

Territorial Role of Second Chamber in Parliamentary Federations: Evidence from Pakistan

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In federal systems, upper chamber of the legislature is considered as a representative institution of the smaller units but the evidences suggest that the parliamentary features of federations limit the territorial role of the upper/federal chamber. This is because the relative party discipline in parliamentary democracies and the supremacy of popular house on the second chamber in such federations. Building on this proposition, the paper attempts to determine the territorial character of Pakistani Senate through evaluating its role for pro-autonomy legislation during the debates over 18th constitutional amendment in Pakistan. The evidence demonstrates congruence of opinion between the Senators and the members of National Assembly over certain autonomy issues. Hence, it seems to suggest that the parliamentary nature of the institutions limits the territorial of the Senate of Pakistan.

Keyword: territorial role; second chamber; federalism; Pakistan

Almost one-third of the contemporary democracies have bicameral legislatures (Schneider, 2006, p. 160) but it has special significance for the federal democracies. The bicameral systems around the world have different models. The nature, composition and functions of the legislative chambers vary across the cases. Primarily, the second chamber was a legacy of royal rule and its memberships was associated with the upper class and royal family, such as the House of Lords in the case of England. But since the so-called compromise between smaller states and the bigger states at the time of the enactment of US federation at the Philadelphia Convention in 1787, "bicameralism has become a norm in the federal settings" (Watts, 1999, p. 92). Under the federal bicameralism, while the first chamber represents the people, the second chamber provides representation to the federating units at the federal level (Dickerson, Flanagan, & O'Neill, 2009). In the contemporary federations, the second chambers are playing a vital role in accomodating diversity and safeguarding the territorial interests. However, despite their prominent role in the federal politics, the second chambers have attracted little scholarly attention. Only, a few systematic studies are available that discuss the role of second chambers in federations (Patterson & Mughan, 1999; Smith, 2003; Tsebelis & Money, Bicameralism, 1997; Swenden, 2004 & 2010; Russell, 2001; Norton, 2007). But, there is hardly any study that exclusively examined the territorial role of second chambers in the parliamentary federations. Therefore, this paper aims to focus on a comparatively ignored but important area of research with special reference to the Pakistani case.

Territorial role of second chambers in parliamentary federations

Mostly, the second chambers perform secondary role such as "scrutiny and revising functions with respect to government policy and legislation". But, under the federal bicameralism "the second chambers play important role by representing the territorial interests" of the units at the national level. However, there are certain factors that affect their role significantly. The second chambers provide overrepresentation¹ to the smaller

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¹ The greatest degree of overrepresentation has been provided in the Australian and Pakistani Senates that provide parity representation to the states irrespective of their population sizes. 1. Equally, the Canadian federation provides equal regional representation. Originally, the Canadian senate had 72 members. The membership was equally distributed among the three

federating units and the degree of overrepresentation varies considerably². It has been argued that the degree of overrepresentation³ plays vital role in determining the role of second chambers to protect the regional interests of minority federating units. The second factor that defines the role of second chamber is the mode of its member's selection. It has been argued that the indirectly elected chambers by the state legislatures "lack the democratic legitimacy, and hence real political influence" in comparison to the directly elected first chambers⁴(Lijphart, 1999, p. 206). The third factor that has been identified to contribute in determining the role of second chamber is the constitutional powers of the house in comparison to the popular house⁵. The power of second chamber is positively correlated with the protection of the interests of smaller units. Generally, in the parliamentary federations the second chambers tend to be subordinate to first chambers⁶.

But less importance has been given to the fact that the form of institutions has a major impact on the role of second chambers in the contemporary federations. It has been argued that the role of second chambers is subservient to the first chambers in the federations that involve "the fusion of executive and legislative powers in a parliamentary executive". Conversely, the second chambers have relatively greater role in the federations that encompass "the separation of executive and legislative powers" (Watts, 1999, p. 76).

Building on this argument, the paper contends that the executive-legislature relationship in a federation is a defining factor for the territorial role of the second chamber. In the parliamentary federations, the relative party discipline and the superior role of the first chamber limit the territorial role of the second chamber. The evidence reveals that the members of second chambers represent the parties than the regions. To assess the effects of parliamentarianism on the role of federal bicameralism, this study compares the perspectives of Senators and members of the National Assembly on the autonomy issues through the analysis of House Debates. To investigate the extent to which the Senate of Pakistan⁷ protects the interest of federating units, the House

regions i.e. Ontario, Quebec, and the Maritime provinces of Nova Scotia and New Brunswick. Currently, the house is composed of 105 members distributed among the regions of Ontario (24 seats), Quebec (24 seats), the 'West' comprising of Alberta, British Columbia, Manitoba and Saskatchewan (24 seats), the 'Maritimes' consisting of New Brunswick, Nova Scotia and Prince Edward Island (24 seats), Newfoundland has six seats. The remaining three seats are reserved for the northern territories, one seat for each territory (Docherty, 2002).

² For full description of this inequality in the degree of overrepresentation see, (Lijphart, 1999, pp. 203-2011) and (Watts, 1999, pp. 93-94)

³ The rationale behind this overrepresentation of smaller units is to provide enough space to the minorities in a federation to safeguard their territorial interests. It has been argued that the smaller units lack adequate representation in the popular houses. Resultantly, they remain unable to influence the public policy to safeguard their regional concerns. In such cases, the substantial representation in the upper house is vital for smaller units to protect their regional interests. Experience in parliamentary federations seems to suggest that the parity representation of constituent units is the best option, the weighted representation is the second-best option, and the population based representations is the worst option for smaller units to protect their regional interests.

⁴ Different federations adopt a variety of electoral procedures to elect or appoint the members of the federal chambers. These are direct elections, indirect elections and nominations. It has been observed that the mode of election or appointment relates to the legitimacy and role of the house. Where members are directly elected, they represent the interests of regional electorate more effectively. The members of indirectly elected chambers have to follow the party policy. Similarly, the nominated members are concerned to follow the agenda of their nominators. It has been noted that "where senators are appointed by the federal government, as in Canada, they have the least credibility as spokespersons for regional interests, even when they are residents of the regions they represent" (Watts, 1999, p. 95). Docherty (2002, p. 27) has rightly observed in the Canadian case that "being an appointed body, the Senate has never successfully fulfilled its original purposes, namely to be a voice for regional and proprieted interests".

⁵ There are great variations in constitutional powers enjoyed by upper houses of the different parliaments. It ranges from veto power to nominal constitutional role played by upper chambers.

⁶ For instance, their negative votes on proposed legislation can frequently be overridden by the first chambers, and in most parliamentary systems the cabinet is responsible exclusively to the first chamber" (Lijphart, 1999, p. 205).

⁷Contrary to the common practice, the Pakistani federation adopted the unicameral legislature in the constitution of 1956 and the constitution 1962. However, the constitution of 1973 established a bicameral parliament consisting of the National Assembly and the Senate. The members of National Assembly are elected through the first-past-the-post electoral system. The representation to the federating units in this house has been provided on the population basis. On the contrary, the Senate

Debates over the 18th constitutional amendment bill has been analysed. The analysis focuses on the following questions:

- (a) Do members of the Senate and the members of National Assembly belonging to the same political party have identical perspectives on certain autonomy issues?
- (b) Do members of the Senate and the National Assembly belonging to same province/region have similar perspectives on certain autonomy issues?

Pakistani Federation: Journey from Unicameralism to Bicameralism

According to the Indian Independence Act of 1947, Pakistan adopted the India Act 1935 as an interim constitution of the Pakistan. A Constituent Assembly was set-up for framing the constitution. The constituent assembly passed the Objective Resolution on March 12, 1949. This resolution, along the other provisions, suggested a federation comprising of the territories of Pakistan. Subsequently, the constituent assembly enacted the first constitution of Pakistan that was promulgated on March 23, 1956. This constitution established federal political institutions in Pakistan. However, contrary to the contemporary federal practices, unicameral legislature was designed in this constitution. The house was composed of 300 members and the membership was provided on the parity basis to the two provinces (Choudhury, 1956). This constitution proved short-lived as the martial law was implemented in October 1958 and the constitution was abolished. The second constitution of Pakistan was implemented in 1962 by Gen Ayub Khan, then the president of Pakistan. This constitution also adopted unicameral legislature and again the representation was provided on parity basis to the both provinces. Pakistan adopted the third constitution in 1973. This constitution provided bicameral legislature, comprising of the National Assembly and the Senate. Members of the national assembly are elected by the first-past the post popular electoral system. The representation to the federating units in this house has been provided on the population basis. The Senate is a federal chamber that provides equal representation to the four provinces. The members of the Senate are elected through indirect elections by the provincial legislatures on proportional basis for the period of six years.

Regional representation in the Senate of Pakistan

Territory	General Seats	Technocrats	Women	Minorities	Total
Punjab	14	4	4	1	23
Sindh	14	4	4	1	23
Khyber Pakhtunkhwa	14	4	4	1	23
Balochistan	14	4	4	1	23
FATA	8	0	0	0	8
Federal Capital	2	1	1	0	4
Total	66	17	17	4	104

Method

The authors have selected the legislative debates over the 18th constitutional amendment to verify the research questions for several reasons. The debate initiated by the 18th constitutional amendment was the most significant in the constitutional history of Pakistan regarding the issue of provincial autonomy and power-sharing. It created the impression among political elites and intellectual circles that the amendment would reform the federation and will reshape the center-province relationships if not forever, at least for near future. Hence, several political groups aimed for amendments to be reflective of their political opinion. The debate on provincial autonomy attracted much attention in the National Assembly and the Senate of Pakistan. The parliamentarians belonging to different political parties during the meetings of "Constitutional Reform Committees" (CRC) expressed their point of view and tried to achieve their political goals. This analysis is important as all the parties or groups working for provincial autonomy made all their efforts to mold the constitutional amendment to their point of view. As the center of the debate was the parliament, so the study of House Debates regarding the issue of provincial autonomy provide much significance to the research conducted on the issue.

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The Bill was passed by the National Assembly on April 08, 2010 and by the Senate on April 15, 2010 and assented by president of Pakistan on April 9, 2010. Many parliamentarians took part in debate over the Constitutional Bill (18th amendment) 2010. However, this paper has analyzed the part of debates that was relatively meaningful and related to the provincial autonomy, territorial and distributive issues, power-sharing, and identity politics etc. The paper analyses the debates of 49 parliamentarians (33 Senators and 16 members of National Assembly) from the four provinces. The debates of members from FATA and Islamabad, the Capital Territory are excluded from the analysis.

Regional Distribution of Speakers

House	Punjab	Sindh	KPK	Balochistan	Total
Senate of Pakistan	10	6	7	10	33
National Assembly	4	4	5	3	16
Total	14	10	12	13	49

Determining the Perspectives of Parliamentarians: Set of opinions on autonomy issues

The authors have identified a set of perspectives through review of the House debates related to the matters such as autonomy, power-sharing, and territorial and identity issues. Originally, the 1973 constitution had two legislative lists: the federal legislative list encompassing the federal subjects and concurrent legislative list that includes the subjects on which federal and provincial assemblies were authorized legislation. All the residuary powers were given to the provinces. However, the smaller federating units have been demanding the abolition of concurrent list and some items of federal legislative lists to promote provincial autonomy. So, the issue of abolition of concurrent list remained the primary concern during the 18th amendment in the constitution of Pakistan. The CRC believed that the complete abolition of the concurrent list would be problematic to run the federation smoothly as certain matters require harmony of laws for all the country. So, it was proposed that the eight items of the concurrent list would be transferred to the federal legislative list. However, the regional parties were not satisfied with this suggestion and demanded that the federal legislative list should include only four subjects namely defense, foreign affairs, currency, and communication. The opinion of parliamentarians over the abolition of concurrent list and autonomy issues has been grouped in three broad categories: (a) one group of the parliamentarians opined that the 18th amendment has provided adequate autonomy to the provinces; (b) the second group argued that although the abolition of concurrent legislative is a positive step but provinces should be provided more autonomy; (c) the third group was disappointed by the provided autonomy and demanded maximum autonomy to the provinces by providing only three to four subjects to the federation.

The bill suggested certain measures to strengthen the role of senate in the politics of Pakistan. It was proposed that federal cabinet would be answerable to the senate in addition to national assembly; the report of CCI will also be laid before the senate which was previously only required submit to national assembly only; the legislation regarding the subjects of federal list was authorized to originate in the senate that was previously only allowed for the national assembly. Many parliamentarians on this proposed role of senate seemed satisfied. However, a group of parliamentarians contested and demanded more powers for the Senate. The bill provided effective role to the CCI that previously remained unable to perform its function adequately. Many parliamentarians considered it a positive step that would ensure harmony between the center and provinces and among the provinces. However, several parliamentarians remained silent on this provision of the bill.

Renaming of the NWFP as Pakhtunkhwa was an old demand of the Pashtun nationalists. The idea was also supported by some other political parties and the provincial assembly of then NWFP had also passed resolution to rename province as Pakhtunkhwa instead of NWFP. The linguistic and ethnic diversity of the province became a contentious issue. At one time the issue caused deadlock and was resolved by adding prefix of Khyber on the proposal of PML-N. It was the only issue on which political parties remained unable to develop a consensus. It also resulted in unrest in the Hazara Belt, mainly non-Pashtu speaking region of defunct NWFP. All the parliamentarians belonging to the Hazara Region opposed this proposal. In addition, PML-Q agitated inside and outside the parliament over the issue. Perspective of the parliamentarian regarding this issue is part of the analysis. Historically, the Pakistani state has not recognized the regional languages as national languages and Urdu, a mother tongue of a minority group, the lingua franca of Pakistan remained only official national language of

Pakistan. CRC did not address the issue according to the aspirations of the regional/nationalist groups. Some parliamentarians emphasized the recognition of regional languages but majority remained silent. The federating units of Pakistan have been advocating for more just distribution of financial resources to manage their affairs. CRC attempted to address this concern by delegating the excise duty on oil and natural gas levied at well ahead to the province of origin. Sales tax on services was handed over to provinces. It was also suggested that the distribution formula of funds between center and provinces would not be redesigned in a manner that the share of province would not be reduced in all the proceeding awards. It also suggested joint ownership right of natural resources for federation and provinces. Previously, federal government was the sole owner of the natural resources. While, the state-wide parties appreciated the provision of joint ownership rights, the regional parties demanded complete ownership rights of natural resources for provinces. In addition, the Sindhis and Baloch regional parties demanded the ownership right of territorial waters and seaports. Each province of Pakistan has a substantial minority group based in particular region of the province. Seraikis are mostly based in South Punjab, Hazarewals in Hazara region of the KPK, Pashtuns in North Baluchistan, and Mohajirs in urban Sindh. Some of these provincial minority groups have been demanding separate provinces. During the debate over amendment bill, the demands for creation of new provinces also emerged. However, the opinion of parliamentarians on creation of new provinces remained mixed. Some members of the parliament raised the territorial concerns and the issue of uneven intra-provincial distribution of power and resources. A summary of opinions on these issues is tabulated and placed in the appendix.

Results

This section provides detailed analysis of the House Debates over the 18th constitutional amendment to determine the territorial role of Senate of Pakistan. This section deals with the research questions of this study:

- (c) Do members of the Senate and the members of National Assembly belonging to the same political party have identical perspectives on certain autonomy issues?
- (d) Do members of the Senate and the National Assembly belonging to same province/region have similar perspectives on certain autonomy issues?

Do members of the Senate and the members of National Assembly belonging to the same political party have identical perspectives on certain autonomy issues?

Pakistan People Party (PPP) was the single largest party in both Houses of the parliament in 2010. All the eight parliamentarians of the PPP that participated in the debates, considered the amendment as a positive step for the provincial autonomy and to redress the regional grievances. However, the Senators from Sindh and Balochistan opined that the amendment has 'failed to devolve all which is right of provinces' (Abbasi, 2010). Sabir Baloch a senator from Balochistan, told the house that he has "congruence of views with the Baloch nationalists such as Shahid Bugti regarding the rights of the people of Balochistan (Baloch, 2010). However, Shah, member of National Assembly from Balochistan, was relatively contented with provisions of the amendment. He regarded 'the abolition of Concurrent Legislative List and the granting of 50% share of natural resources to the provinces as significant achievements'. However, he 'demanded more financial resources for Balochistan and suggested that the control of Gwadar port should be handed over to Balochistan (Shah, 2010). The members of both houses supported the renaming of NWFP as Khyber Pakhtunkhwa as per party policy. Nadeem Afzal Gondal, the member of National Assembly from Punjab, 'appreciated the amendment bill and dismissed the charges levelled against Punjab. He told the house that Punjab respects rights of other provinces (Gondal, 2010). The members from Sindh discarded the creation of new provinces. Overall, the analysis of debates suggests similarity of opinion among the members of PPPP in both Houses.

The parliamentarians of PML-N were mostly belonging to the province of Punjab. They manifested congruence of thought regarding the issue of autonomy and devolution of power irrespective of their membership in upper or lower house of the parliament. They had appreciated the amendment in terms of provincial autonomy and considered it as a major positive development (Dar, 2010). However, Baloch, member of National Assembly from Balochistan argued that 'abolition of concurrent list was not significant for Balochistan as most vital for Balochistan was the ownership rights of natural resources, coastal areas and ports'. He apprehended that 'the

devolution of large number of federal departments to provinces might cause problems for Balochistan because province was in deficit of resources to run those departments (Baloch, 2010).

Comparatively PML-Q has better representation in the debates about the 18th amendment because of its better presence in the upper house of the parliament. The analysis of the opinion of the parliamentarians reveals that there were no significant differences among the opinion of the MNA's and Senators about autonomy issues. Majority of the members followed the party policy to oppose the name of KPK, favored the creation of new provinces in Punjab and KPK, and considered provincial autonomy provided by 18th amendment as sufficient (Muqam, 2010). But the debate manifested certain regional trends, the senators and MNA's from southern Punjab were more concerned about intra-provincial distribution of resources as compared to the issue of provincial autonomy (Durrani 2010). The MNA from Sindh, Marvi Memon, does not seem contend with quantum of autonomy provided by the 18th amendment: she asserted for the strengthening the role of Senate in the legislative and administrative affairs, Posting of the indigenous bureaucracy in respective provinces, mandatory consent of lowers riparian for the construction of water reservoirs, and promotion of regional languages (Memon, 2010).

Majority of the JUI's parliamentarians were members of the Senate belonging to the smaller provinces. The Senators and the member of National Assembly from Balochistan demanded radical changes in center-province relations by providing maximum provincial autonomy. They favored complete ownership rights of the natural resources for provinces (Ismail, 2010). A senator from Sindh also had similarity of views regarding these core issues with their party compatriot from Balochistan (Soomro, 2010). However, the Senators from KPK appear satisfied with the provincial autonomy provided through 18th amendment (Sawati, 2010). The analysis of JUI's parliamentarians' opinion confirmed the already established opinion that there was no vital difference between the opinion of the Senate and National assembly members from the same region although there was divergence of views on the regional bases.

MQM is an ethno-regional political party. Its support base is mainly concentrated in urban centers of Southern Sindh. All the participants of debate belonging to MQM had unanimity of opinion regarding the issue of autonomy. There was no difference in views expressed by MQM's Senators and Members of National Assembly. They accepted the 18th amendment but only as a first step towards desired goal. They also showed their concern about intra-regional distributional issues and demanded abolition of quota system for jobs. They also desired for more authority of local government institutions in perspective of the Karachi metropolitan corporation. They strongly supported the creation of new provinces in Pakistan (Sattar 2010).

The analysis of opinion of the members of regional parties of the Pashtun areas of KPK and Balochistan demonstrate similarity of views. The parliamentarians of ANP did manifest any differences because of their membership in Senate or National Assembly. They seem willing to accept 18th amendment as a positive step for autonomy but desired for more radical changes. The other point was their satisfaction on the issue of joint ownership of natural resources by center and province of origin. The seemed extremely happy over the renaming of their province (Khan, 2010). Alone speaker of PKMAP had similarity of views with ANP on all these issues. He also stressed for the regional concern of Pashtuns in Balochistan (Mandokhel, 2010).

The Baloch nationalist parties lack representation in National Assembly as they had boycotted the general elections of 2008. However, the Senators representing the three different Baloch nationalist parties had similarity of views about the issues related to autonomy and devolution. They demanded limiting of central government to only three or four subjects and for the remaining subject demanded complete devolution all the decision-making power to the provinces. They have demanded more powers for the federal chamber, and exclusive ownership rights of the natural resources for province of the origin (Baloch, 2010).

Other parties: The Senators of the JAH, JI, and PML-F supported the concept of autonomy initiated through 18th amendment. The senator of PML-F from Sindh demanded the status of the national languages for regional languages.

Do members of Senate and the National Assembly belonging to same province/region have similar perspectives on certain autonomy issues?

The members from the central Punjab seem to favor the 18th amendment in terms of provincial autonomy. There was no divergence of opinion based on membership in either house of the parliament (Zafar, 2010). Likewise, all the parliamentarian from southern Punjab was more concerned about the problems faced by their region. They were more interested about the rights of impoverished regions of the provinces as compared to the provincial autonomy. They also manifested almost an unanimity of thought whether Senators or MNA's. The Parliamentarian from south Punjab supported the creation of new provinces (Durrani, 2010).

The members of Senate and National assembly representing rural Sindh belonging to different political parties have congruence of opinion. They focused on concerns of rural Sindh. All of them supported the 18th amendment as an initial step to further advance the cause of provincial autonomy, opposed intra-provincial devolution of power that can hamper the spirit of provincial autonomy. They were averse to the idea of creation of new provinces as they were apprehended about the division of Sindh. Also, some of them highlighted the issue of regional languages to be given the status of national languages (Abbasi, 2010). The parliamentarian from the urban Sindh supported the devolution through 18th amendment but demanded more provincial autonomy. They specially focused on the local autonomy at district level for the cause of urban Sindh (Ghouri, 2010).

The parliamentarian from Balochistan was not satisfied with the quantum of provincial autonomy provided by 18th amendment. Even, members from the mainstream political parties favored the idea of more expanded provincial autonomy. There was a somewhat variation in the opinion of the representative of the Baloch nationalist parties and JUI as well as PKMAP from members of PPP and PML-N. The former group desired more provincial autonomy by limiting the control of center to three or four subjects whereas latter group did not adopt such radical opinion. Both groups have similarity of thought regarding the provincial ownership right of natural resources. They asserted to strengthen the role of Senate in the federal structure of Pakistan (Baloch, 2010).

Most parliamentarian from Pashtuns areas of KPK regardless of their membership in Senate or National Assembly considered the 18th amendment as positive but insufficient in terms of provincial autonomy. Although they seem contended for the joint-ownership of the natural resource. They were extremely enthusiastic about the renaming of NWFP as KPK (Naseeb, 2010). The amazing exception was PML-Q Senator Saleem Saifullah Khan who despite being a Pashtun opposed the renaming of province as KPK following his party lines (Khan, 2010). The parliamentarians from Hazara and Swat opposed the renaming of the province. They were more concerned about the regional problems faced by their region like members of Southern Punjab and Urban Sindh. The issue of intra-provincial distribution of resources was the main issue of their debates (Sawati, 2010).

Conclusion

The analysis of House debates illustrates that there is hardly any difference of opinion between the Senators and the members of National Assembly of the same party over autonomy issues across the regions. Similarly, the senators and the members of National Assembly belonging to same province/region have similar perspectives on certain autonomy issues. It can be argued that it is partly due the indirect system of election for the Senate that provides political parties leverage to elect the members. Equally, the relative party discipline owing to parliamentary system is responsible for identical perspectives of both houses. The survey of debates revealed that there were some concerns of the Senators over their respective regions but they have followed the party lines. So, it seems to suggest that the parliamentary nature of the institutions limits the territorial of the Senate of Pakistan. Nevertheless, overrepresentation of the minority provinces in the Senate provides substantial representation to the parties having regional based agendas. Consequently, these parties play better role in Senate to safeguard the interests of their concerned regions. The paper contends that bicameralism can better serve its core objective of providing power-sharing to federation units at federal centre in non-parliamentary federations than the parliamentary federations. It has been argued that the superior role of popular house in parliamentary system lessen the utility of second chamber. Hence, parliamentary federations should devise multiple power-sharing mechanisms for more inclusive federal decision making.

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