

ROLE OF THE SENATE IN FUTURE POLICY MAKING

AN AIDE-MEMORIE

Reference to be provided by Prof. Khurshid

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I

The earliest example of a bicameral system can be seen in the United Kingdom, where by the end of the thirteenth century a chamber for the high aristocracy was established. The most classic example, however, is that of the United States of America where the differences that cropped up in the Philadelphia Convention on the issue of representation in a federation were resolved in the Connecticut Compromise in the form of a bicameral system in which each state achieved equal representation in the Upper Chamber, and representation in the lower Chamber remained proportional to its population. In the contemporary world bicameral system is no longer understood in the context of its aristocratic origins. Instead, its justification is rooted in the following arguments:

- 1) In federal states, bicameralism reflects the dualistic structure of the state. Almost all federal states have bicameral parliaments.
- 2) Even a number of unitary states have opted for bicameralism and this "reflects their desire, either to have within the parliamentary machine an in-built mechanism in the form of a so-called 'revising' Chamber to maintain a careful check on the sometimes hasty decisions of a first Chamber, or, to achieve a more stable balance between the Legislature and the Executive as the unbridled power of a single Chamber is likely to be restrained by the creation of a second Chamber on a different basis". (Parliaments of the World: A Reference Compendium, by Inter-Parliamentary Union, Macmillan, 1976, p.4).

In the light of the contemporary literature the above constitute classic justifications for the Second Chamber. Two more points, however, deserve to be considered. First, in view of the need for associating, in the process of legislation and policy-making experts and people specializing in different vocations, it is being suggested that the Second House can also be the institution in which such experts can be drawn in.

In Ireland, most of the members of the Senate are elected from five panels representing vocational interests, while some Senators are elected by the Universities. In the United Kingdom also hereditary peerage is being increasingly supplemented by making peers from different areas of national expertise. In Pakistan five seats have been allocated for the constituency of experts, technocrats and Ulema. This enables the Senate to play a more salutary role in legislation and policy-formation.

Secondly, in an ideological state like Pakistan, there is a genuine need for bringing into the Parliament people who have specialized knowledge of Islamic sciences and who can assist the Parliament in interpreting the intricate problems of Islamic law, Allama Iqbal was conscious of this need and that is why he suggested in the Reconstruction of Religious Thought in Islam as well as in his Presidential Address for the year 1932 that Ulema and people with intimate knowledge of modern jurisprudence should be brought in the Parliament either via election or by association as experts. The Second Chamber can cater for this ideological need.

Senate in Pakistan has the unique distinction of embodying the following characteristics:

First: It is the voice of the Federation and is elected by the provinces which are represented in it equally;

Second: It is permanent and cannot be dissolved and as such represents constitutional and political continuity; and

Third: It has special representation of professionals, technocrats and Ulema, along with a higher age limit for its members ensuring greater expertise and experience in the performance of its functions.

In view of the above mentioned distinct features of the Senate, and also the fact that it is an elected body and not a nominated or hereditary house, and that it is in a better position to assist in reconciling provincial views and strive for a national consensus on important issues, it is very conspicuous that the Constitution totally excludes from its jurisdiction the money bills (Article 73). When we examine the powers of the two houses in different countries of the world, where bicameralism prevails, we find that either the two houses enjoy equal powers even in financial matters, as is the case with U.S.A., USSR, Argentina, Brazil, Checkoslovakia, Switzerland, Belgium, Italy and Republic of Vietnam or even if the powers enjoyed by the Second House in financial matters are unequal, it does play a definite role in these matters by considering the money bills, by sending its own recommendation to the popular House and by at least delaying the passage of such bills for a certain specified period of time. In Austria, Canada, India, Malaysia, United Kingdom the Second Chamber cannot override the popular House but contributes its share by holding discussion on finance bills and can even delay the acceptance of a bill it is not in agreement for a particular period of time. This enables the Parliament to reconsider such an issue and that is the real purpose.

In view of this role of the Second Chamber budget and the finance bills are either introduced in a joint session, or are simultaneously introduced in both houses, or are alternatively introduced in each house every other year, or are introduced in the popular House and simultaneously placed on the table of the other house.

In the United States the Money Bills originate in the House of Representatives, the Senate can propose amendments involving increases or insertion of expenditure, and/or reduction or rejection

of a demand for grant. In the United Kingdom while there is no discussion on the budget in the House of Lords, it can have discussion on general financial policy on the basis of a motion by a member. Similarly, the House can have direct discussion on the budget by discussing the Appropriation and Finance Bill. In India also Money Bills originate in the Lok Sabha but are transmitted to Raja Sabha which must return them within 14 days. Article 109 of the Constitution of India deserves to be read carefully:

"109. Special procedure in respect of Money Bills.-(1) A Money Bill shall not be introduced in the Council of States.

(2) After a Money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations and the Council of States shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States.

(3) If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Council of States and accepted by the House of the People.

(4) If the House of the People does not accept any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States.

(5) If a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People."

In the light of the above discussion it is proposed that Article 73 and Article 80 of the Constitution deserve to be amended to provide for the following:

- i. Money Bills should originate in the National Assembly but, on approval, should be sent to the Senate for discussion and recommendation, if any;
- ii. The Senate should be obliged to return a Money Bill to the National Assembly within a period of 21 days (even 14 days),

- iii. The National Assembly may either have the power to accept or reject the recommendations/amendments suggested by the Senate.

or

- iv. There may be a Joint Committee of the Parliament to resolve the differences between the two Houses, and the consensus of the Joint Committee would be deemed to be the consensus of the two Houses. (This procedure is followed in USA in a modified form).
- v. If the Joint Committee cannot arrive at a consensus, the viewpoint of the National Assembly may prevail.
- vi. Budget should be presented in a joint session of the Parliament as is the case with Address of the President. Discussion over the budget and its specific appropriations and demands for grants should take place in the two Houses separately. The Senate should be obliged to send its recommendations to the National Assembly within fourteen days to enable the National Assembly to consider the same before finalizing the budget into the Finance Act, which may, after approval of the National Assembly be deemed to have the approval of both the Houses and be submitted to the President for assent.

II

Along with the constitutional amendments suggested above the following proposals may also be considered to further strengthen the role of the Senate:

1. The institution of Ombudsman (Muhtasib-e-A'la) should be an organ of the Parliament and its report should be submitted to the two Houses of the Parliament and discussed there. It is also proper that the Ombudsman should be appointed by the President on the recommendation of the Senate or the President may propose his name to the Senate which should approve it. Senate may also be involved in some other key appointments. It may be instructive to reproduce below the relevant portion of Article II, section 2 of the American Constitution:

"He (i.e. the President) shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-third of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other offices of the United States, whose appointments are not herein otherwise provided for, and which shall

be established by law; but the Congress may by law vest the appointment of such inferior offices, as they think proper, in the President alone."

This provision of the American Constitution has made the Senate a very powerful organ of the State, capable of exerting significant control over the executive. If we cannot go to that extent, we should, however, assign a definite role to the Senate on the following:

- i. Ratification of international treaties and agreements;
 - ii. Appointment of the Ombudsman;
 - iii. Appointment of Governors of the Provinces;
 - iv. Appointment of ambassadors to countries of a certain category, say 12 most important countries of the world to be specified by law.
2. There is an urgent need to make the committees of the Parliament more powerful and more active.

Committees constitute an integral and indispensable part of the parliamentary mechanism evolved over the centuries. Every house of parliament tries to discharge its constitutional responsibilities through a number of permanent or ad hoc committees, which are more suited to undertake a thorough and more detailed examination of matters, whether of law or fact, and come up with recommendations which can seldom be arrived at in the heat of a debate.

Through the organ of committees the house can also secure authentic information, expert advice and impartial opinions relating to a Subject. Committees can play a critical role in making the legislative work as flawless as possible. In addition, their role in providing careful and continuous watches over the operations of the Government is paramount. That is why President Woodrow Wilson described committees as "little legislatures" and Speaker Reed of the U.S. described them as "the eyes, the ears, the hand and very often, the brain of the House". Ronald Young writes in *The British Parliament*, "If parliamentary government is identified exclusively with ministerial responsibility, the final decision on all subjects is placed with the Government, but if it is considered that Parliament is a balance to the Government, able to criticize, revise, initiate and investigate, then Parliament requires some independent means for carrying out its functions and the Committee System can serve a Useful purpose in this regard!" About the American situation Joseph P. Harris writes in *Congress and the Legislative Process* "Congress in session is Congress on exhibition, whilst Congress in its committee rooms is Congress at

work" which is even more true today than it was in 1883 when it was written by Woodrow Wilson in his classic study of Congress (Congressional Government). The real work of the Congress is done today by its 38 standing committees and increasingly by their more than 250 sub-committees. Each legislative committee is assigned a broad class of legislation, such as agriculture, armed services, foreign affairs, taxation and the like. It is in these committees and their numerous sub-committees that legislative policies are deliberated and decisions are reached, subject to the approval of the two houses."

Committees not only ensure more in-depth analysis of the issues involved, they also provide a more congenial climate for inter-action between different views and approaches. The time constraints under which discussions are held in a house of the Parliament are relieved to some extent in a committee. The possibilities of evolving consensus are also far greater. That is why there is an almost universal recognition of their role in the fulfillment of the functions of the Parliament.

In view of this role of the committees it is suggested that along with separate committees of the two Houses of the Parliament, as is the case in most of the countries having bi-cameral system, there should be a number of joint committees of the Parliament. The following joint committees are suggested to be established:

- i. Joint Public Accounts Committee (India has such a committee),
- ii. Joint Economic Committee (As in the U.S.)
- iii. Joint Committee on Defence
- iv. Joint committee on Education
- v. Joint Committee on Library and Research Service of the Parliament

These five joint committees can prove catalysts for establishing an effective role for the Parliament.

3. Constitution has not taken adequate care to provide for resolving differences between the two Houses of the Parliament. While for ordinary legislation the mechanism of the joint session has been provided for, (Article 70(2) and (3) there is no similar provision in case of divergent positions of the two Houses on matters relating to amendment of the Constitution (Article 238). It is, therefore, proposed that for both situations there should be a joint committee of the Parliament to iron out differences between the two Houses. If the differences are resolved and the joint committee arrives at a consensus, this should be construed to be the decision

of the whole Parliament, as is the case in the United States of America. If the committee fails to arrive at a consensus, a joint session may be called to approve such a bill with simple majority in case of ordinary bills and with a two third majority in case of constitutional bills.

I would like to submit that the issues raised in this paper deserve immediate consideration. I am sure if the suggestions made are adopted or further developed, this would immensely enhance the role of the Senate in the future policy formation of the country.

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