**The legislative domain**

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The Constitution of the Islamic Republic of Pakistan, 1973 (the ‘constitution’) ushered the concept of bicameralism, which was successively adopted at the centre in the form of the parliament, comprising the president, National Assembly and the Senate.

The word bicameral, in its simplest form, means ‘consisting of, or based on two legislative chambers’. Analogously, a unicameral system, as is palpable, is a single-house legislative system. Unicameral systems typically conform with unitary systems of government. Pakistan’s first ever constitution was enacted by the Constituent Assembly in 1956 (the ‘1956 constitution’).

Under the 1956 constitution, parliament was unicameral. The legislative powers were vested in parliament, consisting of the president and the National Assembly comprising 300 members divided equally between East and West Pakistan. Critics argue that a bicameral system is desirable, as it avoids hasty and harsh legislation along with securing cogitation. Constitutionalists have been proclaiming the merits of a bicameral system since the mid-eighteenth century.

A bicameral legislature is said to slow down the legislative process, consequently rendering abrupt change along with forcing myopic legislators to reassess their notions – thereby, pruning arbitrariness in legislative action. Considering all the aspects of a bicameral system, and the safeguards in place to repudiate whimsical legislation, one does wonder at times how the fifth most populous country can drift so closely into a quagmire of lawlessness, uncertainty and anguish.

As one begins to ponder over this uncertainty, the state of governance in Pakistan seems to retrogress, without a glimpse of amelioration. Article 70 (1) of the constitution devises the mechanism for the legislative procedure to be followed relating to the introduction and passing of bills. It states that “A Bill with respect to any matter in the Federal Legislative List may originate in either House and shall, if it is passed by the House in which it originated, be transmitted to the other House; and, if the Bill is passed without any amendment by the other House also, it shall be presented to the president for assent”.

Article 70 (2) similarly further clarifies that in case a “Bill transmitted to a House under clause (1) is passed with amendments, it shall be sent back to the House in which it originated, and if that House passed the Bill with those amendments, it shall be presented to the president for assent”. Idealistically, this precautionary measure is rooted as an entrenched clause in the constitution. The bicameral approach serves as a buffer against the enactment of imprudent and temerarious legislation.

Article 70 (3) states that “If a Bill transmitted to a House under clause (1) is rejected or is not passed within ninety days of its laying in the House or a Bill sent to a House under clause (2) with amendments is not passed by that House with such amendments, the Bill, at the request of the House in which it originated, shall be considered in a joint sitting and if passed by the votes of the majority of the members present and voting in the joint sitting it shall be presented to the president for assent”.

The Supreme Court (Practice and Procedure) Act, 2023, an Act aiming to regulate the practice and procedure of the Honorable Supreme Court of Pakistan along with clipping the powers vested in the chief justice of Pakistan to initiate suo-motu proceedings under Article 184 (3) of the constitution and constitute benches was adopted after a joint sitting of parliament on April 21, 2023.

Section 2 of the said Act curbs the chief justice from constituting benches arbitrarily, and mandates for the formation of a committee comprising the chief justice and the two next most senior judges. Section 3 of the Act further sanctions the powers of the chief justice to initiate suo-motu proceedings, by prescribing the same for consultation before a three-member bench, comprising the chief justice and two of the most senior judges. Additionally, Section 4 of the Act states that matters involving the interpretation of constitutional provisions are to be heard by a bench comprising not less than five judges of the Supreme Court. Right to appeal against a suo-motu order, with the limitation period of thirty days, is also provided under Section 5 of the Act. Consequently, an appeal under the same will lie to a larger bench of the Supreme Court.

Post-haste the promulgation of the Act, a constitutional petition under Article 184(3) was moved before the Supreme Court to “safeguard the constitution and independence of the judiciary”, subsequently challenging the vires of the said Act. It was alleged that both the legislative chambers had erred in their operation by not conforming to the provisions as enshrined under Article 75 of the constitution as the president had returned the Bill to parliament for reconsideration on April 8, 2023.

Parliament, in a joint sitting, reconsidered the Bill and successively passed it on April 10, 2023 with minor amendments. In conjunction with the aforestated grievances, it was also held that parliament had transgressed its authority vis-a-vis the constitution, in relation to the Federal Legislative List’s item No 55 (pertaining to the enlargement of the jurisdiction of the Supreme Court) along with the interpretation of Article 191 of the constitution, which categorically confers upon the Supreme Court the power to make rules regulating the practice and procedure of the Court. Resultantly, the chief justice, through the formation of an eight-member bench, suspended the legislation via a written order. It was held that “…The moment that the Bill receives the assent of the President or (as the case may be) it is deemed that such assent has been given, then from that very moment onwards and till further orders, the Act that comes into being shall not have, take or be given any effect nor be acted upon in any manner”.

The National Assembly passed a resolution soon after, denouncing the eight-member bench formed by the chief justice and alleging the Supreme Court was meddling in its constitutional domain of being the highest legislative body in the country. The ostracism of seven judges from the bench led to accusations of bias and furtherance of opacity among the Supreme Court ranks. The National Assembly, in an attempt to retaliate, has passed another bill, titled ‘Supreme Court Review of Judgments and Orders Bill, 2023’. This Bill potentially aims to expand the Supreme Court's review jurisdiction to a much broader scope of conducting reviews.

Critics argue that what transpired had all the necessary ingredients to be termed as a ‘monopoly’ over the interpretation of the constitution by the Supreme Court. The grapple for jurisdiction between the Supreme Court and parliament is not a new phenomenon. In the words of Thomas Jefferson, the third president of the United States of America and the principal author of the Declaration of Independence (1776), “It is a very dangerous doctrine to consider the [Supreme Court] judges as the ultimate arbiters of all constitutional questions. It is one which would place us under the despotism of an oligarchy”.

Parliament, in obedience to constitutional edicts, does not have jurisdiction under Article 191 of the constitution to draft the rules of procedure of the Supreme Court. The constitution expressly delegates this authority to the Supreme Court itself. It is imperative to expound here that all legislative power is vested in parliament, and all executive power in the president.

If the courts invade the legislative domain of parliament by their ‘construction’ and ‘interpretation’ of the constitution, then parliament has the power to set them straight – with the aid of a constitutional amendment. Individuals in favour of considering the Supreme Court as the ultimate arbiter of all constitutional questions often ingeminate Article 190 of the constitution which requires all judicial and executive authorities in Pakistan to act in aid of the Supreme Court. This edict only relates to acting in aid of the Supreme Court apropos its judicial function.

Vis-a-vis the dissension between parliamentary supremacy and the ascendancy of the apex court re its ‘judicial monopoly’ over the constitution however one tries to march around the select edicts of the constitution, the legislative and judicial organs are bound to work together, at least de jure.

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