The 21st Amendment Act of Pakistan
A Matter of Serious Concern for Islamist Parties in Pakistan

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The 21st Amendment Act: A Matter of Serious Concern for Islamist Parties in Pakistan

On January 5, 2015 the Pakistan Parliament in a joint session of both Houses (Senate and National Assembly) passed 21st Amendment to the constitution of Pakistan, establishing military courts for trying Islamist terrorists. The 21st amendment was the consequence of the Army Public School incident of December 16, 2014 in Peshawar, where Islamist terrorists belonging to Tehreek-e-Taliban Pakistan Fazalullah faction cold-bloodedly murdered 145 (132 of them school children). The terrorist attack which is now being considered as Pakistan’s 9/11 appears to have changed the course of action of policy makers or at least related to TTP and linked groups.

The passing of 21st amendment by Pakistani parliament for paving the way for military courts seems to be an unprecedented act for dealing with the Islamist terrorists in Pakistan. The framers of the bill even used the terms “using the name of religion or a sect and raise arms or wage war against Pakistan”, another unprecedented moment. Besides this the government of Prime Minister Nawaz Sharif came under intense pressure from civil society (via social media) to suspend the moratorium on capital punishment. The immediate suspension of moratorium has hitherto led to the execution of 9 convicted terrorists, and the number may cross 100 within few months.

The said Act amended the Article 175 of the constitution leading to further amend the first schedule of the constitution (i.e. clause XXXIX of The Pakistan Army Act 1952, VI of The Pakistan Air Force Act 1953, XXXV of The Pakistan Navy Ordinance 1961, and X of The Protection of Pakistan Act 2014). The amendment calls for special measures for speedy trial of offenses related to terrorism. The legislative measures as stated in the ‘Statement of Objects and Reasons’ explicitly calls for action against those involved in terrorism, waging war on Pakistan, insurrection against Pakistan, and threatening the security of Pakistan. The amendment establishes military courts despite the fact that it is passed by a democratically elected government keeping in view of the extraordinary situation and circumstances existing in Pakistan after the Army Public School incident in Peshawar.

Salient Features

- The 21st amendment shall provide constitutional cover to military courts (trial of offences by the military courts)
- Extension of the jurisdiction of military courts to try terrorists (under Pakistan Army Act 1952)
- The 21st amendment shall remain part of the constitution for two years
- Article 175 shall have no application on the trial of persons under the Pakistan Army Act 1952, the Pakistan Navy Act 1961, and the Protection of Pakistan Act 2014

The amendment further amends the Section 2 of Act 1


2 There are 8000 convicted prisoners in Pakistan on death row in Pakistani jails. With more than 500 of them belong to different terrorist outfits and at least 100 of them who have exhausted all appellate authorities against their convictions.

3 Article 175 of Pakistan Constitution is about Establishment and Jurisdiction of Courts in Pakistan
XXXIV of Pakistan Army Act 1952. The amendment in the Pakistan Army Act by virtue of amendment in the Constitution empowers the military courts to try under the following sections of the act:

(iii) Claiming or are known to belong to any terrorist group or organization using the name of religion or a sect: and

(a) raise arms or wage war against Pakistan, or attack the Armed Forces of Pakistan or law enforcement agencies, or attack any civil or military installations in Pakistan; or

(b) abduct any person for ransom, or cause death of any person or injury; or

(c) possess, store, fabricate or transport the explosives, fire-arms, instruments, articles, suicide jackets; or

(d) use or design vehicles for terrorist acts; or (e) provide or receive funding from any foreign or local source for the illegal activities under this clause; or

(f) act to overawe the state or any section of the public or sect or religious minority; or

(g) create terror or insecurity in Pakistan or attempt to commit any of the said acts within or outside Pakistan,

Amendment to the Protection of Pakistan Ordinance, 2014

(iv) claiming or are known to belong to any terrorist group or organization using the name of religion or a sect and raise arms or wage war against Pakistan, commit an offence mentioned at serial Nos. (i), (ii), (iii), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii) and (xx) in the Schedule to the Protection of Pakistan Act, 2014 (X of 2014)

Concerns for Islamist Parties

Two principal Islamist parties in the Pakistani Parliament namely Jamaat-e-Islami (JI) and Jamiat-e-Ulema Islam (JUI)

boycotted the voting sessions for the said amendments. The decision to boycott the voting was not taken by the leaderships of these parties in haste. In fact the matter was thoroughly debated in the parliament and government held separate meetings with the leaders of Islamist parties to address their concerns regarding the bill. The Islamist parties though did not publicly show their concerns about the repercussions for them but did voice against the bill in media calling it ‘a conspiracy to turn Pakistan into a secular state’. The two major concerns for Pakistani Islamist parties are as stipulated in the text are:

- “claiming or are known to belong to any terrorist group or organization using the name of religion or a sect and raise arms or wage war against Pakistan.....”
- “provide or receive funding from any foreign or local source for the illegal activities”

Both JI and JUI have remained partners in electoral alliances in past elections (2002 elections) and formed coalition governments in Khyber-Pakthunkhawa and Baluchistan provinces in 2002. Both the Islamist parties adhere to Deobandi school of thought and most of the Islamist terrorist organizations (TTP, Harkat ul Jihadi-e-Islami, Harkat-ul Mujahedeen, Lashkar-e-Jhangvi, and Jaish-e-

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4 JI has 4 National Assembly seats whereas the JUI has 13 seats in the house of 342.
Mohammad) in Pakistan also belong to the same sect. The use of the words ‘using the name of religion or sect’ invariably would come down to Islamist terrorist organizations belonging to the Deobandi school as most of the actively involved terrorists are either graduates of Deobandi madrasahs in Pakistan or involved in sectarian violence against adherents of Shia or Barelvi sects.

The Islamist parties simply do not want to support a bill which may hang over them like the sword of Damocles. Simply put most of the leadership of Islamist terrorist organizations emanated from the Islamist parties and many of them maintain relationship with Islamist parties’ leaders to communicate with the government and law enforcement agencies. The Islamist parties’ leadership have at times called the fallen Pakistani Taliban leaders such as Hakeemullah Mehsud as martyrs in their statements. Many high profile Islamist terrorist leaders and high value Al-Qaeda targets have been arrested from the homes of JI leaders, one most sighted example is of Khalid Shaikh Mohammad, the mastermind of 9/11 attacks was arrested in 2003 from the house of JI’s Rawalpindi chapter leader Farzana Qudoos. Besides KSM’s arrest scores of Al-Qaeda leaders were arrested alongside JI members from Karachi, Lahore, Mardan, Faisalabad and Quetta. The clause “provide or receive funding from any foreign or local source for the illegal activities” may create plenty of problems for Islamist parties in future.

Another major issue which may cause serious concerns for Islamist parties is related to part ‘F’ which says “act to over-awe the state or any section of the public or sect or religious minority”. Sectarian terrorist organizations like Lashkar-e-Jhangvi and Tehreek-e-Taliban Pakistan (which is also sectarian because many of terror attacks against Shia community in Pakistan) appear to have had close relationship with Islamist parties of Deobandi school of thought. According to Pakistani freelance journalist Zia ur Rehman,

“The JUI-F has influence with many of Pakistan’s militant groups, including those led by Hafiz Gul Bahadur and Waliur Rahman Mehsud. In June 2010, for example, the JUI-F pressured the government to release approximately 300 alleged Taliban members from prison, as the men were also JUI-F party members.....the JUI-Nazariat, led by Maulana Asmatullah, a member of parliament from Baluchistan, was the first religious party that organized a protest rally on May 2, 2011 in Quetta to pay homage to slain al-Qaeda chief Usama bin Ladin. The JUI-N, unlike the JUI-F, is openly supportive of the Afghan Taliban.”

Lashkar-e-Jhangvi is a splinter of Sipah-e-Sahaba Pakistan an overtly anti-Shia political party, whose leader Haq Nawaz Jhangvi was simultaneously general secretary of JUI Punjab province chapter and also contested National Assembly seat on JUI’s ticket in 1988 elections in district Jhang of Punjab province.

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5 Hakeemullah was killed in drone attack in December 2013 in South Waziristan. JI Amir Munawar Hassan called him a martyr. JUI leader Fazal ur Rehman in a similar fashion stated that even a dog killed while fighting the Americans is a martyr. (The Express Tribune, November 5, 2013)

6 Amir Mir, “The Jihadi Face of the Jamaat: Is the alliance with the Establishment over now?”, The News, November 12, 2013


8 Nadeem F Paracha, The Hate Vote, Dawn, March 24, 2013

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After Jhangvi’s assassination in 1990, his followers established Lashkar-e-Jhangvi (Army of Jhangvi) with a sole purpose to conduct terrorist attacks against the Shias in Pakistan. TTP’s first Amir Baitullah Mehsud was a former district leader of JUI in South Waziristan another TTP commander Sadiq Noor from North Waziristan was also associated with JUI\(^9\). Baitullah was the first Emir of TTP and played a pivotal role in the assassination of twice-elected Prime Minister Benazir Bhutto in December 2007\(^{10}\). According to United Nations inquiry report on the assassination of Benazir Bhutto, “Further indications of the Al - Qaida threat to Ms Bhutto emerged two days after her death when Al - Qaida spokesman Mustafa Abu al Yazid claimed responsibility for her assassination in a telephone interview with Asia Times Online. He stated: “We have terminated the most precious American asset who vowed to defeat mujaheddin.” Al Yazid said that Al - Qaida had ordered the assassination, which was carried out by operatives of Lashkar e Jangvi, a Punjab jihadi group with a strong anti - Shia bias. Al - Qaida stood to gain from the political destabilization of Pakistan that followed her assassination. Given the above, the Commission believes that the competent authorities of Pakistan should vigorously pursue the possible role of Al - Qaida in Ms Bhutto’s assassination.\(^{11}\)”

**Conclusion**

Some political parties and terrorist organizations appear to establish some level of links and contacts. Leonard Weinberg et al have conducted a seminal research work in this context. According to their study of 430 terrorist organizations, 203 (47.2 %) have ‘links of one kind or another with political parties’\(^{12}\).

Scores of cases could be quoted to establish links and ideological leanings of Islamist parties in Pakistan with Islamist terrorist organizations. The point is that that the Islamist network (parties, terrorist organizations, charity and welfare organizations) were never concerned as they are today because of the recent legislation in the parliament in the aftermath of Peshawar incident. The primary reason is establishment of military courts and other is the clauses in the legislation which could yield serious legal repercussions for their own party members involved in providing safe havens to the Islamist terrorists. The Islamist parties have not disclosed their strategy to counter the legislation, since they do not have substantial number of seats in the parliaments. Therefore it is expected that they would come up with a plan to flex their muscles by showing either their street power, using the madrassas’ student body under their control or by vetoing down the said legislation in the Council of Islamic Ideology\(^{13}\) which is currently headed by a JUI stalwart Maulana Sherani.

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\(^{10}\) “BB murder case: Another witness point toward Baitullah Mehsud”, The Express Tribune, March 3, 2012


\(^{13}\) The Council of Islamic Ideology (CII) is a constitutional body to review all the legislations passed by the parliament and to ensure that none should have any clause contrary to Islamic notions of Sharia. The CII is currently headed by Maulana Sherani, a senior leader of JUI-Fazal faction. Sherani was selected to head the CII by former President Asif Ali Zardari in 2011 because he needed JUI’s votes to maintain majority in the parliament.