**Decayed Local Government**

[Shahrukh Mehboob](https://dailytimes.com.pk/writer/shahrukh-mehboob/" \o "More Articles by Shahrukh Mehboob)

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In any democratic country where the government assumes the role of “welfare and service state,” the question of governmental liability evokes a serious response.

The concept of an intensive form of government requires the active participation of the state in welfare and service activities. On the other hand, the concept of government liability may have a chilling effect on such participation. Therefore, a very delicate balance needs to be drawn. No elaborate argument is needed to demonstrate the critical importance of local bodies in a democratic setup, especially in countries like Pakistan. Local government institutions serve as the foundation of a democratic polity; as a nursery to train elected representatives in the responsible management of public affairs. They also offer the largest possible number of people possibilities of participation in self-government. The local government is the third level of government deliberately created to bring government to the grass-roots population and give the grass-population a sense of involvement in the political processes that controlled their daily lives. Changes/enactments by the provincial government to abolish the whole elected sphere in local government frustrated the expectations of the people. These were also detrimental to the political structure within the country. The appointment of administrators by the Provincial Government for one year without any infrastructure of local government in place-leaving the fate of the people in the hands of unelected and novice persons-is against the fundamental rights of the people to choose representatives of their choice.

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Such infrastructure is bad for the very concept of Local Government and ultra vires of the Constitution. The constitution has strictly instructed against any kind of discrimination against the individuals of the country and to treat them equally. Unfortunately, by enacting the Local Government Act, 2019, the Provincial government has failed to do so. That facing with this problem i.e. the change of local government system by the provincial legislation, the democratic forces of the country through the “Charter of Democracy” promised to resolve the issue and to provide “Constitutional Protection.”The conditions for promulgating an ordinance prescribed in Article 128 were not met because no necessity required immediate action to be taken for the promulgation of the Amendment Ordinance. The Objection Resolution/Preamble to the Constitution, which, under Article 2A of the Constitution, is now a substantive part of the Constitution, and which mandates that sovereignty belongs to God alone and authority is to be exercised by the people of Pakistan through their chosen representatives. The Act, and then the Amendment Ordinance violate the concept of being governed by one’s chosen representatives; negating democracy and representative government. In promulgating the Amendment Ordinance, the Government itself expressed no confidence in the majority of the members of the provincial assembly who had voted in the Act. The executive making law through ordinances is a vestige of colonial rule, is undemocratic, and negates the concept of representative government. Hardly any countries still have this mechanism to enact laws. The very idea behind giving Constitutional Protection to local governments was to make them more autonomous from the provinces that they have previously been. Ironically, the local government system was much more powerful under successive military governments, though for reasons other than strengthening democracy. Notwithstanding some flaws, the local governments enjoyed much greater administrative and fiscal powers under Gen Musharraf’s military-led dispensation. Instead of improving upon it to make the system more democratic, the PML-N and PPP governments disempowered them. There were heavily centralised power structures in both provinces. It is important to mention that the present regime was neither in power nor assemblies when Article 140A was made part of the Constitution unanimously. But after coming into power, through PLGA 2019 they are trying to make Article 140A redundant through sub-ordinate legislation which amounts to trampling the law and subversion of the Constitutional commands. That the promise made to the people of Pakistan in Item 10 of the Charter of Democracy was fulfilled by the legislatures through Constitutional (Eighteenth) Amendment Act, 2010 and Article 140A regarding Local Government has been made part of the Constitution which was earlier introduced through Legal Framework Order 2002 (LFO, 2002) rather in addition, a Sub-Article (2) regarding the conduct of Local Government elections by the Election Commission of Pakistan was added in the Constitution.

The Constitution has invested the constitutional courts with the power to invalidate laws made by parliament and state legislature transgressing constitutional limitation. Where an act made by the legislature is invalidated by the courts on the ground of legislative incompetence, the legislature cannot enact a law declaring that the judgment of the court shall not operate; it cannot overrule or annul the decision of the court. But this does not mean that the legislature, which is competent to enact that law, cannot re-enact that law. Similarly, it is open to a legislature to alter the basis of the judgment. The new law or the amended law so made can be challenged on other grounds, but not on the ground that it seeks to ineffectual or circumvent the decision of the court. This is what is meant by “check and balance” inherent in a system of government incorporating separation of powers.

The provincial government in the whole of the Act, 2019 did not mention anywhere that at what specific time the elections will be held. The whole concept of the new election of the local government after the appointment of administrators and after the dissolution of local government was left untouched and vague. Previously, courts also struck down such steps taken by the government to remove the sitting local government officials through notifications and no time was mentioned for the next elections. The court stated that if by particular date elections were not conducted, Local Bodies would stand revived.

Though the supreme court earlier passed the judgment to hold the elections of local government for the betterment of socio-economic structure and grass-root level development (afterwards, elections were held following implementation of supreme court judgment), results were not in the favour of the present government. The federal government decided to not transfer power and funds. The budget of the local government-18 billion rupees-to conduct elections hung in mid-air. Meanwhile, the major crackdown our country faced was COVID-19 and the resulting lockdown. But there was no working grass-root level, which affected the locals badly. The next local government elections are going to be held in 2022 and a budget of 22 billion has been passed by the government. The question is on the badly affected local bodies and communities that still lack even basic structure for development. This action ill behoves a party that had led the effort to amend the Constitution to make the provinces more autonomous politically, fiscally, and administratively. The devolution project started with the 18th Amendment in 2010 will remain incomplete without strengthening local democracy and empowering Local Government for effective and participatory governance.

*The writer is a legal practitioner and a freelance columnist. He tweets @legal\_bias and can be reached at shahrukhmehboob4@gmail.com*