trend: PTI for NA, PML-N in Senate and IMC | Population: 47.38% (W) 52.62% (M) Gap: 5.24% Voters: 46.79% (W) 53.21% (M) Gap: 6.42% | Rural: 49.42% Urban: 50.58% |

Table 2: Social Sector Indicators

| Province/ Area | Population Density/ 6 th Highly Populated | Share in the GDP | Literacy | HDI Average Score Gross Enrollment, Life Expectancy, Per Capita Income (150/189) 2018 | Fundamental Rights | Representation in CCI, NEC & Share in NFC |
|---|---|------------------------|-----------------------------|--|---|---|
| Punjab | 535.74/ sq. km | 54% | Rate 62 % M:71%, W:52% | 0.732 (high-medium) | Yes | Yes |
| Sindh | 340/ sq.km | 30% | Rate 60% M:70 %, W:49% | 0.640 | Yes (Sindh Human Rights Commission) | Yes |
| Khyber Pakhtunkhwa | 349/ sq. km | 13% | Rate 53 % M:71 %, W:35 % | 0.628 | Yes | Yes |
| Balochistan | 35.55/ sq. km | 3% | Rate 43 % M:61 %, W:25 % | 0.421 | Yes | Yes |
| Federal Capital- Islamabad | 2214/ sq. km | .73% | Rate 96 % | 0.891 | Yes | No |



Democracy Sans Devolution



Syed Mohamad Ali

Development Anthropologist

It's been ten years since the eighteenth amendment to Pakistan's constitution was adopted. Spearheaded by a PPP-led government, and endorsed by all main opposition parties, passage of the 18th Amendment in 2010 was a hallmark accomplishment of civilian governments. Hailed as a sign of democratic deepening, this constitutional amendment aimed to devolve significant powers from the central government to the provinces. It also mandated the formation of local governments to bring the government closer to the people. However, despite more than a decade, the goal of devolving power down to more localized levels of government remains an elusive goal.

The devolution of power is vital to help deepen democracy in any country. Devolution primarily aims to delegate powers from the central government to local tiers of government, and it can help make governance structures more efficient and responsive to local needs. This article will take stock of Pakistan's recent experiences with the devolution of power and it will highlight the evident impediments which have prevented consolidation of robust local governments (at the district, tehsil and union council levels). Understanding these issues is especially vital in heterogeneous countries like Pakistan.

Pakistan's experience with devolving power under both its military regimes and authoritarian democratic governments remains lackluster. Till the passage of the 18th Amendment, it was primarily military

rulers (under the Ayub, Zia and Musharraf eras) who undertook political centralization at the federal and provincial levels, while instituting electoral representation at the local level, in order to legitimize their rule. The Local Government Ordinance of 2001 (under the Musharraf government) was, however, quite ambitious in scope, as it aimed to allocate a significant proportion of local government seats to women, as well as to minority and other marginalized candidates (peasants and workers). The international donor community also endorsed the LGO 2001 and spent a significant amount of resources to help build the capacity of local governments. Yet, mainstream political parties remained wary of the local governments which had been elected on a non-party basis, and which were used to bring to the fore local leaders sympathetic to a military government.

The democratically elected PPP government decided to undo the extensive devolutionary process put in place by General Musharraf instead of trying to reform it. The PPP government did manage to secure consensus amongst all major political parties for the need to devolve power from the federal to the provincial level. The 18th Amendment enabled devolving various key subjects (17 ministries in total, including health, education, social welfare and environment) from the centre to the provinces.

However, devolving power beyond the provincial level did not prove easy. Pakistan did not have functional local governments for several years after democracy returned to the country in 2008. This period included the entire tenure of the PPP government (2008–13) and the initial years of the previous PML-N government. All provincial governments slow-walked the formation of local governments until 2015. As the local government acts were formulated by different provincial governments rather than imposed on the provinces by the federal government, the scope and scale of devolution and its associated powers and functions varied from province to province. In Sindh and Punjab, the local government laws were more centrist, and provincial governments kept a tight rein over local governments. In Punjab, local governments were dominated by the PML-N, with very few local officials

belonging to other political parties.

In the case of Sindh, the situation was more complicated. The Muttahida Quami Movement (MQM) dominated the major city districts of Karachi and Hyderabad, whereas the PPP controlled local governments across rural Sindh, and also controlled the provincial assembly.

Although Balochistan was the first province to formulate a local government law, as well as the first to conduct local elections, its coalition government could not provide local governments the administrative, financial, and political powers they needed to work competently. The scope of decentralization in KP is broader than in the other provinces. However, local governments within KP remained under the firm grip of the Chief Minister of the province.

While the newly created local governments struggled to produce results under the control of over-empowered provincial governments under the PML-N led government (2013 to 2017), the result of the general elections of 2018 created further complications for the local government system when power shifted from the PML-N to the PTI. The provinces had achieved some autonomy from the center, so the PTI's takeover at the center did not directly threaten the functioning of local governments. However, the fate of local governments was jeopardized where the power dynamics shifted at the provincial level, as happened in the case of Punjab, where PTI managed a narrow victory over the PML-N. The over-empowered provincial government led by PTI in Punjab immediately choked the earlier local governments because they were dominated by the PML-N. In KP, the PTI saw no need to dissolve the local government structure (as it was already dominated by PTI), and they could run their course under the supervision of the provincial government until their term expired in August 2019. In January 2019, the four-year tenure of struggling local governments in Balochistan ended. In May 2019, the PTI government was able to use the provincial assembly to dissolve all local governments in Punjab (although their terms were not set to expire till January 2020) through controversial legislation passed by the Punjab Assembly. The MQM and PPP dominated local governments in Sindh, however,

managed to continue functioning (till their tenure lapsed at the end of August 2020), although these local governments were also caught up in the political tussle between the PPP and the MQM.

The ongoing power struggles between political parties have created a power vacuum at the local level. Villages, towns, and even the largest cities across the country, are once again at the mercy of non-representative bureaucrats, and subjected to machinations of political rivalries. What has been happening in Karachi, the single largest revenue generating city in the country, is a case in point.

The PPP dominated provincial assembly remained reluctant to help the MQM effectively run Karachi, while at the same time resisting the Center's interference in trying to address evident failures of responding to the needs of the megacity, including lingering problems like municipal garbage collection. The PPP has also resisted federal interference in the aftermath of the recent flood disaster which has wreaked havoc in the megacity.

The elections for provincial governments in Punjab, Balochistan and KP should have been held within the stipulated period of 120 days, but all three provincial governments have been dragging their feet. It seems highly unlikely that Balochistan will be able to take the lead again in holding the next round of local government elections under the 18th Amendment. The PTI governments in Punjab and Khyber Pakhtunkhwa had

agreed to hold local government elections by November this year, but these have yet to occur. The tenure of the local governments in Sindh has now also lapsed, but it is unlikely that the province will be able to hold elections in time, given the ongoing contestation between the PPP and the federal government over the demarcation of electoral constituencies.

Playing politics with the local government system has led to the weakening of the essential state-society social contract leading to marginalisation, group grievances and conflict, and undermined social resilience in the country. In its first 'COVID-19-Pakistan Socio-economic Impact Assessment and Response Plan', the United Nations rightly observed that many local governments around the world were at the forefront of the current COVID-19 crisis, but in Pakistan these institutions remain disconnected from citizens because they are still saddled with a governance style which is top down, reactive, and authoritative.

With provinces going their own ways, it has seemingly become difficult to spearhead a comprehensive response to tackle key challenges facing the country on pressing human development challenges in the health and education sector, or to deal with impending environmental challenges. Some have also argued that the transfer of a large percentage of federal revenues to the provinces after the 18th Amendment has left limited fiscal space for the federal government to invest in human capital and economic development goals. The lackluster state of social service delivery

across the country has in turn been used to justify calls for the 18th Amendment to be reviewed. Yet, rather than trying to recentralize power, it is important to realize that the real problem lies not as much with the 18th Amendment itself, as it does with the reluctance of provinces to devolve fiscal and decision-making powers down to appropriate local government levels. Given a future scenario where South Punjab might become a reality and GB and AJK are given provincial statuses, the need for effective local governments will only become more necessary, or else the mere creation of more provinces will not be able to bring meaningful change to the lives of ordinary people.

Despite political rhetoric, political patronage and elite-led development policy priorities still hold sway, even though they do little to alleviate the inequitable distribution of resources across and within different regions of the country. The role of effective and adequately empowered local governments is vital for making governance more accountable and achieving the ambitious Sustainable Development Goals. Pakistan has managed to emerge relatively unscathed from the COVID-19 pandemic, yet there are major climate related and human development challenges which continue to pose imminent threats to the country. Meaningful devolution of power has the potential to help address grievances within and between all the provinces, to contend with the neglect of marginalized groups.

Federalism and Pakistan



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The term federalism is derived from the Latin word *Foedus* which means treaty, pact or covenant. Federalism is used to denote a system of government that is shared between a central/federal government and its federating units i.e. states or provinces.

A.V. Dicey, an eminent British constitutional scholar, is known for his work on principles of parliamentary sovereignty. He defined federalism as 'a political contrivance intended to reconcile national unity and power with maintenance of state rights'. A global overview informs that countries having heterogeneous and multi-ethnic population have adopted the federal form of government.¹ The core reasons for this are that, (a) It provides inclusive options for division of power among different tiers of governments; (b) Assures system of representative democracy; (c) Envisages devolution of power mechanism i.e. autonomy to States/Provinces; and, (d) Protects the rights of minorities and vulnerable citizens.

Federalism has division of power between central government and its

federating units (state/province). Federations also have different levels of centralization to suit their styles of governance and tiers of government. Federalism, generally, follows federal and provincial sets of law i.e. federal laws are seen to strengthen standardization and inter-connectedness; whereas the State or Provincial laws are expected to be more responsive to local issues.² The political system, generally, has two divisible sets of 'Lists' for the federal and provincial level; however, there can be another called concurrent list that is shared by both levels but in-case of dispute, the federal government prevails.

What is Cooperative Federalism? A term that takes the discussion of federalism from dual federalism to intergovernmental relations in which national, state, and local governments interact cooperatively and collectively to solve common problems, rather than making policies separately but more or less equally or clashing over a policy in a system dominated by the national government.³ It creates a relationship in which the national or federal government can influence the policies and functioning of the State/Provincial governments, often through fiscal means. It recognizes that governmental tiers not only have overlapping functions, administration and legislation, but also have a distinct policymaking sphere; where citizens and organized interests can access, contribute and influence public policy. Existence and authority of each level of government is constitutionally governed. It is commonly expected and acknowledged that federalism will adequately be protected through the political processes by the stakeholders.

Pakistan was meant to be a federation. All constitutional proposals, from the Objectives Resolution and Basic Principles Committee's (BPC) three reports, to the constitutions of 1956 and 1973, except for the constitution of 1962,

described the 'Pakistan state' as a federation. In the Constitution of 1962, under Field Marshal Ayub Khan, the State was described as a 'republic' and the federal government as the 'central government'. The control of the center over legislative, economic and administrative powers, has historically created scrimmage with provinces, especially when federal and provincial governments have not been of the same political party. It has been a contentious state of power sharing both under the civil and military rule. The security impediments, in Pakistan, led to the rise of nationalism of another level/type, that helped create a political narrative in favour of more centralization and reduced provincial autonomy.⁴ Under the Martial law regimes, cooperative federalism was anchored more at a local government level.

The weakened politician, democratic practices, functioning of parliament and elected governments has contributed to re-initiation of debate in public discourse regarding what suits Pakistan: centralization or devolution? The debate attempts to scale back the 18th Amendment to the Constitution, in 2010, which is recognized as the corner stone of the devolution, provincial autonomy and most comprehensive political reform package since 1973.

Political economy of federalism in Pakistan has been on shaky grounds since 1940. The Lahore Resolution of 1940 promised autonomous and sovereign status to the constituent units. The Quaid-i-Azam had rejected the federal part of the Government of India Act of 1935 because it envisaged an all-powerful center. The authors of the 1973's Constitution had categorized the debate of centralization/decentralization in three broad categories i.e. legislative, fiscal and political. It retained the three list of subjects as elaborated in the Government of India Act 1935 i.e. the Federal,

1. For instance one such study is by Jerg Gutmann and Stefan Voigt (2017) "Why Adopt a Federal Constitution? And why Decentralize? – Determinants Based on a New Dataset." ILE Working Paper Series, No. 6, University of Hamburg, Institute of Law and Economics (ILE), Hamburg. Available at <https://www.econstor.eu/bitstream/10419/157659/1/ile-wp-2017-6.pdf>

2. Roderick M. Hills Jr. "The Political Economy of Cooperative Federalism: Why State Autonomy Makes Sense and 'Dual Sovereignty' Doesn't." University of Michigan Law School. Available at <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1964&context=mlr>

3. Ibid

4. Mansoor Akber Kundi & Arbab Mohammad Jahangir (2014), "Federalism in Pakistan: Issues & Adjustment." Available at <http://pgil.pk/wp-content/uploads/2014/12/Federalism-in-Pakistan1.pdf>

Provincial and Concurrent list.⁵ This heavy pro-federation bias in the division of subjects has characterized all constitutional arrangements in Pakistan since the Government of India Act 1935.⁶

The list of subjects shifted from three (federal, provincial and concurrent) in 1935 and 1956, to one (federal) in 1962, to two (federal and concurrent) in 1973, with residual powers lying with the provinces (1962, 1973). The federation penetrated deep into the domain of the concurrent list. The authors of the 1973 Constitution may have wanted to establish uniformity of practice, through subjects in the Concurrent list. However, the concurrent list was seen as another tool for centralization. Provinces have been contesting to remove this list because its construct allowed the federal government to always prevail over them in case of a conflict. The federal bias comprehensively defined the taxation structure through the list of subjects. The authors of the 1973 Constitution had envisaged validity of the Concurrent List for 10 years, which got undone in 2010 through the 18th Amendment.

Fiscal decentralization is a critical element of provincial autonomy and devolution. It is gauged through the ratio of provincial/sub-national revenues and expenditures to the national revenues and expenditures. These are detailed through the award of the National Finance Commission (NFC)⁷ that dates back to 1974. Provincial Finance Commissions (PFC) were constituted in 2001.⁸ The last, 7th NFC Award, was issued in 2009 and has not been renewed despite the option of renewability post five years.⁹

Elections at the provincial and local level are taken as the 3rd critical element of decentralization; and an indicator to measure political decentralization. The political history of Pakistan has recorded succession of martial laws that impacted the operational/functionality of the ideals of a federation by resorting to centralization of power, bureaucracy, administration and focus on local governments. The practice has also been used by the

elected federal governments to treat provinces as subordinates rather than confederating and/or cooperating units.

Federalism, as a symbol of shared sovereignty, has remained somewhat elusive in Pakistan. The Sitting Minister for inter provincial coordination is of the view that the Constitution of 1973, has based Pakistan's governing system on cooperative federalism-'one in which federal, provincial and local governments must work with each other collaboratively and collectively'.¹⁰ Whereas, the various analysis of the constitutional and political history of Pakistan suggests that although Pakistan is a formal federal system and fulfils minimum requirements of federalism, it has had strong under currents for centralization e.g. through Article 149.¹¹ In its attempt to align with cooperative federalism, Pakistan has gradually been moving towards relative liberalization of the principles of coordination and cooperation among and between provinces and the Center. However, federal governments under both civilian and military set-ups, were seen to have a tendency to control the purse and policy at the cost of provinces.

The oft asked question in the discussion of federalism/cooperative federalism is that what happens if harmonious relationship breaks down and federating units refuse to cooperate? What options would then be available with the federal government to have the federal policy(s) implemented? Would it be constrained to be dependent on the voluntary participation of provincial and local governments? The 18th Amendment was a long-awaited step towards improving strained federal-provincial relationships; to strengthen the working harmony; and recognition of constitutional overdue to the provinces. It led to the establishment of a local government system as mandatory. The 18th Amendment was an outcome of political consensus for the provincial autonomy. It amended almost 101 Articles of the Constitution and contributed to the development of participatory federalism in the country.¹²

Rasul Bakhsh Rais-leading political

scientist in his analysis said, "...after decades of being run from Islamabad, provinces will eventually have the right to legislate, to control their own education programs and significantly more of their finances, among other things, a difficult retooling that could lead to even more instability if it is not handled delicately."¹³ Equally important was the fact concerning the capacity of the provincial government to address issues of gigantic nature. The successful devolution warranted provincial and regional integration as well, in a way where Balochistan and Gilgit-Baltistan required more focus.

A deadline of 30th June 2011 was set for the transfer of ministries from the federal to provincial governments. One of the recommendations was that the Special Parliamentary Committee on Constitutional Reform SPCCR should remain in charge to oversee the process; whereas, a devolution commission was also proposed for the same. In the end, the government constituted a 9-member Implementation Commission for Constitutional Reforms (ICCR) headed by the SCCPR Chairperson. ICCR was designated with the task of implementing the policies, decisions and directives, reviewing laws, rules and regulations, and monitoring the administrative mechanism to bring about the transition in the federal structure. Despite the deadline, there were concerns about absence of a designated and time bound process/road map for shifting various ministries and their staff from the federal to provinces. Unfortunately, not having one was the lead contributor to the slower roll out of the 18th Amendment.

The resource transfer is a constant source of tension between the federal and provincial governments. The 18th Amendment is acknowledged as the most progressive step to strengthen fiscal federalism. A major breakthrough came in 2009, when the 7th NFC Award increased the provincial share of the divisible pool from 47 percent to 56 percent for 2010-11, and to 57.5 percent for the following four years.¹⁴ This was the direct outcome of political consensus in

5. Story of federalism in Pakistan by Owais Mumtaz - SSRN-id3152176.pdf

6. Dr. Mohammad Waseem (2010), "Federalism in Pakistan." Available at <http://www.forumfed.org/pubs/Waseem-Fed-Overview.pdf>

7. NFC draws strength from Article 160 of the Constitution of the 1973. Its validity is for 5 years. It contains certain types of taxes such as (1) income taxes, (2) general sales tax on goods and services, (3) wealth taxes, (4) capital gains taxes, port taxes, excise duties and industrial taxes, etc., which are collected in each province. These are then pooled and redistributed according to the NFC formula.

8. PFC is a formula for the distribution of resources among the districts in their respective province. The formula includes both transfers- the development transfer and current transfers. The purposes of the current transfers are to ensure the maintainability of existing services at the districts level and of the development grants to minimize the intra- district poverty and inter-districts income differential.

9. Revenue distribution under 7th NFC – www.finance.gov.pk

10. Dr. Fahmida Mirza, "Cooperative Federalism." Available at <https://www.thenews.com.pk/print/643871-cooperative-federalism>

11. The Article 149 of the Constitution is a powerful tool with the federal government to intervene in any province to protect it from internal disturbance and to ensure that its government is carried on in accordance with the Constitution. (Syed, A. 2006)

12. Abolishing the concurrent list in principle, transferring the residuary powers to provinces; Restoring parliamentary sovereignty by repealing Article 58(2)(B); Expanding the jurisdiction of the Political Parties Act to FATA, thereby encouraging political parties to field their candidates from that region in future elections; Making the CCI a more substantive body; Restricting the space for issuing presidential ordinances; Providing for the Chief Election Commissioners appointment on the basis of agreement between the government and the opposition; Establishing a Judicial Commission comprising 7 members, including 4 judges, the law minister, the attorney general and a representative of the Supreme Court Bar Association; and Re-naming NWFP as Khyber Pakhtunkhwa.

13. Inverted reading of the 18th Amendment by Tahir Kamran. Available at <https://www.thenews.com.pk/tns/detail/567606-inverted-reading-18th-amendment>

14. The Award changed the ratio of distribution of resources to provinces: Punjab 51.74 percent, Sindh 24.55 percent, NWFP 14.62 percent and Balochistan 9.09 percent. (NFC Award, nd: 4) The NFC Award with the commitment that the provinces share will not be less than in the previous Award.

making and in support of the 18th Amendment. It led Punjab to accept a decrease in its share; doubled the share of Balochistan; and expanded the criteria for Award.¹⁵ The new criteria of sharing of resources included; population 82 percent, poverty 10.30 percent, revenue generation five percent and inverse population density 2.7 percent. The concurrent list was abolished that led to transferring 40 of its 47 subjects to provinces.¹⁶ Among others, it strengthened the Council of Common Interest (CCI)¹⁷; empowered provinces to raise loans at home and abroad; issue security guarantees on the provincial consolidated fund; and gave the sales tax on services (but not on commodities), to provinces.

Politically, the evolution of the 18th Amendment was seen to have been anchored in the Charter of Democracy.¹⁸ However, its critics were of the opinion that it left much to be desired. The political will of the leading political parties was constrained to serve their respective party interest rather than being compliant to the spirit of the Charter of Democracy. Smaller political parties' demand for deepening of regional/provincial perspective and institutional strengthening could also not find enough political traction. 'For example, there was no provision for a Federal Constitutional Court; no merger of FATA in Khyber Pakhtunkhwa; no independent accountability commission to replace NAB; and no accountability of ISI and MI to civilian authority. Some claimed that the 18th Amendment, much like the 1973 Constitution itself, did not provide for an independent Election Commission, an independent judiciary, an independent commission for accountability and a mechanism for a third tier of government at the local level'. Some found that the Amendment diffused the demand for provincial autonomy more rather than addressing it frontally and, averting the re-opening of the thorny issues of administrative and fiscal decentralization.¹⁹

Federalism and cooperative federalism are terms co-opted from the United States of America. The Pakistani use of the concept of federalism, at present, is to nearly the opposite outcome—a centralized minority resisting its confederating/cooperative units, who are the

majority, to exercise provincial autonomy. 'The excuse is that these provincial governments are run with less than bona fide intent, or by less-than-capable representatives'.²⁰ These excuses are pronounced for provinces where the government is held by a political party which is not in power at the federal level—e.g. Sindh. However, the current control of the Punjab government, by the federal government, both being led by the same political party, has put a dent of another level in the concept of provincial autonomy.

Lack of effort on part of the political stakeholders to not develop a consensus roadmap for equitable distribution of power has impacted the implementation of the 18th Amendment. The abolition of the concurrent list was taken with a pinch of salt by the bureaucracy at the federal level which perceived it as letting go of legislative powers of the federal government. Hence, lack of will of the bureaucracy on institutional transferring of federal authority of specified departments to provincial governments. On the other-hand, federally appointed senior bureaucrats at the provinces had a dual responsibility and accountability that led to widening of cracks. Cumulatively it led to delays in the roll out, adoption and reaping of benefit from the devolution of power under the 18th Amendment for the provinces. It has hit fresh and next level snags under current federal government.

Articles 141-147 of the 1973 constitution deal with the relations of the federal government with the provinces. Lack of a synchronized handholding between federal and provincial governments led to delays and to-date, the actualization of provincial autonomy has a need for do more. The critically important misses in this regard, at both the federal and provincial level, include not having a new NFC award; non-functioning of PFC; and withheld local government (LG) systems. LG is critical to the devolution/decentralization that needs attention from all political stakeholders. 'One has to do with devolution and the other, related but separate, to do with fund-sharing arrangements between the federation and the provinces: the vertical part of the National Finance Commission formula'.²¹ Release of provincial share of revenue and control of federal projects and institutions in provinces by the federal

government, remains a contesting ground.

Khyber Pakhtunkhwa (KP) and Sindh have had strained relations with the current and previous federal governments. The contesting issues have been 18 subjects which are under joint control, census, public debt and natural resources; that require to be settled through the platform of the Council of Common Interest. The 2013-18 provincial governments of Balochistan and KP criticized the federal government on not being provided with what was mentioned in article 158 of the constitution. Each province has the right to utilize its resources and meet its requirement of oil and gas, which is not the case in practice. Though the government has devolved the Ministry of Power to the provinces but revenue collection still rests with the federal government. In this way, the amendment has taken away the legislative and executive powers of the provinces. Meanwhile the mining sector is with the federal government which is also contested by the provinces.²² The current debate on release of funds-in case of Sindh Federation—is an indicator of the same, besides exerting political control at provinces.

The appointment-transfer of senior federal bureaucracy—the Chief Secretaries, Departmental Secretaries and Police chiefs in the provinces, especially in case of Sindh and Punjab, is not only reflective of current political stress but an indicator of how centralized control through bureaucracy was seen to be against the spirit of devolution.

The current federal government has been attempting to develop a counter 18th Amendment narrative under the argument that it has constrained fiscal space and share for the federal level to initiate development work. Flexing federal power has also been recorded by taking control of federal institutions in the provinces. One such attempt ended up in the Supreme Court as well. In 2019, the Sindh government approached the Supreme Court in a case where control from three of its major hospitals was taken away from Sindh, by the federal government, on the premise that they fell under entry 16 of the Federal Legislative List. Justice Maqbool Baqar, in his dissenting note, wrote that 'one must

15. The addition of backwardness, revenue generation, inverse population density along with population are factors to determine horizontal distribution (among provinces) to make new NFC award acceptable to all federating units.

16. Dr. Mohammad Waseem (2010), "Federalism in Pakistan." Available at <http://www.forumfed.org/pubs/Waseem-Fed-Overview.pdf>

17. Through Article 153 of the 1973 Constitution that led to strengthen of the Council of Common Interests (CCI) by extending membership; meeting routine; to take care of disputes between the Centre and a province or between provinces; & presentation of report to parliament.

18. Text of the Charter of Democracy (2006). Available at <https://www.dawn.com/news/192460/text-of-the-charter-of-democracy>

19. DAWN, Zulfiqar Halepoto (2010), "18th Amendment: Do more." (letter to the editor).

20. Moiz Jafri (2019) "Diluting provincial autonomy." Available at <https://www.dawn.com/news/1491192>

21. The News on Sunday, Tahir Kamran, "Inverted reading of 18th Amendment. Available at <https://www.thenews.com.pk/tns/detail/567606-inverted-reading-18th-amendment>

22. Dr. Adil zaman, Fazli Subhan, Dr. Mohammad Ali & Prof Dr. Abdul Qadir Khan. "18th amendment & provincial autonomy: challenges for political parties." Available at https://www.researchgate.net/publication/335378299_18th_Amendment_Provincial_Autonomy_Challenges_for_Political_Parties

resist conflating the State with the federal government as the provincial and also the local governments too constituted the State. The State's obligation with regard to fundamental rights is, therefore, to be fulfilled and discharged by all tiers of the government and all organs of the State as per their power, authority, obligation, and competence, strictly as prescribed under the Constitution. The spirit and soul of federalism is distribution of legislative powers between the federation and the provinces, with its core being provincial autonomy. Interpretation of constitutional

provisions should thus be in consonance with this principle, rather than in a manner that encroaches upon the space reserved for the province.”²³ These are core impediments for the future of cooperative federalism, federalism and provincial autonomy in Pakistan.

I.A. Rahman²⁴ is the strongest voice for the cause of federation and best summarizes the issue. According to him, the provinces' right of not to be treated as subordinate to the federation lies in the fact that the provincial assemblies

created Pakistan; and that they are not the creatures of the federation. After giving the units their due, the federation will become a smart polity, its non-productive expenditure will come down, the feeling of alienation among communities and nationalities constituting the federal units could die out and Pakistan could become stronger and be at peace with itself. I feel Pakistan's future lies in having more of democracy and more of federalism.

23. DAWN, Nasir Iqbal (2019), “Center shouldn't be allowed to undermine provincial autonomy says SC Judge.” Available at <https://www.dawn.com/news/1485553>

24. Ibn Abdur Rehman, also known as I.A. Rehman is a Pakistani peace and human rights advocate, and a veteran communist.

Post 18th Amendment: The Follow-up to Local Governance



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The Parliament of Pakistan passed the 18th constitutional amendment by a unanimous vote, notified by the Gazette of Pakistan on 20th April, 2010.¹ It was one of the most comprehensive amendment in the constitutional history of Pakistan, touching upon and amending 102 out of 280 articles, which now makes up about 36 percent of the whole constitution. This amendment transferred 17 federal ministries to the provincial governments including that of the local government. Nevertheless, even after a decade of the passage of this landmark legislation, the provincial governments in the federation, with the exception of Khyber Pakhtunkhwa (KP), have not yet delegated the authority, management and the funds to municipal governments. It is a well-established fact that the Sustainable Development Goals (SDGs) cannot be achieved without the robust participation of people at the most basic tier of government and more so in deprived regions found at the fringes of society. Local governments ensure that people have access to fundamental services, and

that they can have a say in the process of decision making at the local level. It is a medium for poverty ridden labourers, farmers, men and women to form an opinion and decide about the impacts of the development process. Devolution of powers' doctrine has ascribed two key functions to local government: First, to administer the provision of basic goods and services to people and second, engage the public in devising policies to cater to their particular needs.²

However, post the 18th amendment, this process of delegation of power to local governments by the provinces has not gone smoothly and can hardly be declared successful. After the promulgation of the 18th Amendment, the first elections of local government could only be held after four years. Balochistan remained ahead of other provinces in this regard and began the process on December 7th, 2013, but as these elections were divided into two phases, it was completed on 28th January 2015.³ Absence of political will amongst ruling elites in the remaining three provinces deferred local government elections for even more time. On May 30th, 2015, local government elections on party basis were held in KP, following the judicial proceedings. In the Punjab and Sindh provinces, these elections were held on 20th September after the Supreme Court of Pakistan ordered this.

Nonetheless, the idea of transferring powers to local governments has still not materialized. In Punjab and Sindh, the local governments were very ineffective. The reason for this may be attributed to the new legislation being conceded by the respective provincial assemblies. These local governments then could not undertake development projects or provide service delivery as they lacked both the authority and money to do so. Only KP's provincial government delegated authority and resources to its

local government in true sense. The local government system installed by the Musharraf regime had its problems but, in any case, its performance was much better than those introduced by the governments of PPP and PML(N) in Sindh and Punjab respectively. Countries like Pakistan that comprise of a diverse population need delegation of powers to be transferred at the lowest levels. Otherwise, the clientelistic model of governance in such countries pushes the already impoverished segments of the population further to the fringes.

This process of decentralizing powers from provinces to local governments faces a multitude of obstacles.⁴ A dearth of political will among the ruling class of Pakistan when it comes to devolving power to local government, is deemed as one of the major obstacles. They do this out of the fear of losing their political grip over the masses in the face of rising political voices.⁵ Moreover, many studies have also pointed out the role of provincial governments in postponing this process of making the local government system fully operational. Second, legislative initiatives to transfer powers from the provinces to the local governments have not been well-received by Pakistan's bureaucracy.⁶ Apart from these, other issues and challenges include but are not limited to, variations in ruling parties' interests; administration capacity of districts; mismanagement with division of responsibilities; conflict of management; limited capacity of services delivery by local governance system; stacked resources; insufficient resources of local revenue administration; and, lack of fiscal autonomy.

As far as the local government model of Punjab is concerned, the ruling Pakistan Tehreek-e-Insaf made devolution of powers to local government a central tenet of their governance agenda before elections. When it came to power in 2018,

1. Katharine Adeney, "A step towards inclusive federalism in Pakistan? The politics of the 18th amendment." *Publius: The Journal of Federalism* 42, no. 4 (2012): 539-565.
2. Philip Norton (2020), "Devolution: A disunited union?" In *Governing Britain*. Manchester University Press
3. Sadia Ashraf and Aisha Shahzad (2020), "Federalism and Provincial Autonomy in Pakistan: A Case of Balochistan."
4. For instance see, Adam Saud, and Kashif Ali Khan (2016), "Decentralization and Local Government Structures: Key to Strengthening Democracy in Pakistan." *Journal of Political Studies* 23, no. 2
5. Shoukat Ali and Abdul Majid (2020), "Decentralization and Social Development: A Study of Local Government System of Pakistan." *South Asian Studies* (1026-678X) 35, no. 1
6. Faiz ur Rahim and Nasim Shah Shirazi (2017), "Fiscal decentralization and citizen's satisfaction from local public service delivery in Pakistan." *International Journal of Ethics and Systems* (2018).

the party intended to introduce similar local government reforms in Punjab, as it had successfully implemented in KP. The scheme was to install a city government model with the mayor directly in charge of all issues in the urban district. Legislations like The Punjab Local government Act 2019, and the Punjab Village Panchayats and Neighbourhood Councils Act 2019, are accomplishments of the PTI government in this connection. Meanwhile, the Punjab government brought numerous changes in the law-the most egregious one being a provision for the selection of technocratic members who could then become mayors-that further weakened the local government system. No real delegation of fiscal powers was made earlier in the Punjab Local Government Act 2013 as well.

Consequently, the local governments remained short of financial resources and dependent not only on the provincial governments but also the bureaucracy.⁷ Contrarily, the latest legislation looks serious in delegating fiscal authority to local governments and also in encouraging more robust engagement of people in local governance.

Nevertheless, these laws have their own problems. They leave the problem of the capacity of local governments of administering their districts. Also, the eager scope of these laws makes the implementation process more complicated. Further, rural urban disparity may sharpen with these laws. According to the critics, the Tehsil councils will be deprived of the most skilled manpower as the latter will prefer to work in district centers. In addition to that, these laws still make it possible for the provincial governments to regulate the local governments. Third, how the bureaucracy in Punjab perceives this process, will indicate whether it is going to succeed or not.⁸

The latest local government in KP completed its tenure in August 2019, but before that the provincial government brought some amendments empowering neighbourhoods and village councils. The rationale behind this step was to allow for increased public participation in decision making. These amendments simultaneously scrap the district level of government but keep intact, district administration, which is unfathomable as the latter will be answerable to provincial government and will regulate the local governments in any case. The tehsil and village levels of government have been

kept in place by these newly passed laws.

Surprisingly, the district tier has been abolished but simultaneously, district administration has been retained as a unit. The district administration will be reporting to the provincial government and ultimately controlling the local governments. Only two tiers-tehsil and village/neighbourhood-have been retained. Earlier in 2013, the PTI, in alliance with the JI, introduced a relatively bold law, and consequently established a local government system which was closer to the spirit of devolution and provisions of articles 32, 37 and 140-A of the constitution. The World Bank, in its report 'Pakistan @ 100', and Ishrat Hussain in his book 'Governing the Ungovernable', termed the Local Government Act (LGA) 2013 as a genuine effort and relatively bold attempt towards decentralization.⁹ The Act made it mandatory that 30 percent of the total development spending of the provincial government would be given to local governments through the Provincial Finance Commission, keeping in view the factors of population, poverty, revenue collection and lag in infrastructure. I believe that there is a need to restore the district tier with more powers, remove provincial indirect control over local bodies, and make local bodies free from the clutches of the bureaucracy.

Likewise for Sindh, two most important factors as to why local government devolution in terms of administration, financial, and political is imperative are as follows: In addition to ethnic division based politics, Sindh economy is caught between urban industrialized Karachi with Port Qasim and Karachi Port as two commercial seaports and the rural agrarian areas. Ironically, on question of federal to provincial devolution, Sindh yearns for more provincial autonomy but resists further administrative and financial devolution to local government.¹⁰ It is the need of the hour to redesign the existing local government system in order to enhance true citizen participation.

The province of Balochistan has experienced many governance models. Amended Balochistan Local Government (BLG) Act 2019, is the latest of all, which is expected to play a fundamental role in the development of Balochistan. Post 2018 dissolution of local bodies scenario presents a grim picture of the future of local government in Balochistan.¹¹ Unable to hold local government elections, the

Election Commission of Pakistan is indirectly committing violation of the constitution. In addition, it undermines the good work of the previous local government system. Prosperity and inclusive development can only be achieved on the basis of a strong and working local government system in Balochistan.

The relationship between civil servants and local elected representatives began to get complicated after the 18th amendment. Still in the early stages of proper implementation, this amendment aims to reform the public governance of the country and improve public service delivery. In order to achieve this, it is incumbent to devolve roles and responsibilities at the local level. The essential first steps in this direction would include the devolution of most provincial powers, except those dealing with inter-local coordination.

In my opinion, futuristic local governance reforms are necessary and an immediate requirement for strong national cohesion. An analysis of local government acts show that local government laws and subsequent elections held all over Pakistan in 2014-15, can be considered as the first step to the devolution of power from provinces to the local level. Nevertheless, the legal remit of each law is limited in scope, excessively deferential to provincial governments, and devoid of any evocative devolution of administrative, political and financial powers (as directed by Article 37 and Article 140-A).

For effective and empowered local governments across provinces of Pakistan, I recommend that current laws need to be revisited for the provision of just levels of autonomy to the local government. Provisions which allow illogical power to government in provinces such as arbitrary powers of inspection, leaving the affairs of the District Councils to the bureaucracy, discretionary removal of elected representatives of the local government systems and the ability of provincial governments to exclude areas from the purview of the Acts among others, should be removed. For effective local governments which can accomplish and address citizens' issues and local affairs at the grassroots level, far more extended fiscal supremacies are needed to be owed for selected local governments.

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Goals of Equality and Representation: Does Decentralization Work?



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Can decentralization help Pakistan achieve the Sustainable Development Goals (SDGs)? There is no straightforward answer to this question. To a large extent this is because achieving the SDGs is a matter of political will as much as it is of institutional structures. There is no reason to imagine that with political will in place, centralized ministries committed to the eradication of poverty and inequality across the country, and to making quality services accessible by all, cannot do so through country-wide administrative networks. After all, even services that are usually considered ideal candidates for localised delivery, such as quality healthcare (Goals 3), education (Goal 4), and access to clean water and sanitation (Goal 6), need strong central policies and direction in order for local implementation to work well. And this is truer of the other SDGs on climate change, infrastructure development, and economic growth.

For some goals, however, decentralization may hold greater promise. The reduction of inequality (Goal 10), and especially gender inequality (Goal 5), and the development of stronger, more inclusive and accountable institutions (Goal 16), may benefit more from decentralized and localised governance. Yet, we usually conceptualise decentralization as a way of improving the mechanics of service delivery rather than as a way of reforming local governance in order to reduce spatial and group

inequality and to strengthen representation. In this piece, I look at the space defined by an intersection of Goals 5, 10 and 16—the creation of inclusive and accountable institutions at the local level that can ensure equality to marginalised populations, especially women, but also low-income households, minorities, and remote populations. How does decentralization work to advance these goals?

Before we consider this question, a major caveat must be addressed. Any answer assumes that local government is a constant and stable system, and that what is under discussion is its design or other factors that may hinder its local implementation. But such stability has presented the greatest challenge in Pakistan. Pakistan has a long history of local government that dates back to 1959 but the local government systems instituted by one regime or government have usually been dismantled by the next. Most significantly, local government systems have been instituted by military regimes but not by democratically elected governments until 2013. The fact that local governments have finally become a part of the narrative of civilian regimes is encouraging, but the 2013 system was weakly instituted and did not empower local governments enough to impact change.

Furthermore, it is now to be replaced or amended again in parts of the country. Any analysis of the impact of decentralization in Pakistan is thus severely constrained by this discontinuous history and weak institutionalisation. We can, however, consider how decentralization might help advance goals of inequality and inclusion moving forward.

Decentralization as a reform is essentially value neutral—as a system it does not automatically achieve improvements in governance unless doing so is an explicit part of the design of the system, and connected to political goals of the regime at the centre. The history of local government in Pakistan has demonstrated that the institution of a local government system will not make governance more inclusive or accountable to people simply by reducing the distance between them. Local governments' ability to include the most vulnerable population groups is depend-

ent on the same constraints that affect higher tiers of government—mainly the availability of resources and capacity.

The design of decentralization in terms of fiscal transfers from the centre or the ability to raise revenue locally is key in making resources locally available. But some of these measures may well increase rather than decrease inequality. Central transfers to local government units are most often formulaic. Much depends on whether the formula calls for equal transfers across sub-units, or for equitable transfers that provide more to areas and groups that are poorer or less developed. The latest local government reform, the Punjab Local Government Act 2019, recognises the principle of equalization funds and suggests a poverty criterion as part of its formula for fiscal transfers from the province to local units. This means that poorer areas should receive more. However, it also suggests compensating local governments for better performance on service delivery, on expenditure management, and on fiscal effort in collecting taxes. This may have the opposite impact on equity goals. Some local governments will perform better on delivery and management, and especially on tax collection, because they are already better off than other units—because they have richer populations or better resource endowments. If this allows them to attract significantly higher transfers from the province than poorer regions, fiscal decentralization might increase inequities across different parts of the country.

Furthermore, informal practices and politics can also lead to unequal development across decentralized units. Some local governments may be better placed to capture more provincial funds because elites in these areas are better connected to the ruling party through patronage networks. Once again, there is little reason to believe that accountability linkages are more effective at the local level than within higher tiers of government unless the transparency of decision-making and resource allocation are an explicit part of the design and implementation of decentralization reforms. Fiscal transfers may remain faithfully formulaic, but patronage networks can deliver in other more

informal ways.

Within sub-units, a distinct policy focus on the inclusion of remote and marginalised populations is required to ensure that decentralization does not simply reproduce patterns of disproportionate benefits accruing to parts of the rural tehsil or urban municipality that are already better off. Decentralization can create 'new microgeographies of exclusion'.¹ It is not unusual for expenditure to be significantly unequal across sub-units of local government, nor the fact that those that benefit disproportionately from government expenditures on services like health, education, and sanitation are often those populations that are already better off.²

Inclusive governance also depends on local capacity. It requires capacity for effective demand aggregation by local councillors, ensuring that demands from across the whole neighbourhood, village or union make it up the chain to where decisions are made. It requires capacity for the representation of these demands in decision-making fora, to ensure that they are part of deliberations within rural tehsils and urban municipalities. And finally, it requires the capacity to distil these demands in a systematic manner during the planning process to ensure responsiveness. Much of this requires resources and skills that local officials (both elected and unelected) may not have, given that skilled staff are usually based at the provincial or district level and not within small towns. A significant investment in councillor and staff training may be required to build capacity for, and awareness of, inclusive practice and procedures within the work of local governments.

There are two other elements that are key

to enhancing local capacity for demand aggregation, representation, and responsiveness. The first of these is effective representation of different groups, especially women. Local government systems in Pakistan have done quite poorly on this. In both General Musharraf's LGO 2001 and the 2013 reforms, reservations for women within union councils were based on indirect election. Under the 2013 local government system, this meant that women were elected by eight votes, cast by the (almost always male) six members of the union council elected on general seats, as well as the chairperson and vice chairperson of the union. Not surprisingly, women councillors were largely disconnected from voters in their community and accountable instead to eight members of the union council. This was also true of seats reserved for the representatives of minority groups.

A major sea change, at least in the case of women, is the institution of direct elections for the reserved women seats in local councils. This means that women candidates will need to campaign across the community, and in the process, have the opportunity to develop constituencies of their own that they can represent. An important implication of this is that they may connect with women voters inside their homes for their votes, and later for demand aggregation. Our research has shown that women are politically excluded by the norms of gender segregation in Pakistani society that does not allow access by largely male councillors (or political workers) to women inside homes.³

Goals of gender equality and the representation of women will be advanced further by the introduction of a "zipped" closed list proportional

representation system of electing councillors at higher tiers of local government. This public relations system will put a woman on each alternate seat on the closed list. This will ensure quotas while putting women on the same ballot as other candidates, and will thus make party resources and other support mechanisms available to them in the same way that they are available to male candidates. This has the potential for even greater impact because it moves from a system of reserved seats to integrating women on general seats.

The second key element for enhancing local capacity for demand aggregation and responsiveness is the availability of good data. This has been another major challenge in Pakistan, where understanding the impact of any governance system is severely constrained by the lack of systematically collected, usable, and widely available data. Good information, well-constructed measures of exclusion and inequality, and rigorous research can contribute to a better understanding of how marginalisation is manifested and experienced by different groups, and how to establish and strengthen inclusive governance. The lack of good quality, easily accessible, and disaggregated data can make goals of equalization across sub-units difficult.

Local governments need to be conceptualised not just as the structure of government but as a culture of governance. For a culture of inclusive, representative, and responsive governance to become institutionalised, a basic prerequisite is for local government systems to remain in place over a period of time. This longevity has been the greatest challenge of local governance in Pakistan.

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What is your view on the devolution of power in Pakistan?

According to Article 140-A, the responsibility of holding local government elections and establishing a local government setup that is politically, financially and administratively independent and accountable, rests with the provincial governments.

In this regard, the former government of Khyber Pakhtunkhwa (KP) carried out local government elections in 2015 based on a three-tier system and a robust mechanism. It remained successful for four years. Local government representatives were allotted 30 percent of KP's Annual Development Budget. I was also part of this very system.

Once the former government's term ended in August 2019, we

carried out several amendments in the Local Government Act, based on our learnings. Unfortunately, COVID struck and the process could not be carried out timely. However, we will soon be introducing a two-tier system where the focus will be on improving service delivery at the levels of tehsil local government and village council.

The KP government will soon be conducting local government elections to establish a robust, people friendly and people centered system, once the uncertainty of COVID diminishes. The benefits of this are meant for the citizens of KP, the end users. This system will focus on improving service delivery at the grass roots level. We are currently in the last phase of preparation in establishing an exceptional system of local government where municipal services delivery will be taken to another level.



Inayatullah Khan

Former Minister of Local Government, Elections and Rural Development
Khyber Pakhtunkhwa Assembly, PTI

Has the local government system in Pakistan been successful post devolution? Why or why not?

The real question is whether local government has had any impact at all post devolution. In my opinion, the impact that it was supposed to have, it did not. The legislation was not carried out according to constitutional spirit. The local government act that was passed initially, has not come into effect in true spirit. There have also been problems in implementation.

While the concept was revisited after four years with radical changes done, the impact has been very limited owing to a lack of continuity in implementation.

What challenges have been observed for local governments?

The first challenge is political and bureaucratic elite, who come with the mindset of no power sharing.

Second, although duration is defined in the Election Act 2017, in the fact that elections should be held after 90 days, however, there is no constitutional guarantee in this regard.

Third, provinces are dependent on federal transfers, and districts are dependent on provincial transfers. The transfer process is not smooth and has several gaps.

Fourth, financial issues also remains a significant challenge, with weak indigenous revenue generation. The original amount pledged to the provinces is not transferred.

Administrative control is another challenge. Despite the existence of elected bodies, districts are controlled by provincial governments through administration control and hence that renders districts unable to function independently.

Overlapping of the roles of elected representatives at both provincial and district levels, is also an issue, along with a lack of capacity.

The entire machinery of local government needs to be revisited.

What has been the support of the federal government in

streamlining this process, both in terms of planning and implementation?

There has been limited support from the federal government. Provinces have carried out their legislations in complete silos. During my tenure as a minister for five years, I never saw any initiative in this regard.

How can well-designed local government reforms strengthen Pakistan's federal democracy?

Here lies a missing link. While both the federal and provincial governments are present, there is a lack of participation from the district tier. Owing to this, there is a lack of bottom-up planning. While the local government system provides leadership-several ministers such as Mr. Pervez Khattak and myself have emerged out of that system-the fact that it has not been strengthened has limited its effectiveness. This has resulted in a weak federal democracy.

Given the cost of devolution was high, was there any synchronization/hand-holding between the federation and provinces in order to support the process?

There was no support from the federation, however, it also did not pose any challenges. Moving forward, it is important the provinces take up more responsibility.

As provinces wait for local government elections and administrative structures undergo changes based in revised Local Government Acts, what more needs to be done moving forward?

Positive developments are needed. There needs to be a safety net in the constitution for continuity. There should be a constitutional amendment. Local government acts should be implemented according to spirit, and not just on paper. Financial transfers need to be smooth. More space for revenue generation powers for local government must also be given. The overlapping of roles needs to be revisited and avoided. The Election Commission of Pakistan must play a proactive role in conducting elections. Time lapses in local government elections are very harmful. All these gaps need to be addressed moving forward.



Nafisa Shah

Member National Assembly, PPP

Has the local government system in Pakistan been successful post devolution? Why or why not?

Local governance in my view, is one of the most important questions that has yet to be resolved in Pakistan. So far, the local government systems introduced in different provinces lack coherence, and mostly remain limited to being only a cosmetic transfer of power.

The federal structure of Pakistan empowers the provinces which have largely been unable or unwilling to devise systems that transfer power to local bodies.

What has been the support of the federal government in streamlining this process, both in terms of planning and implementation?

This issue has to be taken up at the level of the Council of Common Interests (CCI), a constitutional body that is mandated to

take decisions on matters between the federation and provinces. However, the central government has never tried to empower this body, adding further difficulty to the relationships between the centre and the provinces.

As provinces wait for local government elections and administrative structures undergo changes based in revised Local Government Acts, what more needs to be done moving forward?

Moving forward, a national dialogue aimed at consensus building on local government structures and devolution needs to be conducted. This must involve the Chief Ministers, the Prime Minister, and local council mayors.



Dr. Aisha Ghaus Pasha

Member National Assembly, PML-N

What is your view on the devolution of power in Pakistan?

18th amendment, along with the 7th NFC Award, have been major milestones in the fiscal devolution of Pakistan. Even though the 18th Amendment was implemented, I do not think that the federal government implemented it whole heartedly. A number of issues continue to remain and there is some evidence which points towards reversion on the 18th Amendment, as a lot of devolved functions and ministries/divisions which were abolished following it, have been re-established in the federal government under different names. We see a number of issues continue to remain unresolved, such as labour issues, workers' welfare fund, trustee properties and so on and so forth. There are a number of such examples and more, that can be quoted regarding unresolved issues following the 18th amendment.

What needs to be done? The federal government needs to look through this, and they need to do two things: One, really devolve as per the letter and spirit of the 18th amendment, the functions to the provincial governments, and second, restrict themselves only to the Federal Legislative List-I functions. The concurrent list functions which were abolished because of the 18th amendment, should be devolved to the provinces and the provinces be granted the authority to look after them. Holding back on power is not the right way forward which is reflected by these Acts which

we see.

The 18th amendment has empowered and strengthened the federation by strengthening provincial presence in the Council of Common Interest and National Economic Council. Now, the federal government should convene regular meetings and attribute significance to the issues. This will lead to strengthening of the federation which in turn will streamline the devolution of power from federal to the provinces, and then from provinces to the local governments. I feel that this will strengthen the federation by improving accountability and ensuring people's participation in decision making, as the lower the tier, the closer the government is to the people. This will also improve service delivery.

The tendency to hold on to power and not delegate is a common occurrence in the political side as well as bureaucracy. Hence, if provincial governments are handed over functions as per the 18th amendment, they will do a good job at it, and according to local government acts, the 18th amendment also strengthens local governments and recognizes them explicitly. The manner in which provinces have handled the collection of sales tax on services and improved tax collection delineates their effective service delivery. Hence, devolution at that stage will also be good, not only for accountability, but also for service provision.



Ahsan Iqbal

Former Minister for Interior and Planning,
Development and Reform
Member National Assembly, PML-N

What has been the support of the federal government in streamlining the devolution process, both in terms of planning and implementation?

Devolution through the 18th amendment was a historic milestone in Pakistan's constitutional history. Concurrent list in the constitution was abolished and fifteen federal ministries were devolved to the provinces. In my view, the post devolution implementation plan was done in haste with the sole purpose of offloading the devolved ministries from federal to provincial governments. There was no proper transition plan worked out to develop new capacities in the provinces and to create linkages among provinces for effective coordination in order to achieve national goals in the devolved sectors.

How can well-designed local government reforms strengthen Pakistan's federal democracy?

Effective local governments hold key for good service delivery in any democratic system due to their grass root level presence. Weak local governments in Pakistan have been a major handicap in making democracy work in Pakistan. Article 140-A provided constitutional cover to local governments but is vague in terms of

spelling out a clear framework to provide continuity to local bodies like national and provincial assemblies. Effective local bodies can build greater confidence of the citizens in the democratic process, in order to serve their needs better.

As provinces wait for local government elections and administrative structures undergo changes based in revised Local Government Acts, what more needs to be done moving forward?

Under the 18th amendment, while many functions have been devolved to the provinces, the provincial functions have not been further devolved to local bodies, making provinces a very top heavy structure. There is a need to redistribute provincial functions between provinces and local bodies, in order to provide local bodies a greater stake and role in democratic governance. Moreover, funding for local governments remains a major issue. Provincial Finance Commissions need to make fair awards. For quality service delivery, local bodies need quality human resource, which is lacking. Local government service structures in terms of recruitment, development, promotions and compensations, needs major reform.



Shandana Gulzar Khan

Member National Assembly, PTI

Has the local government system in Pakistan been successful post devolution? Why or why not?

In my personal opinion, local government in Pakistan, in particular post the 18th amendment, has not delivered.

Devolution is a process aimed at ensuring that governance structures are responsive to the needs of the local populace instead of a top-down approach. It is twice as important in Pakistan, given large portions of the population are facing a patronage-based ideological system of no delivery.

Paradoxically, each time Pakistan has witnessed structural reforms in local bodies and moved towards decentralizing government control, it has taken place during a military dictatorship. This is one of the biggest reasons that accounts for a reluctance of “democratically-elected” governments to cement those reforms. This in turn, results in a reluctance to endow the local governments with decision- making power and resources.

What challenges have been observed for local governments?

- Legitimacy of the reform is the first main roadblock (Given that reforms have been used by successive military dictatorships as a method to gain legitimacy and bypass the political process);
- Reluctance of provincial governments to transfer resources

and power to local governments, runs counter to constitutional provisions;

- Resistance to the emergence of young new political leaders who may establish new power bases; and,
- Both the federal and in particular, the provincial bureaucracy, have shown a clear reluctance to provide resources and services to the lower tiers of government.

As provinces wait for local government elections and administrative structures undergo changes based in revised Local Government Acts, what more needs to be done moving forward?

- Creation of a federal mother institution to complete the devolution process;
- Methodology for ensuring that reserved seats are provided on merit not patronage;
- Devise effective mechanisms to ensure implementation, monitoring and accountability;
- Ensure fiscal devolution in addition to authority with strict checks and balances as well as central oversight;
- Training and capacity-creation of local officials; and,
- Create information portals for effective citizenry.

say that again

“...address the risk of ‘elite-capture’ at the local government level.”



Amjad Bhatti

Chief Technical Specialist
Reconciliation and Federalism Support
UNDP Somalia

Has the local government system in Pakistan been successful post devolution? Why or why not?

The local government system in Pakistan always remained a key area of control and contestation for both military and civil administrations. We have consistently seen two patterns in this regard: decentralization without democracy and democracy without decentralization. However, Article 140 (A) was adopted by the 18th Constitutional Amendment (2010) which reads: “Each Province shall, by law, establish a local government system and devolve political, administrative, and financial responsibility and authority to the elected representatives of the local governments.”

Nonetheless, this was in 2015, almost five years after the 18th Amendment, that the apex court, while adjudicating the matter in the spirit of public interest, directed provincial governments first to initiate required enactments in line with the constitutional command and, second, to conduct elections on party-basis at all tiers of local governance, including Cantonment Boards.

In compliance of the federalist principles of decentralization, this was the first time that each province had autonomously introduced its context-specific law on local government without any influence and intervention by the federal government. Election processes were completed in all four provinces including Islamabad Capital Territory and Cantonment Boards. Provincial governments started spadework to facilitate the transition of assets and liabilities to respective local governments. With a minimalist approach, elections at the local level were concluded but the real transfer of authority and resources at the grassroots level was never allowed to begin.

Constitutional compliance of Article 140 (A) needs to be analyzed at three levels i.e. textual, contextual, and doctrinal. By enacting the local government laws and conducting elections, the provincial governments have indeed passed through the textual or minimalist compliance of the Article 140 (A); while these laws continue to fall short on contextual and doctrinal compliance of the constitution for not corresponding to the devolutionary spirit of the 18th Amendment and neither do they correspond to the doctrinal dimensions of devolution.

What challenges have been observed for local governments?

Post-18th Amendment, the provincial legislatures initiated the process of decentralization on the dictation of judicial intervention. According to the provincial legislative frameworks, powers delegated to local governments through local councils could be recalled or reassigned to any officer nominated by the provincial government. According to these laws, the policies,

directions, and decisions of provincial governments will have overriding effect on policies, directions, and decisions of local governments as these are bound to work within the framework of provincial governments. For example, in Sindh, the provincial government can take over the management and control of any institution or service maintained by a local council/government. In Punjab, the establishment of Health and Education Authorities in 2015 emerged as an administrative anomaly as they take away the functions of two key sectors from elected councils and vests authorities in officers to be appointed by the provincial government-without any explicit communication and coordination link with local governments. Apart from deficient legislative frameworks, the local governments across the country faced challenges in terms of transfer of power and resources.

What has been the support of the federal government in streamlining this process, both in terms of planning and implementation?

Constitutionally speaking, local government is essentially a provincial subject, thus, it must be steered by the provincial legislatures and executives. Federal overreach on provincial subjects must be avoided. However, if Article 7 of the Constitution is read in conjunction with Article 140 (A) (1), the intent of the legislature has unequivocally been embodied in this Article. And a bare reading of the text indicates that the constitutional definition of State remains incomplete without elected local governments in place. Thus, a basic and an important link in constitutional governance will remain missing in Pakistan unless provincial legislatures and governments move with a sense of urgency to put the third tier of governance in place.

How can well-designed local government reforms strengthen Pakistan’s federal democracy?

I believe that the lowest tier of governance is the first tier of democracy. However, the lowest tier is still hanging in balance, failing grassroots democracy in Pakistan. Historically, the top-down and centralist paradigm has not delivered social services to the people of Pakistan proportionate to the financial resources allocated and spent. Pakistan thus has become the history of wasted resources, missed targets, failed opportunities, and increased disparities in the social development sector. The 18th Amendment has, however, instituted a durable and constitutionally guaranteed process of devolution by devolving subjects, functions, policies, planning and implementation to the provincial domains.

With the policies, planning and programming related to service delivery in the social sector decentralized to the provinces, federal planning bodies can no more design and plan a

development project without taking into account the provincial representation and perspective (Council of Common Interest, National Economic Commission and Planning Commission). The same is desired from the provinces in relation to districts, only then can the top-down approach of development be replaced with the bottom-up perspective. Accountability and representation are two key features of devolution, which need to be incorporated at every tier and sub-tier of development planning, management, and execution.

The new laws of local government must have the following key functions devolved to local governments:

- Regulatory functions (rules, by-laws, enforcement, compliance, and reporting)
- Allocative functions (preparation, appraisal, and approval of annual budgets)
- Taxation (identification, collection and managing local taxes)
- Service delivery (gap identification, planning, resourcing, resource-sharing, managing, and monitoring)
- Policy and planning (local development, spatial, land-use and town planning with stronger vertical linkages)
- Data collection and information/knowledge management (collect, collate, and update statistics related to respective jurisdictions and ensure public access to public data)
- Community development (engage, mobilize, and support citizens/communities in identifying, designing, and implementing community projects at various sub-tiers of the local government)
- Capacity-building (training for effective discharge of duties and skill development for community-based livelihoods and economic activities)
- Political power-sharing (allowing competition, contest, demand-articulation, negotiation and consensus-building at local levels)

As provinces wait for local government elections and administrative structures undergo changes based in revised local government Acts, what more needs to be done?

First, the new legislative frameworks of local government must comply with the textual, contextual and doctrinal spirit of Article 140 (A), ensuring substantive decentralization of political, executive and fiscal authority to the elected representatives of local government.

Second, there is a need to create a predictable mechanism of inter-governmental fiscal transfers (IFT) in line with the principles of 'fiscal equalization' as introduced by the 7th NFC Award. Provinces need to establish Provincial Finance Commissions making IFTs transparent, not prone to political manipulation, easily understandable, equitable, predictable and delivering resources to the local governments in a timely manner.

Third, incorporate provisions enabling decentralized development planning at the grassroots levels. The mainstream architecture of development planning is practiced in a top-down and vertical manner. Traditionally, Five-Year and perspective plans would be developed at federal level and handed over to the provinces to be implemented at district levels. The input from districts, tehsils and UCs in the process of mainstream development planning is almost non-existent. One major reason of the failure of such vertically designed plans is that the lowest tiers are not engaged in the process of such plans with special reference to service delivery at the grass roots level. We need a paradigm shift in the planning process by developing a bottom-up planning grid where community/cluster plans will be aggregated into Ward and UC Development Plans, and then UC Development Plans to be integrated into District Development Plans for further upward integration at Provincial and Federal levels. Citizens/communities are key actors in development planning through this model; and local government representatives could be takers and pushers of such plans. Decentralized development planning at the lowest tier of governance must be made part of any future local government structure to ensure allocative efficiency.

Last but not the last, address the risk of 'elite-capture' at the local government level. Experience suggests that while decentralization of functions and resources to local levels is necessary, it is not a sufficient condition to deepen local democracy. Ali Cheema has underscored in his study that decentralization allows the local elite to capture decision-making structures and reinforce their power and influence. In countries like Pakistan, elites' power is perpetuated through land holdings, family networks, employment status, wealth, political and religious affiliation, personal history and personality. According to some reports, the earmarking of development funds from the budget to the politicians under the Basic Democracies, the People's Works Programmes, Khushhal Pakistan program and other similar schemes designed by federal level governments, paved the way for the enrichment of the elected officials. In the case of Pakistan, decentralization has accentuated elite capture which makes the case for citizens' engagement more critical in strengthening rule of law regimes at the grassroots level.

Indeed, civil society plays a vital role in deepening and sustaining democratic local governance by creating societal fences against an entrenched risk of elite capture in hierarchical societies. The on-going process of decentralization at the local level necessitates thinking proactively as how to embed and operationalize legal entry points which could be deployed to mobilize a citizen-led countervailing power to address the patrimonial tendencies and elite capture of resources and decision-making spaces at the grassroots level.

say that again

"...A well-designed and well-functioning local government system is a necessary component of a federal democracy."



Dr. Asma Faiz

Assistant Professor
Lahore University of Management Sciences

Has the local government system in Pakistan been successful post devolution? Why or why not?

The 18th Amendment did not have a provision for downward devolution of power to district and sub-district level, besides a moral compulsion. After the completion of the pre-existing local government system introduced by the Musharraf regime that lapsed in 2009, the provincial governments did not show any substantive interest in devolving power to the local level. Following the promulgation of the 18th Amendment, it was in response to complete inaction by the provincial governments that the judiciary ordered provinces to develop their separate legislation and introduce the local government system. We have now seen the completion of the tenure of the first local governments in the provinces. The new laws in general did not transfer any meaningful financial and administrative powers to the districts. Hence, the project of devolution of power to grassroots level remains a work in progress, a decade after the 18th Amendment.

What challenges have been observed for local governments?

The efficacy and performance of the local government system has been adversely affected by several factors. These include general lack of political will on part of the provincial governments, the presumed deficit of capacity of districts, insufficient transfer of funds and a state of conflict between bureaucracy and elected local government officials. Firstly, we observe a sustained pattern of lack of support for local governments among the political parties in Pakistan. The Pakistan Tehreek-I-Insaaf, (PTI) as early as 2013, voiced support for the local government system. Since coming into power at the Centre in 2018, it has not done much to enhance the second-tier devolution of power. The Muttahida Quomi Movement (MQM) in Sindh has been a great champion of the local government system. But this can be explained with reference to the peculiar ethnic demography and party politics in that province. By and large, the political parties in Pakistan have not enthusiastically embraced the project of devolution of powers further down to the district level. Second, the local government representatives have frequently complained of insufficient transfer of funds from provincial governments. In certain cases, this has resulted in public expression of dissent by the local government officials against their own parties. The provincial governments on the other hand, mirror the Centre in highlighting the weak capacity of local governments in transferring funds. In their view, the weak local government performance is proof of their lack of capacity and preparedness to deliver services and carry out their responsibilities. Lastly, a general state of deficit of trust between the bureaucracy and elected local government officials has further stymied the

empowerment of local governments in Pakistan.

What has been the support of the federal government in streamlining this process, both in terms of planning and implementation?

The federal government has generally left the question of local governments to the provinces. This reflected both the constitutional reality as well as their overall lack of interest. If we look at this question during the tenure of the PTI government, the only place where the government appears to passionately advocate a strong local government is Sindh. But this ardent support for local government has to be taken with a pinch of salt as Islamabad-Karachi relations have been highly strained since August 2018. The PTI government has been on the offensive against the PPP government in Sindh. It has therefore picked up the agenda of local government reform in the province since it has its ally, the MQM, out in the wilderness because of the gap of authority suffered by local government officials, especially the Mayor of Karachi. The same level of commitment to devolution is missing in the case of other provinces ruled by the PTI-led governments.

How can well-designed local government reforms strengthen Pakistan's federal democracy?

A well-designed and well-functioning local government system is a necessary component of a federal democracy as is evident through the examples of other federations such as the US and Canada. A local government system helps to deliver services at the grassroots level, thereby improving the quality of governance in the country. Moreover, the two-tiered devolution produces an essential mechanism of shared governance between the Centre, provinces and local governments. If this multi-tier system of governance functions properly, it will lead to greater trust in democracy, enhanced state legitimacy and popular participation in decision-making.

Given the cost of devolution was high, was there any synchronization/hand-holding between the federation and provinces in order to support the process?

In my view, there has not been a clear-cut and visible pattern of cooperation between the Centre and the provinces over deepening the process of devolution in Pakistan. Of course, one needs to take into account the question of party politics into the picture. The PTI government for instance, has been most vocal in support of the local government set-up in Sindh where the MQM has been its Trojan horse, while it has deeply antagonistic relations with the PPP, the ruling party in the province. The PTI has

therefore consistently complained about lack of provincial support to the local government set-up in Sindh, whereas its policy seems to be different in Punjab and Khyber Pakhtunkhwa, provinces where it formed governments in 2018 and 2013 respectively. The local body elections in both provinces have been delayed. The PTI local government representatives have openly complained about the lack of transfer of funds by their own party's governments in Lahore and Peshawar. Thus, it is hard to observe a linear and effective synchronization between the Centre and provinces on the question of local governments.

say that again

"...All we really need is a well-functioning Provincial Finance Commission which ensures a democratically determined and geographically equitable formula for resource sharing within provinces."



Usama Ahmed

Public Policy and Governance Expert

Has the local government system in Pakistan been successful post devolution? Why or why not?

If you define success in terms of being able to retain elected councils-obviously not. Ever since the LGO 2001 regime lost constitutional protection in 2008, provincial governments moved to re-establish commissionerates, replace local government laws with retrogressive province-centric regimes and claw back funds, functions and functionaries. The 18th Amendment extended a life line to elected local governments and pressurized the provinces to hold local body elections in 2015. But with the exception of Khyber Pakhtunkhwa (KP), I believe, these bodies remained largely starved of funds. Now, elected local councils have again lapsed in all provinces and powers have reverted to local administrators. Provinces are dragging their feet on holding elections. While there are certain genuine obstacles here-2017 census results, legal frictions between Local Government Acts (LGAs) and Election Commission of Pakistan (ECP) laws, etc-but in general, the problem is based in politics, not policy.

If you define success in terms of service delivery, independent assessments are mixed. There is no clear, empirical evidence that service delivery performance improved-or deteriorated-in any domain, with the introduction of elected local governments since 2001 onward. But this is not exceptional, even in international literature. What DID change-and most studies agree on this point-is that local government became more accessible to the common citizen. I would especially single out the reserved seats for women and minorities in local elected councils as a major step forward in making local government inclusive. That's where local government reform was most successful. That does not mean that local power dynamics have been significantly altered. Local elites will still be in charge. But they will have a strong incentive to price the interests of their constituents into all decisions they make.

What challenges have been observed for local governments?

As aforementioned elected local governments suffered immediate rollback in 2008-09 and have yet to fully reclaim their status ever since in any province, except KP. There are a number of problems-local councilors lack capacity, councils lack funds, they do not employ their own staff (unlike provincial or federal services), local government laws have become increasingly complex and difficult to implement-I believe KP has amended their LGA a dozen times since 2013. But the core challenge is the prevailing political culture. MPs are not interested in legislation. They are interested in small infrastructure projects that can fill out their electoral resumes. And that is simply a reflection of our political culture. The political economy surrounding local

government actually centers on public funds for development.

What has been the support of the federal government in streamlining this process, both in terms of planning and implementation?

Not aware of any effort made by the federal government in this regard. Local governments are a provincial subject.

How can well-designed local government reforms strengthen Pakistan's federal democracy?

There is a natural tension between traditional federalism and strong local government. Traditional federalism brought us the 18th Amendment-where we created four new 'Islamabads'. And the downside of that has now become painfully clear. Trickle-down of resources from these new power centers follows past patterns of inequality. Federal to provincial devolution has not tangibly improved governance for citizens of Karachi, or Bahawalpur, or Chitral or Qilla Saifullah. The fruits of increased provincial budgets resulting from the 7th NFC Award have not really reached certain districts, tehsils and villages. And ultimately, this will lead to resentment against respective provincial governments. Now there are certain radical proposals to fix this problem that have been floating in recent public discourse-making divisions into provinces, introducing bicameral legislatures for provincial assemblies, etc. All we really need is a well-functioning Provincial Finance Commission which ensures a democratically determined and geographically equitable formula for resource sharing within provinces. That will not only lead to stronger local governments but also stronger provincial governments which will in turn strengthen our federal system.

As provinces wait for LG elections and administrative structures undergo changes based in revised LG Acts, what more needs to be done moving forward?

Local governments need to increase their bargaining power to negotiate their rights with the provinces. Local Council Associations were formed in the past to serve this need and were successful to a certain extent. Article 140A owes at least partially to their efforts. But they need a national champion. This is where the federal government can come in. The increasingly polarized national political climate is going to play out in local body electoral contests. The danger is that the policy debate for a strong elected local government will take a backseat to this more newsworthy drama. It is important to remember that it does not matter which party the mayor of a particular district belongs to-what matters is the powers and funds s/he has, to serve the people of the district.

Youth Voices

What role can local governments play in youth empowerment?

“The most important part a local government can play is to engage the youth in the political process. After all, the largest proportion of the population consists of the youth, so they are the ones most impacted by any and every political decision.”

Tuaha Rashid

“Economic empowerment of the youth should be the top priority area of the local government. It should work with the private and public sector in bringing out not only employment opportunities, but even short term initiatives that aim at ‘temporary income bursts’ as well.”

Fiza Akhtar

“The provincial and federal governments already have a large portfolio to cater to so it makes sense if they cannot cater to the youth. This is where the local government needs to step in and take control. Not just empowerment but eradicating inequalities in the youth-be it social or economic or gender or status etc-should be a tailored front line priority for them.”

Sakina Ali

“Recently, the youth have been uplifted and brought into the mainstream by the Prime Minister. Prior to this, there wasn’t much being done to empower the youth so local government or no local government, did not make much of a difference.”

Ali Kareem

“Local governments can play a significant role in empowering us. Since regular education is not everyone’s piece of cake, the local government can focus on imparting technical skills. Since they can connect to the youth one-on-one, this would be a big investment on their part for the youth as well as the country.”

Palwasha Bashir

“Local government is the tool through which the local communities are empowered. If actually put into power, they can do wonders for the youth. The question of ‘if’ is most important and to be honest, quite skeptical about that happening.”

Shahid Nabi

DEVELOPMENT ADVOCATE
PAKISTAN