

Assessment of Institutional Constraints on Parliamentary Sovereignty in Pakistan

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Abstract

In this research paper detailed analysis of various factors that impose limitations on parliamentary sovereignty in Pakistan, with a particular emphasis on institutional constraints is presented. The present study presents a qualitative research approach, consisted of historical background, deep study of literature review within the legal framework and leading case laws of apex courts. By this approach the research aims to highlight the fundamental factors that cause hindrances in guaranteeing the supremacy of parliamentary sovereignty in Pakistan. This paper aims at pointing out the reasons which have restricted the autonomy of the Pakistani parliament. Firstly, the dominance of the executive on the legislative branch of the state is considered as the prominent factor limiting the Parliamentary Sovereignty. Secondly, judicial overreach in the name of judicial review is another contributing factor affecting the significance of the Parliamentary Sovereignty in the country. Lastly, the pattern of political parties within the country is based upon ancient age dynastic rules which cause more harm than good under the prevailing circumstances. In the wake of research findings the article comes up with suggestions and recommendations that can strengthen the Parliamentary Sovereignty which will ultimately result into the strong democratic government in Pakistan. The proposed suggestions are consisted of different measures such as actualization of separation of powers, practicing judicial restraints, infusing and sensitizing the real spirit of democracy within political parties and strong accountability amongst all the organs of the State.

Keywords: *Parliamentary sovereignty, Institutional constraints, Executive dominance, Judicial activism, Undemocratic trends, Political parties*

Introduction

Parliamentary Sovereignty is recognized as soul to the body in the democratic governing setup, allowing the elected representatives to make the laws according to the will, wish and aspirations of their nation, and hold the executive branch accountable. Parliamentary Sovereignty is a doctrine where the parliament wields absolute power and can therefore make and unmake laws (Gilani et al., 2023). It is a basic principle that empowers Parliament to make and amend laws, oversee the government's actions, and ensures checks and balances in the political system. Although, in developing countries including Pakistan, Parliamentary Sovereignty is encountered with number of limitations due to presence of different factors. In Pakistan institutional constraint on the Parliamentary Sovereignty is the outcome of several factors such as historical, constitutional and political. Since the birth of the country, the influence of military establishment on the Parliament in shape of Marshal Laws is recognized as one of the important factors affecting the status of the Parliamentary Sovereignty (Zaidi, 1998).

There has been a tug of war on the issue of Parliamentary Sovereignty of Pakistan. Unfortunately, it has become a victim of the constitutional framework whereby through a number of amendments the powers are transferred from one executive to another and from one organ to another organ. We can make better sense of public law if, instead, we interpret it as the articulation and enforcement of standards of legitimate governance, inspired by universal ideals of individual freedom and human dignity (Allan, 2023).

Strong executives such as Prime Minister and President have been snatching these powers from each other using parliament as their tool to settle the scores among political archrivals. On various occasions, through amendments, the president had been empowered with the authority to dissolve the parliament under certain circumstances, which could be seen as a curtailment of parliamentary sovereignty (Pakistan & Assembly, 1973). Strong

executive head has remained as cornerstone in all the constitutional documents with limited authority vested in the parliament and as a result the parliament is merely a titular legislative body dominated by the treasury benches and executives which further constraints the parliamentary autonomy. As far as the political parties are concerned, the parliament is witness to see the dynastical ruling methods with old fashioned way of selecting their leadership. The leaders of almost every party consider themselves as leaders by birth and follow their ancestral policy irrespective ever changing international global scenario and needs. Party leader exert control over their members' voting rights, disallowing difference of opinion in policy matters or even during the legislative process to exercise independent decision-making. Undemocratic trends within the political power always reflect inside the parliament hence weaken its capacity to hold the executive branch accountable. (Gardbaum, 2014).

To enhance and strengthen the parliamentary sovereignty in Pakistan, constitutional overlapping of the organs for implementation of system of checks and balances within branches of the government be fully safeguarded. Executive overreach and undue political party influence upon the parliament be discouraged by the ruling parties and this can be achieved by having strong opposition in the parliament. (Talbot, 1996). Transparency amongst political parties with accountable behavior plays a vital role which can help mitigate the undue influence of money in politics, thereby safeguarding the integrity of parliamentary decision-making processes (Ayesha, 1990).

Lastly, introduction of legal education for future public participation is essential. Sensitizing public and creating awareness can ensure that the parliamentary decision are according to the aspiration of people of country. (Talbot, 2010). In addition to all, free and fair media policies will assist the government in its actions. Precisely in any democratic setup, the parliamentary sovereignty is dealing with limitations but by addressing the issues

and considering the recommendation the parliamentary sovereignty can gain momentum which may be termed as Parliamentary Activism.

Background of the Study

Pakistan came on the surface of earth in 1947, and it took breath under the Government India Act 1935 encouraging the parliamentary form of government. The country witnessed its first constitution in 1956 focusing upon the principles of parliamentary sovereignty and democratic governance. With the advent of this constitution, parliamentary form of government was established, consisted of two houses; Upper House (Senate) and Lower House (National Assembly) (Pakistan & Assembly, 1973). These legislative bodies hold significant authority for making laws according to will of nation. It was recognized that the parliament is the supreme body to enact laws in line with the constitutional provisions.

However, it is essential to recognize that according to theory of formalism the parliament is sovereign and absolute but at the same time rest of the organs would also become absolute authority and in result checks and balance becomes nonexistent. Overlapping of organs with defined boundaries creates a room for a sovereign parliament. In absence of these defined boundaries institutional constraints come into force limiting the sovereignty. One such constraint is the judiciary, which is authorized to interpret the constitutional provision and statutory laws passed by the parliament which can be termed as check on the legislative powers of parliament. (Carolan, 2009). To establish a solid theoretical foundation for understanding the factors that limit parliamentary sovereignty, it is crucial to examine the relevant legal provisions. On the one hand, the constitution has put a restriction on the parliament that no law shall be passed against the fundamental rights. On the other hand, under article 199 and 184 the judiciary exercises its powers of judicial review over legislative actions, thereby curbing potential excesses of parliamentary authority.

Statement of Problem

This paper discusses Assessment of Institutional Constraints on Parliamentary Sovereignty in Pakistan. Since its inception the status of parliamentary sovereignty has not up to the mark as in the cases of democracies of the developed world. As an organ of the state the parliamentary sovereignty has remained under the shadows of different institutions. Such a sorry situation of the parliamentary sovereignty, the nation starts looking at the unconstitutional solutions. This study will provide a solution to strengthen parliamentary sovereignty by defining the boundaries of each organ in the state.

Significance of the Study

The concept of parliamentary sovereignty has remained a prominent debate in the past few years as the world is witnessing some new aspects like globalization and digitalization of the world. These aspects give rise to more hidden and powerful factors which operate as a check on various parliaments of the world. These aspects are of heightened debate such as gaining legislative and political freedom, analyzing the factors which undermine freedom and sovereignty of the parliament. Since its independence the democracy in Pakistan has been facing multifarious constitutional and political crisis (Habib et al., 2019).

It has been observed that some states enjoy full parliamentary sovereignty whereas others lack in it. lack of sovereignty results in conflict among three major organs of the state, and so on so forth. As far as Pakistan is concerned, the parliamentary sovereignty is touching its lowest ebb. It has never assumed full sovereign status. It has always been murdered through presidential orders, Martial laws and state of emergency. It has been common understanding that whenever the need has arisen to empower the Parliament of the country, the system has not allowed it to happen. From politicians to laypersons, no one has taken serious efforts to make the parliament of their country supreme. The constitutional and political history of Pakistan has witnessed the murder of political rights by other institutions

(Bazmi, 2022). Thus, this study is devoted to study the root causes of this lamentable state of affairs and also study its potential effects and finally, suggest a practical way out.

Related Literature

The idea of Parliamentary Sovereignty is synonymous with the fact of having an absolute higher authority in a legal set up. This statue means that Parliament is revered as the highest decision-making body in that particular legal setup. It does not mean that all other organs of the state are undermined under the superiority of the parliamentary system (Gilani et al., 2023). This principle is applied in commonwealth countries where parliamentary sovereignty has become a serious issue. The principle of Parliamentary Sovereignty sits very close to the British. To grasp complete understanding of the principle let us delve into the subject for a while. The parliamentary sovereignty means-as per the definition given by the Dicey theory- ‘the Parliament has the absolute power to make or break any law deemed necessary; and that there is no other body powerful enough to challenge its decision or reverse it. The British made this theory more popular by connecting it with a most famous dialogue which was: ‘the parliament is so much sovereign that it can make a man woman and a women man (Goldsworthy, 2023).

Laws are made to serve the people who have sent their representatives to the assemblies to protect the rights and duties of every member of the country. The representatives are accountable to the general people, and they are rewarded and punished by the people through voting system. For instance, if a current elected body of representatives is not delivering on the expectations of the people it shall be replaced by the people in the next upcoming elections (Fagan & Sircar, 2019). If the same body is coming up to the expectation of the general masses, it will be erected in the next elections. This means that the parliamentary system is run by people. Decisions taken by the parliament are in the interest of the people. When these decisions are overriding by the any federal or superior court, the

legislative body becomes sanctioned and doesn't feel itself as an independent entity (Dahl, 1971). How can a bench of judges not elected by the people override the decision of the true representatives of the people i.e. parliamentarians? Are these judges going to face the public in elections? Do they have to answer the parliament for their actions? Surely not (Limbach, 2000). To answer this question there came the concept of supremacy of the constitution. This concept was the brainchild of American legal fraternity provided in the article 6 of American constitution. Once this principle made its way into the legal field, it became impossible to think of undemocratic practices while sitting in a democratic set up. It was made sure that constitution is the supreme law of the land and parliament is the sovereign body to enact laws in the light of laid down rules of the constitution. No any organ of the state would be seen indulged in violating the limits imposed by the constitution or encroaching upon the sovereignty of the other organ (Chazel, 2023).

However, there was an unwanted experience of parliamentary superiority which perceived itself sovereign in the America (Wahl, 2000). Many years ago when the North America was a colony of British, the incidence of 'taxation without representation' occurred. The North American parliament conceiving itself a sovereign authority sought to enact taxation laws in direction from the British Parliament without participation of the colonies assemblies (Weisskircher, 2023). The parliament was doing injustice on the name of sovereignty that's why colonial people rebelled and chanted the slogan of 'taxation without representation'. Therefore, sometimes checks are necessary to inhibit historical events repeating themselves. But these checks must not be places at the expense of undermining the authority of the parliament (Cunningham, 2002).

But over the years the power of parliament has declined due to a number of forces prevailing worldwide (Ginsberg, 2003). Mostly third world countries have done more than protecting this very principle of parliamentary sovereignty and Pakistan is no exception.

Since its inception Pakistan has registered itself on the world stage as a parliamentary democracy where parliament was meant to remain independent of any pressure. It was required to represent its own people. But due to various factors it has failed to delivery on the very basic tenets of the Dicey theory (Kausar, 2015).

The abovementioned form of democracy is a western style democracy which largely revolves around elected representatives and their freedom of working (Schmidtke, 2023). Democracy does not refer to the fact that power is determined by the people only and they are the soul of the government but there are other forms of democracy apart from western styled one. A major part of the democracy features insurance of the fundamental rights which are to be protected by every organ if the state. Hence, democracy is meant to create a balance between rule by the people and the protection of the fundamental rights. This American experience forced the lawmakers all around the world to put in place certain limitations for the smooth functioning of the parliamentary system. These limitations were in the form of giving importance to common man's voice (democratic character), rule of law and respect for human dignity or fundamental human rights (Perez Bustamante, 2023). Parliament would be sovereign and no any power would be above the statue of the parliament. It would be sovereign to make or break the laws. However, the laws created by this body would respect fundamental rights of the people, one of the limitations of Parliamentary Sovereignty (Weiler, 1995).

Parliamentary Sovereignty as discussed above is said to be the sovereignty of people living in a particular state. As suggested by Albert Dicey, parliamentary sovereignty is the authority of people which make or break any law deemed necessary (Read, 2023). It is powerful and sovereign as used to the case of Monarch or King in early political history of mankind. Sometimes it happens that the concept of parliamentary sovereignty is not fully understand in simple terms. It is usually associated with parliament having all the powers

beyond what it is authorized to retain. Although parliament is sovereign yet it has certain mandate to achieve, it should be allowed to surpass that mandate. Parliament has certain limitations (Malik, 1973). People are entitled to cherish the status of being sovereign. They should feel themselves as free, independent of any pressure to dispense their services to the state and to their fellow countrymen. Sovereignty resides with people and is transferred to various parts of the state in various forms. Through social contract, people decide the mode of exercising this sovereignty. They create terms on which to determine the amount of sovereignty each organ of the state has to exercise. These limitations are placed inside the use of judicial review (Ringhand, 2005)

Research Methodology

In this paper, a qualitative approach is used and same is supported by the case studies, legal framework, and literature. During this research various constitutional documents and publications have been studied, analyzed and discussed which provided understanding of the legal and institutional context of Parliamentary Sovereignty, democratic governance and institutional impediments in Pakistan (Mohamed, 2016).

The Constitution of Pakistan is the primary source of constitutional documents for examining the legal structure and governance in the country. The Constitution of 1973 provides three organs of the State vis Legislature, Executive and Judiciary with the concept of separation of power and system of checks and balances. This primary document defines the relationship of the state with its citizens, safeguarding the fundamental rights and promoting the democratic principles. The secondary source is the precedent law wherein researcher can highlight the judicial interpretation of Parliamentary Sovereignty and understand the extent to which courts exercise their powers in reviewing legislative actions (Roesler, 2007).

Discussion and Analysis

The findings are consisted of three contributing factors which are restricting the parliamentary sovereignty. Executive overreach and dominance is the first cause to undermine the authority of parliament. The leader of the house becomes the executive head and keeps influencing the legislative process irrespective of collective wisdom of the parliament. Judicial overreach and denial to judicial restraint has become second cause which under certain situations encroaches the legislative domain. In recent past the judiciary has acted as travelled beyond its jurisdiction under the garb of article 184(3) and *Suo Moto* actions however judicial activism can be recognized as mandatory tool to check and balance the abuse of power and misuse of authority, but judicial intervention can subside the legislative authority of Parliament and imbalance the power corridors of rest of the two organs of state. Lastly, weak political party structures in shape of dynastical rule within party creates followers rather leaders, these followers follow the party decisions and ignore the welfare of general public and this further undermines parliamentary sovereignty. Precisely all the factors create an impact on the legislative function of the parliament.

Conclusion and Recommendations

The study concludes by summing up the findings and highlighting the institutional constraints that restrict parliamentary sovereignty. The recommendations aim to strengthen the parliament and empower democratic governance and ensure the full exercise of parliamentary sovereignty in Pakistan:

1. Empowering the parliamentary committees for scrutinizing the legislative drafts, conduct enquiries and hold executive accountable.
2. Overlapping of the organs is the best method to keep the system of checks and balances alive however overreaching and encroaching the authorities create imbalance amongst the organs. Defined boundaries of each organ help and prevent all to remain

within their domain. Judicial Review of unconstitutional actions by either branch helps to maintain the harmony.

3. Money bills are the sole authority of the lower house however the treasury benches make it impossible for the parliamentarians to have debate over the bills.

Parliamentary sovereignty can be asserted in way that every major expenditure be approved from parliament. Absence of opposition creates a room for executives to act dominantly over the members of party.

4. Military influence be reduced because it has always posed a threat to parliamentary sovereignty Practically there is no civilian control over the armed forces to safeguard and reinforce parliamentary sovereignty, several steps can be taken:

- a. Establishment of robust parliamentary committee to monitor defense policies, budget allocations and military operations.
- b. A series of constructive dialogues between civilian authorities and military is vital for effective decision making.

5. Introduce legal education at school level to create legal awareness to the future leadership of country.

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