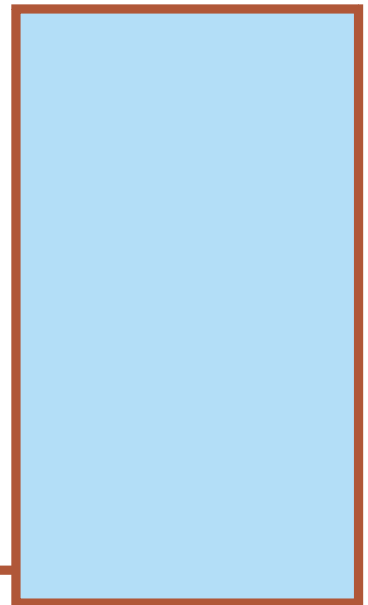


# Punjab Local Government Act 2013

A critical analysis



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## Acronyms

<b>ADR:</b>	<b>Alternative Dispute Resolution</b>
<b>CM:</b>	<b>Chief Minister</b>
<b>KP:</b>	<b>Khyber Pakhtoon Khawa</b>
<b>LG:</b>	<b>Local Government</b>
<b>LB:</b>	<b>Local Bodies</b>
<b>LGI:</b>	<b>Local Government Institution</b>
<b>PLGA:</b>	<b>Punjab Local Government Act</b>
<b>PML(N):</b>	<b>Pakistan Muslim League</b>
<b>PTI:</b>	<b>Pakistan Tehrik-e-Insaaf</b>
<b>PPP:</b>	<b>Pakistan Peoples Party</b>
<b>Panchayat:</b>	<b>Council of elders</b>
<b>Anjumn-e Musalhat:</b>	<b>Body of Arbitration</b>
<b>Markaz:</b>	<b>Center</b>
<b>MPA:</b>	<b>Member Provincial Assembly</b>
<b>MNA:</b>	<b>Member National Assembly</b>
<b>MC:</b>	<b>Municipal Committee</b>
<b>NED:</b>	<b>National Endowment for Democracy</b>
<b>TMA:</b>	<b>Tehsil Municipal Administration</b>
<b>UC:</b>	<b>Union Council</b>
<b>Zila:</b>	<b>District</b>

## Preface

Local government institutions constitute one of the most important avenues for marginalized people, particularly; women and minorities to participate in the development of their communities and influence the decision-making processes that are directly relevant to their lives. Important opportunities for poor people, women and minorities to participate in the development of their communities are to be found in local institutions of governance. This system is not only key to strengthen democracy and improve service delivery at grass roots level but also imperative for improved service delivery for citizens. It takes the governance many steps closer to the governed.

Local Governance as lowest tier of governance is, plausibly, considered as the first tier of democracy. Unfortunately, this first tier of democracy has been used as extension by the military-led dictatorships and refused its true powers by the political Govts in Pakistan. Usually every time when military dictators came to power, they patronized local government institutions. Whereas the civilian democratically elected governments usually ignore local governments and every civil government had avoided to hold elections for LGs during their tenures.

Various civil society groups and progressive political parties always advocated for restoration of elected LGs. And now finally the Local Govt. Institutions have been placed in through out the country, however, the question of devolution of powers to LGs in line with the Article 140-A of the constitution still remains to be addressed.

Despite repeated delays it is appreciable that Local Government Elections have finally been completed in Punjab and with that LG institutions have been installed through out the country from 2 January 2017. As a result of the last leg of LG polls in November 2016, some 18,567 members have been elected on reserve seats across the Punjab, including 9,286 women, 4,435 workers/peasants, 4,245 youth, 427 technocrats and 4,189 non-Muslims. Earlier last year in November 2015 some 32120 representatives; including general councilors, chairman and vice chairmen were elected through direct elections. This means, more than 58,000 elected people are now ready to perform its political, administrative and development role in 4015 union councils, 11 municipal corporations, 35 district councils and one Metropolitan Corporation of Punjab.

Although under “The Punjab Local Government Act 2013” the powers of the elected LG representatives have been reduced and district governments have been made technically dependent on the provincial government and representation of women and minorities at different levels have also been decreased, compare to the devolution system of Gen. Musharraf but the very establishment of these local government institutions after some 8 years' gap must be taken as a positive step itself. People now at least will have a say and voice, no matter how low it is, in affairs of local development affairs.

Looking at the representation ratio of women (one of most weaker section of society) at various tiers in LG structures of Punjab province, it is less than 20%; Sindh ensured women



reserve seats up-to 22%, for KP it is around 30 %. While in Baluchistan reserved seats for women around is around 33%. So Punjab lags behind other provinces in this regard.

The purpose of this analysis of the PLGA2013 is to better understand the law, highlight the gaps and share it with stakeholders, including policy makers, civil society actors and academia, so that Govt. can be urged to remove the suggested gaps in the law.

We must hope that in line with its constitutional responsibility the provincial government would continue to hold LG Polls regularly in future. Also in compliance to Article 140-A of the constitution, the provincial government should devolve administrative and fiscal powers to the elected representatives of local government in letter and spirit. We also hope that Provincial Government would give due consideration to the true compliance of Article 32 of constitution, which ensures effective representation of women, peasants, workers, minorities and youth in the local government system.

I am thankful to NED for extending financial support to undertake this analysis and its publication. WISE team also deserves appreciation for their coordination to develop this document.

Sincerely,

Bushra Khaliq  
Executive Director

January 2017

## About WISE

Established in 2011, WISE (Women in Struggle for Empowerment) is a dynamic women-led organization, determined to help bring about social change in how women and girls are valued in their communities. In a short period of time it has done significant work around women human rights in Pakistan.

Registered under Societies Act 1860 as Non-Governmental Organization, WISE is dedicated to protect and promote social, political, economic rights for women with focus on Gender, Labor, Governance, and Human Rights in Pakistan.

WISE is an all-women's group of like-minded people, united on the basis of shared vision of gender justice. Its leadership comprises women rights activists, with background of active struggle for social justice and women empowerment in Pakistan. WISE team enjoys versatile experience in women mobilization & organization, advocacy & lobbying for women and human rights related campaigns, actions and struggles.

WISE strength lies in close networking with women struggles and movements at grassroots, national, regional and international level. We also believe in struggling and politicizing all human rights thus working closely with marginalized groups, religious, ethnic minorities and vulnerable sections of society.

### **Vision:**

A just and violence-free society where women and human beings enjoy equity and equal rights, avail economic, social and political opportunities with full freedom and have capacity to exercise their rights.

### **Mission:**

Act together for protection and promotion of women human rights in order to change society in favor of women through education, awareness, organization and building synergy among human right groups, women and their movements.

### **Philosophy:**

Putting women in the forefront of development paradigms, which is prerequisite for any positive social change. There is no development strategy more beneficial to society as the one, which involves women as central players.

### **Objectives:**

- Organize, educate women and synergize their struggles for their socio-economic and political rights.
- Enhance and strengthen women's capacity to claim their human rights and countering violations
- Eradication of gender-based discrimination, customary practices that deny women advancement, opportunities and access to resources.
- Advocacy and lobbying for pro-women programs, policies, laws and implementation of women related existing laws.



# 1. Background

The Constitution of Pakistan asks for the LG system as the third tier of govt. in all provinces. Article 140-A of the Constitution, as amended and incorporated in 2002, makes it obligatory 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 parties also emphasizes Local Governments in the following words. “Local bodies’ election 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.”

Article-37 of the Constitution of Pakistan 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 a requirement demanded from the “provincial governments to decentralize its administration under article 10-A,” of the Constitution.

18th 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 government elections, as enshrined and authorized by the said amendment and the Constitution of the country.

After 2013 general elections, the restoration of elected LGIs was expected, but provincial governments used all possible tactics to delay the constitutional obligation. At last the Supreme Court of Pakistan intervened and passed a judgment binding provincial governments to restore democratically elected LGIs by the end of September 2013.

In pursuance to this order the provincial governments introduced new LG laws in order to hold fresh elections of LGIs. However, new enactments, in many ways lack democratic aspirations of the masses particularly the citizen’s engagements were cut to very minimal level similarly the volume of representation was also reduced significantly especially marginalized communities were deprived of their right to represent, participate in local level governance.

It took almost one year for the Punjab Province to complete the LG electoral process. The main reason behind was legal battle in the Apex Court as several petitions of opposition parties, including PTI, PPP and PML-Q, and some individuals, challenged amendments to Punjab Local Government Act (PLGA) 2013 carried out by the Ruling PML-N. However, the way to last leg of LG elections was cleared after the Punjab government finally recoiled and announced to withdraw all the amendments made under Local Government (Amended) Ordinance 2016 through another ordinance in the light of Lahore High Court’s direction.





## 2. Punjab Local Government Act, 2013

The Punjab was the last Province to do away with the Punjab Local Governments Ordinance, 2001. On August 23, 2013, the Provincial Assembly passed the Punjab Local Government Act, 2013 (XVIII of 2013), by replacing the Punjab Local Government Ordinance, 2001, (XIII of 2001). Later, on 13th September, 2013, vide Notification No. SOR (LG) 39-20/2013, issued under sub-section (3) of section 1 of the aforesaid Act, all provisions of the Act except section 154 thereof dealing with repeal of 2001 Ordinance were enforced with immediate effect.

The new legislation is more tilted towards 1979 model of LG governance. It introduces several levels of local governments and Authorities, i.e., one for Education and other for Health for each district. The law as well has retained several provisions of 2001 Ordinance, but no administrative office has been devolved to the local governments.

In November 2016, with the completion of the last leg of polls on reserve seats for women, minorities, peasants/workers, youth and technocrats at the different levels of UCs, District Councils, Municipal committees, Municipal Corporations and Metropolitan Corporation, in Punjab the LG electoral process was finally completed and LGs in the Punjab province started their functions from January 2, 2017.

***The new legislation is more tilted towards 1979 model of LG governance. It introduces various levels of local governments and Authorities, i.e., one for Education and other for Health for each district. The law as well has retained several provisions of 2001 Ordinance, but no administrative office has been devolved to the local governments.***

### 3. Composition & functions of local councils Under PLGA 2013

According to PLGA 2013, Municipality and District Councils are the primary units, whereas, UCs will function under Guidance from upper councils; District Education and Health Authorities shall not fall within jurisdiction of LGIs. The provincial government may delegate any additional function and assign any specific Developmental; Planning, Budgeting for town planning but according to master plans of development authorities;

#### a) Union Councils

Under the Act, the lowest tier of the local government is the Union Councils, both for the rural and urban areas to be notified by the Government for each district, to be called the Village Councils and City Councils respectively. Each Union Council shall have a Chairman and Vice Chairman to be elected directly as joint candidates. In addition, thereto, each Council shall have 6 members elected on general seats and the members on the reserved seats on the basis of adult franchise include: - (a) two women members; (b) one peasant member in a rural UC or one worker member in an urban UC; (c) one youth member; and one non-Muslim member.

#### b) District Councils

Except the Lahore district, the next higher forum of local government at district level are the District Councils for rural areas and Municipal Committees for every notified integrated urban areas having a population of thirty thousand or more but less than five hundred thousand persons. All Chairmen of the rural Union Councils shall be the members of the District Council along with the members indirectly elected on the reserved seats include:- a) Women members, not exceeding 5, as the Provincial Government may notify on the basis of number of Union Councils in the District Council; b) Non-Muslim members, not exceeding 5, as the Government may notify for each District Council, C) Peasant members, not exceeding 3, as the Government may notify on the basis of number of Union Councils in the District Council; D) one technocrat member and one youth member. Chairman and Vice Chairman of the District Council shall be elected from amongst the members of the District Council.

#### c) Municipal Committees

In urban areas, the next higher local governments are the Municipal Committees. The members of the Municipal Committees shall elect their Chairmen and Vice Chairmen as joint candidates from amongst themselves, by majority votes of the members present and voting. Each such Committee consists of directly elected members from the specified wards thereof and the members indirectly elected on the reserved seats by the directly elected members include: - A) women members, not exceeding five, as the Government may notify on the basis of number of wards in the Municipal Committee; B) non-Muslim members, not exceeding three, as the Government may notify for each Municipal Committee. C) worker members, not exceeding 2, as the Government may notify on the basis of number of wards in the Municipal Committee; D) one youth member. In the first session of the Municipal

Committee after election, the members shall elect Chairman and Vice Chairman of the Committee, as joint candidates, by majority of the members present and voting.

**d) Municipal Corporation**

The Government may declare and notify an integrated urban area having a population of more than five hundred thousand to be a Municipal Corporation comprising the Chairmen of all Union Councils in the area of Municipal Corporation and Chairmen of the urban Union Councils shall elect the members on the reserved seats by voting include: - A) women members, not exceeding 15, as the Government may notify on the basis of number of Union Councils in the Municipal corporation; B) non-Muslim members, not exceeding 5, as the Government may notify for each Municipal Corporation, C) two worker members; D) two technocrat members and E) one youth member

**e) Metropolitan Corporation**

The District of Lahore has been named as the Metropolitan Corporation, the one and only in Punjab, comprising Chairmen of all Union Councils in the district who would elect by voting the members on the reserved seats include: - 25 women members, 10 non-Muslim members, 5 worker members; 3 technocrat members and 2 youth member.

*The law provides for setting up two Authorities namely; District Education Authority and District Health Authority for every district. Each of such Authority shall comprise such number of indirectly elected members from the local governments specified in the Schedule annexed to the Act and nominated technocrat members on the basis of proportion of population of the district and in accordance with the rules to be made for the purpose.*

*District Education Authority shall, inter alia, manage and supervise the primary, elementary, secondary and higher secondary schools, adult literacy and non-formal basic education, special education institutions of the Government in the district. Likewise, the District Health Authority is, inter alia, required to establish, manage and supervise primary and secondary Health care facilities and institutions. Elaborate functions have been assigned, under the law, to all levels of local governments for carrying out civic services in their respective spheres.*

## 4. Main Features of PLGA 2013

- I. **Change of Designation:** In PLGA 2013, what is mainly changed is the designation; Now Chairmen, Vice Chairmen, Mayors and Deputy Mayors heading the Municipal and Town Committees, Councils and Metropolitan Corporations instead of Nazims and Naib Nazims (in the previous system).
- II. **Age Limit for Candidates:** The minimum age for every member of the Councils, Municipal Committees, Municipal Corporation and Metropolitan Corporation has been fixed at 25 years. But for Youth members, the qualifying age for becoming a member is restricted to from 21 to 25 years. The tenure of all Councils, Municipal Committees and Municipal Corporations is 5 years.
- III. **Technocrat members:** The inclusion of technocrats is a new addition in PLGA 2013. The members of the local governments shall be elected by the local governments, other than the Union Councils, in the district. The nomination of technocrat members shall be made by the Government on the basis of their expertise in the relevant field, provided that the number of nominated members shall not exceed the elected members.
- IV. **Youth Members:** The inclusion of youth members is also new addition in the PLGA 2013. Under the Act at every level; Union Council, District Council, Municipal Committee, Municipal Corporation and Metropolitan, youth members would be elected on reserve seats
- V. **Party basis elections:** On the lines of the Basic Democracies Order, 1959, Local Government Ordinances, 1979 and 2001, initially, the Punjab Local Government Act, 2013 provided for holding of elections of the local governments at all levels on non-party basis. Subsequently, because of persistent demand of the public and Courts' decisions, by virtue of the Punjab Local Government Act, 2013(XXIII of 2013), passed by the Provincial Assembly on December 13, 2013, it has been provided that henceforth all elections under the principal legislation shall be held on party basis through secret ballot.
- VI. **District Education Authority and District Health Authority:** The law provides for setting up two Authorities namely; District Education Authority and District Health Authority for every district. Each of such Authority shall comprise such number of indirectly elected members from the local governments specified in the Schedule annexed to the Act and nominated technocrat members on the basis of proportion of population of the district and in accordance with the rules to be made for the purpose.

District Education Authority shall, inter alia, manage and supervise the primary, elementary, secondary and higher secondary schools, adult literacy and non-formal basic education, special education institutions of the Government in the district. Likewise, the District Health Authority is, inter alia, required to establish, manage

and supervise primary and secondary Health care facilities and institutions. Elaborate functions have been assigned, under the law, to all levels of local governments for carrying out civic services in their respective spheres.

**VII. Rural-Urban divide:** Abolishing the uniform system of Union Councils, the rural-urban divide, has 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 urban. 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".

**VIII. Fiscal & Administrative Control:** For the purpose of having financial control over the local governments, the law proposes for appointment of a Finance Commission headed by Provincial Minister for Finance. For administrative control, a Local Government Commission has been set up with Provincial Minister for Local Government as its head.

**IX. Panchayat / Musalihat Anjuman:** On the lines of Local Government Ordinance, 2001, the PLGA 2013 contains provisions for amicable settlement of disputes through a 'Panchayat' and 'Musalihat Anjuman' to be constituted by Village Councils and City Councils respectively. Both the forums shall consist of nine members, at least two of whom shall be women, to be nominated by Panchayat and Musalihat Anjuman, as the case may be. This system of settlement of disputes by the community itself is also based on the principle of alternate dispute resolution.

**X. Role of ECP:** There are un-necessarily electoral clauses have been mentioned in PLGA 2013. ECP have to follow these clauses and conduct elections but electoral rolls are responsibility of ECP. Direct elections on the basis of UAF only at UC level; all chairmen and V. chairmen will be indirectly elected from respective councils. In case of Metro all councilors will act as electoral college; Age for candidate is 25 years except for Youth member who may be 18 years; Tenure will be 5 years starting from elections.

*In PLGA 2013, what is mainly changed is the designation; Now Chairmen, Vice Chairmen, Mayors and Deputy Mayors heading the Municipal and Town Committees, Councils and Metropolitan Corporations instead of Nazims and Naib Nazims (in the previous system).*

## 5. A critical analysis of PLGA 2013

### 5.1 Separate structures of LG system

The PLGA 2013 provides separate structures of LG system for urban rural areas, earlier it was uniform structure for all, which is bound to create rural-urban divide. It says District councils & UCs; in rural areas except Lahore; and Municipal Corporations, Municipal Committees in urban areas and Metropolitan Corporation in Lahore; in urban areas government may notify such number of UCs called city councils; A rural Union Council shall be called Village Council and Urban UC will be called City Councils; Panchayat will be formed by rural UCs in their jurisdiction and Urban UCs will form Musalihat Anjuman in urban areas; both would be consisted of nine members including two women nominated by local councils.

Precisely, The PLGA 2013 determines the composition of rural and urban councils, as a “Union Council for each Union, a Markaz Council for each Markaz, a Town committee for each town, 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 as the Government may, by notification declare any area, comprising the area of one or more UCs to be a Markaz” denominating various population sizes from 300 to 3 million or above.

However, the Government may, without the availability of recent census, face difficulties in notifying or de-notifying a Local Council as Panchayat, Union Council, a Municipality, Town Committee, or a Metropolis Corporation. Not entirely the case but there will be lot of political maneuvering and influences to serve party interests, strongholds of one or the other political parties or traditional constituencies of a feudal lord. Demarcation of Local Councils will rarely be based on population especially in the absence of recent census.

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 6 (a), 1 & 2, “the Government may, by notification, extend curtail or otherwise alter the limits of a local council or declare that a local council shall cease to be a local council...” and so on.....” In that case, “if the control of the local area is placed under any other local authority, the balance of the local council fund and other property vesting in the local council shall vest in such local authority and the liabilities of the local council shall, stand transferred to such local authority”. Otherwise, “the balance of the local council fund and other property vesting in the local council shall vest in Government and the liabilities of the local council shall stand transferred to the Government” state sub-c its sub-clauses 1 & 2.”

In the same context, Clause 7 says for “the division, amalgamation and reconstitution of local council, Government may, by notification, divide a Local Council into two or more Local Councils or amalgamate two or more Local Councils into one Local Council and may specify in the notification the consequences which shall ensue upon the publication of such notification” and when “as a result of such division or amalgamation any new Local Council is constituted in accordance with the provisions of the Act or in the manner specified in the notification, the directly elected general members of any Local Council so divided or

amalgamated shall become the members of such Local Councils as Government may notify”.

In that reference, given the stand-off and political expediency the demarcation and re-demarcation will remain controversial even blurred between the rival parties in future. The said powers are readily provided by the law, though the technical justifications are already outlined but the decisions will obviously be made on the basis of political interests and preferences. The Govt. would try to redesign constituencies suiting to their voting bank.

### **5.2 Dominant role of Deputy Commissioner**

The Deputy Commissioner had already carried sufficient weight in case of dispute, arbitration and the appointment of Secretary, as hinted in the following words, “provided further that in case the electoral unit...falls within the limits of more than two markazez and...more than 50% of the population there does not fall within any single markaz.... 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 Markaz Council and he shall perform such functions and exercise such powers as may be prescribed.”

But after the introduction of new Ordinance; Civil and Administration Ordinance 2016, promulgated and approved by the Punjab provincial Cabinet on 30 December 2016, the powers of Deputy Commissions (earlier DCOs) have been significantly enhanced. A deputy Commissioner is not only the Custodian of the District Budget but also monitor the service delivery of the development projects. The elected LG representatives have virtually been put at the mercy of the DC.

### **5.3 Provincial Government Control & Authority**

Even a cursory glance of the PLGA 2013 gives a feel of too much control and authority of the provincial government over local governments; It has power to announce LG elections; declare vacant seats; dissolve, terminate the elected council and the head; determine local areas. Government can designate any function, alter function, merge any local council, set up parallel private companies to carry out similar functions such as managing solid-waste, Meat company, etc.

To maintain centralized control, the Local Government Boards constituted under Punjab Local Government Ordinance 1979 are still allowed in PLGA 2013 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 meant to maintain bureaucratic control upon the elected representatives.

### **5.4 Encroaching upon LGs powers through Coordination Committees**

In addition, the Government of Punjab is authorized to put up Divisional and District Co-ordination Committees under Section 172 (1,2,3), Chapter XVI. The members of the said Committees shall be appointed by the Government herself. “The members of the Divisional Co-ordination Committee or a District Co-ordination Committee shall be elected or appointed in such manner as may be prescribed”.



Such committees are going to perform very important functions of “co-ordination of the activities of all local councils within their respective jurisdiction and such departments of Government, statutory bodies or other agencies as may be specified; and settlement of disputes arising between local councils within their respective jurisdiction” under Section 173 (1&2) of the Punjab Local Government Act 2013.

In case of dispute between the two or more than two Local Councilors the matter is desired to go to the Coordination Committees. In that case, appointed and not having voting power, the members of such committees or chairmen will also wield sufficient amount of power as his decision is going to be final. The government also maintains the right to abolish or reconstitute the District and Divisional Committees and the chances of governmental maneuvering are increased in case of political, party or personal differences.

### **5.5 Monitoring, Inspection of the LGIs**

Moreover, Chapter VI, Clause-165 authorizes the Government to “inspect Local Councils, and its’ working at least once in a financial year by inspecting officers and offices to be appointed by the Government. The Inspecting Officers are going to have the powers of “entering into, inspect and survey any...immovable property occupied by a Local Council or any institution maintained by or any work in progress under the directions of a local council.” It can, “inspect files, registers, books or documents in the possession or under the control of a local council and...require the production of such statements, accounts, reports, documents and copies of documents relating to the proceedings of a Local Council as the inspecting officer may think fit...to inquire generally into the affairs of a Local Council”, and so on and so forth. Once again it is going to be the overarching bureaucratic fist oscillating over the elected councilors.

### **5.6 Suspension of Local Councils**

Contrary to the spirit of local democracy and autonomy, the provincial Government retains the power of suspension or dissolutions of a Council 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. If not cleared from an enquiry, the Government shall hold fresh elections within three months from the date of dissolutions and so on. Such suspension or removal cannot be challenged in court (Section 170 & 171)”.

Under above drawn situation 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 concern. Rapidly transferred from place to place their term in a particular office hardly exceeds a couple of years.

### **5.7 Financial Management and Accountability**

The District governments are dependent on grants provided by Punjab Finance



Commission (PFC) from provincial consolidated fund; Additional grant may be given in lieu of Octroi and Zila tax. The Act gives powers of transfer of immoveable property tax to District Council; However, government may ask for collection of any Provincial tax; License fees as per previous routines.

With regard to financial autonomy and authority to collect taxes, planning development and independently managing the affairs of local needs and services on ground, the PLGA 2013 rests all such authorities with the provincial government. Looking through Section 48 & 49 (Chapter VI), which states, the constitutions of Local Government Board will be done with the approval of Punjab Government,” 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 to Government of the Punjab’s Local Government and Community Development Department, shall be ex-officio chairman of the Board and the Board shall (Article 49) 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.

### **5.8 Govt. control over Local Government Fund**

The Punjab Local Government Fund is going to be entirely controlled by the Government of Punjab. Although, all Local Councils shall be contributing financially 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 provincial Government 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.

### **5.9 Lack of Community engagement**

The PLGA 2013 provides no formal engagement of citizens in running affairs of a local council; no concept of monitoring, over- sight by citizens etc. Citizens do not have any role in designing, implementing any developmental project within LG framework;

### **5.10 Limited representation of Women, Minorities and Peasants/Workers**

Minorities: Section (11) with sub-clauses (1 & 2) of the PLGA 2013 categorically states, “The number of members in a Local Council representing minorities shall be 5% of the total number of seats for general members”, and, “a candidate belonging to minorities may contest local council elections against a general member seat in addition to the reserved seats...provided that there shall be at least one member from the minorities in each local council...” However, later on through an amendment reserved seats for non-Muslims is made conditional subject to presence in a Local area; over 200 populations will be represented in local council.



Other than the said Section, other Sections i.e. 12 & 30 carry no mention of reserved seats for minorities, though it is adequate here too. They do, however, mention the representation of women, youth and peasants. Similarly, it is taken for granted that minorities' reserved seats shall be filled by indirect election of the electoral college of general members. It might not be the case and they might remain under-represented. The same percentage does not carry a mention in Section 15, whereas other reserved seats are still indicated.

Although section 15 (2) maintains the joint electorate as mode of election but it misses out the spirit and treats minorities far too 'separately' and undermines the real goal of mainstreaming them. 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.

Women: The PLGA 2013 had significantly reduced the representation of women from 33 per cent to 15-20 per cent at various tiers of the local governments in the Punjab. At Union council level, reserved seats for women are 2 out of 13 which makes 15% representation; which is more than 50% decrease from the 33 per cent quota. By reducing the number of union council representatives, the marginalized sections are deprived of due democratic rights, particularly women and minorities.

#### **5.11 indirect mode of election on reserve seats**

The Act reserves seats for four generally under-represented categories — women, peasants/workers, youth and non-Muslims. Elections to these seats at the very first tier of local government — the union council — were to be conducted directly under the original enactment. However, an amendment made through Ordinance to the 2013 Act scrapped the direct modality of elections to reserved seats at the union council.

This amendment does not serve the cause of political empowerment of women and other marginalized sections like; minorities, workers and laborers. Indirect elections, disconnect a politician from an electoral base, and therefore the fountainhead of political power. To be effective, it is essential that at the very grass-roots of political activism and representation, female politicians maintain a direct and real link with a constituency, which continually holds them accountable for promises made and operates as a bulwark against undue opposition or censure (Amjad Nazeer) Where political success depends on patronage from party leadership or other members, rather than the will of the electorate, women councillors are disabled from developing the independence and maturity to eventually contest and win an open and competitive contest.

Secondly, gender quotas in political bodies are justified as a necessary measure, required to ensure women representation in key decision-making bodies. Yet as a mere number opted into power indirectly upon the whim of male colleagues, women councilors are unlikely to yield real political authority.

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

In each district one Health and one Education Authority will be formed by the government with enough functions of monitoring, planning and budgeting, performance monitoring etc.; both would act independently of local councils; So these two crucial sectors are totally out of the purview of the local councils. The local councils could only use the powers delegated on and off by the provincial government.

Section 79 (1), pertaining to education says, “An urban local council shall establish, maintain and manage such educational institutions as may be required by the Government and may, with the previous approval of Government, maintain such other educational institutions as may be necessary for the promotion of education in its’ local area. Responsibility of primary education still falls within the purview of Provincial Govt. but several areas are yet not clear.

Urban and Rural Councils may take such measures for promoting public health, maternity centers, management and maintenances of hospitals and dispensaries, including education in health, etc. But the provincial govt. discretion still supersedes and overlap of functions is quite evident. However, the case is relatively less problematic as is the case with education.

### **5.13 Honorarium for the Councilors**

The PLGA 2013 says that 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. 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.

### **5.14 Centralist Approach**

Enhanced role of provincial government; parallel state institutions shall be more strengthened as the case in Lahore, solid waste, parks, main roads, etc. Meat Company, WASA Metro Bus, Orange Train projects etc. are being managed by specialized agencies and Lahore development Authority also now-onwards would be accountable to Provincial government CM will be its chairman. In Punjab it is quite clear and quite obvious that present government does not allow any type of local leadership to take any major decision in order to run local government institutions.

***But after the introduction of new Ordinance; Civil and Administration Ordinance 2016, promulgated and approved by the Punjab provincial Cabinet on 30 December 2016, the powers of Deputy Commissions (earlier DCOs) have been significantly enhanced. A deputy Commissioner is not only the Custodian of the District Budget but also monitor the service delivery of the development projects. The elected LG representatives have virtually been put at the mercy of the DC.***

## 6. Conclusions

The Civil and Administration Ordinance issued on 30th December 2017 by the Punjab Government has virtually overturned the devolution of power set-up introduced by former President Pervez Musharraf. Under this new ordinance the District bureaucracy is all powerful, and political, administrative and fiscal powers of the elected representatives; mayors and Chairmen have been completely undermined and directed towards the Deputy commissioners. The government now would have to amend or abolish the Local Government Ordinance to restore the administrative system based on deputy commissioners.

### **Reduced autonomy:**

The PLGA 2013 have reduced autonomy of local governments. There is limited space for practical engagement available to local communities; The representation volume of marginalized sections, particularly women have been drastically reduced; The mode of indirect elections on reserve seats are in contradiction to Electoral laws of national and provincial assemblies; It provides that only the chairmen of union councils will elect members of a district council on reserved seats. Previously, all members of union councils were required to be elected members of a district council on such seats.

The Punjab Local Government Act 2013 does not provide for adequate political, fiscal and administrative autonomy to districts, without which local governance will remain weak. The lack of political, administrative and fiscal independence to districts is a failure to provide an opportunity to peasants, laborers and workers to be masters of their destiny.

### **Minimized functions:**

The functions of LGs have been minimized, rural-urban disparities are legalized; A set of new institutions and government controlled private limited companies are currently functional, whereas PLGA2013 protect their functioning; The people's participation in decision-making process and accountability of local government representatives by the citizens are lacking in the Act. Concept of local self-government has been compromised and devolution of administrative, political and financial aspect have been ignored that is exactly in contravene of the country constitution clause 140-A; and the true spirit of 18th amendment;

The financial dependency of LGs would depend on Federal and provincial grants. The PLGA fails to provide fiscal decentralization in line with the 18th constitutional amendment. The Act vests huge powers in the Punjab Government and provides excessive role and arbitrary powers to Provincial Government. It seems government was not transferring powers to the districts and more interested in keeping all powers within a few hands. The Local governments are not given right to levy and collect taxes. Without financial authority the local government system is bound to fail. Every metropolitan city in the world collects tax and spends itself.

**Denial of Political Empowerment:**

With regard to change in the modality of elections on reserve seats for four generally under-represented categories — women, peasants/workers, youth and non-Muslims at the union council level is particularly problematic. As the very first tier of representative government, the union council is a breeding ground of political consciousness and activism. True political empowerment of women at the union council, through direct access and accountability to the electorate, can help build a pool of abler and independent female candidates for positions of authority at higher levels of government. Empowerment at the grass-roots then is key to mainstreaming women in politics. The transformative potential of gender quotas will otherwise be difficult to realize.

**Reduction in Women Representation:**

The PLGA 2013 had significantly reduced the representation of women from 33 per cent to 10-20 per cent at various tiers of the local governments in the Punjab. It provides two seats out of 13 seats for women at union councils level, which is around 15%. The indirect election of women for upper tiers of the local government could deprive them and other marginalized groups of due representation.

The Punjab Local Government Act 2013 provides one minority seat in every union council. In the original law, the government was to fix a minority seat if there were at least 200 minority votes in a union council. By reducing the number of union council representatives, the marginalized sections are deprived of due democratic rights, particularly women and minorities.

**Colonial model of governance:**

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 management. The traces of multiple acts, attitudes and ordinances through which various military governments have been running the affairs of local governance are also visible. The real powers have been vested with the non elected cadre of district Bureaucracy.

**Multiplicity of over-lapping tiers:**

The architecture of local government in Punjab appears to be multiplicity of over-lapping tiers, hierarchical as well as parallel. Below the province, there are the District Administration tiers - division, district, tehsil, and - and the tiers - district councils, union councils, metropolitan and municipal corporations, and municipal and town committees". There was need to simplify and develop the Upper and Lower tiers and abolish all other tiers to remove confusion and make local government simple and efficient.

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.



## 7. Recommendations

- 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;
- 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.
- To ensure responsive attitude, regularity and responsibilities the Councilors are supposed to dispense with, an honorarium essentially needs to be allocated for them;
- Too much control of Provincial government will damage true spirit of LG system; The Provincial Governments' role in LG system should be limited to the level of providing policy guidelines only. The extra ordinary powers in the Act given to provincial government should be reduced to ensure political, administrative and fiscal independence. Therefore, the Act needs to be redrafted.
- The presence of parallel state institutions and authorities in local areas is no good to the local democracy; The local governments should not be reduced to the position of mere agents of provincial government.
- More functions to grass-root level councils amongst various tiers of LGIs is recommended.
- Scrap the provisions establishing separate Education and Health Authorities and instead devolve these functions to the local councils as per the requirement of the 18th Amendment to the Constitution.
- All key municipal functions such as public works, development, education, health, revenue & estate should be wholly devolved to the lowest tier of Local Government.
- The composition of Local Government Commission should be balanced between local government members and members of the Provincial Government. Bureaucracy retains a great deal of power as the Acts currently stand.
- Police should be made answerable to Local Governments. This will further minimise the bureaucratic stronghold and introduce a system of checks and balances.

- The role of political representatives and bureaucratic officials should be clearly defined and limited to avoid any abuse of power. LGs should also have the discretion to work on local issues without undue interference from the Provinces.
- 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. Mainstreaming minorities is far more a complicated and challenging task.
- There should be increase in volume of representation, particularly representation of women, needs up to 33 % at least. Women should be elected directly on the basis of adult franchise at the lowest tier of government.
- 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 also. 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 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.
- 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 process and not to have separate toilets for them need to be legislatively discouraged.
- Local councils should be fiscally empowered. A substantial percentage of funds allocated to the Provinces 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 order to be truly representative, Local Governments must make available Financial Information Reports to the public and be accountable to citizens. Increased powers of taxation should also be given to District Councils. ?
- Provisions for capacity building of the Local Government Institutions and their members should be provided for. Intergovernmental dialogues between all tiers of Government should be introduced keeping in mind principles of cooperation, prioritizing and aligning developmental needs at all levels.

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