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## **SOCIO-POLITICAL LEGISLATION DURING PARLIAMENTARY GOVERNMENTS IN PAKISTAN (1988-1999): A REVIEW**



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IN THE NAME OF

الله  
الله

Most Merciful and Compassionate the Most Gracious and Beneficent  
whose help and guidance I always  
Solicit at every step, at every moment.

اقرأوا ربكم الراكم ٥

الذى علم بالقلم ٥

علم الانسان مالم يعلم ٥ قرآن كريم

Surah Alaq: (3-5)

Read: and thy Lord is the Most Bounteous,  
Who teacheth by the pen,  
Teacheth man that which he knew not,

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Submitted in partial fulfillment of the requirements for the  
Master of Philosophy degree in History faculty of Social Sciences  
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May 27, 2011

Dedicated  
To  
My parents and Teachers

## APPROVAL SHEET

### SOCIO-POLITICAL LEGISLATION DURING PARLIAMENTARY GOVERNMENTS IN PAKISTAN (1988-1999): A REVIEW

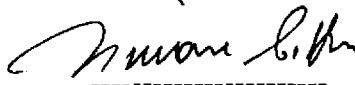
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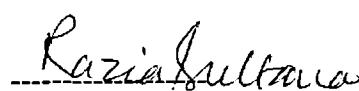
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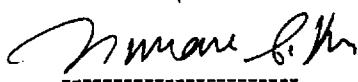


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## Certification

Certified that content and form of thesis entitled "Socio-Political Legislation during Parliamentary Governments in Pakistan (1988-1999): A Review" submitted by **Muhammad Altaf Malik** Registration No: 11-FSS/MSHIS/F08 have been found satisfactory for, in partial fulfillment of the requirements of the degree of MS in History with a specialization in Modern South Asia politics.

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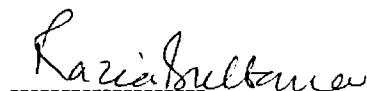
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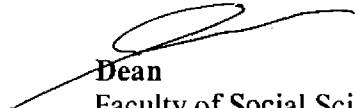
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## ABSTRACT

The at hand study is an effort to dig out socio political issues that were on hand during the period of 1988-99, and were debated on forum of the Parliament. Parliament paid keen focus on these issues and approved very valuable legislations on these issues. This thesis will discover the background of socio-political issues and will present the significant commentary on Parliamentary debates and legislations. It will also bring to light the merits and demerits of socio-political legislations that were passed during the period of 1988-99. The study will also highlight the differences between legislations of despotic period and legislations of Parliamentary period.

An interesting analysis will be presented on Benazir Bhutto period's legislations and Nawaz Sharif period. The thesis will present comparative study on both periods of Nawaz Sharif and Benazir and will trace out differences and similarity in theirs legislative work. It is clear like crystal, parliament took up very serious steps on socio-political issues and issues were debated well in the forum of parliament, than legislations were passed on these issues. No doubt lots of laws were made on socio-political issues. But why did the state of society not change? All related debates of Parliament have been quoted in the thesis and these quotations made thesis more interesting and informative. This thesis presents lot of suggestions and shows the course that goes to needy sectors of society for legislations.

This study will dig out new areas for legislations that have been neglected badly up to now. In nut shell the thesis shows full fledged review on socio- political legislations that was passed during the period of 1988-99 by the Parliament.

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May 27, 2011

Muhammad Altaf Malik

## CONTENTS

	<b>Pages #</b>
Abstract	i
Acknowledgment	ii
Introduction	1 – 5
Chapter No. 1	6 – 33
Functions of Parliament	
Chapter No. 2	34 – 67
Legislations on Social Issues	
Chapter No. 3	68 – 91
Legislations on Political Issues	
Conclusion	92 – 108
Bibliography	109 – 114

## Introduction

Pakistan arose on the world map under the Indian Independence Act of 1947. The first Constituent Assembly of the new state was able to frame a constitution in 1956. However, the 1956 constitution was abrogated within almost two years. In October 1958, Ayub Khan imposed his dictatorial rule, bringing an end to the civilian rule in the country. Although he tried to give a civilian color to his rule through national and local elections, the basic authoritarian character of his regime did not change during his rule. When Ayub faced a protest movement and lost his grip over the state affairs, he handed over power to another military dictator, General Yahya Khan he was then Chief of Army Staff. Yahya was also not able to control the worsening situation in East Pakistan. In the wake of the separation of East Pakistan in 1971, Yahya transferred power to Z.A Bhutto on December 20, 1971.

The civilian government of Bhutto was overthrown in a military coup in 1977. The coup leader, General Mohammad Zia-ul Haq, abrogated constitution and imposed a Martial Law in the country. He remained in power till his death on August 17, 1988. A controlled parliamentary government came into power in 1985 as Zia held elections on non-party basis. Muhammad Khan Junejo became the Prime Minister in the wake of 1985 non-party national elections but his government was dissolved in 1988 by Zia ul Haq.

The preceding analysis shows that the period during which genuine civilian governments ruled from 1947 to 1988 was quite limited. In other words, the civilian governments and political parties had limited legislative experience before 1988. In the post-Zia period, four civilian governments came into power before the government of Nawaz Sharif was overthrown in a military coup in 1999. It can be safely said that the four civilian

governments had the opportunity to govern the country and address different issues through passing laws in the parliament.

The purpose of this research is to study the sociopolitical legislation these four civilian governments passed during 1988-1999. In this study, we will seek to identify the main sociopolitical issues, which the parliament focused on during this period and the kind of legislation it passed to deal with them. An effort shall also be made in this study to assess whether the legislation passed under the leadership of Benazir Bhutto and Nawaz Sharif was able to achieve the intended results. That is, the solution of the problems at hand.

In fact, during this period both Benazir Bhutto and Nawaz Sharif took charge of the Prime Minister office twice. It is a legitimate expectation that the civilian governments of both Benazir Bhutto and Nawaz Sharif would address the problems of the country through passing legislation in the parliament. Both civilian governments were presumably accountable to the parliament.

Interesting questions arise in this regard as whether their legislative record is similar or different and if their legislative records differ, whether these differences are minor or profound.

Despite the fact that the civilian rule existed for almost 11 years, the legislative performance of the civilian governments in Pakistan during this period has not received adequate attention. The study of legislation during 1988-99 shall serve as an indicator of how much the civilian governments were aware of the problems our society faced and how much concerned they were with their solution. The present study also will show whether the civilian governments wanted to solve the prevailing problems through legislative mechanisms or not.

The existing body of knowledge on these issues is inadequate. An effort shall be made in this study to answer these questions and by doing so this study seeks to fill the gap in our understanding of the legislative performance of the civilian governments during 1988-99.

This study will also provide a theoretical framework for the purpose of, comparing the legislative record of the civilian governments on various sociopolitical issues, which were existed in our society. It will not only be useful for our parliamentarians in terms of recognizing the importance of addressing the critical societal and governance issues through legislation but will also encourage the students of politics and history in general to carry out further research in this field.

As already mentioned, this area of research has received little scholarly attention. Although a few scholarly books are available on the constitutional history of Pakistan, the non-existence of scholarly literature on the legislative performance of the civilian governments during period 1988-99 is striking. Of course, there are some works in which scholars have discussed different periods of our constitutional history in which it appears that various governments sought to use legislative mechanisms to address societal issues.

A few scholars have even covered the period 1988-92. However, a thorough analysis of sociopolitical legislation passed during the period 1988-99 is not available. G. W. Chaudhary in his book *Constitutional Development in Pakistan* covered the period of 1947-1971. His second book *Pakistan Transition From Military To Civilian Rule* covers the constitutional history up to the Zia period. Riaz Ahmed in his work *Constitutional and Political Development in Pakistan 1951-54* focused on the early period of our constitutional history. Although these works do not focus on the period under study, they can still be useful

in terms of providing the frameworks for analysis. Rafi Raza in his edited work *Pakistan in Perspective 1947-1997* covers part of the period that is under study but wrote very little about the legislative record of the civilian governments during 1988-99. Hamid Khan in his book *Constitutional and political History of Pakistan* describes only a simple story of political events, which unfolded in the country up to the second government of Benazir. Justice Dr Nasim Hasan Shah has written articles and made speeches on *Constitution, law and Pakistan Affairs*, which primarily focus on the period before 1988, but he does not cover the subject of sociopolitical legislation passed during the period 1988-99. In short, there are no scholarly works, which cover the entire period of 1988-99 with special focus on the sociopolitical legislation under the parliamentary governments.

From scholarly viewpoint, this study will be an important contribution to systematic attempts aimed at analyzing the legislation passed under the parliamentary governments during 1988-99. This study shall be both descriptive and analytical. It is needless to say that the study shall focus on many descriptive details related to the issues debated in the parliament, details related to the debates themselves and details related to the passing of a piece of legislation. The study shall also highlight the reasons as to why the parliament focused on some issues and whether the government succeeded in solving the issue through legislation, which it wanted to. The fact that scholars did not pay attention to the legislation passed during 1988-99 does not mean that no valuable material is available which researchers can use to undertake a scholarly research on the topic.

In fact, sources are now accessible to scholars. The Library of Pakistan National Assembly, the Library of the Senate, and the National Library have a lot of material on the

topic under discussion. Legislation and legislative debates are at hand there. Furthermore the relevant literature is obtainable from the Ministry of Law, Justice, Human Rights and Parliamentary Affairs Islamabad. A large amount of information on the topic is also available in the newspapers, including *The Muslim*, *The News International*, *The Nation*, *Dawn*, *The Daily Jhang*, *The Daily Nawa-I-Waqat*, etc. Almost all such newspapers maintain archives, which are quite useful in understanding the legislative debates on issues during 1988-99. Some secondary sources exist at different libraries, including the libraries of Quaid-i-Azam and International Islamic universities The National Institute of Historical and Cultural Research Islamabad is a good source for relevant material. In short, the available information allows us to conduct a systematic study of the sociopolitical legislation the civilian governments passed during 1988-1999 in order to address certain issues.

This study will be divided into three chapters exclusive of introduction and conclusion. Chapter one deals with the functions of parliament and it specially emphasizes upon on legislative function of parliament. It also provides the framework to understand the actual legislative power and constraints of parliament especially in Pakistan. Chapter two focuses on the social issues, which were presented for debate in the parliament during 1988-99. In this chapter, the discussion will focus on those issues, which the parliament chose to deal with through legislative mechanisms. Chapter three will discuss the political issues that were debated in parliament and legislations were passed on them. Lastly, conclusion will summarize the whole study and will find out further research.

## **Chapter 1**

### **Functions of Parliament**

#### **Origin of Parliament**

In the ancient times there was fusion of functions. A single man could perform different functions. In other words, he was at once supervisor, administrator, judge, and lawmaker. In addition, he had the power of parliament in his hand. A Monarch or Chief for his own gratification could make a new law, change and repeal an old one just by issuing a decree.<sup>1</sup> The term parliament is a generic term for all national Legislative bodies in the world. But the name of such legislative bodies may be different in different countries. In the United Kingdom the parliament is called "British parliament, in U.S.A." Congress, in Germany, Bundestage, and Bundesrat, in Swedish, Riksdag and in Pakistan it is called Majlis shura or Pakistan parliament.<sup>2</sup>

From an historical perspective the British parliament is rightly called the mother of parliament. It provides a political model; its acts have also created several other parliaments in the world. The British parliament as it exists today is the result of a very lengthy process spread over centuries. The House of Lords is a distinctive institution. It consists of grand Landlord, Chief, barons and noble personalities of British society.

In the beginning, the House of Lords were more authoritative than the House of Commons. The feudal system lost its capacity and could not survive in the 13<sup>th</sup> century. At that occasion people stepped forward to take part in the government affairs. So, at this juncture, the House of Commons came into being.

The monarch had started giving importance to the common people. Not surprisingly,

Magna Carta became the beacon light for ordinary people; however, it did not provide a full-fledged agreement of rights for citizens. The year 1295 was the milestone in which an equivalent of the current parliament was established. At this instant the British monarch needed additional consultation from common people.

Consequently, he recognized 'Advisory Council' which consisted of distinguished natives of British society.<sup>3</sup> Parliamentary sessions was started without any schedule and for short time. The monarch, when he needed money, would call the session and would receive an assessment from the parliament about different regions. It was just an expression body; the monarch could disregard advice and expression of the parliament. Nevertheless, the parliament had the opportunity to present it grievances. So then, it was more of an advisory council than the parliament, which could pass legislation binding on the British monarch.<sup>4</sup>

The 17<sup>th</sup> century brought incredible revolution in the British system. The Civil War and Bill of rights in 1689 played a fundamental role in providing power to the parliament. The monarch conceded the authority of the parliament and bonded himself within limits of the parliament's laws. The 20<sup>th</sup> century had come with extra reforms and changes. These reforms reduced the powers of House of Lords but increased the powers of the House of Commons.

The 1911 parliament Act established supremacy of the House of Commons over the House of Lords and the monarch was bound by the advice of the House of Commons. The power of the House of Lords to cause a delay in the legislative process was snatched through the parliament Act of 1949.

Finally, the parliament Act of 1999 completely eliminated the hereditary position of the House of Lords and it has become purely a rubber stamp in the legislative process in Great Britain.<sup>5</sup> At this time the House of Commons, not the House of Lords, is all powerful in the

British political system and is responsible for passing the required legislation in order to deal with problems the British society faces.

In fact, parliament is one of political institutions. It could vary in size, organization, function, and importance. In modern societies democracy is thought to be the best system of governance. Parliament is more powerful in a democratic society than in an authoritative society. There are both bicameral but unicameral parliaments. India is the best example of a unicameral system. The parliament may vary not only in terms of size, organization, function and importance but also in terms of election, selection, tenure, etc.

However, this study focuses on the functions of parliament. It is clear from the existing literature and empirical evidence that parliament performs several functions. These functions are important for continuation of the political system in a society. However, the legislative function is the most important function, which surpasses other functions of parliament. A brief overview of the functions which parliament performs will help us understand the importance of the legislative function in the governance of a society.

## **Representative Function of Parliament**

Parliament represents a bridge between masses and the executive. In other words, parliament, at one level, represents masses. In the eighteenth century the thirteen American colonies raised slogan against the British rule; the most popular slogan was 'no taxation without representation'. In the wake of universal development of adult suffrage and the extension of the franchise, parliament has become a popular forum of representation.<sup>6</sup>

Of course, many flaws can be found in the representative system of parliament. Sex, age, religious, and race differences and other variations made it less effective and dominant.

For instance, women are grossly under represented everywhere in the world. Such flaws led some countries to correct them. For example, Sweden and Finland granted ten percent membership of women in their respective parliaments. In the former communist countries, including the former Soviet Union, the situation was relatively better in comparison to the Western countries. In the former countries, one-third representation was given to women. Age of lawmakers also varies; in some countries people under certain age are not allowed to become part of the legislative bodies.

Some people are banned on the basis of religious and racial prejudices from contesting elections and becoming members of national legislative bodies. For example, in the past, Roman Catholics were not allowed to become members of the House of Commons in Great Britain.<sup>7</sup>

In other words, the Roman Catholics found no representation in the House of Commons due to religious prejudices. The same thing happened to the Jews; they were also not allowed to become members of the House of Commons until 1858. Anarchists were not treated differently until the end of the 19<sup>th</sup> century. Great Britain was not alone in refusing representation to different social groups on the basis of religious and other differences. The same situation can be seen in other countries. In South Africa blacks were treated as non-citizen; in China, as a matter of public policy, minorities of South East Asian origin were not considered as citizens. In US, the blacks and other minorities had virtually no representation in American Congress for quite some time after independence. In India the untouchables' face the same problem in Loksabha.<sup>8</sup> Upper class Hindus have created structural problems, which prevent the untouchables from exercising their legal rights in the biggest democracy in the world.

These flaws of representative function put a negative impact on other functions of parliament, especially the legislative function. Without appropriate representation of different segments of society, it is difficult to achieve desired results in the legislation field. Thus, the representative role of the parliament should be effective otherwise legislation would not be acceptable to different classes of society. The representative function improves the legislative function because representatives, in principles, better understand the real problems of society articulate and represent interests of different groups in the parliament and can legislate in accordance with the will of the people.

## **Governing Functions of Parliament**

Parliament also plays an important role in the governance process. The governance function is multidimensional. Parliament may perform this function through a variety of measures and mechanisms. The governance function involves choosing individuals who are given the responsibility of governance, exercising oversight and vigilance over the governance process, debating and criticizing the governance methods, and conducting investigation when and if required in governance -related issues. In some countries, parliament elects Chief executive, Prime Minister, Ministers and governing bodies. In a presidential system the president is directly elected.<sup>9</sup> The USA is a good example of the presidential system in the world.

In the parliamentary system governing machineries, including the head of state, are drawn from parliament and they remain part of parliament until government is dissolved. The United Kingdom is the best example of the parliamentary system in the world. However, in some countries the nominal head of state such as president in a parliamentary system is

selected by the parliament. In short, through appointment, selection and election, parliament chooses people who are given the governance responsibility but also held accountable to the parliament for their performance.

Parliament is responsible for overseeing and scrutinizing the implementation of different government programs for society. Parliament controls all the work of government through this important function. Most parliaments have developed institutional mechanisms designed to fulfill this role. During the question period, oral and written questions that parliament members raise and submit have to be answered by the executive.<sup>10</sup> These questions may be related to the conduct of both public and private entities, which can affect the welfare of the masses.

In other words, parliament exercises oversight not only on the way government operates but also those societal entities, which can affect the well being of the people. However, in many cases, this function has lost its effectiveness due to party discipline and powerful authority of the executive. For instance, the Chinese parliament is only a propaganda forum of the communist party and it only stamps the policies of the party government. A similar situation prevails in many other countries, including UK, India and in Pakistan.

In spite of this drawback, the significance of parliamentary oversight has grown in the process of strengthening democratic accountability and enhancing democratic values. Through the oversight role parliament controls the policies of government, which can have negative consequences for society. Parliament, theoretically speaking, reviews all legislation from this viewpoint. Thus, oversight is a very essential part in the legislative process.

Parliament gets societal feedback on legislation as members defend their communities in parliament<sup>11</sup> and can review the legislation and policies if found to be ineffective. The

debate and critique may be used in performing the functions of scrutiny and oversight. The debate in parliament has a deep link with legislative procedures and processes. Parliament debates crucial issues of the society and gets feedback on these issues from society. Parliament is likely to develop legislative proposals with the help of parliamentary debates. The members of parliament point out concealed flaws in the legislative schemes. In particular, opposition parties take part in critical job in debating function. However, unfortunately, party loyalty has weakened the debating function. At the present it has become only ceremonial modus operandi and has lost its worth.

In the words of Richard Cobden (1804 – 65), “In this House I heard speech that moved men to tear but never one that turned a vote”.<sup>12</sup> In spite of such problems, debates do facilitate the citizen to develop an outlook regarding foremost issues and policies of Government. In other words, society takes part in the legislative business of Parliament through their representatives, but society partly becomes aware of important issues through the debates of its representatives.

Opposition plays an important role in these debates when it point out flaws of legislative proposals of the ruling party or submits its own legislative proposals on important issues. While a large amount of suggestions and amendments proposed by opposition parties are not acknowledged, sometimes they do a good job in blocking useless legislative proposals which go into the dust bin without endorsement of parliament. Thus debating function thrashes out legislative material; it also connects masses, parliament and government.

Parliament uses other mechanisms in order to fulfill its governance function. In this context, the mechanisms of training and recruitment are noteworthy. Parliament recruits members not only for other governing bodies but for itself too. In addition, it provides<sup>13</sup>

training to politicians in the art of legislation and governance; it gives political experience to them, enabling them to meet the requirements of their elevated offices. Parliament is the training forum where parliamentarians learn about the legislative process and the art of oversight. Governing business needs trained manpower and Parliament does this job well. In Parliament such kind of chances are available to a large number of politicians who keep rotating depending on their victory in elections. The training and recruitment of politicians ensure the survival of parliament and discussion helps it in terms of handling major issues and problems of society.<sup>13</sup>

In an effort to perform its governance function, parliament conducts investigation into public policies and affairs. For this purpose different parliamentary committees are established. Through this function parliament serves as a brake on government's malpractices.

However, primarily parliamentary committees do investigator work. Committees have no executive powers; they simply send their findings and reports to parliament. Furthermore, executives often pay no heed to the finding of the committees and opposition during parliamentary sessions and debates on such things. However, in the United States committees system is very authentic and comprehensive. These committees do major legislative work. Each and every legislative proposal first goes to such committees and Congress gives reasonable emphasis to the reports.<sup>14</sup>

The committee system is more dominant in the US than other countries of the world; however, the committee system is important for legislative business in parliamentary system even in other countries. The parliamentary committees take care of lot of the legislative work, which the parliament, without such committees, will find it difficult to handle in time. The investigative function is supported through the parliamentary power of surveillance.

Parliamentary commissioner or ombudsman is an excellent instrument of surveillance. Some centuries ago Sweden introduced for the first time the office of ombudsman in the World. Generally the purpose of this office is to investigate complaints against government's machinery.<sup>15</sup> This is one of the additional checks on the parliament and executive. In parliamentary system it plays a very effective role but some time government gets unmerited decisions from such office. Such practices could be seen in Pakistan in the shape of National Accountability Bureau, which has been frequently used against political opponents.

In addition to investigative function, parliament also performs the judicial function as part of its role in the governance process. For instance, under certain conditions, US Congress has power to impeach, remove and suspend the executive. The House of Representatives acts as a grand jury for purpose of indictment of the executive and the US Senate has the judicial power.<sup>16</sup> Parliament has not only the power of censorship but it also has the power of impeachment and vote of no confidence.

## **Legitimating Function**

Parliament regularizes and legalizes all the laws and legislation in the country. In other words, laws become legitimate once approved by the parliament. Because of this function, most non-democratic regimes also have legislatures. China and Russia are good examples in this context. In these countries, parliament has no genuine value because in most cases it acts as a rubber stamp. Even its sessions are not held regularly; however, parliament still exists there for legitimizing decrees of the executive. Even in democratic states, parliament performs this function because all state affairs attain legitimacy through approval of the parliament.

Unfortunately, in the Third World countries, especially in Pakistan, the executive is

more powerful than parliament. However, even in these countries, the legislature can mobilize consent in support of laws and policies, which it passes in the name and interest of the masses.

## **Legislative Function**

Of all functions, which a parliament performs, the legislative function is the most important. Legislative function of the parliament is measured in generic terms all over the world. Legislation and parliament go together and cannot be separated from each other. Legislation is the essence of parliament and legislative activity originated in the monarchical period during the 17<sup>th</sup> and 18<sup>th</sup> Century. During this period, monarch was not able to meet his expenses during an emergency, predominantly during the war era. That time it was needed to address grievances and sought consent upon major issues from of parliamentary side.<sup>17</sup> At that time, parliament was the need of the sovereign King and its power was in his hand.

The foremost article of parliament is to make laws for society. If society lacks of rules and regulation, it cannot continue its existence. On the way to preserving the ethics and civilization legislation is an essential component. In the Western world parliament is considered supreme institution that makes laws. Parliamentary sovereignty is admitted in the entire Western world and no higher authority or court can declare Act of parliament as invalid. Acts of parliament have supreme position over all other laws. Its predecessor or successor is free in its legislative function and does not bound parliament.<sup>18</sup>

But in third world countries especially Pakistan and Bangladesh, acts of Parliaments can be challenged in the supreme court of the country. In case of Pakistan nowadays, eighteenth amendment of constitution 1973 is under the discussion in Supreme Court of Pakistan. Legislative activity is a very broad activity. Parliament achieves many other targets.

and objectives through it. Parliament covers approximately all the areas of life. Every aspect of the society is accommodated in legislation. No other authority has power to declare the legislation as invalid; however, parliament gives priority to the will of people and it does not pass any law that creates conflict and anarchy in the society. Parliament gets a feedback from society during legislation work.<sup>19</sup>

In case of the United Kingdom the management announces in advance that it is going to introduce legislation in parliament. And suggestions are welcomed before drafting the legislation. In this way parliament involves the participation of both society as well as the political parties. Both play an important role in legislative process. Most western scholars admit the sovereignty of parliament and same thing was discussed by A.V Dicey who said that: "Parliament sovereignty means that parliament has the right to make or unmake any Law whatever... [And] no person or body is recognized by the Law of England as having the right to outside or set a side the legislation of parliament."<sup>20</sup>

In spite of the sovereignty of parliament to make any law for society, it can be said that Parliament can trample societal norms and values. The historical experiences have shown that parliaments around the world have been under constraints rooted in social norms and values of society. In short, sovereignty or supremacy of parliament also has some limitations. A few of these limitations are discussed below.

## **Limitations of Parliamentary Legislation**

Many students of parliament recognize several constraints of parliament. For example, Dicey has pointed out some of them. There are both internal and external limitations of the parliament. In other words, both internal and external limitations restrain the legislative

functions of parliament. The internal limits include the cultural values and traditions of the society and parliament cannot ignore them. During legislative activity parliament cannot pass any law against the cultural values of society. But parliament is also responsible to preserve the societal tradition and transits it to the next generation in the course of legislation. In the United Kingdom more or less all the constitution is unwritten and is based on societal values and traditions.

No doubt parliament is supreme but it does not violate the values and traditions of society even if there are no written laws on such traditions. In Pakistan parliament also strictly observes the same rules and before the process of legislation the basic societal traditions are strongly observed.

Generally parliaments are bicameral, which includes the lower House and the upper House. Upper House provides the expert criticism on the proposed legislation. The Lower House not only passes the bills but also delays the bills for which the government possesses no "mandate" and may not have the majority either to pass or defeat the bill. Upper House assists the Lower House in passing the bills. It also checks the administration's influence and the public opinion. According to the constitution of 1973, Federal legislation list is divided into two parts, part one and part two. Bills are also divided into two categories, money bills and non-money bills. All money bills are related to part one. The Upper House is not involved in the legislation that is related to finance. Part-I Bills are originated only in National Assembly. Upper House has no power to originate the finance Bills. Money Bills are originated in the National Assembly and are not sent straight to the Upper House. The same practice is observed in the United Kingdom and in the parliamentary system of government in many other countries as well.<sup>21</sup>

In Pakistan constitution provides three lists for legislation, federal list, concurrent list and provincial list. The Federal Parliament has the power to make laws with respect to any matter in the concurrent legislative list. However provincial list is out of bound for Federal Parliament in ordinary circumstances. During any emergency particularly in war period National Assembly can interfere and make laws in this area.<sup>22</sup>

## **Constitution**

Constitution also imposes limitations on the legislative functions of parliament. In other word, constitution makes certain areas outside the scope of the parliament and legislation cannot be passed to change the basics of these areas. The constitution of a country is claimed to be the superlative law. Its supremacy is undisputed and could not be challenged in any court of law. The laws that would be repugnant to constitution will stand void and unacceptable.

Constitution has the supreme position in the entire legislative system. Owing to its supremacy the procedure of amendments in constitution is very inflexible and complicated. A few boundaries are applicable on parliament in this issue. In Pakistan, the Parliament has the power of amending the constitution and amendment of bills can be originated in National Assembly or Senate. But for approval of the bills, it requires two-third majorities in both Houses. But the constitutional amendments that are related to the provincial matter could not be entertained without prior permission of provincial assemblies.

However in United Kingdom, Parliament has the unlimited power, it can amend and change the bill at any time with just simple majority. The British constitution is generally traditional and based on societal traditions and values. Parliament has not violated the cultural

values of the society till now.

In the United States the procedure of amendment involves many steps. Firstly amendments may be proposed by Congress and ratified by the state legislature in three fourths of the states. Secondly, amendments may be proposed by congress and ratified by state conventions held in three fourths of the states. Thirdly, Congress may call a national convention upon the request of two third of the states, and the convention can propose amendments which would then require the approval of three fourth of the states Legislature. Lastly, Congress can call a national convention, which may propose amendments that are then ratified by state conventions called for that purpose.

In France constitution can be amended in two different ways. In first method merely the simple majority in both Houses of parliament can pass the proposed amendments but final ratification of amendments could be done by the public referendum. In other words, in the final ratification, parliament has no role. Secondly, the president or government may propose the amendments and then are submitted to the parliament for approval. These amendments are placed before a joint assembly session, where 3/5 majorities are necessary. Subsequent to that it would be submitted to popular referendum. But in practice De Gaulle submitted constitutional amendments directly to referendum in 1962. This process eliminated the parliament absolutely from the scene.<sup>23</sup>

In Germany amendments procedure is very difficult, it requires the 2/3 majority in the federal parliament. In Italy to amend the constitution, public referendum plays a very prominent role.<sup>24</sup> The above commentary proves that there are lots of limitations on parliament in the area of legislation.

## Private Legislations

Government has a strict control over the House and private legislation is rejected openly. It is considered that Government has special right and is privileged in implementing its policy. Government in parliament does not give any endowment right to private members whose sources of motivation and responsibilities are very different in nature. Government might signify national welfare very brilliantly, because sources of Government are national broad and valid. But it is not the universal law and the private members convey matchless reforms, because sometimes the pressure groups also help in the private legislation. In Pakistan pressure groups are feeble and all hard work come from the individual side.<sup>25</sup>

Sponsorship of a bill is a necessary component in legislative work in the parliament. In party discipline, the bills that are presented by the majority party more or less are likely to pass and those bills, which are sponsored by minority, are comparably destined to the rejection.

In other word, majority rules in the parliament and it controls legislative business. This practice may result in the acceptance of something, which is in error and in the rejection of something, which is right. Hence, mistakes of the majority are accepted and correct positions of minority are rejected in the parliament. For example, in the United Kingdom all-important legislative acts introduced by the government side are passed.

In 1979–1980, seventy-one government bills were passed and only ten out of 152 private bills were sent for royal signature. In the United States, eighty percent legislation is drafted and passed by the Government side. Also, the French constitution of 1958 under article 34 grants special prerogative to the Government in the field of the legislation.<sup>26</sup> In spite of all special privileges of Government benches, opposition and backbenchers provide lot of

the material for parliament business. Sometimes it does not only highlight the weak points of the legislative proposals but also passes the positive commentary on burning issues. However, important legislation is decided in the platform issued at different times, including national election, and official procedures are done in the parliament. Unluckily opposition is absolutely disregarded in the process of legislative activities. That is why throughout the world opposition is not considered accountable for the policy of the parliament. Sometimes the government side rejects a very positive reform proposal without any deliberations and considerations. Parliament has a little power of legislation in defense zone.

Little legislation is needed to regularize the defense matters and naval, military and air forces laws are largely operated without the formal parliamentary sanction. Similar position exists in Pakistan, but here the military enjoys more authority as compare to the other countries.

### **Legislative Function in authoritarian Society**

In authoritarian society parliament has no power of legislation. It cannot criticize the legislative work and have no command of debating on the policies and legislation. It is only a rubber stamp and cannot cast negative vote on the legislation. Parliament is the only platform where government gets approval of its policies. The Supreme Soviet is the uppermost organ of state power and sole legislative authority in Russia however after Second World War it meets its sessions for only few days each year and just for one hour. It is unfeasible for any legislature to perform notable work on the legislation in such a short time. Such parliaments have no time of deliberations, debate, and committee meeting.

Opposition is not found in such kind of parliament. The members of legislative

assembly spend a good time in supporting their parties. Neither any member has showed any disagreement with the policy of their leader nor had they ever caste a negative vote on the policy of their party. In recent years the position is becoming better but still it is an incapable body. The similar position is in China where Chinese legislature endorses the party's policy without deliberation.<sup>27</sup>

## **Committee and Legislation**

Legislative functions of the parliament and committee are incumbent to each other. Legislative process begins with the introduction of the bill and it is sent to committees for the report. Second step of bills start with the report of committee, without committee's reports legislative process cannot continue. It is admitted that the well-built assemblies have strong committees and weak have weak committees.<sup>28</sup>

Committees have two broad functions assisting the legislative process and inquiring particular problems. The committees have some special experts in the field of education, defense, finance, foreign affairs, etc and committee's chairman always comes from major party. In Germany House of Bundstage sent almost its legislative work to committees and committees do almost all-important legislative work. In United Kingdom, France and Japan bills of legislation are sent to committee where the bills are debated and criticized in detail, but it is approved on floor of the House. However, in United States of America, the bills are scrutinized first and then sent to the Congress. Occasionally a number of bills are completely redrafted in committee meetings and shapes of bills are absolutely distorted by the committee.<sup>29</sup> Some bills are totally rejected and sometimes it could never see the light of the day.<sup>29</sup>

In Pakistan, parliamentary committee does most of the legislative works. So-

committees have important role in the legislative process. Parliament not only relies heavily on and trusts committee's reports and gives recommendation and hence mutually completes its journey.

### **Is Executive Powerful in Legislative Activities?**

Walter Bagehot describes in his book *English Political System* that the principal function of parliament is electing the Prime Minister. Among the other four functions of parliament the legislations is the last one.<sup>30</sup> Evidences have proved that the executive has won the battle over parliament. It is very rare that legislature has the monopoly in the law making process. For instance executive has power of making laws through the devices of decree, order, and ordinance.

Drafting and proposing legislative proposals are traditionally the right of the parliament however in 20<sup>th</sup> century virtually the condition has been utterly diverted to the executive. At this instant executive do all such activities. In United Kingdom members have to depend on a lottery system in introducing limited categories of legislative proposals themselves. French constitution grants virtual monopoly to government in the area of legislation. In United States of America eighty percent legislation comes from the executive side. The same position also exists in other countries. One supplementary point is that in United States the President has a power of veto. He can turn down the congressional legislation through veto. But in turn congress can override the veto of president with a two-thirds majority in both the Houses. If both Houses have no requisite majority than their legislative work would be null and void and veto of president will remain valid.<sup>31</sup>

In parliamentary system cabinet has a dominant role in legislation. In England cabinet

writes even the speeches of the Monarch. Cabinet takes decisions about the legislative program and allocates time for various bills. Government often rejects bills introduced by opposition.<sup>32</sup> Parliament rarely makes any significant amendments in the bills, which are forwarded by the cabinet. More than half of the members of parliament are ministers, deputy ministers so parliament is subservient under the will of the executive. It is just a subordinate branch of the government and large legislative work is done under the influence of the executive. Richard Rose elaborates this idea more beautifully in these expressions: "In theory a government bill can be substantially amended or even withdrawn as a consequence of criticism in parliament but such incidents are rare. Laws are described as acts of parliament, but would be more accurate if they are stamped made in white hall."<sup>33</sup>

During the legislation, the Government members do not think that it is important to consult their constituencies. Even though British parliament is supreme conventionally, but in practice the executive is on the apex. Executive drives its strength principally from the party discipline instead of the parliament. Recently Prime Minister got a powerful role in the cabinet. He plays the decisional role in the parliament business. For instance, Prime Minister such as Harold Wilson and James Callaghan played a dominant role in the parliament and their decisions were accepted without any hesitation. Parliament can legislate in detail on civil rights and obligations; nationality, contracts, gifts and inheritance; crimes and criminal procedures, taxation and currency, electoral system; public institutions, economic plans, including nationalization and denationalization of enterprises.

In spite of all of the above powers parliament also highlights the policy outline and rest of the details are left for the executive. Executive has power on the General organization of the national defense, property rights, education, employment unions and social security;

administration of local government units. With the exception of declaring war all the other areas are covered by the executive but war is declared especially by the parliament. Executive can ratify treaties and constitution grants special power to the executive that the executive can legislate by decree.<sup>34</sup>

Moreover executive has special power of legislation that was given by the parliament through delegated legislation and the executive is an inseparable part of the parliament. Even in United States, United Kingdom, Germany and almost all over the world executive's role is increasing in recent decades. Despite of all power, executive needs approval of bills from the parliament. Authoritarian states admit the importance of parliament in this perspective. Parliaments are always involved in shaping the laws that create administration agencies and define their duties. Through audit and examination parliament controls the administration but executives need powers to acquire land, to employ and play officially. All these require the legislation and it would be obtainable only through bills, which are asserted by parliament. But in the recent decades parliament is declining rapidly.

### **Why is parliament declining?**

During the 20<sup>th</sup> century anxiety has been expressed about the unlimited power of executive and parliamentarians are tremendously worried about it. The factors that have brought changes are the following:

- Powerful Political parties.
- Gigantic size of Government.
- Organizational flaws of parliament.
- Strong pressure Groups.

## **Political Parties**

Party loyalty also weakens the parliament. Strict party system snatches the expression of power of members and sometimes they cannot express their judgment and conscience. Majority party rules over the House and the whole legislative process reveals around the wills of the party. Opportunity and private legislation is worse rejected. Richard Cobden (1804 – 65) passes his comments in these words: "In this House I have heard speech that moved men to tear but never one that turned a vote."<sup>35</sup>

## **Gigantic Size of Government**

The growth in the fields of economic development, social welfare usually shifted power of parliament to the executive. Size and status of the executive has expanded and consequently speeded up the downfall of the parliament as well. Size and status of government, is responsible for administrating government's policy and overseeing an ever widening range of public services.

Secondly it places greater emphasis on the process of policy launching and formulation. Therefore the parliament of 20<sup>th</sup> century has lost its positive legislative power by accepting their central role. And now the parliament scrutinizes and criticizes policies rather than making the policy.<sup>36</sup> Lastly government's work and policies are becoming very complicated and complex. For the process of the formulation and implementation of policy, experts are required and parliament is not completing such prerequisites. That is why the government sector is expanding gradually.

## **Organizational flaws of Parliament**

Parliament consists of several hundred members who enjoy formal equality in the sense that they have uniform rights of vote and they can participate in the debate. This equality sometimes creates hindrance in the way of the legislation because most of the time expert's opinion cannot get deliberation. In Pakistan construction of the Kala Bagh Dam is the best example where expert's opinion could not get any consideration.

## **Strong Pressure Groups**

Pressure groups have some special interests and for that purpose they formulate public opinion. Groups play more effective role than parliament in taking up popular grievances and during legislation the parliament cannot ignore programs of these groups. Now question arises that Can parliament be improved? The answer of this question is positive that it can be improved both mechanically and in terms of principal action. But improvement must always be in the framework that the whole political system supplies. A transplantation institution from one system to other is entirely useless. The decline of parliament is a common topic in the West. Representation system is an essential part in the democracy. Parliament must maintain its authority and find the machinery that makes it effective. Through the overhauling process the system of the parliament can become effective and recover its rights from the executive.<sup>37</sup>

## Origin of the Pakistani Parliament

The Pakistani parliament has deep linkages with the British parliament. At the time of independence, Pakistan started its political journey under the Indian Independence Act of 1947. Pakistan inherited a sort of quasi-federal parliamentary system. Section 8 lay down that until a constitution is formed, the country would run its system under the Government of India Act 1935.<sup>38</sup>

From 1956 to 1973, Pakistan witnessed different forms of legislative bodies with different powers. As a result of the 1973 constitution, the Pakistani parliament now consists of the national assembly, senate and all provincial Assemblies.<sup>39</sup>

## Special check on Pakistani Parliament and its performance

Parliament in Pakistan is not free like rest of the world's parliamentary systems. With in the constitutional competency parliament can pass any law for any area. Although president can delay or return any bill but he/she has no authority to veto on it. Pakistan adopted British type parliamentary system but in Pakistan many constraints are there on the sovereignty of the parliament. Frequently faced constraints are structural that had been imposed by the constitution.<sup>40</sup> First constitution assembly of Pakistan framed Objective Resolution in 1949. It is the basic document of Pakistan. Article 2 A enhanced its position and now it has become an operative part of the constitution of Pakistan. Article 2 A declares that objective resolution is a substantive part of the constitution. Resolution declares: "Whereas the sovereignty over the entire universe belongs to Allah Almighty alone and the authority which He has delegated to the state of Pakistan through its people for being exercised within the limits prescribed by Him are a sacred trust."<sup>41</sup>

The resolution turned down the concept of the absolute sovereignty of parliament. In Pakistan it is not sovereignty but subject to the authority of Allah Almighty, which is delegated to the state of Pakistan to be exercised within the boundary prescribed by Allah. The constitution of 1973 is considered as a symbol of democracy in Pakistan. It also declares constraints on the legislative powers of the parliament. According to the constitution no law can be enacted which is repugnant to the injunctions of the Qur'an and Sunnah. Religion is supreme and parliament is subordinate to the religion. Parliament is not free to make any law of its own choice. The eighth amendment of the constitution is also responsible for undermining the authority of the parliament and president became so powerful that he could dissolve the National Assembly.<sup>42</sup>

The 8<sup>th</sup> amendment had been introduced during Zia era, in 1985. Later on in 1997 Nawaz Sharif Government abolished the power of president but Musharraf Government again reinstated. In recent position in the 2010 again people's Government snatched the power of president with the help of 18<sup>th</sup> amendment but ordinance-making power of president and Governors also undermine the authority of the parliament. Ordinances are issued when the parliament is not in session. Ordinances are issued for temporary basis; it is exceptional mode of the legislation and usually issued for three or four months. But in our country ordinance making has become the rule rather than the exception in Law-making. Parliament has been reduced to the subordinate body, which belatedly rubber stamps the ordinances framed by the executive. The daily News expressed it in these words:

Parliament makes Laws that is its seminal role and genesis of its power. When that role is diminished by design or by default than parliament is reduced to a chitchat club. It is a mockery of democracy that more Laws are made and promulgated through executive orders than by the parliament.<sup>43</sup>

The inefficiency of parliament can be judges through the ordinance, which are ratified

by parliament from 1988 – 1997.

Year	No. of Ordinances
1988	33
1989	14
1990	18
1991	43
1992	22
1993	48
1994	93
1995	133
1996	125
1997	54

Sources: Extra-ordinary Gazette of Pakistan – Part-I Islamabad.

Parliament is not supported to rubber stamp to the ordinance only but in the field of Law making performance is also pitiable. The following chart shows the position of parliament about the performance in the field of legislation.

#### **Number of Acts Passed By Parliament**

Year	No. of Acts
1988	06
1989	07
1990	07

1991	23
1992	29
1993	10
1994	23
1995	04
1996	17
1997	43

Sources: Extra Ordinary Gazette of Pakistan – Part-I Islamabad.

The above two charts shows that ordinances, which are ratified by parliament, are more than the original acts. This shows the incompetence and indifference of parliament in the vicinity of Law-making. In spite of all incompetence and lack of interest parliament did lot of work on the legislation, during the period 1988 – 1999 and produced a lot of material on different issues. Issues were discussed in the House. Some issues were settled through legislation and some remained same as they were, but almost major issues were debated at parliamentary forum. At that time major issues were associated to religion, politics, economic, social, defense etc. Every issue has different kinds of groups and modes. In the next chapter social issues will be discussed, classified and the performance will be drawn out in that meadow.

## End Notes

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<sup>23</sup>Eugene J. Meehan, John P. Roche, Murray S. Stedman, Jr. *The Dynamic of Modern Government* (London: Mc Graw, Hill Book Company, 1966), 178.

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<sup>35</sup>Andrew, *Politics*, 310.

<sup>36</sup>Ibid., 310.

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<sup>38</sup>Rafi, Raza (ed.) *Pakistan in Perspective 1947 – 1997* (Karachi: Oxford University Press, 2004), 2, 3.

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<sup>40</sup>Muhammad Younas, *Democratic Practice in Pakistan Issues and Debates 1988 – 1992* (Lahore: Punjab

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## **Chapter No. 2**

### **Legislation on Social Issues**

Despotic rule started in Pakistan from General Ayub Khan, when he was appointed Chief Martial Law administrator by President Iskandar Mirza on October 7, 1958. He introduced presidential system of Government and formulated the 1962 constitution of Pakistan. The constitution of 1962 awarded unlimited powers to President and he was elected through basic democratic system that was consisted upon 80,000 Basic Democrats. Ayub Khan took special interest in social legislation and introduced Family Laws Ordinance 1961, which was extremely criticized by religious circles but later on its significance was admitted. This ordinance affirmed the registration of marriage is obligatory and granted lot of rights to women. That is why the importance of Family Laws is admitted up till now.

Ayub Khan also introduced land reforms. It is measured as exclusive legislation According to land reforms Government fixed limit of land and excess of land was taken by the Government in the lieu of sound reward. He also passed political parties Act 1962 but somebody alleged that through this Act, he restrained political activities of his opponent. But in the other hand this Act, is at rest surviving in constitutional book. In nutshell during Ayub Khan Period, legislation demonstrated authoritarian trend in politics but his social legislation was reasonable some extent.

Government of Zulfiqar Ali Bhutto was solely civilian and legislation record of his government was also subtle. He passed first constitution of 1973 from parliament unanimously. In the commencement constitution of 1973 was wholly Westminster type but later on amendments from one to seven made it presidential system of Government. But later

those amendments did dreadful damage to democracy in country. But in social sector legislative record is very helpful. He was the first who banned liquor and gambling in the country and declared Friday as a weekly Holiday. Bhutto, s Government also settled one of very old and grave issue of Ahmedis through constitutional amendment and confirmed them as non-Muslims. Nationalization of private possessions, legislation was although criticized by several financial experts but imposition of tax on richer families was also appreciated. Definitely he gave some special rights to sharecropper and peasants and also created awareness in lower poor class of the society. In nutshell more or less his period was better in terms of legislation. After the military coup General Zia-ul-Haq took charge of government, during his period foremost legislation was passed through presidential ordinance.

General Zia-ul-Haq introduced Zakat and Ushar Ordinance in 1979 that was extremely protested by the Shia Sect. Later on Shia was exempted from Zakat, while the implementation of Zakat Ordinance had a lot of observation up till now, but we cannot disregard its significance. Zakat and Ushar Laws are surviving in the statute book. Secondly Zia-ul-Haq established Shariat Court and Islamic Punishment were assigned to various crimes in 1980. He also tried to establishing Islamic Banking System in the country but he roughly unsuccessful in this sector. In 1979 he issued Hudood Ordinance that created un-ending debates in society and much observation are existed from the side of women, but Ordinance is also surviving. Ayub Khan had discarded the split electorates but Zia-ul-Haq again restored it. He reserved seats in National Assembly for minorities and women.

Zia-ul-Haq established Mosque Schools and Madrass in the Country. Zia-ul-Haq passed 8<sup>th</sup> amendment in Constitution of 1973. This amendment made him monarch. That is why he is criticized in political circles. In the other world he tried to crush into political

opponent through political legislation. But in social sector his legislation record is satisfactory to some extent.

Since the primitive type of society, human is struggling to solve the social issues. Parliament is the purified form of the issue settle institution. During the process of the legislation many issues arise for debates but only the most important ones are considered and the legislation is passed on them. Pakistani society was facing many issues during the period of 1988-1999; few of them are discussed below:

### **Civil Servant Act 1973**

Syed Iftikhar Hussain Gilani, the Law Minister presented the Civil Servant Act 1973 bill in the Parliament on 20, May 1989. Basically the given bill was concerned about the civil service discrimination, which was present in the system. A dual system was running in the department. Senior bureaucrats like secretary, additional secretary had some special privileges over junior officers. Senior bureaucrats could terminate the services of junior officers without notice. Senior bureaucrats could take retirement at any time. The bill was introduced in the light of Shariat Court instruction to remove the existing discrimination against junior officers. The satisfaction of the management cadre is an indispensable component for justice and harmony in society. According to the previous bill, secretary and joint secretary could be retired at anytime, or after twenty-five years. Later on, the new section 13 was inserted in the Act that approved that all servants could stay in service up to the age of sixty.<sup>1</sup>

Prior to the amendment of the bill tremendous variations had existed in the composition of civil servant. Government official could have retired officially, who has completed his service of twenty-five years without issuing any show cause notice. Federal

Shariat Court declared that the show cause notice is fundamental component of service and the existing clause was not according to the injunctions of Islam.<sup>2</sup> In parliament it seems that the members were not completely prepared for the discussion; only some people like Maulana Sami-ul-Haq, Qazi Abdul Latif and Hasan-A Sheikh raised objection on the hasty legislation. The bill was passed without any serious opposition. The amendment brought uniformity and harmony in ranks of civil services. The Act protected junior bureaucrats from arbitrary and forced retirement. Under the Act, junior bureaucrats could retire at the age of 60. The services of the junior officers could not be terminated without show cause notice. The Act made the show cause notice a necessary legal requirement for terminating the services of any officer. This Act was an attempt to introduce uniform rules for both the senior and junior officers. As a result of this Act, unrest and dissatisfaction among junior officers was removed and discrimination among senior and junior officers was drastically reduced.

### **The Criminal Law Amendment Bill (Fifth Amendment) 1990**

Syed Fakhar Imam Minister for Education and Law moved this bill in National Assembly. The bill was associated to Pakistan penal code 1898, and was related to the maintaining of the law and order in the society. Penal code was not gratifying necessities of society and of the law enforcing agencies. Heinous crimes like, kidnapping, extorting property, robberies were at a high rate and an amendment was needed to control such crimes. Bill introduced new section, 365 A, in the penal code which was related to "Kidnapping or abduction for extorting property, valuable security etc – whoever kidnaps or abducts any person for the purpose of extorting from the person kidnapped or abducted or from any person interested in the person kidnapped or abducted any property, whatever moveable or

immovable or valuable security or to compel any other demand, whether in cash or otherwise for obtaining release of the person kidnapped or abducted, shall be punished with imprisonment for life and shall be liable for forfeiture of property.<sup>3</sup>

Nobody expressed direct hostility on the Bill. Sardar Farooq Laghari, Syed Zafar Ali Shah pointed out that the parliament was going to select a committee which would be inappropriate for parliamentary system, standing committees were an essential piece of the legislation and the government could had formed it earlier.<sup>4</sup> Ch. Altaf Hussain raised the technical fault but did not elaborate any drawbacks of the bill. It seemed that the parliamentarians had not done their groundings so bill was passed without any major opposition.<sup>5</sup> It is clear like crystal that this bill was against the heinous crimes that helped the law enforcement agencies. Hence it addressed very important social issues. It sent a clear signal to the criminals that the government is deeply interested in curbing serious crimes. The bill also sent a clear message to the common people that the government is serious in protecting their life and property. The bill helped to restrict the activities of the dangerous criminal gangs, which were getting benefit from the flaws of penal code. As a result of this amendment, there was a sharp reduction in serious crimes in society. In other words, the bill had a sanguine impact on the society.

### **Amendment of the suppression of Terrorist Activities (Special Court) Bill of 1990**

Iftikhar Gilani, Law Minister was the mover of the bill. Bill existed in the statute book and some of the provincial governments like Punjab, Sindh were facing terrorist activities.

These governments had requested for the amendments in the bill so that the momentum of the justice could be kept swift.<sup>6</sup>

Act was there in the statute book in the name of Special Court Act 1975. By means of amendments the governments had sought immediate trial and justice and the bill declared that officer in charge would investigate and then forward the report directly to special court within fourteen days. Secondly special court shall not adjourn any trial for any purpose, unless such adjournments is necessary for the justice and no adjournment shall be granted for more than two days according to the section 5A, court shall proceed with the trial from day to day and shall decide the case speedily.<sup>7</sup>

The bill also explained the procedure and code of conduct. According to the bill a special court should follow the procedure prescribed by the code for the trial of cases by magistrates.<sup>8</sup> Parliamentarians debated the bill in a professional manner; in opposing the bill the opposition leader, Ghulam Hyder Wyne, Syeda Abida Hussain, Hafiz Hussain Ahmad and Ch. Muhammad Ashraf said that the bill must be introduced by the government and sent back to the properly constituted standing committee of the House which was to take place on the same day. They said that without referring the bill to the standing committee it would not get the blessing of the opposition and therefore would not be adequate for the people. Hafiz Hussain Ahmad further said that it would be used against political antagonist.<sup>9</sup>

He further said that changing the kind of weapon in the place of Rocket and putting on Rifle G-III and Kalashnikov would definitely be used against the political opponent. Syeda Abida Hussein offered illustration of Mr. Afaq Shahid from Karachi who had been victimized by such kind of law earlier. She said; "I would submit to this house that we are causing this

House abiding harm and we are inflicting injury to the legislative process which will hurt us tomorrow, which is going to create precedence of an unhealthy nature.”<sup>10</sup>

The Minister for Law and Justice while supporting the bill said that there was nothing new in the bill and bill should not be confused with the speedy trial courts, which is perceived as a black law by the people party government. He also said that the opposition was doing injustice to bill, as the only purpose of the introduction of the bill was to bring uniformity in all the provinces of the country. He said that the entire nation wanted that the terrorist should be tried expeditiously so that the normal law and order situation was not disturbed.<sup>11</sup>

While the mover said that it would not be speedy court and they are against it but numerous clauses of the bill were very close to it. In spite of all opposition and doubts bill was passed. In nutshell, purpose of the bill was to control the deteriorating law and order condition in the country with the help of speedy trial. Although the government tried to control law and order situation through this Act, it did not succeed because of different reasons. Of all such reasons, the most important was that the most of the decisions of the special courts were turned over by the High Court and Supreme Court due to legal flaws such as the lack of proper witnesses.

#### **Act No. V of 1991 (An act to prohibit the employment of children in certain occupations and to regulate the condition of work of children.)**

Issue of Child labor is a very serious issue in all over the world particularly in Pakistan; the situation of the children labour is very worse and due to this issue reputation of country is going also worsening. Our industries mainly carpet making, soap manufacturing, wool cleaning are run by child labor whose ages are between eight to eleven years.<sup>12</sup> When

Mr. Sartaj Aziz introduced the bill in the Senate in the capacity of private member one of the Senators Ghulam Farooq opposed the Bill in these worlds:

It is not as simple as it appears. This has very serious economic consequences some year back, Iran at the time of Shenshah stopped this child labor and the result was that the export of carpets from Iran went down tremendously. The knots that are put to the carpets by a child of certain ages with his nimble fingers that make finer working than those by the growing up people I had a talk personality on this matter with Shah shah and. I pointed out to him that you have passed this Law and you will lose all the earning the export carpets. He said yes, we have realized the consequences. Pakistan than came in and replaced those exports, because the child labor these included. It is the nimble finger of a child that makes the small knots and all that and the world market it enjoys a great deal of reputation is value. So, one has to consider this aspect also are you prepared to lose it? The consequences would be that if you bring it, you will lose a lot of export.<sup>13</sup>

The above statement shows the worsening condition of this issue. In Pakistan although legislation on this issue was present with the name of Child Act of 1938 but later on a number of other important developments took place.<sup>14</sup>

But immediately the need of amendments arose because the U.N.O adopted a Convention on the Rights of Children that was adopted by General Assembly in November 1989. Article 32 of convention also recognized the right of a child to be protected from economic exploitation and from performing any work that is likely to be hazardous or which affects the child's education or to is harmful to the child's health or physical or mental, spiritual, moral or social development.<sup>15</sup> The prohibition of employment of children under the given act was a constitutional obligation on government to stop such illegality but unfortunately three elected governments had been sleeping and woke up on the call of United Nation.<sup>16</sup>

The purpose of the bill was to update the various provisions of the Act of 1938 because many occupations and processes of manufacturing had been effected. The bill consisted of four parts and two schedules. Act provided a great detail of child labor. It provided a detailed list of the prohibited profession and recommended the fixed working hours, holidays and privileges of the children. Because of the lack of the check and balance,

the law could not play an important role in abolishing the issue of the child labor in our country. The Act provided a very inclusive assessment system.<sup>17</sup>

All members of Senate actively participated in the discussion. Syed Fasee Iqbal and Professor Khurshid Ahmad supported the bill. They said that the Act of 1938 is unable to meet the present needs as a large number of children are working in hotels and houses. Qazi Latif and Nawabzada Jehan suggested that the government should accommodate the poor parents and grant appropriate stipend for them.<sup>18</sup> Syed Abbas Shah said, we should do legislation according to the needs of the society. Qazi Hussain Ahmad was not clear on such bill and Muhammad Allah Yar said that educated labor is a better labor and educated soldier is a better soldier so, it is a required legislation. Ch. Bisharat Elahi opposed the bill but other parliamentarians supported the bill and suggested the special stipend for the children, but in the Act the stipend suggestion was ignored.<sup>19</sup> But National Assembly passed the bill very hastily and did not contribute well and one opposition member opposed the bill in these words: "Passed by a quorum less house it has a doubtful legal validity and no practical utility. With million of them working in the fields, factories, workshops and domestic service of the upper strata, they cannot be thrown out of employment without affecting the livelihood to their families."<sup>20</sup>

In spite of all flaws in the bill, many problems of the child labor were identified and it was a minor effort in this field but its results did not come according to the expectations, because government machinery was involved in the child labor. But in the view of legislation it was a good piece of legislation. Although it was a good legislation which was meant to prevent the abuse and exploitation of children, its implementation remained a problem for

several reasons. Child labor still exists in Pakistan. In other words, the law prohibits the child labor but children are still part of the labor force in different sectors of our national economy.

**Act No. XIV of 1991 (An act further to amend the constitution of the Islamic republic of Pakistan.)**

The IJI Government was facing the problem of terrorism and deteriorating law and order situation. Due to Afghan War violence, many weapons and arms were coming in the country. Robberies, kidnapping, car snatching and a lot of other crimes became the ordinary incidents. The Sheikhpura and Islampura (Lahore) murder produced disturbances for the Government.<sup>21</sup>

Opposition parties were already criticizing the IJI Government; politicians like Pir Pagaro, Nawabzada Nasrullah Khan were demanding the dismissal of the government. To control such kind of state of affairs IJI Government introduced the bill. Prime Minister in his address to the nation said that citizen protection would be the top priority of the government and no one would be allowed to disturb it.<sup>22</sup> Thus in order to solve the issue government introduced this bill. Ch. Amir Hussain Minister for Law introduced the bill and it was approved on 17<sup>th</sup> July 1991. The foremost function of the bill was to establish the special courts. Article 212B was inserted which provided institution of special counts for trial of heinous crimes. It also provided the right for appeals against the judgment of special court before supreme appellate court but that provision was temporary and was only for a period of three years from the date of enactment.<sup>23</sup>

In Senate, Hafiz Hussain Ahmad opposed the bill and said that through this bill government will get more power. Shahzad Gull supported the bill and said that it was in the

favor of public, as 'Justice delayed is Justice denied',<sup>24</sup> In National Assembly many members did not articulate direct on the bill, Aitzaz Ahsan, Ch. Altaf Hussain, Farooq Laghari, Syed Zafar Ali Shah raised objections on the procedure of amendments. Only Ch. M. Afzal Khan pointed out that this will grant unlawful power to police. Through this bill the country will become the police state and government is snatching fundamental rights of citizens.<sup>25</sup>

Despite all the confrontation bill was passed with an over whelming majority of 154 votes against 26. Everything was done hurriedly and questions answer session for adjournment motions was suspended. The first, second and third readings went by like a bullet and the bill was passed in just 39 minutes, making a record in the history of amending the constitution. In nutshell the amendment was passed without any debate. It was alleged that amendment was made apparently to restore the worsening law and order situation but in fact it was affecting the government of Peoples Party in Sindh.<sup>26</sup> Justice<sup>(R)</sup> Kuda Bux Marri said that bill would throw the whole country in to a police state. Most of the opposition criticized it.<sup>27</sup> The Act gives lot of powers to the police. However, these powers have not been used to improve the law and order situation in the country. The special courts which were set up under this Act did not achieve the goal of improved law and order situation. Most of the decisions of the special courts were overturned in the superior courts. In fact, the setting of special courts under this Act created uneasiness in the judiciary because excessive powers were given to special courts which were viewed as a parallel judicial system.

**Act No. XXI of 1991 (An Act to provide for the surrender of illicit arms and improvement and control of the Law and order situation.)**

Afghan War brought tendency of violence in the society and it promoted the weapons culture. Crime rate increased rapidly, kidnapping, car snatching, robbery, and road dacoits became very common. Opposition was already making hue and cry and was criticizing the government enthusiastically. Government was trying to control the situation with hook and crook. Prior to this bill, the government had passed special court bill in this framework. On the eve of special court of the bill, Prime Minister issued the statement that protection of the citizens is the government's highest priority and no obstacles would be allowed and government will deal the situation with an iron hand.<sup>28</sup>

The illicit arms bill was also one of the steps in controlling the law and order situation. Interior minister Chaudry Sujhat Hussain in the parliament presented it. Interior Minister said that we were making liberal policy for issuing arms license, so citizens should return the illicit arms to the government.<sup>29</sup> The foremost aim of the bill was to control the worsening condition of the law and order. Before the amendment of bill, the punishment of illicit arms was very trivial but the present bill enhanced the punishment. Government introduced a new punishment for those who would fail to surrender the illicit arms. The punishment will be following:

- a) In respect of illicit arms defined in such claims (i) to (iii) of claims (a) of section 2, be punished with imprisonment for life and forfeiture of property both moveable and immovable.
- b) In respect of illicit arms defined in sub-clause (iv) of clause (a) of section 2, be punished with imprisonment for life or with imprisonment for a term which shall not be less than three years, having regard to the antecedents, of the accused.
- c) In respect of illicit arms defined in sub-clause (v) of clause (a) of section 2, be punished with imprisonment for a term which may extend to fourteen years but shall not be less than three years, having regard to the antecedents of the accused.<sup>30</sup>

In the Bill government had granted special power to the police under section 04 and police was granted special power to search for illicit arms even police could enter any citizen's house.<sup>31</sup> Syed Iqbal Hyder criticized on increasing the police power, by saying that entry in the house without a warning is absolutely an unlawful act and privacy should be observed at every cost. Hafiz Hussain Ahmad had pointed out the variations between the provincial cultures principally Sindh and N.W.F.P. The bill will generate many more problems in N.W.F.P so for further deliberations bill should be referred again to the standing committee. Manzoor Ahmed, Yahya Bukhtiar did not articulate on the bill.<sup>32</sup>

Bill was passed from the Senate with the favor of 17 against 06 votes Muhammad Afzal Khan strictly condemned Kalashnikov culture and requested the government to restrict it. Aitzaz Ahsan also condemned the special power of police and called it 'Rowlat, Acts because police was already indulged in crimes. For instance police did try to kill MNA Mehmood Khan Ackazai, so why you are giving more power to the police. In this way it will become police state.<sup>33</sup> Chaudhry Altaf Hussain, Muhammad Hussain and many others did not speak against the bill. Bill was passed by the National Assembly as well. In nutshell it was also another attempt of the government to reform the administration and law and order situation.

### **Act No 1 of 1992 (An Act to provide for establishment of a Bait-ul-Mal)**

In the pre-Islamic period, the Arabs faced many economic difficulties. Islam brought a ray of hope for subjugated, miserable and economically deprived groups and classes. The concept of the institution of "Bait-ul-Mal" came from Islamic history.<sup>34</sup> It is a basic duty of state to provide the fundamental necessities of life to its masses and state will supply food,

cloth, education and other necessities without any discrimination. In order to provide assistance to needy, widows, orphans, disabled and poor persons, the institution of Bait -ul-Mal had been established and it's main objective was to provide assistance to poor by reducing their hardships and sufferings and enable them to lead a respectable life in the society.<sup>35</sup> In Pakistan the Bait-ul-Mal means the welfare fund and it was established under the Section 03 of Bait-ul-Mal Act.<sup>36</sup>

**Some key functions of the Bait-ul-Mal are given below**

- (1) To provide the economic aid to needy persons particularly destitute, widows, Orphans and poor.
- (2) Second major purpose was the rehabilitation of persons those who are needy. And the institution will provide the sewing machines and other income Generating assets to the widows and orphan girls.<sup>37</sup>

Government emphasized on the education particularly for the needy students. Bait-ul-Mal will also help those who have no shelter and accommodation will be provided by Bait-ul-Mal fund. Indigent sick persons were also accommodated in the legislation.<sup>38</sup> In short almost all needy sectors of society were covered. At that time it seemed that the state was going on right path and very soon all the social issues would be solved. Abdullah Dada Bhai describes in these words:

It is pleasing to note that present government is also determined for making country a welfare state for which certain measures have been taken since its induction into power. The most significant step of the present government is the establishment of Bait-ul-Mal which is not a full achievement of the goal but yet it is a beginning towards the destination.<sup>39</sup>

It was a very fine piece of legislation, but it was not debated at forum of parliament. It was expected that this institution will be successful channel for the poor and needy people who will help in alleviating poverty and the social welfare could be achieved. So that country

could be transformed into a true Islamic Welfare State. But all expectations proved to be deluded for masses and the issues of poverty still exist in the society.

### **Act No. III of 1992 (An Act to provide for abolition of bonded Labour system)**

Bonded Labor is a new form of slavery in modern world. All the civilized societies strictly condemn it but it exists in Pakistan. In Pakistan it is also condemned by the constitution of 1973 and the Article 11 clause 2 of constitution discards such type of practice. But instead of constitutional prohibition there are people who exploit the labor class. To provide safety to the labor class from economic and physical exploitation further legislation was necessary.<sup>40</sup> Prior to this bill bonded labor was common in rural areas but the circumstances are the same even at the present time and it still exists. Bonded labor system means the system of forced or partly forced labor under which a debtor enters into agreement with creditor to the following conditions:

- i. In consideration of an advance obtains by him/her or by any of the member of his/her family.
- ii. In pursuance of any customary or social obligation.
- iii. For any economic consideration received by him/her or by any of the members of his/her family.<sup>41</sup>

The bill declared all agreements and customs are invalid that are made during the bonded labors and the present Act also declared that all the conditions would be null and void against debtor. All property of bonded labor would be free from mortgage also. The Act also declared punishment structure against offender according to it: "Whoever, after the

commencement of this Act compels any person to render any bonded labor shall be punishable with imprisonment for a term which shall not less than two years nor more than not be less than fifty thousand rupees, or with both.”<sup>42</sup>

The Bill provided a comprehensive detail about every aspect of bonded labor. Vigilance committees were also established for check and balance. It was admitted that it is a very significant piece of legislation but unluckily it was not debated in the parliament. During the implementation, no outcome appeared and ninety nine percent of feudal class is still exploiting the labor class, lots of glimpses of this exploitative relationship could be seen in the countryside. Besides all the drawbacks and failures it was again a good effort toward reforming the social issues. It was a positive step of the IJI government.

### **Act No. IX of 1992 (An Act to Provide for the Establishment of Special Court for Speedy Trial)**

Whole Sindh and some area of Punjab were facing bad situation of the law and order. Robbers' rule was prevailing in the whole country especially in the Sindh. In order to handle the situation the governments required the expansion of the speedy courts. Previously eleven speedy courts were working under the shelter of 12<sup>th</sup> constitution amendment, and performance was reported satisfactory. Government explained, in the speedy trial court nothing is new, penal code procedure is the same and because of their satisfactory performance government wanted more number of courts.<sup>43</sup>

Chaudhry Abdul Ghafoor introduced the bill. Trial procedure was the same, which was declared in 12<sup>th</sup> constitution amendment. On taking cognizance of a case the court shall precede the trial with speed and proceeding will go on day-to-day bases and decision will

come out within thirty days. For any delay, the reason will be recorded.<sup>44</sup> The speedy trial court will conduct an open trial in the presence of media and in front of the camera.<sup>45</sup> The opposition criticized it on the forum of parliament. Zafar Ali Shah, Aitzaz Ahsan and several others alleged the government that the government wanted to collapse opponent and it is utterly against the dignity of humanity. It is completely the violation of fundamental rights of the citizens. The open trial will brutalize the society and is not acceptable to the nation.<sup>46</sup>

Under the section 09, the special court shall have jurisdiction and power to take cognizance of an offence committed in the course of investigation or trial of a case tried under this Act by a police officer in charge, a witness, including an expert who has tendered false opinion in a case relating to nature covered by his specialty would be given the punishment provided for the offence under the Law.<sup>47</sup> Bill was criticized by Shahzad Gull and many others said that there are lot of confusions between section 09 and section 15. Section 9 declares the punishment section 15 grants indemnity “While no suit prosecution lies against any person in respect of anything which is in good faith done or intended to be done under this Act.”<sup>48</sup>

Syed Zafar Ali Shah has also criticized contempt of court clause. The Bill gave discretion power to government about mode and place of sentence. The opposition highlighted the side issue. Syed Iftikhar Gilani said that Government should not open a new Pondera box on the decided issues. The barbaric displays of sentences will create more violence.<sup>49</sup> The Bill was debated well and every aspect was discussed openly in the parliament. Opposition pointed out various drawbacks of the bill like, the government is creating a parallel judiciary system in which the equality of law for all was neglected and it will be harmful for the society.<sup>50</sup> Such measures will not serve the society; rather they will divide the society into segments. Some members demanded that the bill should be referred to

the Ideology Islamic Council. In spite of all this the bill was passed. Undoubtedly in the coming days it proved to be very effective. However opposition and government balance played very positive role in debating the side bill and second bill was also associated to the similar function and condition but it was not debated well. Opposition walked out and the bill was passed. In the second bill the government announced the terrorist affected areas and approved special powers for the civil administration and armed forces.<sup>51</sup>

The rest of the terms and conditions were the same as of the special speedy trial court act. In nutshell, second bill granted special power to civil administration so that they can control terrorist activities with the help of armed forces.

**Act No. VII & VIII of 1993 (An Act further to amend the Pakistan penal Code and the code of criminal procedure 1898.)**

Amendment in penal code was very essential for controlling the robbery and many other heinous offences. The amendment was made on the recommendation of the Law commission. There was a great flaw in the section of 392 the original section was as: "Whoever commits robbery shall be punished with vigorous imprisonment for a term which shall not be less than three years not more than ten years and shall also be liable to fine and if the robbery will be committed on the highway between Sunset and Sunrise the imprisonment may be extended to fourteen years."<sup>52</sup>

In amendment the phrase, between Sunset and Sunrise was deleted. Time factor was creating vagueness and criminals were getting advantage from it. The section 392 was debated in the parliament. Opposition raised objections on its discretionary power, which was granted to judge in the respect to the penalty.<sup>53</sup>

Next amendment was associated to counterfeit the section 472 to 474 and made it non-bailable offence. Opposition again made hue and cry and said that it is snatching fundamental rights of the citizens. Third amendment was related to substance of narcotic. Before the amendment whole substance was kept preserved till the final disposal of the appeal. But now only sample would be kept and rest of the material would be destroyed in the presence of magistrate. Opposition stated that the sample was frequently challenged by the accused at appeal stage and if the original stuff was destroyed than how it would be defended? It will help the accused party.<sup>54</sup>

The mover of the bill, Chaudhry Abdul Ghafoor Khan defended the bill and it was passed from the parliament. The next act was also related to the power of the police, and in fact the purpose was to allow the police of Azad Jammu and Kashmir to pursue any lawbreaker who crossed the border of Azad Kashmir and entered within Pakistan, in case any offence cognizable by the police has taken place and they were allowed to peruse and arrest that offender within the territory of Pakistan. The Azad Kashmir Assembly carried out the same amendment.<sup>55</sup>

Liaquat Boluch raised the point that, we should avoid the amendments that create problems at international level. Syed Naveed Qamar opposed it and said through the amendment police will become more powerful and political victimization will be occurring everywhere.<sup>56</sup> The mover defended the bill and declared that the amendment had been made on the request of Azad Jammu Kashmir council. It will be fruitful for the masses. So it was good for a better communication to manage the administration and controlling offences on both the sides. It made the procedure easy for interior ministries and reduced the workload of the law department and also saved the time and revenue of the country. This Act was a good

legislation because it was meant to combat crime in the country. The reduction in the crime rate was thought to bring about social stability and increase economic activity in the country. The Act increased the punishment for road robbery. Under this Act, road robbery during day time was defined to be robbery and carried the same punishment which was defined for night time robbery. The Act was an attempt to make national roads safe for communication and trade.

**Act No. IX of 1993 (An Act further to amend the West Pakistan minimum Wages for unskilled workers ordinance, 1969.)**

The bill was moved by Ejaz ul Haq Minister for Labor and Manpower. The bill increased the wages of the unskilled worker from Rs.650 to Rs.1500. The section 04 of the bill explains that it shall apply to every commercial and industrial establishment where in 50 or more persons are employed. Syed Zafar Ali Shah pointed out negative aspect of the bill. According to him large number of workers is working in the shop, office and many other places where the number of people working is fifty or more. So, bill will be proved to be fruitless for major strength.<sup>57</sup>

Syed Naveed Qamar, Liaquat Baluch demanded three thousand wages. It was manifesto of IJI government. It was demanded that women living in Karachi should be given a special package because the cost of living is higher in Karachi as compare to the other areas of the country.<sup>58</sup> Hafiz Hussain Ahmad, Abdul Karim demanded minimum three thousand wage rate and said that fifteen hundred is not sufficient.<sup>59</sup> Syed Abdullah Shah doubts on nomenclature of the Act. Mian Anwar-ul- Haq, Liaquat Baluch raised objection on the implementation of the bill. The mover of the bill defended his bill and said that we will gradually increase the

wage rate. Secondly we are establishing law reviewing in which the commission and the chairman of commission will be equal to the Supreme Court judge.

The Bill was passed and no major objection was seen in the parliament. In the nutshell it was an attempt to solve the problems of the labor class of the society that were facing financial crises.

**Act No. I of 1996 (An Act further to amend the Pakistan penal code 1860 and the code of criminal procedure 1898.)**

With the passage of time our society is facing many challenges and it is gradually changing its requirements. In order to fulfill these requirements amendments in the procedure and the penal code was essential. The purpose of the bill was to control the incident of theft. For that purpose new section 381A was inserted in the penal code: "381A. Theft of a car or other motor vehicles-whoever commits theft of a car or any other motor vehicle, including motor cycle, scooter and tractor shall be punished with imprisonment of either description for a term which may extend to seven years and with fine not exceeding the value of the stolen car or motor vehicle."<sup>60</sup>

There was a debate among the members of the parliament. They pointed out that many things such as rickshaw, electric motor of tube well or the transformer, were missing from the bill. These things were being stolen every day. Secondly, increase of sentence is not a solution to this theft. In the absence of the good governance and the proper implementation of the bill will not help to achieve the required targets.<sup>61</sup> Rao Qasir Ali Khan was also against the enhancement of the punishment. Gohar Ayub Khan pointed out some of the flaws of the bill. According to his statements present bill does not clarify any thing regarding the diesel engine

and rickshaw etc. Some parliamentarians like Ahsan Iqbal, Humza Sahib made speeches on the irrelevant issues.<sup>62</sup>

The old penal code was not according to the current situation of the society and was not fulfilling the need of the judiciary. The previous penal code was favoring the culprits and it was against the common people. Thus the amendment was very necessary and after amendment it proved to be very useful for the society.

### **Act No. Vii of 1996 (Abolish and restrict the Punishment of Whipping)**

International media and human rights organizations were doing propaganda against the punishment system in Pakistan. They were calling it as a merciless and vicious sentence as that was completely against the dignity of the humanity. Government was also associating these penalties with the dictator era and showing great annoy toward such punishments. In the new amendment government has repealed the whipping Act of 1909 and abolished the punishment of whipping except in cases where the punishment of whipping is provided for, other wise all sentence related to whipping was abolished. Second if any court or Tribunal awarded the whipping, the sentence would not be executed.<sup>63</sup>

However the bill was not debated in the parliament but it was very useful for the society because punishment of whipping was putting a negative impact on the social, moral values of the society. The brutal punishment was being used against the political opponent in the near past especially in the dictatorship period. During General Zia's period political workers had to face such kind of punishments. So repealing the act was a positive step of parliament to address social issues.

**Act No. X of 1996 (An Act further amend the West Pakistan Family courts Act, 1964.)**

Mian Raza Rabani moved this bill. The major purpose of the bill was to settle the family suits, principally dissolution of marriage within the limited time period. Prior to the schedule litigation was extended over a period of three to four years, however now bill has set an excellent frame. Bill introduced new section 12A, which fixed a period for the disposal of the suit. Section 12A was as: "Certain cases to be disposed off within a specified period – Not with standing anything contained here in before, a suit for dissolution of marriage shall finally be disposed of within a period of four months from its institution provided that where appeal lies against the dissolution of marriage such appeal shall be disposed of within four months."<sup>65</sup>

Opposition agreed with the government that the dissolution of marriage, which was one of the items in the bill, should be disposed of within a period of two months. However, it demanded that other cases against women must also be decided within two months so that she remains safe from court wondering.<sup>66</sup> In this way we can reduce the difficulties of women in our society. Dr. Abdul Yahee Baluch opposed the bill and demanded more time for settlement of the family disputes. Hafiz Hussain Ahmad said that it was not according to the Islamic Jurisprudence it should be referred to Islamic Ideology Council. But the majority of the senators like Muhammad Zafar-ul-Haq Naseerullah Babar, Shafaqt Mehmood, Prof. N.D. Khan, Sheikh Rafeeq Ahmad and Abdul Karim made irrelevant statements on the bill.<sup>67</sup>

Mian Muhammad Yaseen Khan Watoo said that according to Islamic Jurisprudence, Justice Delay is justice denied. He supported the speedy process, Muhammad Barges Tahir, explained that only a law cannot not change the situation, administrative machinery should also be sincere.<sup>68</sup> Mian Ejaz was in the favor but Mukhdoom Javeed Hashime opposed the

bill and said that Islam oppose divorce. The speedy judgment will generate destruction in society but delay will help to give some space for compromise between families. Ehsan Iqbal was also not in favor and said that it is against the constitutional Article 35 and Article says that the state shall protect the marriage, the family, the child, and the mother that is why State should protect marriage institution instead of the act of divorce.<sup>69</sup>

In nutshell the bill was passed by the majority in the parliament. There was no ambiguity in it and it sought to overcome a large of difficulties of women, and lot of their problems was solved through the bill. Women were in difficult situation and were facing a lot of miseries before the amendment. Several years of their precious lives were being devastated in court proceedings and men were blackmailing them. This amended reduced miseries of women to some extent. Some people also assumed that it had sped up the destruction of the family system because it became easier for spouses to separate from each other. One can also make the counter argument. It was a good legislation which sought to address an important social issue in our society. The women, a neglected section of society, benefitted from this legislation because under ordinary circumstance now the divorce could not prolong beyond three months.

### **Act No. XI 1996 (Act to Repeal the Special Counts for Speedy trials Act 1992)**

Raza Rabbani was the mover of the bill. The history of the speedy courts starts from 1987 in the form of an ordinance. For the first time Nawaz Government introduced this bill in the parliament for special speedy court and passed very famous 12<sup>th</sup> constitutional amendment. Initially PPP government had condemned the speedy courts and called it as, a

black law as speedy courts had established the appellate court, which was parallel to the Supreme Court.<sup>70</sup>

The present bill repealed the speedy trial court and now all pending cases shall be referred to the respective courts of session and will deal with the normal code of criminal.<sup>71</sup> The appeals that were pending before the special appellate court shall stand transferred to the High Court, having territorial jurisdiction in that regard. Humza opposed the Bill. According to a parliamentarian's viewpoint a speedy court is suitable for the cheap justice. Heinous crimes are increasing day by day so speedy court was necessary for that purpose. Mian Ejaz Ahmad Shafi also opposed the bill because severe crimes like rape; kidnapping and sensational nature crimes wanted some of the special forum where they should be decided with the speedy trial. Without this forum the people would have suffered a lot.<sup>72</sup>

Ahsan Iqbal, Javed Hashmi described the law and order position in the country and did not oppose the bill. This bill was passed without a major opposition. Prior to the amendment the dual system was going on in the judiciary and police also had unlimited powers and authority. Lot of controversy was there on the issue of speedy court. Many people criticized the parallel system of judiciary in the country and the speedy trial was full of errors. The present amendment had closed the chapter of controversy.

#### **Act No. XL 1996. (Act to establish a fund for women in distress and detention)**

Women were neglected in the field of life in Pakistan for quite some time period. Most of them were in distress and detention. To address the issue of women inequality at national level, government introduced this bill in the parliament. According to this bill a fund will be

established for women, so that they can meet their legal and financial needs. The major purpose of the fund was to provide financial and legal support to women in distress and detention circumstances.<sup>73</sup>

Board of Governors would manage the fund. Gohar Ayub Khan appreciated the substance of the bill in spite of that he was in the opposition. Women were facing tremendous problems in jail during their imprisonment they need such kind of aid so there was a need that they should be awarded financial assistance without any discrimination. Board of Governors should be impartial but here the situation was very different. Board was a subdued institution of political party. Most members of the parliament did not take part in the debate concerning this bill. But a few people like, Humza discussed law and order position in the country.<sup>74</sup>

Shahid Khakhan Abbasi criticized the section 04 that gives an explanation about the representation of the Board of Governor and said that it should not be impartial on the political ground. Nawabzada Ghazanfar Ali Gull delivered a long speech. But unluckily it was irrelevant to the bill. There were some drawbacks in the Board of Governor or in the structure of administration but the theme and purpose of the bill was right to address the highlighted issue. Thus once more it was an outstanding portion of the legislation of the parliamentary government.

#### **Act No. VII of 1997 (An Act further to amend the Family Court Act, 1964)**

Before this bill, women had to go to Civil Court for dowry suit where they had to pay court fee. But because of this bill the dowry suit would take place in the family court, all the authority in this regard was granted to the family court. The bill gave an easy process for women to solve their problems.<sup>75</sup> This bill was also proved to be beneficial to address the

women issues and gave women an easy access to the justice and court in Pakistan, now women can file a case without any court fee. After passing this bill a lot of women issues had been settled at top priority. This step was taken during the regime of a woman prime minister.

### **Act No. III of 1997 (An Act to Provide for the constitution of Anti Narcotics)**

Drug issue is very sensational and serious issue for international and mainly for Pakistan community. This issue was affecting the image of Pakistan at international level and the country's foreign policy was being affected. Domestically, the scale of the problem is evidenced by the phenomenal rise in the use of drugs especially heroin. During a decade of 1980-90 there was increase in the numbers of heroin addicts over 200 times to about two millions people.<sup>76</sup> Drug mafia in the country was expanding. The multimillion-dollar trade was also responsible for changing the nature and size of Pakistan's parallel economy.<sup>77</sup> Nawaz Government approved the setting up of an anti-narcotics task force to combat the menace of Narcotics and drugs abuse at home as well as to check drugs trafficking abroad effectively. The task force was functioning under the supervision of the ministry of Narcotics.<sup>78</sup>

The bill was debated in the parliament. Opposition leaders opposed the Bill on the point, that there was no need of increasing the force. Government shouldn't bring any reforms in order to increase the existing number of men in the forces and should not waste paramount revenue on it. Section 4 of the bill was also very close to the military court where all defensive rights were snatched and section 4 was against the justice.<sup>79</sup>

Section 5 of the bill was also against the Islamic laws because without any compensation, destroying the crops of poppy was unjust. First government should arrange any alternative sources of income for the people.<sup>80</sup> Section 6 was also against the Islamic Jurisprudence and laws as without any proof arresting someone was an unlawful act. Chaudhry Shujat Hussain defended the Bill and said we were arranging the alternative sources of income for people. Bill was passed with majority of the vote. No doubt some flaws were there in the bill but drug was the one of the top most social issue and its solution was very important. Parliament tried to solve it to some extent.

**Act No. VI of 1997 (An Act further to amend the offence of Zina.**

**(Enforcements of Hudood) ordinance 1979)**

In society gang rape incidents ratio were going high. All the people were worried about the alarming situation in the society. People were mentally distressed and disturbed and could not slumber with tranquility. Government had tried to control the situation with the help of enhancement of sentence.<sup>81</sup> Amendment was made in section 10 of ordinance VII of 1979. New amendment was as: "When Zina-bil-jabr liable to tazir is committed by two or more persons in furtherance of common intention of all, each of such persons shall be punished with death."<sup>82</sup>

Opposition opposed the Bill on different grounds, first objection was that hudood's sentences are fixed in Qur'an and nobody has power to make amendment in it. In Islamic Sentences system death punishment is not suggested to an unmarried person.<sup>83</sup> Secondly proving the case would be the most difficult process for petitioner and culprits will get benefit from it. Thirdly it is not clear what kind of evidence would be needed to prove the case either

Islamic or scientific.<sup>84</sup> Lastly only increase in punishment would not eliminate the crime in the society. But the bill was passed with the majority vote. The amendment made Hudood ordinance more effective and useful for the society. The amendment was meant to protect women from gang rape through increasing the punishment of gang rape. As a result of this amendment, the cases of gang rape came down sharply. The fact that this amendment had lot of support in Pakistan does not mean that there was no opposition to it. The fear of misused of this law became the basis of opposition to this amendment. The argument was that this law can be used to implicate groups in fabricated cases especially in the rural area. In spite of such arguments, the fact is that as a result of this amendment, the instances of the gang rape declined sharply.

**Act No. XXI of 1997 (An Act to provide for the prohibition of Wasteful Expenses on marriage and ceremonies related thereto)**

Nawaz Sharif Government introduced a unique legislation in social sector. A large amount of money was going waste in different ceremonies. Through legislation all such activities were banned that were leading to the wastage of money. Decoration, lighting and other such activities were banned. Display of firework like cracker etc was also banned by legislation.<sup>85</sup>

Marriage hall, hotel and parks had been banned for marriage events and fine was announced of not less than one lack rupees and not more than three lack rupees for those who will violate the law.<sup>86</sup> In parliament it was debated, opposition opposed it. Major objection was that it would create more unemployment in the country and large amount of government revenue would also be also.<sup>87</sup> Second objection was that it would create a division between

poor and rich. The capitalists have resources and large houses like palace. They serve their guests with unlimited dishes of food in their celebration ceremonies whereas on the other side poor cannot even serve their guest a single dish in the open street. It is not equality of law and division between two classes would be expanded.<sup>88</sup>

It was against the will of people and our cultural values. It was also against the spirit of democracy and it was giving more power to police.<sup>89</sup> The Government and its allies supported the bill by giving a long list of number of wasteful practices with regard to marriage ceremonies. This had imposed hardships and burden on the poor families. Sajid Mir Member of parliament appreciated the bill on three aspects socially economically and religiously. From three sides it was a marvelous legislation. The bill also made lives easy for poor people especially of the middle class in the society and it pulled up them from a trench of problems and this one bill settled many more problems of the society. Although this legislation was useful for the public, its implementation remained a problem because of the behavior of the powerful groups in our society. The powerful section of the society did not obey this law; they rather openly violated this legislation. The result of widespread violation of this law and it could not fully achieve its objectives.

**Act No. XXVII of 1997 (An Act to provide for the prevention of terrorism, Sectarian violence and for speedy trial of heinous offences)**

In Pakistan 97% people are Muslim and only three percent belong to other religions. In Muslim 77% are Sunni and 20% are Shia. Major sects are only two Sunni and Shia. The Sunni subdivided into four sub sects, Deobandi, Bralivis Ale Hadith and Whabi, Shia sub sects are Ismailis Ithna Ashariyya (Twelve) and Bohras. In spite of little difference between

sects, the sectarian conflicts were mostly unknown in Pakistan before Zia-ul-Haq era. Zia used religion to acquire domestic legitimacy and counter Shia dissent, which implied economic and political patronage to Sunni extremists. Shia leaders who felt threatened by Zia's policy established Terik-e-Nifaz-e-Fiqha Jaffari later on militant group was framed in the name of lashker. The agencies sought out Haq Nawaz Jhangvi as a front to counter Shia militancy. He formed Anjuman-e-Sipah-e-Sahaba. With the emergence of both organizations, sectarian conflict got intensified. According to one report 649 people were killed and 2258 injured in only Punjab during the period of 1988-97.<sup>90</sup>

Major objective of the bill was to control the sectarian violence in the country but lawyers' politicians and human right organizations criticized it. It was criticized due to its harsh provisions for legalizing extra judicial killing by police and for raising parallel judicial system in the country. The Act had granted sweeping powers to police for using lethal force against any one.<sup>91</sup> But in spite of all the opposition to the section 8, the Act was very effective in preventing the sectarian activities. These activities included:

a). A person who would used threatening, abusive or insulting words or behavior or. b). Display, publishes, distributes and written material which threatening, abusive or insulting. Or. c). Distributing or show a play a recording of visual images or sounds which are threatening, abusive or insulting, or. d). Has in his possession written material or recording or visual images or sounds which are threatening abusive or insulting with a view to their being displayed or published by himself or another shall be guilty of an offence.<sup>92</sup>

The bill declared seven years rigorous imprisonment or fine or both for those who will violate the section 8 and their trial would take place in the speedy court but not in normal courts. Opposition made great hue and cry on the bill and alleged that it would be used against political opponent. But the bill was passed due to majority of the government in parliament but later on it was challenged in the Supreme Court and was amended in 1998 according to the decision of the court. The bill eliminated sectarian aggression to some extent but it could not eradicated conflicts from top to bottom. Despite of all mistakes bill was affirmative

endeavor in that context. Social legislation had profoundly interlinked with the system of government and parliamentary government passed all the above legislation.

Consequently somebody raised doubt on it and assumed that a large amount of social legislation was in opposition to the opponent of the government. Thus in order to understand the depth of social issues, awareness of some political questions is required, so in that consideration next chapter will dig out the issues of politics in the country.

### End Notes: -

- <sup>1</sup>*The Senate of Pakistan Debates Official Reports*, Volume VII, No. 1-17 (Islamabad: Senate Secretariat, 1989), 527.
- <sup>2</sup>*Ibid.*, 532.
- <sup>3</sup>*The Gazette of Pakistan, Extraordinary* (Islamabad: Published by Authority, 1990), 04.
- <sup>4</sup>*The National Assembly of Pakistan Debates Official Report*, Vol. IV, No. 1-2 (Islamabad: Manager Printing Corporation of Pakistan, 1990), 650.
- <sup>5</sup>*Ibid.*, 650.
- <sup>6</sup>*The Nation*, Lahore, 29 March, 1990.
- <sup>7</sup>*The Gazette of Pakistan Extra* (Islamabad: Authority, 1990), 08.
- <sup>8</sup>*Ibid.*, 9.
- <sup>9</sup>*The National Assembly Debates*, Vol. II, No. 4 (Islamabad: Manager Press, 1990), 246.
- <sup>10</sup>*Ibid.*, 249.
- <sup>11</sup>*Ibid.*, 250-252.
- <sup>12</sup>*The Senate Debates*, Vol. V, No. 1-8 (Islamabad: Senate Sect, 1991), 403.
- <sup>13</sup>*Ibid.*, 408
- <sup>14</sup>*Ibid.*, 405.
- <sup>15</sup>*Ibid.*, 402.
- <sup>16</sup>*Dawn*, Karachi, 19, March 1991.
- <sup>17</sup>*The Gazette of Pakistan, Extra* (Islamabad: Authority, 1991), 70-85.
- <sup>18</sup>*The Senate Debates*, Vol. V, No. 1-8 (Islamabad: Sect, 1991), 405-412.
- <sup>19</sup>*The Gazette of Pakistan, Extra* (Islamabad: Authority, 1991), 70-85.
- <sup>20</sup>*Dawn*, Karachi, 19 March 1991.
- <sup>21</sup>Innytullah, *Pakistan Politics: A personal view* (Lahore: Feroze Sons Pvt Ltd, 1993), 79.
- <sup>22</sup>*Ibid.*, 80.
- <sup>23</sup>*The Gazette of Pakistan, Extra* (Islamabad: Authority, 1991), 352.
- <sup>24</sup>*The Senate Debates*, Vol. V, No. 03 (Islamabad: Senate Sect, 1991), 77.
- <sup>25</sup>*The National Assembly Debates*, Vol. III, No. 05 (Islamabad: Manager Press, 1991), 236-242.
- <sup>26</sup>Innayat, *State and Democracy in Pakistan* (Lahore: Vangurd Book Pvt Ltd, 1997), 65.
- <sup>27</sup>Imtiaz Gul, "12<sup>th</sup> amendment: Astigma or a Milestone" *Frontier Post*, July 26, 1991.
- <sup>28</sup>Innayat, *Pakistan Politics: A Personal View* (Lahore: Feroze Sons, 1993), 80.
- <sup>29</sup>*The National Assembly Debates*, Vol. IV (Islamabad: Manager Press, 1991), 108.
- <sup>30</sup>*The Gazette of Pakistan, Extra* (Islamabad: Authority, 1991), 496.
- <sup>31</sup>*Ibid.*, 497.
- <sup>32</sup>*The Senate Debates*, Vol. VI, No. 5 (Islamabad: Senate Sect, 1991), 71.
- <sup>33</sup>*The National Assembly Debates*, Vol. IV (Islamabad: Manager Press, 1991), 71.
- <sup>34</sup>*Pakistan Times*, Rawalpindi, 15, July 1991.
- <sup>35</sup>*The Gazette of Pakistan, Extra* (Islamabad: Authority 1992), 1.
- <sup>36</sup>*Ibid.*, 2.
- <sup>37</sup>*Pakistan Times*, Rawalpindi, 15 July, 1991.
- <sup>38</sup>*The Gazette of Pakistan, Extra* (Islamabad: Authority 1992), 3.
- <sup>39</sup>*Pakistan Times*, Rawalpindi, 15 July, 1991.
- <sup>40</sup>*The Gazette of Pakistan, Extra* (Islamabad: Authority, 1992), 4.
- <sup>41</sup>*Ibid.*, 22.
- <sup>42</sup>*Ibid.*, 27
- <sup>43</sup>*The Senate Debates*, Vol. II, No. 10 (Islamabad: Senate Sect, 1992), 86.
- <sup>44</sup>*The Gazette of Pakistan, Extra* (Islamabad: Authority, 1992), 442.
- <sup>45</sup>*Ibid.*, 442.
- <sup>46</sup>*The National Assembly Debates*, Vol. II, No. 1-25 (Islamabad: Manager Press, 1992), 931.
- <sup>47</sup>*The Gazette of Pakistan, Extra* (Islamabad: Authority, 1992), 443.
- <sup>48</sup>*The Senate Debates*, Vol. I, No. 10 (Islamabad: Senate Sect, 1992), 90.
- <sup>49</sup>*The National Assembly Debates*, Vol. VI (Islamabad: Manager Press, 1992), 589.
- <sup>50</sup>*The National Assembly Debates*, Vol. I (Islamabad: Manager Press, 1992), 2013.
- <sup>51</sup>*The Gazette of Pakistan, Extra* (Islamabad: Authority, 1992), 448.

<sup>52</sup>*The Senate Debates*, Vol. VI, No. 08 (Islamabad: Senate Sect, 1993), 37.

<sup>53</sup>*Ibid.*, 41.

<sup>54</sup>*Ibid.*, 127.

<sup>55</sup>*The National Assembly Debates*, Vol. I, No. 03 (Islamabad: Manager Press 1993), 290.

<sup>56</sup>*Ibid.*, 294.

<sup>57</sup>*Ibid.*, 276.

<sup>58</sup>*Ibid.*, 278-279.

<sup>59</sup>*The Senate Debates*, Vol. I, No. 09 (Islamabad: Senate Sect, 1993), 10.

<sup>60</sup>*The Gazette of Pakistan*, Extra. (Islamabad: Authority, 1996), 76.

<sup>61</sup>*The National Assembly Debates Vol. VII, No. 1-21*. (Islamabad: Manager Press, 1996), 1221-1222.

<sup>62</sup>*Ibid.*, 1231-1232.

<sup>63</sup>*The Gazette of Pakistan extra*. (Islamabad: Authority, 1996), 356.

<sup>64</sup>*The Senate Debates*, Vol. I, No. 03 (Islamabad Senate Sect, 1996), 88.

<sup>65</sup>*The Gazette of Pakistan*, Extra (Islamabad: Authority, 1991), 1296.

<sup>66</sup>*The Senate Debates*, Vol. I, No. 3 (Islamabad: Senate Sect, 1996), 91.

<sup>67</sup>*Ibid.*, 100-104.

<sup>68</sup>*The National Assembly Debates*, Vol. III, No. 1-3 (Islamabad: Manager Press, 1996), 614-615.

<sup>69</sup>*Ibid.*, 624.

<sup>70</sup>*The Senate Debates*, Vol. IV, No. 1 (Islamabad: Senate Sect, 1996), 60.

<sup>71</sup>*Ibid.*, 60-61.

<sup>72</sup>*The National Assembly Debates*, Vol. I, No. 1-15 (Islamabad: Manager Press 1996), 457-458.

<sup>73</sup>*The Gazette of Pakistan*, Extra (Islamabad: Authority, 1996), 1391.

<sup>74</sup>*The National Assembly Debates*, Vol. VII, No. 1-21 (Islamabad: Manager Press, 1996), 957-58.

<sup>75</sup>*The National Assembly Debates*, Vol. IV, No. 1-14 (Islamabad: Manager, 1957), 657.

<sup>76</sup>Dr. Maleeha Lodhi, "Issue for 1993" *The News*, Islamabad. 2 January, 1993.

<sup>77</sup>*Ibid.*,

<sup>78</sup>*The Frontier Post*, Peshawer, 21, November, 1993.

<sup>79</sup>*The National Assembly Debates*, Vol. IV, No. 1 (Islamabad: Manager Press, 1997), 439-440.

<sup>80</sup>*Ibid.*, 441-442.

<sup>81</sup>*Ibid.*, 370.

<sup>82</sup>*The Gazette of Pakistan*, Extra (Islamabad: Authority, 1997), 1062.

<sup>83</sup>*The National Assembly Debates*, Vol. IV, No. 1-11 (Islamabad: Manager Press, 1997), 360.

<sup>84</sup>*Ibid.*, 362-365.

<sup>85</sup>*The Gazette of Pakistan*, Extra (Islamabad: Authority, 1997), 1198.

<sup>86</sup>*Ibid.*, 1199.

<sup>87</sup>*The National Assembly Debates*, Vol. V, No. 1-17 (Islamabad: Manager Press, 1997), 359.

<sup>88</sup>*Ibid.*, 101.

<sup>89</sup>*Ibid.*, 100.

<sup>90</sup>Zaighum Khan's *Report In Pakistan*, June, 1997, 50-57.

<sup>91</sup>*The National Assembly Debates*, Vol. VI, NO. 1-15 (Islamabad: Manager Press, 1997), 2055-60.

<sup>92</sup>*The Gazette of Pakistan*, Extra (Islamabad: Authority, 1997), 1553.

## **Chapter No 3**

### **Legislation on Political Issues**

#### **Disqualification Membership Act**

In Pakistan there were many political issues like corruption, misuse of power and authority during the period of 1988-99. Media highlighted many stories of corruption and nepotism. Approximately eighteen-corruption references were pending against Pakistan People Party Benazir Bhutto and other party leaders in 1991, when the IJI Government introduced the disqualification membership Act.<sup>1</sup> The original Act was originated in the period of Zia ul Haq in 1977 but now again government needed amendments in it to make it extra valuable. The government inserted new Article '6A' P.P.O in the act and now it was regarding the transfer of cases of members from previous court to new court. This act was described as:

(1). Where two or more special courts have been established and the supreme court is contented that for the common convenience of the parties or witness or for the ends of justice, it is expedient to do so, the supreme court may direct that a case specified by it shall stand transferred from one special court to another.

(2). In respect of a case transferred to a special court under clause-I such special court shall not, by motive of the said transfer, be bound to summon up and rehear any witness who has given evidence in the case before the transfer and may act on the evidence already recorded by or produced before the special court from which the case is transferred.<sup>2</sup>

Second new article 12P (PP) was pertaining to repeal of different articles of the act. It had repealed act no IV and V of 1977 Act. Thirdly foremost amendment had been made in article 3P (PP). This article 3P (PP) explained about the session consign of court. The current

act described: "Provided that special court may, either its own motion or at the request of any party, set at such other place as it may decide in the interest of Justice, having regard to the general convenience of the parties and the production of evidence."<sup>3</sup>

The amendments were debated in detail at the forum of parliament. Opposition paid its responsibilities with righteous way. They called that these amendments were very closely linked with the dictatorship period and these were black laws and for a second time the government desires restoration of the despotic laws.<sup>4</sup> They further opposed and raised the points like why an act of parliament was repealed and replaced by martial law order? How the government wishes to crush its opponent with the help of these laws? In parliamentary system prime minister is the head of government but once again the unrestricted power for making the references were given in the hand of president and the institutions were weakened and power of prime minister was curtailed.<sup>5</sup>

The Bill granted authority to the special court and it had power to define misconduct and misuse of power. Discretion power always creates confusion and problems for system and law. Another significant point is that the president could establish one or more special courts by only a single notification. It again gave more power to executive. Act V of 1977 declared the disqualification for those who were culpable of misbehavior till next general election and for seven years but constitution of 1973 does not permit it.<sup>6</sup> Opposition also pointed out that through the present bill government wanted disqualification of elected members of parliament especially of opposition members whereas constitution provided article 63 (a) already on the topic on disqualification of parliament members than why government is creating controversy in the constitution through present bill. The Article 63 (a) described about disqualification of member and says that, If any question arises a member of the Majlis-e-Shoora (Parliament)

has become disqualified from being a member the speaker or as the case may be the chairman shall refer the question to the chief election commissioner and if the chief election commissioner is of the opinion that the member has become disqualified he shall cease to be a member and his seat shall become vacant.

The act granted unfairness and un-Islamic power to the judge of a special court. In the transfer of a case from one judge to another judge, the second judge would not be bounded to rehear the case and could refuse to examine any witness or summon any documents. According to one of the members of the parliament, the Act was simply meant to punish political opponents of the government.<sup>7</sup> In spite of this opposition, the bill was passed and the mover of the bill defended the bill and said that it will give more power to judiciary and it will also prove to be practical for reducing unlawful actions in politics. The assumption was that if judiciary is dominant, the other institutions also become secure. Judiciary is a significant pillar of democracy, so in this way the bill was very valuable in the political system. The apprehensions of the opposition members of the parliament came true. Lot of references were submitted to disqualify opposition members, especially from the People's Party. The obvious purpose of these references was to harass the political opponents and forcing them to join the ruling party. In short, the law was misused in many instances.

### **Act No. XXIII of 1992(An Act Further to Amend the Political Parties Act, 1962)**

The bill was introduced in pursuance of a decision of the Federal Shariat Court; the bill was brought to amend the section 8 B of the political parties of Act 1962. The original section 8B was as:

If a member of a house having been elected as such as a candidate or a nominee of a political party or having been elected as such otherwise than as a candidate or nominee of political party and having become a member of a political party after such elections or withdraws himself from the political party, he shall from the date of such bisection or withdrawal be disqualified from being a member of the house for the unexpired period of his term as such member unless he has been selected at a by-election held after his disqualification.<sup>8</sup>

The provision of the 8B did not provide the chance of personal hearing to the effected Member of Parliament and Shari'at Court gave the decision against the provision of 8B. Shari'at court ordered that before declaration of disqualification of any member, the right of personal hearing and protection should be given to such member. Government tried to bring an end to such mistakes in the light of court decision and introduced the iveng bill in the parliament.<sup>9</sup>

Opposition opposed the bill and strongly condemned the court's decision. Opposition said that through such kind of legislation government wanted to snatch preliminarily constitutional rights of parliamentarians and in this way parliament would become rubber stamp in the hand of the court. Unfortunately Shariat court was incorporated in the constitution through controversial 8<sup>th</sup> amendment. Islamic Ideology Council already existed in the country and council had the power of securitizing laws under the shelter of constitution of 1973. Opposition criticized that Judges were not elected but selected by president so than why should we give preference to them over the parliament.<sup>10</sup>

Opposition alleged that government is opening entrance of floor crossing prior to the amendment, members had no logic and justification but afterwards gave them a technique of floor crossing and became a foundation of perish for political system.<sup>11</sup> Government Benches defended the bill and called it an Islamic Legislation. Their argument was that giving sentence to anybody without considering his/her argument is against the rule of the justice and human

right, so it was indispensable legislation for the political harmony and contentment and it would be successful in this regard.<sup>12</sup>

In nutshell, it was a very small amendment done in section 8B, however it altered the entire scenario of politics and opened the first step of floor crossing so it was an appropriate piece of legislation in the field of politics and it was proved in the subsequent days. Therefore somebody alleged that through present bill government wanted to buy loyalties of some opposition members. This amendment opened the flood-gates of floor crossing. This Act, in fact, became one of the main reasons for the instability of political system; it led to the dissolution of governments; it promoted corruption among politicians.

#### **Act No. XXIV of 1992 (An Act further to Amend the Senate (Election) Act, 1975)**

The present amendment was again brought in the parliament in the light of Shariat court's verdict, because the original Act of senate did not provide the chance of personal hearing to an individual and without giving the chances of personal hearing many decisions were coming against parliament members. The actual act was as: "Where the nomination of candidate has been rejected under this section by a returning officer an appeal shall lie within two days of the scrutiny day, to the commissioner and any order passed by the commissioner on such appeal shall be final."<sup>13</sup>

The chief objective and function of the bill was to give rights of personal hearing and protection to applicant before the rejection of the application. Government's benches and its allies appreciated the side amendment and demanded more time for defense because two days were not sufficient. However opposition criticized the bill and said that the Shari'at Court was

established under Article 203 (B) and according to this article the court had interpretation power only and was not involved in the law making process. Law making powers were absolutely vested to parliament, and throughout all over the world same rule is governed. But unfortunately in Pakistan it seems that parliament is subordinate organization of the court.<sup>14</sup>

In parliament about 200 members were in the National Assembly and 87 in the Senate all of them were Muslims and Islamic Ideology Council also existed. Hence Shari'at Court's decision was required in the profile of the legislation. Although Islamic Ideology Council could judge the law in the point of Islamic Jurisprudence but council had no power of making laws. Even Abu Hanifa had said once that Jurist could also make a mistake. So through such sort of legislation parliament seemed to be a rubber stamp and supremacy of parliament was being destroyed.<sup>15</sup> Government defended the bill and said under the Article No.2 of the Islam is our governmental religion and when our constitution provides shelter to Federal Shariat Court then why we do not obey its decision. So in all respects legislation was according to the justice, and favorable for the affair of state.<sup>16</sup>

Undoubtedly amendment was entirely according to justice. The whole opposition did not oppose the bill directly but most arguments were against the Shariat court. The bill abolished the ambiguity and doubt in the proceedings of the court and granted chances of appeal to the concerned members. In the last it was a good piece of legislation in the ground of politics and it settled a lot of problems pertaining to political issues.

**Act No. 1 of 1997 (An Act to Amend the Constitution of the Islamic Republic of Pakistan) (Thirteenth amendment)**

In Pakistan political institutions are dispensable in the power struggle between individuals. Most widely accused political event took place in the annals of Pakistan by the name of abrogation of parliament by Governor General Ghulam Muhammad in 1954. Equally politician and political scientists describe it as the first major disorder in the country.<sup>17</sup>

The martial law of 1958 had not only destroyed the existing parliament but also put an end to the whole constitutional framework. Scholars criticized Yahya Khan because he made unlawful deal with the Bengali Nationalist movement outside the framework of the elected parliament by postponing its session and taking up arms against them. Zia-ul-Haq was also criticized because he enjoyed the dubious distinction of twice striking down the assemblies first in 1977 and then in 1988.<sup>18</sup>

The 8<sup>th</sup> amendment institutionalized this practice by providing legal authority to the President. It produced the political instability in the name of stability itself. Frequently parliament was abrogated by the military coup and democracy was also derailed by civilian President during 1954, 1988, 1990, 1993. The 8<sup>th</sup> amendment provided unlawful shelter to civilian administration for dissolving the parliament. The original constitution of 1973 envisages a system of parliamentary democracy and executive is drawn from and is responsible to the parliament. So, the real power of the state vests with the prime minister. The framers of the 1973 constitution had followed British parliamentary structure of government.<sup>19</sup>

Majority of the British constitution is based on convention and rigidly observed by all institutions and during the previous 250 years, the crown had not ignored even a single advice

of the cabinet and prime minister despite of the crowns unrestricted powers. The constitution of Pakistan had a very close link with the British democratic system but the 8<sup>th</sup> amendment changed its nature absolutely and president became more powerful than the prime minister. The original constitution did not award discretion power to president and the prime minister was the origin of all powers. The amendment granted some discretionary power to the president and some of them were as follows:

1. He could appoint a Prime Minister in his discretion that is most likely to command the confidence of the majority of the house till March 20 '1990.<sup>20</sup>
2. He could dissolve the parliament by using his discretionary power, at that time when he would feel that a situation has come where the government of federation is not functioning according to the provision of the constitution.<sup>21</sup>
3. He could in his discretion refer a question of national important to referendum.<sup>22</sup>
4. He might ask the Prime Minister to take a vote of confidence from the house.<sup>23</sup>
5. Once he has dissolved the National Assembly, he could appoint a new date for holding the General Election within 90 days of the dissolution of Assembly.
6. He could appoint a caretaker of the government.
7. He could appoint Governors for provinces after consulting Prime Minister.<sup>24</sup>
8. He could appoint chief election Commissioner.<sup>25</sup>
9. He also could appoint the Chairman Federal Public Service Commission.<sup>26</sup>
10. He has power to appoint the Chiefs of the Forces and Chairman Joint Chief Staff Committee.<sup>27</sup>

President also had powers of appointing judges for the Supreme Court and Shariat Court. Consequently most of the politicians were against the discretionary powers of the

president. Nawaz Sharif got over whelming majority in the general election of 1997. He used heavy mandate to amend the constitution and repealed the important sections of 8<sup>th</sup> amendment. Article 58 (2) (b) 101,112 and 243 were affected. The most important change was the omission of the Article 58 (2) (b) of the constitution vesting discretionary power in the president to dissolve the national assembly. Now the president could use this article only on the advice of Prime Minister. Secondly, the governor, like president was also deprived of the power to dissolve the Provincial Assembly under the Article 112 (2) (b). Thirdly, the power of the president to appoint the governor was also repealed. The amendment in the clause will be made by the president on the advice of prime minister. Fourth amendment had a tremendous significance that was made in article 243, which was related to the appointment of three armed forces chiefs.

After amending article 243, discretionary powers of the president to appoint chiefs of three armed forces and some other key government functionaries was also curtailed. He could no longer give the recommendation to the prime minister for such appointments. It meant that prime minister got the authority for the appointment of the chairman, Joint Chiefs of Staff committee, and chiefs of the three armed forces and also for determining their salaries and allowances.<sup>28</sup>

This passage of the 13<sup>th</sup> amendment was almost a constitutional coup as once again the president became the titular head only having ceremonial powers as envisaged by the original constitution. It was debated only in a positive way not in criticizing mode and manner. Several parliamentarians cherished some areas of 8<sup>th</sup> amendment principally the article 2 (A) and 203 article 2 (A) related to objective of Federal Shariat Court. Opposition and

government's benches supported the 13<sup>th</sup> amendment and fully criticized 8<sup>th</sup> amendment essentially on the portion that was related to the discretionary power of the president.<sup>29</sup>

While Atizaz Ahsan raised various technical points but overall opposition in the parliament supported the bill and the bill was passed with unanimous support. Seventy-nine senators were present in the Senate and they all supported it. It was the first event after 1973 which received a unanimous support in the parliament.<sup>30</sup> In National Assembly the bill also got unanimous support and passed with the favor of 190 votes.<sup>31</sup> Syed Zafar Ali Shah said that 13<sup>th</sup> amendment was a golden gift for our country. Benazir Bhutto in the very beginning was against the 8<sup>th</sup> amendment and during her first government period she said: "We are committed for restoring the constitution of 1973, which was Islamic, democratic and representative and hope that all democratic forces in the country will co-operate with us in ridding our constitution of this black spot which casts a dark shadow on the working of a free and democratic system."<sup>32</sup>

However she could not repeal the 8<sup>th</sup> amendment due to some reasons at that time. She supported 13<sup>th</sup> amendment and said, 'It is marvelous victory of parliament'.<sup>33</sup> Undoubtedly all political forces supported the bill however two views were there regarding it. One view was that eighth amendment had damaged the parliamentary system as it had made the president an energetic player in politics and parliament had become sub-institution to the wishes of a single person. The Article 58 (2) (b) was used as a harmful weapon against the political stability. The 13<sup>th</sup> amendment took away this sword of Damocles and put the country back on the track of parliamentary democracy. Mian Muhammad Nawaz Sharif said at the eve of passing the bill that bill had been introduced in parliament for the revival of the democratic

concept as envisioned by Quaid-i-Azam Muhammad Ali Jinnah and Allama Muhammad Iqbal.<sup>34</sup>

Second viewpoint was that the article 58 (2) (b) was valuable against a political crisis and the military coup of July 1977 was the result of the absence of any provision in the constitution to cope with such situation. Even a few months before its annulment, the Supreme Court held this particular provision valid. The court declared, "The provision of Article 58 (2) (b) is a valid and enforceable part of constitution and in fact, provides check and balances between the power of the president and the prime minister to let the system work without any hindrance to forestall a situation in which martial law can be imposed."<sup>35</sup>

It was passed in urgency and parliament relaxed the standard procedure rules and regulations regarding the constitutional amendment. It was introduced into the assembly and senate on the same day and was passed by both on the same day. The proceeding time in the two houses was only four hours.<sup>36</sup> S.M. Zafar pointed out that the amendment was done in very hurry by parliament and it affected the growth of constitutional cultures.<sup>37</sup>

In spite of a rumor that the president and the armed forces had intervened and stopped the bill, the bill was passed.<sup>38</sup> No doubt it was a very significant piece of legislation of that period. The present bill put an end to war of power that was running between executives and the danger of the instability was vanished as well. The 13<sup>th</sup> amendment made the Prime Minister full-fledged executive from all aspects hence it was a very sublime legislation that made the parliament powerful once again.

## **Act No. IX of 1997(An Act to Eradicate Corruption and Corrupt Practices from Public Offices)**

The corruption in Pakistan's politics is not a new phenomena; it has been there since the history of first government but it had increased during the years from 1988-1999. During this period the corruption touched the unprecedented heights and every institution became corrupt and ineffective. The unprecedented corruption was also cited in many sources around the world. In 1996 Nigeria was first and Pakistan was second in the corruption list all over the world.<sup>39</sup>

Loans of billion rupees were given to the politicians without any proper documentations and processes that were repayable. In 1993 banking council of Pakistan issued a list of about 5000 people who got foreign loans of worth 65 billion rupees from 23, March 1985 on ward and never paid back. Media raised hue and cry on commission issue. Press highlighted that million rupees were made in commission on the sale of huge quantities of cotton and rice to firms with doubtful credentials at prices much lower than those on the world market. Similarly it was reported that purchases of billions of rupees were made in various sectors including energy, aviation and other sectors, on the personal considerations rather than public need. In this situation a strict check and balance system was required and for that reason Ethasab Act was introduced in the parliament. The Ethasab act began from 6, November 1990 and the government servants in the public offices were accountable to ethasab.<sup>40</sup>

Opposition immensely condemned this Act especially the clause that was about ethasab period. They alleged that government requires escape from accountabilities itself and period of Nawaz Sharif as Prime minister was deliberately expelled from Ethasab. Opposition

complained that the government deliberately excluded from the definition of corruption those loan defaulters who were on the list in 1983. If the list of loan defaulter is viewed it will become obvious that the majority of defaulters belong to the current administration.<sup>41</sup>

That is why current government was avoiding the Ethasab since the period of 1985, because at that time when Nawaz Sharif was the chief minister, he allotted 270 plots in one night, brought relaxation in the services rules and granted 241 posts of excise inspector to his party men.<sup>42</sup> Secondly Ethasab commissioner was not impartial and he was subservient of Prime Minister because Prime Minister was appointing the Ethasab commissioner, so it was harmful for political system and government could be victimized to its opponent through this act.<sup>43</sup>

In constitution of 1973 the conditions were utterly different in the appointment process of Ethasab commissioner. According to the constitution, Federal Government would appoint the Ethasab commissioner after consultation with the leader of the opposition in the National Assembly and Chief Justice of Pakistan.<sup>44</sup> The same term and conditions was present in the 18<sup>th</sup> amendment of constitution. Opposition relentlessly criticized the act of Ethasab, which was about the tender of pardon to accomplice. It was certainly against the free and fair justice, and could be used against the political opponent especially against the PPP government.<sup>45</sup> Opposition made it controversial and said that this act was also against the constitution of 1973 of Pakistan and according to the article 248 of constitution the president, governor, prime minister, federal minister and provincial minister shall not be answerable to any court for the exercise of powers and performance of function of their respective offices or for any act done or purported to be done in the exercise of those powers and performance of these functions.<sup>46</sup>

The Ethasab bill deprived magistrate's authorities especially in bail; now he couldn't grant bail without prior permission of chief Ethasab commissioner it was again a clear violation of constitution of Pakistan and Pakistan penal code.<sup>47</sup> In short not only opposition criticized the Bill but also allies of Muslim League like MQM, ANP, JUI and BNP also strongly criticized it and alleged that through this act political victimization could start and it is against the human rights as well. Ethasab is an essential part of democracy but unfortunately it has not been a practice or rule in Pakistan. Over the last many years various governments had utmost will of Ethasab and exemplary punishment had been pledged for corruption but all went fruitless. Political interests stand in the way so that no body could stop it. Majority of the politicians were involved in such unlawful activities. For example two billions rupees of loans were siphoned off. Some prominent beneficiaries were Shahbaz Sharif and his brother who had defaulted on an amount of 2.243 millions. Gohar Ayub Khan's Arusa industries owed about million. Syed Fakar Inam's Kaghan Bricks works owed about Rs. 611 million.<sup>48</sup>

Nawaz Sharif and Ghulam Haider Wyne during their tenure as C.M Punjab distributed 1952 plots to their party men. The caretaker P.M Ghulam Mustafa Jatyi allotted 300 plots in Islamabad. Manzoor watoo also allotted several plots.<sup>49</sup> Benazir Bhutto had granted 60,000 jobs without consulting Public Service Commission and Nawaz Sharif also provided 55,000 jobs to his closed ones. It shows that nobody remain rear in the race of corruption, every one got his/her due share. From October 1993 to October 1996 Benazir Bhutto spend Rs. 337 million on 39 foreign trips and performed seven umaras by spending Rs. 574500 of Government exchequer.<sup>50</sup> Nawaz Sharif also contributed his share and visited France in 1992, along with hundred persons on the government expense. Even president Farooq Laghari had

attended his son's graduation ceremony in U.S.A on government expense and used charter Air Craft. Thus Ethasab had been employed by the successive governments and eventually in process degenerated into a blatant exercise of brute political victimization of the opponents. Many billion of rupees were wasted on providing unsubstantiated accusation of corruption. Many references were raised against Benazir Bhutto in 1990 but when she became Prime Minister for second time all references were settled in her favor. Same was the case with Nawaz Sharif and many other politicians and high official governments. Although it was a good effort of PML (N) but it failed to bring vivid change in political spectrum and one interesting thing is that after current act lot of references were made against Pakistan people party leadership.

**Act No. XXIV of 1997 (An Act further Amend the Constitution of Pakistan)**  
**(14<sup>th</sup> amendment)**

The politics during 1988-99 mainly revolved around Benazir Bhutto and Mian Nawaz Sharif and they are considered responsible for whatever good or bad happened in politics during that period. In 1988 Benazir Bhutto became Prime Minister and Nawaz Sharif took the charge of Chief Minister Punjab, at that time the public was expecting democratic culture and tolerance from both the sides but all wishes of people went in drain. Nawaz Sharif played an active role in persuading members of National Assembly against the Prime Minister Benazir Bhutto. The members of National Assembly were offered millions of rupees to change their party loyalties.<sup>51</sup>

On this occasion the horse-trading term was used for members of National Assembly. Floor crossing was very timeworn issue and it had established many political governments in

country. On December, 1985 section 8 B was added to the political parties Act, to provide for a member's disqualification in case he/she defected or withdrew from the party he/she had joined before or after his/her election.<sup>52</sup> But that section 8B could not control the situation and in 1988 and onward our assemblies became a place for horse trading and floor crossing. President Ghulam Ishaq Khan said that the code of ethics for politician would be framed very soon which would put an end on horse-trading and floor crossing.<sup>53</sup>

Floor crossing was a very severe issue and all political parties were against it but bill was not passed from the parliament owing to be deficient in mandate in the past. The 14<sup>th</sup> amendment was approved on July 1997. Although section 63 was already present in the constitution of 1973 but it was unable to clog the practices like floor crossing. Under the 14<sup>th</sup> amendment a new article 62-A was inserted in the constitution.<sup>54</sup>

The foremost function of this amendment was to stop the practice of switching party loyalties. The clause 2 of article 63-A was very important according to it, if a member of parliament defected then the head of the political party to which member belonged was suppose to give him a show cause notice within seven days. After the notice, the disciplinary committee of the party would decide the issue within seven days. In case of a decision against such a member, he could appeal to the head of party whose decision would be final and decision would be conveyed to presiding officer and send to Election commissioner. Election commission would cancel the membership of the member and seat would be considered vacant.<sup>55</sup> The article 63-A further explained the defection in the following condition.

(a). If the member commits a breach of party discipline which means a violation of the party code of conduct.<sup>56</sup>

(b). If the member casts vote contrary to any direction issued by parliamentary party to which he belongs.<sup>57</sup>

(c). If the member remains abstain from voting in the house against the party policy.<sup>58</sup>

The clause 06 granted unlimited power to the party head. According to this, the action of party head could not be challenged before any court of law even in Supreme and High Court.<sup>59</sup> The present amendment was passed unanimously in parliament and no controversial debate was made over it because all party heads wanted to keep the dissenting members in line. Only Maulana Muhammad Khan Sherani opposed the bill. According to his statement the present bill would snatch the rights of parliamentarians and was against the constitutional rights of members.<sup>60</sup>

In addition, all political parties, like PPP, ANP, BNP, MQM etc supported the bill. Benazir Bhutto appreciated the bill and Nawaz Sharif said it would be landmark in our political system.<sup>61</sup> The vice of defection was damaging the stability of democratic institutions. Many governments had been toppled because of it. In Punjab Manzoor Watto had overthrown the Hadier Wyne government by horse-trading practice.<sup>62</sup>

The Judiciary also highlighted the vice of defection; the Supreme Court in the case of Saber Shah suggested a constitutional amendment to deal with the increasing menace of defection.<sup>63</sup> In spite of all vices of defection some one criticized that the amendment would curtail the freedom of expression and speech. The amendment would convert party bosses into dictator and parliament would become a rubber stamp in the hand of party head.<sup>64</sup> The party leader was final authority with no recourse to the judiciary or any other independent authority available to the accused like creating a dictatorship of the party leader. So the

amendment was criticized as being contrary to the fundamental right to dissent.<sup>65</sup> Leader of Jamat-e-Islami criticized it in this way:

The 14<sup>th</sup> amendment is aimed at nothing more than concentrating all decision making powers in the hands of a person or a clique which through some accident of history or folly of the party members, has climbed to the seat of leadership. Through such action this leadership has only proved that it considers the whole lot of its members as simple bunch of mindless individuals, devoid of any conscience to listen to. Ironically the people's party also seems too happy with the amendment. That amply clarifies where the two so called "Major" parties with respect to democratic values" they further opined: "We certainly favor party discipline and strongly condemn the practice of horse trading. We however, do not agree to the use of these pretexts for usurping the freedom of expression and making the people's representations as thoughtless rubber stamps, who are now asked to follow the leadership even if it was wrong and unjust.<sup>66</sup>

Although opposition alleged that bill would be harmful for freedom of parliament but as a whole it was beneficial for the political stability and it stopped immoral practices that were going on in parliament.

### **The Census Bill of 1997**

The census is the foundation of many development programs in society. The entire economy is based on how the census is exercised.<sup>67</sup> That is why every country holds census after a period of ten years. But in the case of Pakistan census has always fallen to various controversies and never held on due time. Prior to the present bill it was carried out on 1981 whereas it had to be held on the year of 1991 but it did not happen on its due time. The census ordinance was originated in 1959 later on in 1991 some amendments were made in it that were related to various definitions of house, council, chief and commissioner of census. Once again in 1997 Government felt the obligation of amendments in the census laws so that the invalid entries in the census could be stopped. For that reason government introduced a fresh section 13 in the ordinance of census of 1959 which included punishment for forgery. The new section 13 increased the punishment for forgery. The punishment could be given up to six months and a fine of Rs. Fifteen thousand.<sup>68</sup>

In the original ordinance of 1959 punishments were very trivial. Bill enhanced the penalty. All these efforts were done so that the counterfeit entries in census could be stopped. The opposition opposed the bill from different aspects. They demanded the resolution of issues before the development of census. About twenty lacks illegal immigrants were there in Pakistan and generally they required documents of citizenship like, identity cards and passports. They had purchased property in the state as well. More breathtaking article is that some political parties were in favor of illegal immigrants so that they could get benefit in the election. In that location the census was not reasonable at any rate.<sup>69</sup>

The one main issue in the country was the distribution of resources between the provinces. All funds and National Assembly seats were given on population basis rather on the basis of areas. Consequently small-populated areas deliberately demonstrated fake facts and figures. Because of that reason the enhancement of punishment could never discontinued the counterfeit results of census. All efforts went in vain and the government's effort was required to resolve this problem.<sup>70</sup>

The present amendment was not only providing the brutal powers to the local police but it was also very harmful for the poor masses. The census did not become fair until Army won't take part in the process. So for fair census impartial institution was an essential organ.

The suggestion was given that the government must establish an impartial institution and representation should be given to all areas of the country.<sup>71</sup> The Government accepted the suggestion of involving the military and deployed two-lack army personnel for the survey of census.<sup>72</sup>

In spite of the surveillance of opposition bill was passed with the majority vote. In nutshell for better planning and development accurate informative date is necessary and it

comes from fair census. No doubt after a very long period census was held under this law with the help of Pakistani army.

**Act No. VII of 1999 (An Act further to Amend the constitution of Islamic Republic of Pakistan) (Sixteenth Amendment)**

Pakistan is a developing country and its resources are limited. Some areas are well developed while some are entirely backward and people are living in poor conditions and are deprived of the basic necessities of life. Baluchistan, Sindh, rural areas of FATA and some of the southern part of Punjab are underdeveloped areas. Secondly forty eight percent of Pakistan's population is female but they are still unaware of their fundamental rights like right to vote, education, basic health facilities and right of representation in the parliament.<sup>73</sup>

That is why article 34 of constitution of 1973 declared that 'steps shall be taken to ensure full involvement of women in all spheres of life at the national level'.<sup>74</sup> The 1973 constitution had originally envisaged a time period whereby women would secure a special status in representation because it was recognized that it was not easy for women to be elected through the direct election. In 1985 twenty-five women were elected as women representatives in the assembly. So the 1985 constitution had been amended for one more electoral term and therefore women were elected again on the special privileges basis in the 1988 election.<sup>75</sup> Women were still deprived of their rights and opportunity of progress especially in the rural areas of the country. Therefore government introduced the sixteenth amendment bill in the parliament, which was passed on August 3, 1999 with amending Article 27.<sup>76</sup>

Its purpose was to eliminate the discrimination in services, in order to provide the opportunity to all classes and provinces Article 27 clause (1) provided that for a period not exceeding twenty years from the commencing day of the constitution, certain posts would be reserved for a person belonging to any class or area. A need was felt to extend the period of twenty years given in the clause (c) of article 27 to forty years.<sup>77</sup> The members of parliament actively took part in the debate. They demanded women's representation in provincial assemblies and senate.<sup>78</sup> They also condemned the indirect representation as it was against the democracy and it should be on direct method because it was more beneficial for women.<sup>79</sup>

Opposition highly criticized the quota system and called it against the Islam which says that everybody must get according to his/her abilities.<sup>80</sup> The quota system was creating tremendous problems and division among people particularly in Sindh where it was implemented on the basis of urban Sindh and rural Sindh. Due to its disadvantages the Federal Shariat Court declared it null and void because through Quota system elite class was snatching the rights of middle class.<sup>81</sup> The constitutional Article 37 says: "The State shall promote with special care, the educational and economic interest of backward classes or areas, the state shall remove illiteracy and provide free and compulsory secondary education within minimum possible period."<sup>82</sup>

Opposition opposed the bill on the point that the government was violating the Article 37 and was being guilty of high treason under section six of the constitution. Government entirely ignored the minority in the bill and opposition demanded rights of minorities as well. The bill was very helpful for backward areas and distressed class. The bill reserved quota for the backward areas and women in services. The parliamentary governments passed a number of pieces of legislation to address different issues in social and political sectors. However,

social issues still exist in the society. In fact, legislation is indicative of the existence of a problem and effort of the government to address such a problem. Still, legislation is no guarantee that it shall be implemented in letter and spirit that it shall certainly solve the problems for which it is designed. This is also true of the legislations which parliamentary governments during the period in view. These legislations were passed with a view to solving certain social and political issues in society. Some of these legislations proved more effective than others in achieving the intended objectives. The parliamentary governments will continue to address social and political issues in society through legislation because this is the best way in the modern world to overcome such issues.

## End Notes

<sup>1</sup> *The Senate of Pakistan Debates, Official Reports*, Volume-III, No. 2 (Islamabad: Senate Sect rate, 1999), 69.

<sup>2</sup> *The Gazette of Pakistan*, "Extraordinary" (Islamabad: Published by authority, 1991), 167-68.

<sup>3</sup> *Ibid.*, 169.

<sup>4</sup> *The National Assembly of Pakistan Debates, Official Reports*, Vol. V, No. 1-36 (Islamabad: Manager Printing corporation of Pakistan, 1991), 2196.

<sup>5</sup> *The Senate Debates Vol. III, No. 2* (Islamabad: Senate Sect, 1991), 96-97.

<sup>6</sup> *Ibid.*, 102.

<sup>7</sup> *Ibid.*, 107.

<sup>8</sup> *The National Assembly Debates*, Vol. IV, No. 1-19 (Islamabad: Manage Press, 1992), 978.

<sup>9</sup> *The National Assembly Debates*, Vol. VIII, No. 1-24 (Islamabad: Manager Press, 1992), 2123.

<sup>10</sup> *The National Assembly Debates*, Vol. IV, No. 1-19 (Islamabad: Manager Press, 1992), 1126.

<sup>11</sup> *Ibid.*, 1127.

<sup>12</sup> *The Senate Debates*, Vol. V, No. 4 (Islamabad: Senate Sect, 1992), 70.

<sup>13</sup> *The National Assembly Debates*, Vol. III, No. 1-24 (Islamabad: Manager Press, 1992), 1786.

<sup>14</sup> *Ibid.*, 1789.

<sup>15</sup> *Ibid.*, 1796.

<sup>16</sup> *Ibid.*, 1810.

<sup>17</sup> Dr. M. Waseem, "Save the Parliament" *Dawn*, Karachi, 12 April, 1993.

<sup>18</sup> *Ibid.*,

<sup>19</sup> *The Nation*, Lahore, 9, December, 1989.

<sup>20</sup> *The Constitution of Pakistan*, (Islamabad: Government Party Press, 1992); Article 91(2).

<sup>21</sup> *Ibid.*, Article 58 (2) (b).

<sup>22</sup> *Ibid.*, Article 48 (6).

<sup>23</sup> *Ibid.*, Article 91 (5).

<sup>24</sup> *Ibid.*, Art icle 101 (1).

<sup>25</sup> *Ibid.*, Article 213 (I).

<sup>26</sup> *Ibid.*, Article 242 (I) (A).

<sup>27</sup> *Ibid.*, Article 243 (2) (c).

<sup>28</sup> *The Senate Debates*, Vol. V, No. 4 (Islamabad: Senate Sect, 1997), 6-97.

<sup>29</sup> *Ibid.*, 9-12.

<sup>30</sup> *Ibid.*, 28.

<sup>31</sup> *The Nation Assembly Debates*, Vol. IV, No. 1-11 (Islamabad: Manager Press, 1997), 271.

<sup>32</sup> *The Muslim*, Islamabad, 15 January, 1989.

<sup>33</sup> *The National Assembly Debates*, Vol. IV, No. 1 (Islamabad: Manager Press 1997), 263.

<sup>34</sup> *Ibid.*, 1278.

<sup>35</sup> Crois Baxter, Charles H. Kenndy , *Pakistan 2000* (ed). (Karachi: Oxford University Press, 2001), 3.

<sup>36</sup> *Ibid.*, 4.

<sup>37</sup> Hafeez Malik (ed), *Pakistan: Founder's Aspirations and Today Realities* (Karachi: Oxford University Press, 2001), 50.

<sup>38</sup> Hamid Khan, *Constitutional and Political History of Pakistan* (Karachi: Oxford University Pres), 818.

<sup>39</sup> Roodad Khan, *Pakistan: A Dream Gone Sour* (Karachi: Oxford University Press, 1997), 141.

<sup>40</sup> *The Gazette of Pakistan*, Extra (Islamabad: Published Authority, 1997), 1972.

<sup>41</sup> *The Senate Debates*, Vol. VI, No. 18 (Islamabad: Senate Sect, 1997), 14-15.

<sup>42</sup> Ibid., 78.

<sup>43</sup> Ibid., 20-24.

<sup>44</sup> *The Gazette of Pakistan*, Extra (Islamabad: Published Authority, 1997), 1082.

<sup>45</sup> *The Senate Debates*, Vol. VI, No. 18 (Islamabad: Senate Sect, 1997), 50 & *National Assembly Vol. V, NO. 1-17*. (Islamabad: Manager Press, 1997), 1868.

<sup>46</sup> *The Senate Debates*, Vol. VI, No. 18 (Islamabad: Senate sect, 1997), 70.

<sup>47</sup> *The National Assembly Debates*, Vol. V, No. 1-17 (Islamabad: manager Press, 1997), 1906.

<sup>48</sup> M. Siddique Qureshi, *Political Culture in Pakistan* (Islamabad: Dost Publication, 2002), 223.

<sup>49</sup> Ibid., 273.

<sup>50</sup> Ibid., 231.

<sup>51</sup> Muhammad Younas, "Democratic Practices in Pakistan" M. Phil Thesis, (Lahore: Punjab University, 2003), 68.

<sup>52</sup> *The News*, Rawalpindi 28, April, 1993.

<sup>53</sup> *Pakistan Times*, Rawalpindi, 18, March, 1990.

<sup>54</sup> *The Gazette of Pakistan*, Extra (Islamabad: Publish by Authority, 1997), 1496.

<sup>55</sup> Ibid., 1496.

<sup>56</sup> Ibid., 1496.

<sup>57</sup> Ibid., 1496.

<sup>58</sup> Ibid., 1496.

<sup>59</sup> Ibid., 1496.

<sup>60</sup> *The National Assembly Debates*, Vol. VI, No. 1-15 (Islamabad: Manager Press, 1997), 2090.

<sup>61</sup> Ibid., 1496.

<sup>62</sup> *Dawn*, Karachi, 8, September, 1993.

<sup>63</sup> *Pir Sabir Shah Vs Shah Muhammad Khan*, PLD 1995 SC, 66.

<sup>64</sup> Craig Baxter Charles H. Kenndy (ed), *Pakistan 2000*, 7.

<sup>65</sup> Zohra Yousaf, "The year in Democracy" *The Herald Annual* London, January 1998, Vol. 29, 91-92.

<sup>66</sup> Dr. Tanzilur Rahman, "Constitutional Amendments: National Aims and personal whims" [www.jamat.org/ishrat/98/09289/html/](http://www.jamat.org/ishrat/98/09289/html/).

<sup>67</sup> *The National Assembly Debates*, Vol. IX, No. 1-18 (Islamabad: Manager Press, 1997), 573.

<sup>68</sup> *The Gazette of Pakistan*, Extra (Islamabad: Published by Authority, 1997), 1747.

<sup>69</sup> *The Senate Debates*, Vol. X, No. 12 (Islamabad: Senate Sects, 1997), 53.

<sup>70</sup> *The National Assembly Debates*, Vol. IX, No. 1-18 (Islamabad: Manager Press, 1997), 573.

<sup>71</sup> Ibid., 571.

<sup>72</sup> Ibid., 586.

<sup>73</sup> *The National Assembly Debates Vol. VII*, No. 1-37. (Islamabad: Manager Press, 1999), 2469.

<sup>74</sup> Ibid., 2460

<sup>75</sup> Ibid., 2461-62.

<sup>76</sup> *The Gazette of Pakistan*, Extra (Islamabad: Published by Authority, 1999), 1237.

<sup>77</sup> Ibid., 1237.

<sup>78</sup> *The National Assembly Debates*, Vol. VII, No. 1-37 (Islamabad: Manager Press, 1999), 2463.

<sup>79</sup> Ibid., 2470.

<sup>80</sup> *The National Assembly Debates*, Vol. VII, No. 1-37 (Islamabad: Manager Press, 1999), 3227.

<sup>81</sup> Ibid., 3229.

<sup>82</sup> Ibid., 3231-3

## Conclusion

The parliamentary history of Pakistan is of short duration. The civilian rule has been interrupted on several occasions by military coups. As a consequence, the overall record of democratic governments in Pakistan in the field of legislation is not very impressive. The prolonged military rule is partly responsible for this situation. After the prolonged military rule of Zia, the democratic governments were expected to address national social and political issues through legislation. Although parliamentary governments in the post-Zia period tried to do so, their record is less than satisfactory. For instance, there was very little legislative work during the first tenure of the Benazir government. There are several reasons for this less than impressive record in the field of legislation. Firstly, Benazir Bhutto was unable to make few amendments in the existing legislation during her period partly due to the lack of majority in the senate.

Secondly it had no comprehensible legislation program. Thirdly the Pakistan Peoples Party and Islami Jamori Ithed (IJI) remained in the politics of clash throughout that phase. Iqbal Akhund, an eminent administrator associated with Benazir Bhutto's administration, pointed out that the Benazir Bhutto administration did not have a clear-cut programme of legislation. At that time it seemed that Benazir Bhutto was not clear that what could or should be done. But the IJI government by virtue of its two-third majority had a better position as compared to the PPP's Government in pursuing its program through the legislation, but despite of two third majority the IJI having good relations with other parties like Awami National party (ANP) Mutaheeda, Qomi Movement (MQM) Jamat-e-Islami (JI) and Jamiat-ul-Ulema Pakistan (JUP) a logical program could barely be formulated. For instance the

Islamists required more Islamization in the country and wanted Islamic legislation while the MQM and ANP with their secular out look were slightly concerned, that is why MQM did not vote on the Sharia Bill. The prime minister proclaimed that he was not a fundamentalist but it pleased neither the moderate nor the fundamentalist.

The opening term of Nawaz Sharif's government was very feeble in the legislation. During his first term only 17 sessions of National Assembly were held while his phase consisted of 417 days. The undersized duration once more reflects that either the National Assembly did too little or no legislation work. The common smash down of quorum and lack of the contribution in manifestation was either the ignorance of the parliament or inability to recognize its significant role. The IJI Government and parliament's performance in this regards was dubious. Despite of an overwhelming majority in the parliament the IJI Government could not obtain adequate self-assurance to create an environment of the debate and fair legislation.

The IJI Government used the National Assembly as a rubber stamp and decisions were taken out of the parliament. Even the Sharia Bill was hardly debated and the renowned 12<sup>th</sup> constitutional amendment was passed only within fifty minutes. The 12<sup>th</sup> amendment created a hierarchy of the courts which was parallel to the constitutional hierarchy consisting of High court and Supreme Court. Special courts were formed under this amendment and these special courts were not under the control of Supreme Court and High Court. An appeal was also made against the verdict of special court before supreme appellate court that it was an anomalous court ranking somewhere between High Court and Supreme Court. Legal circles considered it

as a black law and militancy courts that restricted the jurisdiction and freedom of the higher judiciary.

IJI government tried to investigate a solution of this problem at the administrative level but it needed political solution as well. So it demonstrates the lack of legislation on parliamentary basis. It is the foremost duty of opposition to criticize and expose the flaws of legislative proposals in the parliamentary system, but if the major party does not acknowledge the rights and privileges of the opposition and bulldoze the rule of parliament than it is not a parliamentary system.

Unfortunately such practices were done very often with opposition in parliament. Under the parliamentary form of government the parliament is theoretically sovereign. It can pass any law within its constitutional competence and the head of the state has no authority to veto it. However, in Pakistan the situation is different because the parliament is not supreme but it is subject to the authority of Allah Almighty, which He has delegated to the state of Pakistan to be exercised within the restrictions set by Him.

The constitution of 1973 imposes an additional limitation on the legislative power of the parliament. According to the constitution of 1973 no law can be enacted which is repugnant to the injunctions of the Quran and Sunnah.

The 8<sup>th</sup> amendment of constitution, ordinance-making power of president and governor imposed limitations on the parliament's legislative power in Pakistan. Unfortunately ordinance making became the rule rather than an exception in law making in our country, the parliament virtually abdicated its key function and it remained busy in the power game. The

parliament was condensed to a subsidiary body, which belatedly would become rubber stamp to the endearing ordinances that were found by the executive.

In Pakistan parliament is unable to observe its responsibility. It is constitutional compulsion of National Assembly that it has to hold its session at least for 120 days each year. But in Pakistan situation is entirely dissimilar.

The detail of sessions could be seen through the underneath table and it presents the genuine image of parliamentarian's involvement in sessions

**Table 1: Performance of Parliament**

Government	Session of National Assembly	Total Days	Average Duration Days
Muhammad Khan Junejo 1985-1988	15	545	36
Benazir Bhutto 1988-1990	11	218	20
Nawaz Sharif 1990-1993	17	417	25
Benazir Bhutto 1993-1996	31	525	17
Nawaz Sharif 1997-1999	20	140	7

Sources: Extra Ordinary Gazette of Pakistan – Part-1 Islamabad.

Another major factor that plays a very fundamental function in legislative development is the representative function of parliament. It has a very close association with the legislative work and social background of parliamentarians and is more indispensable part in legislative business.

In Pakistan majority of the population belongs to the lower middle class or poor class so the parliament cannot be measured on the basis of representatives of the people for the reason that the majority members of parliament belong to either the feudal families or the families of tribal chief. The subsequent diagram will expose the authentic position of the representation of different classes in parliament.

**Table 2: Social Class Background of National Assembly's Members**

Social Back ground	1988	1990	1993	1997
(1). Land Lord/Tribal Leader	156	109	128	126
Businessmen- Industrialist	20	37	38	39
Urban Professionals	09	46	26	32
Religious	15	11	08	03

Leaders				
Retired Army Officers	07	03	05	02
Others	-	03	03	02
Total	207	207	207	207

Sources: Extra Ordinary Gazette of Pakistan – Part-1 Islamabad.

The above diagram shows that always feudal families dominated in parliament that is why very primitive issue of 'Land reforms, is still pending. Every government protected the interest of feudal families and legislation is formulated in this perspective.

Since the independence of 1947 the politics is under the influence of feudal class and the first cabinet of Benazir Bhutto was also dominated by feudal, which played very fundamental role in the legislative business. Strong parliament passes laws without any external stress while the feeble parliament faces great number of difficulties.

In the election of 1988 Pakistan Peoples Party got 93 seats, Islami Jumori Ithad got 54, Mutahida Qami Movement got 13 and the number of independent seats were 44 in National Assembly. MQM, ANP and some independent members helped the Pakistan people party in forming the government but very soon it was removed from the power on 6, August 1990 through a presidential order under the Article of 58 (2) b. The peoples party government was very weak and there were some flaws in the legislation as well. The similar position was with the IJI government in first term and it was not considered as a genuine representative government of the people because in election the bureaucratic machinery and state patronage was used freely in the favor of IJI. The Inter services of intelligence (ISI) went into action for

the support of the IJI. The ISI had distributed Rupees 140 million during the election. Additional more 60 millions were directly given to the IJI leaders and some journalists for the opposition of Pakistan peoples party in election and 80 million were used for some unspecified reasons throughout the elections.

During the election of 1990, IJI got 106 seats, Peoples Democratic Alliance got 44, MQM got 15 seats and independent seats were 42. But in 1993 election, PDA had 92 seats, PML (N) won 72 seats, independent candidates obtained 43 but MQM boycotted the election.

The election results showed that no political party and alliance could get clear-cut majority in election that is why during its first tenure of government IJI could demonstrate outstanding results in the legislation. However in February 1997 election Pakistan Muslim League (N) grew as a well-built and gigantic political party and it won the irresistible majority in the election and that results could be seen in legislative business so extraordinarily illustrious constitutional amendments were made through out that era.

The 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, constitutional amendments were passed during the second term of IJI government. The 12<sup>th</sup> amendment was related to the special court, 13<sup>th</sup>, was concerned to presidential power and 14<sup>th</sup> amendment was regarding the floor crossing. Floor crossing was destructing the stability of democratic institutions and lowering the public representative's image in the public.

On the other hand the 14<sup>th</sup> amendment snatched the free will of expression and speech of members of parliament and it made the party leader absolute authority with no remedy to the judiciary or any other independent authority available to the effected member and it was like creating despotism in the party. In Pakistan political parties have no democratic conduct

and manners. On the whole party leaders have a dominating role in party's politics. Political leaders have autocratic tendency and that tendency is sustained till now.

In recent times in 18th constitutional amendment such kinds of clauses have been included on the behalf of all parties head that grant enormous power to the party head. Second period of Nawaz Sharif's government was valuable and that government passed a bundle of legislations. Terrorist Act 1997 was passed in his second period. Terrorist Act empowered the law enforcement agencies to conduct house searching and detain people without warrant or any legal papers. Petition was filed against it in the court. The Supreme Court gave decision against the amendment and government had to amend the terrorist Act in the light of those instructions.

Ethasab Act was also amended in that period. According to the Act the power to appoint the chief accountability commissioner had been shifted from President to Prime Minister and secondly the period from 1985 to 1990 had been excluded from the Ethasab. The period of exclusion was apparently done to save the Nawaz Sharif's tenure, as a Chief Minister of Punjab because during that period he remained Chief Minister. Ethasab Act could not disburse the noteworthy part in the renovation of system. There were no reservations and every government official used it for his/her own interest and assistance.

Recently, according to 18<sup>th</sup> constitutional amendment, Federal Government would appoint the head of Ethasab with the consultation of opposition leader of the House and Chief Justice of Supreme court but present government has violated the terms and conditions of appointment and has chosen a favorite personal for Ethasab head. The opposition has

challenged that appointment in the Supreme Court. It shows that still of conflict politics is going on in our country and political issues are still pending.

Ethasab is a very indispensable feature of democracy but unluckily in practice it does not rule in the country. Parliamentary governments did their utmost struggle to eradicate the corrupt practice in the country and introduced very exemplary punishments but it all went in vain because political and many other interests stand in the way of Ethasab.

Majority of politicians and high rank bureaucrats were involved in unlawful activity that is why corruption and corrupt practices are still growing day by day. The constitution article 248 is creating vagueness in the implementation of Ethasab Act as well. The Article 248 describes that the President, Governor, the Prime Minister Federal and provincial Ministers will not be answerable to any court for the exercise of power and performance of function of the respective offices or for any act done or purported to be done in the exercise of these powers and performances of these functions. Actually Article 248 does not present clear image so it needs a clear explanation.

Some experts belonging to law profession think that the Article 248 provides special privileges in the criminal cases but not in financial matters and affairs. The article 248 was criticized tremendously at the eve of National Reconciliation Ordinance (NRO) that is why it requires an explanation so that the controversy and embarrassment should be abolished.

Thirdly main thing is that the Ethasab bill deprives magistrative powers mainly in granting the bail. Magistrate is unable to award bail without prior authorization of Chief Ethasab commissioner. It was against the Pakistan's penal code and procedure. Although Ethasab Act was an immense exertion of parliamentary government but it was full of flaws. It

needs more reforms and unbiased institutional composition only then its performance can be enhanced. Every government has exceptional programs in the arena of legislation. The Islami Jumori Ithahad (IJI) Government had also various special priorities on social and political areas. In 1991 the IJI Government introduced the disqualification member Act. Through this bill government wanted ineligibility of elected members mainly of opposition members since that time rival politics is at full swing.

In parliamentary system, Prime Minister is considered as the head of government but in disqualification Act President became head of the government and once again unrestricted powers were granted to President. He could make references against anyone at any time. Ghulam Ishaq Khan was president that time and definitely he was against the Pakistan peoples party. He proved himself as an enemy of PPP and made unlimited references against the leadership of Pakistan Peoples Party.

Secondly paramount discretionary powers were granted to special court in that view. Now special court's judge can define the misconduct and misuse of power, thirdly injustice and inequitable powers are also granted to special court's judge in the context of transferring case from one court to another court. In transferring case from one court to other court, the new court was not bound to hear again the case or re-examining of the witness or any other documentary evidence. Political Party Act 1962 was also amended in that period. Provision 8B of political parties did not provide the chance of personal hearing of the affected parliamentarians. The amended bill awards defensive right to members while opposition alleged that the government wanted to buy loyalty of opposition members and bill will open the door of floor crossing.

But in fact it was according to the justice because everybody has right of self-defense and it demolishes the dictatorship in the party system. However, very soon the IJI government snatched all the rights of members through 14<sup>th</sup> constitutional amendment in 1997. In the initial tenure the IJI government was in favor of the members because the Act of senate Election 1992 was also passed in the favor of members.

Senate Election Amendment Act 1992 grants rights of personal hearing before the refusal of the application. In Nawaz Sharif's first term the legislation was generally passed on the democratic line and authoritative and dictatorial behavior was not seen. But in second term when IJI government was in majority the attitude of government was authoritative and dictatorial its reflection could be seen in the legislation. In spite of all in the second term IJI government passed more legislation on political issues as compared to the period of Benazir Bhutto.

Census Bill of 1997 was one of the notable portions of legislation of that epoch. The whole financial system of the country depends on census data reports but initially the census issue remained unsettled due to political problems. The Nawaz Sharif Government increased the penalties and sentences in the census bill so that the counterfeit and incorrect entries in the census could be blocked.

Very little time was given to the parliamentary government but despite of this parliament did admirable job in the social area and passed valuable legislation on social issues. In 1990 the criminal law amendment bill was passed by the parliament because the incidents of kidnapping, abduction for extorting property were widespread in the society. In order to control such heinous crimes new section 365-A was inserted in the criminal

procedural code. The new section increased the sentence of culprits. The harsh punishment like life imprisonments in addition the confiscation of the property was affirmed under a new section. Brutal punishments are very obligatory for tranquility of society but there is a more need of understanding the background of crime and criminal that is why only harsh punishment is not sufficient. Our society is deteriorating in law and order day by day in spite of harsh punishments and penalties.

Benazir Bhutto's government introduced a special court bill in 1990 because through special courts government wanted quick and fast trial for fair justice. There is a very famous proverb "Justice Delay is Justice Denied." however Benazir Bhutto's government entirely failed in that field. Peoples Party's government ill-treated its political opponents by misusing the law and order. Sheikh Rashid who was MNA at that time was preyed by this Act. Such sorts of Bills were passed in the first term of PPP government but in the second term all special courts acts were repealed even special court speedy trial Act of 1992 and all pending cases were shifted to their respective courts of session and all cases were to be dealt under the normal code of criminal. The appeals that were pending before the special appellate court were also referred to the High Court having territorial Jurisdiction in that regard. Such kind of legislation shows that peoples party's government in its second tenure was clearly against the special or speedy courts but Nawaz Sharif from start to end was in the favor of speedy and special courts.

Nawaz Sharif in his first term established special courts through constitutional amendment in 1991. Bill was passed in just 39 minutes. The first, second, third readings went like a bullet. Through the bill unlimited powers were granted to the police and second act of

special and speedy trial was brought in 1992. Government wanted an expansion of speedy court all over the country. One of innovative thing was that the trial was supposed to be conducted in the presence of media and in front of the camera. Government thought that through open trial they could terrify the criminals but human rights NGO's and media made huge hue and cry and called it against the fundamental right of human beings. That act had been repealed in 1996 during the PPP's government but again in 1997 Nawaz Sharif Government passed a special court Act in 1997.

It is clear like crystal that special courts acts were entirely against the justice and human rights, that is why it had been challenged in the Supreme Court and Supreme Court had granted verdict against the special court in 1998 and issued a special instruction for its amendments. Peoples Party was against the open trial and punishment and called it the sign of despotic rule that is why Peoples Party's government put a ban on the whipping punishment through abolishing the parliament of whipping Act 1996.

Another positive step taken by the Peoples Party's government was the attention on the women issues. West Pakistan's Family court Act 1964 was amended by PPP parliament in 1996. Bill inserted new section 12-A. Section 12-A fixes the period for the disposal of Family suits especially the dissolution of Marriage within four months. Prior to this bill, women have to face a lot of problems and disturbances. The present bill reduced their hardships so it was a matchless and splendid legislation in the social sector. Secondly peoples party's government established a fund for those women who were in distress and detention. The foremost function of the fund was to provide financial and legal support to those women that were in

distress and detention conditions. Again it was high-quality legislation in social areas particularly for distressed gender class.

Muslim League parliament also paid its contribution and tried to settle the issue of dowry through dowry suit Act in 1997. Prior to the bill of dowry, suits were filed in the civil court where the court fee was compulsory but that legislation removed the entire court fee and helped to settle this issue. Now it will be filed in the family court.

Muslim League parliament also emphasized on the law and order reforms. Surrender of illicit arms Act 1991 was a chain of law and order reforms. Government enhanced punishment for the illicit arms and special powers were granted to the law enforcement agencies.

Under the section 04, police could enter the house of people without search warrant or any legal paper. There is a saying, 'violence creates violence, harsh and severe punishments cannot stop utterly social evils' but that government tried to solve the issue with power and harsh punishment that is why no clear-cut success could be seen in the settlement of this social issue. However both parliamentary governments paid full heed in the penal code and amended it so that the flaws of penal code could be removed and it could be made according to the requirements of the society. It shows that the parliamentary governments were involved in laws reforms.

Hudood ordinance 1979 was also amended in 1997 because the rate of gang rape incidents was going high in the society. Amendment was made in the section 10 and death penalty was declared for such sort of crime. Nawaz Sharif government was more interested in

the welfare of public than the people party's government and hence welfare legislations were passed during the League government.

In 1991, the parliament passed the prohibited child labor bill although its results were not according to the desired expectations because government machinery was involved in the child labor. In Pakistan feudal and capitalist class has always remained in power and frequently these two groups exploit the child labor and majority of poor children work in mills, factories, and houses of elite class. However the legislation was a magnificent effort towards the welfare of children. The next attempt, which was also observed in the parliamentary government, was the bonded labor bill. The bill provides a shield to the labor class from economic and physical exploitation of powerful class. It grants special legal protection from the brutality of feudal and capitalists; however in reality powerful class is still exploiting the labor class in countless ways.

Government machinery, poverty, unemployment low literacy rate and several other factors are supporting the powerful class and bonded labor is still a common practice in the country chiefly rural areas are full of such vices, where humanity is trembling and no body is ready to help. Despite of all it is a magnificence of parliamentary system that took part in reducing the ruthlessness and pain of labor class in our society.

Many social issues were considered for discussion in the parliament and legislations were passed on those issues. Previous government settled the issue of wages of unskilled worker and amended the Pakistan (minimum) wages ordinance of 1969. Government increased the wages of unskilled worker from 650 to 1500 rupees. Such type of legislation proved the

interest of government in welfare and social issues. Intended for betterment of poor population of the country Bait-ul-Mall was also established through the parliament legislation.

It is a fundamental obligation of the state to provide the indispensable requirements of life and government tried to present a design of the welfare state through that legislation. However all expectations proved to be delude for poor people and funds were used for political purposes. Although in the legislation point of analysis it was the unique and incomparable legislation that was passed by parliamentary government on social issues. Parliamentary government wanted the welfare of people and that objective was given a pinnacle priority through legislation.

Parliamentary government prohibited the wasteful expenses on marriage ceremonies by passing a Bill in 1997. It solved the paramount issue of society and particularly of poor people as well as middle class and made their lives unproblematic. However capitalist mafia is like drug mafia that violates the legislation and legislation is seen powerless in front of them and same happened in our society with that legislation. But no doubt as legislation logic was incredibly right track legislation so no body could blame it. Sectarian and drug issues were another problem for our society and parliamentary government did not disregard it at any cost.

Muslim League, s government paid a special head to it and passed another bill against the sectarian violence. The major function of the bill was to control the sectarian aggression in the country. But opposition, lawyers, NGO's criticized it because of its harsh provisions. Sectarian Act had granted an extensive power to police. Police could use a lethal force against sectarian violence. Government tried to solve the issue forcefully while it required a different

ground. That is why the issue is still existing in the society and is also growing day by day. Muslim League, s government established an Anti Narcotic Force through the parliamentary legislation. So that the drug abuse could be stopped but drug addicts were neglected and there was no reasonable organization for their rehabilitation. Drug addict's families are facing lot of problems so that area also needed legislation.

If we investigate the legislative business of parliamentary government as compared to despotic rule than it can be concluded that the performance of parliamentary governments were better than that of the authoritarian rule. Parliamentary governments faced tremendous troubles like instability, and a limited and short time period of rule but still these governments paid full attention to and tried to explore the solutions of problems. But lots of issues are still pending and they need legislation.

In 1997 over two third of Pakistan's adult population was illiterate 17 million children were out of primary school in 1998. It means that education sector needs legislation because of the lack of education the social and political issues cannot be abolished. In addition more either 60 million people do not have access to health facilities, 60 million people are without safe drinking water, and still millions are deprived of fundamental sanitary amenities. Additional 36 million people are living in complete deficiency and more than half of the cultivatable land is in the hands of big landlords. So, all the above-mentioned areas need an emergency legislation. If the record of the democratic governments in the post-Zia period is not very impressive, it does not mean that the despotic governments performed better than the former. Despite all shortcomings of the parliamentary governments, parliamentary legislation is the tested method to solve national social and political issues of Pakistani society.

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<i>The Pakistan Times</i>	(Rawalpindi)
<i>DailyJung(Urdu)</i>	(Rawalpindi\Lahore)
<i>Daily Nawa-I waqat(urdu)</i>	(Rawalpind\Lahore)