

Legal Impediments to Rural Development

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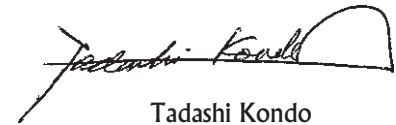
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Foreword

The India Resident Mission (INRM) Policy Brief Series is sponsored by the Asian Development Bank (ADB) and is designed as a forum to disseminate findings from policy research work undertaken on the Indian economy. The series is primarily based on papers prepared under the Technical Assistance (TA) 'Policy Research Networking to Strengthen Policy Reforms in India'. The main purpose of the TA was to provide assistance for developing policy research networking capacity, in order to build support for, and consolidate the reform process. The INRM Policy Briefs provide a nontechnical account of important policy issues confronting India.

A handwritten signature in black ink, appearing to read 'Tadashi Kondo', with a large, sweeping flourish at the end.

Tadashi Kondo
Country Director

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The apparently rich narrative on rural development bears testimony to the multitude of factors, diverse forces, and wide-ranging policy perspectives and initiatives that are part of the discourse. If, however, the veneer of formalism and the polemics of rhetoric are peeled away, it is noticed that the bread-and-butter issues of rural development are often ignored. The study of politics, governance, and administration at the grassroots is often the Little Narrative, somewhere distant and languishing in the periphery, with the entrenched Big Narratives of development with a global or national perspective occupying centre stage.

The philosophy underlying the power-sharing arrangement in any political system is mirrored in the nature of responsibility assigned to various levels within the formal hierarchy of power. Given India's economic and social reality, issues linked to rural development were often high on the agenda of priority of those in power. In terms of policy outcomes, however, the results have been disappointing, both on account of the 'tyranny of structures' and the 'paralysis in operation' (Jain 1982; Krishna 2002; Shastri 2003). This narration attempts to forge a conscious link between local government, rural development, and empowerment strategies.

In recent years, the discourse on rural development has attracted considerable attention in view of the move to devolve authority from the central/state governments to the local government on the one hand and provide for a legitimate space for civil society actors on the other.

These interlinked initiatives have, at the same time, their own logic of growth and a clear and distinct rationale. Both initiatives have brought in their wake a series of constitutional and legal reforms. But gaping uncertainties also remain, because the two initiatives were not viewed in concert as part of a much wider strategy for citizen empowerment and deepening of the democratic process. The legal impediments to rural development stem both from the absence of critical legal provisions and the ambiguity in existing legal provisions.

Further, the focus of discussion on rural development in policymaking circles in India and in similarly placed nations has taken two routes, which at times could be at cross-purposes. It has been persuasively argued that in many developing nations there is a clear value shift in the defining character of the development discourse from ‘creating a good society’ to ‘ensuring good governance’—the focus being more on reforming the institutions within the system rather than transforming the system itself (de Souza 1999: 136–41). This shift in focus creates a totally new worldview of priorities, strategies, and initiative, as seen in recent years. Another recent development has been the attempt to transfer decision-making to institutions and structures that are more directly responsible to the citizens (Chhibber et al. 2004). To ensure authentic and people-centered development, it has been argued by economists, political scientists, and policymakers that devolution of power to state and local governments is an essential prerequisite. In a formal legal sense, the structures have in many instances been created to empower local bodies. However, in reality the capacity to ‘operationalize the formal structures’ is riddled with innumerable contradictions and insurmountable practical roadblocks. This devolution has often remained a pious policy hope and not been taken to its logical conclusion, since the political elite did not wish to let go control over the levers of power. The consequence was that every level of government argued for being entrusted with greater powers even while retaining its existing authority. The justification was also pegged on the logic that scarce resources required judicious use and the ‘higher level of government’ was best suited to arbitrate the distribution (see Manor 1999).

The legal impediments to rural development have several linked developments:

- (a) the process of democratic engineering and citizen expectations and the incapacity of the existing structural arrangement to cater for these needs;
- (b) the need to carry forward the logic and philosophy of the 73rd Constitution amendment by meaningfully empowering panchayats;
- (c) ensuring the accountability of the state and local bureaucracy and ushering in greater transparency in administration;
- (d) focusing on the primacy of the role of the state and its administrative machinery and identifying policy initiatives linked to rural development in that specific context;
- (e) ensuring greater visibility to citizen/community initiatives by clearly demarcating their role and responsibility vis-à-vis the government structures;
- (f) clarity on the regulatory role of the state; and, above all,
- (g) evolving a comprehensive and multi-track strategy for empowerment.

Summary of Major Challenges and Recommendations

<i>Nature of Challenge</i>	<i>Response</i>
1. The apparent absence of a conscious link between three critical areas: local government, rural development, and empowerment strategies.	Ensuring meaningful decentralization, participative rural development, and citizen empowerment (more specifically empowerment of the disadvantaged and underprivileged sections of society) requires a concert of efforts in the three critical spheres. Much of government activity in these three areas is disjointed. Government agencies and departments concerned need to evolve a mechanism to ensure more meaningful coordination.
2. The legal impediments to rural development are both on account of the absence of critical legal provisions and	<p><i>Absence of legal provisions</i></p> <p>1. Legal provisions to define the relationship between multiple players at the level of local government to ensure greater role definition and clarity.</p>

<i>Nature of Challenge</i>	<i>Response</i>
ambiguity in existing legal provisions.	<p>2. Legal provisions to strengthen the regulatory role of the state, especially in the context of local government. With the increasing outsourcing of functions, laws to define the principles of outsourcing and the scheme of accountability (both to the system and to the citizen) need to be worked out.</p> <p><i>Ambiguity in existing legal provisions</i></p> <p>1. The major legal silences created by the 73rd amendment need to be immediately addressed. Specifically:</p> <ul style="list-style-type: none"> • Assignment of responsibilities for the functions outlined in Article 243G read with the 11th Schedule of the Constitution • Entrenchment of subsidiarity principle • Ensuring the supremacy of the democratically elected local body over the local bureaucracy • Reducing the role and influence of ex-officio members of local bodies. <p>2. Ensuring fiscal autonomy to local government and broadening the tax base of local bodies by a constitutional mandate.</p>
3. The avowed objectives of important decentralization initiatives have remained largely unfulfilled. The hiatus is often caused by serious legal bottlenecks. Some of them have been listed in the previous point.	The gap needs to be bridged. The political will and administrative support for decentralization needs strengthening.

<i>Nature of Challenge</i>	<i>Response</i>
4. Several studies point out that the citizens' level of faith in local government far exceeds their confidence in the state and central governments.	If the common citizen believes that the local government is the site at which important government initiatives that play a major role in shaping his/her life and destiny are taken, then this level of government needs to be given autonomy and space to perform and meet citizen aspirations and expectations.
5. The shift in the 'centre of gravity' of Indian politics necessitates a searching second look at the role that citizen perception of democratic processes and institutions has played in ushering in these changes.	The shift needs to be reflected in the power distribution within various levels of government. Part of the voter volatility noticed in India is a by-product of the mismatch.
6. For the socially and economically marginalized, the disjoint between the 'promise of policy' and the 'reality of benefit' is poignantly evident. In spite of the provisions of the 73rd amendment and the reservations provided in local governments, entrenched social groups have ensured their control and supremacy over local government.	Local governments provide a useful site for the marginalized sections of society to participate in affairs of state. The practical reality of unfulfilled promise needs attention.
7. The lack of coordination between different agen-	Coordination of the different organs of the state as well as nonstate actors (at the local

<i>Nature of Challenge</i>	<i>Response</i>
<p>cies of the state inhibits citizens from taking 'ownership' for their own development and progress.</p>	<p>level) involved in the field of local government, rural development, and empowerment is urgent. The responsibility for this coordination could be entrusted to the popularly elected local body at the district level.</p>
<p>8. A strong and powerful political message was being sent across the system by according constitutional status to the local bodies and recognizing them as the legitimate third tier of the Indian federal system. However, the initiative needs to be taken logically forward. The legal impediment lies in the unfinished agenda of the 73rd amendment.</p>	<p>The 73rd amendment was a legitimate first step and not the end point of the process of meaningful political decentralization. The urgent corollary steps include:</p> <ol style="list-style-type: none"> 1. limiting the role of ex-officio members; 2. entrenching and fortifying the 'local' in the scheme of governance; 3. operationalizing the constitutionally mandated transfer of functions to the local government; and 4. ensuring an independent zone of fiscal competence for the local government.
<p>9. There is little proof in the developments of the last decade that the 'local arena' has been clearly recognized as the exclusive site for full implementation of welfare programs and rural development schemes.</p>	<p>Entrenching the 'local' in the scheme of development has become urgent. The 'local' should not remain a mere arena for implementation of schemes and plans formulated at the higher levels; it must be part of the process of formulating and designing welfare programs and rural development schemes.</p>
<p>10. Those whose area of operation and influence is limited to the</p>	<p>Their role in local bodies needs to be comprehensively reviewed. There are two alternative tracks.</p>

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<p>local area are stifled by the presence of state legislators and parliamentarians in local bodies.</p>	<p><i>Track 1:</i> Ex-officio membership in local bodies could be abolished. <i>Track 2:</i> If Track 1 is politically impossible, the role of ex-officio members needs to be clearly delineated.</p>
<p>11. In a federal system division of responsibilities should be on the principle of subsidiarity.</p>	<p>Subsidiarity implies that a higher level of government performs a particular function only when the lower level cannot discharge it effectively. As a first step, this principle should guide the demarcation of functions between state and local government.</p>
<p>12. Local governments enjoy limited autonomy to perform the functions assigned to them. They have largely been sidelined as program implementing agencies. Even in program implementation they have to kowtow to the norms prescribed by the authorities at the state and central levels.</p>	<p>To ensure that the 'local' takes ownership for the functions assigned to it, it must be involved in all phases of the program, including its design and conceptualization.</p>
<p>13. District Planning Committees (DPCs) need to be strengthened.</p>	<p>There needs to be a mandatory provision to constitute DPCs in all states and ensure that the head of the district local body is the ex-officio chairperson of the DPC.</p>
<p>14. Local bodies lack fiscal autonomy.</p>	<p>An exclusive tax domain for local bodies needs to be created.</p>
<p>15. The bureaucracy at the local level, often</p>	<p>On the lines of the Karnataka Panchayat Raj Act of 1985, the local bureaucracy</p>

<i>Nature of Challenge</i>	<i>Response</i>
working in tandem with the political leadership at the state and national levels, successfully scuttles many a progressive initiative emanating from the local government.	must be required to function under the leadership of the political head of the elected local body. Greater transparency in the operation of schemes and multi-track avenues for citizen participation in the implementation would permit the stakeholders to assume ownership of the process.
16. The economic reforms package sought to redefine the role of the state and legitimize the position of new players at the local level.	It is important to prepare a blueprint of who are the major actors (state and non-state) at the local level. Once identified, there must be a clear definition of the role, functions, and responsibilities in order to ensure concerted efforts towards goal achievement and optimum utilization of scarce resources.
17. Three critical markers need to be identified while examining the changing role of the state in the light of economic reforms: (a) popular perception of the changing role of the state; (b) the impact of the emergence of new players at the local level; and (c) the regulatory role of the state and the focus on coordination.	Popular perception of the changing role of the state clearly indicates a preference for direct involvement of the state in areas linked to the delivery of public goods. This may be an indicator either of the people's continued faith in government processes or a reflection of the absence (at the local level) of nongovernmental agencies. If common citizens are to endorse the role of nongovernmental actors they need to register their presence and/or be seen as nongovernmental actors. The presence and role of new players (state and nonstate) at the local level is not clear. Often, the citizen continues to view them as an extended arm of the state. This possibly is a reflection of the way they function and/or the overbearing presence of the state. The presence and

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	emergence of new actors requires a clear enunciation of the regulatory role of the state. The finer nuances of this role need to be worked out and operationalized.
18. Rural development strategies are about various forms of empowerment. A comprehensive approach to empowerment needs to be taken as the route to iron out the legal impediments to rural development.	A comprehensive approach assumes a coalition of objectives, concert of efforts, and coordination among the multi-track agencies of the state and society towards achieving improvement in the quality of the life of citizens of rural India.

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