

## Article 140A of the Constitution of Islamic Republic of Pakistan, 1973: A guarantor of grassroot level democracy and good governance

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### **Abstract:**

The local government system is designed for the purpose of efficient delivery of services at the grassroot level and it is the inviolable command of the Constitution of Pakistan 1973 by virtue of Article 140A. Lord Ripon introduced Local Bodies Resolution in 1882 and dubbed local bodies, as school of democracy. In Pakistan, military regimes had introduced local bodies election, the detailed power devolution plan was of General Musharraf (late). On the contrary, political parties always hesitated to establish local government system in the country and tried their best to avoid conducting the election. If, the local government system is allowed continuously to perform, it can bring soft revolution in the country and play pivotal role in the development, resolving problems and ensuring the good governance at the grassroots level.<sup>1</sup>

**Key Words:** Grassroot, good governance, efficient delivery of services, school of democracy, constitutional obligation, devolution and establish local government.

### **Introduction**

The worst form of democracy is better than the best dictatorship. Yes, it is a charming political phrase to listen. But unfortunately, in Pakistan so-called democratic parties did never allow to flourish grassroot level democracy which is called school of democracy by Lord Ripon in 1882. Throughout political history, these political parties never showed any interest to conduct local bodies election. The absence of grassroot level democracy resulted in bad-governance rather

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<sup>1</sup> Without Local Bodies, Tasneem Noorani, DAWN 22<sup>nd</sup> February 2022 available at <https://www.dawn.com/news/1608736/without-local-bodies>

absence of governance. On the other hand, establishment of local government can lead to good governance and efficient delivery of service at doorsteps. By insertion of Article 140A of the Constitution of Pakistan, 1973, the governments have been divided into three tiers viz; Federal Government, Provincial Government and Local Government; the last being the nursery of the democracy and assurance of delivery of basic facilities at the doorsteps of the masses. It is unfortunate, that the local bodies elections always been held by the Military Regimes to legitimate their unconstitutional and illegal takeover.<sup>2</sup>

The democratic parties who have been ruling this country for decades, constantly denied the development of grassroots level democracy which can be a source of future leadership in the country. The fear to democratize, by the political parties is strange in 21<sup>st</sup> century. They want to concentrate powers in their hands and allocate development funds by themselves.<sup>3</sup> The Superior Courts, time and again, decided that the powers which are to be exercised by the local governments, are being exercised by the member of National and Provincial Assemblies alongside bureaucracy, dubbed it as encroachment of powers and denying of democratic norms and suppressing the true representation of the local areas.<sup>4</sup>

Under the command of the Article 140A (2), the Election Commission of Pakistan is under constitutional obligation to conduct fair, free and transparent local bodies election in the country but estrangely the ECP has been evading to perform its constitutional obligation and kept on requesting for delaying the local bodies election.<sup>5</sup>

A considerable time has been lapsed and local bodies elections were not held in all the provinces of Pakistan. The Court has reproduced the dissolution date as Balochistan, KPP Punjab and Sindh, 09-01-2010, 30-01-2010, 23-02-2010 and 24-02-2010 respectively.<sup>6</sup>

“In the meanwhile, another petition was filed by Raja Rab Nawaz, learned Advocate of this Court and subsequent thereto directions were issued to the Federal Government of Pakistan to hold elections in the Cantonment Areas. As for the last 18 years elections of local bodies have not been conducted in Cantonment areas whereas the Local bodies in the Provinces were dissolved on the following dates,

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<sup>2</sup> Muhammad Ashraf, Malik, “Shameless Aversion to LB”, The Nation, 6<sup>th</sup> January 2023 available at <https://www.nation.com.pk/06-Jan-2023/shameless-aversion-to-lb-polls>

<sup>3</sup> 2020 LHC 3635, para-No.3.

<sup>4</sup> 2021 SCMR 714.

<sup>5</sup> 2014 SCMR 1.

<sup>6</sup> Ibid.

and since then there is no local government in the Province despite of mandatory provisions of the Constitution.<sup>7</sup>

The ECP, the constitutional body has always been deviating or in other words not obeying the constitutional command. The ECP must be prepared and be ready to conduct local bodies election when it is asked by the Federal and Provincial Governments. This includes to update electoral list, delimitation and all other necessary steps which are necessary for holding free, fair and transparent election to establish local government.<sup>8</sup> This delaying tactics continued by one authority or the other and on one excuse or the other. The governments tried their best to postpone on the pretext of amendments going on in Local Body Ordinance or Act whatever the case may be or on pretext of delimitation<sup>9</sup> but to delay local bodies election is their one point agenda. They actually do not want to transfer power at the grassroots level and continuously violating the constitutional and legal provisions.<sup>10</sup> The miserable condition in respect of establishing local bodies governments can be measured as the local bodies election was the issue in 2014 and Islamabad High Court in the year 2023 still seizes the case of ICT local bodies election. Actually, the political parties are not interested in conducting local bodies election and they are adamant to transfer the administrative, political and financial powers at grassroots level.<sup>11</sup> The Supreme Court in Administrator, Municipal Corporate, Peshawar case, deplored that:

“2....The Constitution cannot be permitted to be violated. If the excuse of the Government were to be accepted then elections to the National and provincial assemblies can also not take place, and that would be the end of democracy.”<sup>12</sup>

“9. It appears, we have not learnt a single lesson from our tragic history. When Pakistan emerged on the world stage, it was a proud country with the largest Muslim population in the world. But the people's interest and franchise was discarded; officers facilitated unconstitutional rule; the country ruptured into two and we were left with half a country. This truncated country can no longer accept nor will we permit the Constitution's subversion and unconstitutional rule. Obedience to the Constitution is the inviolable obligation of every citizen (Article 5) and anyone subverting or attempting to subvert the Constitution commits high treason (Article 6).<sup>13</sup>

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<sup>7</sup> 2014 SCMR 101.

<sup>8</sup> Ibid at para 5.

<sup>9</sup> Post Poll Karachi, Dr. Noman Ahmad, DAWN 7<sup>th</sup> February 2023, available <https://www.dawn.com/news/1735778/post-poll-karachi>

<sup>10</sup> Ibid Para 7.

<sup>11</sup> Ibid Para 10.

<sup>12</sup> 2021 SCMR 714, Para 2.

<sup>13</sup> Ibid Para 9.

Whereas on the other hand, European Union has empowered and implemented in letter and spirit, developed the capacity and strength of local governments in EU countries depicts that local governments ensure to regulate EU, Environmental changes, every transition, the handling of refugees, healthcare, and other essential public service.<sup>14</sup> So much so, European Commission and European Parliament have acknowledged the important role of local governments in implementing the good governance policy.<sup>15</sup> To learn the experience from European Union, the local authorities are so functional and powerful that they are proactively engage in politics internally and externally to keep liaison with EU networks. The local self-government in EU is so empowered to take initiative and policy designing role in urban mobility, environmental policy, healthcare, education, social services, procurement, transportation, and housing etc., as described as:

“Being in direct touch with their citizens, local authorities take a vital role in overcoming national borders and contributing to a mutual understanding of differences and commonalities. It is in this spirit that our research seeks to improve our understanding of local government in the EU for politicians and people working in public authorities at multiple levels, as well as for academics who may find our empirical and theoretical insights useful for their own endeavours.”<sup>16</sup>

In this brief research paper, we would like to discuss the reasons by all stakeholders to delay the local bodies election on one pretext or other. There are numerous reasons, to delay the local bodies election; for example, delimitation, amendments in the Local Government Act, Ordinance, use of EVM, defective electoral roll,<sup>17</sup> made in successively governments, showing of incapability by ECP are a few. The change of Federal and Provincial governments discarded the local government system of previous government in Punjab.<sup>18</sup> The Join sitting (Senate and National Assembly) under Article 75 (2) has passed Islamabad Capital Territory Local Government Bill, 2022 wherein, Mayor and Deputy Mayor will be elected indirectly. In previously enacted law, the election of these two slots were to be held directly. The new law, passed in join sitting, also increased Union Councils seats from 101 to 125; the case for which is already is in Islamabad High Court,

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<sup>14</sup> Marius Guderjan and Tom Verhelst, “Local Governments in the EU: Completing the Integration Cycle”, available at <https://blogs.lse.ac.uk/eurompblog/2022/02/13/local-government-in-the-european-union-completing-the-integration-cycle/>

<sup>15</sup> 2018 Report on the Role of the Cities in the Institutional framework of the Union, Report-A8-0203/2018 European Union, available at [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0273\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0273_EN.html).

<sup>16</sup> Ibid.

<sup>17</sup> Plan to use EVMs ‘stunt’ to delay Punjab LG Polls. Chief Election Commissioner, DAWN, 06<sup>th</sup> February 2023 available at <https://www.dawn.com/news/1716886>

<sup>18</sup> Ibid.

Islamabad.<sup>19</sup> This change in the law, will cause further delay of local bodies election at Islamabad Territory City because it is highly expected that the opposition party will pursue the case in the court against this amendment.

We would like to divide this paper into Five parts. In first part, we will review the Historical Background. In Second part, Constitutional provisions related to Election Commission of Pakistan and local bodies government. In the third part, the military regime's love with local bodies will be reviewed. The fourth part it will be consisted of important and foundational judgments of the superior courts wherein superior courts ordered in numerous cases to hold local bodies election and to transfer political, administration and financial powers to local representatives. The Fifth part will talk about the political parties' hesitant to empower their own party-men. In the end, we will conclude with some of the recommendations.

## 1. Historical Background

In United-India, Lord Ripon had introduced Local Bodies Resolution in 1882. He was appointed Viceroy in 1880 by William Gladstone and his contribution towards the betterment of the Indian lives are highly regarded. He promulgated first ever Factories Act in 1881 to provide safety to the children and he was the viceroy who had repealed infamous Vernacular Press Act in 1882. Lord Ripon was considered a liberal viceroy in India appointed by England. The idea of decentralization though was not a novo and Municipalities were existed in the big towns before his resolution. But Lord Ripon reformed and promoted the idea of creating municipalities in small towns, empowering these municipalities through local bodies more capable hence non-officials got hold of some power through local bodies.<sup>20</sup> Through this Resolution, District and Local Boards were formed in rural and urban areas. The boards in rural area were called Taluka or Tehsil and non-official member included through election and only rent payers were allowed to participate in election. The non-official can become Chairman of rural area and thus the local bodies were consisted of elected and nominated peoples.<sup>21</sup>

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<sup>19</sup> Parliament Joint Sitting passed Islamabad Capital Territory Local Government Act, 2022. The Nation, available at <https://www.nation.com.pk/09-Feb-2023/parliament-joint-sitting-passes-islamabad-capital-territory-local-government-amendment-act-2022>

<sup>20</sup> Lord Ripon: The Father of Self-Government in United India available <https://thenationaltv.com/News/lord-ripon-father-of-local-self-government-in-india>

<sup>21</sup> Ibid.

The officials of local bodies had been empowered to impose and collect taxes, and power to appeal of loan with the approval of government. It means that local bodies had been financially empowered, the most neglected and difficult aspect of devolution plan in Pakistani context. The interference of the state government was made lessened, and this system was initially applied in the local bodies of *Madras, Punjab and Bengal*. It is worth mentioning that the Panchayat Raj system was in vogue since ancient times in India but Lord Ripon's Resolution was landmark step in the promotion of local self-government and empowering the local peoples.<sup>22</sup>

Lord Ripon's local bodies was so empowered that 141 years ago, it had devolved the functions related to sanitation, water supply, cleaning of local streets, medical aid and primary education, the significant improvement was seen after its implementation, and local bodies was become strategic, systematic and termed it as *school of democracy*. The intent behind introducing local bodies in 1882, Lord Ripon, wanted that Indians should get experience of exercising powers at grassroot level and through this resolution, he also removed difficulties faced by a local body. The bureaucracy did not like this idea and dubbed that Indians are ineligible to participate and run their own local affairs and it created hurdle time and again. But despite of all this, Lord Ripon gain praise by the Indian for his noble causes in education, eradication of child labor and the most important gift to Indian was to empower the local peoples through Local Bodies Resolution 1882.<sup>23</sup>

## 2. Constitutional Provisions relating to Election in the Country

The Constitution of Islamic Republic of Pakistan 1973 has categorically entrusted the task of conducting election to a constitutional body i.e., Election Commission of Pakistan. The Part-VIII of Constitution consist of two Parts, covering articles from 213 to 226 about election law, powers, and functions of the Election Commission of Pakistan. The State has been defined in the Article 7 wherein local authority has been included in this definition. The Article 7 is placed before the start of Fundamental Rights and Principles of Policies and deliberately, the Superior Courts have been excluded from the definition because the Fundamental Rights against State, of individuals are to

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<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

be enforced, safeguarded by the Superior Judiciaries<sup>24</sup> and the aspect is that the word to impose taxes or Cess, are used in Article 7, and Superior Courts cannot impose and collect taxes.<sup>25</sup> In Principles of Policy Chapter; the chapter of principles and guidelines for State to make laws and superior judiciary to interpret the laws and constitutional provision. The State have been asked, under the Articles 32, 34 and 35, to ensure the participation of women in every sphere of life, minorities, and peasants respectively.<sup>26</sup> The Article 140A is divided and inserted in two parts and stages; first part 140A (1) was inducted in the Constitution of Pakistan by General Musharraf (late) and second part 140A (2), was added through 18<sup>th</sup> Amendment 2010 Act. The first part is 140A (1) of the Constitution, made obligatory on provincial governments to establish local government system wherein political, administrative, and financial responsibilities, to devolve to the local elected leaders and by its clause 2, the Election Commission of Pakistan has been entrusted the constitutional responsibility to conduct local bodies election.<sup>27</sup>

The Election Commission of Pakistan, under Article 218 (3) is duty-bound to conduct election honestly, justly, fairly, in accordance with the law and ECP needs to stop the corrupt practices in the election process.<sup>28</sup> The Commissioner of ECP under the constitutional command, is required to revise the electoral roll/voter lists annually.<sup>29</sup> All the Executives Authorities are constitutionally obligated to assist the Commissioner in discharging his or their duties in relation to election in the country.<sup>30</sup> The Article 222 (b),(c),(e) and (f), Subject to the Constitution,

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<sup>24</sup> “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,”

<sup>25</sup> Fazal Jan v Roshan Din - PLD 1990 SC 661.

<sup>26</sup> “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.”

<sup>27</sup> “Article 140A: 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.”

<sup>28</sup> Workers Party Pakistan v Federation of Pakistan - PLD 2012 SC 681. “Article 218 (3): *It shall be the duty of the Election Commission constituted in relation to an election to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against.*”

<sup>29</sup> “Article 219 (a): *Duties of Commissioner: The Commissioner shall be charged with the duty of— (a) preparing electoral rolls for election to the National Assembly and the Provincial Assemblies, and revising such rolls annually;*”

<sup>30</sup> Imran Khan v Election Commission of Pakistan - PLD 2013 SC 120. “Article 220: *Executive Authorities to assist Commission, etc: It shall be the duty of all executive authorities in the Federation and in the Provinces to assist the Commissioner and the Election Commission in the discharge of his or their functions.*”



Parliament by enacting the appropriate law provided that Commission has to do delimitation process of the constituencies; prepare the electoral rolls as per the updated demography of the constituency; and ECP has to deal with the matters relating to the corrupt practices which occurred before, on or after the election process and further clarified that no powers of the Commissioner or Election Commission under the Part of Election Chapter cannot be abridged.<sup>31</sup>

Therefore, if we read all the constitutional provisions in the light of precedents of the superior courts, then we can say that to conduct honesty, justly, fairly and transparent election of National, Provincial Assemblies and Local Governments in the country, is the core function and duty of the Election Commission of Pakistan.<sup>32</sup> The democracy, a participatory process government, is the modern day political system in the country; to achieve objectives of the democracy, it is necessary that ECP to take all the necessary steps to update the electoral rolls, to do delimitation in accordance with the law, to take stern action against the mal-practice and corrupt practices committed by anyone. These steps are necessary for the development of democracy in the country and to ensure fulfillment of political, civil rights which are guaranteed under Fundamental Rights in the Constitution of Pakistan 1973. The Judiciary is not included in the definition of State, the reason behind this logic is that Judiciary has to interpret Law, Constitution, safeguard and protect the fundamental rights, enshrined in the Constitution of Pakistan.<sup>33</sup> The Election Commission of Pakistan has been assigned a very gigantic task to conduct election in the country honestly, justly, fairly and in transparent manner so the representation of the people can be ensured and true democracy as defined by former US President, Abraham Lincoln; “The government of the people, by the people and for the peoples.”

The local body election, before the insertion of 140A, was mentioned in Principles of Policy only, and ordered by the superior courts while interpreting the Article 17 of the Constitution. But now it is not merely a wish or principles of Policy but a constitutional command under Article

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<sup>31</sup> “Article 222: Electoral Laws: Subject to the Constitution, 1 [Majlis-e-Shoora (Parliament)] may by law provide for— (b )the delimitation of constituencies by the Election Commission; (c) the preparation of electoral rolls, the requirements as to residence in a constituency, the determination of objections pertaining to and the commencement of electoral rolls; and (e) matters relating to corrupt practices and other offences in connection with elections; and

*But no such law shall have the effect of taking away or abridging any of the powers of the Commissioner or an Election Commission under this Part.*”

<sup>32</sup> PLD 2013 SC 120.

<sup>33</sup> Brohi, A. K., Fundamental Law of Pakistan, p.328.



140A, it is the provincial constitutional obligation to establish local governments system to devolve the political, administrative and financial responsibility and authority to the elected local representatives, for the purpose of smooth and efficient delivery of services to the masses at their doorsteps.

### 3. Military Regime's Love with Local Bodies Elections

The military in Pakistan had taken over the governments four times directly and rest of the time controlled the so-called democratic governments behind the scenes. Interestingly, every military government had introduced local bodies governments and held local bodies elections. But remember, it does not mean that the military regimes were interested in sharing powers with the masses, but their motives were to legitimize the illegal and unconstitutional actions. The Supreme Court historically had legitimated the military take overs on the *doctrine of necessity* introduced by the former Chief Justice Muhammad Munir in Maulvi Tamizuddin case.<sup>34</sup> In the last military rule, the Supreme Court of Pakistan had empowered the General Musharraf (late)<sup>35</sup> regime to amend the Constitution; though the power to amend the Constitution is not vested in the Supreme Court itself but in Second Military coup, he was punished under Article 6 for committing high treason.<sup>36</sup> General Ayub introduced Basic Democracies to gain popularity and legitimacy in 60s and General Zia also conducted local bodies election wherein the local area peoples were empowered, to get favorable result in Referendum.<sup>37</sup>

The Devolution Power Plan 2001 of General Musharraf (late) was unique in the sense that it had brought drastic changes in the political system, particularly at local level, It was a comprehensive devolution plan though painful for the district bureaucracy in the country through this Devolution Power Plan 2001, District Commissioner/Commissionerate system was abolished and brought all other district bureaucracy under the control of District Nazim (Lord Mayor's new name). A separate Federal Agency was created by the name of National Reconstruction Bureau

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<sup>34</sup> PLD 1955 FC 240.

<sup>35</sup> Died on 6<sup>th</sup> February 2023 in Dubai hospital.

<sup>36</sup> Zafar Ali Shah v General Musharraf – PLD 2000 SC 869. Dr. Rasul Bakhsh Raees, Re-Inventing Governance: A Case Study on Devolution, published in Devolution and Governance Reforms in Pakistan edited by Syed Mubashir Ali and Muhammad Amjad Saqib, Oxford University Press, Lahore.

<sup>37</sup> Ibid at Page 235.

(NRB) that had chalked out this detailed plan in the name of Power Devolution at the grassroots level, in three tiers, are District, Tehsil and Union councils.<sup>38</sup>

The main features of this devolution plan were discussed by Prof Rasul Bakhsh Raees. The three tiers local government system was introduced and implemented viz; District, Tehsil and Union Council level and women were given 33% participation at all levels. The DC office, in the previous system, was all in all, in controlling the affairs of the district and most of these officers were from Federal Bureaucracy and that too from a particular occupational group DMG (District Management Group, newly named Pakistan Administrative Service (PAS)).<sup>39</sup> The DC enjoyed a lot of powers under the previous system. But these were abolished through Local Government Ordinance 2001 and district officers were brought under the supervision of elected District Nazim and Tehsil Nazim to ensure efficient and quick delivery of services at grassroots level and concept of accountability before the elected District Nazim and Tehsil Nazim, was introduced.

#### 4. Pakistani Superior Courts Judgments on Local Bodies Election

##### *a. Ms. Imrana Tiwana v LDA - PLD 2015 LHC 522*

This *Environmental Public Interest* Constitution Petition by the concerned citizens had challenged the constitutionality and legality of Signal Free Corridor Project proposed and started by Lahore Development Authority (LDA).<sup>40</sup> This Signal Free Corridor Project started by the LDA to remodel and redesign the road from Qurtaba Chow to Main Gulberg ranging seven kilometers. This judgment discussed in detail about Environmental impact of the project but here we would like to confine ourselves to local government system and its benefits.<sup>41</sup>

The seminal, comprehensive, and foundational judgment on Article 140A was delivered in the year 2015 by a Full Bench of Lahore High Court comprising Mr. Justice Syed Mansoor Ali Shah, Ms. Justice Ayesha A. Malik, Mr. Justice Syed Yawar Ali, JJ. Mr. Justice Syed Mansoor Ali Shah authored the judgment.<sup>42</sup> In this judgment, inter alia, the history of Article 140A was

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<sup>38</sup> Ibid.

<sup>39</sup> Ibid. Now re-named as PAS (Pakistan Administrative Service) and Syed Muhammad Ali, Democracy sans Devolution, UNDP.

<sup>40</sup> Para No.1 of the Judgment – PLD 2015 LHC 522.

<sup>41</sup> Para No.3. of the Judgment – PLD 2015 LHC 522.

<sup>42</sup> Ms. Imrana Tiwana v Lahore Development Authority (LDA) - PLD 2015 LHC 522.

given and urged establishment of local governments, leading to promote democracy in the country. The Article 140A in present shape, was inserted in the Constitution through 18<sup>th</sup> Amendment in 2010 by the political parties after Musharraf regime and it was intended that it will pave way for 3<sup>rd</sup> tiers of democratic set up in the Federation of Pakistan. This will pave the true democratic value in the country, and it would be a milestone in developing and promoting democracy in the country.<sup>43</sup>

The background of bringing 18<sup>th</sup> Amendment which had amended more than 100 articles of the Constitution was discussed in detailed in the *Imrana Tiwana* case.<sup>44</sup> This famous amendment was brought by the consensus of the political parties immediately after the General Musharraf's military regime was over and these political parties wanted to project themselves as democratic hence, they had inserted, inter alia, Article 140A to fulfill the guidance provided in the Article 32 of the Constitution regarding promotion of local governments.

The Article 140A does not envision the local government to be nominal or residual or merely symbolic anymore but a real empowered stakeholder and a breeding ground for deeper and more public responsive politics. The idea is a move away from top-down management and governance but for ideas, aspirations, and imperatives to from upwards to macro level.

*b. LDA v Imrana Tiwana – SCMR 2015 1739 (Appeal case)*

In appeal, against LHC Judgment in *Imrana Tiwana* case, Supreme Court decided that after insertion Article 140A, the provincial governments have been empowered to establish local government system in their respective provinces. The provinces are exclusively empowered to make legislation and to take all such steps that are necessary to conduct fair, free and transparent elections but they cannot slash the powers of local bodies government and if it is done thus violate constitutional powers through legislation such exercise shall be struck down by the superior courts. Once the local representatives are empowered in the light of Article 140A, the same cannot be taken back. The Supreme Court held that:

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<sup>43</sup> Ibid

<sup>44</sup> PLD 2015 LHC 522.

“Even after the insertion of Article 140A of the Constitution, the Provincial Government would continue to have the authority to enact and amend statutes, make general or special laws with regard to Local Government and local authorities, enlarge or diminish the authority of Local Government and extend or curtail municipal boundaries. Such power of amendment, however, was subject to the fact that if the Provincial Government overstepped its legislative or executive authority to make the Local Government powerless, such exercise would fall foul of Article 140A of the Constitution and be struck down by the court.”<sup>45</sup>

Mr. Raza Kazim, Senior Advocate Supreme Court advanced the arguments that once the powers are devolved, the devolving side has nothing to do its devolution and only the authority to whom it is devolved lives. He further reiterated that after the insertion of Article 140A, the provincial government is constitutionally duty bound to devolve the political, administrative and financial responsibility and authority to local government.<sup>46</sup> In Asad Ali Khan case,<sup>47</sup> where a question of constitutionality of section 3 of Punjab Local Government Act, 2019 was raised by the petitioner. Mr. Justice Gulzar Ahmed, the then Chief Justice of Pakistan, speaking for the Court, has made it clear that once, under Article 140A, the Provincial government, by legislation, establish local government system; subsequently it cannot dissolve the local bodies government, till the specified tenure is completed. The relevant part of the judgment is reproduced here under:

“...Therefore, the local government system established under Article 140A of the Constitution through Provincial Legislation, when translates into an elected local government for a specified period of time by law, cannot be dissolved before the period of its expiry, as such action will directly come in conflict with Article 17 of

## 5. Devolution of Power Plan under Political Parties

The mainstream political parties, who claim themselves as democrats, are not interested to devolve powers at local level. The Karachi issue is the main example. This city's annual GDP was 164\$ but in 2018-2019 budgetary year, Karachi Municipal Corporation got only 2.5 billion and during the Mayorship of Nematullah Advocate he managed to get 5 billion. The mega-city is a jugular vein of the Commercial hub of the country, but revenue generation functions have been taken over by provincial government and private sector.<sup>48</sup> The local bodies election, held recently,

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<sup>45</sup> 2015 SCMR 1739.

<sup>46</sup> Ibid at Para 21.

<sup>47</sup> Asad Ali Khan v Province of Punjab – PLD 2021 SC 770

<sup>48</sup> How Do Karachi 's Poor See Themselves, DAWN Sunday 29<sup>th</sup> January 2023; a reported authored by Arif Hassan and Amal Hashmi available at <https://www.dawn.com/news/1733976/how-do-karachis-poor-see-themselves>

creates confusion as the split poll results shows no clear majority. Pakistan People's Party, Jamat-e-Islami and Pakistan Tehreek-i-Insaf, stood first, second and third respectively,<sup>49</sup> cannot form local government at Karachi independently.<sup>50</sup> The possible scenarios are that If PPP and JI form government then JI can deliver as per its manifesto because in this case they can get development funds from Sindh but if JI joins with PTI and get mayorship, in this case, it will be remain only an opposition party even enjoying the mayorship because province will not disburse funds. Therefore, it will have to join PPP for fulfilling its promises. Another twist is MQM who is sitting with federal government and if its demands are not met, it can create problem at center. So, mainstream political parties are not interested in transferring administrative, political and financial responsibility and authority to the local bodies' governments. In a recent column in *The News*, Ms. Aasiya Riaz has urged that an appropriate amendment<sup>51</sup> in the Constitution of Pakistan should be brought to making 140A and local bodies related issue more concrete and protected.<sup>52</sup>

### Recommendations and Conclusion

The Article 140A should appropriately be amended to bring more clarity regarding local bodies election, delimitation, updating electoral/voters lists and all other ancillary tasks to be assigned Election Commission of Pakistan, so that the confusion of whose responsibility it is be settled once for all. Since, constitutionally, it is the core function of the ECP to conduct election in the country then it would be better, as has been decided, by the superior courts that all the above relevant functions be mentioned in the Article 140A to get rid of the confusion.

Women' participation should be ensured in every provincial legislature made for local government because it is the wish of the Constitution-makers mentioned in Preamble, Article 2A and Article 34 in Principles of Policy where women' participation to be ensured in public life.<sup>53</sup> General Musharraf had allocated 33% reserved seats in local bodies governments in all Three Tiers: District, Tehsil and Union Council level. It would be suggested that Deputy Mayorship, Deputy Tehsil Nazim and Deputy Chairman at Union Council level, should also be a woman,

<sup>49</sup> DAWN, 16<sup>th</sup> January 2023 available at <https://www.dawn.com/news/1731936>

<sup>50</sup> DAWN/Business Recorder etc. to be inserted here.

<sup>51</sup> Amendment for Devolution, Aasiya Riaz, The News, 22<sup>nd</sup> January 2023 available at <https://www.thenews.com.pk/print/1032967-amendments-for-devolution>

<sup>52</sup> Without Local Bodies, Tasneem Noorani, DAWN 22<sup>nd</sup> February 2022 available at <https://www.dawn.com/news/1608736/without-local-bodies> had expressed similar view regarding amending the Constitution to make local bodies more streamlined.

<sup>53</sup> "Article 34. Steps shall be taken to ensure participation of women in all spheres of national life."

whose electoral college be all women of District, Tehsil, and Union Council respectively. Therefore, women can contribute to local area development. The women councilors should be allocated separate funds for their training to enhance capacity building of the women to comply with the constitutional provisions for women participation in the public life. Simultaneously, men should also be imparted training for sensitizing to be tolerant. The Chairman of Union Council that is *Reconciliation Committee* for family related matters like divorce matters, the Chairman and Deputy Chairman, who should be a woman, be included in the process of Divorce Certificate Issuing Authority.

The political parties should give chance to these schools of democracy i.e., local bodies governments and it will be in their own benefits to receive future leadership for their parties. When, these local bodies governments will ensure efficient delivery of services, and development work; this will promote and fulfill the promises of the political parties made in their manifestos at time of General Elections, and constitutional provisions<sup>54</sup>. Once, the local governance continues without interruption from any quarter, then they will become mature and competent to run the affairs of the local area, as is done in the European Union countries. The provincial governments, through legislation decide which departments of the province, be devolved to the District Local Government for speedy and efficient delivery of services in the provinces. Before devolving the departments, the capacity building process of the department to perceive the responsibilities be ensuring. The Local Government Department should continuously provide training for women councilors regarding budget making and decision-making-process. Simultaneously, the men should also be imparted training to sensitize working together with women at local area so that the women can participate in the development of the local area.

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