



A Comparative Study of the Constitutional Base of the Local Governments in India and Pakistan

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Abstract:

The central government of each state of the present age has to perform extensive functions. Now decentralization is the most common trend and states devolve powers to Local Governments (LGs). However, Pakistan's past history shows that the institution of LG was not strengthened and empowered. The 18th amendment Act 2010 addressed LG and Clause A was inserted in article 140. In India, article 243 of the Indian Constitution was revised under the 73rd and the 74th constitutional amendments. This study endeavors to investigate the constitutional base of local governments in India and Pakistan. Content analysis of the constitutions of both the countries has been conducted as a qualitative study within constructivist paradigm. The details of the 73rd and the 74th amendments in the Indian Constitution and the 18th amendment in the 1973 Constitution of Pakistan are given in this study. It is concluded that a comprehensive plan of LG is mentioned under the 73rd and 74th amendments in India. There is need to revise the article 140 to strengthen the institution of LG in Pakistan.

Keywords: Pakistan, India, 73rd and the 74th amendments, PESA Act 1996, the 18th amendment, panchayats, Local Government

INTRODUCTION

Local government is a public institution that deals with local issues within a particular territory. In the contemporary world, functions of each state have been increased extensively. Local government plays very effective role to manage the local affairs. Mood of the voters can be easily judged in local

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governments' elections. The citizens of the developed countries such as England, France and USA show their enthusiasm in the local affairs. However, the citizens of the developing countries show lack of interest in the local affairs. The sound foundation of democracy at the local level is quite essential for the better future of democracy at the national level (Lipman, 1949). There are extensive benefits of Local Government (LG). It is economical and is also a check against bureaucracy. It is helpful in the promotion of liberty and equality. Local affairs can easily be managed under the umbrella of LG. It can rightly be called as a training academy for the rising leaders. It shares the functions and responsibilities with regional/state and national governments. It plays a crucial role in resolving the local problems and also provision of civil services (Meaning of L.G., n.d.). The role of LG is just like a bridge between the state and its citizens. We can easily differentiate between LG and other organizations by using four standards. First, a defined area is specified for LG. Second, autonomy is given to LG to manage the local issues. Third, LG has the jurisdiction to impose local taxes. It also enjoys the powers to issue orders that are compulsory upon the citizens. Fourth, LG's representatives are directly elected by the public. Local assemblies make decisions and laws for the betterment of the local residents (Lidstrom, 1998). The administrative, political and fiscal powers must be devolved to the local level for the greater interest of the society.

LITERATURE REVIEW

After introduction of the 73rd and 74th Amendments in the Indian Constitution, some of the prominent works on local governments in India include Mukarji, and Datta (1996), Mayaram and Pal (1996), Singh (1996), Mitra, (1995), Gulati (1996), Kuhn (1998), Oommen (1999), Mathew (1999), World Bank (2000), Johnson, (2003), Samra, Atul and Chakravarti (2018). The mentioned authors mainly focused on allocation of powers and functions, taxation powers, problems and prospects of Panchayats, women representation in Panchayats, fiscal decentralization, development in rural areas, inter-governmental relations, and analysis of the Panchayats as the third tier of the federation etc. Johnson wrote "Decentralisation in India: Poverty, Politics and Panchayati Raj" and mainly focused on decentralization in India under 73rd Amendment. The author concluded "that many States in India have tended to retain powers of appointment, transfer, revenue generation, spending, etc. at the expense of the Panchayats" (Johnson, 2003). Professor George Mathew, an expert on local government in India expressed his views on 73rd and 74th Amendments in these words; "of course, only when the subjects mentioned in the 11th (Panchayats) and 12th (Municipalities) Schedules are brought under Schedule VII, they will assume the status equal to that of Union and State Lists" (Mathew, 2015). World Bank also conducted the detailed study on Rural Decentralization in India which consisted of three volumes. The studies on working of Panchayats in post-73rd and 74th Amendments in different Indian States were also conducted. Some of the examples are; Behar (1999), "Initiatives for Decentralisation of Governance in Madhya Pradesh", Deshpande and Murthy (2002), "Pressures from Below: Decentralised Governance in Karnataka", Ghatak (2002), "Recent Reforms in the Panchayat System in West Bengal" and Raghavulu and Narayana (1999), "Reforms in Panchayati Raj: A Comparative Analysis of Andhra Pradesh, Karnataka and West Bengal."

The prominent literature on LGs in Pakistan includes such as; Friedman (1960), Rizvi (1976), Cheema, Khawaja and Qadir 2003), Hasan (2005), Oquist (2006), Hasnain (2008), Mubashir and

Saqib. (2008), Musarrat and Azhar (2012), Ahmed, Saleem and Iftikhar (2012), (Batool, 2014), Wajidi (2000), World Bank (1996, 1998 and 2000), PILDAT (2013) and Malik and Rana (2019). The mentioned authors addressed different aspects of local governments in Pakistan such as the working of local governments in Pakistan in historical context, system of basic democracies under Ayub regime, local government system during Zia regime, Devolution Plan 2001 (introduced by General Pervaiz Musharraf), working of local governments in Pakistan in post-18th Amendment scenario, local government reforms in Pakistan during the government of Pakistan Tehrik-e- Insaf (PTI) etc. Malik and Rana wrote an article entitled “the history of local governance in Pakistan: what lessons to learn”. The authors concluded that the military dictators of Pakistan used local governments as a tool to justify their claim of decentralization of powers. However, the fact was opposite to it as the military dictators kept powers at the central level. The democratically elected governments remained unenthusiastic to introduce a strong and dynamic system of local governments. The members of national and provincial assemblies wanted to keep their hold on the development funds (Malik and Rana, 2019). This study fills the gap in the existing literature on the working of local governments in India and Pakistan.

RESEARCH METHODOLOGY

Aristotle is considered the founder of comparative method in political science. The political scientists and researchers also apply the said method in their researches in the present age. The prominent scholars of comparative school include De Tocqueville, Bagehot, Dicey, Wilson, Bryce and Lowell. Lipson remarked that “... the comparative method enjoys both the antiquity and respectability of an Aristotelian precedent” (Lipson, 1957). The comparative method constitutes the theoretical framework of this study. The experts of political science apply a variety of theories for the explanation of political phenomena. Different research methods included under the constructivist philosophical paradigm are “narrative study, case study, descriptive study, phenomenological study, grounded theory and ethnographic study” (Adom, Yeboah and Ankrah, 2016).

The present study utilizes the constructivist paradigm of research. The 73rd and 74th Amendments and PESA Act 1996 under the Constitution of India and the 18th Amendments and particularly Article 32 and 140 of the Constitution of Pakistan have been examined. The conclusion of this study is based on the thorough examination of the above mentioned amendments and articles of the constitutions of both the countries.

This study endeavors to answer the following questions: What is the brief history of LGs in India and Pakistan? What is the constitutional base of local governments in India and Pakistan? What changes were brought under the 73rd, 74th Amendments in India? How the institution of LG was manipulated by military dictators in Pakistan? How was the institution of LG addressed under the 18th Amendment?

LOCAL GOVERNMENT IN PAKISTAN SINCE 1947

After getting independence from the British rule, the powers were centralized at the federal level (Salamat, 1992). Instability remained the prominent characteristic in the political landscape of Pakistan in 1950s and bureaucracy controlled the institution of LG. Ayub Khan came in power in October 1958 through a military coup (Waseem, 1987). Ayub Khan launched a new system of LG

and advocated it in the following words, “We have given the name Basic Democracies (BDs) for evident motive that we desire to evolve and grow from the very first step of the political ranking so that it finds roots deep among the people starting at the village level in rural areas and the mohallah level in towns” (Ziring, 1997). Ayub Khan designed the system of Basic Democracies (BDs) to safeguard his rule. The BDs were the Electoral College for the National Assembly, Provincial Assemblies and the President Bureaucrats were also members of the BDs and they had upper hand over the elected members (Talbot, 1999). Ayub Khan gave the resignation on March 25, 1969, and the BDs system was also disappeared. Two LG Ordinances (1972 and 1975) were introduced during the democratic government of Zulfikar Ali Bhutto. He did not give the priority to LG and did not hold its elections (Quddus, 1989). General Zia ul Haq came in power on July 5, 1977 and introduced a new system of LG in 1979 (Hasan, 2005). Three LG elections (1979, 1983 and 1987) were held during the military regime but LGs were not given the autonomy (Aziz, 1989). LGs remained neglected during the democratic governments from 1988 to 1999. General Parvez Musharraf came in power on October 12, 1999 and launched a new system of LG under the Devolution Plan 2001. The district government was at the top in the new scheme and it lacked autonomy. The relationship between the LGs and the concerned provincial government remained problematical (Cheema and Khan, 2006).

The military dictators of Pakistan namely; Ayub Khan, Ziaul Haq and Musharraf encouraged and strengthened LGs to win the support of the common man. However, they did not mark any serious efforts to make LG as an autonomous institution. LG is not given the protection under Article 32 and 140 of the Constitution of 1973. In contrast, the institution of LG was declared as the third tier under the 73rd and 74th constitutional amendments in Indian Constitution (Cheema and Ijaz, 2003).

LOCAL GOVERNMENT IN PAKISTAN IN POST-18TH AMENDMENT SCENARIO

Under the 18th Amendment 2010, 102 Articles of the 1973 Constitution were addressed. The amended Article 140 (A) says: “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. Elections to the local governments shall be held by the Election Commission of Pakistan” (Eighteenth Amendment Act, 2010). The said amendment ensured the provincial autonomy and enhanced the functions and powers of the provinces. It was expected under the said amendment that the provinces will empower LGs. The provinces introduced the in post-18th Amendment scenario.

- The Punjab Local Government (Amendment) Act (Act XVIII) of 2013, as amended up to May 4, 2019.
- The Khyber Pakhtunkhwa Local Government (Amendment) Act, 2018, as amended up to April 29, 2019.
- The Sindh Local Government Act (Amendment) 2017, as amended up to February 20, 2019.
- The Balochistan Local Government Act 2010, as amended up to March 4, 2015

The tenure and structure of LG in the four provinces differed according to the above mentioned acts.

The powers and functions of the provinces were enhanced under the 18th Amendment. However, the provinces seem reluctant to empower LGs. The outgoing UNDP country director to Pakistan

Marc-Andre Franche showed dissatisfaction about the working of LG in the country. He observed, "We are generally disappointed with the quality of LG laws that each province has developed. Only KP has a decent law that gives real power and real money to the LG." He was of the view that just holding the elections of the LG was not sufficient. Franche opined that an effective devolution of political, administrative and fiscal powers will be helpful in the establishment of a strong LG system in Pakistan (Pakistani Elite, 2016). The 18th Amendment envisioned the devolution of administrative, political and fiscal powers to LGs but the provinces showed unenthusiastic approach in holding elections of LGs. The politicians at the national and provincial levels feel that a strong LG system will marginalize their political hold in their respective constituencies (Kakar, 2017).

LG plays a role of an academy for the new politicians. The politicians and bureaucracy of the country accuse each other for the unsustainable LG system. All the stakeholders must show the political will to encourage and institute a robust LG system. The encouragement of LG is envisaged under the Principles of Policy. Article 32 of the 1973 Constitution says, "The State shall encourage local government institutions composed of elected representatives of the areas concerned and in such institutions special representation will be given to peasants, workers and women" (Article 32 of the 1973 Constitution). A particular system of LG is not mentioned under Article 140. It is the responsibility of the provincial government to frame laws of LG for their respective province under the said article. Pakistan needs a strong LG system and functioning of democracy on regular basis that will certainly lead to achieve this goal. A well-known politician and retired army general Abdul Qadir Baloch expressed his views in the following words, "we as a nation are shy of local government" (Baloch, 2015). The political parties of the country are not interested in the empowerment of LGs. Pakistan needs a strong LG system and the provincial governments can play their effective and decisive role in this regard. The 18th Amendment overhauled the 1973 Constitution and ensured the provincial autonomy but gave little touch to LG (Chaudhary, 2015). Waseem, a renowned political scientist expressed his views on LG in these words, "local bodies have been pawns in the hands of civil and military governments" (Waseem, 2015). It has been observed that the country's bureaucracy and national and provincial level politicians do not want to establish a strong LG system. They feel that a strong LG system will reduce their importance and also consider that LG's elected representatives are not able to carry out their responsibilities appropriately (Sethi, 2015).

Mahatma Gandhi's once commented about Panchayati Raj in these words, "Every village has to become a self-sufficient republic. This does not require brave resolutions. It requires brave, corporate, intelligent work. Any lover of true democracy and village life can take up a village, treat it as his world and sole work, and he will find good results" (Prabhu & Rao, 1960).

PANCHAYATS IN INDIA IN POST-INDEPENDENCE PERIOD

Panchayats were mentioned under Article 40 of the Indian Constitution in the Directive Principles of State Policy (Part IV of the Constitution), which is not compulsory. The aforesaid Article says: "The state shall take steps to organize village Panchayats and endow them with such power and authority as may be necessary to enable them to function as units of self-government" (The Constitution of India, Article 40). In the early 1950s, India's development was planned without giving much importance to Gandhiji's idea of gram swaraj (Mathew, 2015). In 1952, Community

Development Program was initiated in India and was failed due to lack of public support. The Government of India instituted a committee in January 1957 under the headship of Balwantray G. Mehta to overview the Community Development Program (1952) and the National Extension Service (1953). The committee was also empowered to make recommendations for better functioning of local bodies. The main recommendations given by Mehta Committee are mentioned below. The committee recommended establishment of three-tier Panchayati Raj System, Gram-Panchayats at the village level or at the bottom, Samiti Panchayat at the block level or in the middle and the Zilla Parishad at the district level; These bodies should be assigned the duties and functions of planning and development schemes; The members of the Gram-Panchayat should be directly elected. However, representatives of Samiti Panchayat and Zila Parishad should be indirectly elected; The chairman of the Zila Parishad should be the District Collector; Sufficient funds should be given to these bodies to fulfill their responsibilities and functions; Adequate powers and functions should be transferred to these bodies; Samiti Panchayat should be given powers to collect revenue from tax on professions, land revenue, tax on entertainment, motor vehicle tax etc; Zila Parishad should approve annual budget of Samiti; There should be a realistic and uniform mechanism of public contribution in community works (Balwantray Mehta Committee Report, 1957).

On October 2, 1959, Prime Minister Mr. Jawaharlal Nehru inaugurated Panchayati Raj in the state of Rajasthan and praised the system. He remarked the system as “the most revolutionary and historical step in the context of new India”. Panchayat Acts were passed by all the Indian states and by the mid-1960s, all parts of the country had Panchayats. People living in rural areas welcomed the system and felt that they had a say in local matters. Panchayati Raj Institutions (PRIs) played the role of a training centre for the young politicians. On the other hand, the politicians at the state and central-level in alliance with the bureaucracy began to criticize the local bodies and tried to popularize its weaknesses (Mathew, 2015).

Ashok Metha committee was instituted in 1977 to reexamine functioning of the Panchayats. The committee reached on the conclusion that “Panchayati Raj is the soul of democracy and therefore it should be empowered with more authority”. The Panchayats formed after 1977 are called Second Generation Panchayats. Ashok Metha committee made 132 recommendations to strengthen and review the Panchayati Raj System. Significant recommendations of the said committee are mentioned below. The existing three-tier Panchayati Raj System should be abolished. It was proposed that two-tier system, Mandal Prishad at the lower level and Zila Prishad at the district level should be established; Planning and executive responsibilities should be performed by Zila Prishad; The first point for decentralization below the state level should be a district; In the state council of ministers, a minister for Panchayati Raj Institutions should be appointed to look after the affairs of these institutions; The Panchayati Raj elections should be conducted by the Chief Electoral Officer in collaboration with the Chief Election Commissioner; Zila Prishad should be assigned development responsibilities; A district level audit agency should be appointed; Elections of the local bodied should be held on party-basis; Panchayati Raj Institutions should not be superseded by the state government; The powers to impose taxation should be given to Panchayati Raj Institutions (PRI) to generate revenue. Metha Committee’s recommendations were fruitless due to the collapse of Janta Government at the central level (Debroy, and Kaushik, 2005).

THE 73RD AND 74TH AMENDMENTS IN INDIAN CONSTITUTION

According to Buch, “the Indian State felt that implementation of development programs would be the most effective if local people were involved especially for identification of beneficiaries for development programs and to a smaller extent, for decisions on how to spend the funds available for different local projects” (Samra, and Chakravarti, 2018). Ultimately, a Panchayati Raj Bill was presented in the Parliament in 1989 and was rejected in Rajya Sabha (Upper House). The parliamentary political parties had apprehensions that the centre wanted to establish direct links with people and administration. They viewed that the powerful local government will undermine the role of the state government (Samra, and Chakravarti, 2018).

THE 73RD AMENDMENT

The 73rd Amendment Act was ratified on 24th April 1993. Some important features of local government in India under 73rd and 74th Amendments are discussed below. A Gram Sabha is the lowest tier and performs such powers and functions as provided by the state legislature, through law (Article 243-A); Panchayats have been established at the district, intermediate and village levels. However, Panchayats at the intermediate level may not be established in a state, having population less than twenty lakhs (Article 243-B); The provisions regarding the composition of Panchayats are made by the legislature of a state (Article 243-C); Seats have been reserved for Scheduled Tribes and Scheduled Castes in every Panchayat (Article 243-D); Every Panchayat is elected for a period of five years (Article 243-E); The legislature of a state may, by law, devolve powers and functions to Panchayats with respect to the preparation of plans for social justice and economic progress (Article 243-G); The legislature of a state may, by law, empower Panchayats to impose and collect taxes (Article 243-H); The Governor of a state has been empowered to establish a Finance Commission, every five year. The Commission is authorized to examine fiscal position of Panchayats and make recommendations to the Governor (Article 243-I). The State Election Commission has been empowered to prepare electoral roles and conduct elections of Panchayats (Article 243-K).

THE 74TH AMENDMENT

The members of Municipality are directly elected (Article 243-R-1); Wards Committees have been established, within the territorial area of a Municipality, having a population of three lakh or more (Article 243-S-1); Seats have been reserved for the Scheduled Tribes and Scheduled Castes in every Municipality (Clause 1). One-third of the total number of seats reserved under Clause (1), have been reserved for women belonging to the Scheduled Tribes or, as the case may be, Scheduled Castes. Under Clause (6), the Legislature of a State can make any provision for reservation of seats for any backward class of citizens in any Municipality (Article 243-T); The duration of every Municipality is five years (Article 243-U); The Municipalities have been empowered to perform functions with respect to the 12th Schedule, and the preparation of plans for economic development and social justice (Article 243-W); The Legislature of a State, may by law, empower a Municipality to impose and collect taxes (Article 243-X); All elections to the Municipalities are held by the State Election Commission (Article 243-ZA); Under Article 243-ZD, a District Planning Committee shall be instituted in every State at the District Level. The function of the Committee will be to consolidate

the plans prepared by the Municipalities and Panchayats in the District and to prepare a draft development plan as a whole (Article 243-ZD).

The 73rd and 74th Amendments not only introduced a new system of local self- governments but also brought the changes in the Indian federal system. The introduction of PRIs resulted in the expansion of scope of democratic base in the country. In pre-73rd and 74th Amendments scenario, there were only 4, 963 elected members belonging to the two Houses of the Parliament, State Assemblies and Union Territories. The said amendments remarkably enhanced the strength of the elected representatives. There are 589 Districts Panchayats, 6,904 Block/Tehsil/ Mandal Panchayats at the intermediate level and 2, 39,000 Gram Panchayats in rural areas. In Urban areas, there are 149 city corporations, 1,772 Town Municipalities and 2,023 Nagar Panchayats. About three million (2 million males and one million females) local representatives are chosen every five years in India (Mathew, 2015).

The said amendments resulted in transforming the structure of federation of India from two-level to multi-level. In the words of George Mathew, “of course, only when the subjects mentioned in the 11th (Panchayats) and 12th (Municipalities) Schedules are brought under Schedule VII, they will assume the status equal to that of Union and State Lists. Although the elected bodies have no legislative powers and de jure the Union and States constitute the federal India, the qualitative change that has come about in the Indian federal structure has far reaching consequences” (Mathew, 2015).

There are two schools of thought about 73rd Amendment in Indian Constitution. First, the liberal democratic school takes the 73rd Amendment as a positive step for decentralization in the country. However, this school views that the terms and conditions of the 73rd Amendment are not fully implemented. The second school views that there is no genuine decentralization under the 73rd Amendment. The central argument is that the aforementioned Amendment is a failure case because the distribution of power and resources in rural areas depend on the “pre-existing pattern of social inequalities created by caste, religion, class, gender and other forms of rural domination” (Johnson, 2003).

The power equations have been considerably changed by the 73rd Amendment. It is an encouraging impact that most of the States hold Panchayats’s elections on regular basis. However, there is need to define role of the bureaucracy properly. PRIs have inadequate fiscal powers and mostly depend upon the States. Oommen made comparison of 12 States of India and reached on the following conclusion. Panchayats have inadequate budgeting powers; There is ambiguity in assignment of powers and functions among Panchayats and other levels of government; Insufficient powers of taxation have been given to Panchayats at all levels; The delegated functions to the village Panchayats, have limited technical, fiscal and administrative support (Oommen, 1999).

CONCLUSION

The functions of a modern state have been increased remarkably and a strong LG institution shares the burden and solves local issues. Pakistan’s political and constitutional history reveals that the institution of LG was not encouraged by the federal government and the provincial governments. The military dictators usurped powers through unconstitutional means, centralized powers and

encouraged the institution of LG to satisfy the common man. Regrettably, the genuine devolution of power to the grass roots was not ensured and the country is still in search of an efficient LG system.

Mahatma Gandhi wanted to make every village a self-sufficient republic. Panchayats were mentioned under Article 40 of the Indian Constitution in the Directive Principles of State Policy (Part IV of the Constitution), which is not compulsory. Different committees were instituted to make recommendations for the establishment of an effective system of LG in the country. A comprehensive LG was introduced under the 73rd and 74th Amendments in India. The 18th Amendment introduced remarkable changes in the political system of Pakistan. Section A was inserted in Article 140 under the said amendment. The responsibility lies upon the provincial government to design the system of LG and to devolve political, administrative and financial powers to the local elected representatives. The Constitution of 1973 is silent on the specific form of LG and leaves it on the provincial governments of the country. On the other hand, the provinces are unenthusiastic to encourage the institution of LG.

In the past, the provincial governments dissolved the elected LGs. It should not happen in future and the institution of LG must be given protection under the 1973 Constitution. The elections of LGs must be held on regular basis. LG is the third tier of government in a federal state but it is a provincial subject under Article 140. The need of the hour is to give the constitutional protection to the institution of LG through the revision of Article 140.

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