

Emergence and Evolution of the Senate in Pakistan (1947 to the 18th Amendment and Afterwards)

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ABSTRACT

Strong bicameralism that the Upper House should be stronger than the Lower House is now considered as one of the salient features of modern federalism. The Upper House or ‘the House of Federation’, is to provide equal representation to the federating units called provinces, states or regions. Emerging as a federation in 1947, Pakistan should have started its constitutional journey with strong bicameralism. On the contrary, in the first two constitutions of Pakistan, unicameral legislature was adopted even though bicameral legislature was proposed in all the constitutional proposals that preceded the first Constitution of 1956. Finally, the Upper House or the Senate of Pakistan, was introduced in the 1973 Constitution. However, still the Upper House was weak in terms of its legislative powers and check and balances on the executive until the 18th Amendment in 2010. The evolution of Upper House in the constitutional history of Pakistan is studied at

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length in this paper. Moreover, it is also explored; why it took Pakistan so long to evolve a stronger Upper House and whether this evolution process is complete after the 18th Amendment or more constitutional reforms would be required to bring Pakistan at par with the federal principle of strong bicameralism?

Introduction

Bicameralism is becoming more and more common institutional feature among the modern legislatures. According to the statistics of Inter-Parliamentary Union (IPU), in 1996 only 58 countries had bicameral legislatures; while in 2019, 79 had adopted bicameral.¹ Jeannette Money and George Tsebelis argue that the motivation for bicameralism in unitary system is 'efficacy' and 'senatorial expertise'; while in the federal form of government focus is on symmetric representation and "senatorial powers".² This sounds very logical because the federal systems are more concerned about the distribution of powers and increased representation of the smaller federating units. Therefore, now most of the federal states have bicameral legislatures because in federal system the Upper House also named as the second chamber

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- 1 For 1996 figures see David E. Smith, 'A House for the Future: Debating Second Chamber Reform in the United Kingdom', *Government and Opposition*, 35, no. 3 (2000):325 and for 2019 figures see the official website of Interparliamentary Union (IPU) [online] https://data.ipu.org/compare?field=country%3A%3Afield_structure_of_parliament#pie.
 - 2 Jeannette Money and George Tsebelis, 'Cicero's Puzzle: Upper House Power in Comparative Perspective', *International Political Science Review / Revue internationale de science politique*, 3, no. 1, (1992):25.

represents the component federating units, while the Lower House represents the federal citizens.³

In most of the cases including the federal systems, Upper House is less powerful as compared to the Lower House⁴. This is more so in parliamentary democracies because in parliamentary form of government the Cabinet usually comes from the Lower House only. But Arend Lijphart in his path-breaking book, *Patterns of Democracy* maintains the federal states ideally should have ‘strong bicameralism’ following what he terms the consensus model of consociational democracy to better accommodate the minority communities within the federal scheme. According to Lijphart, the two conditions for ‘strong bicameralism’ are: “the upper house has to be elected on a different basis than the lower house (to ensure increased minority representation), and it must have real power—ideally as much power as the lower house.”⁵

The demand for Pakistan and its birth has roots in the federal principle. Sayed Jaffar Ahmed writes, “the federal principle was inherent in the evolution of the movement that culminated in the creation of Pakistan” in 1947 as since 1910s Muslim League was persistently demanding maximum provincial autonomy within the British India.⁶ In fact, the All India Muslim League was scared of the idea of introduction of unitary system and the majoritarian Westminster model of democracy

3 Anna Gamper, ‘Legislative Functions of Second Chambers in Federal Systems’, *Perspectives on Federalism*, 10, no. 2., (2018): E-117-133.

4 Ronald L. Watts, *Comparing Federal Systems*, 3rd ed., (Montreal: McGill-Queen’s University Press 2008):147.

5 Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-six Countries*, 2nd ed., (New York: Yale University Press, 2012).

6 Sayed Jaffar Ahmed, “Historical Evolution of Federalism in Pakistan: From Bewilderment to Setting up of a Path,” *Pakistan Perspectives*. 18, no. 2, (2013):105.

in India. They feared such a model would mean a permanent centralised Congress rule over whole of India as Hindus were a permanent majority and Muslims a permanent minority, leaving nothing for the Muslims in general and the Muslim League in particular in such a centralised unitary scheme.

As bicameralism is considered essential for a federal structure, therefore, it was quite natural to believe in independent Pakistan, the Pakistan Muslim League government would opt for a two-house parliament in the new constitution of Pakistan. It however took Pakistan more than twenty-five years to introduce the Upper-House in the Constitution of Pakistan, 1973 although the federal structure was adopted from the day one. In those twenty-five years, two constitutions i.e., 1956 and 1962 were framed, but none of them contained provisions for the second chamber.

Since its introduction in 1973, the Upper House, called the Senate in Pakistan has undergone several changes and transformations because of the subsequent constitutional amendments that have been made from time to time. Among those amendments, the 18th Amendment is considered as one of the landmark constitutional amendments which has considerably increased the powers of the Senate in Pakistan.

In March 2018 the senatorial elections were conducted in Pakistan and new chairman Senate was elected. The three-year tenure of the chairman Senate, Raza Rabbani of the Pakistan Peoples' party is considered an important period (March 2015-March 2018) in the history of Senate. Mr. Rabbani established new traditions and rules of business for the Senate that has made it far more effective as compared to the time when he took over as a chairman Senate.

Literature Review and Significance of the Study

There is so much literature available on democracy and civil-military relations in Pakistan but very little is written about the democratic institutions of Pakistan especially the parliament which consists of the Lower House., National Assembly and the Upper House, the Senate. Dr. Mahboob Hussain⁷ is the only scholar who has focused the most of his research on parliament, especially the Lower House..

Some NGOs have also started working on parliamentary issues of Pakistan. In this regard, the work of Pakistan Institute of Legislative Development and Transparency (PILDAT) is commendable one. The PILDAT has recently published three handbooks on capacity building of parliamentarians and parliamentary committees: “How to be

⁷ Mahboob Hussain, “Institution of Parliament in Pakistan: Evolution and Building Process (1947-1970),” *Journal of Political Studies* 8, no.2, (2011): 77-99; Mahboob Hussain, “First Direct-Elected National Assembly of Pakistan – Election and Formation,” *Journal of the Research Society of Pakistan* 49, no.1 (2012): 177-192; Mahboob Hussain, “Parliament in Pakistan 1971-77 and Chief Executive: An Analysis of Institutional Autonomy,” *Journal of Political Studies* 20, no.1 (2013a): 83-95; Mahboob Hussain, “Institutional Influence in Pakistan: Bureaucracy, Cabinet & Parliament,” *Asian Social Science* 9, no. 7 (2013b): 173-178; Mahboob Hussain, “Institutional Relationship in Pakistan: A Study of Army and Parliament (1971-1977),” *Pakistan Vision* 14, no.1 (2013c): 116-129; Mahboob Hussain, “Sovereignty of Parliament as Constituent Assembly and Framing the Constitution of 1973,” *Journal of the Research Society of Pakistan* 50, no.1 (2013d): 81-100; Mahboob Hussain, “Establishing Constitutional Status of Qadianies: A Study of Parliamentary Debates, 1974,” *Pakistan Vision* 14, no.2 (2013e): 76-93; Mahboob Hussain, “Resolution of National Issues: An Assessment of First Pakistani Parliament’s Durability,” *Journal of the Research Society of Pakistan* 55, no. 1 (2018): 343-352; Mahboob Hussain, *The Parliament of Pakistan: A History of Institution-Building and (Un) Democratic Practices, 1971–1977* (Karachi: Oxford University Press, 2019).

an Effective Legislator”⁸, “Effective Role in Committees”⁹ and Performance of the National Security Committee 2013-2018.¹⁰

Moreover, Ahmed Bilal Mehboob, the head of PILDAT wrote a research article, “Institutional Capacity and Governance in Pakistan: A Case Study of Parliament” in The Wilson Centre’s edited book, *Pakistan’s Institutions: We Know They Matter, But How Can They Work Better?* published in 2018. Apart from PILDAT, an American NGO, the Search For Common Ground (SFCG) Pakistan as also published two handbooks on capacity building of Pakistani women parliamentarians under its programme the “Women’s Initiative for Learning and Leadership (WILL): Strengthening Women’s Political Participation and Leadership for Effective Democratic Governance in Pakistan”.¹¹

In most of the above-mentioned literature, discussion is too much focused on the Lower House. None of this literature focuses on the Upper House, the Senate, as it is mentioned only sparingly when required to describe the two houses or the legislation process in the parliament is discussed. The former senator of the Pakistan Muslim League (Q), Mr. Nisar

8 PILDAT, *How to be an Effective Legislator* (Islamabad: Pakistan Institute of Legislative Development and Transparency, 2019a).

9 PILDAT, *Effective Role in Committees* (Islamabad: Pakistan Institute of Legislative Development and Transparency, 2019b).

10 PILDAT, *Performance of the National Security Committee 2013-2018* (Islamabad: Pakistan Institute of Legislative Development and Transparency, 2019c).

11 Sayed Shamooun Hashmi, *Leading The Way: A Handbook for Pakistan’s Women Parliamentarians and Political Leaders* (Islamabad: Search For Common Ground Pakistan, 2014); Mohammad Zakria Zakar, *Baseline Survey for Strengthening Women Parliamentarians in Pakistan for Effective Government* (Islamabad: Search For Common Ground Pakistan, 2014).

A. Memon is the only one who wrote a book, *Insight into the Senate of Pakistan* in 2018 focusing the working, organization and the structure of the Senate. Apart from that book, Khan and Mushtaq are the two academics who have focused their research articles on Senate.¹² This paper builds on that available literature on the Senate and tries to explain the constitutional debates on bicameralism in early phase 1947-70 and the origin and growth of bicameralism in Pakistan since 1973.

Research Questions

Why did the constitution makers take so long to introduce bicameralism in Pakistan? It is an intriguing question, so far not explored in any research study on Pakistan. Whether the idea of bicameralism was never given a proper thought in Pakistan before 1973 or it was purposefully not adopted for some political choices made by those who mattered most in Pakistan then? And when it was introduced in 1973, was it a strong bicameralism following a federal model or a very weak Upper House on unitary model? How has federalism evolved over the years in Pakistan since its introduction in 1973?

Research Methodology

This is primarily a qualitative research to provide an in-depth historical analysis of the evolution of Upper House in Pakistan. The case study of Upper House in Pakistan is used to show how do postcolonial states use everything at their disposal to deny the smaller units their due shares in the

12 Kishwer Khan, "Bicameralism in a Federation: An Historical Analysis of Role of Senate in Promoting Federalism in Pakistan," *Pakistan Perspectives*. 22, no.1 (2017): 135-158; Mushtaq Muhammad, "Empowering Ethnoregional Minorities and the Federal Bicameralism: Examining the Role of Senate in Pakistan," *FWU Journal of Social Sciences*, no. 4 (2017): 1-11.

federal scheme. This is a desk research where all possible primary and secondary sources are used to collect the relevant data on the topic.

The Debates about the Upper House in Pakistan (1947-70)

Pakistan came into being as an independent nation state on August 14, 1947 but its first constitution was promulgated on March 23, 1956. In this phase of nine years four constitutional documents came under discussion in the constituent assembly i.e. the Objective Resolution 1949, the interim report of the Basic Principles Committee 1950, the final report of the Basic Principles Committee 1952, and the Bogra Formula 1954. The first constitutional document which came out from the constituent assembly of Pakistan was the Objective Resolution passed by the constituent assembly on March 12, 1949. The objective resolution broadly set the direction of the future constitution by underlining the aims and objectives of the future constitution. Regarding federal nature of the future constitution, the Objective Resolution merely said Pakistan would be a “federation wherein the units will be autonomous”, without mentioning anything about the nature of the legislature.¹³

The Interim Report of the Basic Principles Committee 1950

After passing the Objective Resolution, the Constituent Assembly had appointed a 24-member Basic Principles Committee (BPC) which was assigned the task of framing the

13 Government of Pakistan, *The Constituent Assembly of Pakistan Debates: Official Report of the Fifth Session of the Constituent Assembly of Pakistan* Vol. V (Karachi: Government of Pakistan, 1949).

new constitution of Pakistan.¹⁴ The interim report of BPC was presented before the constituent assembly by the Prime Minister, Liaqat Ali Khan on September 28, 1950. Interestingly, in the interim report not only an Upper House was provided but also what Lijphart terms the two conditions of 'strong bicameralism' were also fulfilled.¹⁵

Under the interim BPC Report, the legislature was to consist of the two houses - a House of Units, the Upper House; and a House of the People, the Lower House. The House of Units was to be the representative institution of the provinces of Pakistan where all the provinces were given equal representation; while the House of People was representative institution of the people of Pakistan which was to be constituted on the basis of one-man one-vote and adult franchise.¹⁶ Hence, the BPC report provided different basis for election of the two houses, fulfilling the first condition of Lijphart's 'strong bicameralism'. The second condition of strong bicameralism was also fulfilled as the two houses were made equally powerful. Under the interim report of PBC, in terms of legislative powers, the two houses enjoyed equal powers as even the budget or money bills were to be passed in the joint sitting of the two houses.¹⁷ Moreover, the Prime Minister and the Head of the State were to be elected in the joint session of the parliament and the cabinet was made equally responsible to both the houses of parliament.

14 Hamid Khan, *Constitutional and Political History of Pakistan* (2nd edition) (Karachi: Oxford University Press, 2001).

15 Lijphart, *Patterns of Democracy*, 38.

16 Hamid, *Constitutional and Political History of Pakistan*.

17 Riaz Ahmad, "Pakistan's First Constituent Assembly's Efforts for the Making of Constitution 1947-1954," *Pakistan Journal of History & Culture*, XXIII, no.1 (2002): 1-37.

But these features of strong bicameral legislature received severe criticism from East Pakistan members in the Constituent Assembly as they considered it an attempt to “reduce the East Pakistan majority into a minority and thus turn East Pakistan into a colony of West Pakistan”.¹⁸ This objection from East Pakistan made a sense because then West Pakistan could have three to four provinces while East Pakistan was one province only with population more than the combined population of the whole of the West Pakistan. Hence, there was a good chance that in the joint session where all key decisions were to be made, the East Pakistan might become a minority. Therefore, because of the concerns of the East Pakistan this first proposal of ‘strong bicameralism’ could not succeed.

The Final Report of Basic Principles Committee 1952

The final report of PBC was presented by the Prime Minister, Khwaja Nazimuddin on December 22, 1952 in the Constituent Assembly of Pakistan. This report also suggested bicameralism, but it was no more ‘strong bicameralism’. It was very weak bicameralism almost following all the principles of the Westminster model as the Prime Minister and his cabinet was to come purely from the lower house only and was made responsible to it alone. The House of Units had no say in the election and removal of the Prime Minister and his cabinet. Moreover, regarding budget or money bills the Upper House, the House of Units could only suggest changes while the House of People had the final say as it could summarily reject the changes suggested by the Upper House and forward the money bill for assent to the head of the state. Regarding representation in the two houses, the principle of ‘parity’ was

18 Ahmad, “Pakistan’s First Constituent Assembly,” 5.

introduced between the East Pakistan and the West Pakistan which meant the 400 seats of the House of Peoples and 120 seats of the House of Units would be equally divided between the East Pakistan and the West Pakistan.¹⁹ It is interesting to note here that by that time West Pakistan was not declared 'One Unit' but still in this report it was treated as one unit for the purposes of representation in the parliament.

From the East Pakistan Hussain Shaheed Suhrawardy and Shaikh Mujibur Rahman criticised the parity principle, however, overall, this report was well received in East Pakistan.²⁰ In West Pakistan the final PBC report received very strong resentment. Especially in Punjab the parity principle was severely criticised.²¹ In Punjab many feared East Pakistan would clearly dominate the political scene as West Pakistan was a less cohesive unit because the political leadership in Sindh and NWFP was sympathetic with the East Pakistan.

Bogra Formula 1954

Among all these debates and divisions along the provincial lines, the new Prime Minister of Pakistan Mohammad Ali Bogra was able to convince all the stake-holders in the parliament on what is now termed as the 'Bogra Formula' in the constitutional history of Pakistan. On October 07, 1954 Mr. Bogra presented his formula in the Constituent Assembly which was the second serious attempt to implement 'strong bicameralism' in Pakistan. Knowing the grievances of different federating units on the future constitution of Pakistan, Bogra

19 Ahmad, "Pakistan's First Constituent Assembly," 5.

20 Ahmad, "Pakistan's First Constituent Assembly," 5.

21 Hamid, *Constitutional and Political History of Pakistan*.

suggested a very clever middle ground which had satisfied all the federating units of Pakistan.

According to the Bogra Formula, the Upper House, the House of Units was to consist of fifty members, ten each for the five units i.e. East Bengal; Punjab; NWFP, Frontier States and Tribal Areas; Sindh and Khairpur; and Baluchistan province, Baluchistan States Union, Bahawalpur and Karachi.²² On the other hand, the lower house, the House of People was to consist of total 300 members, of which 165 members were to come from the East Pakistan and 135 from the West Pakistan.²³ The 135 members of West Pakistan were further divided on the basis of population of different federating units. Hence, the Upper House followed the principle of parity among federating units conforming to the ideal federal model for the Upper Houses while for lower house the principle of one-man one-vote and adult suffrage was followed. Interestingly, while doing this overall parity in the joint sitting of the parliament was maintained by providing 175 seats each to the East Pakistan and the West Pakistan in a joint session.

Like Interim BPC report, in the Bogra Formula the Upper House and lower house enjoyed equal powers. The election/no confidence motion/confidence motion for the Prime Minister and his cabinet needed simple majority vote in the joint session of the parliament with at least 30 percent members from each zone East Pakistan and West Pakistan voting. The two houses would enjoy equal legislative powers in all matters including the budget and money bills. In the case of difference of opinion between the two houses, the bill must be passed by simple majority in the joint sitting with at least

22 Ahmad, "Pakistan's First Constituent Assembly,".

23 Mehrunnisa Ali, *Politics of Federalism in Pakistan* (Karachi: Royal Book Company, 1996).

30 percent from both the East and the West Pakistan voting in favour.²⁴

The Bogra Formula provided Pakistan a golden opportunity to reach a consensus constitution and the best possible solution not just for the bicameralism but arguably that of the federal question in Pakistan as well. The political history of Pakistan could have been completely different if the new constitution was framed on the lines of Bogra Formula. But this was not acceptable to the then Governor-General of Pakistan, Ghulam Mohammad (a former bureaucrat) who unconstitutionally dissolved the Constituent Assembly and thwarted this rare consensus of politicians because under Bogra Formula his dissolution powers were curbed, and the head of state was made a figure head following the Westminster model. Later, the Supreme Court of Pakistan had upheld the unconstitutional decision of the Governor-General under infamous 'Law of Necessity' in Maulvi Tamizuddin case. Rest is the history as this paved the way for future military interventions in Pakistan from which Pakistan could never come out completely and lost its Eastern Wing.

This clearly shows that bicameralism was at the centre stage during the whole constitutional debate in that early phase (1947-54) of the constitution making in Pakistan. Moreover, there was almost a consensus in Pakistan that the future constitution would be bicameral as all three documents in the post 1956 Constitution clearly provided for the bicameral legislature. Then one wonders how and why the first two constitutions of Pakistan i.e., the 1956 and 1962 constitutions provided unicameral legislature.

24 Ahmad, "Pakistan's First Constituent Assembly,".

One simple explanation which was given at that time for not adopting the bicameral legislature was that after imposition of the One-Unit Scheme in October 1955, there was no need for the second chamber as simple parity principle was followed in 1956 and 1962 constitutions for the two wings of Pakistan in the National Assembly.²⁵ Under the One-Unit Scheme all provinces and states of West Pakistan were dissolved and merged into one united province of the West Pakistan. This appears to be a very strange logic as it suggests the utility of second chamber is merely for distribution of seats between the federating units.

The arbitrary manner²⁶ in which One-Unit Scheme was achieved and then the way it was used as a pretext to introduce unicameralism in Pakistan clearly shows there were some ulterior motives behind not adopting bicameralism in Pakistan at that stage. From dissolution of the first Constituent Assembly in 1954 to the promulgation of 1956 Constitution the political scene in Pakistan was dominated by what Mohammad Wasim terms the *Gang of Four* comprising Ghulam Mohammad, Major General Iskander Mirza, General Ayub Khan, and Chaudhary Mohammad Ali. One more plausible explanation for not adopting the bicameralism in Pakistan can be, the *Gang of Four* was not in favour of the Upper House as the presence of Upper House could have made things more complicated and difficult to handle for

25 Hamid, *Constitutional and Political History of Pakistan*.

26 The arbitrary manner used for imposition of One-Unit Scheme is obvious from the fact that in Sindh province the ministry of Chief Minister Abdus Sattar Pirzada was dismissed and in his place more amenable Chief Minister Ayub Khuhro was installed to achieve the resolution in favour of the One-Unit Scheme. Similarly, threats of same kind were used in NWFP and Balochistan to achieve the desired results there.

them.²⁷ The arbitrary manner in which political affairs of the state were handled after 1954 dissolution of the first Constituent Assembly to the imposition of Martial Law in 1958 depict a design in which Upper House was a clear misfit.

The Birth of the Upper House and its Evolution

Finally, it was the Constitution of 1973 which introduced the Upper House named Senate.²⁸ Unlike the Lower House, which was elected on the basis of population and adult suffrage, in Senate all the four provinces of Pakistan were given equal representation.²⁹ Under the original 1973 Constitution, the Upper House consisted of sixty-three members in total. Fourteen members from each province were to be elected on the basis of proportional representation by means of single transferable vote from the four provincial assemblies, five members belonged to the Federally Administered Tribal Areas (FATA) and two from the capital territory, Islamabad.³⁰ Moreover, unlike National Assembly which was to be dissolved at the completion of its term of five years, the Senate was a continuous body with half of its members retiring after every two years, hence the four years term for a senator.

Hence, the first condition of 'strong bicameralism', increased representation for minorities in the Upper House was met

27 Mohammad Waseem, *Politics and the State in Pakistan* (Islamabad: National Institute of Historical and Cultural Research, Centre of Excellence, Quaid-i-Azam University, 1994).

28 Ahmed, "Historical Evolution of Federalism in Pakistan," 11-29.

29 Katharine Adeney, "A Step Towards Inclusive Federalism in Pakistan? The Politics of 18th Amendment," *Publius: The Journal of Federalism*, 42, no.4 (2012): 1-27.

30 Zubair Faisal Abbasi, *Federalism, Provincial Autonomy and Conflicts* (Islamabad: Centre for Peace and Development Initiatives, 2010).

under 1973 Constitution. However, it should be noted unlike the Interim BPC report and Bogra Formula the second condition, the Upper House should enjoy equal legislative and political powers like Lower House was completely ignored. In terms of executive political powers, the Upper House, under the 1973 Constitution, had no role in the election/no confidence/confidence motions against the Prime Minister and his cabinet. Moreover, whole of the cabinet was to come from the National Assembly and it was only responsible before the National Assembly for its policies which meant the Senate had no powers of the political oversight over Government. Hence, the Upper House enjoyed no executive powers and all the executive authority rested with the National Assembly under the original 1973 Constitution.

In terms of legislative powers as well, the Senate had very limited powers. The Senate could not initiate legislation on the part I of the Federal Legislative list which contained almost all the important federal government powers. It could only initiate legislation on ten unimportant subjects given in the second part of the federal legislative list and the concurrent list.³¹ Moreover, the National Assembly was given the over-riding authority over Senate in matters contained in the Federal Legislative List Part I as the bills rejected in Senate would go directly for assent to the President if the National Assembly had passed the same bill again. Regarding money bills, the Article 73 in the original 1973 Constitution stated, "a money bill shall originate in the National Assembly and after it has been passed by the Assembly it shall, without being transmitted to the Senate, be presented to the President for

31 Craig Baxter, "The Development of Federalism in Pakistan," *Asian Survey* 14, no. 12 (1974): 1074-1085.

assent.”³² Hence, with regard to money bills the Upper House, the Senate had no role to play whatsoever under the original 1973 Constitution.

It is interesting to note here that although under the civilian government of Z.A Bhutto bicameralism was introduced in Pakistan, yet it was kept very weak with no powers of oversight over the executive and very restricted legislative powers under the original 1973 Constitution. In fact, it was the military government of General Zia-ul-Haq and his infamous 8th Constitutional Amendment which was responsible for the first major enhancement in the powers of the Senate. President Zia-ul-Haq increased the total number of Senators from 63 to 87 in 1985 by adding five technocrat members from each province with the help of a special Presidential Order (no.14) even before 1985 elections.³³ Moreover, under the 8th Amendment in terms of initiating and passing any bill or constitutional amendment, the Senate was made equal to the National Assembly for the Federal Legislative List Part I and II both and the Concurrent List except the money bill which must originate from the National Assembly.³⁴ Moreover, the over-riding powers of the National Assembly were also withdrawn except for the money bills.

It should also be noted here had the powers of Senate not been enhanced under the 8th Amendment, the then Prime Minister, Nawaz Sharif would have easily succeeded in

32 Baxter, “The Development of Federalism in Pakistan,”.

33 Mahboob Hussain, “Power Dynamics of State Institutions in Pakistan, Discourse Analysis of Bureaucracy and the Legislature (1971-1977),” *A Research Journal of South Asian Studies* 30, no. 2 (2015): 177-186.

34 Parveen, Kausar (2000) The Constitutional and Political Dimensions of Eighth Amendment. *Pakistan Journal of History and Culture*, Vol.XXI, no.1,,67-92.

passing the infamous 15th Amendment popularly known as Shariat Bill (Imposition of Islamic Law Bill) in 1998. As the Fifteenth Constitutional Amendment was already passed by the National Assembly on August 28, 1998 but got stuck in the Senate where Nawaz Sharif's party the Pakistan Muslim League-Nawaz (PML-N) lacked the required two-third majority for making a constitutional amendment.³⁵ The other increase in the number of seats to the Senate came under the rule of another military dictator, Pervez Musharraf as he increased the total number of Senate seats from 87 to 100 under his Legal Framework Order (LFO) 2002 providing representation to women, increasing the FATA members and adding seats for technocrats.³⁶

The Upper House after 18th Amendment 2010

The 18th Amendment was a landmark amendment in many contexts as it increased the provincial autonomy, brought most of the Presidential powers back to the parliament which were taken away by the 17th Amendment, made the inter-governmental forum, the Council of Common Interest (CCI) functional and above all made the Upper House, the Senate far more powerful than it was before this amendment. Under the 18th Amendment, the Prime Minister and his cabinet were made responsible before the Senate same as the National Assembly.³⁷ Practically speaking, this meant the Senate would also have the "Question Hour" where Senators could directly ask questions to

35 M. Ziauddin, "Nawaz Sharif's Shariat Bill," *The Express tribune*, March 05, 2013. Online at: <https://tribune.com.pk/story/516152/nawaz-sharifs-shariat-bill/> (Accessed on 18/05/2018).

36 Khan, "Bicameralism in a Federation,"; Muhammad, "Empowering Ethnoregional Minorities and the Federal Bicameralism,".

37 Shahid Hamid, *Impact of 18th Constitutional Amendment on Federation-Provinces Relations* (Islamabad: Pakistan Institute of Legislative Development and Transparency, 2010).

the cabinet members regarding any administrative issue in the country. Hence, the Senate was for the first time given the powers of the oversight over the executive.

Under newly inserted article 175A under 18th Amendment, four senators were made part of the Parliamentary Committee who take part in the appointment of the judges of the Supreme Court and High Courts and in case when National Assembly is dissolved all eight members of the parliamentary committee would come from the Senate. Moreover, unlike past practice now the President cannot promulgate ordinances when the Senate is in session and the number of days that Senate may take in sending its recommendations on money bills is raised from seven to fourteen days.³⁸ This means in terms of money bills the Lower House has still retained its over-riding powers over the Senate.

There are also some minor changes in the structure of the Senate. Under the 18th Amendment, four seats of minorities were added; one each given to each of the four provinces of Pakistan. The number of compulsory days for the sessions of the Senate in a year are also increased from 90 to 110. Moreover, the tenure for Senators is now fixed at six years with half of the senators retiring every three years. Below is given the current structure/composition of the Senate after the 18th Amendment.

Current Composition / Structure of the Senate

Provinces / Territories	General	Technocrats / Ulema	Women	Non-Muslims	Total
Sindh	14	4	4	1	23
Punjab	14	4	4	1	23

38 Hamid, *Impact of 18th Constitutional Amendment on Federation-Provinces Relations*.

Balochistan	14	4	4	1	23
Khyber Pakhtunkhwa	14	4	4	1	23
Federal Capital	2	1	1	-	4
FATA	8	-	-	-	8
Total	66	17	17	4	104

SOURCE: Senate of Pakistan

website.<http://www.senate.gov.pk/en/essence.php?id=10&catid=4&subcatid=138&cattitle=About%20the%20Senate>(accessed on 24/12/19)

Hence, no doubt the 18th Amendment brought some important constitutional changes which could raise the stature of the Senate, but it was former Chairman Senate, Raza Rabbani who made very important contribution in making Senate one of the most important institutions in the federation of Pakistan. To recognise Senate as a symbol of federation, it was officially named as the “House of the Federation” and these words were added in the Senate emblem. To institutionalise the oversight of the Senate over government machinery, provided under the 18th Amendment; it was made obligatory for the ministers and officials of the respective ministries and divisions who were on the Orders of the Day in Senate to mark their attendance on the day and mechanism was created for implementation of the recommendation/directions given by the Senate. Moreover, *Gali-e-Dastoor* (Urdu: the Constitution Gallery) was created in the Parliament House to pay tribute to the struggle for democracy and the rule of law in Pakistan.

Among several new steps undertaken in that phase (March 2015-March 2018), the most important step was revitalising for the first time the role of committees in the Senate and the

creation of the 'Committee of the Whole'. For creation of the Committee of the whole, Senate rules were amended to convert the Whole House (all the members of the Senate) into one Committee - Committee of the Whole House under rule 172A. Moreover, another rule 172B was also added whereby on issues of national importance, the 'Committee of the Whole' was empowered "to require the attendance of any person or summon production of papers, record from any Division, department, autonomous body, semiautonomous body or organization, or examine such persons on oath or solemn affirmation, or invite or summon any person to give evidence in relation to any matter under its consideration".³⁹

Using this Committee of the whole, Chairman Senate Raza Rabbani was successful in initiating Inter-institutional dialogue between the executive (civilian government), army, parliament and judiciary to address the issues of national concern. In this regard the then Chief Justice of Pakistan, Anwar Zaheer Jamali visited the Senate and debriefed the Committee of the Whole about clearing the backlog in courts on November 05, 2015 and an in-camera session of the Senate's Committee of the Whole was held on December 19, 2017 in which the Chief of Army Staff (COAS), Qamar Jawed Bajwa, gave a detailed briefing on national security situation in Pakistan. These two events did not bring any major shift in the policies, but they were of immense symbolic significance for the parliamentary supremacy in Pakistan.

39 The official Website of the Senate of Pakistan
<http://www.senate.gov.pk/en/whole.php?id=-1&catid=90&subcatid=293&cattitle=Committee%20of%20the%20Whole>
(accessed on 24/12/19).

Conclusion

This study shows that in its early phase (1947-54), parliamentarians were seriously discussing and debating the 'strong bicameralism' in Pakistan and many thought it was a panacea for resolution of the federal question in the country.. But once One-Unit of West Pakistan was created in October 1955, the project of bicameralism was completely abandoned. The first two constitutions of 1956 and 1962 which were ultimately abrogated by the Martial Laws, provided unicameral legislature, the National Assembly only.

Under the 1973 Constitution, bicameralism was introduced for the first time by installing the Upper House. Interestingly, it was very weak bicameralism as the Upper House was made completely toothless institution under the original 1973 constitution. However, gradually the Senate regained some powers initially under the tutelage of military rulers General Zia-u-Haq and General Musharraf. Finally, the democratic forces also realised the importance of the Upper House and its powers were enhanced in the 18th Constitutional Amendment.

This clearly shows, since its birth in 1973, the Upper House, has gradually increased in its stature in Pakistan. If we look at the current status of the Senate in the federation of Pakistan, it surely has become one of the most important federal institutions. Despite this important development, one cannot say in Pakistan that the project of 'strong bicameralism' has culminated because Lower House, is still far more powerful than the Senate. The fact is that the Prime Minister and his cabinet still need vote only from the National Assembly and also on money bills the National Assembly enjoys an over-riding authority over the Senate. Moreover, the Senate is still indirectly elected by the Electoral College consisting of the four provincial assemblies for provincial seats and the National Assembly for FATA and Senators from the Capital, Islamabad.