

## **POWERS OF THE SENATE OF PAKISTAN AND ITS IMPACTS ON FEDERATION**

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### **Abstract**

*The fathers of the constitution never considered historical existence of the provinces and their identity as a genius factor and reality. The founder of Pakistan Mr. Jinnah and his party who himself was advocating provincial autonomy in British India himself changed the mind and they were against provincial autonomy and any move for lose center as anti-state theory. Thus the senate remained less powerful and dysfunctional chamber like British House of lords as compare to the National Assembly which is real representative house directly elected by popular vote.*

*The senate of Pakistan passed a resolution in February 2017, to enhance its role and powers to protect the rights of provinces and their participation in the affairs of federation of Pakistan. This resolution has clearly bond the federal government for seeking senate approval for extension of National Finance Commission (NFC) Award for one years. The senate has gained the powers through same resolution to increase provincial share by 1% each time if the federal government will seek the extension in NFC Award it also possesses the powers to resolve any dispute between provinces and center, the issue of imposing any federal law on provinces.*

*The following article discusses the powers of the Upper House (Senate) of the Pakistani Parliament in historical perspective. Some examples of popular federations has been given to support the idea of how a multiethnic state like Pakistan should empower its Upper House, the Senate, to bring in the clear parity of powers among Centre and federating units. Besides, in the conclusion, policy suggestions are included to the parliamentarians.*

**Key Words:** *Senate, Parliament, Democracy, Federation & Provincial Autonomy.*

## **Introduction**

Pakistan is a democracy and has a bicameral parliament consists of National Assembly and Senate. The Parliament is consisting of upper house (Senate) and lower house National Assembly and the President. The Senate is vital platform of democratic Pakistan to strengthen the federation and trust of federating units. Constituting the multiethnic state of Pakistan aimed to improve harmony between provinces and federal government. In the federal countries like Pakistan, where sense of ownership in the affairs of central government was very rare, only a powerful Senate can play a role to promote sense of nationhood needed for the growth and prosperity of the country and create equal opportunities and welfare of the citizens of the provinces.

Unlike United States of America, the Senate of Pakistan is a weaker chamber of its Parliament and has implications on federation. The curtailed powers of Senate undermine the representation of federating units in the crucial legislations and it results in making a kind of perception at the hands of federating units to feel weak against the central government.

The lesser powers of Senate have repercussions for unity among different units of federation. Most of the important legislation is done by the National Assembly is not represented as on law of parity but proportionality. It undermines the equal participation of all federating units in such legislations. Pakistan's federation needs its Senate to become more powerful to ensure and balance the power of federating units in the Parliament. The strengthening of Senate will strengthen the federation of Pakistan and will bring a unity among its federating units.

Passing of the 18th amendment was a milestone in the history of Pakistan to bring more parity between the Centre and provinces. This Amendment increased provincial powers, enhanced powers of senate and transferred some ministries to the provinces. The amendment democratically created balance of power between president and prime minister but also enhanced the share and participation of provinces.

Unfortunately, some elements are pressurizing they federal government for roll back the powers and from promulgation of 18th amendment in its true spirit.

The provinces are continuously complaining against federal government and provincial government of Punjab. The small provinces like Sindh and Baluchistan feel deprived in existing political system where the Senate is not truly strong to stop attempts of victimization of small provinces. The Senate have limited authority over national resources, General sales taxes, participation in decision and powers of federal government. The powers of right of ratifying on

appointments of national administration, rights of initiate by provincial legislature, equal share in decisions in development sector, national pool and right of advice and share in CCI, NFC, CEC and other institutions which are empowered to decide for future of the nation.

### **The Senate of Pakistan**

The Senate of Pakistan came into existence on April 1973. The Senate is representative chamber of federating units of Pakistan to maintain the balance of power between center and diverse provinces and to muster any legislation of imbalanced National Assembly against the interests of any federating unit.

The fathers of the constitution never considered historical existence of the provinces and their identity as a genius factor and reality. The founder of Pakistan Mr. Jinnah and his party were advocating provincial autonomy in British India later he changed mind and they were against provincial autonomy and took any move for lose center as anti-state theory. Thus, the Senate remained as less powerful and dysfunctional chamber like British House of Lords as compare to the National Assembly as real repetitive house directly elected by popular vote.

The Senate was denied of its due powers and functions as constitutional institution representing federating units and territories. Some practical steps were taken to empower the Senate to overcome the disparity between Centre and provinces. The Senate was given representation in Public Accounts Committee. On February 13<sup>th</sup> 2017 the Senate of Pakistan passed a resolution to enhance its role and powers to protect the rights of provinces and their participation in the affairs of federation of Pakistan. This resolution has clearly bond the federal government for seeking Senate approval for extension of National Finance Commission (NFC) Award for one year. The Senate has gained the powers through same resolution to increase provincial share by 1% each time'' if the federal government will seek the extension in NFC Award it also possesses the powers to resolve any dispute between provinces and center, the issue of imposing any federal law on provinces (Dawn, 2017).

The milestone was 18<sup>th</sup> constitutional amendment in the history of Pakistan that increased provincial powers, enhanced powers of senate and transferred some ministries to the provinces. The amendment not only created balance of power between President and Prime Minister but also enhanced the share and participation of provinces.

### **Historical Background**

Pakistan has witnessed three constitutions since its birth in 70 years. The first decade, when it came in to being went in experiencing the constitutions and

crises. The sudden death of the founder of the country (1948), assassination of the first Prime minister (October 16, 1951), dissolution of the first constituent assembly (October 1954) at the stage of its constitutional development had shaken the very foundation of the country. The task of the first constituent Assembly elected on December 1945, three years before the birth of its future country, was to frame a constitution acceptable to all political parties, religious groups and minorities and constituent units. Before it fulfills the task of framing the constitution the Assembly was dissolved on October, 1954.

After the division of united India on religious lines in 1947, a new country Pakistan came in to being as a religious country (Islamic Republic of Pakistan) where thinking about political ideologies of provinces and provincial autonomy was like anti-state sentiment. Though, the leadership unconditionally did not turn down this real issue, however, it was not main task of the framers. It was resolved according to Lahore Resolution which states "the areas in which the Muslims are numerically in a majority, as in the North-Western and Eastern Zones of India, should be grouped to constitute 'Independent States' in which the constituent units shall be autonomous and sovereign". [iii] But the issue was suppressed intentionally to give space and priority to "the two nation theory of Sir Syed Ahmad Khan. (Notes from Pakistan, 2009). The Objective Resolution of 1949 repeated the Lahore Resolution words "Pakistan shall be a federation and its constituent units will be autonomous (Notes from Pakistan, 2009). Provincial autonomy in resolution was just a statement to calm down the sentiments of East Pakistan (now Bangladesh). The Second Constituent Assembly came in to existence in May 1955, passed and promulgated the first constitution on 23 March 1956, the constitution of 1956 framed a federal form of government with the west minister system following unicameral legislature. The leadership of the time and framers of the constitution ignored the very basic principles of the federation. The government of Pakistan announced new scheme of "One Unit" to merge all four provinces of West Pakistan in to one homogeneous province to counter the numerical dominance of East Pakistan (Bengalis). After two years, on October 7, 1958, this constitution was abrogated followed by imposition of Martial law in country. A new constitutional commission was constituted to frame a new constitution for the country. The commission framed the constitution of 1962. The constitution again provided one unit (dividing Pakistan in to west and east wings) ignoring the feelings and unrest in East Pakistan (now Bangladesh) and other provinces i.e. Sindh, NWFP (now Khyber Pakhtunkhwa) and Baluchistan. The historical existence of the units that created Pakistan denied and their feelings were ignored to counter balance numerical majority of Bengalis. This move made to serve the interests of Military-bureaucracy, establishment and Punjab leaving the smaller provinces' interests back.



The first rift rose with the decision of ordaining Urdu as the national language of Pakistan by its founder Muhammad Ali Jinnah in 1948. "People of East Pakistan, particularly the progressive forces were not prepared to accept Urdu as the only state language (South Asia, 2010). The decision created chaos in East Pakistan later on 5 October 1955, the "One Unit" scheme fueled the situation in small provinces particularly in Bengal and Sindh against central government and Punjab. Separation of East Pakistan in 1971, misbalanced the demographical situation in the remaining Pakistan where Punjab as a single province dominated all three provinces at 58 percent majority. The elites of Sindh, NWFP and Baluchistan pushed for some kind of majority constraining federalism (Waseem, 2010). The "One Unit" scheme ended with the promulgating the constitution of 1973 when a bicameral parliament was formed again to provide representation to the federating units in parliament.

The restoration of Bicameral Legislature in the constitution of 1973 could not serve the purpose. Generation of revenue, share in natural and economic sources, redistribution of the finance and water and share of federating units in national administration were the issues small provinces raised. The separation of East Pakistan created fearful situation for state and for those who raised their voices for provincial parity in powers with the Centre. Following years witnessed military regimes in three successful attempts of coup and on other hand the genuine issues of smaller federating units were not addressed properly.

After fall of East Pakistan on 16 December 1971, morally Military-establishment went down and political leadership realized to establish a federation and genuine federal constitution with a bicameral parliament to provide true representation to the provinces. The constitution of 1973 was an effort to listen to the smaller provinces against larger province Punjab. To balance the overwhelming majority of Punjab province in National Assembly, a balanced demographical representation in bicameral parliament needed to overcome the fear of small provinces. Under the constitution of 1973, first time in the history a bicameral parliament came in to existence to provide the equal representation to provinces in polity of Pakistan.

With the less powers upper house, the Senate represented the provinces equally but it could not satisfy the small provinces. The Senate has no power on money bills. It cannot hold, delay, amend or reject money bills. The Senate of Pakistan like house of lord can only debate on money bill and send recommendations to the lower house but the national assembly like house of commons of Great Britain has power to accommodate the recommendations or not. The national assembly of Pakistan can bypass the senate and send the money bill to the president for his

assent. The senate can only provide second thought to the money bill; money bill can only be initiated in national assembly. This has created again a chaos in country. The nationalist tendency erupted again in Sindh and Khyber Pakhtunkhwa. Nationalist leadership of G.M Syed in Sindh, Khan Ghafar Khan of NWFP and many nationalist leaders in Baluchistan turned their movements for separation of their respected provinces. "During framing the constitution all fancy promises made with the representatives of smaller provinces were simply ignored which led to the Baloch representatives' resignation and rejection to sign the 1973 constitution (Baloch, 2010).

### **The US Senate: A Comparison**

Classically, the upper house in federation serves to represent the regions or provinces in national parliament. The countries with diversity, cannot balance their unity and representations without having a strong and empowered upper house with members elected by provincial assemblies on territory line. The upper house maintains trust and confidence of small regions and states from a fear of domination or deprivation by large federating units within country. The first 13 states of the United States were feeling unsecured and were avoiding adopting the articles of confederation from 1777 to 1787. After many failed attempts the, founding fathers of the constitution successfully convinced the reluctant states and after which Continental Congress promulgated the Articles of Confederation, the first constitution of the United States by September 17, 1787. The Congress of the states adopted and established the national government and laws providing guarantees of protecting rights of citizens. The federating states agreed on condition to have equal share of the states in national legislation. A bicameral parliament with strong senate mustering the powers of popularly elected lower house (House of Representatives) with powers of ratification and fully and equally representing and defending the interests of the states in congress to protect the integrity of the concerned states merged in the United States of America.

For the countries with multi-ethnic groups and regions, the senate of USA became popular. In beginning, the US states had only fear of deprivation of their rights, victimization and dominance by large states to join a young country as a member state. The states were of the opinion to have surety for having equal share in national affairs. This had convinced the prominent leaders and founding fathers of American constitution like John Adams, Benjamin Franklin, Alexander Hamilton, John Jay, Thomas Jefferson, James Madison, and George Washington to assure the founding states of the USA for the equal share, sense of equality and prosperity.

After centuries and decades with sense of security, the diverse societies in world and in USA have grown properly and constitutional guarantees built nations under the umbrella of powerful and balanced congress in USA and elsewhere and parliament in many other countries. There are many federations in the world which are still in crisis and disputes between center and states and province and provinces. In that situation, the equal representation in upper chamber is now the commonest way of equality in federal states around the world. In these states, the membership and share in senate is based on provincial representations instead of population. The very basic concept of senate in Australian parliament was intent to protect the smaller colonies "Australia is a federation of six states, each of which has its own parliament and government. The Australian Senate comes very close to the classic US federal model. Each state is represented by 12 members in the Senate irrespective of their population (Meg, 2000).

### **Weaknesses of the Senate of Pakistan**

In almost every federal state with multi-ethnic society and diversity, the strong parliament with empowered upper house is necessary. The Parliament of Pakistan in general terms is very weak Parliament particularly its upper house the senate. The upper house is weaker and ignored chamber. The Senate's powers were to create the sense of equality and protection after secession of Bengal on 16 December 1971. Resultantly, it was assumed by smaller provinces that constitutional reforms would take place to strengthen the Parliament specially the Senate for the sake of integrity of the federation. A bicameral parliament was formatted, but the Senate was not truly empowered, the true representation of federating units and upper hand in Military, internal affairs, defense, revenue, money bills, development is not given to the Senate.

It is dire need of the time to reform and empower the Senate of Pakistan to maintain harmony in federation with reference to the small provinces. The Senate neither checks the executive nor it can elect. Though executive authority in Pakistan is elected by lower house, the cabinet is member of lowers it sits and is responsible to the lower house. The lower house is only authority to impeach it. The Senate has no power to monitor the appointment of officials of national administration. The senate is not empowered to ratify any executive decision. The power of declaring war is just a national sprit no parliamentary resolution is required like Senate of USA. The issuing emergency is sole power of the executive authority.

### **Empowering the Senate of Pakistan**

It is very much important to have bicameral parliament (upper house) to represent federating units in all federal states, especially for the countries with multi-



ethnicity and came into being with political merger of the historical geographies. This system of the government has shown a sense of security and equality in diverse societies.

The fact for having a strong senate to represent federating units in polity body remained always a vexed issue in all the history from USA to Pakistan. The matter of representation of federating units is not mere an issue to have voice in parliament but the units always look to have a chamber which has powers to protect their integrity. To muster the legislations of the lower house and purview in social and economical development, political identity and distribution of wealth and finance. This becomes more important when a federation wants to protect the interests of different ethnicities geographical regions. The leaders of the units insist for an equal representation of regions in all fields in the congress, while federalist prefer strong central and national government with less powers to federating units to face challenges in region. Federalists advocate having a strong and empowered federal executive to perform independently as true popular sovereign body. A space is needed to plan for the citizens having no barrier of parliament and regions within country." Money bills lie at the heart of government. Taxation bills raise revenue and appropriation bills authorize the government to spend that revenue (Origin of Senate, 2017).

In this situation, the senate can have more additional powers to check the threat of dominance of majoritarian elements that might otherwise dominate the legislation and governmental process. Logically, all decentralized federations need strong and politically empowered senate. A strong central government must have equal representation of small provinces in national affairs of the country to ensure peaceful resolution of disputes between center and periphery. Again a well settled formula of representation is needed which shall have clear line for allocation of seats to the territories and clear line against fear of victimization.

### **Challenges in Empowering The Senate of Pakistan**

The 18th amendment in the constitution is a step forward in making federation stronger by strengthening and empowering federating units and this amendment has given more powers to the small provinces. Unfortunately, there are some elements are pressurizing the federal government for rollback and reverse the devolution of powers and from the promulgation of 18th amendment in its true spirit. Besides, in countries like Pakistan, which are underdeveloped, the national cohesion in policymaking and inter-provincial harmony is necessary for the overall development of the countries.

The smaller provinces have been complaining against injustice of central and Punjab governments. The small provinces like Sindh and Baluchistan feel



deprived in existing political system, where senate is not truly strong to stop attempts of victimization of small provinces. The projects like CPEC (China Pakistan Economic Corridor) can only become successful when all the federating units are represented equally in overall development projects.

A strong Senate with equal powers on national resources and other authorities can serve the nation most in coming years. This will also minimize the fear of disintegration. It is the responsibility of the federation to make the central government more responsive to the provinces. Thus, the voices of separation will automatically discouraged.

### **Conclusion**

The Senate (upper house) is necessary and important chamber in all federal states to safeguard and support the integration of federating units and secure due share in national affairs of the state. It provides second mature thought to the legislation of the lower house where young legislators make laws in haste and according to the agenda of the party. The membership of Upper House should be given to the senior most and learned citizens of Pakistan and prominent politicians and professionals as this chamber characterized as embodying a particular measure of wisdom, balance and expertise (Baloch, 2010).

The smaller provinces of Pakistan have serious complain for having no role in national affairs. They complain for due share in development budget, water for irrigation, legislation, institutional development, distribution of natural resources, revenue, taxes but the system is dominated by a particular province and numerical majority in lower house of parliament also is one factor to be complained. Serious complains of smaller provinces is the respect of legislation of provincial government against many national projects harmful for particular sub-nation.

Interfere of Military and establishment in making Governments, dissolving parliaments, legislations and other political affairs has been disliked affair in the country especially in small provinces. Internal migration to other provinces, having right there to do business, sale and purchase of property, participation in politics is considered a serious threat to the numerical majority of indigenous population in respected province.

A strong senate can safeguard the rights of small provinces democratically in parliament, if upper house powerful. The fear of majoritarian power can be countered in upper house if it would be empowered and made a true representative chamber of federating units. Unfortunately, the Senate of Pakistan is not true representative house of the federating units with real powers to safe guard provincial interests as custodian. To suppress tendencies of separatist

movements in country, the central government needs to empower the Senate and make it a true chamber for federating units.

### References

- Dawn. March 15, 2017. Senate seeks enhanced role, powers in key state affairs Retrieved on 22-04-2019. (<https://www.dawn.com/news/1320526>)
- Two Nation Theory.(2019) Notes on Pakistan. Retrieved on 15-04-2019 (<http://notesonpakistan.blogspot.com/2009/08/two-nation-theory.html>)
- Objective Resolution.(2019) Notes on Pakistan. Retrieved on 15-04-2019 (<http://notesonpakistan.blogspot.com/2009/08/objective-resolution.html>)
- South Asian Studies ( 1, January-June 2010)A Research Journal of South Asian Studies Vol. 25, No, pp.99-124
- Dr Mohammad Waseem, Federalism in Pakistan,( August 2010) LUMS, Forum For Federation, Germany.
- Baloch, Sanaullah.(2010) Senate Reforms in Pakistan. pp 2-7 <http://www.civiceducation.org/wp-content/uploads/2011/02/Senate-Reforms-in-Pakistan-Senator-Sanaullah-Baloch.pdf>
- Russel, Meg. (2000) *Representing the Nations and Regions in a new Upper House: Lessons from Overseas*. University College, London England, pp.8 -12
- Parliament of Austrelia. Origins of the Senate. Retrieved on 17-04-2019. (<http://www.aph.gov.au/Senate/briefs/brief09#finance>)
- Baloch, Sanaullah. Senate Reforms in Pakistan. 2010. pp-4-10 <http://www.civiceducation.org/wp-content/uploads/2011/02/Senate-Reforms-in-Pakistan-Senator-Sanaullah-Baloch.pdf>