THE PROCESS OF LAW MAKING BY PARLIAMENT AND PROVINCIAL ASSEMBLIES IN PAKISTAN

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Abstract

This work discusses the process of law making by Parliament and Provincial Assemblies in Pakistan. It focuses on the procedure of making and amending normal laws, amending the Constitution itself, how to promulgate Ordinances by the President and the Governors, and how to pass a Bill through a joint sitting of Parliament. It also explains the types of Bills and the procedures to be followed for introducing and passing them by Parliament. It elaborates the role of Standing Committees constituted by Parliament. Finally, it discusses whether there are certain limitations on Parliament which restrains it from amending the Constitution.

Key Words

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Law making, Legislation, Bill, Parliament, Constitution, Act, Ordinance, Standing Committees

Introduction

Law making is absolutely necessary in modern times to address new situations. The best way to address an issue legally is to bring in new legislation or amend the existing one. Judicial law-making is not suitable for introducing drastic changes in law, neither is it quick, nor could it bring in major changes in law. On the other hand, judges are not elected representative hence are not expected to legislate, further it requires someone courageous enough, having a lot of time and money to bring his or her case before the apex Court. In addition, in a democracy, new laws should be made by the elected representatives of the people. In Pakistan the main legislative bodies are Parliament and the Provincial Assemblies. Laws passed by the Parliament or the Provincial Assemblies are called Acts or statutes or enactments which is commonly referred to as statutory laws.

Parliament

Parliament comprises of the National Assembly, the Senate and the President. Majority of both Houses must vote in favor of a Bill, then after assent of the President it becomes an Act of Parliament.

Types of Bills

There are two types of Bills: Private Members' Bill and Government Bills. Government Bills are introduced by relevant Ministers and supported by the treasury.

The National Assembly

Article 51, clause (1) of the Constitution[1] of 1973, provides that the total number of seats in the National Assembly are 336. The composition of seats of the National Assembly for each Province and the Islamabad Capital Territory is given in Fig. 1 below:

	General	Women	Total
Baluchistan	16	4	20
KPK	45	10	55
Punjab	141	32	173
Sindh	61	14	75
ICT	3	--	3
Total	266	60	326

10 seats in the National Assembly are reserved for non-Muslims.

[1] The Constitution of the Islamic Republic of Pakistan [As modified upto the 31st May, 20218] (National Assembly of Pakistan), 2018.

Fig. 1 showing the division of seats in the National Assembly.

Under Article 51(4) there are 10 seats reserved for non-Muslims. 266 Members are directly elected by the public, the country being divided into constituencies and each of these returning one Member of Parliament. Members of the National Assembly are also called MNAs and can also be called as Members of Parliament. There must be a general election after every five years, though such an election can be called sooner by the Prime Minister. In addition, there may be individual by-elections in constituencies where the member died during the tenure of the Assembly or otherwise disqualified due to any reason as mentioned in the Constitution. Government of the day is formed by the political party having majority in the National Assembly even with the help and alliance of small parties forming a coalition Government.

The Senate

Under Article 59 clause (1), of the Constitution of 1973, the Senate shall consist of 96 seats, 14 are to be elected from each Provincial Assembly. Two on general seats, and one woman and one technocrat including *aalim* shall be elected from the Federal Capital in such manner as the President may, by Order, prescribe. Four women shall be elected by the members of each Provincial Assembly, four technocrats including *ulema* shall be elected by the members of each Provincial Assembly. Four non-

Muslims one from each Province, shall be elected by each Provincial Assembly.

Legislative Process

The Rules governing Legislative Process in the Senate are, Rules of Procedure and Conduct of Business in the Senate, 2012 as amended up to 27th January 2020 (hereafter Rules).[2] Here we shall explain the legislative process in the Senate which is identical to the one in the National Assembly although it has its own Rules of Procedure[3] but the provisions of both Rules are almost similar. There are two types of Bills: Private Members' Bill and Government Bills. In case of a Private Member's Bill any member, under Rule 94(1) of the Rules of Procedure shall give ten working days' notice, in writing to the Secretary Senate about his intention to introduce a Bill. Three copies of the Bill along with the Statement of Objects and Reasons signed by the member shall accompany the notice. Under Rule 95, of the Rules, Motion for leave to introduce the Bill must be set down in the Orders of the day on the day meant for the Private Members. Copies of the Bill shall be circulated

[2] Rules of Procedure and Conduct of Business in the Senate 2012 as amended up to 27th January 2020 available at <http://senate.gov.pk/uploads/documents/RPCB2012-12-3-2020%20updated.pdf> (last accessed 5 November 2021).
[3] Rules of Procedure and Conduct of Business in the National Assembly 2007 as amended up to the 29th January, 2013 available at <http://www.na.gov.pk/uploads/documents/1399619027_820.pdf> (last accessed 5 November 2021).

along with the Orders of the Day. When the item is called the member may move for leave to introduce the Bill. the Chairman shall allow the mover to make a brief statement introducing the salient features of the Bill. If the Bill is unopposed, it is referred to the relevant Standing Committee. There are as many Standing Committees of each House as there are ministries. If leave to introduce the Bill is opposed by the concerned ministry, chairman put the matter before the House for vote. If the majority present approve vote in favor of the Bill, then leave is granted. After grant of leave to introduce the Bill, the mover introduces the Bill and then same is referred by the Chairman to the relevant Standing Committee. Whereas if the majority present, vote against grant of leave then, the Bill stands rejected. In case of a Government Bill, a Minister shall give notice in writing to introduce a Bill. The notice must be accompanied with the Statement of Objects and Reasons signed by the Minister concerned. Introduction of the Bill shall ordinarily be included in the Orders of the Day for a day meant for Government business and copies of the Bill shall be circulated along-with the Orders of the Day. At least two clear days shall intervene between the day of supply of copies of the Bill to members and the day for setting down of the Bill for a motion under Rule 100. If the Bill involves amendment to an existing law, the Secretary shall also supply a relevant extract of the Rule or Rules of the original Act which the Bill seeks to amend. When the item is called, the Minister shall introduce the Bill. Under Rule 97(1) the Secretary shall cause every Bill that has been introduced to be published in the Gazette as early as possible. The procedure for grant of leave to introduce the Bill prescribed for the Private Member's Bill is repeated and after grant of leave to introduce with vote of the majority present, a Bill is introduced and thereafter it is also referred to the Standing Committee concerned. In some exceptional cases, if with the subject matter of the Bill, member-in-charge may move that the requirement of this rule i.e., referring the Bill to the concerned standing Committee, be dispensed with and, if the motion is carried, the Bill is taken up for consideration and passage by the house. When a Bill has been received back from the Standing Committee, the Secretary shall cause copies of the Bill, as introduced, together with modifications, if any, recommended by the Standing Committee, to be supplied to each member within seven days after the receipt back and shall set down the Bill on the Orders of the Day. If the Standing Committee has recommended that a particular Bill may not be passed by the Senate then the Member-in-Charge may ask that it be referred to a Select Committee which is a committee established by the House for a special purpose.

If a member raises the objection that a Bill is repugnant to the Injunctions of Islam, he may move a motion and if it is supported by not less than two-fifths of the total membership of the Senate, the question shall be referred to the Council of Islamic Ideology (CII) for advice as to whether the Bill is or is not repugnant to the Injunctions of Islam.[4] Such a motion cannot be raised after the commencement of the motion for consideration of the Bill. Notwithstanding a reference to the CII, the Senate may at any time proceed with the Bill, if it considers that in the public interest the passage of the Bill should not be postponed until the advice is furnished. The advice of the CII on a question referred to it shall on receipt be circulated amongst the members and shall also be laid on the Table of the House. If the advice of the Council of Islamic Ideology is furnished after the Bill has been enacted and to the effect that the law is repugnant to the Injunctions of Islam, the Minister concerned shall, within seven days of the laying of the advice on the Table, move that the law be reconsidered and further action thereon shall be taken in accordance with the provisions of this chapter as if the law were a Bill referred to the Standing Committee.

First Reading

In the First Reading the principles of the Bill and its general provisions may be discussed. At this stage amendments to the Bill may not be moved.

Second Reading

[4] See Article 229 of the Constitution of 1973.

In the second reading the Bill shall be taken up clause by clause. At this stage any member may move an amendment to the Bill subject to the provisions of these rules. The Secretary shall cause a list of admitted amendments of which notices have been received to be made available for the use of every member.

Third Reading

When clause by clause reading of the Bill has taken place and no amendment in the Bill is made, the member-in-charge move that the Bill may be passed at once. If any amendment in the Bill is made, any member may object to a motion being made that the Bill be passed at once, and such objection shall prevail, unless the Chairman allows the motion to be made. Where such objection as aforesaid prevails, a motion that the Bill be passed may be made on a subsequent day. At this stage no amendment to the Bill may be moved, except verbal amendments which are of a formal or consequential nature. In making his speech a member shall not refer to the details of the Bill further than is necessary for the purpose of his arguments which shall be of a general character.

Once the Bill is passed by the Senate it is transmitted to the National Assembly for consideration with a message to that effect.[5] Same procedure is repeated in the National Assembly. Similarly, when a Bill is passed by the National Assembly it is transmitted to the Senate. If a

[5] Rule 117 of Rules of Procedure and Conduct of Business in the Senate, 2012.

Bill passed by the Assembly and transmitted to the Senate is rejected or is not passed within 90 days of its laying in the Senate or is passed with amendment it shall be returned to the Assembly with a message to that effect. When a Bill, as amended by the Assembly, is passed by the Senate an authenticated copy thereof signed by the Chairman shall be transmitted to the President by the Secretary Senate for assent under Article 75 of the Constitution. When a Bill transmitted by the Assembly under clause (1) of Article 70 is passed by the Senate without amendment, a message shall be sent to the Assembly to this effect.

Reference of Bill to the Joint Sitting

If a Bill transmitted to the National Assembly is rejected or not passed within 90 days of its laying in the National Assembly, or is passed by the National Assembly with amendment but not passed by the Senate with such amendment, any Minister, in the case of a Government Bill, or, any member in case of private member's Bill may, after giving two days' notice, move that the Bill be considered in a joint sitting, or if a joint sitting is not in session, request the President to summon a joint sitting for consideration of the Bill. Joint sitting of Parliament is mostly used by the government of the day to pass Bills that might not be passed by either House or which is rejected by the relevant Standing Committees. To illustrate this point, the government passed 33 Bills in a single joint sitting of the Parliament on 17 November 2021. (See Figure below for the list of the Bills):

S No.	Bills passed in the Parliament
1	International Court of Justice ICJ (Review and Reconsideration) Bill, 2020
2	Elections (Second Amendment) Bill, 2021
3	The Criminal Laws (Amendment) Bill, 2021
4	Anti-Rape (Investigation and Trial) Bill, 2021
5	The Islamabad Capital Territory Charities Registration, Regulation and Facilitation Bill, 20
6	The SBP Banking Services Corporation (Amendment) Bill, 2021
7	The National College of Arts Institute Bill, 2021
8	The Muslim Family Laws (Amendment) Bill 2021 (amendment in Section 4)
9	The Muslim Family Laws (Amendment) Bill,2021 (amendment in Section 7)
10	The Hyderabad Institute for Technical and Management Sciences Bill,2021
11	The Islamabad Rent Restriction (Amendment) Bill, 2021
12	The Corporate Restructuring Companies (Amendment) Bill, 2021
13	The Financial Institutions (Secured Transactions) (Amendment) Bill, 2021
14	The Federal Public Service Commission (validation of Rules) Bill, 2021
15	The University of Islamabad Bill, 2021
16	The Loans for Agricultural, Commercial and Industrial Purposes (Amendment) Bill, 2021
17	The Companies (Amendment) Bill, 2021
18	The National Vocational and Technical Training Commission (Amendment) Bill, 2021
19	The Pakistan Academy of Letters (Amendment) Bill, 2021
20	The Port Qasim Authority (Amendment) Bill, 2021
21	The Pakistan National Shipping Corporation (Amendment) Bill,2021
22	The Gwadar Port Authority (Amendment) Bill, 2021
23	The Maritime Security Agency (Amendment) Bill, 2021
24	The Emigration (Amendment) Bill, 2021;
25	The Privatization Commission (Amendment) Bill,2021;
26	The COVID-19 (Prevention of Hoarding) Bill, 2021;
27	The Al-Karm International Institute Bill, 2021 and
28	The Islamabad Capital Territory Prohibition of Corporal Punishment Bill, 2021
29	Unani, Ayurvedic and Homoeopathic Practitioners Act;
30	The Prevention of Corruption (Amendment) Bill;
31	The Provincial Motor Vehicle (Amendment) Bill;
32	The Regulation of Generation, Transmission and Distribution of Electric Power (Amendm
33	The Islamabad Capital Territory Food Safety Bill, 2021.

Figure. List of 33 Bills passed by the Parliament in its joint sitting on 17 November 2021.

When a Bill transmitted by the Assembly is passed by the Senate, without amendment, an authenticated copy thereof signed by the Chairman shall be transmitted to the President by the Secretary for assent under Article 75 of the Constitution. When a Bill is assented to by the President under Article 75 of the Constitution, the Secretary shall immediately cause it to be published in the Gazette as an Act of Majlis-e-Shoora (Parliament).

Passing of a Normal Bill by Parliament

To simplify the process a normal Bill is initiated either in the National Assembly or the Senate. If passed by a simple majority by one House, is transmitted to the other House. If passed without amendments by the other House is presented to the President for his assent. If the Bill is rejected by the other House, or is not passed within 90 days, or is passed with amendments, the Bill at the request of the House where it originated shall be considered in a joint sitting and if passed by the majority, shall be presented to the President. (Below is the copy of Election Act 2017 passed by the Parliament in 2019).

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ISLAMABAD, SATURDAY, MAY 18, 2019

PART I

Acts, Ordinances, President's Orders and Regulations

SENATE SECRETARIAT

Islamabad, the 16th May, 2019

No.F.9(5)/2019-Legis.—The following Act of *Majlis-e-Shoora* (Parliament) received the assent of the President on 14th May, 2019 and is hereby published for general information:—

ACT NO. IV OF 2019

An Act further to amend the Elections Act, 2017

WHEREAS it is expedient further to amend the Elections Act, 2017 (XXXI!I of 2017), for the purpose hereinafter appearing;

It is hereby enacted as follows:—

Price. Rs. 5.00

[779(20 19)/Ex. Gaz.].

1. Short title and commencement. 1) This Act may be called the Elections (Second Amendment) Act, 2019.

(2) It shall come into force at once.

2. **Amendment of section 20, Act XXXHI** of 2017.—In the Elections Act, 2017 (XXXIII of 2017), in section 20, after sub-section (2), the following new sub-section, shall be inserted, namely:—

"(2A). For the purpose of delimiting constituencies, for the general seats of the Provincial Assembly of Khyber Pakhtunkhwa for Tribal Areas two or mere separate areas may be grouped into one constituency for their ‹elections to be held in 2019 and Bye-elections related thereto and thereafter this sub-section shall stand omitted.".

MUHAMMAD ANWAR,
Acting Secretary

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Money Bill

Under Article 73(2) a Bill or amendment shall be deemed to be a Money Bill if it contains provisions dealing with all or any of the following matters, namely:

- A. The imposition, abolition, remission, alteration or regulation of any tax;
- B. the borrowing of money, or the giving of any guarantee, by the Federal government, or the amendment of the law relating to the financial obligations of that Government;
- C. The custody of the Federal Consolidated Fund, the payment of moneys into, or the issue of moneys from, that Fund.

A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes. If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the National Assembly thereon shall be final. Every Money Bill presented to the President for assent shall bear a certificate under the hand of the Speaker of the National Assembly that it is a Money Bill, and such certificate shall be conclusive for all purposes and shall not be called in question. Under Article 73(1), a Money Bill to originate in the National Assembly and a copy to be transmitted to the Senate at the same time. Senate to give its recommendations in 14 days (Article 73(1) which may or may not be incorporated by the National Assembly and shall present the Bill to the President under Article 73(1)(b) for his assent. The President has to give his assent within 10 days and except a money Bill may send a Bill back to the House where it originated for reconsideration. But if it is again passed with or without amendment, must be assented to by the President within 10 days. If he does not assent to it, it will be considered to have been assented to it by him. When the Bill is consented to it becomes an Act of Parliament under Article 75(3). An act of Parliament, and no provision in any such Act, shall be invalid by reason only that some recommendation, previous sanction or consent required by the Constitution was not given if that Act was assented to in accordance with the Constitution.[6] A Bill pending in either House shall not lapse by reason of the prorogation of the House. A Bill pending in the Senate which has not been passed by the National Assembly shall not lapse on the dissolution of the National Assembly. A Bill pending in the National Assembly, or a Bill which having been passed by the National Assembly is pending in the Senate, shall lapse on the dissolution of the National Assembly.

It is pertinent to note that current parliamentary year starts on 13 August and ends on 12 August during this tenure of the Government. As the parliamentary year supposed to start from the date of oath taking of its members after the general election. Unfortunately, Parliament does not do much legislation as it should. For instance, Parliament has passed 8, 36, and 19 Acts in 2018-2019, 2019-2020, and 2020-2021 respectively. Thus, in three years only 63 Acts are passed by Parliament. In the same period 55 Ordinances were promulgated by the President and were laid down before the National Assembly.

Procedure for Making Ordinances

Under Article 89(1) of the Constitution the President may promulgate an Ordinance, when necessary and when the Senate or National Assembly is not in session. It is like an

[6] Article 75(4) of the Constitution.

Act but is valid for an initial period of only 120 days however it can be further extended by a resolution of either house for further period of 120 days. An Ordinance once laid before the either house, it shall be treated as Bill and it will have to follow the same procedure for approval and passage as prescribed for a Government Bill, introduced in either house. an ordinance can be withdrawn anytime by the President.

Constitutional Amendment

For amending the Constitution two-thirds majority is required in both Houses of Parliament under Article 238(1) and (2). Under Rule 131(2) each clause or schedule, or clause or schedule as amended, as the case may be, shall be put to the vote of the Senate separately and shall form part of the Bill if it is passed by the votes of not less than two-thirds of the total membership of the Senate. Under Rule 131(9) if a Bill to amend the Constitution which would have the effect of altering the limits of a Province, shall not be presented to the President for assent unless it has been passed by the Provincial Assembly of the Province by the votes of not less than two-thirds of its total membership.

Limitations on Amending the Constitution

In *Federation of Pakistan v Munir Hussain Bhatti*,[7] a review petition, Mr. K.K. Agha, as he then was, argued that the decision of the Supreme Court by virtue of Article 189 will render the Parliamentary Committee, created under Article 175A of the Constitution, redundant. This was a review petition against the decision of the Supreme Court, i.e., *Munir Hussain Bhatti v Federation of Pakistan*.[8] The Court rejected this view and Justice Jawwad Khawaja observed, that by applying Article 189, "we have enunciated a new

[7] PLD 2011 SC 752.
[8] PLD 2011 SC 407.

principle of law, which is that the decisions of the Committee are subject to judicial review." The Court, therefore, rejected the review petition. There is no limitation on the powers of the Parliament to amend any of the provisions of the Constitution.[9] But can Parliament amend the provision to disintegrate Pakistan or change the ideology of Pakistan? In *Mahmood Khan Achakazi v The Federation of Pakistan.*[10] Justice Sajjad Ali Shah observed that the Objectives Resolution "in the shape of Article 2-A when read with other provisions of the Constitution reflects salient features of the Constitution highlighting federalism, parliamentary form of Government blended with Islamic provisions." In *Zafar Ali Shah v Pervez Musharraf*[11] the Supreme Court ruled that the basic features of the Constitution, i.e., independence of judiciary, federalism and parliamentary form of government blended with Islamic Provisions cannot be altered by the Parliament. Interestingly, the then Marshal Law Administrator had not asked whether he can change the constitution or not but the august Supreme Court granted him the power to do so. Perhaps decisions given by the apex Court at that time had many questions. But can the Parliament change the Salient Features of the Constitution? The answer is in the affirmative since it was the Parliament that passed the Constitution in the first place and because the above cases were decided to validate Marshal law regimes. In addition, the Parliament has changed the procedure for the appointment of judges to the superior judiciary thereby effecting the independence of judiciary which is considered one of the salient features in the above cases, therefore, it can change even the salient features of the constitution if it wants so. In theory Parliament can make any law but in

[9] Article 238(6).
[10] PLD 1997 SC 426.
[11] PLD 2000 SC 869.

practice it makes laws to translate the political agenda and manifesto of the political party in government into laws.

Law Making by the Provincial Assemblies

Under Article 141 Parliament can make laws for the whole or any part of Pakistan, and a Provincial Assembly may make laws for the Province or any part thereof. Under Article 142(b) both the Parliament and a Provincial Assembly can make laws with respect to criminal law, criminal procedure and evidence and under Article 142(C) a Provincial Assembly can make laws with respect to any matter not mentioned in the Federal Legislative List mentioned in the Fourth Schedule to the Constitution.[12] Under article 143, in case of a clash between a Federal law and Provincial law, the Federal Law shall prevail. Governor of the Province assents to the Bill within 10 days or return it to the Assembly for reconsideration under Article 116. A Money Bill cannot be returned. If the Bill returned by the Governor is amended or not amended, is sent back by the Assembly, the Governor must sign. Once signed it becomes an Act of Provincial Assembly. Under Article 128(1) a Governor, may except when the Provincial Assembly is in session, make and promulgate an Ordinance as the circumstances may require. Ordinance should be laid before the Assembly to be considered as a Bill introduced in the Assembly and shall stand repealed at the expiration of 90 days. However, it could be repealed by a resolution of disapproval of the Assembly. Finally, it could be extended by a resolution of the Assembly for further 90 days.

Conclusion

[12] See also Article 70(4).

What is said above may be summed up here. Parliament comprises of the National Assembly, the Senate and the President. There are two types of Bills: Private Members' Bill and Government Bill. A normal Bill may be introduced in either House of Parliament and may be referred to the relevant Standing Committee which may propose changes, approve or disapprove it after discussion. Thereafter, the first reading takes place in which the reasons and purposes of the Bill are discussed which is followed by the second reading in which clause-by-clause discussion on the Bill takes place. In the third reading only an amendment if suggested is discussed. Once the Bill is passed by a majority of the Members present in either House, it is transmitted to the other House where the same procedure is followed. If approved by the other House it is presented to the President for his assent. A Bill aiming to amend the Constitution should be approved by two-thirds majority of either House before which it is under consideration. As per decisions of the august Supreme Court of Pakistan there are limitations on the powers of the Parliament. There are some features called 'salient' features of the Constitution, i.e., independence of judiciary, federalism and parliamentary form of government blended with Islamic Provisions, which cannot be altered by the Parliament. However, nothing can stop the Parliament from changing even the salient features if it wished to do so. If a Bill cannot be passed otherwise because it is opposed by the opposition in either House or the relevant Standing Committee, it may be passed in a joint sitting of Parliament provided the government has majority in one House.