



Viewpoint

Legal and institutional perplexities hampering the implementation of urban development plans in Pakistan

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ABSTRACT

The effective implementation of development plans requires functioning institutions with well defined legal support and good plans. This article explains how legal and regulatory frameworks as well as the institutional capacities of local planning agencies (LPAs), including Cantonment Boards (CBs), City District Governments (CDGs), Town Municipal Administration (TMAs) and Development Authorities (DA), in Pakistan confound and affect the implementation of development plans. A comparative review of existing Acts, Ordinances and urban planning frameworks in place at various levels was conducted, and inconsistencies and gaps that impart perplexities amongst the aforementioned institutions and regulatory frameworks were identified. The overlapping powers and functions of the institutions which have legal backing must be eliminated to ensure effective implementation of urban development plans.

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Introduction

Unplanned urbanization is a challenge for local planning agencies in Pakistan. Development plans were prepared for Pakistan's major cities starting in the early 1960s; however, these plans failed to produce any results (Hameed & Nadeem, 2006). Therefore, urban growth has occurred through a process of spontaneous land conversion and use. The continuous failure of development plans has made it imperative to assess the actual causes of such problem. Legal support, institutional frameworks and effective development plan policies are the major contributors to the planned urbanization process (GoP and ADB, 2000). Policies pertaining to urban and city development must be continuously assessed and reviewed to meet the challenges associated with increasing populations.

The literature shows that policies related to the governing of city regions in developed countries have undergone considerable changes to successfully implement development plans. In the early 20th century, the haphazard growth of European cities prompted the need for proactive steps to provide order to urban forms. This implied the establishment of institutions that developed uniform rules and regulations to curb laissez-faire pattern of urban growth (Eisner, 1994). Local planning agencies were empowered in Britain for the first time through the Town and Country Planning Act

(TCPA) of 1947. The act required all developments to obtain planning permission in relation to comprehensive development plans (Cullingworth & Vincent, 2002). However, the institutions were initially incapable of practicing development planning, and the effective management of cities was impeded (Wakely, 1996). This induced premature depreciation and prompted vigilant and effective organizational efforts to exercise some sort of control on the spatial structure of cities (Davoudi, Healey, Vigar, & Majale, 2009). Gilbert (1997) stated that an institution's strengths, powers and functions fundamentally obstruct effective city-wide development efforts. Efforts to train urban managers to responsively manage cities were insufficient, without appropriate changes in institutional and development plan practices (Mehta, 1998; Wakely, 1996). Therefore, institutional structures, powers and functions changed over time to promote good governance and the implementation of land policies in cities (Enemark, 2006).

In Pakistan neither institutional frameworks nor legal and regulatory supports are considered in the management of cities (Shah, Afridi, & Minallah, 2007). A multiplicity of institutions oversees development at the local level and has overlapping functions, whereas the national and regional levels are completely ignored. The 2nd 5 year plan (1960–1965) envisaged a process of planned development at the national, regional and local levels that would establish a system of hierarchical development in the country, but only local level plans were prepared (GoP, 1960). These plans failed to establish order to urban forms, and the reasons for this failure are complex and have not been properly assessed until now. This research attempted to investigate the actual causes for the failure of development plan practices in Pakistan.

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The objective of this study was to review and evaluate the institutional powers and functions imparted through existing legal and regulatory frameworks at the National, Provincial and Local levels to highlight loopholes and gaps within the system. The various acts and ordinances that empower institutions such as the Cantonment Board (CBs), Development Authorities (DAs), City District Government (CDGs) and Town Municipal Administrations (TMAs) to execute planned developments within Pakistani cities were assessed. The institutional capacities of these organizations were examined in terms of the physical planning functions. Both primary and secondary data were used.

Analysis and discussion

The British-inherited legal and institutional structure such as Municipalities, Cantonments and Improvement Trusts continued to function up until the 1960s in Pakistan. These institutions were incapable of executing physical planning functions. The government of Pakistan, Planning Commission report in 1965, articulated that only three out of more than a hundred Trusts and Municipalities had qualified staff for physical planning and housing operations. The rest of the institutions had neither proper staff for physical planning nor for other professions such as surveying, engineering and accountancy (GoP, 1965). The legal framework of these institutions overlapped various functions, introducing a substantial amount of perplexity. The situations were more complex in major cities in which a number of development organizations work in parallel. A lack of coordination and a common vision among these institutions hampered the development process.

Improvement Trusts (ITs) were replaced by Development Authorities (DAs) through an administrative order in the cities act (1976). ITs and DAs were supposed to support the Municipalities for carrying out major development in cities. However, it is evident that they have been loath to the idea of handing over control of development projects particularly housing schemes (Alam, 2008). Municipalities extend no services to the localities that fall within the jurisdiction of DA in the same city.

Although a number of physical planning acts, ordinances, rules and regulations have been introduced in Pakistan, no uniform and consistent planning and development frameworks have been developed at the national, regional or local levels. Parallel institutions perform similar activities within cities. Examples include the Cantonments Boards, DAs, CDGs and TMAs, which are found in all the major cities of Pakistan. Each of these organizations has similar functions, including the production, implementation, monitoring and reviewing of development plans. However, no laws or regulations direct their coordination or professional capacities. As a result, these institutions operate at the federal, provincial and local levels in their respective domains without addressing the root causes of problems. This muddled and unclear power and function structure hampers the holistic and integrated planning efforts required to address the challenges associated with increasing populations. Unlike other developing countries with good practices such as the Philippine, Malaysia, and China (NRPB, 2011), Pakistan has no comprehensive town planning laws or national and regional planning organizations. Only local level institutions exist, but they do not coordinate with one another. National and regional level institutions for physical planning are also completely absent in Pakistan. The legal and regulatory supports of local level physical planning organizations are analyzed in the following sections.

Cantonment Act 1924 and the Cantonment Ordinance 2002

The Cantonment act, promulgated on 16 February 1924, consolidates and amends the administrative functions of Cantonments in

Pakistan. The Act states that, “Building Control within the limits of the Cantonment Board concerned would be regulated under the provisions of this act and that the Provincial Law on the subject would not be applicable to the buildings erected or intended to be constructed on a plot situated within the territorial limits of the Cantonment Board concerned” (Government of India, 1924). The act also enabled Cantonments to make their own bye-laws for governing local matters that require particular treatments. Clause (viii) of the act defined the scope and powers of Military Authorities and gave them the final say in matters such as the erection or re-erection of buildings.

Based on the urgency of the Cantonments to address emerging issues within their limits, and on the spatial expansion of military colonies, the government of Pakistan passed the Ordinance CXXXVII in 2002. Various sections and subsections pertaining to the planning, development and management of Cantonment areas are as follows.

- Section (16) of the Cantonment Ordinance explains that the Cantonment administration shall “prepare spatial/ master plans for its local areas in collaboration with union administration including plans for land-use and zoning. It shall execute and manage the plan after the cantonment board gives approval. . .”
- Section 15(2c) explains that Cantonment officers (Planning) shall be responsible for “spatial planning and land use control, building control and implementation of development plans” (GoP, 2002).

These regulations explicitly declare that Cantonment administrations shall prepare and execute development plans for their respective areas and shall exercise control over zoning, land subdivision, land-use, building and land development. Cantonment Boards work directly under the Federal Defense Ministry and are not responsible for following the plans of LPAs. Cantonments, which are parts of cities, have development plans and by-laws to control development within their jurisdictions. The law empowers Cantonment administrations to exercise the following functions:

- “Cantonment Board to approve annual development plans, approve [Sic] land-use zoning and master plan development and maintenance programs. . .” Section (26(vii)).
- Sections (181 and 182) illustrate that “the Cantonment administration should discourage Illegal erection and re-erection of buildings and that no building shall be use [Sic] other than the approved use specified according to the Cantonment development plan. . .”
- Section (187) deals with the removal of encroachment, and Sections (197 and 198) discuss the maintenance of open spaces within Cantonments. The Cantonment administration shall make adequate arrangements for the removal of refuse from public roads and streets. Section (127) as well as Section (138) states that “the Cantonment administration may prepare and implement schemes for prevention of air, noise, water and land pollution from different sources in their controlled areas. . .”

The monitoring and management of all municipal services is to be performed by the Cantonment administration. The Cantonment board is empowered by Section (16 and 244) to generate funds for implementing development plans within its jurisdiction. The Presidential Cantonment Order of 1979 empowered Cantonments to collect immovable property tax and an entertainment duty in their respective jurisdictions (Shah et al., 2007). It “shall effect, notwithstanding anything contained in the constitution or any other law for the time being in force” changes in the

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