

# THE SENATE MONEY BILLS AND THE COUNCIL OF COMMON INTERESTS

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Reference to be provided by Prof. Khurshid

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The Senate in its session on 28th May, 1989, unanimously passed a resolution asking the Federal Government to call a meeting of the Council of Common Interests failing which it requested the President to call a meeting of the joint session of the Parliament. A vicious campaign has been unleashed by the PPP Government and some of its intellectuals against this concrete proposal of the Senate to resolve the crisis that has been imposed upon the country by the confused policies of the Federal Government in relation to economic planning and particularly promotion of developmental efforts in the provinces. The issues involve primarily relate to the respective authorities of the Federal and the Provincial Governments in matter relating to economic development and respect for the framework of constitutional autonomy contained in the Constitution of 1973. The following observations may clarify the position.

It has been said that the Senate has no role in passing of a Financial Bill. This is correct as per Articles 73, 74 and 75. There has never been a dispute on this constitutional position although in a major anomaly that a federation with bi-cameral legislature has not excluded the Upper House from any role in the matter of money bills. Almost all federal states have given some role to the Upper House in this respect particularly in the Constitutions of USA, Canada, Australia, India, etc. The critics have confused passing of money bill with discussion on financial issues. Exclusion of jurisdiction in respect of money bills does not bar the Senate from discussing fiscal, monetary or financial policies of the country. There is a permanent Standing Committee of the Senate on "Finance, Economic Affairs, Planning and Development, Statistics and Population Welfare" (Committee No.5, clause 140 of the Rules of Procedure and Conduct of Business in the Senate, 1988). There is also a committee on problems of less-developed areas, specifically with the purpose of "reviewing plans and special programmes for less-developed areas, identifying problems: bottlenecks and difficulties, in the implementation of the programmes and making recommendations for the speedier development of these areas; in order to achieve more balanced and equitable utilization of resource in the country for greater socio-economic justice" (Rule 142 of the Rules of Procedure and Conduct of Business in the Senate, 1988).

The resolutions which can be passed by the Senate under Rule 194 can cover any subject, economic, financial or otherwise. While all these recommendations of the Senate are recommendatory Senate has a role to play in these areas under the Constitution and the Rules of Business. Senators also ask questions on financial matter and the Government has been providing information on them to the Senators for discussion in the Senate.. It should be abundantly clear that a money bill is a very specific type of law and it is only a money bill and the federal budget which are excluded from the jurisdiction of the Senate. There are hundred and one other ways in which Senate has every right to discuss economic and financial policies and programmes in the country and evaluate their performance.

While money bills have been excluded from the jurisdiction of the Senate, all items contained in part 2 of Federal Legislative List and item in the 34 of the Concurrent List have been specifically brought in the jurisdiction of the Parliament (Majlis-e-Shoora) which consist of the Senate and the National Assembly. Under Article 154, clause 4, the Majlis-e-Shoora (Parliament) in joint sitting may from time to time by resolution "issue directions through the Federal Government to the Council generally or in a particular matter to take action as Majlis-e-Shoora (Parliament) may deem just and proper and such directions shall be binding on the Council." In view of this the joint sitting can pass a resolution prescribed in the Constitution and in this respect Senate and National Assembly are at par with each other. The matters on which Senate and National Assembly have to concurrently deliberate include, electricity, railways, mineral, oil and natural gas,; liquids and substance declared inflammable by the Federal Law, development of industries where development is under federal law to be in the public interest institutions, establishments, bodies and corporations administered or managed by the Federal Government immediately before the commencement date including Pakistan Water and Power Development Authority and the Pakistan Industrial Development Corporation, all institutions, establishments, bodies and corporations, industrial projects undertaken on the whole or partially by the federation or by a corporation set up by the federation or matters incidental or enumerated in this part. This covers a very vast area of the entire developmental landscape of the country. A quick look into the proposed public sector Annual Development Programme for 1989-9i shows that out of a total federal PSPD of 41.5 billion over 22.5 billion relates to these areas. If **50%** of the Peoples Works Programme is also included in this, the share would exceed 24 billion. As far as these matters are concerned they are in the jurisdiction of the Parliament of which Senate is a part and Senate has every right to examine bills, programmes, priorities and allocations to be made in these fields as well as the question of allocation of resources between the federation and the provinces, in this respect.

The Parliament is within its jurisdiction to issue direction: in these matters and such directions are binding on the Council of Common Interests and the respective governments. It is unfortunate that so far a number of constitutional organs which were provided for in the Constitution of 1973 to ensure provincial autonomy and parliamentary control over the executive have not become operational. The failure of the past governments must not become an excuse for a perpetration of these anomalies.

Article 142 and Article 97 of the Constitution have also to be carefully read to understand the scheme of provincial autonomy in the country and the manner in which it is being unfortunately flouted by the present government, although the record of the earlier governments has not been much better. According to Article 142(b) Majlis-e-Shoora (Parliament) has exclusive jurisdiction for legislation on Federal Legislative List and according to 142(c) a provincial assembly has exclusive jurisdiction in respect of items not mentioned in the Federal Legislative List or the Concurrent Legislative List. It is extremely important that as against the Indian Constitution where there is a specific provincial legislative list and the rest of the items are within the jurisdiction of the federation in Pakistan there is no provincial legislative list and all residual items are the exclusive responsibility of

the provinces. The Constitution explicitly excludes the Majlis-e-Shoora (Parliament) in respect of them. As far as the Concurrent List is concerned Federal Parliament as well as Provincial Assemblies have jurisdiction thereon and the Federal law has a precedent over a provincial law but according to Article 97 policies and programmes about the Concurrent List cannot be made by executive action of the federation only. They must be backed by an act of the Parliament. The words of the Constitution are:

"Provided that the said authority shall not, save as expressly provided in the Constitution or in any law made by "Majlis-e-Shoora (Parliament), extend in any Province to a matter with respect to which the Provincial Assembly has also power to make laws."

Matters of the so-called Peoples Works Programme concern this provision of the Constitution because more than 50 percent of it comes under the exclusive jurisdiction of the provinces and most of the remaining part relates to the Concurrent List in respect of which such programmes can be made only through an act of Parliament, a la to be approved by the National Assembly and the Senate both. In respect of the entire Concurrent List Senate has a jurisdiction in the same manner as is the case of the National Assembly.

It is unfortunate that the Council of Common Interests has not" been activated so far in the country. This is an important constitutional organ to formulate and regulate policies in relation to matters in Part II of the Federal Legislative List of the Constitution and also in relation to matters in entry 34 (Electricity) in the Concurrent Legislative List and is authorized to exercise supervision and control over its related institutions. If there is a dispute between the federation and the provinces on any matter the Majlis (Parliament) is the appellate body under Article 154. Clause of the Constitution shows that decision in a joint sitting shall be final. In view of these provisions the resolution of the Senate is a timely effort on the part of the Senate to resolve a national crises and the resolution has aptly referred to is a constitutional solution to the problem.

Two more points have to be clarified. The question of National Finance Commission deserves to be considered under the Article 160 of Constitution. This Commission should have met long ago and decided the question of distribution of taxes and revenues from there between the Federal and the Provinces. Unfortunately its report has not come and adhoc arrangements continue which give an upper land to the federation. The Federal Government has no right to bulldoze and impose its will upon the provinces while it is failing in its duty to clearly demarcate the taxes which should be collected and utilized by the provinces. On the one hand it has authority to collect most of the taxes and then distribute part of that in the provinces, under which framework it was logical and natural that the deficit of the provinces be shifted by the federation If the Government is not prepared to lift the deficit of the province and in accordance with Article 150 of the Constitution decentralize the collection of taxes and give to the provinces autonomy to levy taxes under the Constitution and as such balance their own budget. You cannot have your cake and eat it too.

It has been said that the Government of Punjab has committed a sacrilege against the federation by demanding the right to establish provincial banks. It seems that the critics have not read the Constitution carefully. I will invite their attention to Federal Legislative List, item 28, where it has been clearly stated that "State Bank of Pakistan; Banking, that is to say, the conduct of banking business by corporation other than corporations controlled by a province, which carry on business only within that province. This makes it very clear.

Under the Constitution there can be provincial banks, provincial banking corporations provided they are owned or controlled; by a province and carry on their business within their provinces. This is exactly what the Chief Minister of Punjab has asked for.

I hope these observations will clarify some of the issues on which effort is being made to confuse the public opinion.

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