

The First Senate of Pakistan (1973-77): An Assessment of Performance

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ABSTRACT

This article aims to analyze the Legislation of the senate Pakistan during 1973-77 through the approach of case study. The Senate with some variations, performs the functions of making laws, raising and spending money, representing the federating units, overseeing the administration and providing advice and consent. These are five major functions but the Senate's preeminent role is concerned with legislation. Senate performs all these functions through its well-developed procedures and the rules of business. This article attempts to have an analysis of the impact of the senate and the activities in the senate. The role of the senate was assessed in the assessment of bills, resolutions, ordinances, questions asked in the senate, privilege motions, adjournment motions, motions filed in the senate secretariat and the role of senate in the assessment of the bills of amendment in the Constitution. In addition, for deep understanding the role of Senate, debates in the senate on bills, resolutions, ordinances, questions asked in the senate, privilege motions, adjournment motions, motions filed in the senate secretariat and the bills of amendment in the constitution were also included in the this paper. Moreover, the impact of participation of the senators in inter-parliamentary union, association of secretaries general of parliaments and bilateral parliamentary goodwill exchange visits is also included in the chapter for the sake of understanding the overall impacts of the senate and senators in federal politics and legislation.

KEYWORDS:

Legislature, Constitution, Institution, Dependence, Legislation.

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INTRODUCTION

In the first quarter of the life of Pakistan the Parliamentary system was often despised by the ruling clique in the first decade after the emergence of state. The majority of ministers from the cabinet of Chaudhry Muhammad Ali except H.S. Suhrawardy preferred the presidential form during a discussion on the form of government. (Kokab, 2011, p. 173) Likewise the bicameral parliament that suited the federal reality of the state was not provided in the first Constitution of the state enforced in 1956. In the next decade during which military ruler Ayub Khan ruled over country, the unicameral parliament as envisaged in the Constitution of 1962 was not more influential than the chief executive as required for the nature of country. The National Assembly remained a semblance of the parliament that was created only to give cover to the authoritarian rule of Ayub Khan. The Constitution of 1973, however, provided the bicameral parliament in Pakistan. (Waheed, Hussain & Kokab, 2020, p. 66) The Senate of Pakistan, the upper house of the parliament was formed as a body which represented the provinces/territories of the country and promotes a feeling of equality, peace and harmony, which is so essential for the growth and prosperity of a nation.

The Senate in Pakistan, over the years has emerged as an essential organ and a stabilizing factor of the federation. The Senate in Pakistan's parliamentary system has the power to discuss and even delay any bill of legislation, but the Senate does not have the veto power in proposed legislation, even after finding contradictions to the federal doctrines. Although the Senate of Pakistan is the representative of provinces its thoughts have never been incorporated in the formation of the nation's internal as well as external policy essentials. The spirit of bicameralism is useless unless the country's Constitution provides applicable powers to ensure the spirit of solidarity. As senate, it has the mandate attained by the Constitution to secure second consideration as the custodian of rights (Tsebelis, Money & Jeannette, 1997, pp. 125-26).

DISCUSSION

In the Constitution of 1973, it was decided that all the bills would be decided in mutual consultation of both the houses of parliament. It meant that a bill could be a final law only after passed by both the houses i.e. National Assembly and Senate. However, the role of Senate was somehow less than that of the National Assembly. The first Senate of the country worked very hard in legislative matters of the country. The first Senate started working from August 1973 and its last session was held in May 1977. It was dissolved in July 1977 because of the promulgation of martial law in the county (Lynch-Staunton, 2000, pp. 10-12). During all the time from 1973 to 1977, Senate devoted the major part of its time to legislative affairs. For 74% of the



time, Senate was directly or indirectly linked with the legislative business. According to the statistics of Senate working from 1973 to 1977, first Senate of the country worked on about 243 bills. However, the impact of Senate remained differential on different bills. Senate performed three types of working on these 243 bills i.e. it passed the bill as received by the National Assembly, recommended amendments in the bills and returned to National Assembly, bills were originated in Senate. (Government of Pakistan, 1980, pp. 65-66)

The majority of the bills on which senate worked were received from the National Assembly. About 88% of the bills received by the Senate were originated from National Assembly. This implies that Senate remained most of the time working on the bills which were moved in it from the National Assembly. In other words, it is also clear that Senate was working in close relation with National Assembly. However, it is also clear that Senate was not more than a substitute institution of the National Assembly as most of the time, it considered those bills which were moved from the executive or government from National Assembly. (Goraya, 2012, pp. 660-61)

About 12% of the bills were originated from the Senate as shown in the Figure 1. This implies that Senate was not only working on the bills received from the National Assembly but issues of legislative matters and public interests were also discussed in the first Senate. Out of the bills originated from Senate, about 8% were private bills and rest of all the bills (92%) were government bills. This implies that the Senate facilitated the government as the majority of the bills which were originated from the Senate were government bills.(Government of Pakistan, 1980, p. 148-49)

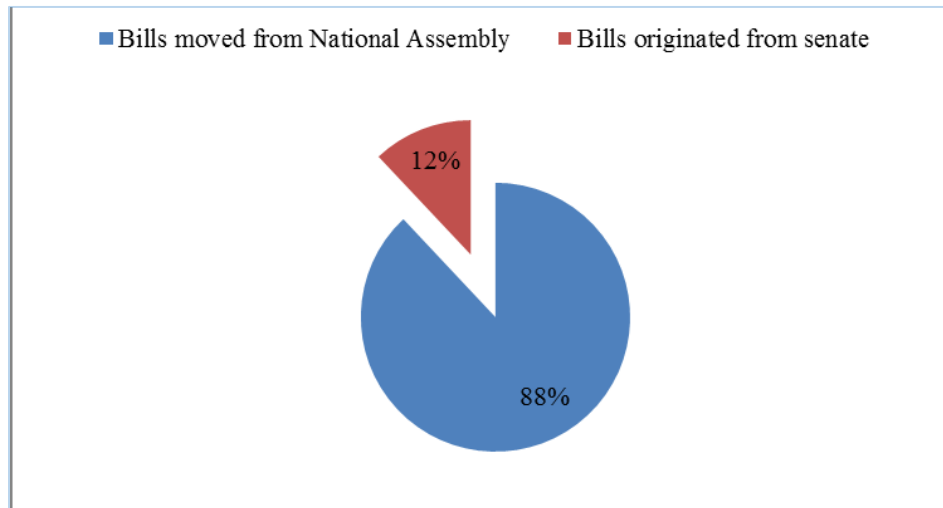


Figure 1. Origin of the Bills Passed by the First Senate of Pakistan (1973-77)

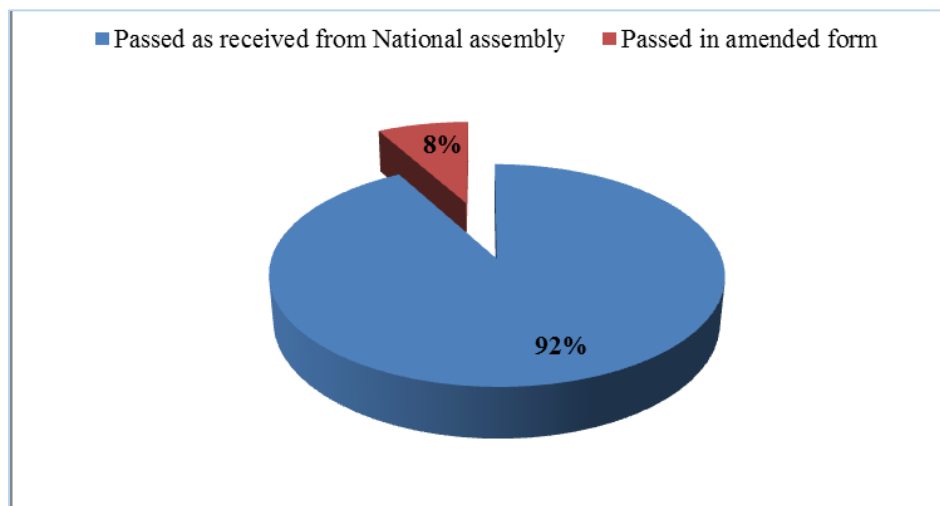


Figure 2. Amendment Ratio in the Bills Passed by the First Senate of Pakistan (1973-77)

The impact of senate can be calculated in term of proposing some amendments in the bills received in the Senate. The Senate proposed amendments only in 8% of the total bills received in the senate from 1973 to 1977 as shown in the Figure 2. On the other hand, 92% of the bills, although debated and discussed in the senate, were passed in their original form as received from the National Assembly. This implies that the impact of the Senate was not significant in amending bills.

The role of senate was somehow overshadowed by the National Assembly in terms of providing useful insights in different bills or to improve the quality of legislation. There might be many factors behind the low contribution of the Senate in proposing amendments in different bills received in the senate. First of all, the majority of the senators were from the same political party i.e. Pakistan People's Party which was in absolute majority in the National Assembly and Provincial Assemblies. Therefore, the Senators were less concerned about amending the bills which were moved by their own political party and which were related to government affairs.

It is also evident that private bills which were originated in the Senate were not passed. One of the private bills was withdrawn and the other bill was deferred.(Sultana & Javaid, 2010, 123-24) This implies that independent decision making in the Senators was not so much impactful and the Senate was more dependent on the bills moved by the executive/government. However, the impact of the political party in the Senate cannot be overlooked as the majority of the Senators were from Pakistan People's Party which was the treasury party in parliament as well as in provincial assemblies.

Subjective interest of the senators in different tasks performed in the Senate can be judged from their participation and interest in Senate's proceedings. It was quite evident from the participation of senators in different proceedings that they showed their keen interests in different tasks performed in the house. Interest and participation of the senators is also evident from their attendance in different sessions from 1973 to 1977. On average, 25 senators participated in the Senate proceedings in the period from 1973 to 1977. However, the visits of different federal ministers and Prime Minister are also worth mentioning. Prime Minister Mr. Zulfikar Ali Bhutto visited first Senate of Pakistan four times from 1973 to 1977. In nut shell, it is evident that the senate remained participating in legislative matters but the impacts of the senate were not as significant as it was conceived. (Government of Pakistan, 1980, p. 149)

THE CONDITIONAL ASSENT OF PRESIDENT WAIVED OFF IN RULING OF THE CHAIR:

The question whether the prior assent of the President of Pakistan was essential for the Senate to consider any bill regarding some amendment in the laws prescribed in Schedule 6 of the Constitution was raised in the house on different occasions. However, the Chair gave ruling to continue the debate on bills without the prior assent of the President. This proved the increase in the autonomy of the institution that was obtained with the favourable explanation of the rules. On 11th April 1974, the leader of house Rao Abdus Sattar moved a bill to amend clause 3 of the Land Reforms Bill, 1974. This was actually amendment bill. On this move, Khawaja Mohammad Safdar raised a point of order. He said that amendment could not be moved prior to the sanction of the president. He further added that the sanction of the President is required before moving amendment in the Senate according to clause 2 of Article 268 of the constitution. It was because Clause 2 of the Article 268 of the constitution that laws included in the sixth schedule could not be altered, replaced or amended without prior consent of the president. He therefore, argued that the chair should rule on his earlier point of order of the other day that the consent of the President could be obtained at any time before the bill was passed from the senate. The mover of the amendment Mr. Khawaja Mohammad Safdar also quoted some rulings of the other parliaments and claimed that amendment under observation was related to amend the law specified in the sixth schedule of the Constitution which required previous consent of the president before considering it in the Senate.

Two ministers opposed the point of order of Khawaja Mohammad Safdar. Minister for Health and Minister for Social Welfare while opposing the point of order claimed that the chair had already ruled that the amendment in the laws of sixth schedule required prior sanction of the President. However, it did not mean that amendment in bill or such law cannot be discussed in the Senate without prior consent of the president. In addition, opposing to the point of order, ministers further added that it was not required to take prior consent of the President when amending bill as it was required for introducing money bill under Article 74 of the Constitution. However, the chair closely observed the matter and provided his judgment. The chair while looking in the matter found that the member raising the point of order was actually not correctly quoting the ruling of the chair which was given a day ago that there were certain laws for which prior consent of the president was required to make amendments. On the other hand, there were laws in the Constitution which did not require prior consent from the president to make amendment.

This implies that it was not constitutional requirement to obtain prior consent from the president for discussing and moving amendment in the house. According to the constitutional requirement, alteration, replacement and amendment could not be started prior to the sanction of the president. However, there was not such constitutional requirement for discussing bills on the floor of the house. On the other hand, chair also claimed that Article 75 of the Constitution did not permit anything objectionable, unconstitutional and illegal. The chairman of the Senate ruled that it would have been advisable to the movers of this amendment to take prior consent of the president but chair did not think that discussion should be stopped on the bill. The chair further added that the consent of the President could be obtained at any time before the bill was actually enacted

(Valentine, 2010, pp. 533-34). The above discussion is evident that the Chairman of Senate tried to continue the debate on the bill for which the Constitution had put restraint of Presidential permission. Debate was permitted on the ground that the permission might be obtained during and after the debate.

Again on 22nd November 1976, the Minister for food and agriculture again moved a bill in the Senate for making amendment in the Land Reforms Regulation, 1972. However, Khawaja Mohammad Safdar, a Senator from opposition benches, raised a point of order that copy of the consent of the President was not attached with the bill therefore, it could not be taken into account. He argued that the laws specified in the sixth schedule required prior consent from the President even before suggestion of any amendment. He further added that the rule 80 (2) of the Rules of Procedures and Conduct of Business in Senate, 1973 clearly required a copy of the consent form the President with the notice of the bill. He indicated that the copy of the consent from the president was not provided therefore, the bill could not be considered in the Senate. Responding to the point of order raised by Khawaja Safdar, Minister for Food and Agriculture told that the bill was actually an ordinance and consent from the President was obtained before the promulgation of the ordinance. He, therefore, claimed that the consent of the President was not required to obtain for considering ordinance type bills. He was of the views that first consent of the president on the ordinance is enough for the consideration of the bills in senate. (Government of Pakistan, 1980, p. 148)

Another senator Masud Ahmad Khan argued that ordinance, when it was presented in National Assembly, was considered a bill and prior sanction of the president was obtained as it was mentioned in the preamble of the ordinance that the president was satisfied that the ordinance was promulgated. The Minister for Food and Agriculture argued that when the bill was passed from the National Assembly they did not require previous sanction of president accompanying the notice as it was waived there. However, Khawaja Mohammad Safdar, opposition Senator, claimed that the sanction which minister took for the ordinance was not enough for moving this bill in the Senate. Another senator, Kamal Azfar was of the views that point of order raised by Khawaja Mohammad Safdar was not applicable for the bill under discussion. These rules which Khawaja Mohammad Safdar was indicating were applicable for the bills originating in the senate while this bill was moved from the National Assembly. He further added that for the promulgation of any ordinance the previous sanction was required which was obtained as well. However, obtaining second sanction from the president for discussion in the Senate was neither relevant nor possible because there was not time interval between the ordinance and the bill for obtaining second sanction from the President. He further added the sanction obtained from the President for the ordinance was actually a sanction for the bill because ordinance submitted in National Assembly with the sanction of the President were considered bills. After hearing the arguments of both the parties, the Deputy Chairman presented his ruling. He said that formal sanction of the bill which was passed with the sanction of the president in National Assembly was not required for introducing it in the Senate. He further added that rule 82 was not strictly applicable to the ordinance in question. However, if National Assembly without any irregularity passed the amendment it could appear in the Senate without the copy of previous sanction of the President. Consequently, rule 82 was not applicable and Deputy Chairman declared that it was rule out of order. (Government of Pakistan, 1980, p. 148)

IMPACT OF SENATE IN THE ASSESSMENT OF ORDINANCES:

Besides working on different bills, the Senate was also found working on different ordinances. First Senate of the country received a total of fifty ordinances from National Assembly. The majority of the ordinances were received in 1976 with a count of twenty-two ordinances. In term of ordinances, the Senate only debated and discussed these ordinances and it did not ask for any amendment in the ordinances and 49 out of 50 ordinances were passed from the house in the form of bills. However, one ordinance was lapsed by the government. This implies that senate remained working under the good control of executive and the Senate did not propose any amendments in the ordinances moved by the National Assembly and the Senate after debating and discussing these ordinances simply passed them in the form of bills. (Hussain, 2013, pp. 84-85) The working of the senate in the assessment of ordinances was not significant and the house was mainly supporting the government and/or National Assembly. It did not critically look into legislative affairs in the ordinances.

SENATE'S DEALING WITH IMPORTANT ISSUES:

The Senators were also found very keen to express their views on various subjects discussed in the Senate. For, example during question and answer hour in the Senate, questions were being asked about the production of fortified ghee in the country. One of the members asked permission from the Chairman for a speech on the matter for three to four mints. On the other hand, the Minister concerned raised objection that member could ask a supplementary question but it was against the rule to make a speech at such time. The Chairman, in his ruling said that the member had not right for speech on the occasion. This implies that the members of the Senate were very serious about their impacts on different issues and therefore, were ready to discuss them as well.

Another example is about the relevance of the speech in the Senate by the member of the senate. On 15th of February 1974, the Finance Minister made political speech during the consideration of the Bank Bill, 1974. Responding to the speech of the Finance Minister, an opposition senator Kamran Khan said that he was not intended to criticize anyone but the way Minister delivered his speech he had no other alternative to start his political speech. During his speech, Mr. Kamaran Khan criticized the Pakistan People's Party and different policies of the government especially nationalization of the different industries. He

added that this nationalization was neither in the interests of common people nor of the state. The Chairman ruled on the speech of Kamran Khan that any senator could criticize and disagree with the bills, policies and schemes proposed by the government but all this criticism and disagreement should be quite relevant with the specific bill in the Senate. For example, Mr. Kamran Khan can disagree and criticize the bank bill (nationalization of the bank) as far as it is relevant with the bill but it is not quite relevant with to discuss the nationalization of the other factories and industries etc (Government of Pakistan, 1980, pp. 50-53).

IMPACT OF SENATE IN THE ASSESSMENT OF QUESTIONS OF SENATORS:

During different session of the first senate of the country, the senators mainly from opposition parties were keen to put different questions to the ministers. It is quite visible from the number of questions which the Senate Secretariat received from 1973 to 1977. The Senate Secretariat received a total of 1,171 questions. However, about 70% of the total questions were replied and rests of the 30% of the questions were not replied. The ratio of abstained questions is relevantly high keeping in view the powers and influence of the upper house of the parliament. These questions were related to a number of different sectors including governmental affairs as well as public affairs. However, the majority of the questions were related to the activities of the government in different fields. The majority of the questions were related to the establishment, finance, education, health, economics and development. This implies that senators put varieties of questions to understand and assess the working of government in different fields (Khan, Idreed & Hussain, 2017, pp. 11-12).

The senators from the ruling party asked about 334 questions and the top senators who asked different questions were Qazi Faizul Haq (66), Sardar Mohammad Aslam (65), Afzal Khan Khoso (49) and Farooq Ahmad Khan Leghari (26). On the other hand, 71% of the questions in the senate were asked by the senators from opposition parties. This implies that senators from the opposition were working and putting different questions mainly to the leader of the house and different federal minister for assessing the activities of the government in different fields i.e. establishment, finance, education, health, economics and development. Khawaja Mohammad Safdar who was from PML asked about 525 questions, Haji Sayed Hussain Shah from Awami National Party asked fifty-nine questions, Maulana Shah Ahmed Noorani asked forty-nine questions and Zamarud Hussain from Awami National Party asked forty-one questions. This implies that most of the time senators from opposition parties remained active to inquire about the activities of the government and the senators from the ruling party remained justifying the position of their own political party which was actually ruling party as well. From the above discussion, it is clear that the impact of senate in term of asking questions was somehow significant (Government of Pakistan, 1980, pp. 61-63).

First Senate of the country also received privilege motions besides working on different bills, ordinances and replies to the questions. The senate received about forty-three privilege motions from 1973 to 1977. However, the majority of these privilege motions were not considered by the senate. This implies that the senators were very much considered about their own rights, powers and immunities. Therefore, about forty-three privilege motions were submitted by the senators from 1973 to 1977.

The Senate remained under the influence of external actors in term of assessing resolutions moved by the senators, which were formal documents to start or end any activity because of their relevance with public interests, federation or federal government. Similar was the case with the number of adjournment motions. The tiny numbers of resolutions were adopted in the senate and the rest of the resolutions were not considered based on technicalities. It means that the rulers were not even ready to listen the voices of the whole Senate but it was more in the hands of external forces like executive who wanted to control each and every institution of the state i.e. bureaucracy, parliament and even the institution of military. The chair and the members of senate from government benches were safeguarding the interests of executive and in most of the cases those resolutions which were against executive body were ruled out of order by the Chairman or Deputy Chairman on the objections raised by the senators from government benches.

The senators in the first senate of the country filed motions directly in the sessions of the Senate and also filed motions in the Senate Secretariat. However, the motions filed in the Senate Secretariat were more formal and technical in nature. The chair along with assessing different motions and legislative affairs also assessed these motions. However, Chair did not change his loyalty with executive body of the state and the majority of the motions were ruled out of order based on lack of relevancy and conflict with the rules of procedures and conduct of business in senate. There were also some motions which were ruled out of order based on the objections raised by concerned minister from government benches. Only a small number of motions were included in agenda and were discussed and debated in the Senate. It means that senate remained safeguarding only external actors and did not consider the points raised by within the Senate.

The senators of the first senate were involved in many activities which were related to increase their impact and involvement in decision making or legislation. The senators remained the part of inter-parliamentary union which was a global institution of parliamentarians. They participated in different conferees and meetings held under the umbrella of inter-parliamentary union. In addition, the members from senate were also the part of the association of secretaries general of senate who were working on different matters of great importance to parliament and parliamentary affairs. Secretary General of parliament from Pakistan took part in different meetings of the association which was admired by association as well. Besides working with global institutions, the senators from Pakistan also visited many countries in the form of delegates. On the other

hand, delegates from foreign countries also visited Pakistan under bilateral goodwill exchange visits. These visits were very important for interacting with the parliamentarians from foreign countries and to learn from their experiences.

CONCLUSION:

Senate passed about seven bills of constitutional amendments which were moved from National assembly to Senate. All the bills of constitutional amendments were passed as received from the Assembly and in few cases the Senate only discussed and held debate on the bills just to fulfill procedure to pass the bills. In one of the bills, the Senate proposed any amendment. On the other hand, the members from opposition benches raised some question on couple of bills but their proposed amendments in the bills were ruled out of order by the Chair based on the objections raised by the concerned ministers and other members from government benches. It means that senate was working mainly on the directions set by the members of National Assembly and indirectly on the directions of the member of executive body of the state because the Senate was working only on those amendments which were proposed by National Assembly.

Four out of seven constitutional amendments were related to empower Chief executive or executive body. All the amendments were passed from National Assembly and the Senate did not pass any amendment against the desires of Chief Executive of the country. It means that Bhutto was successful to give superiority to executive body. The position of both houses of parliament – the Senate and National Assembly – was secondary as a helping institution to the executive body of the country. It is also evident that Bhutto not only used parliament but also tempered with Westminster parliamentary model for achieving personal glory and political ambitions. There is consensus among many writers that from 1971 to 1977, Zulfikar Ali Bhutto was the sole and/or one and only actor who not only affected political system of the country but also influenced state institutions (Haqqani, 2010, pp. 127-29). On the other hand, Raza Rabbani in his interview claimed that senate and federal executive are two different bodies and there is not point of conflict between council of common interests and federal executive (Rabbani, 2020).

However, senate as institution was not able to play active part in legislative affairs because of the clear majority of Pakistan People's Party and hegemonic personality of Zulfikar Ali Bhutto. In addition, senate remained under the control of national assembly which was under direct control of executive body. It means that political leadership, legislative institutions, executive, bureaucracy and military interplayed and the maximum powers were enjoyed by executive and legislative institutions were only to validate the proclamations of executive body. It is therefore, concluded that senate did not fulfill its prime objectives and in most of the time, senate remained working on the bills moved by national assembly. In addition, senate also remained under the control of executive, bureaucracy and military because of their direct involvement with each other. Therefore, it can be concluded that senate did not work independently to achieve institutional autonomy. Besides many others factors, the role of senators in the first senate was not up to the mark. The senators from ruling party were more concerned to safeguard the decisions by party leadership.

CREDIT AUTHOR STATEMENT

Fauzia Rashid: Conceptualization, Methodology, Software, Investigation, Writing- Original draft preparation. **Dr. Mahboob Hussain:** Supervision. **Dr. Rizwan Ullah Kokab:** Data curation, Visualization, Writing- Reviewing and Editing

COMPLIANCE WITH ETHICAL STANDARDS:

It is declared that all authors don't have any conflict of interest. Furthermore, informed consent was obtained from all individual participants included in the study.

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