

# **PUNJAB LOCAL GOVERNMENT ACT 2013**

**(A CRITICAL ANALYSIS)**

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## (A CRITICAL ANALYSIS)

### Theoretical Context:

Local government is an integral part of the democratic structure of governance. Being closer to the citizens and dealing with the essential public services, local governance is highly debated and earnestly advocated in contemporary times. Representative of peoples' needs and aspirations, as a third tier of governance, local government holds tremendous potential for civic comforts, environmental conservation, social justice and economic development. One can hardly find any progressive or progressing state in the world that is either not evolving or thriving upon an efficient and autonomous system of devolved governance. Not interchangeable though, notions like 'deconcentration', 'devolution' and 'delegation' hinge around the modalities and practices of decentralized system of governance.

Richard Bird (1994) defines decentralization as "the degree of independent decision making exercised at the local level." In theory, decentralization is sometimes classified into three forms of governance i.e. delegation, deconcentration and devolution (Cheema

and Rodinelli 1983). If the dispensation of services is removed from the centre and delivered through representatives of the central government, this is termed as 'deconcentration' (Smith 1967), while 'delegation' stands for a case, where local government functions as an agent of the federal government. It is, however, transference of financial and administrative powers and autonomy from the centre to the local levels that is known as 'devolution', only if genuinely in place and functioning properly. On the other hand, if certain roles, functions and services, normally performed by bureaucrats, are rolled down to the regional or local axis, it will only be termed as delegation of authority and responsibilities, not a perfect devolution for independent planning, policy formulation and implementation on ground.

Decentralization comes only if political authority is also devolved to the third tier of governance (Ibid). However, the term decentralization is used more or less synonymously with 'devolution implying political as well as fiscal autonomy'. Elected and held accountable to the public, political representatives are mandated to generate funds by levying taxes, plan, endorse and monitor development initiatives and functions under a devolved system of governance by law. Nevertheless, the depth and scale of decentralization is determined by the elements of fiscal authority, autonomy and representation. Therefore peoples' writ in decisions making, accountability, transparency, access to information, transference of authority and its' statutory status as well the quality and efficiency in delivery of services are the most significant aspects to be scrutinized while analyzing the vigour and originality of a decentralized system in a state (Page and Goldsmith 1987, in Bangali 2002).

### **Perspectives on Local Government in Pakistan:**

A democratic system, removed from its citizens and oblivious of their vital goods and services, rarely serves its' purpose in letter and spirits. Therefore the local government is believed to be the bed rock of a democratic polity that sincerely takes care of its' citizens, men and women, young and old, able and infirm, prosperous or under-bread as its' fundamental responsibility.

Inevitable for social development, vital for citizens' day to day life, yet this tier of governance suffered from centralized control or outright abeyance in Pakistan since its inception. Political ambivalence and financial constricts marked its inefficiency and maneuverability, whatever regime it was put in place in and in whatever form. Stamped by nomenclature like Basic Democracies in 1960s, Municipalities or Local Bodies in 1980s and Local Governments in 2000s, the system was mainly exploited by all military and authoritarian regimes to serve their ulterior motives. Derogating political parties, undermining democratic processes, engineering new constituencies, manufacturing consent and constituting legitimacy remained central to the local bodies installed during non-democratic and extra-constitutional regimes. In most cases, the flesh and blood of the dictators-led local governance was put-up on the carcasses of the colonial apparatuses, by and large, serving the similar purposes with self-serving ends.

Injected by massive sums of foreign capital in the name of fiscal, institutional and technical support, 'Devolution Plan – 2002' was an outcome of Local Government Ordinance 2001. Though much better and far more representative and devolved in terms of fiscal and administrative authorities and services, the system, devoid of constitutional cover, also failed to sustain once the military government was thrown out of power. Dissolving Magistracy and boiling down the offices of the Deputy Commissioner into District Coordination Office (DCO) and Superintendent Police into the District Police Officer (DPO) and putting up several Executive and Deputy District Officers (EDOs and DDOs) in various sectors like education, health, revenues and others number of functions were made subservient to the District Heads i.e. Nazims and Naib Nazims (literally mans Administrator and Deputy Administrator). Modern in outlook and organization, even this relatively better system could not work for due to lack of sincerity, illegitimacy of the regime and piece meal pattern of implementation. District bureaucracy also made tooth and nail effort to make the plan fail and has perhaps a role in its failure. Non-cooperation and non-participation in all boards and committees, their planning and development initiatives, possessive attitude and sitting on files approaching their tables, were the chief tactics and mischief of the colonial replica. A mismatch between the centralized authoritarian government operative at the centre and

decentralized governance at the district level, also impinged negatively on the substance and efficiency of the Local Government Plan 2002.

Knowledgeable of the fact that military governments have frequently exploited this vital tier of governance, the significance and necessity of local government cannot be denied. Compelled by public desires and realizing its inevitability, political governments always had had an urge to amend and adapt a local government system but it is only in the recent times that the idea is somehow being forged to an acceptable form. It is now internationally recognized that, denying local government tantamounts to the denial of basic human rights to the citizens.

Article-37 of the Constitution of Pakistan (CoP) pledges to “decentralize the government administration to expeditiously dispose its business for public convenience and requirements’ and Article-32 of the Constitution dictates the state to “encourage local government institutions composed of elected representatives of the area concerned having special representation of peasants, workers and women” as the principle of policy. Contrary to the centrist practices, it is also demanded from the “provincial governments to decentralize its administration under article 10-A,” of the Constitution.

Further on Article 140-A of the Constitution, as amended and incorporated in LG Ordinance 2001, makes it obligatory to the provincial governments stating that “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”. Similarly, Article-10 of the repeatedly referred Charter of Democracy (CoD) agreed and signed between the two leading political parties also emphasized its political modality in the following words: “Local bodies’ elections will be held on a party basis ... and constitutional protection will be given to the local bodies to make them autonomous and answerable to their respective assemblies as well as to the people through regular courts of law.” One of the most promising constitutional provisions i.e. 18<sup>th</sup> Constitutional Amendment (2010), authorizes provinces to legislate and come up with a system of Local Government suitable to their local conditions. Part of the compulsion was re-emphasized in April 2012 by the Supreme Court of Pakistan commanding provinces to hold local elections, as enshrined and authorized by the said

amendment and the Constitution of the country. Earlier this year the Supreme Court of Pakistan advised the incumbent government, time and again, to legislate and come up with a local system of governance in each province.

Towards the Punjab Local Government Act 2013:

*The purpose of constituting LGs is “to establish an elected local government system to devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments; to promote good governance, effective delivery of services and transparent decision making through institutionalized participation of the people at local level; and, to deal with ancillary matters”*  
(Preamble – PLGA 2013)

Much delayed and deferred more than once during the former governmental set up, finally the Government of Punjab came up with Punjab Local Government Act 2013 in August 2013, here after referred as PLGA - 2013. Other provincial Governments i.e. Balochistan, Sindh and Khyber Pakhtunehwah have also ascended or are at the verge of ascending to the respective Bill (2013), in the ongoing couple of months. However, it is the PLGA 2013 that is the subject of our critical inquiry and in-depth analysis here.

Besides looking at its' structure and the system of representation, how genuine is the intent and orchestra of the proposed plan, is what we are going to thoroughly review in this paper. How, what, where, when and how much an action, authority, representation or responsibility, is meant to be dispensed off, shall also be examined from peoples' as well as technical and legal perspectives. What processes does it lay down for citizens' inclusion, regarding caste, class, gender, religion, age, space and specific needs, for an extensive citizen's participation, also remains our main subject of concern.

As we know, accountability and transparency cannot not be ensured without a suitable mechanism for citizens to ask questions, seek information, register their demands and request enquiries, should a citizen or a collection of citizens desires so. Therefore, exploring such means and mechanism in the would-be system of devolved governance is also important. How clear and unambiguous is the distribution of powers and fiscal authority in various areas that help delivering public goods also demand a fair assessment to measure the degree of devolution.

The PLGA 2013 was adopted not only in the absence of the opposition parties rather defeating almost all the proposals of the entire opposition. One can say at the outset that the manner in which the Bill was framed and now approved is a disservice to the very spirits of democracy by the democratically elected parliamentarians. Instead of welcoming debate and criticism, to draw a broad-based consensus, the ruling political party in the province rushed to unilaterally approve the bill. Under the situation, it is highly unlikely that any lawmaking under the said Act will ply on smoothly or benefit the very people for whom this entire exercise of local government legislation and the would be elections shall be carried out. Provisions such as holding elections on non-party basis, placing district health and education authorities under provincial control and bestowing excessive powers to the provincial government to suspend local mayors and chairmen are designed to hold on to the levers of power and do not let go any policy or implicative powers.

A four year term of Local Governments has been fixed and respective provincial government is authorized to periodically audit its income and expenses After the local government elections in near future, Metropolitan Corporation and Municipal Corporation will succeed the rights, liabilities and assets of City District Government (CDG), Town and Tehsils set up under LG Ordinance 2001 and likewise Union Councils (UCs) will succeed the rights, liabilities and assets of Union Administration. The titles of District and Tehsil Nazims and Naib Nazims will stand obsolete and be replaced by the Mayor and Deputy Mayor while Union Naizims and Naib Nazims by Chairmen and Vice-Chairmen.

In the arena of Municipality and Corporation, the entry requirements, salary structure and other incentives, though the Act declares it to be brought under civil services, are usually too poor too unattractive to draw efficient employees. At present, their comprehension of development planning, policy issues, management and capacity for service delivery and other requisite skills are seldom admired. Eventually district management, conventionally known as DMG group, reigns supreme over the local services cadre. Ironically, the Act seems is going to strengthen it further at the cost of the powers of elected representatives.

“The Government may, although, emphasizes the subject Act, “set up institutions or make other arrangements as may be necessary for pre-service and in-service training of the functionaries of the local councils...and other interested agencies; the training of members and chairmen of local councils; organize conferences and seminars on Local Government and related subjects; and undertake research in local government and allied subjects independently or in collaboration with the universities or research institutions”. But hardly any resources are either indicated or readily vested at the hands of Local Government to materialize opportunity. Obviously, the chances of a-prior or on job improvement sound bleak.

Political and Electoral Processes: Issues and Concerns:

When and how local government elections will be held is yet not clear. Extrapolating from certain statements, media reports assume the elections to be held sometimes in December this year or January next year. But one thing is now clearer, that the Punjab Government is going to hold LG elections on non-party basis. Proposals vehemently extended by opposition parties - Pakistan Peoples Party (PPP) and Pakistan Tehreek-e-Insaf (PTI) to hold elections on party basis, were turned down. So much so the opposition parties quit the assembly session as a token of protest but the Bill went through, anyway. Interestingly enough, 13 amendment proposals extended by a group of treasury benches were also defeated<sup>i</sup>. By and large Civil Society of the province also thinks that LG elections be held on party basis to further the democratic process and



enabling citizen to make informed choices. The element of party based-elections was part of the draft Bill 2012 but the clause was removed later.

Save, affixing a few things here and there, that we shall further go into details hereunder, over all structure and substance of the PLG Act 2013 has been promulgated upon the template of 1979 Local Bodies Ordinance – a highly centralized system of local governance which hardly moves beyond a certain degree of de-concentration or delegation at max.

Presenting its report the Special Committee on Local Government presented the key features of the would be Local Government as under..."The delimitations of Union Councils could be done wherever it seemed necessary...The local government's union council to comprise of a directly elected chairman, vice-chairman, six general members, two female members on reserve seats and one peasant member in the rural union council or one worker member in urban union council on a reserve seat. One youth member and one non-Muslim member on reserved seat where at least 200 non-Muslim voters were registered were also suggested. The 'district council' would consist of all the chairmen of the union councils and shall additionally include indirectly elected individuals (on reserve seats) by the chairman and the members of the rural union councils present and voting. 15 female members, one technocrat, a youth member and five non-Muslim members would also be included in the council. Metropolitan Corporations shall consist of all the chairmen of union councils in the district and shall include indirectly elected (on reserve seats) by the chairman and the members of the rural union councils present and by voting. 25 females, five workers, three technocrat, two youngsters and 10 non-Muslim members would also be included. Municipal Corporations would consist of all the chairmen of union councils in the area and shall include indirectly elected (on reserve seats) by the chairman and the members of the rural union councils present and by voting. Two worker members, two technocrat members, one youth member and five non-Muslim members would also be included.<sup>ii</sup>"

Political Parties (mainly sitting on the opposition benches) strongly believe that the new set up does not empower, the elected representatives at the local level. They claim that, “financial and administrative powers of the local government rest with the Punjab government whereas the functions of local mayors or chairmen will be restricted to removal of encroachment, construction of streets and nullahs and controlling sanitary workers” PPP, Jamat-e-Islami and PTI even challenged the law in the Act in the court of law. Arguing, how the new law violates Article 62, 63, the petitioner’s<sup>1</sup> lawyer said that, “the new law also ignored the provisions of Articles 62 and 63 of the Constitution, which detail the qualification and disqualification criteria for members of parliament. He said that this was a violation of fundamental rights and democratic norms and asked the court to declare the law to be unconstitutional”. He further said, “it (the law) contained several questionable provisions (including) reducing the number of women representatives, allowing non-elected government employees control of financial matters, giving the chief minister powers to interfere in local governments, and conducting party-less elections”<sup>iii</sup>.

Criticizing the law, opposition politicians argue that all the powers of removing local representatives rest at the hands of the chief minister. The power by some of the critics in opposition benches are being termed as the like of 58(2)B, where the president had an authority to dismiss the elected prime minister<sup>iv</sup>. Even the appointment of health and education authorities is vests with the provincial chief. Contrary to the provision of the CoP (Article 18) Election Commission is responsible to hold elections but the law seems delegating that powers to the provincial government. Further the opposition representatives believe that it is a violation of the Article 140-A of the CoP which transfers political, administrative and financial controls to the local authorities. Further weakening the Local Governments, they argue, planning, community development, literacy, law, information technology and taxation authorities have been transferred to the provincial governments<sup>v</sup>. In that case terming it devolved democracy will fly back in the face of democracy itself.

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<sup>1</sup> Rizwan Gul of PTI

According to the Secretary Local Government, Punjab is following the example of Khyber Pakhtunkhwa which takes good aspects of both the 1979 and 2001 Local Governance Systems. Nevertheless, a deeper look suggests that in certain instances, it is worse than the one installed by decades old dictatorial era. If at all, it is quite quite 'limited' or in other words 'controlled' plan for devolution. Opposition benches even dub it to be the colonial replica of 1861. The new Local Government's plan, however, retains certain schedules of the Local Government Ordinance 2001, including select details of implementation.

The clause mandatory under Article 33, that "every member, within thirty days of the first meeting of the Local Council held after his election shall be notified to file a declaration of his assets and liabilities before such and such authority and in such and such form and manner as may be prescribed," sounds great but clear mechanism for check and balance is not laid down. Under what powers and how the Election Commission will make it a binding remains questionable. How will the people of the area, a voter or a citizen be able to petition for the declaration of assets or a misconduct or report overspending is also not delineated. Citizens' disempowerment, inaccessibility to the information and inability to hold a public representative accountable is as difficult as it is in other tiers of governance. Holding inquiry about the 'misconduct' including bribery, corruption and misappropriation or willful diversion of funds of the local council or any attempt of misappropriation is almost impossible without setting forth a systematic institutional mechanism, particularly for the citizens and or affectees. The cases of inquiry risk becoming more a political controversy than of misappropriating funds. It asks for a clear and transparent judicial system to put in place at the local level.

#### Administrative Structure and System:

In terms of role and designation, what is substantially changed is the would be Chairmen, Vice Chairmen, Mayors and Deputy Mayors heading the Municipal Corporations, Municipal Committees, Councils and Metropolitan Corporations instead of Nazims and Naib Nazims as was the case with the former structure of local governance.

Abolishing the merger, rural-urban divide, has also been introduced that might invite discomfort, confusion even opponents' litigation in some of the cases as the towns and urbanities are rapidly expanding, though haphazardly, and various settlements increasingly see themselves as no more rural. Discrimination in terms of development schemes and implementation is feared to become a structural outcome. Ignoring the changing demographic structures 'Zila' is still defined as "a revenue district as notified under the Punjab Land Revenue Act (XVII of 1967) excluding urban areas".

Precisely, the Act determines the composition of rural and urban councils, as a "Union Council for each Union, a Zila Council for each Zila; a Municipal Committee for each Municipality, a Municipal Corporation for each city, and a Metropolitan Corporation for each Metropolis and there is a provision that the Government may, by notification, divide any district into rural and urban area and delimit the jurisdiction of local council. Constitutionally speaking the powers lie with the election commission, not with the provincial government.

The Government may, in the absence of broad based political consensus, face difficulties in notifying or de-notifying the boundaries of a Local Council as Union Council, a Municipal Corporation, Municipal Committee, or a Metropolis Corporation. Not entirely the case but there are the chances of political maneuvering and influences to serve party interests, strongholds of one or the other political parties or traditional constituencies of a feudal lord or some local influential. Demarcation of Local Councils will rarely be based on population, as should be the case, particularly when all political parties are not at one page.

In case of revenue, in certain instances, it might become a serious problem of declaring or dismissing an area to be or not to be a Local Council, as the said Act has readily been qualified in Chapter II, The Constitution of Local Councils under the Clause 3, 4 and 6. By notification, "the Government may, as prescribed by law, after inviting public objections and suggestions, alter the limits of a local area and declare that any area shall cease to be a Union Council, District Council, Municipal Committee or Municipal Corporation". And "Any two or more adjoining local governments within a District may,

after inviting public objections through a resolution passed by two-third majority of the total membership of each of the local governments, make a proposal to the Government for a change in their respective boundaries subject to the condition that no revenue estate shall be divided and the size of population in the relevant local area shall, as far as possible, be close to the average population of similar local areas in the District.” The clause seems avoiding to draw a political consensus while population clause, is very much likely to be superseded in practice.

In the same context, Clause 7 states that “the Government may, by notification in the official Gazette, divide a local government into two or more local governments or reconstitute two or more local governments as one local government or alter the limits of a local government and may specify in the notification the consequences which shall ensue upon the publication of such notification. Subsequently, it also states that when, as a result of such division or reconstitution, any new local government is constituted, in accordance with the provisions of this Act in the manner specified in the notification: (a) the existing members of any local government so divided or reconstituted shall become the members of such local government as the Government may, by notification, specify as if each such member had been elected to that local government; and (b) such local government shall, to the extent and in the manner specified in the notification, be the successor of the local government so divided or reconstituted.”

Same is the case for Union Councils and Wards where the Act states in clause 8 for Delimitation of Union Councils; “(1) Subject to subsection (2), a Union Council shall be an area comprising one or more revenue estates or in the case of an area where revision of settlement under the law has not been taken, one or more census villages, notified as such by the Government. (2) As far as possible: (a) the area of a Union Council shall be a territorial unity; (b) the population of the Union Councils in a District shall be uniform; (c) the boundaries of a Union Council shall not cross the limits of a Revenue Sub-Division in a District; and (d) the area of a Union Council shall consist of a whole number of patwar circles, or a patwar circle may contain a number of Union Councils.” And for Delimitation of wards clause 9, “(1) The Government shall, in the

prescribed manner, delimit wards in Union Councils, Municipal Committees, Municipal Corporations and the Metropolitan Corporation. (2) For purposes of delimitation of an urban area, a ward shall, as far as possible, consist of a census block or adjoining census blocks. (3) For the purpose of delimitation of a Union Council, a ward shall, as far as possible, consist of a whole or part of a village, a census block or combination of adjoining villages or census blocks.”

In the Local Government Ordinance 2001, there were some officially defined participatory spaces like Citizens’ Community Boards (CCBs), Masalehati Anjuman (conciliatory committees) and local peace committees, where citizens had the mechanisms to participate in the decision making processes and make the official decisions responsive to people’s development needs. However under the PLGA 2013, these participatory spaces are either restricted or their scope has been highly truncated.

In that reference, given the stand-off and political expediency among three leading political parties Peoples Party, Pakistan Therik-e-Insaf and Muslim League, the demarcation and re-demarcation will remain controversial even blurred. The said powers are readily provided by the law, though the technical justifications is already outlined but the decisions, one has reason to afraid, will be done on the basis of political interests and preferences. Every province has drafted the local government law to suit its own political considerations. The Sindh Assembly witnessed the same uproar, as was experienced in the PA, when the Sindh Local Government Act, 2013 was passed, ignoring the concerns of the opposition. Two provinces are holding party-based elections while the largest province Punjab is going for non-party elections. Government of each party incumbent in the province will bend upon dismantling and manufacturing constituencies suiting to their voting probabilities and chances of success. Feudal lords will be further keen on it in rural areas.

The authority of Deputy Commissioner, according to the law, carries sufficient weight in case of disputes, arbitration and the appointment of Secretary, as is hinted in the following words, “provided further that in case the electoral unit...falls within the limits of

more than two Councils and...more than fifty percent of the population there does not fall within any single Council.... In case of any dispute in this regard the decision of the Deputy Commissioner of the District shall be final". It also states, "There shall be appointed by Government, a Secretary for each Council and he shall perform such functions and exercise such powers as may be prescribed." In case of the provision of transferring Local Council funds to another, there are very many chances of demographic misrepresentation and ceasing one and installing another Council for political expediency and bureaucratic discretion or financial gains. Besides this, it will also influence General Members of the Councils and the corresponding electoral units and representation as detailed under sub-clauses titled as, "Representation of General Members" the way it has been prescribed for Unions, Municipalities and Metropolis Corporations.

To maintain centralized control, the Local Government Boards constituted under Punjab Local Government Ordinance 1979 are still allowed to administer offices and officials of the Local Council Service. Restoration of the out of vogue colonial replicas of 'Commissioner' and 'Deputy Commissioner' offices subservient to the Secretary and Chief Secretary is another sign of maintaining bureaucratic control upon the elected representatives.

The process of making sarpanches as members of the Local Councils is opaque and undemocratic. Elected members ratio gets even thinner in other tiers of Local Councils. Say, in a Local Council, the Government shall have an authority to nominate government officials as its members. How many of them are going to be the Civil Servants is however not clear. The very act conflicts with the Section 27 (2-d) of the same Bill that disqualifies any government official to become the member of a Local Council (Intikhab Hanif 2012). Eventually and evidently, very limited administrative power shall remain in the hands of the Municipals and the Metropolises' elected representatives. Not stopping here the Rural Councils are required to submit their regular progress reports of the implementation of the development projects to the Planning and Development Departments. The idea of independent planning and development receives a big blow here. Auditor General and Public Accounts

Committee, who in turn are answerable to the Chief Minister, are authorized to conduct periodical audits of the respective Local Government, severely cutting down the provincial authorities of the Local Governments.

Contrary to the spirit of local democracy and autonomy the Government retains the suspension or dissolutions of a Councilor with itself. "Government may, by notification, suspend a local council, chairman, mayor or deputy mayor, if there are reasons to believe the local councilor is unable to administer its' affairs, exceeds or abuses power, fails to discharge his duties" etc. "While council ceases holding offices, all the functions shall be performed by such person or authority as government may appoint in this behalf. In not cleared from an enquiry, the Government shall hold fresh elections within three months from the date of dissolutions and so on.

Under the situation drawn above, the Government may plot cases on the ground of political grievances against an individual or a party while the Government decisions are already described to be unchallengeable and final. Civil servants are obviously going to be the instrument of exercising such powers who rarely associate themselves to the people of the area or its' development concerns, given their conventional bureaucratic arrogance. Rapidly transferred from place to place their term in a particular office hardly exceeds a couple of years on average.

In Kaiser Bangali's views, being large centers of population and complex in structure, urban centers ask for more sophisticated governing systems than towns and municipalities. The towns could be demarcated as the central units of urban local governments while municipalities could be formed through agglomerates of towns formed into municipalities. Even larger settlements could be huddled together to form metropolises, giving way to the federating governing structures. Towns being the extension of rural society and economy and functioning as the hub of agriculture produce, marketing and exchange could be made the part of Union Councils. Smaller municipalities, currently known as committees could be awarded the status of Union Councils. The present confusion and conglomeration of Panchayats, Union Councils,



Towns, Committees and corporations could be simplified for administrative, political and electoral convenience.

### Financial Management, Accountability and Problems:

Financial autonomy is the litmus test for the degree of devolution and autonomy of collecting taxes, planning development and independently managing the affairs of local needs and services on ground. The Act 2013 appears to retain almost all such authorities with herself. Looking through clause 119 (Chapter XVI), which states, The Government shall appoint a Provincial Local Government Commission which shall consist of persons of integrity and good track record of public service.,” one can already infer how far the Local Governance is going to be independent in managing its finances.

The Board shall “consist of a chairman and not less than three or more than five members to be appointed by the Government. It also says, “The Secretary, Local Government and Community Development Department shall be the Secretary of the Commission. shall (Article 119, Sub-section 3) perform the functions of, “Planning Commission for local councils; advise and evolve organization and methods, techniques for the benefit of local councils etc. Local Board Fund shall also be constituted under the complete jurisdiction of Punjab Government, surely managing and controlling all the local government servants, development, planning and management too. Councils are supposed to seek approval of their development plans from Planning and Development Department. How far, they will be financially autonomous, is any body’s guess.

The Punjab Local Government Fund is going to be entirely controlled by the Government of Punjab. Although, all Local Councils shall be contributing financially to ply through the affairs of the Board but they are not going to possess any authority over its governance. Revenue, receipts, rents and service charges are there but still it is evident that the Government of Punjab is controlling, dispensing, prioritizing and auditing all funds. Will it gradually transfer autonomy to the respective Councils and how

far is never explained? Financial control, what is clear, thoroughly remains in the hands of Provincial Government.

## Representation Issues of Religious Minorities, Peasants, Workers and Women:

Chapter IV with clauses 13 sub (c) ) of the categorically states, “one non-Muslim member where there are five hundred non-Muslim voters or more registered in the Union Council and clause 14 sub (c) “such non-Muslim members, not exceeding five, as the Government may notify on the basis of population of the non-Muslims in the District Council.”, While taking care of bare minimum, provision for some representation of minorities and marginalized groups seems encouraging and affirmative at least to its face value. However, certain inadequacies still appear to be considered further. For instance the clause 14 (1) states that the “provided the representatives of peasants, workers technocrats, youth and women shall be elected by the directly elected general members of the respective local council in the prescribed manner,” which does not sit comfortably with the democratic process. The requirement of directly elected Councilors electing special representatives might promote favouritism or discrimination. Being mindful of the problems and concerns faced by minorities in every sphere of life, their effective representation and inclusiveness demand further care and consciousness at each step and all areas of concern.

A parallel could be drawn with 8<sup>th</sup> amendment that obliterated the word ‘freely’ in the Objective Resolution to intentionally marginalize the minorities. In addition, there are certain clauses of religious offense that readily exclude religious minorities or minoritized groups from participating in elections. Under the circumstances, it is quite common to bring false charges against a minority person, which will suffice to disenfranchise an already marginalized group (Peter Jackob 2012) <sup>2</sup>. Even one’s religious identity or their theological beliefs could stand objectionable for the larger

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<sup>2</sup> Peter Jackob is human and minority rights activists and it associated with Justice & Peace Commission. His views were sought through phone and email exchange.

community. Pluralism and inclusiveness needs more proactive actions than reservation of seats alone. It is the right of equal citizenry and respect in each area of local governance.

Beyond the reference of 5% minority representation, other provisions rarely refer to the promotion of their culture, festivals, religious ceremonies, language, if any, and crematory, funeral and other needs and functions. Though it assumes and does not specify of providing such services to majority alone but categorical reference to their specific needs is missing, which I personally think is important given the present state of discrimination and other institutions generally being oblivious to the religion, culture, traditions and values of religious minorities.

Contrary to the Article 32 and Article 140-A, women's seats have been reduced to 2 out of 13 i.e. 15% roughly that is drastic reduction from 33% provision in the previous set up of the local governance. In certain districts, it will fall to the 10% of the total membership of the district<sup>vi</sup>. The total reserved seats, however, do approach to half the elected representatives.

National Commission on the Status of Women offered an elaborate analysis and policy recommendations against Devolution Plan 2001. The report incorporates women's representation and empowerment challenges faced in 2005. Part of its' observations are still valid with respect to the proposed Act. On reserved seats women should need to be elected directly, based on the constituencies and the seats be filled through joint electorate. Women's 33% representations should be ensured in all monitoring committees. Women's presence in Council's meeting need to ensured through legislative measures. Gender mainstreaming, missing in the said act, needs to be adopted as an official strategy. Gender budgeting and gender audit should be incorporated as a legislative requirement at the local level. A certain percentage of women-specific projects be made mandatory. Gender discriminatory practices like not to provide them budget, narrowing down women's space to speak during the sessions, not to provide them seating in office, holding Council's meetings without informing women, keeping them away from development planning and budgeting and not to have separate toilets for them need to be legislatively discouraged. And lastly, the results of

constituencies where women were barred to participate in LG elections need to be declared null and void. The proposed bill must elaborate things on women's participation (NCSW 2010).

### **Management of Public Health and Public Education:**

Primary education and basic health, already devolved to the provinces, should have further been devolved to the Local Councils as is the case in developed countries. But in violation to the Article 140-A of the Constitution, it has still been retained by the province and simultaneously there are several overlaps and lack of clarities surrounding the bill.

The law provides, among other things, for the constitution of district education and health authorities. The law was supposed to devolve the two functions to the local government. But, on reading the provisions of the act, it seems the government has opted to merely shift the functions of health and education to these 'authorities' while keeping tight control over them from the provincial capital and not trusting local governments or bodies with oversight and responsibility.

Section 17 of the act states "the government shall, by notification in the official gazette, separately establish and determine the composition of the district education authority..."The members of the authority will either be indirectly elected members from the local government or technocrats nominated by the provincial government. "The technocrat members of an authority shall have expertise in the relevant field and shall be appointed by the government," it reads.In addition: "The government shall appoint the chairman and the vice chairman of an authority and they shall serve during the pleasure of the government".

Though the board might have a nominal majority of indirectly elected local representatives, since the chairman and vice chairman are to be appointed by the province and are answerable to the province — and not to the chairman or mayor or

even the local populace — the locus of control will be with the provincial education department or the chief minister's office.

Responsibility of primary education still falls within the purview of Provincial Government but several areas are yet not clear. The provincial government is to appoint the chief executive officer of the authority: "The government shall, through open competition, appoint the chief executive officer of an authority on such terms and conditions as may be prescribed... ."For clear authorization and efficient delivery of services, it is very important that federal and provincial line agencies and departments should be separated from areas of local governance, in this case health and education, of which the local councils authority has already been truncated (Kaisar Bangali 2002) is an example.

A Local Council may allow such honorarium, allowance or remuneration to its chairman as may be fixed by it with the approval of Government". But as was seen in 2002, general members do ask for honorarium of which The Act is silent. Without honorarium, members rarely take their responsibility seriously and do not participate in meetings for complaints, planning or implementation issues of developments at the local level.

### **Conclusion and Policy Recommendations:**

Keeping in view the detailed analysis drawn here above, one can clearly identify the legacy of colonial governance in the structures, systems and processes of district governance. The traces of multiple acts, attitudes and ordinances through which various military governments have been running the affairs of local governance still seem operative. Much of the system, in practice, can easily be termed either obsolete or inadequate in the context of modern democratic and devolved systems of governance and calls for drastic reforms and radical transformation.

As stated by Kaiser Bangali (2002), I will say, "the architecture of local government in Pakistan appears to be in, what may be described as, a state of institutional anarchy. There exists a multiplicity of over-lapping tiers, hierarchical as well as parallel. Below

the province, there are the District Administration tiers - division<sup>3</sup>, district, tehsil, and - and the LGRDD tiers - district councils, union councils, metropolitan and municipal corporations, and municipal and town committees”. He proposes to simplify and develop the upper and lower tiers and abolish all other tiers to remove confusion and make local government simple and efficient. Although part of the multiplicity of tiers is removed but duplicity of functions and authorities does exist in the said act that needs to be removed.

Mr. Bangali proposes, what I also endorse here, is the model of German local governments. “It guarantees, in his views, “local autonomy and decrees that districts and municipalities must have a parliament, elected by general, direct, free, equal and secret ballots. It guarantees local authorities the right to manage all their own affairs, including financial matters, within the limits set by the law. In principle, the Federation (needs to be) the only guarantor of the institutions of local government..., but has, apart from a few exceptions, no direct relation to individual local authorities. On the other hand, local authorities are constitutional elements of their respective states, which are empowered to regulate local government law. The state (read province) should be able to dissolve local authorities by means of an act of parliament, assign them tasks or take them away”.

He further argues that, “the constitutional guarantee of local autonomy prohibits Federal and State (Provincial) legislation from removing the rights of the local authorities to manage their own affairs or from restricting this right to such an extent that the substance of the autonomy is taken away. Local authorities command certain sovereign rights which cannot be infringed by the Federation or the State (the province). These are: personnel sovereignty, i.e., the right to select, engage, promote and dismiss staff; organizational sovereignty. i.e., the right to organize the administration themselves; planning sovereignty, i.e., the power to organize and shape local territory under their responsibility by drawing up land use and building development plans; legislative sovereignty, i.e., the right to pass laws and by-laws; tax sovereignty, i.e., the right to

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<sup>3</sup> Divisional tier is almost dysfunctional now.

raise taxes; and financial sovereignty, i.e., the right to manage their income and expenditure.”

Following the model suggested by the above quoted author, I will argue that, If we are interested to make local government system representative, autonomous and effective, we need to erect a modern and truly representative structure of governance at local level. A sort of ‘local cabinet’ needs to be constituted at the local level, elected through direct franchise of the Mayor. It could be constituted by the members of ‘district assembly’. Each member of a cabinet could be vested with the responsibility of one local department that could be administratively headed by a secretary taken in from Civil Services. If we are really serious to devolve governance, the local governments must not be created as an extension of the provincial governments rather an autonomous third tier of governance. The provincial governments should exercise its powers only in terms of legislation, regulation, standardization, monitoring and periodical audits. A whole chapter promulgating fundamental principles for local governance needs to be incorporated with a list of subjects falling in the sphere of local governance. Apart from the legislative structure, specific recommendations to the bill are as under:

- “In 2009, the expiration of a legal order led to the suspension of local governments in all provinces and returned local government administration back to the provincial governments. Provinces subsequently passed laws, in fact a single clause amendment to abolish the offices of Nazims and Naib Nazims, to further weakening the prospects of a representative local government. As it was a clear violation of Pakistan’s constitution, petitions against these amendments remained staggering in the corridors of the Supreme Court of Pakistan. (UCLG, 2010)” A constitutional cover to the local government act that talks about devolving political, administrative and financial responsibility and authority to the elected representatives of the local governments is a must to avoid such problems in future.
- Since the accession of 18th amendment that provided much awaited autonomy to the provinces, a practice of doing things independently by the federating units

has crept in. Autonomy does not mean a complete negation of solidarity of the federation and uniformity of laws among the provinces. It actually means transferring more powers to the provinces to tackle in the day to day business promptly and efficiently to minimize and ideally alleviate the miseries of the citizens and provide them fundamental services without delays, usually caused by procedural hiatus. The same is true for establishing local governments, precisely to extend local services to the citizens at their doorstep;

- “The protection of local government rests with the local government commission and the provincial finance commission. However, these institutions do not have adequate capacity to perform this role and so addressing local governance grievances often take place through political channels” (WB, 2010);
- “Local government in the province of Punjab is highly likely to face serious resource constraints as the right to collect taxes lies with the provincial government leaving very limited revenue access to the local governments. Transfers from the provincial governments are usually insufficient to meet their needs. Therefore local governments must be given taxation authority to enjoy financial sovereignty;
- PLG Act 2013 is against the spirit of democracy and citizens’ participation in decision making. It must develop and encourage more that one means of citizens’ participation. There should have been a wider public and political debate in the parliament and involving wider sections of society and make their contributions for improving the existing legislation;
- 33% of the seats in all of the local government related entities such as Boards, Commissions, Committees, etc. must be reserved for women. The minimum number of Women Councillors at each tier must be 3 or more, in proportion to the size and entity by the population of the area. At least 5% seats (minimum 1, woman numerically speaking) be within each category of the reserved seats for non-Muslim citizens, peasants, workers and special or differently abled persons.



Women Councillors be elected directly through through direct elections to be finalized in consultation with women's rights' activists, legal experts and political parties. Besides that political parties must given at least 5% tickets to women to contest elections on the general seats and extend their support and campaigning<sup>4</sup>.

- At least 33% of the development funds at all LG tiers be allocated for women's development and women's empowerment programmes, through Women representatives and at least 33% of the seats in all LG-related entities, boards, commissions, committees, etc. must be reserved for women. Affirmative action for women, women members' participation and inclusion in decision making must be facilitated by providing of travel allowance and other logistic support (Ibid).
- Just to reiterate in the light of legislative structure suggested above, there is no room for a system build on colonial template of district management and structures. Any such legislative provisions and respective authorities must be done away with. Punjab Local Government Board and Coordination Committees and their overriding financial and administrative authorities be abolished to devolve these powers to the proposed 'Local Cabinets.' The said Board's powers as Planning Commission and the power of Local Board Funds need to be devolved to the Intra Local Cabinet's financial and planning structures. Planning and Development Department's mandate to approve Local Councils' development plans need to be removed or the department be made accountable to the Local Government instead of the Provincial Government. Otherwise, it is 'provincial centralization' in the name of decentralization;
- Providing legislative cover, Local Bodies elections must be held on party basis to corroborate the system on top and make it genuinely democratic;
- Confusion and overlap between Zila, a revenue district, Urban and Rural Council and it arbitrary constitution and abolishment need to be removed to minimize the

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<sup>4</sup> Suggestions extended by Insani Haqooq Ittehad (Human Rights Network - Pakistan)

chances of conflict and political maneuvering. Progressively eliminating the rural urban divide is recommended to minimize feudalist influence and eliminate discriminatory development planning, budgeting and public facilities. Reconstitution of the rural or urban constituencies, if and when required, must have sound justification besides population factor. The point is to minimize the conglomeration and confusion between Panchayats, Markazes, Union Councils, Towns, Committees and Corporations for a simplified administrative, political and electoral functions.

- To ensure responsive attitude, regularity and responsibilities the Councilors are supposed to dispense with, an honorarium essentially needs to be allocated for them;
- Mere the right to contest elections at the 'reserved' as well 'general' seats and assuring certain percentage of their representation at each level is not enough. Given the depth and frequency of entrenched discrimination, affirmative measures to impart them equal representation, the right to adult franchise and equal citizenship is important, which needs explicit mentions in the proposed Act 2012. Mainstreaming minorities is far more a complicated and challenging task than it is generally assumed to be.
- Gender mainstreaming asks for special provision of budget to women for women's development, women-specific projects, creating room for their active participation during the Sessions, providing them suitable seating in office, keeping them informed about the Council's meetings, ensuring their participation in development planning and budgeting, all substantiated by legislative support from the Bill. Equally important is to declare the results of constituencies where women were obstructed or discouraged to participate in LG elections, as null and void.

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End Notes:

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