

**TYPICAL CONSTITUTIONAL SPHERES OF INTERACTION AMONG PARLIAMENT
CHAMBERS IN THE ASIAN COUNTRIES**

**ESFERAS CONSTITUCIONALES TÍPICAS DE INTERACCIÓN
ENTRE LAS CÁMARAS DEL PARLAMENTO EN LOS PAÍSES DE ASIA**

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Abstract

This study was aimed to investigate and analyze the constitutional texts of Asian states with a bicameral parliament in order to consolidate the typical areas of interaction among the chambers of parliaments. The results of analysis in present study showed that typical areas of interaction among chambers of parliament and international sphere providing the interaction among chambers with respect to foreign policy. It was concluded that the typical areas of interaction among chambers of parliaments in Asian countries reflect established approaches to the constitution of their statuses.

Keywords

Constitution – Interaction among Chambers of Parliament
Typical Areas of Interaction among Chambers of Parliaments

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Introduction

Interest in identifying typical areas of interaction among chambers of parliament is mostly due to the constitutional design of parliament, and the highest legislative body of the state, as an integral body implementing a single state policy (legislative, control, personnel, etc.)¹.

According to the provisions of Article 95 of the Constitution of Myanmar, "a law is considered to be adopted only if it is approved by both houses of parliament". There is similar wording in Article 70 of the Constitution of Bahrain, Article 93 of the Constitution of Cambodia, Article 88 of the Constitution of Thailand, Article 42 of the Constitution of Japan, Part 1 of Article 66 of the Constitution of Malaysia, etc. Constitutions of the Asian countries with a bicameral structure for the legislative body of government provide a ground for existence of various functional, organizational, and procedural measures ensuring the interaction among the chambers of parliament. As a rule, in constitutional-legal science, issues relating to the interaction among chambers of parliament are considered from perspective of gender representation², as a phenomenon of bicameralism³ and based on the situation of a particular country⁴, from perspective of relationship with technology in Europe⁵, in connection with influence of Internet on the activities of parliament⁶, and with respect to the study on issues of political pluralism as well⁷. Based on the review on the studies conducted about the legal theory, no study was found to focus on investigation of both the interaction among chambers of parliament in general, and the spheres of such interaction in particular. Compensating for such a doctrinal gap, the present study was designed to investigate the texts of the constitutions in Asian countries in order to consolidate the typical areas in them regarding the interaction among chambers of parliaments.

¹ L. Nikonova and A. Minasyan, "Constitutional spheres and forms of interaction of the chambers of parliaments: foreign experience. Science and education: economy and economics; entrepreneurship", *Law and management*. Vol: 11 num 78 (2016): 82-87.

² N. Shvedova, *Obstacles to Women's Participation in Parliament*. International Institute for Democracy and Electoral Assistance (Moscu: IG, 2005); P. Norris and R. Inglehart, "Cultural Obstacles to Equal Representation", *Journal of Democracy*. Vol: 12 num 3 (2001): 126-140; M. R. Selomo & K. K. Govender, *Procurement and Supply Chain Management in Government Institutions: A Case Study of Select Departments in the Limpopo Province, South Africa*. 2016 y M. Shirvani; A. Mohammadi & F. Shirvani, "Comparative study of cultural and social factors affecting urban and rural women's Burnout in Shahrekord Township", *UCT Journal of Management and Accounting Studies*, Vol: 3 num 1 (2015): 1-4.

³ J. Druckman and M. F. Thies, "The Importance of Concurrence: The Impact of Bicameralism on Government Formation and Duration", *American Journal of Political Science*. Vol: 46 num 4 (2002): 760-771. y C. Luo; M. Li; P. Peng & S. Fan, "How Does Internet Finance Influence the Interest Rate? Evidence from Chinese Financial Markets", *Dutch Journal of Finance and Management*, Vol: 2 num 1 (2018): 283-302.

⁴ M. Russell and M. Sciara, "Parliament: the house of lords – a more representative and assertive chamber?", *Palgrave Review of British Politics* Vol: 13 num 4 (2006): 122-136.

⁵ N. Vig and H. Paschen, *Parliaments and Technology: The Development of Technology Assessment in Europe* (New York: State University of New York, 2000).

⁶ K. Magarey, "The Internet and Australia parliamentary democracy", *Parliamentary Affairs*. Vol: 52 Issue 3 (1999): 404-427.

⁷ M. Bumba, "Political Parties and the Size of Government in Multiparty Legislatures", *Comparative Political Studies* Vol: 18 num 2 (2003): 16-31 y T. Denise; H. Simon and S. Pascal, "Party Unity in the Swiss Parliament: The Electoral Connection", *The Journal of Legislative Studies*. Vol: 20. Issue 2 (2013): 193-215.

Methodology

The present study was carried out based on a dialectical approach to the study on legal phenomena and processes, using general scientific (system, logical, analysis and synthesis) and private scientific methods. The latter include formal legal, linguistic legal, and comparative legal, collectively used to study the constitutional texts of 13 Asian countries with bicameral parliaments in order to identify typical areas of interaction among their chambers. The countries include: Afghanistan, Bahrain, Bhutan, India, Indonesia, Jordan, Cambodia, Malaysia, Myanmar, Pakistan, Thailand, Philippines, and Japan (texts of constitutions were provided from database of the Internet-library "Constitutions of the States (Countries) of the World" (<http://worldconstitutions.ru/>)). It should be noted that the focus group was selected based on the unity of their geographical space, which suggests that there is a single / contiguous approach to the constitutions in terms of typical areas of interaction among chambers of parliament.

Results and discussion

Analyzing constitutional acts of Asian states with a bicameral parliamentary structure made it possible to conclude that, there are typical areas of interaction among chambers of parliaments.

Such a constitutional sphere of interaction among chambers of foreign parliaments was identified as legislative in all 13 constitutions of countries of this study group, implemented through the adoption of laws.

Undoubtedly, the exclusive right to adopt laws is assigned to the parliament. According to Article 93 of the Constitution of Cambodia, a law must be adopted by the National Assembly and approved by the Senate. It should be noted that, such constitutional prerogative for the adoption of laws by a specific chamber is not established in all countries. For example, Part 5 of Article 13 of the Constitution of Bhutan and Part 1 of Article 70 of the Constitution of Pakistan provide the possibility for passing a bill to any of the chambers of parliament. However, approval of the second chamber remains as a prerequisite for adoption of the law. Such constitutional establishment for adoption of laws representing "equality in chambers of parliament" provides an additional basis for criticism while considering the classification of chambers as "upper" and "lower".

In some Asian countries, a provision has been constituted on the possible adoption of laws only when the two chambers of parliament reach a mutual agreement. So, Article 95 of the Constitution of Myanmar enshrines the provision that "no law can be promulgated until it is approved by both chambers of parliament separately, or at their joint meeting". Such constitutional formulations are included in Part 1 of Article 94 of the Constitution of Afghanistan, Article 70 of the Constitution of Bahrain, Part 2 of Article 107 of the Constitution of the Republic of India, Article 62 of the Constitution of Thailand, and Article 49 of the Constitution of Japan. In some Asian countries, to overcome the negative position of one of the chambers, it is possible to re-vote on a bill in a chamber with greater powers. So, if Chamber of Advisers in Japan does not approve bill issued by the House of Representatives within 60 days after its receipt, then the draft law is considered as rejected. To overcome the veto of Chamber of Advisors, a second vote is needed along with a majority vote of at least two-thirds of deputies of the lower chamber (Article 59 of the Constitution of Japan).

If disagreements arise regarding the adopted draft law, constitutions of some Asian countries provide the possibility for forming bodies whose activities are aimed at achieving a common opinion among chambers. Such bodies include Intermediary Committee (Art. 71 of the Constitution of Pakistan) and Joint Committee (Art. 147 of the Constitution of Malaysia). The intermediary committee is created from the members of both houses of parliament for a period not exceeding 90 days since the date of its formation. The decision on the bill is made through voting by a majority of parliamentarians. The work of committee is resulted in the adoption of law with a kind of wording that satisfies both chambers of parliament. Unlike Intermediary Committee, the Joint Committee in Malaysia is formed not only from the parliamentarians of both houses of parliament, but also from non-members of the chamber. The Malaysian Constitution does not set a period for activity of this committee, but it forms a reservation in case of disagreement of one of the chambers of parliament while draft law considered as rejected by the committee, and a new procedure for adopting law begins in the House of Representatives.

In addition, joint meetings are formed in order to achieve an agreed opinion of chambers on the controversial bill, in which decisions are made through a majority vote of the members of both chambers (part 4 of article 108 of the Constitution of India).

Further study on the constitutional texts of this group of countries resulted in the classification of organizational and personnel work as typical spheres of interaction, which envisages the joint formation of higher state bodies or appointment of officials. In Philippines (article 17 of the Constitution), both houses of parliament participate in formation of "their own electoral tribunal, dealing with elections, results of the counting of votes and the qualification investigation of members of the House", as well as establishment of an independent organization of national economy and planning (Part XII of the Constitution) and an independent central financial institution (part XII of article 20 of the Constitution); in Bhutan (part 6 of article 10 of the Constitution) the right to adoption of constitution by the Druk Gyalpo (King of Bhutan) is assigned to the Houses of Parliament; in Japan (Art. 67 of the Constitution), the chamber appoints the Prime Minister from its members; in Indonesia, the chamber elects the head of the state and vice president (part 2 of article 6 of the Constitution).

In Asian states, control sphere is considered as one of the typical areas for the conjugation of powers of chambers, represented by a combination of three segments - personnel and control, organizational and control, and financial and control.

The control of cadre and variety of control sphere is realized in connection with removal of the head of state from the office (impeachment), resignation of the highest state officials or expression of no confidence in the ministers. In a constitutional format, the impeachment procedure for the head of state is enshrined in Article 71 of the Constitution of Myanmar, Part XI of Constitution of the Philippines, Part 2 of Article 47 of the Constitution of Pakistan and other states. It should be noted that the Constitution of the Philippines assigns a fairly wide range of powers to the parliament in personnel and control sphere. Thus, parliament has the exclusive right to apply impeachment procedure not only in relation to the head of the state, but also with respect to the members of the Supreme Court, members of the Constitutional Commission and the Ombudsman (Part XI). According to paragraph «D» of Article 28 of the Jordanian Constitution, the House of Parliament appoints a specific person as the king, in case the king dies without an heir. According to Article 136 of the Malaysian Constitution, among the personnel and control powers of chambers of parliament, the right of chambers for approval is guaranteed

through regent of the head of state. In Japan, constitution has been provided the right for (Article 64) impeachment procedure, implemented by the Houses of Parliament in relation to judges dismissed from the office in connection with initiation of proceedings. Similar powers of the chambers have been "reproduced" in part 4 of Article 125 of the Constitution of India. The right of chambers to express no confidence in the ministers is enshrined in the Constitution of Afghanistan (Article 90) and the Constitution of Bahrain (part 4 of Article 67).

Organizational control sphere is the second segment of control sphere regarding typical areas of interaction among the chambers of parliaments in Asian countries. This area is implemented by the Houses of Parliament in connection with their right to establish joint permanent and temporary commissions. So, chapter 10 of Article 11 of the Constitution of Bhutan enshrined the right of chambers of parliament to form committees, "involving carrying out the tasks of the parliament."

Financial control is the third segment of control sphere regarding the typical area of interaction among chambers of parliament. The financial and control sphere are mostly concerned with the adoption of the state budget, establishment of taxes and fees, tax incentives, decision-making on external and internal loans of the state, on the financial issues, on creation of diverse extra-budgetary funds, and etc. Confirmation of these powers for the chambers of parliament is included in provisions of Article 168 of the Constitution of Cambodia, Article 83 of the Constitution of Japan, Chapter 14 of the Constitution of Bhutan, etc. It should be emphasized that the financial control sphere is also attributed to the legislative sphere, since it is implemented in the form of adopting a law.

Considering the analysis of the constitutional texts of Asian countries, it was concluded that international sphere is one of the typical areas of interaction among chambers of parliament. Based on the established constitutional practice, the right to ratify and denounce the international treaties (for example, Article 90 of the Constitution of Afghanistan) is traditionally assigned to parliament. The constitutions of some Asian states provide the ground for achieving the consent of both houses of parliament to conclude an international treaty. For example, according to Article 206 of the Constitution of Myanmar, it is established that chambers of parliament have the right to agree with the head of the state in order to establish or cancel diplomatic relations with other foreign countries. Similar wording is reflected in Article 190 of the Constitution of Malaysia.

Some constitutions in Asian states provide the exclusive right for the Houses of Parliament to declare war (Article 189 of the Malaysian Constitution). Part 2 of Article 23 of the Constitution of the Philippines and Article 189 of the Constitution of Cambodia enshrined the right for the Houses of Parliament to consent with the head of the state to declare war. In view of the foregoing, the analysis on the typical areas of interaction among chambers of parliament represented in the constitutional acts of the countries in the study group made it possible to judge approaches of states regarding the joint powers of chambers of their parliaments in the constitution.

Conclusion

Analyzing texts of constitutions of the Asian countries with a bicameral structure of parliament has contributed to the identification of typical areas of interaction among the chambers of parliament.

The legislative sphere is a typical sphere of interaction among chambers of parliaments in Asian countries, implemented in form of passing laws. It was found that "constitutional roles" regarding the right to adoption of bills in some Asian countries are distributed between both houses of parliament. So, Part 5 of Article 13 of the Constitution of Bhutan and Part 1 of Article 70 of the Constitution of Pakistan provide the possibility for adopting a law by any of the chambers of parliament.

Organizational and personnel sphere is another type of typical areas of interaction among chambers of parliament, which provides the ground for interaction of chambers during formation of electoral tribunal, establishment of an independent organization of national economy, planning an independent central financial institution (Philippines), and appointing the prime minister (Japan), and the president (Indonesia).

Based on the functional purpose of parliament, control, is represented by a set of three segments: personnel and control, organizational and control, and financial and control, and is attributed to the number of typical spheres of interaction. The first segment is in connection with procedure of impeachment of the head of the state (Pakistan, Myanmar), members of the Supreme Court (Philippines), approval of regent (Malaysia), expression of distrust to the ministers (Afghanistan, Bahrain); the second segment is in connection with the right of the chambers to form joint commissions (Bhutan); and the third segment is in connection with adoption of laws regarding the state budget, decisions on taxes and fees (Cambodia, Bhutan, Japan).

International sphere is considered as the interfaced sphere regarding the interaction among chambers of parliaments, which involves joint participation of the chambers in ratifying and denouncing international acts (Afghanistan), establishing diplomatic relations (Myanmar), and declaring war (Malaysia).

Thus, the analysis of typical forms of interaction among chambers of parliaments in Asian states, as cited in the constitutional texts of European states, made it possible to judge approaches of the constitutions in these countries with respect to the joint powers of the chambers of parliaments..

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