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### LIMITING THE POWERS OF PRESIDENT: A STUDY OF SENATE'S BUSINESS (1985-1999)

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#### **ABSTRACT**

This study offers an analysis of the business of Senate of Pakistan. The Senate was restored in 1985 along with the increase in President's powers under 8<sup>th</sup> Constitutional amendment. The phase from 1985's semi-Presidential form of Government of Zia-ul-Haq to the proclamation of emergency in 1999 marked the testing time for the working of parliament in Pakistan. During the period, Presidents disrupted the democracy by dissolving the Assemblies; however, Senate resumed its working. The working of Senate to establish and preserve boundaries with the institution of President is the focus of study. The Senate debates are analyzed to conduct this research and the archival sources along with secondary sources are used for study. The study complies that the Senate played a vital role in legislation to limit the jurisdictions of President. The motions against the undemocratic moves of Presidents impart the control of Senate. The initiation of 13<sup>th</sup> amendment and challenging the supremacy of President indicates that Senate has extended its boundaries to the institution of President.

#### **INTRODUCTION**

General Zia ul Haq staged a coup d'état on 5<sup>th</sup> July 1977 that came to be commonly known as "Operation Fair play" (Khan, 2001). He had stated, "I will not accept a political office because I do not think I am fit for that" (Rizvi, 2009). However, instead of keeping his promise he held the office of President after Fazal Elahi Chaudhry resigned in 1978. Zia tightened his hold on the

government (Britannica, 2022). By the end of 1984, he announced for the continuation of office of President even after holding of the national elections. In December 1984, referendum was arranged to take legitimacy before general elections. After securing his own position as a President, he announced elections in February 1985. In March 1985, the Senate was also restored.

Pakistan gradually shifted from autocratically governed structure to semi-democratic polity. Zia restored so-called democracy and Parliament passed eighth amendment that empowered the President. Even the successors of Zia also used the extra-presidential powers and dissolved the Assemblies for three times. Instead of this, Senate never tended down itself and developed strong boundaries with the President.

### ***Boundary Development: An Indicator of Institutionalization***

Nelson Polsby's study, *The Institutionalization of US House of Representatives*, characterizes that boundary development with other institutions is an important factor of institutionalization (Polsby, 1968). The boundary of an institution is defined as an indicator that marks the distinctiveness of an institution from other institutions that generally differentiates the institution from its environment (McGuire, 2004). Well-defined borders from other organizations characterize the institute with a high degree of freedom to develop itself in the field. The starts and ends of the institution's limits are easily discernible so that an institute that tries to inculcate the boundaries of other institution is trying to expand its outer boundary.

### ***Legislation to Limit the Powers of President***

The Parliament of Pakistan consists of Senate, National Assembly and President. These three institutions overlap the powers of each other. However, each institution has its own boundaries. The President is entitled to give final approval to any legislative work. This may show the influence of President over the legislative institutions but Senate of Pakistan took several steps during 1985-1999 that helped the House to limit the powers of President. The steps toward the encroachment in institution of President are discussed here.

### ***Restricted the President to Summon a Session***

Constitution of Pakistan places an obligation on President to address a joint session of Parliament at the commencement of the session of each year and confers a privilege on the Senate to meet the joint session and consider the address of the President. Article 56(3) says, "At the commencement of the first session after each general election to the National Assembly and at the commencement of the first session of each year the President shall address both Houses assembled together and inform the Majlis-e-Shoora (Parliament) of the causes of its summons" (Pakistan, 1973). The President's address traditionally outlines the program of the government for the year, which program can be discussed in the joints sitting or in session of Senate individually. Senate of Pakistan occasionally raised voice against on the

failure of the President to summon a joint sitting of the Parliament as required under Article 56(3) of the constitution.

The financial year starts from July in the country and Parliament often conduct its session after the presentation of budget and monetary policy. The year 1986 witnessed that Senator Wasim Sajjad asked for the summoning of joint session by the President. The reason was to discuss the economic policies of Government during the upcoming fiscal year. He posed that the execution of economic policies without discussion in joint sitting would be a breach of privilege of Senate as well as violation of Constitution. The Law Minister replied that the said Article will be applicable if President felt the need of joint session then he will address and define the need of session. President already called a joint sitting by tomorrow on 18 July 1986, so no breach of provision of Constitution or privilege occurred. The Chairman considered this technical issue, asked for further guidance to remove the ambiguity, and deferred motion to the next week (Pakistan S. o., 1986).

After a week, Attorney General and the Minister for Justice and Parliamentary Affairs expressed their views and explained rules and laws as well as the narrative of Government. Mr. Chairman drafted a comprehensive ruling, that in future, the day or time when the two houses should meet for the President's address under Article 56(3) should be specified in advance. There should be a calendar of sitting drawing for the year as a whole before the commencement of the first session. Rules should be framed in the Rules of Procedure providing for the manner in which the meeting of the two Houses assembled together should be called and conducted (Pakistan S. o., Senate Debates, 1986).

Although the President called for joint sitting but the objective of the sitting was discussion about the fiscal policy which was already lapsed. The discussion on the motion clarified that Senate had maintained its supremacy over the institution of President. The call and question about the non-summoning of the session on President, especially after the Eighth Amendment which empowered President so much, results that the Senate never allowed to other institutions to breach the privilege of the House. The inclusion of rules regarding to summoning a session by the President clarifies the development of Senate's boundaries with reference to President.

### ***Criticism on President's Address***

President is bound to summon a session of both Houses of Parliament at start of every year, the rules of Senate also bound that the address must be laid to the house for further discussion. The House starts the discussion by motion of thanks; however, opposition or sometimes treasury benches criticize the assertions of President. This criticism generally favors the public but may cause reduction of powers of institution of President as another institution will challenge the impression and goodwill of the President. This may cause to change the policies of government. The opposition criticized often the President's address in Senate of Pakistan to make influence to modify the policies of government for the coming year.

A motion of gratitude is used to consider the President's address (Pakistan G. o., Constitution of Pakistan, 1973). A Minister places a copy of the President's Address on the Table as soon as possible following the President's Address. The Chairman set aside one or more days for discussion of the issues raised in the President's Address, and may suspend or vary the rules as required for this purpose (Pakistan S. o., Rules of Procedure and Conduct of Business in the Senate, 2012).

The joint sitting of Majlis-e-Shoora (Parliament) held on 19 April 1987 and President General Muhammad Zia-ul-Haq addressed to Members (Pakistan N. A., 1987). According to rules of Senate, it was necessary to lay the address by a Minister and discussion on the address was necessary. However, address was not presented and motions against the delay were led to the Senate. On 29 July 1987, Mr. Wasim Sajjad addressing with motion of thanks started the discussion while several Senators requested to amend the motion by criticizing due to failure of presentation of accurate appraisal of the policies.

Mr. Ahmed Mian Soomro regretted on non-discussion of previous two addresses, the delay in trails of political cases, need of constitutional amendment, elimination of corruption, confrontation of the difficulties of common person, revision of budget and announcement of local bodies' elections were not explained so this was not the verbatim Address. Molana Kausar Niazi expressed that President did not highlight the five points' plan of Prime Minister Muhammad Khan Junejo. Mr. President said that this is a thought of Prime Minister so that means President did not carry this plan. Nation suffered a lot during Martial Law, an elected Prime Minister was hanged up, media faced many problems, heroine and Kalashnikov culture was introduced and he was praising Martial Law and Military Courts. His words were so inappropriate. Mr. Javed Jabbar expressed that it was an address by Chief of Army Staff speaking to Parliament. It was at the same time playing to the public gallery and it was calculated media oriented speech. Further he criticized the frequent change in cabinet, defense strategy, foreign policy, domestic situation caused due to Mujahideen, difference in views of President and Prime Minister and accused Martial Law.

Minister of Foreign Affairs, Sahabzada Yaqub Khan stated that I believe this criticism was sincere and that the members deployed the reasons on which their dissatisfaction with the address of President was based. He replied on two points raised by the members on foreign policy and Armed Forces. He elaborated Pakistan's Afghanistan policy and stated the importance of indulgence in Russian-Afghan war. (Pakistan S. o., Senate Debates, 1987).

Major General Shirin Dil Khan Niazi criticized the Government on several points, i.e. bad debts, rights off, non-discussion of budget, agriculture and protection of forests, standing committees, law and order, pending cases in courts and non-effectiveness of administration. Corruption, electricity and water crisis, women empowerment and reforms in education system were very important issues, which were not addressed by President. While Brig. (Retd) Abdul Qayyum Khan articulated on presentation of budget in Senate, foreign

policy with Afghanistan, Russia, America and India, Kashmir dispute, educational reforms and to some extent in favor of Army. Senator Muhammad Tariq Chaudhary expounded that the address was sign of frontogenesis between Law and present Government. He stressed on worst law and order situation, on the importance of party based elections and on redefining of foreign policy with India (Pakistan S. o., Senate Debates, 1987).

The address as was on personal will of President so several members of the House denied it. As it was not presented with the consent of Government, so that criticism was justified and it raised several questions on the institute of President. The criticism on the presentation of the President's address laid a positive impact for the next time. As, President addressed with a joint sitting following year on April 7, 1988 and the Law Minister presented the address to the house on April 14, 1988. The address was again opposed by the opposition as well as from government benches.

Mr. Hassan A. Sheikh opened remarks that he belonged to the government party and it was his duty to follow the directions given by the leader of the party but he had not completely disassociated with motion of thanks. The Presidential address was not a parliamentary parlance as the address denoted the policy of government, achievements of past and future ambitions. President himself stated that he ignored the draft of Government while Article 48 remarked the President should act in accordance with the advice of Cabinet and Prime Minister. The Martial Law was lifted up from country and now the democratic government had its hold so the Cabinet, Prime Minister and Parliament stood responsible and President would not responsible for any further discrepancies. He further criticized his speech on the points, i.e. the reference of the speech of Quaid-i-Azam to the first constituent Assembly, stance of President on Martial Law and restoration of Constitution, corruption, dishonesty, misuse of Eighth Amendment by the President and on the insignificance of the Cabinet in President's eyes.

Professor Khurshid led some amendments to add in the motion regretting that the address was failed to spell out the policies of Government. It included the failure in legislative program for the year, enforcement of Sharia Laws and protection of human rights, reorganization of economy, control on deterioration on law and order, tides of crimes, introduction of National language and repatriation of stranded Pakistani in Bangladesh. He pointed out several issues, i.e. the contradiction between words and deeds of President, distortion of constitution by acts, differences with Prime Minister, misuse of discretionary powers and financial interpretation. Other issues were factual errors in Sharia Laws, non-seriousness on political parties act, local bodies' elections, open ballot order for elections, uneducated unemployment, international debts, absence of educational reforms, indulgence of Army in public matters and mal-policies with Afghanistan (Pakistan S. o., Senate Debates, 1988).

Senator Tariq Chaudhary enlisted the problems of the country including issue in implementation of constitution, crisis in Judiciary, malpractices of Bureaucracy, Army, smuggling, foreign policy, sovereignty of provinces and

some other points similar to Prof. Khurshid. Senator Muhammad Mohsin Siddique threw light upon division based on linguistics, provincialism and ethnicity. Other issues were crisis in law and order, injustice, corruption, unaccountability of Armed forces and immature foreign policy (Pakistan S. o., Senate Debates, 1988).

President Zia-ul-Haq dissolved the National and Provincial Assemblies on May 29, 1988, which created a gap in working capacity of Parliament. Motions for this purpose rose in the House, it caused a benefit for the Parliament and President declared the new elections date during the address with the Senate (Pakistan S. o., Senate Debates, 1988). Criticizing the address, Mr. Javed Jabbar introduced an amendment due to serious misinterpretation of the Constitution concerning the binding obligatory that elections should be held within 90 days of the date of dissolution of National Assembly (Pakistan G. o., Constitution of Pakistan, 1973). He emphasized on unethical moves of different institutions that weaken the Constitution and Parliamentary norms. He accused that the wording and attitude conveys that address was not delivered by the President but by the Chief of Army Staff. The point of delimitation raised by the President was also invalid because census had been done in 1981 and they still need time for re-examining the delimitation.

Mr. Hassan A. Sheikh raised a point that without the advice of Prime Minister how President can address under Parliamentary practice. He criticized the composition of Cabinet without Prime Minister and stated that, "today, the President is the Prime Minister as well as the President. He presides over the Cabinet meetings and also call himself the President of Pakistan. There is no provision in the constitution for President to preside over the Cabinet meetings. I am prepared to say that this is a President's address, this is the Prime Minister's address" (Sheikh, 1988) No doubt, the House had majority with the members of ruling party, in spite of this, it was noticeable that House raised several question over the President.

President Zia-ul-Haq died in a plane crash and according to the Constitution of Pakistan, Chairman Senate Ghulam Ishaq Khan elevated to the Presidency. He appeared on national television after the contentious and mysterious aviation disaster in Bahawalpur and declared General Zia-ul-Haq's death. Ishaq Khan was the second in line of succession to Pakistan's President, according to the Pakistani Constitution (Blood, 1995). He served as interim president until the elections, following the Constitution's succession requirements (Government, 2022). After the General Elections 1988, Ghulam Ishaq Khan secured 608 votes for presidency, competing against four other candidates. He participated in Presidential elections on a PPP platform and also backed by IJI (Foundation, 2022). He addressed to the joint session of Parliament on December 14, 1988, which was presented to Senate for further discussion.

The Senate discussed the address of the President Ghulam Ishaq Khan on March 30, 1989. Mr. Javed Jabbar opened debate by acknowledging the President and stated that President's address reflects historic transition of the nation. After that, he clarified the stance of his government about foreign policy with Soviet Union and China. Further, he talked about the economic

policies, health policies, working for women, Judiciary and law and order situation in the country. Senators debated on government policies but did not criticize the Presidential address as he partially talked about government policies.

The address of President in the years 1990 and 1991 was not opposed at any point. Both side of benches, Government and opposition admired the Presidential address. In 1990, President Ghulam Ishaq Khan dismissed the Government of Benazir Bhutto under article 58-2(b) just after 20 months of Government (Crossette, 2022), and caretaker Government discussed the address. However, the PPP's Senators opposed the policies of Government and dismissal of Government of Benazir Bhutto. In the following year, the Gulf issue was at its peak and the address of President was generally on foreign policy. It was witnessed that democratic elected President was not opposed at any ground.

On December 19, 1991, President Ghulam Ishaq Khan addressed with the Parliament and during the address Opposition Leader, Benazir Bhutto severally interrupted President. The address came under consideration of Senate in February 1992. The interruption of opposition leader during the speech of President was criticized by different Senator even Qazi Hussain Ahmad declared this 'intentional attempt to derail constitutional institutions, violation of democratic norms and to create crisis in the country (Ahmad, 1992).'

Opposition leader, Manzoor Ahmad Gachki criticized the Presidential address as Benazir Bhutto protested it during the address. Manzoor Ahmad Gachki declared this address as, 'disputed and controversial'. He stated, "The current speech was a written draft of Government, which lessen or vanished the facts from the speech. President of Pakistan did not elaborated well about the Law and Order situation. The country remained about 28 years under Martial Law and we are still living under 'partial Martial Law.' He admired the working of Parliament while bulks of laws were implemented through Presidential Ordinances. He stated that, press was working independently, but why media persons faced violence and why there houses were burnt. They victimized the political Leaders and talked about the human rights" (Gachki, 1992). He accused that President misinterpreted the economic and foreign policy.

President Ghulam Ishaq Khan addressed with a joint session on 22<sup>nd</sup> of December 1992, which came under discussion on February 22, 1993 in the Senate. Syed Abdullah Shah criticized the speech of President by raising several points. He criticized the points of President on Law and Order situation, foreign policy, rigging in 1990's elections and especially on incident of demolition of Baburi Masjid. Similarly, Dr. Abdul Ghafoor Jatoi also criticized on performance of Government, political culture, crisis in Sindh and on other points (Pakistan S. o., Senate Debates, 1993).

Under Article 58-2(b), President Ghulam Ishaq Khan dismissed the Government of Nawaz Sharif in 1993 and appointed Mir Balakh Sher as interim Prime Minister. Nawaz Sharif filed petition against the move of

President. The Supreme Court concluded on May 26, 1993 that the Presidential decision was unlawful, that the president could only dissolve the assembly if there had been a constitutional breakdown, and that the government's inefficiency or corruption did not matter (Dutt, 2009). The political impasse lasted, and both Ishaq Khan and Nawaz Sharif were compelled to resign after a joint intervention by the court and the military (Foundation, 2022).

Prime Minister Nawaz Sharif resigned and Assembly was dissolved on July 18, submitting to military and opposition legislators led by his predecessor, Benazir Bhutto. President Ghulam Ishaq Khan, his main opponent, also resigned as part of an accord mediated by the army to end a political spat between the President and Prime Minister that had crippled the government. Ishaq Khan announced his resignation in a letter to the Speaker of the National Assembly, while Sharif announced his in a nationally televised speech. Moeen Qureshi, a former World Bank executive, was sworn in as a caretaker prime minister to supervise the elections. As required by the constitution, Ishaq Khan administered the oath of office to Qureshi before handing over the presidency to Senate Chairman Wasim Sajjad (Times, 2022).

In accordance with Constitution, the occupation of the institution of President by Chairman Senate itself denotes the supremacy of Senate. Wasim Sajjad did not indulge in violent language against the opposition and on various occasions tried to mediate between various political factions in the Government (Pakistan, 2003). During this period, general elections were held in the country and power was transferred to the elected government.

Wasim Sajjad, as acting President of Pakistan, addressed to the Parliament consisting of newly elected Government on October 27, 1993. He congratulated to newly elected members and asked for constituting a better Government that must have to work for the betterment of Pakistan. The Government was just sworn in so he never discussed the plans. He tried to brought opposition and Government on one page. The Senate started discussion on Presidential address on January 3, 1994. The speech was a balanced speech so the Members did not criticized it. However, Members of Pakistan Muslim League criticized the abolishing of Government and newly elected Government's policies.

After the General Elections 1993, PPP came into power and Prime Minister Bhutto and the Pakistan People's Party backed Sardar Farooq Leghari because of his credentials and "clean reputation" in comparison to politicians suspected of vast corruption and white collar crimes. He accepted the nomination and ran for President against Wasim Sajjad, the Acting President and Nawaz Sharif's PML (N) nominee. Leghari received 274 votes in indirect voting, compared to 168 votes for Wasim Sajjad. Finally, he was elected President of Pakistan for a five-year term on November 13, 1993 (Foundation, Sardar Farooq Leghari Becomes President, 2022).

On December 26, 1994 Senate discussed the President Leghari's address and Chaudhary Muhammad Anwar Bhinder criticized that the speech was not

according to basic norms. He neither highlighted the issues of public nor discussed the measures. It was a mini budget, which was presented by the Finance Minister. He further criticized on law and order situation, non-implementation of Constitution, political detention, economy and foreign policy (Pakistan S. o., Senate Debates, 1994). In November 1995, Raja Zafar-ul-Haq criticized on law and order situation in Karachi, economic progress, high rate of inflation, political unrest, law and order situation in Karachi, drug mafia, injustice, abusing on media and corruption (Pakistan S. o., Senate Debates, 1995).

The Government of Benazir Bhutto was dismissed by President Farooq Leghari in 1996 and 1997 witnessed the winning of PML (N). The relation of President become fair with PML (N) and with the introduction of 13<sup>th</sup> amendment, Nawaz secured his Government from 58-2(b) (Bahadur, 1998). The address of President Farooq Leghari in 1997 and 1998 was not opposed much and PPP just opposed the moves of Nawaz Government. The criticism from Senator identified that Senate tried to expand its boundaries to the institute of President.

### *Thirteenth Amendment to Limit President's Powers*

President Zia ul-Haq's Government passed the Eighth Amendment in 1985, allowing the president to dissolve Parliament and dismiss the Prime Minister. Multiple Presidents have used this power to depose elected Prime Ministers based on completely unfounded charges. There was no necessity for evidence in this section; instead, entire elected governments might be ousted based on unfounded charges or whims (Mohammad, 2010). President Zia picked Junejo as Prime Minister through an invitation to establish the civilian administration in accordance with the restoration of the constitution after conferring with Pir Pagara (Lyon, 2008). Due to some rivalries, Zia-ul-Haq diminished his own appointed Prime Minister's cabinet using power under Article 58-2(b) firstly on May 29, 1988 (Aziz, 2016). President Ghulam Ishaq Khan ousted the first government of Benazir Bhutto (Coll, 1990) and first government of Nawaz Sharif (Gargan, 1993) by same means. Similarly, the second government of Benazir Bhutto ended by using Presidential power under the same Article by President Farooq Leghari (Khan, 1996).

Mr. Gohar Ayub, Minister of Foreign Affairs initiated the Constitution (Thirteenth Amendment) Bill, 1997 in Senate on April 1, 1997. Normally the bill would go to the concerned standing committee but Mr. Gohar Ayub asked to dispense with the thirteenth constitutional amendment bill so it was taken into consideration. As the bill was presented with mutual consensus of Government and opposition, so House considered the bill immediately. Mr. Khalid Anwar stated the purposes and objects of the bill and highlighted the drawbacks of power of President to diminish the Government. The bill was to deprive the President of Pakistan of certain powers but the President Farooq Leghari graciously supported it. Even the opposition leader, Benazir Bhutto also decided to support the bill (Pakistan S. o., Senate Debates, 1997). The initiation of this step was to reduce the unjustified powers of President.

The bill abolished article 58-2(b), amended Article 101, dealt with the appointment of Governors of provinces by Prime Minister and the appointing authority of Army Chief, Navel Chief, Air Chief and the Joint Chief would be Federal Government instead of President. The bill was reversal of eighth amendment but Article 2(a) that articulates Objectives Resolution and Sharia Court was not abolished. The motion was adopted by the favor of 79 members and no one opposed it (Pakistan S. o., Senate Debates, 1997).

On the same day, National Assembly conducted its session and Syed Zafar Ali shah moved the passed bill by Senate for further consideration. The motion got 190 votes in its favor and none was against it. Therefore the motion stood passed by Two-Third of the total membership of the Assembly (Pakistan N. A., National Assembly Debates, 1997). The bill was sent to the President for his assent, which was granted on third of April 1997 (Pakistan G. o., The Gazette of Pakistan, 1997).

The thirteenth Amendment reversed the eighth amendment and restored the Constitution's basic federal parliamentary nature. This change limited the President's powers, and he was now required to act on the Prime Minister's suggestion, which was binding. The executive was given more power in the original draft of the constitution (Khalid, 2013). Senators agreed to initiate the thirteenth amendment bill and played vital role for the acceptance. The bill was quite necessary to limit the jurisdiction of President. Limitations over other institutes of Parliament, no doubt, strengthen the institute of Senate. The Senate proved its supremacy and developed its boundaries with the institute of President.

## CONCLUSION

The period 1985-1999 witnessed four times dissolution of National Assembly by Presidents but Senate worked effectively without any pressure. President Zia tried to influence the legislation by issuing ordinances but at the same time, Senate was condemning the irregular moves of President and Government. Similarly, the Senate discussed the matters of dissolution of Assemblies but did not oppose the step of President as the President used constitutional powers. The pressure from Senate to implement and to follow the Constitution ensured the supremacy of the House over the President. The criticism over addresses of President Zia unfolded his malpractices. Similarly, the Senate opposed the practices of Federal Government during 1988-1999. Though, it took too long to limit the powers of President but the initiative of 13<sup>th</sup> amendment taken by Senate is undeniable. It spelt out that the Senate was playing its role to strengthen the Parliamentary system instead of semi-Presidential system. It is witnessed during 1985-1999 that Senate effectively grown its external boundaries with the institution of President.

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