

Role Of Religious Parties In Legislation In Parliament Of Pakistan (2013-18): A Critical Analysis

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Abstract

Pakistan has multi-party system and it comprises of both religious and non-religious parties. Although religious parties particularly JUI-F and JI have very limited number of seats in the Parliament of Pakistan, they influence the process of legislation to much extent especially where injunctions of Islam are violated or any threat to religious institutes is predicted. This research is, therefore, an attempt to critical analyze the role of Islamist parties (JUI-F and JI) in the process of legislation in the Parliament of Pakistan. It is a descriptive-analytical research which evaluate the already available facts and information for finding out the role of Islamist parties in the Parliament of Pakistan from 2013 to 2018. For the purpose of analysis, two constitutional amendments and four ordinary laws have been taken. Both the Islamist parties, JUI-F and JI, have actively participated in the legislation and also made strong observation on those contents which are against Shariah or possessing threat to religious institutes.

Keywords: Amendment, bill, constitution, debate, opposition, treasury benches

1. Introduction

The general elections, 2013 was a significant movement because for the first time in history of Pakistan one democratic government had concluded its regime and smoothly transferred its power to another democratic government. Pakistan Muslim League Nawaz (PML-N) was come out as the majority party in the general elections. It established government not only in capital but also in two provinces, Punjab and Baluchistan. In the National Assembly (NA), PML-N had gained 190 seats out of 342 which was a commanding position in the House. Simultaneously, Pakistan Peoples' Party (PPP), Pakistan Tehreek-e-Insaf (PTI) and Muttahida Qaumi Movement (MQM) had secured 47, 31 and 24 seats respectively and were sit on the opposition benches as the main opposition parties. Jamait Ulama-i-Islam Fazl-i-Rahman (JUI-F) and Jamat-i-Islami (JI), Islamic religious parties, had gained only 13 and 4 seats in the NA respectively. JUI-F became ally in the government with PML-N while JI sit on the opposition benches with other opposition parties.

From 2013 to 2018, the government had several constitutional amendments in the 1973 Constitution of Pakistan. It was a significant contribution in the constitutional history of Pakistan. Simultaneously, several other important legislations were also passed from the parliament. This paper investigates the role of Islamic religious parties, JUI-F and JI, in the process of legislation in parliament of Pakistan in PML-N government (2013-2018). It not only tries to find out the contribution of two religious parties in the enactment of different legislations but also examines to what extent the religious parties had defended theirs Islamic ideology. For this purpose, two constitutional amendments and four different laws which have more relevancy with Islamic parties' ideologies have been taken in consideration for analysis. It is pertinent to mention that both JUI-F and JI are prominent Islamist parties in Pakistan, however, they secured very limited seats in the parliament of Pakistan. It is also noteworthy that during PML-N government (2013-2018), JUI-F was government ally and JI was setting on the opposition benches.

1.1. Research Methodology

This study has carried out under qualitative research design. It is an analytical research which evaluate the already available facts and information for finding out the role of the Islamist parties in the Parliament of Pakistan from 2013 to 2018. Data was collected mainly from primary, however secondary sources were also consulted. Primary data sources comprise of debates of the members of the political parties in the National Assembly and Senate of Pakistan from 2013 to 2018. The secondary sources include newspapers, three prominent newspaper of Pakistan Dawn, The Express Tribune and The Nation have accessed for data collection.

Descriptive-analytical method is adopted for the analysis of data. Most of the data was consist of the debates made by parliamentarians in the Parliament, which is available in documented form in the Library of Parliament as well on the website of the Parliament of Pakistan. However these debates are in rough form. It was, therefore, arrange in order and categorized according to the research questions. After arrangement and categorization, the data was thoroughly read, and the

important and relevant areas to our research were highlighted. The important areas in the data were again read to understand the explicit meaning of the text. In this way, the input of the Islamist parties in making legislations were comprehensively investigated. For the reliability of the data, secondary sources, prominent newspapers of Pakistan, were also examined to provide more authenticity to the research.

1.2. Twenty-First Amendment Bill in the Constitution of 1973

The twenty-first amendment was tabled in the NA by Minister for Law Pervaiz Rasheed. The objective of the amendment was to create special military courts to accelerate the trials of militants. The bill was not opposed by any member present the house at the time. Nevertheless, members of Jamiat Ulema-e-Islam-Fazl-i-Rehman (JUI-F), Jamaat-i-Islami (JI), Pakistan Tehreek-e-Insaf (PTI) and Sheikh Rasheed did not cast their votes and boycotted from the session. This constitutional amendment would valid for only two years as mentioned in it, sanctioning military courts to hear the cases of those who are suspected of terrorism offences.

Both the religious parties, JI and JUI-F, criticized those contents of the bill which citing groups “using religion and a sect” in describing terrorists to be punished by the proposed military courts, seeing the wording discriminatory against religious groups and religious institutes (National Assembly, 2015). They emphasized to omit those words which indicating towards specific religious groups. Nevertheless, Chaudhry Nisar Ali Khan, the then Interior Minister, replied that it would neither be something frightening nor kangaroo courts (National Assembly 2015). He was of the opinion that these special military courts would not violate fundamental human rights protected by different international instruments. PML-N, major government party, endeavored to persuade JI and JUI-F to accept and vote the constitutional amendment, however, both the parties did not agree with the amendment and also abstained from voting (NA passes 21st Amendment, 2015).

The major issue which may cause serious concerns for Islamist parties is related to part ‘F’ which says “act to over-awe the state or any section of the public or sect or religious minority”. The term “sect” refers to a religious sect and excludes any legally recognized political party. Sectarian groups such as Lashkar-i-Jhangvi and Tehreek-i-Taliban Pakistan have maintained close association with religious parties particularly those parties influence from Deoband school of thought (zahid, 2016). Farhan Zahid is of the opinion that the religious parties wanted to drop this bill as it would make threats for them because of their association with different sectarian groups. He further said that majority of the leaders of the extremist religious groups were the products of religious parties in Pakistan.

The leaders of the religious political parties in Pakistan have several times termed the banned organizations people killed in different attacks as martyrs in their speeches, for example Hakeemullah Mehsud head of Tehreek-i-Taliban Pakistan (Zahid, 2016). It is also noteworthy that most of the leadership of these sectarian groups had connection with the members of religious political parties. Therefore, the clause “provide or receive funding from any foreign or local source

for the illegal activities” would produce give rise to several problems for the religious political parties in time ahead (Zahid, 2016). Both JUI-F and JI strongly opposed this constitutional amendment bill; they also proposed several changes in the bill but were rejected by the House. Consequently, they boycotted from this particular session of the National Assembly. Nonetheless the bill was passed by the parliament with majority of votes in its favor.

1.3. Twenty-Third Amendment Bill in the Constitution of 1973

Twenty-third amendment bill 2017 was presented in the NA by Zahid Hamid (PML-N), Minister for Law. The aim of the bill was to revive the military courts for another two years. It is worth mentioning that these military courts were previously established for only two years via twenty-first amendment. Therefore, the government wanted to extend the validity of the military courts for another two years through twenty third amendment. The bill was supported by all the political parties in the parliament except two government allies Pakhtunkhwa Milli Awami Party (Pk MAP) and Jamait Ulama-i-Islam Fazl-i-Rahman (JUI-F) and one independent member from opposition in the NA. JI, which has opposed the previous bill regarding military courts, voted in favour of the bill with some reservations.

In the National Assembly, both the religious parties showed strong reservation over this amendment bill. They opined the bill has specifically targeted the religious institutes and organizations. For the reason they put forwarded a number of amendments in the bill. Sahibzada Muhammad Yaqoob, Ms Ayesha Syed, Sahibzada Tariqullah and Sher Akber from JI suggested changes in sub-clause (iii) and (iv) of Clause 2 of the amendment bill. JI desired to drop the phrase “misusing the name of religion or sect” from sub-clause (ii) and (iv) and the “Explanation” related to sub-clause (iv) should also be removed (National Assembly, 2017). In explanation, Sahibzada Tariqullah said to the members of the NA that religion has no connection with terrorists and terrorism and all of us knows it. Still, you all are consciously relating religion with acts of terrorism (National Assembly, 2017). JUI-F, which was also government ally, suggested the same changes in the bill as was presented by JI. Both religious parties were of the opinion that the name of religion should be excluded from the amendment bill. However, the proposed changes from the religious parties were not accepted by PML-N, the major government party. Consequently, these changes were also overruled by the House.

In the Senate, JUI-F again put forwarded the changes in the bill but was also rejected by the majority of the members. For this reason, JUI-F boycotted from the session of the Senate. The JUI-F proposed to drop the phrases related with “religion” and “sect” from Clause 2 of the twenty third amendment bill. However, majority of members of Senate overruled these changes on a voice vote (Senate, 2017).

Both the religious parties did their efforts to drop the phrases related with religion and sect but did not succeed. The reason was that they had very limited number of seats in parliament which were not effective in total 342 members of NA and 96 members of Senate. Although they had potent street power through which they could pressurize the government, they did not choose to go to that

extend. Simultaneously, JUI-F did not left neither treasury benches nor ministries to record their protest. On the other hand, JI voted in favour the amendment bill. The twenty third amendment bill was passed from the parliament with two third majority and the military courts were extended for further two years.

1.4. The Anti-terrorism (Amendment) Bill, 2014

The Anti-terrorism (Amendment) Bill, 2014 was presented in the National Assembly by Minister for Science and Technology Zahid Hamid. The aim of the bill was to address the objections of Financial Action Task Force (FATF) which made rules for Anti Money Laundering and Counter Financing of Terrorism (CFT). The bill brought changes to the Anti-Terrorism Act (1997) to cease the flow of money to terrorist organizations through money-laundering. It further authorized the law and order forces to shoot at sight those people who disobey these rules and regulations.

Islamist party JI, sitting on the opposition benches, suggested two amendments in the amendment bill, though overruled by the treasury benches. Sahizada Tariqullah of JI recommended that a new proviso should be included in Clause 3 and in the proposed section 11-B (National Assembly, 2014). The proviso says that “provided before the listing of organization or person as proscribed in the First Schedule on an ex-post basis, and organization or individual whatever the case may be, must be heard and should be given full opportunity to satisfy the Government regarding allegations leveled upon that organization or an individual”. Sher Akbar Khan another member from JI proposed a change in Clause 3 which says the words “and the High Court has power to decide the matter with cause against the person or Government” should be included after paragraph 3 (National Assembly, 2014). However, the House overruled these two proposed amendments from JI.

Before presenting the amendment bill in the upper House, the Senate Standing Committee on Interior Affairs and Narcotics discussed it in detail. Majority of the parties in the Committee meeting believed that security forces would abuse the power granted to them in this amendment bill (Muhammad, 2014). JUI-F Senator Talha Mehmood presided the Committee meeting, arguing that both government and opposition should pick a middle ground to pass the bill from the Senate, and ensuring that law enforcement authorities do not abuse the power entrusted to them via this bill. It should be noted that the Standing Committee was headed by the member of religious party, JUI-F. Notwithstanding, non-religious parties were also of the opinion to bring some changes to the bill.

Senator Tahir Mashhadi of the MQM, a member of the opposition benches, declared that the law would be used against political workers since security agencies have been utilizing the already existing laws against different political parties (Muhammad, 2014). He said that by handing over a great deal of authority to the country's security forces, such as imprisoning anyone for three months would be disastrous. Moreover, Sardar Ali the Senator of PPP also from opposition benches lambasted that the government is trying to make this law only for the people of Karachi

as it looked like that it would be used against the workers of those political parties which are stronger in Karachi.

The Standing Committee had brought about three changes to the bill. This includes orders to fire suspects that must be issued by police officers of grade 17 or higher, or of equivalent rank in the case of military or civilian troops or by judicial magistrate (Mukhtar, 2014). Another amendment made by the Committee is that everyone arrested under this law should be given the opportunity to undergo a medical examination. The third change is that if an investigator deceitfully and accidentally involves, entangles, or arrests a person, the penalty is up to two years in prison, and / or fine. The changes brought about by the Standing Committee were also incorporated by the Senate in amendment bill.

1.5. Pakistan Protection Bill, 2014

The Pakistan Protection Bill, 2014 was tabled in the National Assembly by Zahid Hamid, Minister of Science and Technology. When the bill was introduced, Khursheed Shah, the opposition leader, condemned the government decision of introducing the bill without informing the opposition parties. He opined that the introduction of this bill in NA without reaching an agreement with the opposition parties is contrary to parliamentary practice (National Assembly, 2014). He also warned the treasury benches that it would be difficult for them to pass the bill from Senate which is dominated by the opposition parties. The opposition leader also opposed several provisions of the bill that would allow the security forces to shoot anybody in good faith; however he asked what the “good faith” means. At the same time the provisions that allowing the security forces to search any home without a warrant and to detain any suspect for 90 days without telling his family is also opposed by the opposition leader.

Ji also strongly opposed the bill in the NA. Sahibzada Tariqullah said that the government is converting this country into police state through the bill (National Assembly, 2014). He claimed that our amendments regarding detention centers and 90 days forced detention are ignored by the treasury benches. He showed strong reservation on the power given to police via this bill to shoot anyone and to enter any house without any warrant. JUI-F termed the bill unconstitutional. Moulvi Ameer Zaman of JUI-F stated that the bill is against the spirit of article 7, 8, 13, 14, 21, 22, 111 and 188 of the Constitution of Pakistan (National Assembly, 2014). He said that our party had suggested several amendments but it was not accepted by the PML-N, government majority party. He was of opinion that although we (JUI-F) are part of the government alliance, we cannot overlook such oppressive legislation of the government.

JUI-F also moved an amendment on floor of NA to change the definition of “enemy alien”. Shahida Akhter, member of NA from JUI-F, moved the amendment in the bill which stated that “Enemy Alien” means a person found guilty by a Court not to be citizen of Pakistan or depredation on its territory by virtue of involvement in offences specified in the Schedule” (National Assembly, 2014). The original definition of “Enemy Alien” is “a person who fails to establish his citizenship

of Pakistan”. She stated that there are many people in Khyber Pakhtunkhwa, Baluchistan and Karachi who do not possess national identity card, so how they would prove their identity. Naeema Kishwar from JUI-F stated that the content of the bill which give unrestricted power to security forces is against the injunctions of Islam (National Assembly, 2014). She emphasized that the government need to accept the amendment moved by JUI-F. This bill empower the security forces to enter any house without warrant and shoot anyone who do not follow the orders. When the amendments of JUI-F and JI were not accepted they boycotted from the session.

JI and JUI-F were the two parties in the parliament which not only strongly opposed the bill but also abstained from voting. So both the religious parties were strongly against the bill. They labelled the law as “black law”. Both the religious parties believed that the law would have significant impacts on the lives of general public and would posed restrictions on theirs freedom within the country. The unlimited power given to law enforcement authorities through this law was also rejected by both the religious parties. Having said that both these parties did not take other political parties in confidence to stop the passage of the bill. Simultaneously, they did not cast their vote against the bill; they abstained from voting and boycotted the session. Nonetheless, with the support of other opposition parties the government succeeded to pass the bill from the parliament of Pakistan.

1.6. The Election Bill, 2017

The Election Bill 2017 was introduced in the National Assembly by Zahid Hamid from treasury benches. It is to be noted that ‘Parliamentary Committee’ was formed on July 5, 2014 to draft a bill for elections reforms in Pakistan (National Assembly, 2017). The parliamentary committee included 33 members from all the parliamentary political parties- treasury benches along with opposition benches. In its very first meeting, Ishaq Dar, a veteran politician from PML-N, was appointed head of the parliamentary committee (National Assembly, 2017). The committee created a proposal that was tabled in the House as 'The Election Bill 2017', after nearly three years of deliberation. The ‘nomination form’ is a basic application form proposed by the draft bill which would be filled by all the applicants contested for national and provincial assemblies seats. The proposed law has raised the form submission fee to 20 thousand rupees for the all the applicants of national, provincial and seats; the aim is to discourage non-serious candidates. At the same time, the spending limit for the contesting candidates has raised to 40 lakh, 20 lakh and 15 lakh for national, provincial and Senate seats. The proposed bill further says that the Pakistan Election Commission (ECP) has the authority to invalidate election results in a particular constituency if the female vote’s turnout in the constituency is less than 10%. This particular provision is intended to encourage women’s participation in the elections process.

Jamat-i-Islami has made several observation on the proposed law. JI recommended that Election Commission should not cancel elections in any constituency due to the low turnout of women, but anyone who attempts to prevent women from voting should face legal consequences (National Assembly, 2017). JI proposed that provision relating to 10% turnout of women’s votes in each constituency should be removed. It further suggested that the elections’ expenses mentioned in

clause 132 for national, provincial and Senate seats should be cut down from 4 million to 1.5 million, from 2 million to 1.5 million and from 1.5 million to 1 lakh respectively. In addition, in the 2018 general elections, JI proposed to develop and implement a voting mechanism for Pakistanis living in other countries. However, the treasury benches did not consider these changes in the draft bill.

On the floor of the House, Sahibzada Tariqullah from Jamat-i-Islami suggested that the loan defaulter mentioned in Clause 2 of the bill would be should be counted from 1947 up to date rather than 'on or after 31st December 1985' (National Assembly, 2017). JI believed that it would recover much more money which would contribute in financial health of the country. Nonetheless, this amendment was overruled by the treasury benches. Syeda Aysha also from Jamat-i-Islami proposed an addition of a new sub-clause 7 in Clause 50. It states that the staff on the day of the elections including Returning Officer (RO) and Presiding Officer (PO) shall be responsible for transparent elections. For any elections manipulation, presiding officers would be held accountable and should be penalized (National Assembly, 2017). However, like other proposals from JI, it was too rejected by the treasury benches. In addition, JI also tabled another amendment to remove the requirement of 10 percent women's votes in each constituency (National Assembly, 2017). It was also not accepted by the government alliance.

The draft bill was again presented in the National Assembly for further amendment to fix the changes made in the Form 'A' for a contestant candidate in the Elections Bill, 2017. It is worth mentioning that these changes were not pointed by the religious parties when the bill was for the first time tabled in the assembly, as these changes were related with the finality of the prophethood. In amendment Form (A), the letters "I solemnly swear" was changed with the words "I declare" which had raised the issue about the faith of a candidate in inevitability of the prophethood of Hazrat Muhammad (PBUH) (Haq, 2017). In addition, it was enacted that non-Muslims contestants would not use this form.

In the National Assembly debate, former Prime Minister Zafrullah Jamali claimed that the Minister of Law Zahid Hamid had made the changes to Khatm-e-Nabuwat (finality of prophethood) law in the Election Bill 2017 (National Assembly, 2017). PTI's Shah Mehmood Qureshi demanded from the government that those who are involve in this irresponsible modification must be identified (National Assembly, 2017). While responding to the opposition's allegations, Zahid Hamid told the House that he firmly believes in oneness of Allah and recognizes finality of the prophethood of Hazrat Muhammad (PBUH) (National Assembly, 2017). It is important to mention that not only Zahid Hamid was the member of the committee made for drafting the bill for elections reforms but also members from all the parliamentary political parties whether in government or opposition were included in the committee. So both the government and opposition were responsible for this modification in the elections law. In particular, in the first draft bill, the religious parties had also ignored these changes in Khatm-e-Nabuwat laws.

Nonetheless, the Khatm-e-Nabuwat testimony has been reinstated to its previous version in both languages of Urdu and English (Haq, 2017). Similarly, sections (7-B) and (7-C) of the Conduct of General Elections Order, 2002 have also been reinstated to their previous versions through the bill. Section (7-B) says that the position of Ahmedis would be same as provided by the 1973's Constitution of the country, whereas section (7-C) deals with the belief of registered voters on the finality prophethood of Hazrat Muhammad (PBUH). Similarly, the bill was also passed by the Upper House to restore the original clauses of Khatm-i-Nabuwat. All the opposition parties supported this amendment bill in the Senate without any alternative.

1.7. The Transgender Persons (Protection of Rights) Bill, 2018

The Transgender Persons (Protection of Rights) Bill, 2018 was tabled in the Senate by PPP's Karim Khwaja sitting on the opposition benches of the Upper house. The aim of the proposed draft bill was to make it possible for transgender people to be recognized and registered in public offices as transgender. The law could also enable them to get passport and driving license. They would be able to change their gender in their records at the National Database and Registration Authority (NADRA). Kidnapping, abducting, or enticing a transgender person to have illegal association is punishable by life in prison and a fine, according to the bill. It also provides protection to transgender's inheritance right and those who deprived them from this right would be punished for five to ten years in jail or a fine of ten lakh rupees, or both.

The proposed law was unanimously passed by the Upper house (Senate) with no debate and alternatives from the opposition as well as treasury benches (Senate, 2018). It is notable that the proposed law was introduced in the Senate by PPP's senator, the major opposition party. Both the religious parties, JUI-F and JI, have members in the Senate but they did not suggest any changes or make any debate on the proposed law.

In the Lower house (National Assembly), the bill was introduced again by PPP's member, Naveed Qamar. Before voting on the proposed draft bill, Naeema Kishwer from JUI-F said the proposed law has a fundamental flaw which shall be addressed (National Assembly, 2018). For that reason, she urged that the draft bill be submitted to the relevant Standing Committee for further review and discussion. In addition, she moved a motion for sending the draft bill for further deliberation to Council of Islamic Ideology (CII). Nevertheless, the treasury and opposition benches, with the exception of JI, rejected the motion and proposal of JUI-F. Naeema Kishwer extended that her party (JUI-F) has strong reservation over the draft bill because it allowed castration which is against Islamic injunctions. She advocated that government should establish a medical board that would determine whether or not a person is transgender.

Aisha Syed, a member of National Assembly from Jamat-i-Islami, showed her party consent on the reservation made by Naeema Kishwar (National Assembly, 2018). She also believed that the proposed draft law should be sent to the relevant Standing Committee for more discussion. However, not only the Treasury benches but also the other opposition parties rejected the reservations and proposals made by both the religious parties in the parliament of Pakistan.

Consequently, the proposed law was enacted by the National Assembly with majority of votes both from opposition parties and government alliance.

1.8. Conclusion

It is observed from the study that those bills which have contradicted with ideologies of the opposition parties have faced resistance from the opposition benches. However, religious parties have showed more resistance than non-religious parties. As JUI-F and JI, religious parties, were the parties who opposed the enactment of Pakistan Protection Bill, 2014. Similarly, the religious parties JI and JUI abstained from voting on 21st and 23rd constitutional amendment bill related to military courts. On the other hand, non-religious parties like PPP and PTI, who have also strong reservation over the above bills but they made compromises against their ideologies and voted in favor of the bill. Although, major opposition party PPP succeeded to incorporate some alternatives in these bills, it did not stop the passage of these bills from the parliament. As these parties have enough numbers in the Senate to drop these bills. The study concludes that Islamist parties in the Parliament of Pakistan have not only actively participated in the process of legislation but also have made strong objections on those bills which were against the injunctions of Islam. They also tabled alternative policies against those which were against their ideologies. To sum up, Islamist parties, particularly JUI-F and JI, have very limited seats in the parliament of Pakistan. In addition, they have had one percent ratio against other political parties, but their performance in the process of legislation was much better than other parties. At the same time, they were more committed to their ideologies than other non-religious parties.

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