

Senate Reforms in Pakistan

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P R E F A C E

Bicameralism is a common model of parliamentary design and one of the most important features of parliamentary democracies around the world.

In number of countries with bicameral parliament the functioning, and even the existence, of the Senate (Senate) is regularly challenged. Many such as UK, Canada, France and Spain - are engaged in vigorous, sometimes protracted, debates about their upper houses. Countries with little population and homogeneous social and ethnic structure i.e. New Zealand, Denmark and Sweden has abolished their Senates (Senate). However, countries like Poland, the Czech Republic and South Africa have adopted bicameralism with establishment of Senates as part of their federal reform policies.

The fundamental composition and function of the Senate in the Pakistani federation has long been a source of contention amongst pro-autonomy and centralists. Regional discontent embodied in the demands for open-federalism in particular and Senate reform in general.

The core issue in this protracted debate has been the need to secure equal and effective regional (provincial) representation in Pakistan's federal centre, with proponents of Senate reform viewing the need to transform the institution into one that offers regional perspectives on federal policies.

The demand for Senate reforms has been to correct its commonly held inadequacies in representing, protecting, promoting and accommodating regional interests and identities.

In fact Pakistan needs an upper house to provide sober second thought and amplify the genuine voices of diverse regions with democratic legitimacy.

I hope this paper will be of use to all those who wish to have an over view of the Senate of Pakistan and issues concerned with its empowerment.

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Introduction

Views and opinion, for and against the Senate, have been aplenty – mostly sharply divided. While the protagonists of the bicameral system have emphasized the need for having a strong Senate as a safeguard against the possible tyranny of majoritarian rule, the critics have dismissed its role and even existence as being inherently undemocratic and subversive of the will of the people expressed through the directly elected Lower House (National Assembly).

The merits and demerits of the Senate notwithstanding, the fact remains that about one-third, nearly seventy countries in the world, including seventeen in Europe, practice bicameralism.

Federal states in Asia and elsewhere in the world all have bicameral systems. Bicameralism is closely bound up with federalism, of which it is one of the key features. The same applies to countries that are highly decentralized or constitutionally regionalized, where, as in the case of federalism, the Senate plays an essential balancing role between the centre and the state's geographical components.

However, bicameralism is not limited to federal countries, about one third of unitary states too have bicameral legislatures.

Bicameralism in Pakistan

A bicameral parliament means that the legislative process is divided between two different chambers (Houses). Article 50 of the 1973 Constitution provides for a parliamentary form of Government with a bicameral legislature Majlis-e-Shoora (Parliament), consisting of the President and two Houses to be known respectively as the National Assembly and the Senate.

Pakistan is a democratic parliamentary federal republic with Islam as the state religion¹. Until 1973 Pakistan was a country with unicameral political system. The 1973 constitution provides for a parliamentary form of government with a bicameral legislature, comprising the National Assembly and the Senate.

The bicameral legislature comprises a 100-member Senate and a

342-member National Assembly. The President is the Head of state and the Commander-in-chief of the Armed Forces and is elected by an electoral collegeⁱⁱ.

Ethnic diversity, cultures, languages, and geographical make up of Pakistan necessitated for institutional structure reflecting pluralism.

The way, in which the 1973 Constitution was conceived, it was envisioned by the framers that with diverging interests of different ethnic groups, Pakistan requires a system of federal bicameralism - not a simple bicameral legislature.

Political scientists believe that bicameralism system evolve out of a) the need to balance political power and b) the perceived need for the efficiency of the legislative process.

Two-chamber legislatures are commonly adopted with the aim of enhancing the representation of sub-national governments. Most of them are territorially elected: this is frequently done in order to offset the centralizing tendencies of unicameral legislatures, which are generally elected on party slates. Secondly, Bicameralism induces stability because undesirable policies can be avoided through the interplay between the different preferences of the members of the two houses. As a key principle of democracy, i.e. the separation of powers, is expressed through the fact that the two houses supervise each otherⁱⁱⁱ.

Bicameralism is the easiest way to accommodate the dualist structure of the state, because it is a method of representing popular national interests and state and regional interests at the same time.

There is a broader consensus among political scientists that bicameral legislature is more likely to have stable, un-dominated policy choices than a unicameral legislature.

A Forum of the World's Senates, held in March 2000, identified the following advantages of bicameralism. Firstly, bicameralism is appropriate in the context of nations adopting decentralization policies which justify independent representation at a central level. Secondly, it is a guarantor of stability in the transition to democracy. Lastly, bicameralism is viewed as a modern means of

ensuring the separation of powers without which, according to the Forum, a society has no constitutional basis.

Indeed bicameralism itself is no guarantee of equitable distribution of resources, nor is the equality of the federative representation. Bicameralism with legitimate and politically powerful upper house is answer to the successful functioning of multi-ethnic state.

Historical Background

In contrast with India, which opted for a bicameral parliament on 28 July 1947 and established a Senate known as Council of States or Raja Sabah, Pakistan was a system with unicameral parliament prior to separation of East Pakistan.

After independence, the first Constituent Assembly of Pakistan, elected in December 1945 was assigned the task of framing the Constitution of Pakistan. This Assembly passed the Objectives Resolution on 12 March 1949, laying down principles which later became substantive part of the Constitution of Pakistan. However, before it could accomplish the task of framing the constitution, it was dissolved in October, 1954. Thereafter, the Governor General convened the Second Constituent Assembly in May, 1955, which framed and passed the first Constitution of Pakistan on 29 February 1956. That Constitution was promulgated on 23 March 1956, which provided for a parliamentary form of Government with a unicameral legislature. However, from 14 August 1947 to 1 March 1956 the Government of India Act 1935 was retained as the Constitution of Pakistan. On October 7, 1958, Martial Law was promulgated and the Constitution abrogated. The Military Government appointed a Constitution Commission in February, 1960 which framed the 1962 Constitution. That Constitution provided for a Presidential form of Government with a unicameral legislature. The 1962 Constitution was abrogated on 25 March 1969.

The separation of East Pakistan in 1971 led to a new thinking about federalism in Pakistan as Punjab now represented the position of one-province-dominates-all at 58 per cent of the population. The smaller provinces were committed to constrain

the majority of one province in the parliament. The specter of other ethnic communities seceding from what was left of Pakistan after Bangladesh loomed large on the horizon. The elites of Sindh, NWFP and Balochistan pushed for some kind of majority-constraining federalism^{iv}.

The 1970 Assembly framed the 1973 Constitution which was passed on 12 April and promulgated on 14 August 1973. Prime Minister Z. A. Bhutto, himself from Sindh, was able to accommodate the demands of the provinces for a bicameral parliament comprising a population chamber (the lower house) and a territorial chamber (the upper house).

Senate in Federal State

Federal states in Europe and elsewhere in the world all have bicameral systems. Popular representation has to be accompanied by representation of the constituent geographical entities, particularly when the federal state has been formed by a process of political merger.

The rationale for having a Senate for a Parliament and its status and role in the body polity, has been one of the vexed questions in the history of democratic governance.

The main function of Senate would therefore appear to be to represent sub-national authorities. Popular representation has to be accompanied by representation of the constituent geographical entities, particularly when the federal state has been formed by a process of merger.

The basic purpose of second chambers (Senate) in federal systems is that:

-First, that “bicameral systems add an element of deliberate ‘redundancy’ into the legislative processes “ which means that they offer a chance for second thoughts, which “is particularly important where legislative proposals may have been prepared in haste and passed in the first house under strict party discipline”.

-Second, “depending upon the membership of the second chamber, such a body may also provide an opportunity to bring

particular forms of expertise to bear on the debate of an issue before parliament finally confirms its decisions”.

-Third, in federal systems Senates have two additional functions: They act “as a device to check the power of majoritarian elements that might otherwise dominate the governmental process.

-Fourth, the Senate in federal states ensures adequate representation of regional and minority interests and viewpoints”.

In fact, any highly decentralized state needs a truly represented and politically empowered Senate to ensure dialogue between the centre and the periphery. After 18th Amendment in the Constitution, Pakistan needs to move towards greater political decentralization and in that case a blurred and cosmetic institution like Senate of Pakistan will not help to address democratic deficits in the federal system.

Senate of Pakistan- Role and Status

Soon after fall of Dhaka, there was a political realization that Pakistan, with diverse regions and ethnicities, needs political system with true federal structure, providing equal representation to all ethnicities and regions despite their geographical size and population.

The 1973 Constitution provided for an empowered National Assembly where majority belonged to Punjab and Senate, with equal rights and power, where all the four provinces benefit from equal representation.

Equal provincial membership in the Senate was premeditated to balance the demographical formula extant in the National Assembly. In this way, under the 1973 Constitution, the Senate came into existence for the first time. The elections of the first Senate were held on July 10, 1973. Before this date, under all previous Constitutions only one House had operated in Pakistan.

However, the impact of the enhanced representation of smaller provinces in the Senate has been offset by the asymmetrical policy scope of the two houses. The Senate has no control over money

bills. The national budget could be sent for assent of the President after passage through National Assembly, even bypassing the other house^v.

The Senate was envisaged to promote following basic roles:

- A. A majority-constrained Federalism
- B. Equal representation in politically empowered Senate
- C. As a legislative chamber with equal power to National Assembly
- D. As an institution where interests of the states (provinces) could be projected and safeguarded and;
- E. As a deliberative chamber where greater and diverse experience is brought to bear on questions of significance.

Moreover, during framing the constitution all fancy promises made with the representatives of smaller provinces was simply ignored which led to the Baloch representatives' resignation and rejection to sign the 1973 constitution^{vi}.

The Constitution of Pakistan dose not assigned any extra-ordinary or unique role to the Senate of Pakistan. In the 1973 Constitution, PART III, the Federation of Pakistan, Chapter 2 the Majlis-e-Shoora (Parliament) Article 59 says that:

- (1) The Senate shall consist of one-hundred members, of whom,-
 - (a) fourteen shall be elected by the members of each Provincial Assembly;
 - (b) eight shall be elected from the Federally Administered Tribal Areas, in such manner as the President may, by Order, prescribe;
 - (c) two on general seats, and one woman and one technocrat including aalim shall be elected from the Federal Capital in such manner as the President may, by Order, prescribe;
 - (d) four women shall be elected by the members of each Provincial Assembly;
 - (e) four technocrats including ulema shall be elected by the members of each Provincial Assembly.

- (2) Election to fill seats in the Senate allocated to each Province shall be held in accordance with the system of proportional representation by means of the single transferable vote^{vii}.

Therefore, in this paper we intend to briefly examine the Senate's role in Pakistani polity to understand the challenges and future prospects:

Senate - as a Second Sober Thought:

Indeed Senate of Pakistan has a moderate role to play as a revising Chamber. Though revisions have been few and far between, yet potentially there is always the possibility of revision as a result of second sober thought. The Senate has, in our parliamentary system, the authority to discuss and delay legislation, but it does not have veto power and right to clog or undo the proposed legislation, even if it is contradictory to the principle of federalism.

Although Parliament of Pakistan including the Senate do consist of representatives of provinces, but its "sober second thought" has never been considered in the formation of country's internal and external policies. The essence of democratic bicameralism is useless if the Senate is sidelined and powerless within the policy process, even where it offers a different perspective.

As a Senate, it has the mandate to secure a second sober look at hasty legislation but technically it has no power to perform as custodian of the states (provinces) rights.

The Senate in Pakistan could make outstanding contributions to the law-making process and improve the quality of legislation if its political legitimacy as a federal representative body is established.

The Senates (Second Chambers) are often characterized as embodying a particular measure of wisdom, balance and expertise.

The Senate in Pakistan could also make outstanding contributions to the law-making process and improve the quality of legislation if its political legitimacy as a federal representative body is established.

Senate often has more time on its disposal and can interest itself in topics that are too often neglected by the National Assembly.

Senate - as a Federal Chamber

Another significant role of the Senate of Pakistan was envisioned by the architects of 1973 constitution to give strong representation to the provinces in the federal legislature. However, the concept of equal and strong representation of provinces compromised by giving 12 per cent representation to Federally Administrated Tribal Areas and the Capital Territory of Islamabad.

Senate is a federal Chamber where the representatives of each province are elected by the elected members of the Provincial Assembly however; Federally Administered Tribal Areas (FATA) eight Senators are selected by region's 12 National Assembly Members.

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According to Article 247 and Article 248, of existing 1973 Constitution of Pakistan, the Jurisdiction of the Constitution, the Supreme Court and High Court of Pakistan do not extend to FATA.

Ruled by the Frontier Crimes Regulations (FCR) FATAs are represented both in the National Assembly of Pakistan by 12 elected Members of the National Assembly (MNAs). Moreover, FATA is represented in the Senate of Pakistan by eight senators who are selected by these 12 MNAs. The provision of election for the 8 Senators of FATA by 12 MNAs is considered farcical.

The region is nominally controlled by the federal government; the President of Pakistan has the authority only to implement the rules in FATA. He appoints and nominates the Governor of Khyber-Pakhtunkhwa who exercises the power of the president. It's beyond comprehension that FATA has provided a sizable representation both in National Assembly and Senate of Pakistan.

Geographically adjacent and socially and economically interdependent with Khyber-Pakhtunkhwa province, FATA has no representation in Provincial Assembly.

It's in the interest of the people of FATA that Islamabad should extend full provincial rights to FATA by merging it with Khyber-Pakhtunkhwa province including merging all the six Frontier Regions with province adjacent settled districts. Giving due representation to the people of the region in K-P provincial assembly.

The Khyber-Pakhtunkhwa province should represent the region in the Senate of Pakistan.

A tiny region, less than 1000 sqkm, of Capital Territory of Islamabad should only be represented in the National Assembly. As such, in a federal model of government, no state or territory has any political or economic advantage relative to the others because of the national capital lying within its borders.

Senate - as a Deliberative Chamber

The Second Chamber (Senate) in functioning democracies and "open-federal system" is not only a legislative but also a deliberative body. If truly represented, it can make very valuable contributions. However, less informed and members with poor experiences undermine the overall justification of the Senate in any federal system.

The prime role of the Senate of Pakistan as a deliberative Chamber was reinforced by the provision of nomination to the Senate of seventeen (17) technocrats (Members noted for their contribution to literature, science, art and social service). However, this provision was further exploited by including the title of Ulmmah in this category (See Constitution Article 59, C and E).

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In fact religious scholars with immense knowledge and accreditation from top universities could fall in this category but at the present it's a known practice in Pakistan that anybody can attain a certificate from any religious school and could easily claim/contest for the technocratic category.

The current composition of the Senate of Pakistan and members elected under this provision is a known pattern of misuse of this category.

The true representation of technocrats and experts not only increase the scope of the Chamber but hold informed debates on public issues and endeavor to make proceedings relevant to public welfare.

Senate - as a Chamber of Continuity

The hallmark of the Second Chambers (Senate) in federal parliamentary democracies is the principle of continuity as a perpetual House, as a continuous institution in the parliamentary framework.

A scheme of having a Chamber of legislative continuity was needed in a parliamentary system to meet the legislative and constitutional contingency at a time when the popularly elected House may be under dissolution or in the process of reconstitution after election.

The impossibility of dissolving Senates is a guarantee frequently used to ensure the stability and continuity of the State: it exists in the majority of the world's nations. National constitutions provide for a right of dissolution in only 19 cases, including the Belgian, Spanish and Italian Senates, the First Chamber of the States-General of the Netherlands, the Chambers of Councilors of Japan and Morocco and the Senates of Kazakhstan, Thailand, Nepal and Uruguay^{viii}.

The Senate of Pakistan, according to the Constitution of Pakistan Article 59 sub article 3 “the Senate shall not be subject to dissolution but the term of its members, who shall retire as follows, shall be six years”.

Following Musharraf's military takeover on October 12, 1999, he dissolved both the Senate and the National Assembly.

However, in reality Senate in Pakistan including democratic process has suffered several undemocratic and unconstitutional setbacks. During 1988-99 four successive national parliaments elected, each of which is subsequently dissolved preterm. Following Musharraf's military takeover on October 12, 1999, he suspended Pakistan's constitution and assumed the additional title of Chief Executive. He appointed an eight-member National Security Council to function as the supreme governing body of Pakistan. He dissolved both the Senate and the National Assembly.

As if the Senate continues as a permanent House, the dissolution of National Assembly will have limited impact on the Bills pending before the Senate. A Bill which is pending in the Senate and has not been passed by the National Assembly, will not lapse on the dissolution of the NA. Thus, the continuity of the Senate ensures a significant measure of legislative continuity.

Senate and Government Formation

The Senate of Pakistan has no role in the making or unmaking of the Government. Since the Governments are not formed, nor do they fall on the basis of the numerical strength of the Senate, this forum role is limited in political perspective.

The Government of the day is collectively responsible to the National Assembly, a forum where smaller provinces do not hold any numerical majority.

However, equal power with regard to government formation exists in many countries i.e. Bosnia and Herzegovina and Italy – with equal bicameral systems. In Romania, motions of censure are voted on in joint sessions of the two chambers.

The Chairman Senate of Pakistan only acts as interim head of state. This is a traditional practice in France, but also applies to Germany, Romania, the Czech Republic, Poland and Italy. The Italian Senate enjoys a power of no confidence vote.

Indeed, where an upper chamber has limited powers over government formation and legislation (Particularly on budget and financial matters), it will also tend to have limited powers to scrutinize government.

In many countries the upper house has significant other powers, beyond those over legislation and government scrutiny. The commonest of these are involvement in the choice of the head of the government and state, and of senior judges.

In Italy, Switzerland and the US, approval of the upper house is required for appointment of government ministers^{ix}. In Japan the upper house is involved in election of the Prime Minister, but the lower house has the last word. In Italy the government may be brought down by a no confidence vote in the upper (or lower) house.

Senate of Pakistan should have equal power with National Assembly on issues:

- A. Government Formation
- B. Appointment and Confirmation of Supreme Court Judges, Government Ministers and Ambassadors, federal secretaries
- C. Election of the Prime Minister including no-confidence vote
- D. The Prime Minister should be from either chamber (Senate or National Assembly)

In eight countries the members of the upper house (Senate) are involved in selecting members of the highest courts. In most countries this duty is shared with the lower house, but in two cases it belongs to the upper house only.

Senate Committees and Executive Accountability

Parliamentary Committees play a vital role in the Parliamentary System. They are a vibrant link between the Parliament, the Executive and the general public. The need for Committees arises out of two factors, the first one being the need for vigilance on the part of the Legislature over the actions of the Executive, while the second one is that the modern Legislature these days is over-burdened with heavy volume of work with limited time at its disposal.

In fact, smaller provinces including Sindh, Balochistan and KP province are supportive of bicameralism in principle but want an empowered Senate with more distinct composition and functions.

The Senate of Pakistan has a costly but less efficient Committee System. There are forty four (44) standing, house, functional and finance committees intend to secure executive accountability but in practice these committees have hardly been able to positively influence government functioning. However, in India the Rajya Sabha has total 36 committees including parliamentary standing committees, applauded for their effective role and objective deliberations.

Under Senate of Pakistan rules there shall be a Standing Committee which deals with the business of the Government relating to the Ministry with which is concerned or any other matter referred to it by the Senate. A Committee is also authorized to examine suo moto the expenditures, administration, subordinate legislation, the public petitions and policies of the Ministry concerned and its attached public bodies. Besides standing committees, there are three functional committees. (i) Committee on Government Assurances (ii)

Committee on Problems of Less Developed Areas and (iii) Committee on Human Rights.

In addition to the above committees, there are two other committees, namely the Committee on Rules of Procedure and Privileges and House Committee.

Some observers believe that a single, active committee with adequate resources, expertise on the subject matter, and portfolio is the best system to oversee the executive functioning.

The Committees aid and assist the Legislature in discharging its duties and regulating its functions effectively, expeditiously and efficiently. Through Committees, Parliament exercises its control and influence over administration. Effective and transparent Parliamentary Committees have a salutary effect on the Executive.

The Senate committee system is central to parliamentary democracies. It enables Member of Parliaments (senators) from all parties to examine thoroughly and report on proposed laws and controversial matters of government policy. The committee system is essential to the Senate's role as a house of scrutiny and review. In fact Senate Committees are "the best accountability mechanism that any parliament has".

One of the important functions performed by the legislative committees is that of the oversight of the executive.

In fact, the Parliamentary Committees in Pakistan do not function in a non-partisan manner and their deliberations and conclusions are less objective.

Unlike Pakistan, in the US and Australian Senate, a far more effective committee system is in placed and developed than exists in the lower house. Committees scrutinize bills carefully and report to a chamber where minor parties and independents hold the balance of power. Consequently, due to effective Committee

system, the Senate has been referred to as the legislative powerhouse of parliament.

Simply in Pakistan's case, this is based on my personal experience as Member Senate Standing and Function Committees, Senate Committees are largely fake - they do not assist the legislature to scrutinize and hold accountable the executive government, but are firmly under the control of government, principally through ministers determining the subjects of inquiry.

The Senate committee system must be strong, empowered and different from the lower house because it should enable the Senate to conduct inquiries into matters independently of the executive government. The establishment of independent and empowered Senate system will have very positive impact on overall functioning of democratic institution and result in reducing government abuses and mounting corruption.

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In comparison with other Senate Committees, Senate Committees in Pakistan have been systematically degraded and weakened to minimize their role of oversight. They do not have any mechanisms of Committee hearings to focus on the implementation and investigations of programs are known as oversight hearings. The Senate Committees do not deal with the confirmation or rejection of top government appointments and nominees.

People in Pakistan still think of government and parliament as one and the same thing, as well they might give the rigidity of executive control of lower house, and independent upper house is still seen as something of an anomaly.

This misinformed perception could be change if Committees and legislature improve their skills and ability to obtain information

those governments would rather conceal. The executive wants the public to receive only the information favorable to it, and strives to manage the release and the presentation of unfavorable information, and to keep much secret. A functioning legislature is essentially an instrument for breaking down that information management in the interest of the public's ability to judge governments and parliaments differently.

Take the case of the Senate Functional Committee on Human Rights, this Committee is assigned to review on a continuous basis the overall situation of human rights violations in the country and receives representation from the affected persons, organizations and international agencies, including the Human Rights Commission, regarding human rights violations in Pakistan. The Committee's role includes undertaking studies and makes recommendations for redressing the human rights violations including proposal for legislation in that area.

After its formation, the committee adopted a strategy to counter human rights violations in the country and also to respond to such violations at the international level as well. However, In reality, during Musharaf's turbulent period from 2005 to 2008, this Committee miserably failed to identify or take up a single human rights violation case in the country.

Musharaf launched military offensives in Balochistan, without Parliament's consent, the notorious practice of enforced disappearances flourished under his dictatorship. The Red Mosque operation including restriction on civil liberties was on the rise, but under the Chairmanship of Mr. Senator S.M Zafar, the Senate Functional Committee on Human Rights played a very partisan role and remained quite on alarming human rights situation in the country.

Senate and Public Grievances

Pakistan has one of the weakest legislatures of the democratic world. The Parliament here is under a great degree of executive domination. The established mechanisms to address public grievances in the Senate are less beneficial. The matter of urgent public grievances, and particularly on human rights and corruption related matters, are routinely killed by the Chairman Senate and Senate Secretariat. The executive's influence on working and functioning of Senate Secretariat and Committees are major obstacle in fair, transparent and open deliberation.

In diverse federal states the Senate is the reflecting surface of the problems faced by different regions or provinces. Its Members, being the representatives of provinces, articulate the concerns of respective states and their people. Majority Senates around the world have, through well established procedural devices such as Questions, Calling Attention, Special Mentions, Short Duration Discussion, Half-an-Hour Discussion, Motions, Resolutions, etc., raised issues of public importance, focused attention on matters affecting policies of the Government and provided a forum for ventilation of public grievances. Through these devices, the Senate is managed not only to elicit information but also put pressure on the Government to reorient its policies for serving larger public interests.

Senate in Pakistani Polity

The very composition, inferior powers and ineffective Committee System of the Senate of Pakistan so far goes to prove that it is not an empowered, truly territorial representative and effective Chamber.

Legislative Competence of the Senate

Both the Houses of Parliament, that is, the Senate and the National Assembly work together to carry out Parliament's basic work legislation or lawmaking. The procedure for introduction and adoption of Bills is laid down vide Articles 70, 77 and it is interdependent on both the Houses, except for Money Bills where the National Assembly enjoys an exclusive jurisdiction.

A Bill, with respect to any matter in the Federal Legislative List, or in the Concurrent Legislative List, can originate in either of the two Houses, with the exception of a Money Bill which originates only in the National Assembly but a copy of which is simultaneously transmitted to the Senate for making recommendations to the National Assembly within seven days. Upon introduction, a Bill shall, unless the member-in-charge moves a motion for dispensation of this requirement of the rule, stand automatically referred to the concerned Standing Committee of the House for scrutiny and report within a stipulated period of time. When a Bill, except a Money Bill, is passed by the House, in which it originated, it is transmitted to the other House and that Bill, if passed without amendment, by the other House is transmitted to the President for assent.

Financial matters (Money Bills)

In addition to legislative and oversight power, the power over public funds assures the instrumentality of the legislature in public life. Therefore, all executive branch expenditures as stated in the proposed budget require the approval of the legislature (Both Senate & National Assembly), which shall also have the right to make amendments^x.

Nevertheless, the budgetary role of second chambers differs. Some have the same power over the budget as the lower house, for instance in the United States. Others have asymmetrical and more precisely lesser power in budgetary matters than the lower house.

For example, article 105(3) of the Basic Law of the Federal Republic of Germany (1949) requires the consent of the regional chamber or *Bundesrat* for most revenue measures. The consent of the *Bundesrat* is, however, not required for the expenditure side of the national budget.

The issue of fair and equitable resource distribution has been a bone of contention between centre and provinces. Since Senate represents provinces, it should have exclusive jurisdiction on Money Bills.

In some countries the regional chamber merely has a consultative role in budget matters. For example, section 109 of the Constitution of India (1950) allows the Council of States or Rajya Sabha to make recommendations to the House of the People or

Lok Sabha when it comes to budgetary matters. These recommendations can be rejected or accepted by the lower house with a simple majority vote. The role of the second chamber of the Parliament of Pakistan, i.e. the Senate of Pakistan, is the same as that of the Indian second chamber, because it can also formulate recommendations of non-binding nature to the first chamber, i.e. the National Assembly.

As far as Money Bill is concerned in Pakistan, it is the prerogative of the National Assembly only to consider it. However, under the Legal Framework Order 2002, a copy of the Money Bill is simultaneously transmitted to the Senate for making recommendations to the National Assembly. When the Bill is taken up clause by clause, the recommendations made by the Senate are considered in the order of the clauses of the Bill to which they relate, in accordance with the provisions of rules 131 and 133. When passed by the Assembly, an authenticated copy of the Money Bill is transmitted to the President for assent under Article 75.

Constituents of Money Bill

Constitution defines that a Bill or amendment is considered as a Money Bill if it contains provisions dealing with all or any of the following matters,

1. The imposition, abolition, remission, alteration or regulation of any tax;
2. The borrowing of money, or the issuing of any guarantee, by the Federal government, or the
3. Amendment of the law relating to the financial obligations of that Government;
4. The custody of the Federal Consolidated Fund, the payment of moneys into, or the issue of moneys from, that Fund;
5. The imposition of a charge upon the Federal Consolidated Fund, or the abolition or alteration of any such charge;
6. The receipt of moneys on account of the Public Account of the Federation, the custody or issue of such moneys;

7. The audit of the accounts of the Federal Government or a Provincial Government;

Since Budget and financial issues are directly concerned with Federal Consolidated Fund, it is pertinent that Senate of Pakistan, which represents federating units, must have a greater say on financial matters of the federation than National Assembly^{xi}.

The issue of fair and equitable resource distribution has been a bone of contention between centre and provinces. Since Senate represents provinces, it should have exclusive jurisdiction on Money Bills than National Assembly. The Senate must be strengthened specifically in the ambit of financial power.

Equal Powers in relation to National Assembly

Where there is a separation of powers between the executive and the legislature, as in the U.S.A., Switzerland, and the Latin American federations, normally the two federal legislative houses (Senate and National Assembly) have had equal powers, although in the U.S.A. the Senate in fact has some additional powers relating to ratification of appointments and treaties. The US Senate votes to confirm or reject the Presidents' US Supreme Court nominees. Some people believe this power falls to Congress; however, "Congress" is a collective term that includes the House of Representatives, which has no voice in the Supreme Court selection process.

Article 2, Section 2, Paragraph 2 of the US Constitution provides that the President may nominate members of the Supreme Court, but that appointment only occurs with the "advice and consent" of the Senate. This means the Senate conducts an investigation of the candidate's qualifications and personal background, determines whether he or she would adequately fulfill the role of Justice, then votes whether to approve or disapprove the nomination. If the Senate votes a simple majority (51 votes) for confirmation, the nominee receives a commission; if a member of the Senate decides to filibuster to block or delay a nomination, a

three-fifths (60) vote is required to end the filibuster (until 1975, the requirement was two-thirds of those present)^{xii}.

The Italian Senate is unusual among Upper Houses in that it has almost the same power as its Lower counterpart: other than the budget, any law can be initiated in either house, and must be approved in the same form by both houses; additionally the Government must have the consent of both to remain in office (this situation is called "perfect bicameralism").

Where there are parliamentary executives, such as Pakistan, the house that controls the executive such as National Assembly, inevitably has more power.

Invariably, in the parliamentary federations, unlike Italy, the executive has been responsible only to one chamber that based on population, the intention being to reduce the impact of party discipline in the house representing regional interests. The effect, on the other hand, has been to weaken the relative power of these federal second chambers (Senate) in parliamentary federations. In these federations the powers of the second chamber in relation to money bills have as a consequence also been usually limited. Furthermore, in the case of conflicts between the two houses provisions for merely a suspensive veto, for joint sittings where the total members of the second chamber are less numerous, or for double dissolution have usually rendered the second chamber weaker.

Nonetheless, some of the federal second chambers in parliamentary federations, such as the Australian Senate and the German Bundesrat, have been able to exert considerable influence.

Conclusion

Theoretically speaking the Senate in Pakistan, despite legitimacy deficit, is a modern and democratically designed institution but in practice both chambers and particularly Senate role is dormant. Pakistani legislature, particularly the Senate has to perform an additional and equally important role of serving as federal institution to facilitate intergovernmental cooperation and

collaboration by promptly addressing growing centre-province conflicts, appalling human rights situation, severe violations of fundamental guarantees and stretching inequalities and discrimination.

We live in an age of crises, political, security, economic and humanitarian. In crises the greatest danger comes from those who claim to know all the solutions and who demand immediate implementation of them. Such people are likely to be found holding executive office. The greater the crisis, the more likely it is that mistakes will be made in attempting to deal with it, and the greater the need for scrutiny of proposals based on sound information. The legislature should provide that scrutiny. The Pakistani Parliament cannot be well equipped to provide that scrutiny when one House is not permitted to make its own inquiries into significant issues and proposals, and the other struggles to make up the deficiency against executive resistance.

Parliamentary reform is never more necessary than in this age of crisis, and further subordination of Parliament never more perilous.

It's in the greater interest of democracy and federalism that multi-ethnic and diverse societies (states) should address democratic deficits particularly re-structuring and re-arranging fundamental institutions, the driving force behind a successful and workable federation.

In fact, despite tall claims, by the civil-military regimes, Pakistan hasn't been able to achieve a greater openness in the federation. The provinces feel strangle by the policies and decision taken unilaterally by the centre without consent of democratically established institutions. Simply Pakistan is a classic example of "closed federalism" both excluding provinces from having any role in internal and external planning and policies.

To achieve greater level of federalism and enhance provinces role in state affairs, Pakistan need to think about a Senate model which is truly equal in representation, equal in power and effective and efficient in its working.

ⁱ Constitution of Pakistan, Article, 50. Majlis-e-Shoora (Parliament) [There shall be a Majlis-e-Shoora (Parliament) of Pakistan consisting of the President and two Houses to be known respectively as the National Assembly and the Senate.]

ⁱⁱ Constitution of Pakistan, Part III, Article 40, sub article 3.

ⁱⁱⁱ Rakhimkulov, E. R. n.d. The Relative Pros and Cons of the Second Chamber in the Ukrainian Context

^{iv} Dr Mohammad Waseem, Federalism in Pakistan, August 2010, www.forumfed.org/pubs/Waseem-Fed-Overview.pdf

^v Dr Mohammad Waseem, Federalism in Pakistan, August 2010, www.forumfed.org/pubs/Waseem-Fed-Overview.pdf

^{vi} Three Members of National Assembly, Nawab Khair Bux Marri, Dr. Abdul Haye Baloch and Mrs. Jenfir Musa from Balochistan did not sign the document.

^{vii} Constitution of Pakistan Chapter 2. THE MAJLIS-E-SHOORA (Parliament) Article 59. The Senate

^{viii} Forum of the World's Senate -

<http://www.senat.fr/senatsdumonde/english/english-synthese.html>

^{ix} Article 2, Section 2, Paragraph 2 of the US Constitution

^x Role Of Parliament In Budget Process, Strengthening Democracy through Parliamentary Development (United Nation Development Programme)

^{xi} Federal Consolidated Fund and Public Account: All revenues received and all loan raised by the Federal Government, and all moneys received by it in repayment of any loan, form part of a consolidated fund, which is known as the Federal Consolidated Fund.

^{xii} Article 2, Section 2, Paragraph 2 of the US Constitution: "He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent

of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments."