DEVOLUTION AND DECENTRALIZATION: A STUDY OF REGIONAL AND INTERNATIONAL BEST PRACTICES
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## List of Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>CCBs</td>
<td>Citizen Community Boards</td>
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<td>CSOs</td>
<td>Civil Society Organizations</td>
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<tr>
<td>EDO</td>
<td>Executive District Officer</td>
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<tr>
<td>FOI</td>
<td>Freedom of Information</td>
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<td>FSC</td>
<td>Federal Shariat Court</td>
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<td>KP</td>
<td>Khyber Pakhtunkhwa</td>
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<td>PLGO</td>
<td>Punjab Local Government Ordinance, 2001</td>
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<td>RTI</td>
<td>Right to Information</td>
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<td>TMA</td>
<td>Tehsil/Town Municipal Administration</td>
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<td>UC</td>
<td>Union Council</td>
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<td>UIPT</td>
<td>Urban Immovable Property Tax</td>
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<td>VNC</td>
<td>Village and Neighbourhood Council</td>
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A. Executive Summary

The study informs about the comparable international models of local self-governance and looks at the salient features of the Right to Information laws enacted in Pakistan and two other countries namely Canada and India. The evidence presented in the study from regional and international levels will help establish effectiveness and importance of the LG system for a strong democratic system in Pakistan.

Local government systems and laws of India and Canada have been studied in order to highlight and share the best practices. Both the countries being colonies in the past, offer comparable grounds for systems developed over decades in Pakistan with India sharing common history of local self-governance in the pre-colonial and colonial eras. Local governments in all the three countries have been deemed a provincial / state subject with a distinct feature in India i.e., the Indian Constitution through 73rd amendment in 1992 has provided constitutional cover to the creation of local governments throughout India. Since, local government is primarily a provincial subject in Canada and variance in legislations across the country is of high degree, so legislation of Alberta has been discussed in this study.
B. Introduction and Setting the Context

i. Introduction

The international and regional best practices have always been a source of inspiration and good examples for various legal and structural reforms in Pakistan. For instance, most recently the Government was moved by a regional example and it incorporated the Right to Education (RTE) in the constitution. The regional examples and best practices in local government identified through this research are most likely to inform and influence the government officials and political parties for establishing and strengthening local government system in Pakistan. The study involved review of international governance models including legal and institutional frameworks to gather evidence of best practices regarding devolution and decentralization. Special emphasis has been placed on the regional models e.g. India. This evidence generated through this study shall be used to sensitize and inform political representatives and media about need and importance of the LG system.

ii. Objectives of the Study

The study was conducted with a view to analyze the local government systems across the world from the standpoint of citizens’ participation and right to information. For the purpose of this study, local government systems of India and Canada were reviewed to identify examples and best practices regarding avenues for citizens’ participation and opportunities for ‘Right to Information’ (RTI).

iii. Framework of Analysis and Methodology

Methodology adopted for this study included thorough review of local government systems in other countries through review of their legal frameworks and systems.

iv. Structure of the Report

The study has been presented in four sections. Section I of the study informs about the context, objectives and framework of analysis for the study at hand.

Second section informs about the concepts and basics of local governments, devolution and decentralization. Third section of this report provides detailed comments and opinion regarding the local government systems being practiced around the world. In this section, the LG systems of India and Canada are presented in detail. Conclusion has been given in section four of this report.
Devolution Concept and Practices in Pakistan

v. Devolution Concepts and Basics

Decentralization can be defined as the transfer and accessibility of authority or dispersal of power in public planning, management and decision-making from the national levels to the sub-national levels from a central body to subordinate regional bodies, or more generally from higher to lower levels of government.¹

The concept of devolution has been explained as a way of providing multiple centers of participation in decision-making that assures better management, responsiveness, and accountability; which are basic features of good governance. Thus relationship between successful devolution of power and good governance is quite positive and beneficial for the society. Devolution of power is an important setting to improve governance in developing countries. It is identified as a vital factor that contributes to the development process in a society. It also promotes characteristics of good governance that are prerequisite for advancement and prosperity of a country.

Generally in devolution process, most of the administrative and financial powers are shared with the local authorities in different regions of the country. These local authorities are called Local Governments, which work as administrative offices that are smaller than a state or province. The term is used to contrast with offices at nation-state level, which are referred to as the central government, national government, or (where appropriate) federal government. In modern nations, local governments usually have fewer powers than national governments do.² They usually have some power to raise taxes, though these may be limited by central legislation.

In some countries, local government is partly or wholly funded by subventions from central government taxation. The institutions of local government vary greatly between countries, and even where similar arrangements exist, the terminology often varies. Common names for local government entities include state, province, region, department, county, prefecture, district, city, township, town, borough, parish, municipality, shire and village. However, all these names are often used informally in countries where they do not describe a legal local government entity.

vi. History of LG Frameworks in Pakistan

Globally, grassroots administration and service delivery is effected through elected local governments; where budgets are made, allocated and spent for citizens, usually with extensive citizen participation. Typically, members of

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¹ http://www.searo.who.int/EN/Section1243/Section1255/Section1413.htm
² http://en.wikipedia.org/wiki/Local_government
parliament make laws, the Executive makes policies and strategies based upon these laws. The Executive also allocates funds to administrative or other units, down to local governments. These local governments then carry out the actual development work, usually in close coordination with local citizens. Service delivery by the public sector is, therefore, largely the job of local governments. Like many other countries of the world, Pakistan also experienced local government system a couple of times.

Local governments have existed in the Indian subcontinent for many centuries, with the first municipal corporation set-up in Madras in 1688 by the East India Company. In 1947, the areas that constituted Pakistan had few developed systems of local government and they were confined mainly to Punjab. Wherever local government existed, it was not based on adult franchise and its agenda and budget was under severe bureaucratic control of the Deputy Commissioner, who played a critical role in determining its policy. On the eve of Independence, in 1947, Pakistan inherited local government institutions established under the Local Government Act 1882, also known as Lord Rippon’s Reforms.³

After independence, in 1953, the Village Aid Program was introduced. It was a community development and extension program designed to solve problems of rural areas by coordinating efforts of government and citizens. The program was aimed at creating awareness among the rural population for economic, social and cultural development by providing facilities like education, health and water supply. This situation, by and large, continued till 1958.

³ Gul, Mehnaz, Finding Influentials in Decision Making Process of Local Government, M. Phil Thesis, The Department of Administration and Organization Theory, University of Bergen, Norway

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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<tr>
<td>1688</td>
<td>Municipal Corporation</td>
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<td>1882</td>
<td>Local Government Act</td>
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<tr>
<td>1953</td>
<td>Village Aid Program</td>
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<tr>
<td>1959</td>
<td>Basic Democracies System</td>
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<tr>
<td>1979</td>
<td>Provincial Local Government Ordinances</td>
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<td>2001</td>
<td>Local Government Ordinance</td>
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The period ranging from 1958 to 1969 saw the erection of Pakistan's first Martial Law and the establishment of a military government, as well as, the development of an extensive elected system of local government. The military government after disbanding the provincial and national governments realized that there was
a need for at least a resemblance of involvement of the people in their own affairs. This gave rise to the Basic Democracies System providing for a new local government system across the country through which members were elected.\textsuperscript{4}

Under the Basic Democracies Ordinance of 1959, urban areas were defined as areas under the jurisdiction of a municipal body or any other area that the government could declare as an urban area. In urban areas, town committees were set up for towns having a population of less than 14,000. In rural areas, the first tier of government was the Union Council that consisted of a group of villages. The Chairmen of the Union Councils in an area constituted collectively a higher Council, the Tehsil Council, which did not perform any executive functions. In the Basic Democracies System, a District Council was created, consisting of an Electoral College of which all Chairmen of Union Councils, town and union committees were members; removing the distinction between urban and rural areas. The District Council had 28 obligatory and 70 optional functions and powers to levy taxes.

If the first Martial Law Government was the pioneer in devising an extensive system of local governments, it was the second Martial Law Regime of General Zia that implemented elected local governments. These were revived in 1979 under the Provincial Local Government Ordinances, which with amendments, were in operation till 14th August 2001 in Pakistan. Under this Ordinance, there were four levels of municipal government in the urban areas: town committees, municipal committees, municipal corporations and metropolitan corporations. Members of the council elected the senior officers of these councils and the controlling authority was the elected house. There was a three-tier system of local government in operation in Pakistan in the rural areas, where Union Councils, Tehsil or Taluka Councils and District Councils were supposed to exist. However, provincial governments had, in practice, usually abolished the middle-tier, the Tehsil/Taluka level. As a result, mainly Union Councils and District Councils existed, which were elected on the basis of adult franchise. The elected members elected the Chairmen of these councils themselves.

With the return of democracy in Pakistan after martial law of 1979, all local governments were dissolved. In the NWFP, all local bodies were dissolved in 1991, in Sindh in 1992, and in the Punjab in August 1993. Different reasons were given as to why the provincial governments dissolved the local governments in their own provinces. After 1988, when four General Elections were held in Pakistan, local governments became almost redundant, primarily because they became competing centers of patronage and power in contrast to elected representatives at the two higher tiers.\textsuperscript{5}

\textsuperscript{4} http://www.lgdsindh.com.pk/history.htm
\textsuperscript{5} Zaidi, S. Akbar (2005), \textit{The Political Economy of Decentralization in Pakistan}.
The government during president Musharraf’s regime, sensing the obvious shortcomings of local government system under Ordinance of 1979, came up with a new local government plan in 2001. The plan integrated the rural with the urban local governments on one hand, and bureaucracy with the local government on the other. The LG system introduced in 2001 presented a coherent structure in which district administration and police were answerable to the elected Chief Executive of the district. Opportunity for citizens to monitor affairs of government through elected representatives, the civil society’s involvement in development activities and system of effective check and balances were some of important features of the local government system. Two elections were held under the system introduced in 2001. Appreciation of the system was reflected through enhanced participation in two elections.

In 2008, after the restoration of the democratic process, key constraints of LGO 2001 emerged which hampered the efficacy of the system. While many powers were devolved from the province to the district, a vast vacuum was created without associated devolution from the federal government to the provincial government. Thus, with provincial governments now in place on party basis, considerable resentment towards local bodies emerged. Provincial legislators sought to affect decision making on development spending in the districts. In the ensuing review of the system, few amendments were made in 2005 to LGO 2001.6

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C. International Governance Models on Devolution and RTI

This section of the report presents an overview of the local government system in India and Canada whereby the Indian system shares common roots with that of Pakistan's system from the pre-colonial and colonial rule and the Canadian system is presented as a modern model of local government while being a federal democratic administration. The development of local government system in India has been presented as a yardstick for drawing comparison with the local government system of Pakistan. A review of the legislations by the two aforementioned federations on Right to Information (RTI) has also been presented in this chapter along with inferences for Pakistan.

a. Local Government System in India

The notion of local self-governance existed in India from ancient times at the grassroots level and the village councils existed under the name of ‘Panchayats’ that performed administrative as well as judicial functions. The term ‘Panchayat’ literally means ‘Council of Five’ and comprised elders and notables of a village and has also been referred to as ‘Gram Sangha’. Ancient Indian texts ‘Manusmriti’ also known as Law of Manu, Mahabharat, and Ramayana carry narrations that highlight the role of ‘Gram Sangha’; thus establishing the importance attributed to local self-governance by the people of this region. This self-governance model of the region continued to flourish and yield results till the advent of the British in the sub-continent. In pre-colonial times, the Panchayats even levied and collected taxes like Sulk, Pali, and Bhaga for carrying out development at the local level. The Panchayat system continued to function effectively through Muryas and even in the Mughal times. In fact, the monarchs of India heavily patronized the functioning of this system at the local level as it ensured smooth rule at the local level whereby the elected representatives confined themselves to the local needs and local issues. It resulted in a state of well-being for the people and having a critical role in managing their affairs; thus making centralized administration an easy job.

It is important to note at this juncture that throughout the history of the functioning of ‘Panchayats’ in India, openness has been the hallmark of the system. All the matters brought before the council were discussed in open house proceedings and usually majority of the local habitants attended them. A complainant was allowed to present his case before the ‘Panchayat’ and anyone present could take part in the proceedings. The ‘Panchayat’ also followed the practice of inviting the views and opinions of villagers at large and stakeholders specific to an issue. In modern terms, it presents a good example of local self-governance with the principles of
transparency, accountability, and right to information lying at the heart of system.

The Indian system of local government, besides the Panchayat Model, has another streak in the form of urban governance by virtue of functional municipalities. The first municipal corporation in India was formed in Madras in 1688. The next two municipal corporations formed were those of Calcutta and Bombay in 1876 and 1888 respectively. The element of elected representatives in the municipalities was introduced by the Viceroy of India Lord Ripon. The Indian Council Act of 1892 was an important milestone in the Indian history as after its enactment, Municipal Corporations and District Boards were created for local administration. However, it was The Indian Local Government Act 1915 that provided a legal cover to the rural-urban divide in local self-government in India and also sanctioned that the municipal chairman would be elected non-official with nominated members to a minimum and that too to accommodate the minorities.7

After independence from the colonial rule, the historic local government system of the sub-continent significantly altered by the colonial rule survived to be adopted by the nascent states of India and Pakistan. Both declared local governments as provincial / state subjects and the provinces / states were given autonomy by their respective legal frameworks to define their own local government systems. Example may be cited of The Bombay Provincial Municipal Corporations Act of 1949 which displays commitment of the government to the notion of introducing local government system. On the other hand, local governments in Pakistan were controlled by the centre through bureaucracy and in majority of the places, elections were not held. Even in places where elections took place, they were held by limited franchise and were dominated by massive malpractices.8 However, like Pakistan the rural-urban divide in India continued to flourish as the state governments in India not only adopted the Panchayat system but also enacted laws to govern the urban local governments. The rural-urban divide in India was sanctified by the Indian Parliament through 73rd amendment to the Constitution of India in 1992.

Principles of Policy of the Indian Constitution under Article 40 had merely held the states responsible to take steps to organize village Panchayats9 but the 73rd amendment went on to define the role and responsibilities of the Panchayats. The Panchayats created under the ambit of the Indian

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7 Indian Local Self Government Policy 1915
8 Waseem 1994
9 “The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.” Article 40, The Constitution of India
constitution are elected bodies of public representatives at village, intermediary, and district levels with reserved seats for scheduled castes, scheduled tribes and women. A constitutional cover to the tenure of all Panchayats has been granted and the term for them has been set to five years. When compared with Pakistan, this term is one year longer than the one granted by the local government system introduced by the Musharraf regime. However, unlike the system of Musharraf regime, the Indian constitution grants conditional autonomy to the Panchayats for economic and development planning along with levying taxes. The Panchayats are bound to act on the directions and limitations introduced by the state government.

The notion of ‘Transitional Area’ introduced by the Indian Constitution is of significant importance with respect to creating effective governance mechanisms. It calls to constitute a ‘Nagar panchayat’ for an area in transition from a rural area to an urban area. Further classification of areas has been done in the form of a ‘Municipal Council’ which is created for small urban area, and a ‘Municipal Corporation’ for a larger urban area. In case of Pakistan, there does not exist any such classification. Pakistan maintained the rural-urban divide till 2001 when it was abolished and in 2013, the divide has again been created with only Punjab to follow suit (Draft Local Government Act 2013 of Punjab has created the rural-urban divide). However when compared with India, the underlying definitions for area classification within the legal and administrative frameworks in Pakistan need to be reviewed. The notions of economic activities, geographic dimension along with population density, and increasing transition to urbanization need to be taken into account to make distinction between rural and urban areas.

The creation of ‘Planning Committees’ and ‘Local Government Commission’ are commensurate with the system introduced by Musharraf regime in Pakistan. The Indian system, as briefly described in this review, is inconsonance with the local traditions and administrative measures introduced over the past centuries. With a large population based in the rural areas, the constitutional cover granted to the local self-government in India is commendable and sets path for integrated development by creating representative institutions and appropriate forums like the ‘Planning Committees’.

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10 The Constitution of India, 243Q. “(2) In this article, “a transitional area”, “a smaller urban area” or “a larger urban area” means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.”

11 How to Best Classify Rural and Urban?, Edoardo Pizzoli and Xiaoning Gong

12 Article 243, The Constitution of India
Right to Information in India

Freedom of Information is a fundamental human right and is the touchstone for all freedoms to which the United Nations is consecrated. The United Nations General Assembly declared access to information as a fundamental right in 1946, yet many developing countries of the world lag behind in enacting laws to bestow this right to their citizens. The Commonwealth recognizes ‘Right to Information’ as a practical shortcut to achieving the goals of poverty eradication and good governance as liberal information-sharing regime leads to deeper democracy and people-centred development. Harsh Mander argues about the role of civil society in curtailing corruption of governmental institutions and their functionaries with respect to right to information in India.

It was in the year 2005 that India, after some movements of civil society organizations in different parts of India, enacted the law on right to information i.e. Right to Information Act 2005. The Act, enforced in all India except Jammu and Kashmir, provides for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities. In order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions took place. The law further recognizes that democracy requires an informed citizenry and transparency of information that are vital to its functioning.

Right to Information Act 2005 of India defines the right to information in a comprehensive manner and includes the right to inspection of works, documents, records, taking notes, extracts or certified copies of documents or records, taking certified samples of material, and obtaining the information in any electronic form. The law, on one hand, requires all the government entities to publish the procedures and budgets for the access of citizens and on the other hand asks the public entities to appoint Public Information Officers. The Public Information Officer is bound to provide the requested information within thirty days of the receipt of such request provided that the request does not fall under the category of exemptions provided by the law. The exemption like any other country bar a citizen from accessing copyrighted information and information pertaining to trade secrets, national security and economic interests etc. The creation of the offices of Chief Information Commissioner and State Chief Information Commissioners under the Act with substantial security of

13 Open Sesame: Looking for the Right to Information in the Commonwealth, International Advisory Commission of the Commonwealth
14 Does Civil Society Matter? Governance in Contemporary India
15 Right to Information Act 2005
tenure, helped ensure independence of the institution from governmental interference / pressures. This independence of institutions is an enviable step for other developing countries. It is commendable that despite problems in implementation, the Act is being followed and the local governments, being no exception to the Act, are also bound to provide the requested information to the citizens of India. The Global Right to Information Rating has rated India as second among the 89 countries of the world with respect to having a clearly defined law and an effective implementation mechanism.

b. Local Government System in Canada

The prevalent system of local government in Canada can be best summarized with the following notion of Alexis de Tocqueville:

"Local assemblies of citizens constitute the strength of free nations. Municipal institutions are to liberty what primary schools are to science; they bring it within the people's reach; they teach men how to use and how to enjoy it. A nation may establish a system of free government, but without the spirit of municipal institutions, it cannot have the spirit of liberty. 16"

Rise of the local government system in Canada can be traced back to the mid-nineteenth century, soon after the end of nationwide unrest which necessitated the need to establish municipal institutions in the whole country. The Act of 1845 required every township or parish to constitute a municipal corporation which was to be represented by an elected council headed by a president or a mayor. The Constitution Act 1867 delegated powers to the provinces regarding the local governments. Ever since 1867, the municipalities of Canada continue to work depending on different Statues that delegate certain powers to them in varying degrees across Canada. Each province has delegated areas to municipalities, specific to its priorities and needs. For example, the province of British Columbia has retained the power to control the use of rural land unlike other provinces. Although after 1995, municipal acts were passed by British Columbia, Manitoba, Ontario, Nova Scotia, and Alberta etc., yet the demand for more financial and legislative autonomy has been on the rise 17.

Municipal Government Act of Alberta is considered model / progressive legislation in the Canadian context which recognizes municipalities as a 'natural person' and delegates considerable responsibilities of service

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16 Democracy in America, Vol 1, Alexis de Tocqueville
17 Assessment of the Municipal Acts of the Provinces and Territories, Federation of Canadian Municipalities 2004
provision to the citizens. Five types of municipalities namely Municipal District, Village, Town, City, and Specialized municipality are formed under the Alberta law. It is important to note that the law requires the minister responsible to form any type of municipality to hold public meetings before the formal creation of new municipality. All the people likely to be affected by the creation of new municipality are to be heard at a public meeting and a vote may be held of the people who would be electors of the proposed municipality. This safeguard provided to people by the state law enshrines the principles of participation and transparency. Furthermore, the law requires the council to hold all its meetings in presence of the public and whenever in certain circumstances, a meeting is held without public presence, no resolution or bye-law is to be passed at such meeting. The right of public presence has been enshrined in section 198 of the Act which gives every person a right to attend the meetings of the council. Moreover, every municipality is required to provide information on the salaries of councilors, the chief administrative officer and designated officers of the municipality.\footnote{Section 217, Municipal Government Act Alberta}

The above mentioned aspects of Alberta’s law signify the space given for people to participate in the affairs of the government. Despite being province-centric legislative framework, the avenues created for direct and indirect public participation in the affairs of municipalities are exemplary. Third world countries like Pakistan and India may learn from such measures which ensure meaningful and effective participation of the people in managing affairs at the local level.

**Right to Information in Canada**

Access to information Act 1985 of Canada lays down the basis of freedom of information for the Canadian citizens. It gives a right to the citizens of Canada along with the permanent residents to access information from the government institutions. The Act binds the government departments, while holding the concerned minister responsible, to periodically publish all information related to their processes and working on an annual basis. A bulletin containing updated contents of the annual publication has to be published twice a year. This measure is meant to ensure that people are made aware of the key highlights of the working of a government department. Although provisions for exemptions have been incorporated in the Canadian law, yet the ambit of such exemptions has been kept narrow. National interest and matters relating to defence of Canada along with foreign relations are the main features of exemption clauses. The laws in India and Canada are comparable in many ways. Blanket access has been denied in both the countries but the exemptions stipulated by their respective laws are objectively exercised and forums like Global...
Right to Information acknowledge the well laid out information sharing regime of both the countries. Office of the ‘Information Commissioner’ has been created under the Canadian Law and right of appeal has also been granted to the citizens in case of non-disclosure / non-cooperation by a government department. However, the Canadian Information Commissioner has been granted unprecedented service tenure of seven years whereas the Assistant Information Commissioners have been granted terms of five years. Keeping in view the expediency of implementation, Canada introduced Access to Information Regulations\(^\text{19}\) to streamline the processes of information provision by the government departments which ensure adherence to the Act in letter and spirit by the government functionaries.

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\(^\text{19}\) Access to Information Regulations (SOR/83-507)
D. Conclusion

The above discussion and analysis on regional and international best practices provide with information that can be immediately used to drive continuous improvement, generate improved organizational performance and achieve a culture of excellence within the local government system of Pakistan. The above review informs that comparable institutional procedures for access to information are not present in Pakistan where half the federating units are still to enact the primary legislation on Right to Information. The successful experiences of devolution in our neighboring countries and at international level serve as the examples for newly elected provincial and federal government of Pakistan. The positive aspects of these best practices should be adapted in order to improve and strengthen local government system in the country.