

POLICY BRIEF



Centre for Public Policy & Governance
Forman Christian College (A Chartered University)

Senate Elections 2015: An Assessment and the Way Forward

Dr. Saeed Shafqat

Professor and Founding Director,
Centre for Public Policy and Governance
Forman Christian College

Maheen S. Khosa

Research Fellow
Centre for Public Policy and
Governance

Introduction

The Senate Elections were held on March 3rd 2015. These were the 12th Senate elections. The first elections of the Senate were held in 1973 and the second in 1975. The Senate and its members have six years term but fifty percent retire after three years and mid term elections are held to fill these seats. In 1977 the military regime of General Zia-ul Haque dissolved the Senate. With the restoration of democracy in 1985, the Senate was re-created. Then again midterm elections were held to fill the fifty percent seats in 1988, 1991, 1994 and 1997. In 1999, once again the military regime of General Pervez Musharraf dissolved the Senate. It remained dissolved for four years and was re-created in 2003. Subsequent mid-term elections were held in 2006, 2009 and 2012 and now in 2015.

Despite allegations of lack of transparency and 'horse trading', the elections were smooth, political parties demonstrated skills of bargain, compromise and some degree of consensus in the process. With the exception of the Federally Administered Tribal Areas (FATA) and Khyber Pakhtunkwa (KP), political parties were, for the most part, able to work through the electoral process fairly smoothly. Additionally, there was no clear evidence of exchanges of money for getting votes despite projections and claims on that front from the media¹. Doubts about the integrity of the elections were created but for the most part were restricted to FATA, KP and Baluchistan. FATA became an exceptional case from previous Senate elections because of the issuance of the late night Presidential Ordinance on FATA regulations, altering the rules for Senate elections in FATA. There were two problematic aspects of this ordinance; a) the fact that it bypassed the parliament and the blatantly unconstitutional nature of the way it was issued reinforcing the perception that PML N has no respect for democratic norms and conventions; and b) the complete and utter inability of the Election Commission of Pakistan (ECP) to handle this crisis speaks volumes about the institutional capacity and the vulnerability that organization suffers from.

The media projections that PML-N would be gaining edge in the Senate elections remained illusionary. The major opposition political parties led and energized by former President Asif Zardari showed prudence and foresight in fielding a consensus candidate for the position of Chairman Senate—Mian Raza Rabbani. A renowned and very well respected lawmaker Senator Rabbani is a rare breed among Pakistani

politicians. He is widely recognized as a democrat, a person of integrity, principles, votary of rule of law, above partisanship and one who was instrumental in steering and overseeing the passage of monumental 18th Constitutional Amendment. He has been elected to the Senate six times since 1993. He joined Pakistan Peoples Party (PPP) in 1968. A close aide to former Prime Minister Benazir Bhutto, he became the deputy secretary general of the party in 1997 and held that position till the present. He resigned from that position before taking the oath as Chairman Senate. He was also appointed leader of the opposition in the Senate in 2005². Given these impeccable personal and political credentials, Prime Minister Nawaz Sharif and his PML-N found it expedient to endorse Rabbani's candidature as the consensus candidate.

In short, Rabbani's elevation as consensus Chairman of the Senate holds the promise of its emergence as a responsible, deliberative and proactive legislative body. On the other side the election of Maulana Abdul Ghafoor Haideri, JUI-F (Baluchistan) reveals both the opportunism of Pakistani political parties and also the centrality of religion and increasing influence of religious political parties in Pakistani politics. It shows two significant trends first, how religion is intertwined with politics and constrains promoting principles of constitutional liberalism in Pakistani parliamentary politics. Second, pragmatic approach that Maulana Fazalur Rehman adopted to seek the support of major main stream political parties and shrewdly cut a deal with opposition parties to support Raza Rabbani in return for mustering support for JUI-F candidate as Deputy Chairman Senate. Maulana Haideri's election as Deputy Chairman is an important indicator of how major political parties (PPP, PML-N, ANP, MQM) have preferred to accommodate religious groups compared to those espousing ethnic causes or provincial rights. How democratic dispensation and the rise of religious parties quite disproportionate to their size in the Senate unfold, would be instructive to watch? It is equally relevant to note that JUI (under late Maulana Mufti Mahmud) played a progressive role in the peripheries of KP and particularly in Baluchistan by challenging and 'standing up' against the tribal leaders. Despite, JUI-F's tilt towards the Taliban since 1990s the party has continued to provide an alternative to tribal leadership, which is steeped and couched in Madrasshs and religious zeal emanating from there. This shows the ascendancy of the religious over the political in the Pashtun Belt stretching across KPK and Baluchistan, although tribal leaders and Sardars are becoming more visible in re-claiming the lost ground.

This policy brief will assess the role and functioning of the Senate and analyze how (or if) it has evolved. What is the significance of recent Senate elections? What impact could these have on strengthening the legislative capacity of the parliament and fostering democratic values in the future? It will provide an overview of changing personal backgrounds of the Senators; and assess to what extent, if any personal background, merit, and socioeconomic background contributes in getting an individual selected as a candidate and elected as a Senator. The brief will attempt to identify the emerging patterns of the Senate and also make a few specific recommendations in making the Senate a robust and responsible legislative body.

Senate of Pakistan: An Overview

The Senate is the Upper House of Parliament in Pakistan's bi-cameral form of Parliament, with the National Assembly (NA) forming the Lower House. While the Lower House is meant to be the real arena of political contests, the Upper House is intended to have a restraining, moderating and guiding influence on the Lower House.

After gaining independence in 1947, Pakistan's political leaders could not agree on the formulation of the constitution. In 1956 when a constitution was adopted before it could be effectively operationalized, the Constituent Assembly was overthrown by the military in 1958. In 1962, when the military government presented a new constitution, it abandoned the parliamentary form of government and imposed presidential form with single legislature. The presidential system collapsed with the fall of president Field Marshal Mohammad Ayub Khan in 1969. In 1970 the first General Elections were held and generally regarded fair. In East Pakistan, Awami League emerged as the largest party, while in the West Pakistan (particularly Punjab and Sindh) the Pakistan People's Party emerged as the dominant party. However, due to power struggle among the political parties and lack of intent on the part of military to transfer power to the elected representatives, especially the Bengalis, East Pakistan, representing the country was dismembered, leading to the emergence of a separate state of Bangladesh, the Pakistani State collapsed. The presidential system lingered on for a while, till the adoption of the 1973 Constitution by the parliament. In 1971 and with the breakup of Pakistan, the presidential form of government fragmented into pieces. With the break up Pakistan the political leadership and civil society woke up with the rude shock that reviving and strengthening Pakistan meant adopting a federal form of constitution and government.

Thus, in December 1971, as power was transferred to PPP, it had representation in all the four provinces but had dominant majority only in Punjab and Sindh, while in the North Western Frontier Province (now Khyber Pakhtunkhwa (KP) and Baluchistan the National Awami Party (Wali) and JUI had majority of seats. Therefore, while at the federal level the PPP formed government, at the provincial level it had to concede formation of provincial governments to NAP and JUI. Given this reality, the political leaders and political parties were conscious that a federal constitutional set up would be a desirable goal to resurrect Pakistan. During 1972-73, after considerable deliberation, political bargain and negotiations that all the major political parties in the National Assembly of Pakistan adopted the constitution in April 1973. There was realization of the need for a truly federal structure, providing equal representation to all ethnicities and regions despite their geographical size and population³. The 1973 constitution therefore accounted for the demands of the smaller provinces by creating a bi-cameral system of parliament in Pakistan comprising a parliament, comprising both a population chamber (the National Assembly) and a territorial chamber (Senate)⁴.

Manifestation of Pakistani Federation

Following the theory and spirit of federal principles, the main purpose for the creation of the Senate of Pakistan was to give equal representation to each of the federating units. The membership of the National Assembly is based on the population of each province. While the Senate provides equal representation to all the federating units, irrespective of population size, thus, balances out the potential for provincial inequality in the National Assembly. Equal membership in the Senate is thought to serve as a medium through which any doubts and apprehensions regarding deprivation and exploitation between the provinces and the federation can be dispelled. In that spirit, the Senate is expected to oversee that any and all legislation protects the interests of the federation and promotes national cohesion and harmony. And also alleviates the fears of the smaller provinces regarding domination by any one province because of its majority⁵.

Structure and Functioning

The Senate is a permanent legislative body comprised of 104 members. The Constitution of Pakistan lays out rules, procedures on the composition and functions of the Senate and how it may be governed. The term of each senator is six

years⁶. Half of the elected senators retire after every three years, and new members are elected in their stead. While the National Assembly dissolves automatically⁷ at the expiration of its term, the Senate is not subject to dissolution⁸. The highest office in the Senate is that of the Chairman, followed in authority by the Deputy Chairman. The term of office to be held by both is also three years⁹. In terms of legislation, a Bill cannot become a law unless both houses of the Parliament pass it. A notable exception to this is the Finance Bill, which remains the sole prerogative of the National Assembly.

Of the 104 seats in the Senate, 23 seats are allocated to each province; four are allocated to the Federal Capital and eight to the Federally Administered Tribal Areas (FATA). Of the 23 seats allocated to each province, fourteen are general seats; four are reserved for women; four are for technocrats and one seat from each province is reserved for non-Muslims. The Senate was originally comprised of 45 members. The membership was raised to 63 in 1977 and then to 87 in 1985. The membership of the Senate was again raised from 87 to 100 in 2002¹⁰. It was finally raised to 104, following the 18th Constitutional Amendment passed during the tenure of the PPPP government with the addition of four seats for non-Muslims¹¹. Prior to the 18th Amendment there were no special seats for Non-Muslims in the Senate. This is perhaps indicative of the gap between the actual purposes of the Senate as opposed to Senate in practice. The Senate catered for protecting provincial representation but it appears that the political parties have now woken up to a realization that minorities need to be given representation in the Senate, as there was no representation of non-Muslim minorities, hence the creation of four additional seats.

| Year | Total | Province | | | | FATA | Federal Capital |
|------|-------|----------|---------------------------------|-------------|-------------|------|-----------------|
| 1985 | 87 | 19 | | | | 8 | 3 |
| | | General | Ulema/Technocrats/Professionals | | | | |
| | | 14 | 5 | | | | |
| 2002 | 100 | 22 | | | | 8 | 4 |
| | | General | Women | Technocrats | | | |
| | | 14 | 4 | 4 | | | |
| 2010 | 104 | 23 | | | | 8 | 4 |
| | | General | Women | Non-Muslims | Technocrats | | |
| | | 14 | 4 | 1 | 4 | | |

Senate Committees, Functions and Performance

All functions in the Senate pertaining to legislation, investigation, overseeing and monitoring government operations are all conducted through Senate Standing Committees. These committees are formed under the Rules of Procedure and Conduct of Business in Senate 1988. These rules also guide the composition and functioning of the committees. Each Standing Committee deals with particular subjects assigned to it under the rules for the allocation and transaction of the business of government or any other matter referred to it by the Senate.

In theory, a system centered on standing committees is thought to be vital to the proper functioning of a parliamentary democracy. Since committees are divided by subject matter, it allows for deeper and specialized scrutiny on each issue as opposed to the more general discussion that may take place on the floor of the house. It also allows for consistency in legislation since each subject specific legislation goes through the same committee. Unfortunately, Pakistan has a rather inefficient committee system. At present, there are 28 Senate Standing Committees as well as several other functional and house committees. Some of the most prominent and vital Standing Committees include Defense, Foreign Affairs and Finance.

The purpose behind these committees is to ensure executive accountability but, in practice, these committees have limited influence in improving the government functioning or changing the direction of its policies. Their functioning is largely seen as being partisan and not objective. Moreover, contrary to being a tool to oversee the executive and act as check on government, they are seen to be firmly under control of government, principally through ministers determining the subjects of inquiry¹². Committees, and by extension the Senate, are thought to be under the control of the government, rather than an effective, independent oversight mechanism for the lower house and the executive. The most glaring example of this is the Finance Committee as it is constitutionally limited to merely presenting recommendations on money bills which the lower house is under no obligation to abide by. Given the nature of the subjects they deal with, there is a certain amount of prestige associated with the other committees mentioned here. However their role is also tied directly to whatever is passed in the National Assembly and act merely as a rubber stamping mechanism for legislation emerging in the lower house.

It is ironic that in public perception and also among the political parties the legislative and oversight functions of the Senate are not fully understood and recognized. Political parties, while choosing candidates for the Senate, put greater premium on personal/party loyalty as opposed to worthy, qualified and deserving candidates. The popular perception is that the Senate elections are merely an exercise in 'horse-trading' between political parties with seats being sold off for exorbitant amounts of money. It would then be interesting to assess exactly what sort of candidates have historically become a part of the Senate, as well as those vying for seats in the upcoming elections. While it is difficult to prepare a complete socio-economic profile of current and previous senators, it is worth taking a broad look at the composition of the Senate and assessing the nature of the people the upper house has historically attracted.

There is hardly any study that could throw light on the socio-economic background of the Senators. However, on the face of it, the biggest percentage of Senators belongs to the land owning or agriculturist families, the other significant group belongs to business backgrounds. In terms of professional affiliations, the highest percentage tends to be from a legal background. Most Senate members belong to and are nominated by the political parties, who have exposure to national politics, a small number do not have that experience or exposure. The average age of Senator is around 59 years. There are few members of the upper house who would be in the mid to late thirty age- bracket. Legislation initiation remains limited at the Senate and it plays the role of approver of legislation and regulation. Low attendance, lack of quorum, poor response to questions and absence of meaningful debate on issues of national significance also promote the perception that Senate is cosmetic though still a prestigious body.

The 18th Amendment and the Senate

In addition to the number of seats, the 18th Amendment also significantly enhanced the role and functions of the Senate¹³. In terms of basic functioning, the total number of minimum working days for the Senate was increased from 90 to 110 in a given calendar year¹⁴. Following the 18th Amendment, the report on the observance and implementation of Principles of Policy is now also presented before the Senate by the President; in addition to the National Assembly, for discussion¹⁵. As mentioned above, all the Bills have to be passed in both houses to become law; except those related to finance or monetary affairs. The Senate can, however, make recommendations on

these bills that the National Assembly may or may not choose to incorporate. Another change of significance is that the President cannot promulgate any ordinance when the Senate is in session. Previously this was restricted only to the National Assembly¹⁶.

Prior to the 18th Amendment, the Senate had a period of seven days in which to make these recommendations. After the Amendment, this time period was raised to fourteen days. It is interesting to note that the Senate has not yet been empowered to originate money bills, which can only originate in the Lower House even now.

Although the Senate was established with that lofty goal in mind in the 1973 constitution, it is debatable how successfully this state organ has actually performed its role. Reports of the Senate's performance over the years suggest that the body continues to be a largely cosmetic one and functions at the minimum possible level mandated by the constitution. Media reports consistently point out lack of quorum, disinterest among Senators on debating issues and formulating legislation. There is a growing realization that the Senate needs to be empowered and re-vitalized both in terms of functions and performance. However, particular attention needs to be paid on inducing behavioral change among the Senators on the conduct and proceedings of the Senate.

Poor performance on part of the Senate combined with weak legislative record raises issues about the capacity of the Senators, this puts pressure on, the Council of Common Interest (CCI) that seemingly is emerging as the sole body for the harmonization of federal-provincial relations, particularly post the 18th Amendment. The powers and composition of the CCI have been considerably refurbished following 18th Amendment¹⁷.

It is pertinent to note that despite the enhanced representation of smaller provinces in the Senate, its impact has remained limited because of the asymmetrical policy scope of the two houses. Most tellingly, as indicated earlier repeatedly the Senate has no control over the money bills¹⁸. Even following the 18th Amendment, the Senate is merely allowed more time to make suggestions on monetary and financial bills, but has no actual control. Secondly, the Senate has no actual role in the formation of the government, which remains the prerogative of the National Assembly. By extension, since the Senate has limited powers of governance and legislation, it will also have

limited oversight powers to scrutinize the government of the time¹⁹. These factors have contributed significantly to ensuring that the Senate remains a largely cosmetic body without any practical use.

Senate Elections 2015:

The 2015 election to the Senate, as is constitutionally mandated, was held in accordance with the Proportional Representation (PR) system by means of single transferable vote (STV)²⁰. The ECP was responsible for conducting these elections.

Prior to the 2015 elections, the PPP held a clear majority in the Senate with 41 seats, with PML (N) at 14 seats, and ANP at 12. Muttahida Qaumi Movement (MQM) and JUI F were in third place with seven seats each. For the current elections, 52 seats were available. The seat allocation is Sindh and Punjab 11 each, while Balochistan and KPK have 12 each. Elections were also to be held on four seats from FATA and two from Islamabad²¹.

As with previous Senate elections, these elections were also predicted to be another exercise in political horse-trading and bartering of interests among the political parties and their Members of National Assembly (MNA) and Members of Provincial Assembly (MPA), with most tickets awarded to the party loyalists and wealthy. There were – predictably if somewhat disappointingly – very few new faces if any contesting the senate elections and speculation is already rife that tickets have been sold to whomsoever was willing to pay the highest price. In a retroactive and tentative manner characteristic of government functioning in Pakistan, in the weeks leading up to the elections, political parties considered the need for greater transparency in the Senate elections to root out horse -trading. Amendments were considered but not brought to Parliament prior to the elections. The proposed 22nd Amendment (show of hands) however, were restricted to voting procedures and would unfortunately have had little to no impact on eliminating electoral horse trading in the Senate.

Despite these apprehensions, as noted in the introduction, the Senate elections proved to be a more sound electoral exercise than predicted. It remains to be seen whether this translates in terms of performance of the Senate as a parliamentary body. If previous Senate performance is an indicator, there is still a long way to go before the institution fulfills its potential in terms of facilitating a truly representative and transparent

federal, democratic system of governance. Therefore, we need a comprehensive reform package for strengthening the Senate and making it a transparent, effective, efficient, proactive and deliberative legislative body. The direction of debate on Senate reform package must address and include, discussion on enhancing the capacity of Senate committees, merits and demerits of holding direct elections and prospects of initiating Finance Bill in the Senate.

The Senate – Way Forward:

1. First, Senate must be recognized as body that reflects the federal spirit; harmonizing and blending provincial interests as federal interest. That implies strengthening the monitoring, evaluation and hearing capacity of the Senate and its parliamentary committees. In that spirit there is need to enhance the oversight capacity of the Senate to check Executive authority.
2. Secondly, there is need to initiate discussion on the merits and demerits of holding direct elections for the Senate. Simultaneously, devising procedures to make the current Senate electoral system transparent and credible, which enhances the representative character of the Senate. So that it plays a more vigorous role in law-making, and must also curb the tendency of passing bills in haste or without adequate reading and

deliberation.

3. Thirdly, it may be useful to seriously explore why constitutional amendment should be made to allow a Senator to contest for the election of the Prime-Minister.
4. Fourthly, it will be a great boost to allow initiation and also scrutiny of the Finance Bill in the Senate.
5. Fifth, it may help to devise ways to promote Senate Committee Hearings on appointment of key constitutional offices. In that spirit assess the role and mandate of major Senate Committees.
6. Finally, every effort must be made to dispel and curb the tendency of whitening Black Money through Senate elections by devising laws and procedures that ECP must enforce and political parties must agree to comply.

To sum up and conclude and to pursue the implementation of above recommendations, we feel Senate is a body that is larger and more representative and thus could play a more natural and effective role in promoting harmonization among the federating units. Thus, it will be only appropriate to strengthen the legislative and executive oversight functions and empower the Senate further.

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End Notes

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Email: cppg@fccollege.edu.pk, <http://cppg.fccollege.edu.pk>



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