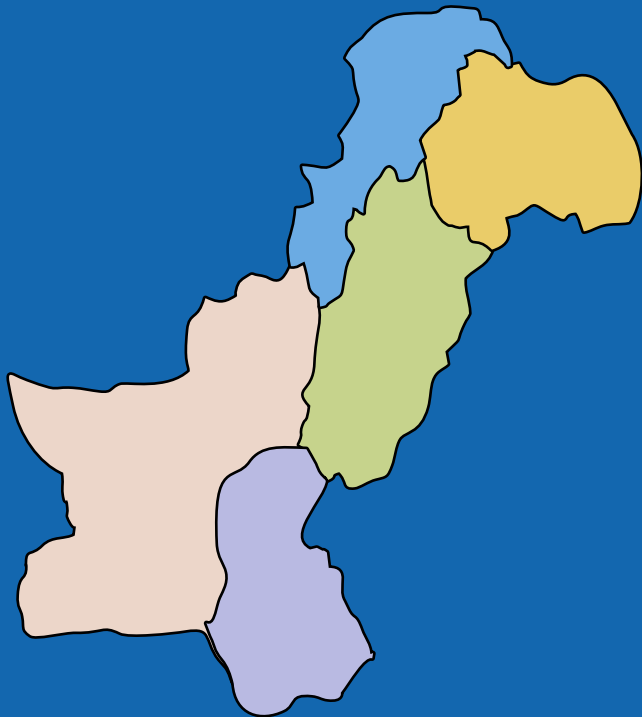


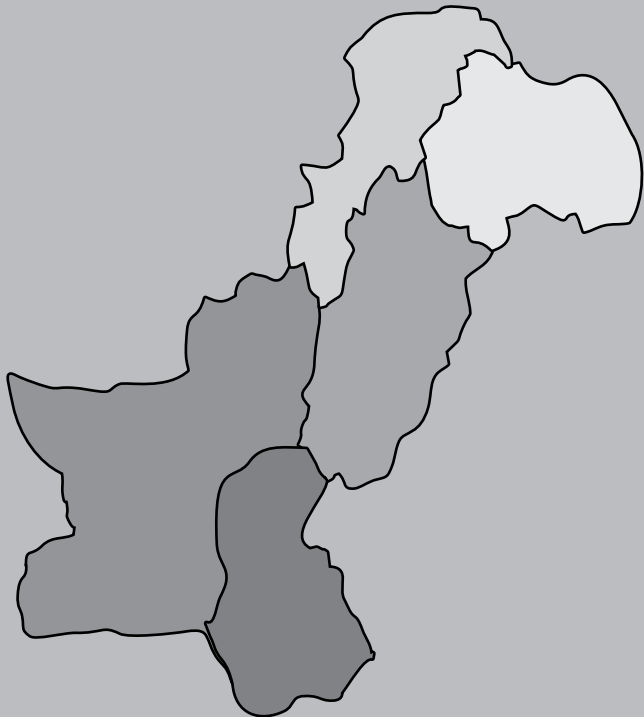
Comparative Analysis of Local Government Laws in Pakistan

Briefing Paper



Comparative Analysis of Local Government Laws in Pakistan

Briefing Paper



PILDAT is an independent, non-partisan and not-for-profit indigenous research and training institution with the mission to strengthen democracy and democratic institutions in Pakistan.

PILDAT is a registered non-profit entity under the Societies Registration Act XXI of 1860, Pakistan.

Copyright © Pakistan Institute of Legislative Development And Transparency - PILDAT

All Rights Reserved

Printed in Pakistan

Published: March 2019

Any part of this publication can be used or cited with a clear reference to PILDAT.

Consolidating
Democracy
in Pakistan **تہذیب**

DAI-CDIP

Office: 3rd Floor, Beverly Center, Blue Area, Islamabad.

CONTENTS

<i>Preface</i>	05
Introduction	07
Comparative Analysis of Local Government Laws	08
Structure of the Local Governments	08
Election Process of the Local Governments	09
Municipal Functions of the Local Governments	11
Fiscal Powers of the Local Governments	14
Attempts at Revision of the Local Government Laws	17
Conclusions	19
List of Tables	
Table 1: Structure of the Local Governments	09
Table 2: Election Process of the Local Governments	10
Table 3: Powers of Local Governments vis-à-vis Constituting Authorities	13
Table 4: Fiscal Powers of the Local Governments	15

Preface

The Briefing Paper ***Comparative Analysis of Local Government Laws in Pakistan*** has been prepared to provide information to political party officials on the legal remit of local governments and the ongoing debate on possible reforms in local governments system in the four provinces.

The paper comparatively examines the 4 provincial local government laws primarily focusing on the following:

1. Comparison of the local government structures
2. Comparison of the election process of the local governments
3. Comparison of the municipal functions
4. Comparison of fiscal powers

The Constitution of Pakistan makes it obligatory for the Federal and Provincial authorities to devolve political, administrative and financial responsibility to the Local Governments. A cornerstone of the process of devolution is empowering people at the grassroots, and this obligation is encapsulated in Article 140-A, and to a lesser extent, in Article 37. While most countries adopt Local Government systems due to necessity and multilateral pressure, Pakistan has marginalized Local Governments time and time again, with the result that a uniform and effective system of local governance has not yet evolved in Pakistan.

This paper presents a comparative analysis of existing Local Government Laws in terms of their administrative and fiscal powers.

This Briefing Paper has been authored by Ms. Aasiya Riaz, Joint Director, PILDAT.

Disclaimer

Every effort has been made to ensure the accuracy of the data contained in this paper. Any error or omission, therefore, is not deliberate. The views expressed in this paper belong to the author and do not necessarily represent the views of Tabeer-Consolidating Democracy in Pakistan.

Islamabad
March 2019

Introduction

Local Government simply means government at the local level. As a separate tier of government, it deserves to be reasonably autonomous. Local Government (LG) is at the lowest tier in the executive branch of government, and as the lowest tier it is best placed to address local concerns. Only those at the local level can be fully aware of the local context, culture & local problems and can best formulate effective strategies for welfare and development of the people.

The biggest argument in Pakistan against the Local Government system introduced by Gen. Pervez Musharraf in 2001 was that with a powerful centre and relatively weaker provinces, the LG system further took away the meagre powers available with the provinces. However, after the passage of the 18th Amendment to the Constitution of Pakistan in 2010, which essentially allowed greater autonomy to the provinces, there has been little or no reason not to devolve required and effective powers to the 3rd tier – that of the Local Government – across the country.

Although each Province and the Federation had passed Local Government laws to establish local governments within their jurisdictions and local government elections were subsequently held, there is a growing debate to further strengthen the local government system and amend the local government laws accordingly. Some provinces are already seriously working on either amending or replacing the current local government laws.

Local Governments system suffers from an image problem in Pakistan. Political parties are generally sceptical of fashioning local governments as Local Governments have been used as a favourite system of past dictators – both that of British colonisers before independence and of military dictators after Pakistan's birth – as a substitute to full democratic governance. Consequently, political ownership of local government system has been lacking in the representative governments. The military regimes of Field Marshall Ayub Khan (1950-1960), General Zia-ul-Haq (1977-1988) and General Pervez Musharraf (1999-2008) used local governments in order to legitimise their control over the country. Although

the Local Government Laws enacted during the Musharraf period decentralised several key functions to the local representatives and was less deferential to the higher levels of Government, the fact remains that all previous (military) local government laws failed to fiscally empower local governments and declined to give political parties a role in the system.

Research and analysis of Local Government Acts (LGAs) globally shows that the measure of a good local government system essentially boils down to how much restraint higher levels of Government exercise over Local Governments through use of executive or bureaucratic power. This paper, therefore, analyses and compares the quantity and quality of the limitations imposed by the Provincial/Federal Governments on Local Governments.

Ironically, representative governments have remained wary of empowered local governments in Pakistan, perhaps seeing them as a threat to their control in the upper levels of Government. This wariness too, is evident in the existing Acts.

In Balochistan, Punjab and Sindh Local Government elections held in three phases. The first phase of the local government elections in Balochistan took place on December 7, 2013, followed by two other phases on May 29 and December 31, 2014 while in Punjab and Sindh, these were held on October 31, 2015, November 19, 2015 and December 5, 2015 in three phases.¹ However, in KP, LG elections were completed on May 30, 2015.²

Although the holding of Local Government elections itself has been of significant intrinsic value for Pakistan's democracy, the scheme of local governments, different in each province, left questions unanswered regarding the powers and financial autonomy of the the Local Governments. Now that the term of Local Government in Balochistan has already expired and the same in other parts of the country are expiring in 2019, there still exist gaps and weaknesses, both in design and implementation of the existing local government system.

This paper provides a comparative assessment of the existing local government laws. The analysis

1. Dawn.com. [Balochistan set to be first province to hold LG polls. January 15, 2015. https://www.dawn.com/news/1157076. \(accessed February 26, 2019\)](https://www.dawn.com/news/1157076)
2. The Election Commission of Pakistan. [Schedule of KPK Local Government Wlection \(4-4-2015\). https://ecp.gov.pk/PrintDocument.aspx?PressId=32929&type=PDF \(accessed February 26, 2019\)](https://ecp.gov.pk/PrintDocument.aspx?PressId=32929&type=PDF)

shows that while KP local government law guarantees a little more power and autonomy to elected local governments, all other LG laws are relatively restrictive in nature.

Comparative Analysis of Local Government Laws

While most countries adopt Local Government systems due to necessity and multilateral pressure, Pakistan's Provincial Governments and the Federal Government have tended to marginalize Local Governments time and time again, with the result that an effective and uniform system of local governance has not been established in Pakistan.

This paper develops a comparative analysis of the following Local Government laws, along with the multiple amendments that have been made to them since they were first passed:

- The Punjab Local Government (Amendment) Act (Act XVIII) of 2013, as amended upto June 1, 2018.
- The Khyber Pakhtunkhwa Local Government (Amendment) Act, 2018, as amended upto February 28, 2018.
- The Sindh Local Government Act (Amendment) 2017, as amended upto April 3, 2017.
- The Balochistan Local Government Act, 2010, as amended upto March 4, 2015

The comparative analysis is primarily based upon the following factors:

- Comparison of the local government structures
- Comparison in the election process of the local governments
- Comparison of the municipal functions
- Comparison of fiscal powers

Structure of Local Governments

Each of local government law provides a different structure of local governments.

While Punjab Local Government law provides a 5 year term of local governments, KP, Sindh and Balochistan local governments have 4 year terms

each.

Balochistan follows a structure of Union Councils, District Councils, Municipal Corporations, Municipal Committees and Metropolitan Corporations. Similarly, Sindh defines local areas in an Urban district as Metropolitan Corporation, District Municipal Corporation, Municipal Corporation, Municipal Committee, Town Committee, Union Committee and Ward, while Rural areas in a District include District Council and Union Council.

The Punjab Local Government Act defines, as local areas, Lahore District as the Metropolitan Corporation, rural area in a District, other than Lahore District, as District Council, urban area in a District, other than the area of a Municipal Committee, as Municipal Corporation, and urban area in a District, other than the area of a Municipal Corporation, as Municipal Committee.

The Punjab law also grants the right to the provincial government to establish District Education Authority and District Health Authority for each district, including indirectly elected members from the local governments and nominated technocrat members, with chairs and vice chairs appointed by the Government. While members of an Authority are to be elected by the local governments in the District, the provincial government has the authority to appoint the Chairman and the Vice Chairman of an Authority who "*serve during the pleasure of the Government,*" and are "*personally responsible to ensure that the business of the Authority is conducted proficiently.*" The law also authorizes the provincial government to take action against the Chairman, Vice Chairman, Chief Executive Officer or any other member of the Authority on grounds of misconduct.

Khyber Pakhtunkhwa recognizes, as local areas, the Neighbourhood, Tehsil, Town, District and City District. The KP Local Government law stipulates that local governments constituted under the law include City district government for District Peshawar, District Government for a district other than Peshawar, Tehsil Municipal Administration for a Tehsil, Town Municipal Administration for a Town in the City District, Village Council for a Village in the Rural Area and Neighbourhood Council for a Neighbourhood with areas with Urban characteristics.

Table 1: Structure of the Local Governments

No.	Parameter	Punjab	Khyber Pakhtunkhwa	Sindh	Balochistan
1.	<i>Duration of the term</i>	5 years	4 years	4 years	4 years
2.	<i>Structure of Local Governments</i>	<ul style="list-style-type: none"> - Lahore District as the Metropolitan Corporation - Rural area in a District, other than Lahore District, as District Council - Union Councils - Urban area in a District, other than the area of a Municipal Committee, as Municipal Corporation - Urban area in a District, other than the area of a Municipal Corporation, as Municipal Committee 	<ul style="list-style-type: none"> - City District Government for Peshawar - District Government for a district other than Peshawar - Tehsil Municipal Administration for a Tehsil - Town Municipal Administration for a Town in the City District - Village Council for a Village in the Rural Area - Neighbourhood Council for a Neighbourhood with areas with Urban characteristics 	<p>Urban area in a District:</p> <ul style="list-style-type: none"> - Metropolitan Corporation - District Municipal Corporation - Municipal Corporation - Municipal Committee - Town Committee - Union Committee - Ward <p>Rural area in a District:</p> <ul style="list-style-type: none"> - District Council - Union Council 	<ul style="list-style-type: none"> - Union Council - District Council - Municipal Committee - Municipal Corporation - Metropolitan Corporation

Elections Process of the Local Governments

Each of the four provincial Local Government Law in place provides for party based elections except in KP where the law provides for non-party based election of Village and Neighbourhood Councils but party based election for District and Tehsil Councils.

Table 2: Election Process of the Local Governments

No.	Parameter	Punjab	Khyber Pakhtunkhwa	Sindh	Balochistan
1.	<i>Party/Non-Party based</i>	Party based	Party based for District and Tehsil Councils; non-party based for village council or the neighbourhood council	Party based	Party based
2.	<i>Delimitation for the Constituencies</i>	ECP	Act still recognizes Delimitation Authority by the Government as well as the ECP ³	ECP	ECP
3.	<i>Mode of election for all tiers of Local Governments</i>	Mix of direct election and indirect elections for reserved seats including women, peasants, youth and non-Muslims; Direct election for chair and vice chair of Union Councils; Indirect election of chair and vice chair of District Councils; indirect election of mayor and deputy mayor in Municipal & Metropolitan Corporations	Mix of direct and indirect election; seats reserved for women, peasants and workers, youth and non-muslims in the tehsil council and district council elected through proportional representation system of political parties' list of candidates on the basis of the total number of general seats secured by each political party in the respective local council;	Mix of direct election and indirect election	Mix of direct election and indirect election Directly elected general representatives nominate and elect special representatives to reserved seats for non-Muslims, women, peasants and workers
4.	<i>Mode of election for Office Bearers</i>	Indirectly elected	Indirectly elected	Indirectly elected	Indirectly elected

3. In the KP Local Government Act XXVIII of 2013 (amended upto February 28, 2018), Chapter II, (10) states that the Provincial Government, by notification, is to constitute a Delimitation Authority for delimitation of village councils, neighbourhood councils and territorial wards for general seats to tehsil, town and district councils. However, Chapter VII, (26) states that after delimitation of Village Council and Neighbourhood Council by "Election Commission of Pakistan," Government shall by notification in the official Gazette, notify Village Council and Neighbourhood Council in all districts.

Municipal Functions and Powers of Local Governments vis-à-vis Provincial Governments

Overall Control of Provincial Governments in general:

While each provincial local government law specifies some responsibilities for elected local government, it also retains respective provincial governments' authority to direct and oversee local governments.

Balochistan:

Under the Balochistan Local Government Act, the Government of Balochistan has, for instance, retained the authority to exercise general supervision and control over the local councils including the authority of inspection of local councils, audit of accounts, issuing directions and dissolution and suspension of local councils, and removal of office bearers.

Khyber-Pakhtunkhwa:

The KP LG law authorizes the provincial government to exercise general supervision and control over the local governments in a number of ways including inspection of local councils, audit of accounts, issuing directions, suspension of Nazims and Naib Nazims of local councils, and control over budget, thus essentially making elected local governments subordinate to the provincial government.

Punjab:

The Punjab Local Government law also retains the authority for the provincial government to delegate any function of a Mayor or a Chairman to a Deputy Mayor or Vice Chairman on the recommendations of the Punjab Local Government Commission. The Punjab Local Government Act states that each local government "shall be bound by the directions of the Provincial Government." The Punjab LG law also gives the provincial government the authority to appoint a Chief Officer, to ensure "coordination" between the local government, other local governments and the Provincial Government, "adherence" by the local government to all laws, policies and oversight framework of the Provincial Government and serve as the Principal Accounting Officer of a local government. In addition, a Punjab Local Government Commission consisting of Minister for Local

Government as Chair, 3 members of the Provincial Assembly of the Punjab (2 nominated by the Leader of the House and one nominated by Leader of the Opposition), 2 technocrat members, alongside provincial secretaries. is authorised to conduct annual and special inspections of the local governments, conduct inquiry by itself or through any other agency about any matter concerning a local government, audit, resolve disputes between provincial government department and a local government or between two or more local governments, among other host of oversight and coordination responsibilities. The Punjab LG law also authorizes the provincial government to suspend a Mayor or a Chairman for a maximum period of 90 days. The Punjab law also provides for the constitution of a Local Government Board to manage the local government service cadre.

Sindh:

Similarly, under the Sindh LG law, provincial government has retained the right to set up a Board, Authority or any corporate body to perform any one or more functions of any Council, singly or jointly with any public or private body, and may acquire, continue, manage or operate any commercial venture or activity as deemed necessary in the public interest. Sindh LG Law also authorises the provincial government to appoint Chief Executives of Councils, who are required by law to supervise financial and executive administration of the Councils while all licences and permissions under law, rules or bye-laws can only be issued, granted or given under the signature of the Chief Executive. The Sindh LG law also authorises the provincial government to exercise general supervision and control over the Councils directly or through Regional Directorates of Local Government to ensure that their activities conform to the purposes and provisions of the LG law. Provincial government retains the authority to advise a Council to revise a decision, resolution, order or action and holds authority for final decision. It also retains the authority to direct any Council, or any person or Authority. The law authorises the government to annually inspect working of the Councils and through designated officials, attend meetings of the Council and take part in discussions and other proceedings except voting. If the Government believes a Council is not able to run a particular department or institution property and efficiently, it can suspend the

Authority of the Council for up to six months. Provincial government also has the authority to appoint an Advisory Committee, whose members hold office at the pleasure of the provincial government. The Sindh law also provides for establishment of a Provincial Local Government Commission comprising Minister for Local Government as Chair, two members of the Provincial Assembly of Sindh each to be nominated by Leader of the House and Leader of the Opposition, two eminent, qualified and experienced technocrat members nominated by the provincial government and Provincial Secretaries of Law and Local Government. The law also provides for the Sindh Local Government Board in charge for local government employees.

Table 3: Powers of Local Governments vis-à-vis Constituting Authorities

No.	Parameter	Punjab	Khyber Pakhtunkhwa	Sindh	Balochistan
1.	<i>Executive Powers to Remove Heads of the Local Governments</i>	<p>Provincial Government has the authority to direct the Local Government Commission to conduct and inquiry and based on its recommendations suspend a Mayor or a Chair for a up to 90 days</p> <p>The Government may, on the recommendations of the Punjab Local Government Commission, issue directions to a local government and the local government shall be bound by such directions</p>	<p>A Local Government Commission carries out “supervision” of Local Governments; Chief Minister has the authority to suspend elected heads for a maximum period of 30 days and refer the matter to the Local Government Commission.</p>	<p>The law authorises the government to annually inspect working of the Councils and through designated officials, attend meetings of the Council and take part in discussions and other proceedings except voting. If the Government believes a Council is not able to run a particular department or institution properly and efficiently, it can suspend the Authority of the Council for up to six months following an inquiry into misconduct. However, the procedure and referral for the enquiry has not been mentioned.</p>	<p>The Provincial Government retains the authority of dissolution and suspension of local governments and office-bearers.</p>
2.	<i>Administration of Local Governments</i>	<p>Law specifies, in details, functions and powers of conduct and functions of all tiers of local governments while prescribing coordination and oversight functions to various non-elected bodies</p>	<p>Specifies, in details, functions and powers of District Councils, City Districts, Tehsil Municipal Administration, etc. such as operation, management, and control of the offices of the devolved departments</p>	<p>Authority rests with Mayor or Chairmen but the law also authorises the provincial government to exercise general supervision and control over the Councils directly or through Regional Directorates of Local Government</p>	<p>The Provincial Government empowers itself to exercise general supervision, and control over the Local Councils and retains the power to give directions to local governments,</p>
3.	<i>Municipal Functions</i>	<p>Various tiers responsible for approving spatial plans, urban design, public ways, water supply schemes, etc. in addition to a number of functions only if directed by provincial government</p> <p>Law provides for separate health and education authorities consisting of elected local government office-bearers in</p>	<p>Local Governments are responsible for municipal services defined in the law and devolved administrative and financial authority for the management of the offices of Government, to the District Government, including Primary and Secondary Education, Mother and Child Health Care Centers, Basic Health Units, Rural Health Centers, Social</p>	<p>A detailed section of prescribed functions for each tier including public health, education, water supply and town planning, etc.</p>	<p>A list of prescribed functions include Public Health, Water supply, Drains, Animals and Cattle, Primary Education, Public Safety, Town Planning, Building Control etc.</p>

Table 3: Powers of Local Governments vis-à-vis Constituting Authorities

No.	Parameter	Punjab	Khyber Pakhtunkhwa	Sindh	Balochistan
		addition to technocrats but managed by Chairs appointed by the provincial govt.	Welfare, Sports, Culture and Youth Affairs, Revenue & Estate, Agriculture, Livestock, On-Farm Water Management, Soil Conservation, Fisheries Cooperatives, Hospitals other than District Headquarters, Teaching and Tertiary Hospitals, Rural Development & Rural Works, Population Welfare Coordination, Human Resource Management, Planning, Development, Finance and Budgeting functions for the devolved offices		

Fiscal Powers of the Local Governments

Weak fiscal powers is another issue in the local government laws in place.

Each provincial law makes elected local governments excessively reliant on provincial discretion of funding. In Punjab, KP and Sindh, Provincial Finance Commissions are composed largely of Provincial Ministers and public servants with nominal representation from elected local governments and MPAs, while in Balochistan the Grants Committee authority rests with provincial ministers and secretaries.

In Punjab, the provincial government retains the authority to review approved budget of a local government, and if found contrary to the budget rules, may require the local government to rectify it. The law prohibits a local government from incurring any debt without previous approval of the provincial government and directs that a local government may invest surplus funds, if any, in such securities and financial institutions as approved by the provincial government. The Punjab Finance Commission consist of Minister for Finance as Chairperson; Minister for Local

Government as Co-Chairperson; 7 members of the Provincial Assembly of Punjab (5 members including at least one female member to be nominated by the Chief Minister and 2 members including at least one female member to be nominated by Leader of the Opposition), Mayor, Metropolitan Corporation, 1 Mayor of Municipal Corporation, 1 Chairman of Municipal Committee, 1 Chairman of District Council and 1 Chairman of Union Council, to be nominated by the provincial government. In addition, the Commission includes, as members provincial secretaries of Finance Department, Planning and Development Local Government and Community Development Department and 2 professional members from the private sector nominated by the provincial government. The Punjab Finance Commission is to take all decisions by majority of the members present and voting. In addition, the provincial government also retains the right to approve or, alter the recommendations of the Punjab Finance Commission.

In KP, Provincial Finance Commission makes recommendations to the Provincial Government on the amount of grant for local governments out of the proceeds of Provincial Consolidated Fund in a financial year, consists of 11 members, including

Minister for Finance as Chair, Minister for Local Government, 2 MPAs each nominated by the Chief Minister and Leader of Opposition, Secretaries of Finance, P&D, Local Government, Parliamentary Affairs and Human Rights, two Nazimeen, district councils elected by Nazimeen district councils in the province; and two Nazimeen, tehsil councils elected by Nazimeen of tehsil councils in the province.

The Sindh LG law defines composition of the Provincial Finance Commission to consist of 13 members including Minister for Finance as Chair, Minister for Local Government as Co-Chair, two members of the Provincial Assembly of the Sindh, each nominated by the Leader of the House and the Leader of the Opposition, Provincial Secretaries of Finance, Planning and Development and Local Government, a Mayor of a Metropolitan Corporation, a Mayor of a Corporation, a Chairman of a District Council and a Chairman of a Municipal Committee, each to be nominated by the provincial government and two professional members from the private sector,

also to be nominated by the provincial government. The law states that the Commission shall take all decisions by majority of the members present and voting while the provincial government retains the authority to approve or, for reasons to be recorded in writing, or alter the recommendations of the Commission.

The Balochistan Local Government Act provides for the setting up of a Local Councils Grants Committee, headed by Minister Finance with Secretaries of the Finance, Local Government and Planning & Development Departments as members, for award of grant to local governments. The Local Council Grants Committee neither has any representation from elected local governments nor from the Provincial Assembly of Balochistan.

Similarly, in raising their own sources of revenue, each LG law restricts the elected local governments' powers to impose taxes and prohibits local governments from incurring any debt.

Table 4: Fiscal Powers of the Local Governments

No.	Parameter	Punjab	Khyber Pakhtunkhwa	Sindh	Balochistan
1.	<i>Fiscal Powers/Compositions and Powers of Provincial Finance Commissions</i>	<p>Punjab Finance Commission to make recommendation to the provincial government on amount of funds & grants for local governments.</p> <p>Punjab Finance Commission consist of Minister for Finance as Chairperson; Minister for Local Government as Co-Chairperson; 7 members of the Provincial Assembly of Punjab (5 members including at least one female member to be nominated by the Chief Minister and 2 members including at least one female member to be nominated by Leader</p>	<p>Provincial Finance Commission to make recommendations to the Provincial Government on the amount of grant for local governments out of the proceeds of Provincial Consolidated Fund in a financial year; consists of 11 members, including Minister for Finance(Chairman), Minister for Local Government, 2 MPAs each nominated by the Chief Minister and Leader of Opposition, Secretaries of Finance, P&D, Local Government, Parliamentary Affairs and Human Rights, two Nazimeen, district councils elected by</p>	<p>Provincial Finance Commission to make recommendations to the Provincial Government on the amount of grant for local governments. Provincial Finance Commission to consist of 13 members including Minister for Finance as Chair, Minister for Local Government as Co-Chair, two members of the Provincial Assembly of the Sindh, each nominated by the Leader of the House and the Leader of the Opposition, Provincial Secretaries of Finance, Planning and Development and Local Government, a Mayor of a Metropolitan Corporation, a Mayor of</p>	<p>The law provides for establishment of a Local Councils Grants Committee, headed by Minister Finance with Secretaries of the Finance, Local Government and Planning & Development Departments as members, for award of grant to the Local Councils</p>

Table 4: Fiscal Powers of the Local Governments

No.	Parameter	Punjab	Khyber Pakhtunkhwa	Sindh	Balochistan
		of the Opposition), Mayor, Metropolitan Corporation, 1 Mayor of Municipal Corporation, 1 Chairman of Municipal Committee, 1 Chairman of District Council and 1 Chairman of Union Council, to be nominated by the provincial government. In addition, the Commission includes, as members provincial secretaries of Finance Department, Planning and Development Local Government and Community Development Department and 2 professional members from the private sector nominated by the provincial government	Nazimeen district councils in the province; and two Nazimeen, tehsil councils elected by Nazimeen of tehsil councils in the province.	a Corporation, a Chairman of a District Council and a Chairman of a Municipal Committee, each to be nominated by the provincial government and two professional members from the private sector, also to be nominated by the provincial government	
2.	<i>Sources of revenue/Authority of Taxation in Areas</i>	Local Governments can levy any tax, fee, rate, rent, toll, charge or surcharge only after the provincial government vets the tax proposal and approves it. Taxes include tax on the transfer of immovable property, entertainment tax on dramatical and theatrical shows, fees for registration and certification of births and marriages, services provided by various tiers, community tax, etc. Local Governments are not allowed to incur debt	Authorizes each tier of LG to levy all or any taxes including, for the District Government to levy tax for Education and Health & any other tax authorized by the Provincial Government Local Governments are not allowed to incur debt	Local Governments can levy any tax, fee, rate, rent, toll, charge or surcharge only after the provincial government vets the tax proposal and approves it. Taxes include fire, conservancy, licenses, toll on roads, transfer of immovable property, entertainment tax on dramatical and theatrical shows, fees for registration and certification of births and marriages, services provided by various tiers, community tax, etc.	Each tier, subject to the approval by the Provincial Government, levy all or any of the taxes prescribed by the government such as on cinemas, entertainment, registration and certification of birth, marriages, and deaths; licenses, sanctions and permits granted by each tier of local government, transfer of immovable property; annual rental value of buildings and land; birth of children; Marriage, advertisement and billboards, animals and sale of animals, etc. Local Councils are not allowed to incur any debt

Attempts at Revision of Local Government Laws

After coming into power, the new PTI Government began a review of the existing LG laws in Punjab, KP and ICT with the aim to both revise and replicate the model of KP Local Government law in other provinces. Prime Minister Imran Khan constituted a committee in September 2018 to present proposal for a new local government structure to be scrutinised and presented before the Provincial Assemblies to initiate the required legislation process within a month.⁴ The Committee was given the mandate to draft new LG laws to be put in place in Punjab and Khyber Pakhtunkhwa provinces where PTI has its governments, whereas Sindh, where the PPP has its government, and Balochistan, where a BAP-led coalition is in power, would be asked to enforce the new LG system under Article 140-A of the Constitution.

Even though the new draft has not been made public, reportedly, the draft system initially proposed that after the completion of the tenure of the existing local governments, the district government would cease to exist. Instead, there would be tehsil governments to be headed by tehsil mayors whereas city mayor would head the whole system of tehsil governments in a city. However, the proposal to replace union councils with village councils, was not considered feasible. The draft system was reportedly endorsed by the Prime Minister. The Federal Information Minister, Mr. Fawad Chaudhry was quoted as saying that he proposed Local Government system “like the one functioning in London, Birmingham and Scandinavian countries in which city mayor is elected directly by the people and not by tehsil and union councils.” In such a system based on direct elections, people cast two votes at a time and the candidates for the office of city and tehsil mayors would have to get at least 51 per cent votes. Later,

Punjab Senior Minister, Mr. Aleem Khan was quoted as saying that the new local government system will be two-tier and offer financial and administrative autonomy at grassroots level.⁵

While the revision in LG laws has not been officially made public, both Sindh and Balochistan have indicated lack of interest in revising their existing LG laws at the behest of the PTI. Mr. Saeed Ghani, Sindh Provincial Minister, was quoted as saying that it was not the Prime Minister’s domain to dictate the provinces on their LG system and added that the PPP Chairman, Mr. Bilawal Bhutto Zardari, has also constituted a committee to address the weaknesses and flaws in the local government system.⁶ Sindh is also considering amendments into its Local Government laws though those are yet to be finalised and are not made public.⁷

Even though the elected Local Governments in Balochistan have completed their term in January 2019 and administrators have been appointed in place of the elected local government officials, the Balochistan Government has requested the ECP to delay holding the LG election due to amendments underway in the Balochistan LG Act. The Balochistan Government sought rescheduling of the ongoing delimitation process in the province and holding of the local government polls in November 2019. However, the ECP turned down the request citing that under Article 140-A of the Constitution and Section 219 (4) of the Elections Act, 2017, it is the constitutional obligation of the ECP to hold elections within 120 days after the expiry of the term of local governments in the provinces.⁸

On February 11, the Balochistan Assembly adopted a resolution, asking the Election Commission of Pakistan to postpone LG elections in the province as conducting fresh delimitation of constituencies is a constitutional obligation after the new census.⁹

4. Dawn.Com. “[New local government system in the works.](https://www.dawn.com/news/1430621/new-local-government-system-in-the-works)” September 2018. <https://www.dawn.com/news/1430621/new-local-government-system-in-the-works> (accessed February 18, 2019).
5. Dawn.Com. “[Aleem unsure about local govt timeframe.](https://www.dawn.com/news/1458222/aleem-unsure-about-local-govt-timeframe)” January 18, 2019. <https://www.dawn.com/news/1458222/aleem-unsure-about-local-govt-timeframe> (accessed February 18, 2019).
6. The News International. “Govt panel reviewing weaknesses of local govt system: Saeed Ghani.” October 30, 2018. <https://www.thenews.com.pk/print/387279-govt-panel-reviewing-weaknesses-of-local-govt-system-saeed-ghani> (accessed February 18, 2019).
7. Dawn.Com. “[Murad allays UC chairmens fear of victimisation after amendment to LG law.](https://www.dawn.com/news/1460166/murad-allays-uc-chairmens-fear-of-victimisation-after-amendment-to-lg-law)” January 29, 2019. <https://www.dawn.com/news/1460166/murad-allays-uc-chairmens-fear-of-victimisation-after-amendment-to-lg-law> (accessed February 18, 2019).
8. Dawn.Com. “[ECP rejects Balochistan plea for putting off LG polls.](https://www.dawn.com/news/1462733/ecp-rejects-balochistan-plea-for-putting-off-lg-polls)” February 09, 2019. <https://www.dawn.com/news/1462733/ecp-rejects-balochistan-plea-for-putting-off-lg-polls> (accessed February 18, 2019).
9. Dawn.Com. “[Balochistan Assembly asks ECP to postpone local bodies polls.](https://www.dawn.com/news/1463500/balochistan-assembly-asks-ecp-to-postpone-local-bodies-polls)” February 12, 2019. <https://www.dawn.com/news/1463500/balochistan-assembly-asks-ecp-to-postpone-local-bodies-polls> (accessed February 18, 2019).

On February 13, 2019, the Balochistan High Court (BHC) stopped the Election Commission of Pakistan (ECP) from conducting the delimitation process in Balochistan for the local government elections. Justice Nazeer Ahmed Langove ordered the ECP to halt delimitations in Balochistan till the next hearing scheduled in the last week of February. President of the Balochistan High Court Bar Association, Shah Mohammad Jatoi, had filed a petition asking the High Court to allow the government to amend the LG Act, 2010 before conducting the delimitation of constituencies.¹⁰ Mr. Jatoi had argued that the population of Balochistan had increased in the census conducted in March 2017 and “the provincial government seeks to amend the provincial local government act, but the ECP doesn't allow it to do that.”

10. Dawn.Com. “BHC stops ECP from conducting delimitation.” February 14, 2019. <https://www.dawn.com/news/1463742/bhc-stops-ecp-from-conducting-delimitation> (accessed February 18, 2019).

Conclusions

Comparative analysis of the existing Local Government Acts shows that while the laws and the subsequent LG elections held across Pakistan in 2014 & 2015 are a milestone just by providing elected political ownership to Local Government in Pakistan, the legal remit of each law is limited in scope, excessively deferential to provincial governments, and devoid of any meaningful devolution of financial, political and administrative powers (as required by Article 140-A and Article 37). Each provincial law vests provincial governments with overriding authority over all tiers of elected local governments through control over funds, allocation of functions and powers, both municipal and fiscal, and stringent supervision and oversight, including the right of suspension, of elected local governments and office-bearers. Each provincial local government legislation appears to insulate the provincial government against the exercise of any power or authority by elected local governments.

For truly empowered and effective Local Governments across Pakistan's provinces, it is recommended that the existing provincial laws be revised to provide for a fair level of autonomy to Local Governments. Provisions giving arbitrary powers to Provincial Governments, such as those which allow discretionary removal of elected representatives of the LG systems, arbitrary powers of inspection, leaving the affairs of the District Councils to the bureaucracy, and the ability of Provincial Governments to exclude areas from the purview of the Acts among others, should be removed. For truly representative and effective local governments that are able to manage local affairs and address public issues at the grassroots, far more expanded fiscal powers will need to be allocated for elected local governments.

While PTI Government initiated a set of reforms in September 2018, the revised proposals to amend local government laws, at least in Punjab and KP where PTI is in power, have yet to be made public. While Sindh has announced it may not follow any Federal proposals of revising its LG law, its own revision of existing law has not been made public either. Balochistan also shows a familiar reluctance in revising the LG law and in holding

fresh LG elections after the expiry of the term of previous elected local governments in the province.

For effective Local Government across Pakistan, there is indeed a need for a fresh revision of the existing LG laws across Pakistan. While the Constitution recognises the necessity for creating a third tier of governance, political parties in Pakistan must come together to introduce more detailed provisions in the Constitution in order to strengthen local government system in Pakistan. As the Indian experience shows that at independence, Constitution of India mentioned panchayats in the Directive Principles of State Policy (Part IV of the Indian Constitution), which is not mandatory, local governments in India were fundamentally strengthened after the passage of Seventy-third and Seventy-Fourth Amendments in the Indian Constitution in 1992 and 1993. These amendments to the Constitution brought about a fundamental change in the realm of local self-government in India as 73rd and 74th constitutional amendments gave official status to the Panchayati Raj institutions in rural India and Local Administrative bodies in urban areas, respectively.¹¹

In addition to strengthening the Constitutional provisions for giving elected local governments the required sanctity as third tier of democratic governance in Pakistan, local government laws must also be amended to redefine and limit the role of Federal and Provincial Governments in control of elected local governments. Much like developed democracies with active and effective local governments, LG laws in Pakistan should devolve all key municipal functions, such as water supply, Sanitation, education, health, revenue & estate, etc., to the lowest tier of local governments while providing required powers, control and authority as needed to effectively carry out functions of local governance.

Local governments can not be effective without being fiscally empowered. A substantial percentage of funds allocated to the Local Governments via the Provincial Finance Commission Award should be clearly stipulated in law. Criteria for development funds etc. should be spelled out to avoid arbitrary allocations. In addition, local governments must have powers of

11. George Mathew, 2015. Local Government System in India. Background Paper. PILDAT.

taxation. Experts who study institutional reforms, including Dr. Ishrat Husain, Advisor to the Prime Minister on Institutional Reforms and Austerity, and tax expert, Dr. Huzaima Bukhari, believe that effective and meaningful decentralization can also help reform the existing unfair tax system which subjects less-privileged segments of society to oppressive taxation. Fiscal decentralization, as part and parcel of administrative decentralization, can make Pakistan a prosperous country. Experts such as Dr. Ikramul Haq argue that we need to implement Article 140A in letter and spirit and mere existence of local governments, without devolvement of political, administrative and financial power, is not the fulfilment of constitutional command. A council, elected by the residents, must enjoy the right to levy municipal taxes. Decentralization of financial powers requires levy and collection of taxes by local governments for meeting the needs of local residents – including education, health care and social welfare services. Local governments working on the principle of self-governance alone can ensure that revenues are spent exclusively for the benefit of public and not the privileged segments of society alone. They argue that in all successful democratic models, taxes at grassroot level play a critical role. In social democratic countries e.g. Sweden, Norway, Denmark and Finland, the most important feature of fiscal management and delivery of social services is municipal tax. Local governments in Finland in 2018 raised revenues of €41.9 billion [US\$ 47.7 billion] and total tax collection [€121 billion] was 44% of GDP. In Pakistan, total tax collection-both at federal and provincial level-in fiscal year 2017-18 was less than US\$ 40 billion (just 11% of GDP). If a country of 5.5 million people (Finland) can achieve 44% tax-to-GDP level and through municipal taxation can provide free services of health and education, we a nation of 210 million can definitely do much more, provided there is a political will.¹²

Many knowledgeable persons believe that, in many ways, Local Government Ordinances of 2002 primarily drafted by the National Reconstruction Bureau (NRB) and later enacted by the provincial governments provided the best model of Local Governance in Pakistan so far. The system and the law may need several improvements also because of the time lapsed since the laws were

enacted but the political parties and the legislatures may take a look at those laws and improve them to suit the current needs.

Elected local governments must be held publicly accountable, as is expected of Federal and Provincial elected governments. LG laws must include provisions that elected Local Governments should periodically make available Financial Information Reports to the public and be accountable to citizens. For local governments to be accessible to people at the grassroots level, the requirements of ease of access, transparency and accountability must also be built into the revised LG laws.

12. Dailytimes.com.pk. Website. Pro-People Agenda. Dr. Ikramul Haq. March 3, 2019. <https://dailytimes.com.pk/360674/pro-people-agenda/> (accessed March 05, 2019).

Consolidating
Democracy
in Pakistan

تعمیر

DAI-CDIP

Office: 3rd Floor, Beverly Center, Blue Area, Islamabad.