



ORIGINAL CONTRIBUTION

## Role of Senate in Federalism: An Evidence from Pakistan in the Post 18th Amendment Scenario

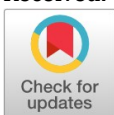
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**Abstract**— Federalism is a setup most suited to countries with diversity. A bicameral legislature has become the necessity of multi-cultural federations since it best satisfies the federating units' needs by giving them equal representation to participate in the legislation and accountability processes. It also guarantees impartiality through providing a second deliberation on matters considered at the lower house overshadowed by the federating units with the majority population. In Pakistan, all constitutions had unicameral legislatures until the debacle of East Pakistan in 1971. After the unfortunate incident, it was felt that an upper house should check out the domination of the largest province in the central legislature with equal representation. So, the 1973 Constitution of the Islamic Republic of Pakistan came out with an upper house named Senate. Provincial autonomy was the long demanded right of provinces brought about by the 18th Amendment to the Constitution. The Amendment gave a new and dynamic role to the Senate. The present study intends to analyze the Senate's role in the federation of Pakistan in the backdrop of the 18th Amendment. By utilizing primary and secondary data sources, this study takes an analytical approach to address the research question. For this purpose, the authors have conducted semi-structured interviews with the Senators (n=6) belonging to all four provinces of Pakistan to bring empirical evidence concerning the role of the Senate as the House of the Federation. The study underscores that the indirect election of the senators, insignificant legislative powers of the Senate, parliamentary nature of the political system, and the resultant bulldozing of legislative proposals by the presidential ordinances and joint sessions of the parliament severely curtail the powers of the Senate. The study concludes that the members of the Senate should be directly elected so that their dependency on the respective provincial assemblies is minimized. The legislative powers of the Senate should be enhanced along with veto power. In case of a joint session of the parliament, one vote of the Senate should be counted as equal to three votes of the NA. With a humble contribution to theoretical and practical fields, the study describes its limitations and presents directions for future research.

**Index Terms**— Senate; National assembly; Bicameralism; Multi-culturalism; Federalism; 18th Amendment; Provincial autonomy; Pakistan

**Received:** 16 June 2021; **Accepted:** 25 September 2021; **Published:** 15 November 2021



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## Introduction

“A majority in a single assembly, when it has assumed a permanent character; easily becomes despotic and overweening, if released from the necessity of considering whether its acts will be concurred in by another constituted authority.” -John Stuart Mill.

The relation between federalism and democracy is somewhat ambiguous. Federalism requires multi-level governments, while democracy entails the rule of the majority. However, both have specific requisites to fulfill (Brenton, 2022). Federalism and the presence of the upper chamber are sine qua non for each other. These both live with each other. The unicameral legislatures also perform efficiently, but they do not fulfill the power-sharing requisites of federalism as much as the bicameral legislatures do. A second chamber with regional representations is primarily seen in federations (Hickey, 2013, p. 219). In other words, among types of the second chambers, one is the type that represents the territorial constituent units, and this is found in federal states. (Bulmer, 2017, p. 10). Although, second chambers are associated with federal states and are very firmly attached to them because most federal states have opted for second chambers (Ahmed, 2017, p. 24). At present, 41% of parliaments of the world are bicameral. Among the federal states, 76% have upper houses (Naidu, 2020, p. 1).

The setting of the upper house as a second chamber in a federal legislature system was first manifested in the United States of America (USA). The two houses were formed, one representing the people and the other for states (Steinman, 2017). The USA has not always shown bicameralism. Instead, the second chamber evolved from the unicameral system which existed before the revolutionary war. The founding fathers of the constitution were worried about the tyranny of majority rule in the unicameral legislature, so they decided to take a different way from articles of confederation. Hence, the US Senate was formed. This move was then called a “great compromise” (Crain, 2002, p. 646).

Soon after the formation of the US Senate, the second chamber was concerned and attached with the needs of the federations. (Gamper, 2018, p. 119) The federations required the representation of the federating units and their participation in the legislative processes; hence, the upper chamber assumed a significant role for the legislatures of the federations after that (Otjes, 2020).

Although there is no denying that Pakistan has been facing multi-cultural and ethnic issues (Shafqat, 2016), regarding its federal aspect, the scene is a little different. Being a multi-cultural country, instead of having proposals in its pre-constitutional drafts of having an upper house, the first two constitutions of 1956 and 1962 did not have an upper house (Ahmad, 2020). The given logic for not adopting the upper chamber was that, in 1955, before enacting the country's first (1956) constitution, the “one unit plan” was implemented where all the provinces of the Western part of Pakistan were merged into one unit. So, the lower house was enough to give equal representation to the representatives of both wings. From this very logic of the framers of both (1956 & 1962) constitutions, it can be assumed that, at that time, the value of the upper chamber was not attached to the needs of the federation (Amir, 2020). It seems that the framers of both constitutions were afraid of an upper house. This way, due to undue influence and vested interest in domination, the upper chamber remained dead in the first two constitutions of Pakistan (Rid, 2019, p. 12). Among many other causes of ethnic conflicts and secessionist movements in Pakistan, one was non-compliance with the federal principles. The one unit plan of 1955 is one of its examples where the political identity of provinces was merged (Sheikh, 2018). Most ethnic issues in Pakistan result from a mismatch between diversity and political institutions (Kukreja, 2020).

Luckily, in Pakistan's third (1973) constitution, the upper house was adopted with the fear in the framers' minds regarding the past incident of East Pakistan's separation in 1971 and Balochistan separatist movements (Mumtaz, 2016, p. 09-15). So, a bicameral legislature was set up with the upper house giving the provinces equal representation irrespective of the population and size (Gilani, 2020).

## Status of the Senate before 18th Amendment

Initially, in the 1973 constitution, the powers of the Senate were limited. Senate could not legislate on the first part of the legislative list, consisting of the most significant subjects. Instead, it was to legislate on some unimportant subjects under part two of the federal legislative lists. Regarding the first part of the federal legislative list, the National Assembly (NA) had full power to overrule any rejection by the Senate and sent the bill directly to the President for signature (Rid, 2019, p. 14).

It was the era of Zia-ul Haq and the 8th Amendment, which first increased the powers of the Senate. The number of senators was increased from sixty-three to seventy-eight. Five technocrats were added from each province. Moreover, the powers of initiating and passing bills became equal to the NA. But the money bills were only to be originated in the lower house. The overriding power of the NA was withdrawn except for money bills. Then the seats were further increased from 87 to 100 by the Legal Framework Order (LFO) of General Pervez Musharraf in 2002 (Rid, 2019, p. 14-15).

The eighteenth Amendment has been hailed as giving more autonomy to the provinces (Bhattacharyya, 2021). After the 18th Amendment, the Senate gets more prestige. The powers granted to the Senate after the 18th Amendment in 2010 include 1) the report of the implementation of principles of policy would be placed before the Senate, annually; 2) when the Senate would be in session, then no presidential ordinance would be placed before the Senate; 3) the time for reviewing money bills would now be 14 days instead of 7 days; 4) the

Prime Minister and his Cabinet would be answerable to the Senate also (along with the NA); 5) four seats are to be given to non-Muslims; 6) working days are also increased from 90 to 110; 7) at the time of one-half members' election, the chairman and deputy chairman of the Senate would be re-elected. In documents, the Senate is now an equal partner with the lower house but is nothing more than a revisory body (Dr. Umbreen Javaid, 2017, p. 26-29).

### **Assessing the Role of Senate from 2010-2020**

The Senate of Pakistan has remained a neglected area in social sciences research. Some previous studies analyzed its powers before and after the 18th Amendment. Still, none of the studies have been conducted to analyze its role as a federal chamber before and after the said Amendment to Pakistan's constitution. This study has filled this significant literature gap. Moreover, the use of primary data (semi-structured interviews of the senators from the four provinces of Pakistan) is of practical importance in viewing the effect of the 18th Amendment that helps make authentic assessments about the Senate's working in the federation of Pakistan. The study's recommendations are of significant importance in reforming the role of the Senate of Pakistan.

### **Methodology**

The underlying objective of the study was to assess the role of the Senate after the 18th Amendment based on the following question: how has the 18th Amendment affected the role of the Senate in the federation of Pakistan? Hence, the present qualitative study utilized both primary and secondary data sources. The primary data was collected through semi-structured interviews with the senators (n=6) selected through purposive sampling with representation from all four provinces of Pakistan. At the same time, the authors utilized multiple secondary data sources, including past studies on the topic and various forms of the grey literature. Semi-structured interviews are considered an effective technique to unfold diverse perspectives concerning the phenomenon under study. The discussion went with the flow. That's why this technique is equally popular among researchers across academic disciplines. The authors took notes and tape-recorded the interviews with the prior permission of the study participants. Afterward, the same were transcribed for analysis purposes. The authors adopted an analytical approach for the analysis of the primary data, and the following key challenges were identified:

### **Challenges Undermining the role of the Senate in Pakistan**

The Senators (hereinafter called participants) underlined many challenges barring the role of the Senate even after the passage of the 18th Amendment. These can be discussed as follows:

#### **Disparity in Financial Powers of NA and Senate**

It is well-accepted that fiscal federalism is very important, especially for a federal state like Pakistan (Tunio, 2021). Similarly, the powers on financial matters are essential for the second chamber of the legislature. Because the primary purpose of their existence is the protection and provocation of the federating units' interests, the federal houses can best protect the financial aspect of federalism through legislation. But unfortunately, the Senate of Pakistan is mere an advisory body regarding money bills. It can neither initiate nor can uphold or veto money bills. This ultimately comes under the authority of the NA, which is based on the majoritarian principle (Khan K. , 2017, p. 155). Adding fuel to the fire, two major political parties represent themselves in the NA, which significantly undermines the representation of other political parties and provincial interests (Mangi, 2021). The 18th Amendment has just increased the consideration times for the money bills from seven days to fourteen days. According to the study participants, the Amendment has not resulted in the increased powers of the Senate. According to them, increasing the days for money bills' consideration didn't result in its enhanced role in the federation of Pakistan as the "House of the Federation". Article 73 of the 1973 Constitution of Pakistan is regarding Money Bills which read that:

“Notwithstanding anything contained in Article 70, a Money Bill shall originate in the National Assembly; Provided that simultaneously when a Money Bill, including the Finance Bill containing the Annual Budget Statement, is presented in the National Assembly, a copy thereof shall be transmitted to the Senate which may, within fourteen days, make recommendations thereon to the National Assembly. The National Assembly shall, consider the recommendations of the Senate and after the Bill has been passed by the assembly with or without incorporating the recommendations of the Senate, it shall be presented to the President for assent.”

(Constitution of Islamic Republic of Pakistan-1973, p. Art. 73)

From the above-cited article from the constitution of 1973, it can be comprehended that the 18th Amendment to the constitution has not increased its role in the federation of Pakistan. The 18th Amendment has just given the Senate provision of the consideration, but

it has not given it the power to amend it. After consideration from the Senate, the money bill is sent to the NA, which may or may not incorporate the recommendations of the Senate.

### **Influence of the Majority Party**

Moreover, the majority party significantly affects the financial share of the provinces. It gets a Senator's money bill passed, which belongs to a region or province where the political party has a majority vote bank. They mostly talked about the region or the province where they have won more seats. Let's take the case of Karachi. No political party is in majority here. When deciding about the funds' allocation, the federal government thinks that its ultimate advantage will go to the Pakistan People's Party if the funds are granted to this area. A similar situation can also be observed in the case of other federating units. In short, the tussle of conflict of interests in the political parties badly affects the financial share of the provinces (Shujaat, 2020).

### **Discretionary Power of the National Assembly Speaker**

Moreover, it is the authority of the Speaker of the NA to decide if a bill falls in the category of money bill or not (Khan K. , 2017, p. 155). This provision of the constitution further curtails the Senate's power. Correspondingly, the Senate is not consulted in formulating the federal budget (Jamaldini, 2020). The Senate already had no significant powers concerning money bills. There was a hope that the 18th Amendment would solve the issues of the financial share of the provinces, but this Amendment needs more amendments as informed by the study participants. The autonomy given to provinces is handed over to the Chief Minister. Provinces are still deficient, whether we talk about Balochistan, Sindh, KPK, or even Punjab (Shujaat, 2020).

### **Indirect election and dependency of senators**

A Senator from Sindh remarked that the representative character of the Senate is undermined mainly due to the dependency of senators for election from their respective provincial assemblies. There is no denying that the senators with the present election system are mainly dependent upon the support of the respective provincial assembly. It has been observed that the seat for senator is reportedly sold for ten to fifteen crore rupees. This practice predominantly affects the capabilities of the senators. They came in the Senate just as dummies of their respective party heads. Subsequently, they don't protect the interests of the regions or the provinces they represent in the Senate (Shujaat, 2020). Likewise, a senator from Punjab stated that the representative role of the Senate had been exploited due to the burgeoning interference and the sale and purchase of the Senate's seats. However, the indirect election from the provincial assemblies has a positive point. The provincial legislatures feel a sense of participation at the central level, but such dependency on provincial assemblies results in mediocrity concerning the senatorial candidacy. In response, this affects the image and role of the Senate in the federal system of Pakistan as a whole. Moreover, the whole system must be revamped for employing the electoral reforms, especially the direct election. This notion bears testimony that the parliamentary nature of the political system undermines the role of the Senate. In such a way, the Senate remains ineffective (Durrani, 2020).

According to a senator from Balochistan, the Senate and the NA are not playing their desired role in a democratic system. In other words, "we are cooking with democracy." As far as the role of the Senate is concerned, no doubt intellectual people also come to this august house, but mostly they are feudalists and industrialists. They come in the upper house by paying high amounts for the seats. Again, this corrupt practice is due to the election of senators from the provincial assemblies. From the very beginning, most political parties are demanding a direct election. The adoption of direct election will enhance the role of the Senate as an intellectual house and will also remove the practice of horse-trading in this federal chamber. Due to the practice of seat purchasing and horse-trading, the senators cannot perform their constitutional role in the federal system of Pakistan. If a senator talks about or defends the constitutional rights of the province from where he belongs, he is criticized as fanning "Provincialism". This is wrong to say it is provincialism. If senators would not defend their province or the region, then the purpose of the Senate for provincial representation will rasp (Jamaldini, 2020)

### **Accountability of the cabinet**

If one looks towards another essential provision of the 18th Amendment that reads that "the Prime Minister and his cabinet would also be answerable to the Senate along with NA". In that case, it does not enhance the power of the Senate because the parliamentary nature of the political system of Pakistan significantly undermines its role. The senators mostly follow their party lines due to their dependency on the election from the respective provincial assemblies (Jamaldini, 2020).

**Under-representation of Senate in Joint Sitting of the Parliament**

As informed by the study participants, if the Senate makes recommendations to a bill and resists its passage, the possible deadlock is sorted out in a joint session of the parliament, where members of the NA and the Senate vote collectively (Durrani, 2020). In the joint sitting, the majority of the sitting members of the parliament are considered for voting. No doubt, the NA is based upon the principle of majority. In the case of Pakistan, the difference of representation of the population from the four provinces means a lot. Any political party requires 137 seats to form a government. In a joint resolution, the decision is taken by the majority vote of the sitting members. This provision of the joint sitting significantly undermines the power of the Senate to pass a bill by a two-thirds majority. As depicted in Table 1, in the joint session, a majority in the Senate turns into a minority (Shujaat, 2020).

Table I  
Under-representation of senate in joint sitting of the parliament

Province/ Region	NA	Representation	Senate	Representation	Joint Sitting	% Representation
Punjab	183	55.12%	23	22.12%	206	47.25%
Sindh	75	22.60%	23	22.12%	98	22.48%
KPK	43	12.95%	23	22.12%	66	15.14%
Balochistan	17	5.12%	23	22.12%	40	9.17%
FATA	12	3.60%	08	7.70%	20	4.59%
Federal Capital	02	0.60%	04	3.85%	06	1.38%
Total	332*	100	104	100	436	100

\*The total number of seats in the National Assembly is 342. But, the reserved seats for non-Muslims are not regional wise distributed. So, for analysis in this study, those seats have been excluded.

Source: (Mushtaq, 2017)

**Lack of Federal Mindset**

The federal mindset is yet to be developed in the political system of Pakistan. It is common in the parliament that the intended legislation is passed through bulldozing. There is a rare practice in Pakistan’s parliament to reach a consensus. The provinces are seldom taken into confidence. While defending their political party’s interest, the representatives often overlook the national interest. Such dereliction produces a feeling of repulsion in the provinces. (Jamalini, 2020). In such a situation, the provisions of the 18th Amendment are nothing but an illusion.

**Discussion**

The study brings empirical evidence that due to the dependency of the senators on the respective provincial assemblies, they are unable to perform their constitutional role effectively. It has also been observed that directly elected members’ houses are more potent than indirect ones. While the extent of representation also has a positive relationship with the regional interests (Khan, 2018, p. 114-115). In the recent election of 2021 to the Senate of Pakistan, the country’s prestige has touched the ground as the scandal of seat purchasing has set the scene (Mohmand, 2021). What would be the character of such an institution where the representatives are voted in return for money? This is all because of the indirect election of the senators. So, the first and the foremost step in making the Senate a genuinely representative body of provinces is to adopt the direct election.

In the second place, the legislative powers of the Senate should be increased as the purpose of the Senate in the federal system of Pakistan is of representation to provinces in the central decision making, so it should have enough legislative powers to carry out its desired role like other federal chambers in the world. Otherwise, it is of no use as a federal chamber.

Keeping in view the above discussion and a detailed account shared by the senators during the interviews, it becomes evident that the Senate of Pakistan is not performing its desired role in the federation of Pakistan, and the 18th Amendment has not been effective in making it an influential upper chamber in the federation. In short, the Senate of Pakistan needs reforms.

**Conclusion and the Way Forward**

To conclude, it can be said that after the 18th Amendment, the performance of the Senate has not been improved as a “House of Federation”. The provisions of the 18th Amendment have increased the prestige of the Senate, but they are not sufficient in any way to increase its power as a federal house. In short, one can say that the 18th Amendment has been failed to enhance the role of the Senate in the federation of Pakistan because a federal chamber is all about powers and not about prestige alone. So, there is a dire need to reform the constitutional status of the Senate. The study has highlighted that the indirect election, insignificant legislative powers of the Senate, parliamentary

nature of the political system, and the resultant bulldozing of legislative proposals by the presidential ordinances and joint sessions of the parliament have severely curtailed the powers of the Senate. Aforesaid in view, the study concludes that the members of the Senate should be directly elected so that their dependency on the respective provincial assemblies is minimized.

Moreover, the legislative powers of the Senate should be enhanced. It should be bestowed upon by veto power, and in case of joint session, one vote of the Senate should be counted as equal to three votes of the NA. These reforms may not fully resolve the underlying problems in the working of the Senate. Still, in the present political system, these will be promising in elevating the role of the Senate as a federal house in the federation of Pakistan.

Drawing upon the informed insights and first-hand information shared by the senators from the four provinces, the study recommends the following way forward to revamp the existing state-of-affairs enabling the Senate of Pakistan to play its constitutional role more effectively:

- The members of the Senate of Pakistan should be directly elected so that their dependency on the respective provincial assemblies is minimized.
- In case of any conflict and a joint session of the Parliament, both the Chairman Senate and Speaker NA should jointly preside over the session. So, in clause (2) of Article 72 of the Constitution 1973, the word "Chairman Senate" should be added.
- The Senate of Pakistan should be bestowed with veto powers to overcome the sense of deprivation from the provinces. Unless and until it has absolute powers on bills and other legislation, it can never play its influential role in protecting the constitutional rights of the provinces it represents.
- The presence and absence or the strength and weakness of these legislative functions may make the upper chamber solid or weak. Let's take an example of the power of absolute veto. It has been noted that the chamber which has absolute power to veto the lower house bills is stronger than the ones with weaker vetoes. Conversely, the weaker veto powers are also necessary because they usually initiate a dialogue in the legislature that results in the passage of bills with consensus, thus saving the rights of the federating units in the legislation process. It can be said that the power to use the absolute or the weak veto powers depends upon the attitudes of the upper and the lower chambers of the legislature. It also varies from country to country. In some federal systems, it may initiate a dialogue. While in other setups, it may produce conflict, whereas, in some contexts, a mere threat can urge the lower house to reconsider the bill, and thus its quality is improved (Gamper, 2018, p. 11).
- The decision should be taken by weighing the votes of both houses in case of a joint session of the parliament. In other words, three votes of the NA should be considered equal to one vote of the Senate. Further, Senate should be given equal voting strength to get the money bill passed as per the above formula, and it should be consulted in the formulation of the federal budget.
- In addition to legislative powers, the power to oversight the prime minister and his cabinet should also be increased. The Senate, like the NA, should have the power to impeach the prime minister with an absolute majority. In this way, the federal house will play a significant role in the federation of Pakistan.
- No one can deny that a powerful upper house is the need of the federation of Pakistan. So, it is in the best interest of the federation that the upper house should be reformed so that it can play the required role in the federal system of Pakistan.

### Limitations and Future Research Directions

The extant study has analyzed the performance of the Senate of Pakistan in the post 18th amendment scenario and acquired primary data through semi-structured interviews by employing a non-probability (purposive) sampling technique. The study participants were the Senators (n=6) belonging to four provinces. The study was conducted in a country-specific context, so the findings may not fit in regional or global contexts. Further, future research may be conducted with different sample size and diverse participants. Researchers may solicit opinions from academia, political analysts, and the general public for that purpose. The study only analyzed the performance of the Senate in the context of the 18th Amendment. Future research may also explore other factors as well. Other qualitative methods may also be employed for data collection and data analysis. Moreover, quantitative studies may also be conducted to analyze the role of Senate in federalism.

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