



LEGISLATIVE GOVERNANCE

Policy Brief

“Through its core oversight function, parliament holds the government to account on behalf of the people, ensuring that government policy and action are both efficient and commensurate with the needs of the public.”

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Brief History of Provincial Assembly of Khyber Pakhtunkhwa:¹

In 1901 the North West Frontier Province (NWFP) was declared a Chief Commissioner Province and in 1932 its status was raised to the Governor Province. In 1937, the Government of India Act 1935 was enforced in the province and the NWFP Legislative Assembly was formed.

The first session of the Assembly on 12 March 1946 elected Nawabzada Allah Nawaz Khan and Lala Girdheri Lal as the Speaker and the Deputy Speaker respectively in the 50-Member House. After Pakistan's creation, the first election of the NWFP Legislative Council was held on 15 December 1951 and the first session of the Assembly was summoned on 10 January 1952. Nawabzada Allah Nawaz Khan was again elected as Speaker and Khan Muhammad Farid Khan as Deputy Speaker on 10 July 1952.

Following the declaration of One Unit in October 1955, Pakistan was divided into two provinces, West Pakistan and East Pakistan, and the Legislative Assembly building was declared as Peshawar High Court. After the dissolution of West Pakistan in 1970, the NWFP Provincial Assembly was restored. The Legislative Assembly became a Provincial Assembly through a presidential order known as Legal Framework Order 1970. The Assembly Secretariat was shifted from Pakistan Academy for Rural Development to its own present building in 1987.

In 2002, the number of the Assembly's Members was increased to 124, out of which 99 are general seats, 22 women's seats and three are reserved for minorities

Role of Legislator in Parliamentary Democracy

A parliamentarian is expected to play three law- making roles:

- an enactor of effective legislation,
- an overseer of its implementation, and
- a communicator with constituents.

Success in the three areas depends on a Member's capacity to undertake the following tasks:

- To assess a Bill in the public interest
- To understand the role of committees and actively contribute in same;
- To utilize research support to gather facts for in-depth analysis of a Bill; and
- To consistently maintain public input to the legislative process so as to instigate desired social change.

A. Assess a Bill in the Public Interest:

A Member serves as a "trustee for the public interest" and assesses legislation on the basis of *reason tempered by experience*.² To exercise legislative power effectively, a Member must answer a central

¹ KP Provincial Assembly Website www.pakp.gov.pk

² Ann Siedman, Robert Seidman, and Nalin Abeysekere, *Assessing Legislation - A Manual for Legislators*, Boston, Massachusetts, February (2003), p.17.

question: *Why do people behave as they do in the face of a rule of law?* Without laws, government cannot govern. Policymakers must determine how to use state power to transform problematic issues and institutions. A Member must contribute towards enacting effective laws which influence the behavior of government employees and citizens at large along desired paths. This requires a Member to quickly become familiar with the Rules of Procedure regarding legislation.

B. Participate in Committees

Committees play an important role in giving in- depth consideration to Bills presented in a house. Through their specialization and expertise members assess bills drafted by a private Member or the government and advise the respective ministries and divisions on various issues, as well as serve as an effective vehicle to evaluate performance once a Bill is passed into law. Committees empower Members to hold public hearings of experts outside government as well as constituents or relevant communities related to an issue or legislation under consideration.

C. Utilize Research Support:

Party position papers, ministerial and departmental institutional memory and expectations, along with constituency opinions, provide a member a foundation for reviewing specific legislation. A Member's understanding should depend appreciably on logic and facts derived from public discussion at all levels. Obtaining the information necessary to conduct such discussion requires research support through a review of existing literature, observation of international best practices and laws, reviewing archives and websites, utilizing the research services with the Parliament and associated bodies such as the Pakistan Institute for Parliamentary Services (PIPS) as well as seeking opinions of academicians, think tanks and other public policy resources.

D. Consistently Invite Public Input:

Members must build and maintain two-way communication channels with the public,³ including civil society organizations and a Member's constituents. Civil society organizations provide key background information, while one's constituents provide a resource on how laws directly impact a community, providing a perspective necessary to formulate and to oversee legislation. Additionally, a member must inform constituents of the implications of any new legislation. Consistent communication helps prioritize legislation for a member.

The success of a parliamentarian in ensuring legislative oversight and adequate public representation primarily rests on his/her proactive role as a legislator who transforms promises into policies, policies into effective laws and their implementation that induce a purposeful social change felt by institutions as well as the people.

Legislative Process

Legislation or Law-Making is the fundamental responsibility of the Provincial Assembly. A *Bill* is a formal legislative statement/proposal which is introduced in the Provincial Assembly. A Bill becomes an Act of the Provincial Assembly if it is passed by the Assembly and assented by the Governor. A Bill may relate to any matter mentioned in the Constitution.

² Ibid, p. 22

Types of Bills

- i. **Government Bills:** Introduced by a Minister and passed by simple majority of the Assembly.
- ii. **Private Member's Bills:** Introduced by any Member of the Assembly and passed by simple majority.
Restriction: Any Bill that involves expenditure from the Consolidated Fund or Public Account of the Province cannot be moved by a Private Member without the consent of Provincial Government.
- iii. **Bills received from Parliament:** A Bill for the amendment of the Constitution passed by the Parliament and where approval of such constitutional amendment require assent of the Province. The Secretary Assembly circulates the Bill and any Member or Minister may give notice to place it on the List of Business of the Assembly.
- iv. **Money Bill:** A Government Bill dealing with matters of revenues and expenditures. In the Rules of Procedure of the Assembly it is also termed as Finance Bill (Money Bill along with the Budget).

Legislative Process: From a Bill to an Act:

Step 1: Introducing a Bill: A Private Member may, subject to the above restriction, move for leave to introduce a Bill after giving the Secretary Assembly 15 days' notice of his/her intention to do so.

Step 2: Motion for Leave to Introduce: If the Bill is admitted by the Speaker, the Secretary Assembly sets down the Motion for leave to introduce the Bill in the List of Business/Orders of the Day for the day meant for private Member's business.

Step 3: Introduction of a Bill: The Speaker decides if a Bill needs to have the consent of the government or the President. If leave is granted, the Member forthwith moves to introduce the Bill.

Step 4: Committee Stage: The Committee examines the Bill and reports to the Assembly about the constitutionality and also proposes amendments and other suggestions in relation to the Bill.

Step 5: Circulation of the Report: The Secretary Assembly circulates the copies of the Bill as introduced and the report of the Committee, and if a notice for a Motion for consideration of the Bill is made, include the Bill in the List of Business for a day meant for private Member's business with at least three clear days difference between circulation of copies and consideration of the Motion.

Step 6: Bills Repugnant to Islam: On the day when the Bill is on the List of Business for consideration, a Member may move that the Bill be referred to the Council of Islamic Ideology for advice whether or not the Bill or any of its part is repugnant to the injunction of Islam.

Step 7: Discussion of Principles of Bill (First Reading): After Motion for consideration, the principles of the Bill and its general provisions shall be discussed in the Assembly and if the Member In-charge has moved for consideration of the Bill at once, amendments in various clauses of the Bill can also be moved or be referred to a Select Committee of the Assembly or circulated for the purpose of eliciting public opinion.

Step 8: Submission of Bill Clause by Clause: (Second Reading): If Motion for consideration of the

Bill has been carried, the Speaker submits the Bill to the Assembly clause by clause. If a Member has moved a Motion for amendment in a clause of the Bill, that amendment is considered by the Assembly at the time of consideration of the clause in which the amendment is moved. Clause one, Preamble and Title of the Bill are considered after the consideration of other clauses and schedules of the Bill.

Step 9: Debate (Third Reading): Once the Bill is considered clause by clause, the Member In-charge may at once move that the Bill be passed. At this stage, general provisions of the Bill are discussed with reference to the amendments, if any, made in the Bill.

Step 10: Authentication and Submission of Bills for Assent: When a Bill is passed by the Assembly, an authenticated copy signed by the Speaker is sent to the Governor for assent.

Step 11: Promulgation: When the Governor gives assent to a Bill, the Secretary Assembly immediately ensures its publication in the Gazette as an Act of Provincial Assembly.

Ordinances:

The Governor may, on the advice of the Cabinet or the Chief Minister, promulgate an Ordinance having same effect as an Act when the Assembly is not in session and there is a situation which requires urgent action. It remains valid for three months and it is to be placed before the Assembly and deemed as a Bill introduced in the Assembly. Meanwhile, the Governor can also withdraw the Ordinance or Assembly can reject it through a Resolution.

Legislator and Oversight Mechanisms



Various parliamentary tools provided in the Rules of Procedure and the Conduct of the Business provide for obtaining necessary information about the working of the Government departments, overseeing the government and making recommendations on matters of public importance. These tools include Questions, Call Attention Notices (CANs), Adjournment Motions (AM), Resolutions and general discussion. CGPA conducted an overall performance review of the KP Assembly Legislators till June 2016.

QUESTIONS

Question Hour is the first hour the Assembly business in a sitting wherein, subject to the provisions of the Assembly rules, a member may ask a question for the purpose of obtaining information on a matter of public concern within the special cognizance of the minister to whom it is addressed.

CALL ATTENTION NOTICES (CANs)

According to Rule 52-A of Khyber Pakhtunkhwa Assembly, a member may call the attention of a minister to any matter of urgent public importance with the previous permission of the Speaker and the minister may make a brief statement or ask for time to make a statement during the same or next sitting. It also states that no member shall give more than two such notices for any one sitting.

The Rule 52-B provides that there shall be no debate on such statement at the time it is made but each member in whose name the item stands in the list of business may, with the permission of the Speaker. Maximum five names of the members could be shown on the list of business. Not more than two notices

could be raised during one sitting. Call Attention Notices that appear on the list of business but could not be taken up during that sitting shall be considered lapse at the end of each sitting under Rule 52-G.

PRIVILEGE MOTIONS (PMs)

A member may raise a question involving a breach of privilege either of a member or of the Speaker or of the Assembly or of a Committee thereof, with the consent of the Speaker as prescribed by Rule 53 of the Khyber Pakhtunkhwa Assembly.

ADJOURNMENT MOTION (AM)

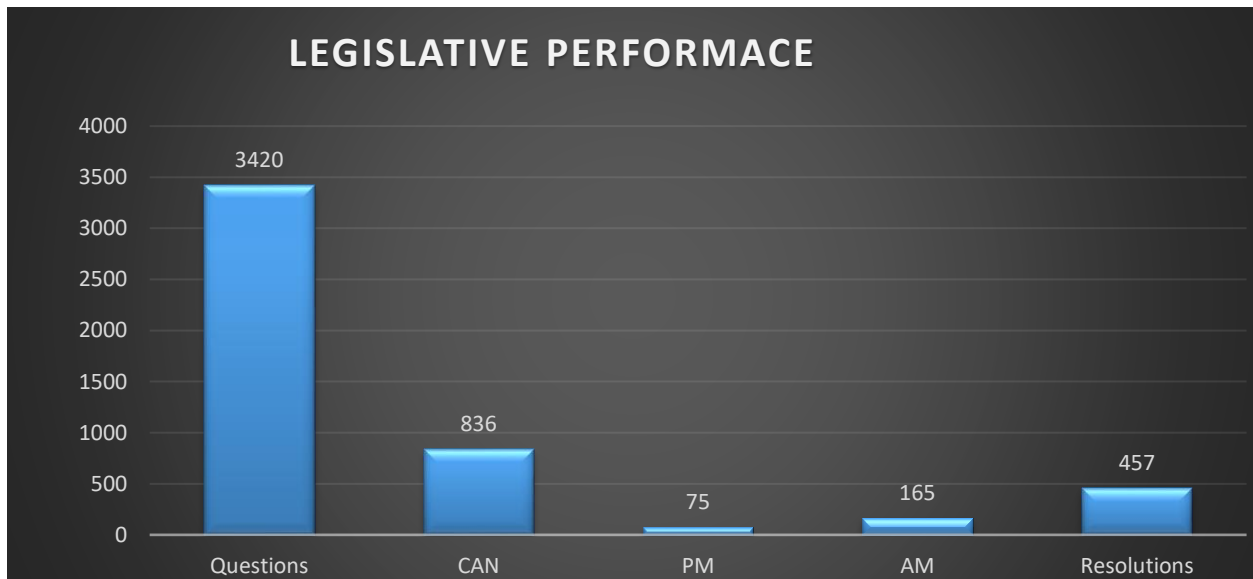
According to Rule 69 of Khyber Pakhtunkhwa Assembly, a motion for adjournment of the business of the House can be moved by a member for the purpose of discussion on a definite matter of an urgent public importance with the consent of the Speaker where not more than one such motion is to be admitted in a day.

A member may give a notice of adjournment motion in writing, to the Secretary not less than an hour before the commencement of a sitting.

RESOLUTION

Any member or a Minister may move a resolution relating to a matter of general public interest, which were raised on the floor of the House by members of the Assembly.

Data uploaded on KP Provincial Assembly Website, shows that till June 2016, total 3420 questions have been put before the house by different members followed by 836 call attention notices. 75 privilege motions have been moved by members. Similarly, 165 Adjournment Motions and 457 resolutions during the reporting period. Party wise break down of the legislative business is as under:



Over All Legislative Performance				
Questions	CAN	PM	AM	Resolutions
3420	836	75	165	457

Legislations

Legislation is the primary function of the members while they serve in the provincial assembly. Analysis of the data shows that over all till June 2016 One Hundred and Eleven (111) Bills have been moved in the Provincial Assembly of KP, out of which 18 have been moved by members. Out of 111 Bills 99 were passed by the Assembly into the form of Acts. PTI, which, is the ruling party in the province and has maximum number of members moved 6 Bills. However, the ruling party missed to initiate legislation on some of its manifesto promises, such as, civil service reforms, uniform education system, elimination of discriminatory laws against women, legal protections for disabled, land reforms and criminal justice reforms. More or less the other thematic areas upon which KP Assembly has legislated are; institutional development and reforms, local government and good governance, accountability and transparency and security. As many as six bills can be categorized as violation of party manifesto commitments of limiting elected representatives' perks and abolition of all discretionary funds.

It is universal norm that majority of the legislation is introduced by the government. Same has been the case in KP Assembly. Members in their private capacity submit bills and there is all likelihood that those would be passed, unless and until they are not fundamentally against the wills and wishes of the treasury benches. There are many precedents from Pakistani legislatures in near past when Assemblies either passed Private Members bills or those were adopted as government bills. In case of KP Assembly, the number of Private Members bills introduced remained low mainly because the House did not observe the Private Member days in full.

Parliamentary Committees

A strong, active committee system is an asset in any functioning parliamentary democracy. A comprehensive system of parliamentary committees provides greater accountability by making the policy and administrative functions of government more open and accountable, giving the people more and better access to parliamentary processes and ensuring Members of Parliament have more involvement in and oversight of decision making. Committees provide a forum for investigation of matters of public importance and give parliamentarians the opportunity to enhance their knowledge of such issues. In short, they allow the Parliament to ensure that the right decisions are being made and at the same time, committees effectively enhance the democratic process by taking the Parliament to the people and giving them a role in its operations.

Committees, which are often termed as “mini legislatures”, need to be empowered for ensuring an effective and strong Legislature. Though it is in the Legislature where laws and state policies are debated and approved, it is in the Committees where these are deliberated and scrutinized. A strong Committee system often gives the Legislature the impetus and direction, serving as a catalyst for effective legislation. According to an Australian Senate Brief, it is “their role to investigate and draw attention to what they find. They ‘throw light in dark corners’ and give advice.”

In short, the principal purpose of Committees is to deal with the complex, varied and demanding nature of Assembly business. This primarily includes initiating or amending legislation, administering financial control, ensuring oversight and scrutiny of executive functions, and forming a forum for public representation. To make Committees more effective, it is essential to ensure their formation as soon as the Assembly comes into being. Rules require that there be as many Standing Committees as there are Departments/Ministries. It has been witnessed that Committees, especially in the KP province, are formed with much delay and some were not even formed by the end of the Parliamentary term. Moreover, KP Assembly is the only

President of United States Woodrow Wilson described committees as

"little legislatures"

Speaker Reed of the United States described them as

"the eyes, the ears, the hands and very often the brain of the House"

legislature in Pakistan that does not require mandatory scrutiny of legislations by committee. Effective committee system is crucial to maximize the ownership of legislations.



Speaker KP Assembly Asad Qaiser addressing the meeting of Public Account Committee in the conference room at Assembly Secretariat on 13-01-2015

Similarly, it is important that Committees be able to exercise their due authority and powers which are derived from the Constitution and elaborated in the Rules of Procedures of each House.

FUNCTIONS AND POWERS OF COMMITTEES

- Initiating and managing legislation;
- Controlling the executive;
- Drafting legislation;
- Communicating with the executive;
- Representation of their constituencies;
- Investigating policy initiatives yet to be brought for ratification.
- Reviewing and approving the budget and expenditures for the government's policy agenda.

DIFFERENT TYPES OF PARLIAMENTARY COMMITTEES

A. STANDING COMMITTEES

Standing committees are permanent committees established pursuant to the Standing Orders, the rules that govern the functions of the parliament. The functions, size and composition of these committees are often clearly indicated in the same Standing Orders/ Rules.

B. AD HOC COMMITTEES

These are formed for the purpose of reviewing particular policies, bills or groups of bills and then are dissolved when that work is completed.

C. LEGISLATIVE COMMITTEES

Legislative committees are established to undertake the consideration of legislation. A legislative committee may be created to study a particular bill referred to it or one may be appointed to prepare and bring in a bill. A legislative committee ceases to exist once it has reported to the concerned House.

D. STANDING JOINT COMMITTEE

Joint committees are composed of members of both the Lower and Upper Houses. Standing joint committees are permanent committees established pursuant to the Standing Orders/ Rules of both the Houses.

E. SPECIAL COMMITTEES

Special committees are appointed by the House to carry out specific inquiries, studies or other tasks that the House judges to be of special importance. Each special committee is created by means of an order of reference adopted by the House (in the case of special joint committees, by both Houses).

F. JOINT COMMITTEES

Special joint committees are established by orders of reference from both Houses to deal with matters of great public importance. The House that wishes to initiate a special joint committee first adopts a motion to establish it and includes a provision inviting the other House to participate in the proposed committee's work. Once the originating House has been informed of the agreement of the other House, the committee can be organized. A special joint committee ceases to exist when it has presented its final report to both Houses, or at prorogation.

G. SUBCOMMITTEES

Subcommittees are to committees what committees are to the House: the parent body is relieved of a portion of its workload by delegating some part of its mandate or a particular task to a smaller group.

H. COMMITTEES OF THE WHOLE

When the entire membership of parliament forms a committee often chaired by the speaker or the deputy speaker to investigate a matter of concern, it is described as a committee of the whole.

Proactive Disclosure of Information:

Just as the executive branch may not encourage robust parliamentary oversight, parliamentarians may not be receptive of rigorous civic oversight of their work as individuals or as an institution. This has been significantly reflected when soon after passing KP RTI Act, in October 2013, when the law was declared as one of the best laws in the world, the same assembly passed an amendment and removed KP Assembly from the Ambit of the law thus avoiding the public scrutiny and accountability.

Elected representatives spend considerable resources on development programs intended to improve the welfare of their constituents. However, in reality for years, these programs have been designed and implemented, in closed environment within corridors of power and without the active involvement of the public. This has result in strict policy prescriptions rather than a practical and inclusive approach to implementation. Marginalized segments such as poor people and women in particular are often completely excluded from development decision-making processes and only learn about projects supposed to benefit them after they have been signed off, making these programs less effective or in many cases complete failure.

Pro Active Disclosure

Section 5 of KP RTI Act, 2013 lists categories of information that will have to be proactively disclosed by public bodies. Depending on the resources, public bodies will provide information listed in Section 5 in an accessible manner according to needs of citizens and also put this information on their web sites. Following categories of information fall under the ambit of Section 5:

- Acts and subordinate legislations (Rules, regulations, notifications, by-laws, manuals and order having force of law);
- Information about the public body including its organization, functions, duties, powers and any services it provides to the public;
- Directory of employees, duties, powers and functions and their remunerations, perks and privileges;
- Norms and criteria set by the public body for the discharge of its functions, rules, manuals or policies;
- Description of its decision making process and any opportunities for the public to provide input into or be consulted about decisions;
- Relevant facts, background information relating to important policies and decisions, formulated which can affect public;
- Detailed budget and detailed proposed expenditure;
- Details of any subsidy or benefit program including the details of the amount and beneficiaries;
- Particulars of the receipts of the concession, permits, licenses or authorizations granted by the public body;
- Categories of information held by the public body;
- Description of the manner in which a request for information may be made including all the information about the designated official.

The sharing of information is essential for sustainable development. It stimulates public debate on and broadens understanding of development issues, and enhances transparency and accountability in the development process. It also strengthens public support for efforts to improve the lives of people. If elected representatives promote the provision of development information to the public for example, information about proposed new projects, an explanation of how programs are being designed and implemented, details of anticipated beneficiaries, and/or information about the implementation of current activities citizens can more effectively engage with their own development. With more information, affected communities can meaningfully participate with governments to develop targeted, sustainable programs which are genuinely owned by local beneficiaries.

Political Economy of Development Funds

“Many political parties in developing countries express their strong concerns during election campaigns for eradicating rural poverty and eliminating regional inequalities. These concerns are often expressed not as a matter of choice or policy implementation but out of political necessities to win the election. Once elected, these parties, out of their zeal to prove their credibility, often strive to create miracles overnight. In the process, however, available limited resources are released without perceived objectives and quantified targets. Above all, funds are frequently allocated to each elected member instead of making appropriate sectoral allocations. Economic development becomes more of a game of political expediency, power retention and consolidation, and less of an achievement of concrete economic goals.”⁴

The disbursement of development funds for local public works under political patronage has been in place since 1985 when non-party elections were held in Pakistan. This has been in practice under different names may it be Peoples’ Works Program, Tameer-e-Watan Programme or Khushal Pakistan the prevailing culture is of making “**Block Allocations**” in the federal and provincial annual development programs for president’s directives, prime minister’s directives and chief minister’s directives, senators and MNAs’ program and MPAs programs. Over three decades this practice has not only shifted priorities of the national and provincial legislators in creating a parallel competing local level infrastructure vis-a-vis local government but also emerged as a strong lever for political influence. “This encouraged national and provincial elected representatives to channel public resources in quantity rather than quality into social sectors and infrastructure, which led to the culture of ghost schools, ghost health facilities and misuse of public infrastructure. Its perpetual reflection in the annual development programs of the federation and the provinces since 1985 also negated Platteau and Gaspart, who argued that “democracy is an institutionally established mechanism for regulating funds/resource transfers, and hence more effective in controlling for elite capture/political capture.”⁵

Constitutional Provision and Apex Court Judgement

Article 156 of the constitution provides that “the National Economic Council shall review the overall condition of the country and shall, for advising the federal and provincial governments, formulate plans in respect of financial, commercial, social and economic policies; and in formulating such plans it shall, amongst other factors, ensure balanced development and regional equity and shall also be guided by the principles of policy set out in chapter 2 of part II.”⁶

However, the Supreme Court in its verdict on the constitutional petition number 20 of 2013 clearly stated: “The Constitution does not permit the use/allocation of funds to MNAs/MPAs/Notables at the

4 “A linear goal programming approach to resource allocations – a case for Pakistan’s Economy” (1995), Rana and Kwak

5 The Politics of Resource Allocation – Abdul Wajid Rana –The News, December 7, 2015 Accessed on October 4, 2016

6 Art 156 of the Constitution of Pakistan 1973.

sole discretion of the Prime Minister or the Chief Minister ... No bulk grant can be made in the budget without giving detailed estimates under each grant divided into items and that every item has to be specified ... The amounts as approved in the budget passed by the National Assembly have to be utilised for the purpose specified in the budget statement. Any re-appropriation of funds or their utilization for some other purpose, though within the permissible limits of the budget, are not justified.”⁷

Prevailing Practices:

Despite these clear legal bars, the practice of allocating discretionary funds still prevails within different quarters of KP province. As reported by CGPA, upon the RTI request they submitted about the information related to expenditures under discretionary funds in 2014-15 in four departments of (KP), revealed that. Rs8.5 billion have been doled out for the constituencies of some government MPAs as well as for the chief minister’s own constituency. Another revealing fact is that some of the districts that have elected MPAs from the opposition parties continue to suffer as they can’t access discretionary funds. This has caused serious geographical inequalities in development. Given the dominant role that discretionary funds play, the KP Annual Development Programme (ADP) — which should ideally have a prominent contribution in regional development — ends up being used for purposes other than fostering development. For 2015-16, Rs1.3 billion have been released under the K-P ADP as of December 4, 2015, but not a single penny was approved for regional development.⁸

Party Wise Fund Details							
S No	Contituency	MPA	Party	Funds Allocated	Funds %	No of Schemes Allocated	Schemes %
1	PK-23	Ahmad Khan Bahadur	ANP	160843000	18	4	9
2	PK-26	Iftikhar Ali Mushwani	PTI	713721000	82	40	91
TOTAL				874564000	100	44	100

What Next?

Parliament no doubt is the legislative branch of government. Separation of Powers as envisioned in our Constitution demands that Legislative and Executive powers must be separated. As the body that represents the people, provincial legislature is called upon to see to it that the administration of public policy reflects and meets the people’s needs. It is also called upon to ensure that agreed policy is properly implemented and delivered to target citizens. In a nut shell, prime focus of members of the Provincial Assembly should be first to legislate and secondly to hold the government to account in respect of how the taxpayers’ money is used. They must ensure their participation in effective and robust tools available to them such as “Committees”. While using these forums they should put all their efforts to detect waste within the machinery of government and public agencies. Thus it can improve the efficiency, economy and effectiveness of government operations and ensures that public money is spent in the most effective and transparent manner.

⁷ Empowering Local Governments---Muhammad Anwar—Express Tribune, January 22, 2016 Accessed on September 26, 2016
⁸ ibid



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