

Comparison Of Mutahida Majilis-I-Amal And Awami National Party Governments In Khyber Pakhtunkhwa (2002-13): A Study In Legislation

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Abstract

In modern world legislation is one of the important functions of democratically elected institutions. In those elected institutions the whole legislative process is controlled by government as they are in majority in the elected institutions. This study compares the government of two ideologically different parties/coalition—Mutahida Majilis-i-Amal and Awami National Party in terms of their legislation. Mutahida Majilis-i-Amal, an alliance of the religious parties mainly focused on implementing Islamic Laws as they promised in the manifesto while Awami National Party tilt was towards western welfare legislation. Apart from the implementation of Islamic laws Mutahida Majilis-i-Amal to its credit have some other laws related to education and health etc. The quantitative comparison of the legislation of both the governments shows that Awami National Party has an upper hand as their government passed 98 laws while Mutahida Majilis-i-Amal during its government passed 55 laws as they gave more time to the Hisba bill which could not become law due to the opposition of central government.

Key Words: Islamic way of Life, Women Rights, Child Rights, Labour Rights, Health, Education

Introduction

Legislation is important mechanism to put a society in order, determine rights and responsibilities, control criminality and punish those who are guilty. In all democratic states of the world legislation is the important function of the elected representatives of the people. Like other democratic states Pakistan also has legislative bodies at central as well as provincial level. Mostly legislation in these bodies are controlled and determined by political parties in majority in these legislative bodies.

Under the Constitution of Pakistan, 1973, Provincial Legislative bodies are authorized to make laws on all other subjects which are not included in the Federal List. The province of Khyber Pakhtunkhwa got its first Legislative

Council in 1932 with 40 members. After passing through different stages the Legislative Assembly of Khyber Pakhtunkhwa presently have 124 members.

The political history of Khyber Pakhtunkhwa from 2002 to 2013 is very interesting as well as important. It is interesting due to the fact that people of the province first give their mandate in favour of religious parties. Right after that in the next elections they turned towards secular political parties. It is important in the sense that the legislative assemblies completed its terms without any interference of the undemocratic elements.

This paper analyses the approach of two ideologically different—religious and secular parties towards legislation in their tenure.

Election of 2002 and 2008 in Khyber Pakhtunkhwa

After the coup of 1999 by General Pervez Musharraf, elections in the country were held in 2002. In those elections Mutahida Majilis-i-Amal won majority in the province of Khyber Pakhtunkhwa. Mutahida Majilis-i-Amal was an electoral alliance of six religious parties for the election of 2002. Before the formation of Mutahida Majilis-i-Amal, it was Pakistan-Afghan Defence Council (PADC). Pakistan-Afghan Defence Council was formed for the purpose of expressing solidarity with Afghan Taliban government in the event of United States attack on Afghanistan. They were also critical of Pakistan government decision to support and help United States in its war in Afghanistan. That Pakistan-Afghan Defence Council was later on converted into electoral alliance of Mutahida Majilis-i-Amal for the election of 2002. Mutahida Majilis-i-Amal was consisted of Jamiat-e-Ulema-e-Islam (F) (JUI-F), Jamiat-e-Ulema-e-Islam (S) (JUI-S), Jamat-i-Islami, Jamiat-e-Ulema-e-Pakistan (JUP), Jamiat Ahle-Hadith (JAH) and Islami Tehrik-e-Pakistan. Maulana Shah Ahmed Noorani of JUP was elected as its first president. (Kamran Aziz, 2009)

In the election campaign, Mutahida Majilis-i-Amal primarily concentrated on anti-US propaganda and enactment of Islamic system and laws in the country. In its manifesto also they focused on remodeling the society on Islamic lines and Islamic governance system. The manifesto also included the aim to inspire the fear of Allah among populace in general and government functionaries in particular. Other things in the manifesto were abolition of Jagirs, just economic system, free education, provincial autonomy and support to the people of Kashmir, Palestine, Afghanistan and Chechens in their freedom struggle. (Ashutosh Misra, 2003)

After the elections of 2002 when the results were declared, Mutahida Majilis-i-Amal won 51 seats out of 99 general seats in the assembly of Khyber Pakhtunkhwa. After the joining of 2 independent candidates and addition of reserved seats for

women and minorities the total number of seats belonged to this coalition rose to 69 out of 124 total membership of the assembly. Thus it was an absolute majority in the hands of Mutahida Majilis-i-Amal and they formed government in the province with Akram Khan Durrani as the Chief Minister of the province. (Ilyas Khan, 2002)

After the completion of the term of the assembly, elections were held in 2008. Before the election political parties issued their manifestos. Awami National Party in its manifesto focused on the status of FATA (Federally Administered Tribal Areas), Agriculture, education, provincial autonomy, women development, independent judiciary and media, labour issues and poverty alleviation. While the Pakistan Peoples Party emphasized on unemployment, poverty alleviation, provincial autonomy, sovereignty of the parliament, education and labour issues. (PILDAT, 2007)

When the results of the elections were declared Awami National Party was able to get the lead with 47 seats in the provincial assembly but was unable to form government alone. Thus it had to form a coalition government with Pakistan Peoples Party which secured 30 seats in the election. Amir Haider Khan Hoti was elected as the Chief Minister of the province.

Comparative study of the legislation of Mutahida Majilis-i-Amal and Awami National Party

In the following lines the legislation of both the governments—Mutahida Majilis-i-Amal and Awami National Party in the provincial legislature has been compared both in quantitative and qualitative terms.

Quantitative Comparison

While quantitatively comparing the legislation of the two governments it was revealed that Mutahida Majilis-i-Amal 55 bills including the passage of Hisba bill for two times—in 2005 and then in 2006. In those 55 bills 14 including 2 Hisba bills were newly drafted bills while 41 were amendments in the existing laws. While Awami National Party in its 5 years tenure passed

98 laws, of which 38 were newly drafted laws while remaining were amendments in the existing laws.

Qualitative Comparison

The following pages describe the qualitative analysis of the legislation by both the governments. It describes and analyses that what was the focus of Mutahida Majilis-i-Amal in the legislative sphere while they were in government and which issues was the center of attention for the Awami National Party led government.

Implementation of Islamic System

One of the important point of Mutahida Majilis-i-Amal manifestos for the 2002 election was the implementation of Islamic laws in the country. In order to fulfill that promise which they had made with the people during the electoral campaign they passed resolutions in the provincial assembly where they were in majority, to ban bank interest and shift the weekly holiday to Friday from Sunday. It was also reported that the government is going to ban the festival of Bassant which is considered to be a non-Muslim festival. (Ashutosh Misra, 2003) For the purpose of implementation of Sharia law in the province, Mutahida Majilis-i-Amal passed a law which bound all the courts in the province to interpret all laws according to Islamic Sharia. Through the same law it was decided to establish commissions to give recommendations regarding Islamic reforms in education, economic system and judiciary. (KPK Act No. II, 2003) With the same purpose of the implementation of Islamic system another bill passed by Mutahida Majilis-i-Amal government was Hisba bill. It was passed twice by the provincial assembly but could not get the status of law. This bill was about the establishment of the institution of Hisba along with a police force called Hisba Force. The purpose behind the establishment of that institution was to fulfill the Quranic obligations of directing good and forbidding evil. According to that bill Mohtasibs were to be appointed at province, district and tehsil level and were entrusted with legislative, judicial and

administrative powers. The qualification for Mohtasib was degree from a Madrassa.

This initiative of the Mutahida Majilis-i-Amal government was criticized on several grounds. Some alleged that the purpose behind the establishment of this institution was to create jobs for Madrassa graduates who were the supporters of the religious political parties. It was also criticized on the ground that the establishment of this institution will create a parallel judicial system which will be in conflict with the existing one. Mutahida Majilis-i-Amal government invested a lot of time of the provincial assembly in that bill. (Dawn, 3rd July, 2004)

This government also prohibited interest on personal loans through the passage of law. It was made a punishable offence and those who commits this offence will have to be punished with five hundred thousand rupees or imprisonment of five years or with both. (Act No. II of 2007) They also endeavored to stop bank interest as well and for that purpose passed a law to introduce the system of Islamic banking in the Bank of Khyber. In order to smoothly run the system a committee with the name of Sharia Supervisory Committee was established. Its function was to give advice to the Board of Governors on converting the existing system to that of Islamic system. (Act No. V of 2004) The establishment of Sharia Supervisory Committee was criticized on the grounds that it will be a parallel body to the Board of Directors and also it will consist of eminent Ulemas but there was no definition of eminent Ulema as who would introduce Islamic Banking System.

Legislation on Health

Health is one of the important and basic right of any individual of a country. Any state which claims to be a welfare state should have health facilities, affordable and reachable to its citizens. For the purpose of the provision of this basic right to the people the Mutahida Majilis-i-Amal government passed a law to provide free of cost medical care to the poor people of the province for certain diseases. An endowment fund was established for that purpose and the medical care

had to be provided to the people at eight hospitals of the province at different cities. (KPK Act No. IV of 2004)

Although the Awami National Party government was unable to provide any free medical care facility to the people but they passed two laws from the provincial assembly related to health sector. The first law bounds the Nikkah registrars to obtain medical tests of the spouses of the Hepatitis C and Thalassaemia before registration of marriage. (KPK Act No. XVII of 2009) This was just for the couple to be aware of the medical condition of their partner before entering upon any relationship.

Another law by this government in health sector was for the re-establishment of Paraplegic centre. It was previously established and run by International Committee of Red Cross. It was treating the patients with spinal cord injuries. Through the law government established a fund to maintain expenses of the Board which was established for the administration of the Paraplegic Centre. (KPK Act No. XX of 2009)

Legislation on Women Rights

Women are one of the most marginalized groups of our society. In our society we have some customs which deny basic rights of the women. The Mutahida Majilis-i-Amal government condemned the tradition of swara (A custom in which a girl is given to the enemy in order to settle a dispute) which is practiced in Pakhtun society but they did not take any step towards legislation to stop that practice. They also condemned and termed unislamic the practice of forced marriages, women trafficking and honor killing but did not do any legislation to stop these practices. (Jhon L., 2007)

On the other hand the Awami National Party led government passed several laws related to women rights. They established Commission on the status of women through a law. The purpose of the establishment of the Commission was the development and liberation of women and elimination of discrimination against women. It will also have to review the existing laws and can also propose new laws for the development and

rights of women. A fund was also established to run the affairs of the commission and welfare of women. (KPK Act No. XIX of 2009) through amendment in the law they included a female member in the Provincial Public Service Commission. (KPK Act No. XX of 2009) and they also gave representation to women in the Zakat committees at provincial, district and local level. (KPK Act No. XVII of 2010) another law passed by that government protects the right of women ownership. According to that law no one can deprive a woman from her property. The law says that no person will reduce, violate, curtail or obstruct the right of women to property which belongs to her by the way of inheritance, gift, purchase or Mehr. Those who violate that law will be punished with imprisonment of up to five years and fine of up to fifty thousands. Also the property will have to be handed over to the rightful owner. The courts were directed through law to decide such cases within six months and implement the decision through local police within a month. (KPK Act No. III of 2012) another law of that government entitles women workers to maternity benefits. The employer will have to pay maternity benefits to women worker for twelve months at the rate of her current salary. (KPK Act No. XVIII of 2013) through another law, the government bounds the factories not to employ women on moving machines as it is very harmful to their health. Similarly women should not be employed in pressing cottons and night shifts were also banned for them. In order to keep check on the factories inspectors will have to be appointed and penalties were laid down in the law for those who violate the provisions of the law. (KPK Act No. XVI of 2013) In the era of the same government the custom of Ghag was declared a punishable offence through a law. Ghag is a custom in Pakhtun society where a person forcibly claims the hand of a woman without her or her parents' consent by spoken or written words that no other person will make proposal or marry her and in case of doing so threaten her family. The law says that anyone who demands the hand of a woman by the way of Ghag or whoever assists someone else in such act will be punishable with fine or

imprisonment. (Dawn, 8th January, 2013) Thus this analysis shows that the Awami National Party led government in the province was more active and dedicated towards women rights as compared to the Mutahia Majlis-i-Amal government.

Higher Education and Research

Research and education is considered to be of vital importance for the development of any nation. Different countries of the world support research and education through grants. The Mutahida Maajilis-i-Amal passed a law through which Higher Education Research Endowment Fund was established. Its purpose was to encourage researchers by providing scholarships and grants. These scholarships and grants were to be given in the field of physical and social sciences. (KPK Act No. IX of 2004) they also passed laws to establish Frontier Women University, University of Science and Technology Bannu and Khyber Medical University. Although the purpose of establishing Women University was the segregation of male and female in the society, but the establishment of a Women University provided an opportunity to those females who were not allowed to get higher education in co-educational institutions.

The Awami National Party led government passed four laws for universities during its tenure. Two of them are for public sector universities which are Islamia College Peshawar and Abdul Wali Khan University. The other two are for private sector universities which are the Iqra National University and Abasyn University. According to the provincial Law Minister of Awami National Party Arshad Abdullah, the establishment of these universities at different areas of the province provided an opportunity to those who could not afford to send their children to Peshawar for higher education. Now these people will also be able to give higher education to their children.

Labour Rights

Labours are very important and at the same time very neglected part of our society. Its the moral obligation of the government protect labours

rights. In the interest of labours, the Mutahida Majlis-i-Amal government raised the rate of fine on employers for deducting salary from employees on annual leave, sick leave or festival holidays. They also raised fine on these employers who take more time of employees than the time specified by the government without extra remuneration. (KPK Act No. VIII, 2005)

The Awami National Party led government passed several laws for the protection of the rights and giving relief to the labours. Minimum Wages Board was established through a law. Its purpose was the regulation of minimum wages for different categories of workers. On the recommendations of this board government notifies minimum wages for different categories of workers. The employers must have to pay to their workers according to the notification of the government. Any employer who does not follow the notified rates could be punished with a heavy fine and imprisonment. (KPK Act No. XII, 2013) Through another law they made it binding on the owners of the newspaper, news agencies, press and book registration to pay salaries to their employees according to the Wage Board Award. (KPK Act No. XX, 2013) another law for the facilitation of the labours was for the provision of compensation in case of death or injury. This law bounds the employers to pay a compensation of three hundred thousand rupees to the legal heir of the worker in case of death or permanent disability during duty. In case of temporary disablement, the worker will be paid half monthly salary during the time of his disablement. But if the disablement increases to one year he will be paid salary only for one year. (KPK Act No. XIX, 2013)

Another law passed by this government was related to health concerns of the factory workers. It was made obligatory on the factories to make proper arrangements for cleanliness, circulation of air, prevention of accumulation of dust, supply of drinking water, suitable lightening and prohibits overcrowding in workrooms. The factories were directed to use heavy machinery of good construction and should be maintained properly. Working hours of the different types of

workers and factories were also fixed. The overtime salary of the workers was fixed as double of the ordinary salary. Workers are made entitled to ten day casual leave and festival holidays with full pay and sixteen days sick leave per year with half pay. Those who did not obey these rules will be liable to be punishment according to this law. (KPK Act No. XVI, 2013)

In order to facilitate the collection of information related to living conditions, working hours and wages of the labours another law was passed by the same government. According to that law officers were to be appointed for the collection of that information. Anyone who does not provide information or provide false information will be punishable with a fine. (KPK Act No. XIV, 2013) Another law passed by Awami National Party government bounds the employers to classify all his employees in permanent, contract, probationers and apprentices and wages of all different categories of workers to be notified. Every worker must be given an appointment letter having terms and conditions of the service and on dismissal must be given service certificate. This law also entitles employees to annual, festival, casual and sick leaves. The law also ensures the payment of wages in time to the workers. It was made obligatory on employers to insure his permanent workers against natural death or injury and if an employer fails to insure his workers he will be then responsible for the payment of compensation as payable to the worker by the insurance company in case of death or injury (KPK Act No. XI, 2013). This government also passed another law related to the formulation of trade unions and it also established Labour Courts. According this law, the employees of an industry and establishment could form or join any association. The association will have its own constitution and rules for the election of its office bearers. Every such association will have to register itself and it will maintain a proper record of its expenditure, funds and its meetings. No employee will be persuaded to join or leave or restricted from joining any such association. Every establishment which has more than fifty workers

will have workers representatives at the Management Council and they will not formulate service rules, policy about promotion and discipline of workers, changing physical working condition in establishment, training of workers, welfare and recreation of workers, regulation of daily working hours and preparation of leave schedule etc without the advice of the workers representatives. According to this law, the Management of an establishment will sort out the grievances of workers within fifteen days but if it fails to respond in fifteen days the matter will be brought before the Labour Court which will decide the matter within seven days. (KPK Act No. XVI, 2009) The above discussion shows that Awami National Party government was more concerned about the labour laws than the Mutahida Majilis-i-Amal government who passed only one law while the former government passed several laws on different aspects of labour rights.

Child Rights

The Awami National Party government passed a law for the protection, education, welfare and training of children at risk. At risk children are those who are orphan, beggars, migrants, labours or disable. Through this law a Child Protection Commission was established which works for the protection and rehabilitation of at risk children. The Commission formulates and plan activities for rehabilitation and protection of children. It also has the power to review the existing laws and can also propose new laws for the protection and development of children in the province. Under that law Child Protection Units were established at District level and Child Protection Officers were appointed at district level to implement the programme of Commission at district level. A fund was also established for the protection and rehabilitation of at risk children. This law also abolished corporal punishment and it also set different punishment for different types of violence against children like physical punishment, child labour, dealing in child organs, child trafficking and involving a child any sexual activity. (KPK Act No. XIII, 2010) The purpose of this law was to protect the children from drug

addiction, physical abuse and harassment and to educate them to so that they could also contribute to the society. To ban child labour another law was passed by the assembly through which employment of children in factories was banned. It also said that adolescent will not be employed on moving machinery or in pressing of cotton. (KPK Act No. XVI, 2013)

In Pakistan underage convicts are kept in jails along with habitual criminals which could have negative impact on those under age convicts. Instead of any correction in their personalities they become more vulnerable to be recruited by groups and adult habitual criminals into their groups. Keeping in view that situation the Awami National Party government passed a law to establish Borstal institutions in the Province. The purpose of that institution was the provision of basic education and training to Juveniles for moral, mental and psychological development. Juveniles will be kept separate from adult criminals. Proper arrangement will be made for their health, hygiene, medical care, accommodation, food and facility of meetings with their relatives. (KPK Act No. XIV, 2012)

Conclusion

The comparison of the legislation of the Mutahida Majilis-i-Amal and the Awami National Party led governments draws the conclusion that the later took its job of legislation more seriously and passed 98 laws during its five years tenure while the Mutahida Majilis-i-Amal passed 53 laws during its tenure. Although the Awami National Party led government has the advantage of the 18th Amendment which gives the power of legislation on the subjects like labour rights, trade unions, family laws, curriculum, regulation of the newspapers and press, tourism and a lot of other subjects exclusively to provincial legislatures. But before that amendment these subjects were in the concurrent list on which both the provinces and federal government were authorized to legislate but in case of conflict the federal law will have to prevail. The quantitative comparison of the legislation of the two draws the conclusion that the Mutahida Majilis-i-Amal, which was an

electoral coalition focused more on the implementation of Islamic laws and gave more time to the controversial Hisba Bill instead of focusing on other issues. Although they had to their credit a few very commendable laws as well which were related to health and grants for research in different subjects etc but more time was given to implementation of Islamic Laws and System. In contrast to the Mutahida Majilis-i-Amal, the Awami National Party led government focused on women, children and labour rights and passed several laws for the facilitation of this marginalized groups of our society. The analysis of the whole legislation by both the governments shows the tilt of the Awami National Party led toward welfare and rights legislation while that of the Mutahida Majilis-i-Amal towards Islamic laws and Islamic way of life.

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