

IMPORTANCE OF DEVOLUTION: A CASE STUDY OF PUNJAB LOCAL GOVERNMENT ACT, 2019

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ABSTRACT

Local governments are one of the key components of government structure and provide an organized system for administration at the grass-root level. Stable local governments are the need of hour and should be vocalized in the policy arena. Literature on local government institutions in Pakistan mostly focused on their performance shortcomings for effective service delivery. Fewer efforts have been made to assess the legislation that provides the power and functioning framework to the local government institutions. This study tries to find out whether the Punjab Local Government Act, 2019 has the potential to devolve the authority in the true sense or otherwise. It highlights the importance to take the first step right apropos of devolution of powers at the grass-root level. Conclusions have been drawn by studying legislation, interviewing experts and local representatives about their expectations and assessment of the Punjab Local Government Act, 2019. It may be deduced on the basis of this research that Punjab Local Government Act, 2019 is decentralized in terms of administrative structure but remains highly centralized in terms of administrative autonomy. Specific allocation of funds is a step forward, but its implementation is necessary for growth and development at the local level. However, the operational mechanism is very complicated that is likely to cause friction among different departments and tiers of the government. There is a need to reconsider the local governments' legislation for making it nearer to the aspirations of general public. Autonomous local government institutions can induce inclusiveness and cooperation, especially in diversified Pakistan.

Keywords: Local Government, Devolution, Punjab, Pakistan.

INTRODUCTION

Devolution deals with transfer of powers from upper to lower tiers of the government. It means the statutory delegation of power from central to local governments for making the mechanism of governance more efficient and responsive to the local needs. For good governance, devolution is the most important and pivotal factor. Efficiency, effectiveness, equity and allowing the marginalized segments of society having a greater say are the important factors which can be attained by devolution. This is because local governments allow local administration to be looked after by locally elected representatives. Such representatives have greater ability to solve the local problems as they do not face any information gap being located near to the people. Hence, local government system tackles and mitigate local problems efficiently.

From Montesquieu and John Locke to Madison, Classical theorists advocate many advantages of decentralized governance. They argue that decentralization stimulate participation, representation, and accountability. It strengthens public policy paradigm and government effectiveness. It ensures representation and accommodation of territorial-based ethnic, linguistic and cultural differences.

Proliferation of decision-making institutions at the local level strengthens public policy making. This process reinvests governance mechanisms by social innovations and flexible experimentation. Power sharing structures and group autonomy is advocated as a solution to conflicts and civil wars as such institutions may turn political opponents into cooperative partners.

This paper analyzes devolution in *The Punjab Local Government Act, 2019*. The Punjab province has been selected due to its economic, cultural and population diversity. Moreover, *The Punjab Local Government Act, 2019* is the most recent comprehensive local government legislation in Pakistan.

METHODOLOGY

The research has been conducted using descriptive, historical and analytical methods of research. The data has been collected through primary sources through interviews, as well as secondary sources e.g., legislation, books, articles and journals.

REVIEW OF LITERATURE

(a) Theoretical perspective of devolution

International organizations and public policy authors have identified importance of devolution and stable local governments through many scientific and systematic findings. Devolution of powers enables local community to access better opportunities and participation in decision making process.

World Bank participation sourcebook (1996) case studies emphasize that it is fundamental that communities have control over decision making, resources, development projects initiatives and planning. It is prudent to devolve the power over administrative, financial, and operational systems. Without the autonomy of the local tier, development projects lack community partnership and often fail. World Bank also advocates that commitment, coordination and cooperation are vital for effective policy implementation. Local governments may not only stimulate commitment, coordination and cooperation but have the potential to enhance inclusiveness and contestability.

Saegaert states that empowerment enables, especially the poor segment, to overcome the barriers which hinder them from accessing new opportunities (Saegaert, 2006). She further extends her argument to advocate for decentralized approaches in order to accommodate marginalized segments in service delivery. It is presumed that participatory and community-based initiatives may help citizens to expand their capabilities for collective action. It may result in major development results such as access to basic needs, better quality of life and reduction in social exclusion and inequality (Gutberlet, 2009).

Empowerment is not a static or stagnant process rather; it is a continuous process. Without devolution, there remains a void in the policy arena. Statutory powers to the local representatives provide them with the opportunity to tackle the problems with innovative and expeditious methods. Narayan and Petesch (2002) argue that communities are considered to be empowered if they participate in decision making, have resources to fulfill unmet needs and have access to information. For significant and fruitful results in development and policy arena, local tier empowerment is a major step forward. Empowerment encompasses participation, capacity building and access to information.

History of public administration is the search for effective tools of administration. In management, local governments have dominated the debate of public administration for scholars like Thomas Dye, Harrold Laswell and Ostrom. They argue that problem solution requires cooperative action and for cooperative action, autonomous local governments are the most important and essential instrument.

Timothy. D. Mead in *"Federalism and state law: Legal factors facilitating and constraining local initiatives"* focuses on legal factors and legislation regarding local governments. The writer dilates that historical development and court cases regarding local governments remained crucial for their empowerment and stability. He further argues that before local officials can be creative, they must have the legal authority to do so and for legal authority, local government legislation is the first step. Without this authority, these institutions are just another cog in the machine of state administration that lacks problem-solving mechanisms, service delivery tools and developmental capabilities. Legal constraints and opportunities thus fashion the circumstances of administration and management.

(b) Potential benefits and apprehensions relating to decentralization

It is a matter of opinion among social scientists and policymakers as to whether power-sharing institutions may enhance political stability or otherwise. Cases of both success and failures of power-sharing institutions can be cited by the proponents of both sides. Usually, reliable and systemic estimates of the effects of different types of institutions on governance is often lacking. Proponents of success argue that regimes which include leaders from rival communities encourage moderate and cooperative behaviour. It is vital to link between the citizens and states. Multiparty parliament and coalition cabinets generate multiple stakeholders in the political system. In these circumstances, community leaders learn to work together to bargain and compromise. With political stakes in the system, politicians accept the legitimacy of the rules of the game hence, they collaborate with their rivals. Constitutional agreements are preserved and conciliation among the public increases in this process.

In psychological perspective, stakeholders feel that their voices count and rules of the game are fair and legitimate. This is a more inclusive kind of decision making and governance.

“Majority rule spells majority dictatorship and civil contention rather than democracy. Democratic regimes should focus on consensus rather than opposition, that includes rather than excludes and that try to maximize the size of ruling majority rather than bare majority” (Pippa Norris, 2008)

Decentralization efforts are identified with the promotion of:

- a) Managerial efficiency
- b) Representative democracy
- c) Qualities of good governance
- d) Stronger public satisfaction
- e) Social tolerance and trust
- f) Decision making closer to community
- g) Policy flexibility
- h) Innovation
- i) Experimentation
- j) Governments responsiveness to local needs.

So, decentralized regimes can infuse democracy in multiethnic and multicultural states.

Proponents against the decentralization argue that this process stimulates social cleavages in the political system. They argue that power sharing deepens ethnic problems rather than ameliorating social identities. Leaders may use populist rhetoric of exploitation. Critics charge that decentralization arrangements are complex, duplicative, and wasteful forms of government. These are slow to respond to major challenges and can originate uneven development and inequality in the region. Some of the major flaws of decentralization are given as follows;

- 1. Community differences
- 2. Partition or even succession
- 3. Breakup of fragile nation states
- 4. Inefficiency
- 5. Increased costs
- 6. Coordination problems
- 7. Another layer of governmental bureaucracy
- 8. Poor service delivery
- 9. Ethnic hatred
- 10. Politics of fear
- 11. Social tensions

On the other hand, centralized governments enhance integration, uniformity, decisiveness, economies of scale and cost efficiency. They have clearer definition of responsibilities. Growth of regional parties can cause political fragmentation. Problems of corruption, clientelist relationships and elite capture can emerge in decentralized governance setup.

Pippa Norris (2008) in his book “Driving Democracy” analyzed the local governments in India and Bangladesh. His arguments are given below as follows:

To understand the impact of decentralized arrangements minutely, we can compare historical developments in India and Bangladesh. Both Countries are bordering states with almost same historical and colonial legacy. This analysis shows that how local governments and power sharing institutions can strengthen and empower the democratic institutions. Power sharing is likely to contribute towards political evolution in countries and most importantly in post-colonial states.

India has a population of over 1.3 billion with an area over 3.2 million square kilometers. Indian society is divided into multiple ethnic, religious, cultural and linguistic identities. About 80% of the population is Hindu with 13% Muslims and less than 5% Sikhs and Christians. Literacy rate is below 60% with significant population living in poverty. Despite the challenges of governing such a vast and diversified society, Indian democratic norms have deepened since independence in 1947. Given the odds pertinent to ethnic violence, the persistence of democracy is a remarkable achievement. India has a two-tier federal setup since independence. Certain degree of autonomy is given to states. India politics is marred with multiparty competition and coalition governments. History of India shows that intercommunal conflicts can be settled with cooperation and conciliation.

On the other hand, **Bangladesh** has a far smaller area and more homogenous ethnic society. The population is 98% Bengali while majority is Muslim with almost 84% of whole population. About 15% Hindu minorities are living in Bangladesh. After independence in 1971, the country has faced political turmoil and violence. Bangladesh faced two presidential assassinations, thirteen head of government, three military coups and 19 failed coup attempts. Bangladesh was under military rule for 15 years after independence. In 1990's, civilian rule was restored with deep rivalry and opposition prevalent between the major parties in the state. Hundreds of people have been killed in last few decades in political violence.

In both these countries degree of decentralization and local government structures present a striking contrast. Since 1993, Indian state has been significantly decentralized into three tier structures. Political decentralization was aimed to solve the problems of poverty and governance. India has 600000 village and town setups of local governments. State election commission oversee the local government elections and finance commission oversee the distribution of state's revenue. This phenomenon of empowered local governments has contributed toward the participation of women and scheduled castes in the political sphere. On the other hand, Bangladesh has always relied on centralized power and control. National parliament is a unicameral body with 300 members. Awami League (AL) and Bangladesh Nationalist party (BNP) remain in a confrontational mode. Distinct regional political parties remained unable to break the hold of major players in national arena. Local governments since independence remained underdeveloped. Major attempts to create political rural base and legitimacy has remained unfruitful. Instead of decentralization, there has been appeals for more recentralization.

Both centralized and decentralized federal systems can be one of the solutions to the governance of the state owing to indigenous factors. However, administrative, fiscal and functional decentralization may stimulate cooperation and coalition among stakeholders.

DOCUMENT ANALYSIS

The Punjab local government Act, 2019 promulgated on May 4th, 2019 is an extensive legislative document. It consists of 8 parts, 39 chapters and 16 schedules. This part of the study tries to highlight important sections of the Act regarding authority, responsibilities and power of local governments.

Section 3 Dissolution of existing local governments (1) All local governments constituted or continued under *The Punjab local government Act, 2013* were dissolved. It was also provided in this section that the government shall constitute succeeding local governments within one year.

This section abrogated all local governments in Punjab with immediate effect which shows the arbitrary culture of administration and management in context of local governments. Sub-section 2 of section 3 clearly states that within one year, succeeding local governments would be formed. This impliedly means that there would be no local government for a whole year.

Administrative powers

Section 6 of the Act directs the local governments to work within provincial framework and not to act in any manner that impedes the executive authority of government. The Act argues that government can issue

policy directions and fix objectives for functioning of local governments. Hence, the local government shall function as may be directed by the government under this Act.

Sub-section 3 of Section 42 binds the head of local government to exercise his powers for observance of general policy or directions of the provincial government.

Section 228 explicitly deals with the power of government to prohibit certain actions of the local governments. Moreover, government may also suspend certain orders and resolutions by local governments.

Section 229 deals with the power of the government to require local governments to take certain actions. It is the duty of the local governments to comply with the directions of government and to take such measures as specified by the government.

Financial Autonomy

In financial matters, Chief Officer (LG&CD) has enormous powers with respect to the head of local government. In case of Punjab local government Act, 2019 the discretion of chief officer may highly impact the decisions and procedures of developmental projects because of him being a principal accounting officer. The Act also states that local development and land use plans should abide by the provincial and regional considerations.

In a federal structure, it seems absurd for the federal government to interfere in the matters of the provincial government as this phenomenon hinders the autonomy of provincial governments. In the same way, local governments should also be autonomous and free from interference from the provincial governments. There should be as little as possible provisions hindering the autonomy of local governments. Chief Officer shall submit every estimate of receipt and expenditure to the government for review. During review government can direct the local government to amend the estimates. **If it fails to observe the directions of government, government can itself amend and certify the estimates.** This shows the tendency of strong and powerful reviewing authority on behalf of government. It can amend the estimates according to its discretion without due respect to the respective local government.

Operational Autonomy

Chapter XXVII of the Act deals with the responsiveness of local governments to citizen needs. Participation of local community is one of the responsibilities of local governments through, consultation, publication of reports and involvement in proceedings. Not less than five percent of the total expenditures shall be allocated to the projects relating to community initiatives. Section 222 clearly states that all orders of the local governments shall be open to inspections by the public. This aspect seems encouraging as it may enhance public trust and cooperation for local governments. It is also worth mentioning that section 62 strengthens participation of the community. Meetings of council, committee and sub-committee shall be open to the public. Except for the confidential matters and disorderly conduct of a person. Public participation is a key for effective mechanism of developmental projects and this provision empowers participation of local community.

Chapter XXIX deals with the oversight by the government and states that supervision and general control over the local governments shall be exercised by the government. Whereas, chapter XXXII deals with the planning, development and land use. Within the six months of assumption of office, head of local government will prepare a local development plan. It will contain objectives, strategies and resource plan for a specific period. Head of local government will call for proposals from the representatives of local government for construction and works. Local development plan presented by head of local government will be approved by simple majority. In case local development plan is not prepared by the local government, the government shall prepare such plan and certify it in prescribed manner. Evaluation and approval of new works will be done through local planning board and should follow the planning guidelines. Local development and land use plans should abide by the provincial and regional considerations.

Experts and stake holder's assessment and aspirations

Interviews from experts in relevant field, local representatives of past or current local governments and general public were conducted for this study to assess their viewpoint of PLGA, 2019. Experts for interviews were Mr. Naeem Ahmed (Deputy Director Election Commission of Pakistan) local government branch,

Mr. Tahir Saleem (Deputy Director LG&CD) and Mr. Zain-ul-Abidin (Senior Executive International Rescue Committee). They talked candidly about the local government structure and PLGA, 2019.

Local representatives included Mr. Zia-ul-Islam (Councilor Karor), Mr. Abdul Rauf (Vice chairman Layyah), Jamil Ahmed (Chairman Layyah), Rizwan Khan (Councilor Muzaffargarh), Ghulam Abbas (Councilor Narowal).

General public interviewee included Haroon Hussain, Mr. Amir, Saqib Hayat, Rana Fahad, Talha Cheema and some others.

Major points raised by the stakeholders in terms of administrative, financial and operational autonomy are elaborated as follows;

Administrative Power

Most of the experts and stake holders argued that PLGA 2019 is highly centralized and control of other branches of government in local government is likely to increase.

Table 1: Administrative powers Assessment by Stakeholders

Stakeholders	Major Points
Experts	<ol style="list-style-type: none"> 1. Highly centralized in terms of administrative powers. 2. Decentralized in terms of administrative structure. 3. Lack of administrative autonomy is likely to increase interference from other government branches. 4. Undue control and supervision of provincial governments.
Local representatives	<ol style="list-style-type: none"> 1. Discretion and interference from provincial government and local government department stifles local governments mechanism. 2. Arbitrary dissolution of local governments and lack of confidence. 3. Bureaucratic control is likely to increase.
General Public	<ol style="list-style-type: none"> 1. Very rigid and centralized legislation in terms of decentralization. 2. Non- party elections are against the democratic norms. 3. Representatives are likely to work as political agents for government rather than effective service delivery.

Financial Autonomy

Most of the stakeholders and experts argued that specific allocation of funds is a step forward but there is need for more resources and spending autonomy for local governments.

Table 2: Financial powers assessment by stakeholders.

Stakeholders	Major Points
Experts	<ol style="list-style-type: none"> 1. Funds from provincial governments may likely to be the major source of finance for local government. 2. 28% allocation of funds from provincial allocable fund is a step forward. 3. Revenue capacity of local governments needs to be improved further.
Local Representatives	<ol style="list-style-type: none"> 1. Delay of funds is the major problem for effective local governments. 2. Expenditures exceeds resources and revenue generation capacity is not stable. 3. Spending autonomy has been curtailed under this legislation.
General Public	<ol style="list-style-type: none"> 1. Lesser funds availability may likely to prevail. 2. Revenue generation capacity is lacking under this legislation. 3. No method to mitigate disparities among districts. Unequal distribution of funds may likely to continue.

Operational Autonomy

Functioning of local governments under PLGA, 2019 is likely to cause problems due to new structure, bureaucratic control, and supervision of provincial governments.

Table 3: Operational autonomy assessment by Stakeholders

Stakeholders	Major Points
Experts	<ol style="list-style-type: none"> 1. Overlapping of local representatives and bureaucracy that has a challenge of either making consensus or a friction between the two. 2. Functioning mechanism is not stable and efficient. 3. Very complex and cumbersome operational structure.
Local representatives	<ol style="list-style-type: none"> 1. Local department control over finances is likely to create operational problems. 2. Project appraisal and approval mechanism is likely to face delays and hurdles. 3. Parliamentarians' interference is problematic for functioning.
General Public	<ol style="list-style-type: none"> 1. Implementation of development projects is unlikely to improve under PLGA, 2019. 2. Discretion of provincial governments in projects approval is likely to cause problems. 3. Accountability of local representatives is likely to increase under the new legislation.

Supreme Court Ruling (Key Incident)

Supreme Court of Pakistan three-member bench under the Chief Justice Gulzar Ahmed in its short order Of Constitutional petition no.48 of 2019 and Constitutional petition No. 7 of 2020 declared on 25th March restored the local governments in Punjab. Paragraph 2 of the order declares section 3 of *The Punjab Local Government Act, 2019* as ultra vires to the constitution. All local governments existing in Punjab prior to the promulgation of the Act were restored by the court to complete their term of office in accordance with the law. This court ruling will empower the local governments in future and mitigate the despotic dissolutions in future.

MAJOR FINDINGS

Major findings in policy envisaged under PLGA, 2019 are as follows:

- a) The Act provides more decentralization in administrative structure but less decentralization in administrative autonomy;
- b) The Act seems to provide undue administrative control of Provincial government;
- c) The Act does not envisage any voice or say of local representatives in government departments.
- d) Role of bureaucracy has been increased in local self-governance in the Act.
- e) Allocation of specific amount from provincial allocable fund that is **28%** is a step forward but the problem of delay in funds may likely to prevail in new dispensation.
- f) Project appraisal and approval mechanism is very complicated and cumbersome in the new system.
- g) Spending autonomy has been curtailed under PLGA, 2019.
- h) Elections on non-party basis are against the norms of democracy.
- i) Lower level of women representation which is likely to be less than 20% is provided in the act.
- j) Lower representation of youth, peasants and workers has been envisaged.
- k) More supervision and control of provincial government and bureaucracy may be discouraging for self-reliant local governments.
- l) Administrative and functional autonomy seems to have been curtailed significantly in the Act.

WAY FORWARD

1. Instead of federal voluntary forces, Pakistan should focus on empowered and stable local government structure. This phenomenon will induce participation, cooperation and collaboration at a broad level.

2. Women empowerment and participation is one of the main drivers for growth and development. Almost less than 20% of women representation is an alarming sign for the nation. Women seats should be increased in local government institutions.
3. In Pakistan, expenditures exceed revenue at all levels of governments. Local government institutions are also not an exception to it. At least, 40% of provincial allocable fund should be allocated to local governments for effective mechanism and service delivery. Local governments should also be empowered in terms of revenue generation capacity.
4. Rural urban divide for administration and local governments is an archaic concept and should be done away with.
5. Instead of complications and undue checks on operational structure. The local government structure should be expeditious and efficient for problem solving.
6. Dispensing with the tier of district is a novel idea for delegation of powers to the grass root level but this might be a highly challenging administrative aspect. Hence, the concept seems over ambitious. There would now be 140 administrative units in the Punjab than 36 districts. This though might make the mechanism of governance effective but require huge chunk of money and administrative hierarchy at tehsil level.
7. Discretion of provincial government in terms of approval of projects, financial allocation and operational checks should be curtailed.
8. Financial powers for projects should be delegated to heads of local governments rather than chief officers of local government department.
9. Role of bureaucracy should be for assistance and cooperation and not for supervision and control of elected representatives.
10. Active role of civil society and experts in local governments should be ensured through legislation.

CONCLUSION

Punjab local government Act, 2019 articulated a new local government structure. The policy for new local governments is yet on paper and waits its implementation. Administrative structure has been made more decentralized by shifting the institutional setup from districts to tehsils. On the other hand, the powers of local representatives have been curtailed to a greater extent. It is more of a centralized local government setup rather than autonomous and empowered. The only noble thing in progression towards financial autonomy through specific allocation of 28% funds at local tier. Most of the previous problems at local level are likely to prevail under this legislation if a significant overhauling is not done timely in the legislation.

The culture of power sharing and devolution needs to be vocalized. For this purpose, the first and most important step is the autonomous local bodies. They should have power and authority to initiate and implement projects without interference from other levels of government. All indicators of good governance are likely to improve with empowered and stable local governments. Political system should base upon absolute majority rather than bare majority. Hence, it is better than the system tries to find other formulae than first past the post system (FPTP). Participation and consensus, achieved through the electoral system, among different stakeholders might stimulate growth and development in local, as well as, national perspective.

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