

POLICY PAPER

Constitutional Cover for Local Governments

**PROPOSED AMENDMENT TO
STRENGTHEN ARTICLE 140-A**

Human Rights
Commission
of Pakistan



HRCP Policy Paper

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Article 140-A



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Human Rights Commission of Pakistan

Aiwan-e-Jamhoor

107 Tipu Block, New Garden Town

Lahore 54600

T: +92 42 3583 8341, 3586 4994, 3586 9969

E: hrcp@hrcp-web.org

www.hrcp-web.org

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1 Introduction

Citizens consume governance directly at the local level; local governments serve as agencies responsible for delivering vital services. However, despite citizens' repeated demands and over a dozen court verdicts,¹ local governments in Pakistan have remained, at worst, non-existent, at best, patchy, invariably denied adequate resources through the Provincial Finance Commissions. Irrespective of which political party has been in power, provincial governments have remained reluctant to empower local tiers of government, often perceiving them unnecessarily as rivals for financial resources and political power.

The Human Rights Commission of Pakistan (HRCP) has long recognised that effective, representative and well-resourced local governments are an important measure of the health of a democracy. Drawing on existing constitutional provisions and international best practices, this policy paper attempts to provide a context for HRCP's advocacy as well as proposing amendments to Article 140-A of the Constitution, which provides briefly for local governments as a responsibility of the provinces, but goes no further in terms of what local governments are responsible for and how their scope of responsibilities should be safeguarded—a criticism levied by many political experts.

The erratic existence of local governments

Between 2010 and 2023, Punjab had local governments for only two years (2017–18), Sindh for six years (2016–20 and 2023), Khyber Pakhtunkhwa for six years (2017–20 and 2022–23), Balochistan for six years (2016–20 and 2023) and the federal capital Islamabad for five years (2016–21).

If we start looking at Pakistan's experience with local governments since 2010, the year devolution was institutionalised through the 18th Amendment to the Constitution, they seem to have lacked smooth functionality and continuity. The local government laws have witnessed repeated changes in all the federating units and in the federal capital. In 2023, the most populous province, Punjab, and the federal capital, Islamabad, have no elected local governments, while local governments in Sindh, Khyber Pakhtunkhwa and Balochistan complain of powerlessness and lack of resources. There is hardly any evidence available to show that

¹ See, for example: H. Bhatti. (2022, February 1). SC announces verdict on MQM-P petition, tells Sindh govt to devolve powers and empower local bodies. *Dawn*. <https://www.dawn.com/news/1672676>

the state has adhered to constitutional benchmarks of administrative and fiscal devolution.

Political parties are, at least in principle, not averse to strengthening local governments. The Charter of Democracy, for example, a major reform document inked in May 2006 by two of Pakistan's major political parties, the Pakistan People's Party (PPP) and Pakistan Muslim League-N (PML-N), states:

The Local Bodies Election will be held on party basis through Provincial Election Commissions in respective provinces 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 (Point 10).

Today, the non-functionality or lack of continuity of local governments in Pakistan has amplified the demand for comprehensive constitutional protections for local governments. Some quarters suggest a whole chapter on local governments, which the federating units may see as infringing on their hard-earned provincial autonomy. Nonetheless, there is consensus that the existing provision, Article 140-A, is inadequate and must be reformed and strengthened.

The amendment proposed in this policy paper is expected to ensure effective local governments in the country at all times to service the municipal needs of 260 million Pakistani citizens. It is also pertinent to mention that, in December 2022, the Election Commission of Pakistan (ECP) wrote to the federal government, urging it to amend Article 140-A and the Elections Act 2017 (Annex 1). This letter provides some important ideas but to expect too much in terms of constitutional reforms on a residual subject may not be feasible. Consequently, firm benchmarks within Article 140-A through a constitutional amendment are likely the most practical option.

2 Existing constitutional and legal scheme

Article 140-A of the 1973 Constitution dates back to 2003. It was initially incorporated through the 17th Amendment and retained and amended through the 18th Amendment in 2010. The 18th Amendment inserted subsection (2) into the article, entrusting the ECP to hold local government elections:

Article 140-A reads as follows:

1. 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.
2. Elections to the local governments shall be held by the Election Commission of Pakistan.

The article rightly treats the subject of local government as a residual subject entrusted to the provinces in light of Article 142 on the subject matter of federal and provincial laws. The Federal Legislative List (Part I) empowers the federal government only with respect to ‘local self-government in cantonment areas’ (Entry 2). Apart from this, Article 140-A and the Federal Legislative List (Parts I and II) are silent on local government in Islamabad Capital Territory. This constitutional lacuna must be addressed at some stage by inserting a new entry pertaining to local government in the federal capital.

Nevertheless, the Elections Act 2017 contains a full-fledged chapter on the conduct of elections to local governments (Sections 219–229). Under Section 219(4), ‘The [Election] Commission shall hold elections to the local governments within one hundred and twenty days of the expiry of the term of the local governments of a province, cantonment or Islamabad Capital Territory.’ This provision has been flouted repeatedly on one pretext or the other—mostly through changes to the local government laws passed by the provinces.

3 Other constitutional provisions on local governments

While the Constitution refers to local government in places, with various articles that have a bearing on this subject (Annex 2), it does not offer any comprehensive scheme.

Constitutional and legal texts in Pakistan borrow terminologies and definitions from the General Clauses Act 1897 (a colonial legacy). Section 28 of the General Clauses Act defines local authority as ‘a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.’ There is otherwise no proper definition of local government in this Act.

The provincial General Clauses Acts adopted in 1956 have similar definitions. The Punjab General Clauses Act defines ‘local authority’ as:

a municipal corporation, municipal committee, district board, body of Port Trustees or Commissioners, or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund.

The Act relating to Khyber Pakhtunkhwa reads:

(35) ‘Local authority’ shall mean a [Local Government], body of Port Trustees or Commissioners, or other authority legally entitled to, or entrusted by the Government with the control or management of a [...]local fund.

However, the 1973 Constitution itself uses terms such as ‘local government’ and ‘local authority/authorities’ about 25 times. It recognises the term ‘local government’ ten times in Articles 32, 63, 140-A, 219 and 222 and ‘local self-government’ once in the Federal Legislative List (Part I, Entry 2). In other articles, the Constitution uses the term ‘local authority’ or ‘local authorities’.

When defining the State, Article 7 reads:

In this Part, unless the context otherwise requires, “the State’ means the Federal Government, Majlis-e-Shoora (Parliament), a Provincial Government, a Provincial Assembly, and such local or other authorities in Pakistan as are by law empowered to impose any tax or cess.

Had this article used the term ‘local government’ instead of ‘local authorities’, it would have implied that the existence of local governments may be necessary to complete the state.

Article 32 of the Principles of Policy says that 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. However, the Principles of Policy are not justiciable, unlike constitutionally guaranteed fundamental rights. If this article were moved to the chapter on Fundamental Rights, this could help ensure the continuity of elected, representative local government institutions in the country.

At least four articles in the Constitution—namely, Articles 27, 37, 63 and 212—recognise or assume the presence of local-level decentralised administration, one of the benchmarks for local government provided in Article 140-A.

At least three other articles—namely Articles 7, 73 and 260—indicate or relate to financial responsibility and authority—yet another benchmark for local government provided in Article 140-A. Two articles, 199 and 212, concern the competence and jurisdiction of a high court and administrative courts and tribunals over local authorities. Articles 140-A, 219 and 222 define the role of the ECP in conducting local government elections, preparation of electoral rolls and delimitation of constituencies.

If read in historical context, the Constitution of 1973 has much more on local government than the defunct constitutions of 1956 and 1962. The 1956 Constitution included all local and other authorities in Pakistan as part of the definition of the state (Article 3). Local government was part of the Provincial List, in which Entry 15 read: ‘Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.’ Local self-government in cantonment areas (Entry 1) was part of the Federal List. In the Constitution of 1962, the term used was ‘local authorities’, thereby protecting the Basic Democracy Order 1959.

4 International best practices

In this context, it is useful to look at what other federally organised countries have done to ensure effective local governments.

In India, ‘residual powers’ are vested in the central government. The Constitution of India, the lengthiest procedural constitution, provided constitutional cover to local governments through the 73rd and 74th amendments in 1993. This may not be an option in Pakistan as there are no provincial or concurrent lists, and the federating units will not tolerate any local list, instead guarding their autonomy over residual subjects.

A second example is that of subnational constitutions [a parallel would be provincial constitutions in Pakistan] such as that in the federally organised US and Federal Republic of Germany. Subnational constitutions in federally organized countries devote considerable space to the establishment and regulation of local governments.

In the US, 49 out of 50 states (the only exception is Nebraska) have bicameral legislatures. In India, out of 28 states, six (Andhra Pradesh, Bihar, Karnataka, Maharashtra, Telangana and Uttar Pradesh) have bicameral legislatures. Bicameralism at the subnational level helps address regional disparities within the federating units in this case.

There is, however, hardly any discourse in Pakistan on the possibility of provincial constitutions to provide for a governance architecture in each province, including local governments and multifactor formulae for resource distribution through the Provincial Finance Commissions.

In this context, the most feasible option is to reform and strengthen Article 140-A and apply the term ‘local government’ throughout constitutional and legal texts, including the General Clauses Act 1897.

5 Proposed amendment to Article 140-A

The amendment proposed in this policy paper reads as follows:

A Bill to further amend the Constitution of the Islamic Republic of Pakistan 1973

Whereas it is expedient to amend the Constitution of the Islamic Republic of Pakistan to strengthen local government in the country;

It is hereby enacted as under:

1. Short title and commencement:
 - a. This Act shall be called the 26th Constitutional (Amendment) Act 2023
 - b. It shall come into force at once.
2. Replace Article 140-A as follows:
 - c. Each Province in its jurisdiction and the Federal Government in Islamabad Capital Territory and the Cantonments shall, by law, establish a local government system and devolve political and administrative powers with a local cadre of services and financial responsibility and authority through the Provincial Finance Commissions to elected representatives of the local governments.
 - d. Elections to local governments shall be held by the Election Commission of Pakistan.
 - e. Elections to local governments shall be held within 120 days upon completion of the term of local governments or in case of their early dissolution.
 - f. Local governments shall meet on the twenty-first day following the day on which local elections are held.

In addition to the proposed amendment, a new entry will need to be added to the Federal Legislative List (Part I):

Local government in Islamabad Capital Territory.

6 Recommendations

Apart from the text of the proposed amendment in Section 5, HRCF proposes the following recommendations for strengthening the political environment and constitutional and legal framework.

The federal/provincial legislatures should:

- Amend Article 140-A with a view to reforming and strengthening it.
- Amend definitions pertaining to local government in the General Clauses Acts at both the federal and provincial levels.
- Apply the term ‘local government’ throughout constitutional and legal texts, including the General Clauses Act 1897.
- Shift Article 32 in Principles of Policy to the chapter on Fundamental Rights.
- Amend the Elections Act 2017 to prevent the provincial governments and federal government from changing their local government acts during the last six months of the life of their local governments.

More broadly:

- The provinces as well as civil society should start a conversation on ‘provincial constitutions’ to delineate the distribution of functions and powers between the provincial and local governments as well as to lay down multifactor formulae for resource distribution through the Provincial Finance Commissions.
- The possibility of holding local government elections simultaneously with national and provincial elections—to save costs and ensure greater political certainty—should be explored.
- Civil servants should not be appointed as stop-gap administrators of local governments: this goes against the spirit of the preamble to the Constitution and the Objectives Resolution, which call for sovereignty to be operationalised through people’s elected representatives.

Annex 1: ECP's stance on local government

In December 2022, the ECP asked the federal government to amend Article 140-A of the Constitution, paving the way for changes in the local government laws.² The proposed amendment reads:

In the Constitution of the Islamic Republic of Pakistan, in Article 140 (A) after clause (2), the following new clause (3) shall added namely (3) The Federal Government, or, as the case may be, the Provincial Government shall make necessary arrangements including amendments [to] [the] existing laws, rules, alteration in the administrative limits of districts, tehsils and local areas before the expiry of term of local governments, if so required, in such a way that the Election Commission of Pakistan may hold elections within one hundred and twenty days [three months] after the expiry of term of the local government.

In its letter, the ECP also sought amendments to Section 219 of the Elections Act 2017, proposing that any amendments to the Act be made a year before the completion of the tenure of a local government:

The Federal Government or as the case may be the Provincial Government shall make necessary arrangements including amendments [to] the existing local government laws, rules, change or alteration in administrative limits of districts, tehsils and local areas before the expiry of the term of [a] Local Government....

Provided that, in case the existing Local Government system is required to be replaced completely with the new local government system or substantially alter during its currency by any Government, then such enactment shall be made by an Act of [Parliament] or the Provincial Assembly as the case may be at least one year prior to the expiry of [the] local government.

The ECP's rationale for these amendments was that its preparation for local government polls went to waste after the change in the law:

² S. Virk. (2022, December 28). ECP wants Article 140(A) amended. *The Express Tribune*. <https://tribune.com.pk/story/2393153/ecp-wants-article-140-a-amended>

Article 32 of the Constitution provides that the State shall encourage local government institutions composed of elected representatives of the areas concerned and in such institutions special representations will be given to peasants, workers and women....

Article 140-A (1) provides that each province shall by law establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representative of the local governments. Chapter XIII of the Elections Act, 2017 deals with [the] conduct of elections [for] the local governments. The Election Commission under Article 140-A (2) read with Article 219 (d) of the Constitution is under obligation to hold local government elections. Article 218(3) of the Constitution cast duty upon the commission, to organise and conduct elections and to make such arrangements as are necessary to ensure that election is conducted honestly justly, fairly and in accordance with law and that corrupt practices are guarded against. In order to fulfil its constitutional obligation, the commission has always strived to hold timely local government elections but the federal and provincial governments repeal or amend the local government laws even after the expiry of the term of the local government which causes inordinate delay in the conduct of election and the commission faces difficulty in fulfilment of its constitutional duty. It is now established that local government is the third tier of the State and delay in election of local government offends Article 32, 140-A (1) 219 (d) of the Constitution and also hampers the devolution of powers at gross root level.

Annex 2: Constitutional articles relevant to local government

The following constitutional articles have a bearing on local government and local authorities.

Article 7: Definition of the state

In this Part, unless the context otherwise requires, ‘the State’ means the Federal Government, [Majlis-e-Shoora (Parliament)], a Provincial Government, a Provincial Assembly, and such local or other authorities in Pakistan as are by law empowered to impose any tax or cess.

Article 27: Safeguards against discrimination in services

(2) Nothing in clause (1) shall prevent any Provincial Government, or any local or other authority in a Province, from prescribing, in relation to any post or class of service under that Government or authority, conditions as to residence in the Province, for a period not exceeding three years, prior to appointment under that Government or authority.

Article 32: Promotion of local government institutions

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 37: Promotion of social justice and eradication of social evils

(i) decentralise the Government administration so as to facilitate expeditious disposal of its business to meet the convenience and requirements of the public.

Article 63: Disqualification for membership of Majlis-e-Shoora (Parliament)

(i) he has been dismissed from the service of Pakistan or service of a corporation or office set up or, controlled by the Federal Government, Provincial Government or a Local Government on the grounds of misconduct, unless a period of five years has elapsed since his dismissal; or

(j) he has been removed or compulsorily retired from the service of Pakistan or service of a corporation or office set up or controlled by the Federal Government, Provincial Government or a Local Government on the ground of misconduct, unless a period of three years has elapsed since his removal or compulsory retirement.

Article 73: Procedure with respect to money bills

A Bill shall not be deemed to be a Money Bill by reason only that it provides—

- (a) for the imposition or alteration of any fine or other pecuniary penalty, or for the demand or payment of a license fee or a fee or charge for any service rendered; or
- (b) for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

Article 140-A: Local government

1. 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.
2. Elections to the local governments shall be held by the Election Commission of Pakistan.

Article 199: Jurisdiction of the high court

1. Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,—(a) on the application of any aggrieved party, make an order— (i) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Jurisdiction of High Court.
2. Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect.

Article 212: Administrative courts and tribunals

Notwithstanding anything hereinbefore contained the appropriate Legislature may by Act 1 provide for the establishment of one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of—

- (a) matters relating to the terms and conditions of persons [who are or have been] in the service of Pakistan, including disciplinary matters;
- (b) matters relating to claims arising from tortious acts of Government, or any person in the service of Pakistan, or of any local or other authority

empowered by law to levy any tax or cess and any servant of such authority acting in the discharge of his duties as such servant.

Article 219: Duties of the ECP

The [Commission] shall be charged with the duty of—[(a) preparing electoral rolls for election to the National Assembly, Provincial Assemblies and local governments, and revising such rolls periodically to keep them up-to-date;]

[(d) the holding of general elections to the National Assembly, Provincial Assemblies and the local governments.

Article 222: Electoral laws

Subject to the Constitution, [Majlis-e-Shoora (Parliament)] may by law provide for—

(a) the allocation of seats in the National Assembly as required by clauses (3) and (4) of Article 51;

(b) the delimitation of constituencies by the Election Commission including delimitation of constituencies of local governments;

(f) all other matters necessary for the due Constitution of the two Houses, the Provincial Assemblies and local governments.

Article 260: Definition of taxation

‘Taxation’ includes the imposition of any tax or duty, whether general, local or special, and ‘tax’ shall be construed accordingly.

Federal Legislative List (Part I)

Entry 2: Local self-government in cantonment areas.