
Responding to Terrorism: Pakistan's Anti-Terrorism Laws

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Introduction

In the post-9/11 landscape, effectively checking political violence and terrorism in Pakistan through preventative legal measures remains a challenge at both state and local levels. Literally speaking, anti-terrorism (sometimes abbreviated as AT) generally refers to passive, defensive, protective, or legal measures against terrorism. Efforts to deter terrorism may take the form of severe penalties under anti-terrorism laws, such as circulating descriptions or photographs of terrorists in the media, offering rewards for information, or might involve a naturally evolved deterrent, such as pressuring the kin of terrorists. As Niccolò Machiavelli wrote in *The Prince*, “fear is maintained by a never failing dread of punishment.”

How do these principles of anti-terrorism apply to Pakistan? Have stringent laws reduced acts of terrorism and deterred those who might commit them? This paper aims to understand and explore these key concerns while charting the evolutionary process of anti-terrorism laws within Pakistan. The analysis is based on the framework detailed in the following arguments/pointers:

Anti-terror laws crosscut boundaries between administration, constitution, criminal, immigration, military law, and laws of war within and beyond. That is, one cannot analyze the anti-terror regime of any state in isolation from its domestic environment that is composed of political, administrative, societal, and economic variables. Parallel to this, the impact of the regional and the international factors cannot be minimized.

The State reserves the right to make and amend laws for the security of its citizens.

Rule of law is the key to the success of anti-terror mechanisms within the state.

Anti-terror laws form a critical component of the comprehensive counterterrorism policy of the government.

Public support, political will, and state capacity are vital in lessening the gap between anti-terrorism goals (as envisaged in the laws) and their practice or implementation.

This paper follows systematic analyses of anti-terrorism policy by tracing the contributions of earlier governments to the development of anti-terror laws in Pakistan. Part one of the paper looks into the historical background of the present anti-terror regime. Salient points and the context of the Suppression of Anti-terrorism Act of 1975 and the Anti-terrorism Act of 1997 by the Nawaz Sharif government are discussed in this section. Part two of the paper discusses the Musharraf government's amendments to the earlier anti-terror craft. Here, the gap between the perception/intent of the anti-terror legal regime and the reality on ground will also be discussed side by side.

Part One: Evolution of Anti-terror Mechanism in Pakistan

Marcus Tullius Cicero, Roman philosopher, orator, lawyer, and politician, once stated that “the soul, mind, and meaning of a State lie in its Laws”. That is, laws are a reflection of the state's mindset and commitment to fight issues like terrorism. As the very nature of terrorism has evolved into a complex and multi-faceted phenomenon, so has the state's response to it. For more than three decades in Pakistan the government has introduced “special” legal measures to deal with certain criminal offences outside the regular criminal justice regime. The government in the 1970s interpreted political violence, nationalist movements, and certain criminal offences as acts of terrorism and sectarian violence and thus instituted a parallel legal system to try those who commit these crimes. The regular criminal justice system was deemed incapable of delivering justice swiftly.

Here, the decisive role of the politics that heavily influenced the adoption and usage of the anti-terror mechanism as a means to suppress dissent and extend executive control over the legislature and political opponents cannot be ignored. Very often the laws under the garb of “anti-terrorist measures” that deal with anti-state (at times political/bureaucratic opponents of the regime of the day) elements were in fact used for political purposes. Historical analysts have termed Prime Minister Liaquat Ali Khan's adoption of the Public and Represen-

tative Officer (Disqualification) Act of 1949, PARODA, as a political instrument that was “used as a political weapon and succumbed to political considerations.”

Prior to the Suppression of Terrorist Activities Act (1975) various regimes in Pakistan used the British-crafted Criminal Procedure Code, especially Section 144, to control political activity and suppress anti-state activities. Under British rule, it was designed to allow a District Magistrate to prohibit large gatherings and carrying of arms during times of civil disobedience.[1] Under General Ayub Khan’s military rule there existed “whole series of repressive measures abolishing all civil liberties, censoring the press, and imposing extraordinary penalties for criminal acts.”[2] The Security of Pakistan Act (1952), the Defense of Pakistan Ordinance (1955), and the Defense of Pakistan Rules (1965), were also frequently used for political objectives. The role of the judiciary was infringed upon and political dissent was controlled by the enactment of Public Offices (Disqualification) Order (PODO) of March 1959 and the Electoral Bodies (Disqualification) Order (EBDO) of August 7, 1959, respectively.[3]

Interestingly, the very definition of terrorism was purely politically charged and domestic in nature. Those in opposition to the federal or central government were deemed “traitors” and were equated with “anti-state” principles, against the integrity of Pakistan as a whole. The so-called anti-terror mechanisms instituted through revival of old and new ordinances, military martial law orders and decrees, and the limitation of the role of the judiciary remained vague and ill-defined. The ambiguity factor was exploited for the benefit of the government of the day and terrorism was dealt with on an *ad hoc* basis, at times with the regular judicial system or through Executive Decrees or Ordinances outside the existing judicial set-up. This resulted in a blurred distinction between political opposition and political violence. As a result, all opposition to the central government was dubbed “anti-state” rather than being perceived as merely “anti-government.”

In the early 1970s, the Z A Bhutto government facing violent opposition and nationalist movements in the NWFP (North West Frontier Province) and Baluchistan resolved to undertake all “necessary steps” to stop the politics of terrorism and secession.[4] In October 1974, the government established “special” courts for “suppression of acts of sabotage, subversion, and terrorism”. [5] The stated objective of the 1974 ordinance was to provide “special provisions” for suppressing such acts and to establish “special” courts with exclusive jurisdiction for “speedy trials” of such crimes.[6] The creation of “special courts” meant a departure from the regular judicial system in order to address the violence and ensure swift justice. The 1974 ordinance was approved by parliament and a few months later became the Suppression of Terrorist Activities (Special Court) Act of 1975.[7] A new era began in Pakistan’s legislative history wherein “special” laws and courts dealing with “terrorism” or “terrorist acts” became the norm.

Likewise, the definition of “terrorist acts” became much broader and the list of offenses that could be tried by “special” courts also expanded. To quote a seasoned historical analyst, Saeed Shafqat, “Wali Khan’s NAP (National Awami Party)[8] was banned and its top leadership was arrested. Police raided Peshawar university campuses to recover “foreign arms”.... Wali Khan was charged with conspiring against the state and a special tribunal was set up to try him.”[9]

The Suppression of Terrorist Activities (Special Courts) Act of 1975 incorporated a number of measures to expedite the slow legal process. Adjournments in court proceedings were not granted unless “necessary in the interest of justice.”[10] The Act also provided that once the accused had appeared before the court, the remaining trial could proceed even if the accused subsequently absconded.[11] It departed from the universal principle of presuming the accused innocent until proven guilty.[12] That law presumed the accused guilty when found in possession of any article which could be used in the commission of the offence he was accused of committing, or when apprehended “in circumstances which tend to raise a reasonable suspicion that he has committed such [an] offence.”[13] It was then that the accused had to convince the court of his or her innocence. This shift in the onus of proof is regarded as a serious issue in evaluating the human rights record under the past and present anti-terror regime. The situation is well captured by the comments of Human Rights Commission of Pakistan (HRCP) Consultant Mr. Najam U Din, “Against such a shift in the onus of proof, all that the most innocent of accused can do is present proof of past good behavior or blanket pleas of innocence.”[14]

The 1975 law remained in force until being repealed and replaced by the Anti-Terrorism Act (ATA) of 1997, [15] which is the principle “special” anti-terror law currently in force. In between these two laws, the government introduced a range of laws aimed at dealing with “special” needs, and the laws were mainly directed at expeditious adjudication of cases concerning acts of terrorism.[16] These laws included the Special Courts for Speedy Trial Ordinance (1987), the Terrorist-Affected Areas (Special Courts) Ordinance (1990), and the Ter-

rorist-Affected Areas (Special Courts) Act (1992).[17] What follows after the introduction of the Anti-Terrorism Act (ATA) in 1997 is essentially an account of efforts by the government to depart from standard legal practice and of some interventions by the judiciary to put limits in place upon such “special laws.”

ATA was the brain child of the Nawaz Sharif government that sought to “impart timely and inexpensive justice by establishing a parallel legal system.”[18] ATA was preceded by many years of sectarian violence and terrorist incidents across the country. Nawaz Sharif’s government felt that “unless criminals and terrorists get severe punishment, the violence and growing rate of crime cannot be stopped.”[19] The law encompassed “special” measures to expedite trials. It embraced the expanded objective of preventing “terrorism and sectarian violence” and providing “speedy trial of heinous offences.”[20] The law aimed to act as a deterrent for would-be terrorists by incorporating the broader definition of terrorism and rigid deadlines to ensure speedy justice. ATA was a definite departure from the regular judicial system and an attempt by the government to dominate the proceedings of terrorism-related cases. The Act defined terrorism as:

Whoever, to strike terror in the people, or in any section of people, or to alienate any section of the people or to adversely affect harmony among different sections of the people, does any act or thing by using bombs, dynamite or other explosive or inflammable substance, or firearms, or other lethal weapons or poisons or noxious gases or chemical or other substances of a hazardous nature in such a manner as to cause the death of, or injury to, any person or persons, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community or display firearms, or threaten with the use of force public servants in order to prevent them from discharging their lawful duties commits a terrorist act.[21]

Crimes within the purview of the ATA of 1997 included murder, the malicious insult of the religious beliefs of any class, the use of derogatory remarks in respect of the holy personage, kidnapping, and various statutes relating to “robbery and dacoity.”[22] Such a broad definition of terrorist acts was seen as blanket cover available to the ruling government to define virtually any kind of violence as terrorism.

Concurrently in 1997, ATA created special “anti-terrorist courts.” This again was a departure from the existing judicial system and an attempt to create a parallel system directly staffed and monitored by the executive rather than the judiciary. A judge in an anti-terrorist court could be a session judge, or an additional session judge, district magistrate, deputy district magistrate, or an advocate with ten or more years of experience appointed by the government. Such judges would have no specific tenure of office, serving at the discretion of the government.

The law required investigation of offences within seven days.[23] Once the case is submitted to court, the trial is to be conducted within seven days,[24] and the trial judge is specifically barred from granting more than two consecutive adjournments.[25] Failure to adhere to the time frame could result in disciplinary action against the presiding judge.[26] Those accused of crimes could be tried in absentia and appeals against conviction and acquittal of such courts would lie *only* with the Special ATA Tribunal, created at the discretion of the government. The decision of the Appellate Tribunal would be final, and no further appeal could be entertained.[27]

The law was prepared and passed in haste, and it was the Supreme Court’s timely intervention that led the government to amend various sections of the law, making it more practical and people-friendly.[28]

At this instance one must look into the famous Mehram Ali case that is often cited as pretext for the issuance, and later on amendment, of ATA 1997. On January 18, 1997, Mehram Ali, a member of militant Shia organization called Tehrik Nifaz Fiqah-i-Jaferia (TNFJ), detonated a remote-controlled bomb in the vicinity of the Lahore courts, where the two leaders of the Sepah-Shareha Pakistan (SSP), an anti-Shia group of Sunnis, were brought for a hearing before the additional session judge. The explosion killed twenty-three people, including the two Sunni leaders, and injured more than fifty people. Mehram Ali was caught on the spot but his trial before the Sessions court went forth slowly.

Following the introduction of ATA 1997 the case was transferred to the newly constituted anti-terrorist court. The court convicted Mehram Ali on twenty-three counts of murder and various other sentences relating to the bombing, and sentenced him to death. He filed an appeal before the newly constituted Anti-Terror Appellate (ATA) Tribunal, also in Lahore. The ATA upheld his conviction. The petitioner then filed a writ petition before the Lahore High Court claiming, among other things, that the formation of the special courts violated the provisions of the Constitution. The Lahore High Court claimed jurisdiction to hear the appeal, but held that the con-

viction should still stand. Mehram Ali then filed an appeal to the Supreme Court of Pakistan. In its decision, *Mehram Ali Versus Federation of Pakistan*,^[29] the Court upheld Mehram Ali's conviction and he was later executed.

The court declared certain sections of ATA 1997 to be unconstitutional and in need of amendment. It was declared that the newly constituted anti-terror court would be subject to the rules and procedures of the existing constitutionally established judicial system, including: (1) the judges of such courts would have fixed and established tenure of service; (2) such special courts would be subject to the same or similar procedural rules as regular courts, including rules of evidence, etc; and (3) decisions of special courts would be subject to appeal before the relevant constitutionally mandated regular courts. Namely, the appeal against the decision of the special court would lie with the respective High Courts and ultimately with the Supreme Court. Moreover, no parallel legal system can be constructed that bypasses the operation of the existing regular courts.^[30]

The conclusion of the *Mehram Ali Case* (PLD 1998 SC 1445) marked the importance of the independence of a judiciary, particularly in reference to the Article 175 of the Constitution. Justice Irshad Hassan Khan, Chief Justice of the Supreme Court of Pakistan, in the *Mehram Ali vs. Federation of Pakistan* judgment observed:

I would add a note of caution that sacrifice of justice to obtain speed disposition of cases could hardly be termed as "justice". A balance ought to be maintained between the two commonly known maxims, "justice delayed is justice denied" and "justice rushed is justice crushed". I do not suggest that speed and efficiency ought not to be ultimate measure of a Court but it should not be at the expense of justice.^[31]

Against this backdrop, the Nawaz Sharif government had to incorporate the changes as suggested by the Supreme Court in the Mehram Ali case. As a result, ATA 1997 was amended, and on October 24, 1998, the Anti-Terrorism (Amendment) Ordinance was issued. Under this ordinance, anti-terrorism courts remained in place and the judges of such courts were granted tenure of office; special Appellate Tribunals were disbanded and appeals against the decision of the anti-terror courts would henceforth be submitted to the respective High Courts; and restrictions were placed on ATA 1997's provisions regarding trials in absentia to accord with regular legal procedures.^[32]

Another landmark Supreme Court decision on February 22, 1999, in the famous *Liaquat Hussain vs Federation of Pakistan*^[33] marked another step in the evolution of the anti-terrorism legal regime. The decision was against the introduction of the Pakistan Armed Forces (Acting in Aid of Civil power) Ordinance^[34] (PAFO) on November 20, 1998. The ordinance was promulgated by the Nawaz Sharif government following the spree of ethnic killings that gripped Karachi in October 1998. The targeted killing of Hakim Said, a well-known philanthropist and a former Governor of Sindh, on October 17, 1998, led to the imposition of Governor Rule (Emergency) in Sindh province. The military was called in to restore law and order in the province. Author bio? s means to an end hasr hered be helpful ordinances have been italicized . . .through the PAFO's broad judicial powers - were conferred on it.

The most glaring feature of the PAFO was the creation of special Military Courts ^[35] to try civilians. This step reduced the existent anti-terrorist mechanism nearly irrelevant, as all pending cases before the anti-terrorism courts could be transferred to the newly established military courts. The ordinance allowed the trial in absentia and appeals could only be lodged in the Appellate Tribunals to be created by the military authorities. Thus, the regular and constitutional judicial mechanisms established to try terrorism-related cases were bypassed and the executive relied solely on military means to administer law and order and ensure justice across the board.

Another so-called innovation of the Ordinance was the creation of a "new crime" punishable with a penalty of up to seven years of vigorous imprisonment. This new crime, referred to as the crime of "civil commotion," stated:

Civil commotion means creation of internal disturbances in violation of law or intended to violate law, commencement or continuation of illegal strikes, go-slows, lockouts, vehicle snatching/lifting, damage to or destruction of state or private property, random firing to create panic, charging bhatta (protection money / extortions), acts of criminals trespass, distribution, publishing or pasting of a handbill or making graffiti, or wall – chalking intended to create unrest or fear or create a threat to the security of law and order.^[36]

The Ordinance was heavily criticized by the human rights activists, media, and opposition parties. Opposition Senator Aitzaz Ahsan questioned the definition of “civil commotion” and observed:

Actions of publishing handbills or wall-chalking or going on strike for economic crises have nothing to do with Terrorism. Intent of law is to suppress all expressions of opposition to government of Prime Minister Nawaz Sharif. It betrays the real face of the government. They talk of democracy; they come to the Parliament talking of democracy but this is one of the most amazing documents of legislation they have produced. Obviously, [the new laws] are intended to strengthen the grip of the government of the political activity in the country.[37]

The Supreme Court’s unequivocal decision in *Liaquat Hussain versus Federation of Pakistan* wholly repudiates the impugned ordinance, declaring it to be “unconstitutional, without legal authority, and with no legal effect.” The unanimous decision of the full nine-member bench also rejected the government’s contention that the ordinance was expedient and defensible under the so-called “doctrine of necessity.”[38] The Supreme Court recorded in its judgment that civilians cannot be tried by military courts; the special courts cannot perform parallel function to those assigned to regular courts, and; the military powers with regard to “aid to civil authority” do not extend to the creation of courts or the exercise of judicial functions.

It also observed that “the cases in which sentences have already been awarded but the same have not yet been executed shall stand set aside and the cases stand transferred to the Anti-Terrorists Courts already in existence or which may hereinafter be created in terms of the guidelines provided hereunder for disposal in accordance with the law.”[39] The Court’s decision also laid down certain procedural amendments to be followed for enhancing the efficacy of the existent anti-terrorist courts. For instance, it was observed that only one case at a time is to be assigned to the Anti-terrorist court.

The aforementioned Supreme Court verdict had a strong bearing on the Nawaz Sharif government’s anti-terrorist resolve, and on April 27, 1999, the PAFO was repealed, but “civil commotion” was added as crime to the fold of ATA 1997.[40] On August 27, 1999, the Nawaz Sharif government made yet another amendment to the ATA 1997 to allow for the creation of anti-terrorism courts in any province of Pakistan.[41] This was the last revision to the craft of anti-terrorism regime by the Nawaz government before it was ousted out of office by the military coup led by General Musharraf on October 12th of the same year. These events lead us to the second part of the paper that looks into the question of how the Musharraf regime has built upon the anti-terror craft of previous governments.

Anti-Terrorism Legal Craft under General Musharraf

Since October 1999, the anti-terrorism legal regime has been a mix of both change and continuity. The ATA of 1997 has been revised and amended amid the changing political and strategic context at the domestic, regional, and the international level. It is essentially an interplay of the national, regional, and global understanding of the issue of terrorism following the terrorists attacks on 11 September. As discussed previously, strategic political issues and differences also overshadowed the adoption of the amendments to the anti-terror legal regime. The intent being the speedy disposal of the cases or political foes, and the disposal of the Nawaz Sharif case under the amended ATA is a case in point.

Pre-9/11: Anti-Terrorism Legal Drive under General Musharraf

The December 2, 1999, twin amendments to the anti-terrorism ordinance expanded the definition of the act of terrorism and enhanced the ambit of the anti-terrorism courts to include several other provisions of Pakistan’s criminal court. According to the first amendment, the courts’ extended jurisdiction would now include: (1) Section 109 – abetment of offense; (2) Section 120 – concealing of a design to commit an offense; (3) Section 120 B – criminal conspiracy to commit a crime punishable by death or with the imprisonment greater than two years; (4) Section 121 – waging or attempting to wage war against Pakistan; (5) Section 121 A – conspiracy to commit certain offenses against the state; (6) Section 122 – collecting arms with the intent to wage war ; (7) Section 123 – concealment with the intent to facilitate waging pf war; (8) Section 365 – kidnapping ; (9) Section 402 – being one of the five or more persons assembled for the purpose of committing dacoity ; (10) Section 402 B – conspiracy to commit hijacking.[42] The Dec. 2nd amendment set up two new special courts to be and empowered to “transfer, claim, or readmit any case within that province.” These courts also served as Appellate Tribunals for the anti-terrorist courts.[43]

Having made such amendments to the existing craft of the anti-terrorism regime, charges were framed against Nawaz Sharif under the newly added sections of the ATA. Sharif was charged with hijacking and threatening the lives of the passengers (that included Army Chief General Musharraf as well) as the aircraft was short of fuel and could not comply with the directives to land outside Pakistan. Bypassing the regular court system that otherwise could have delayed the proceeding of Sharif's case enabled the anti-terrorism court (ATC – Karachi), on April 6, 2000, to convict Sharif of conspiracy to hijack the PIA flight and sentence him to life imprisonment. [44]

That life imprisonment sentence imposed on Sharif under the amended ATA never fully materialized, as a deal was struck between the government and Sharif's family. In December 2000, Sharif and his family were allowed to leave the country for Saudi Arabia. It was reported that under the terms of the deal, Sharif agreed to abstain from politics and remain outside Pakistan for 10 years or so. Additionally, the Sharif family was fined more than 20 million rupees (\$400,000) and agreed to the forfeiture of property worth in excess of 500 million rupees (\$10 million) as part of the deal. [45]

The remaining pre-9/11 phase was marked by further deterioration of law and order, and incidents of sectarian nature became a regular feature on the home front. Despite Musharraf's promise of restoring the writ of the state and ensuring effective and speedy justice, anti-terrorism courts had very significant dockets and delays similar to the regular judicial setup. [46] Musharraf was mindful of the rising tide of sectarianism at home, and while facing diplomatic isolation on the international front as the sole supporter of the Taliban regime in Afghanistan, he began to rethink the parameters of the security policy in operation.

General Musharraf's public address to mark Pakistan's Independence Day (August 14, 2001) reflected the altered security understanding of his regime. He announced a "Devolution Plan 2001" [47] to restructure the country's political and administrative setup. The speech also envisioned a plan to use and amend the anti-terrorism courts to deal with the lawlessness and sectarian violence.

Consequently, the Anti-Terrorism (Amendment) Act issued on August 15, 2001, expanded the purview of the anti-terrorism courts and instituted clauses to proscribe militant sectarian outfits and freeze their financial assets. [48] The Amendment Act empowered the Federal government to ban an organization "if it has a reason to believe that organization is concerned in terrorism." "Concerned in terrorism" is defined as an organization that: (1) commits or participates in the act of terrorism; (2) prepares for terrorism; (3) promotes or encourages terrorism; (4) supports and assists any organization concerned with terrorism; (5) patronizes or assists in the incitement of hatred or contempt on religious, sectarian or ethnic lines that stir up disorder; (6) fails to expel from its ranks or ostracize those who commit acts of terrorism and presents them as heroic persons; or (7) is otherwise concerned with terrorism. [49]

Following the enactment of the amended ATA, the government banned two sectarian organizations, namely: Lashkar-i-Jhangvi (LJ) and Sipah-i-Mohammed (SMP), both militant off-shoots of the Tehrik-i-Nifaz-i-Fiqah-i-Jafferia and Sipah-i-Sahaba, respectively. Additionally, hundreds of activists belonging to these two militant organizations were also rounded up. September 11 soon changed the whole scenario of the anti-terrorism regime, not only for Pakistan, but for the whole world. Pakistan's regime was provided an opportunity and a challenge to vigorously implement its anti-terror craft at home and in its bilateral, regional, and international interactions.

Anti-Terrorism and the Impact of 9/11

The events of 9/11 marked what U.N. Secretary General Kofi Annan called a "seismic shift in international relations." [50] Given Pakistan's strategic location and influence on Afghanistan, its role in the U.S.-led Global War on Terrorism (GWOt) implied changes in its domestic and global strategic posture. By joining the international coalition, Pakistan became the frontline state in the GWOt and enacted laws to ban extremist and militant groups that organized or participated in acts of violence both inside and outside the country.

As an immediate measure, a campaign to expand the number of anti-terrorist courts was undertaken to strengthen existent anti-terror mechanisms. During September and October 2001, eleven new courts were established in the NWFP (North West Frontier Province) and four in Sindh. By the end of October 2001, Pakistan had forty-one anti-terror courts. [51] In January 2002, Anti-terrorism (Amendment) Ordinance was promulgated. This enhanced the single bench to three members of the anti-terror courts and introduced "military personnel" as a third member. The government held that this step was taken "to speed up the lengthy adjudication

process.” Under the new law:

- All terrorism cases will be transferred to the new courts
- Courts will function until November 30 but can be extended
- The entire “terrorist network” was to be targeted
- People who aid and abet terrorists face possible death penalty

A person found guilty had the right to appeal [52]

This act of military involvement in the judicial setup was critically received by lawyers, judicial circles, and international human rights groups. In yet another bid to strengthen the legal regime and ensure rule of law, the government issued the Anti-terrorism (Amendment) Ordinance on November 16, 2002. This Act enhanced the powers of the police to deal with terrorism. By inserting Fourth Schedule into the ATA of 1997, clauses were added regarding the “security of good behavior” to be fulfilled by the activists of the organization or person whose name is recorded in the Fourth schedule list. The Act also provided law enforcement agencies to hold a suspect for up to one year without challenge.[53] By the end of 2002, the government banned another six militant organizations, namely Jaish-e-Mohammad, Lashkar-e-Tayyaba(LeT), Sipah-e-Sahaba Pakistan (SSP), Tehrik-e-Jafria Pakistan (TJP), Tehrik-e-Nifaz-e-Shariat-e-Mohammadi, Tehreek-e-Islami (Ex TJP), and placed one organization, Sunni Tehrik, on the Watch List.[54]

Musharraf’s decisions were also impacted by the Indo-Pak standoff in the wake of an attack on the Indian Parliament (New Delhi) on Dec. 13, 2001, which India fully blamed on LeT (Lashkar-e-Tayyaba), a Pakistan-based Jihadist outfit. Responding to the Indian accusations, the Pakistan government assured the international community that “no one would be allowed to carry out any territorial or subversive activities in or outside the country. No party in [the] future will be allowed to be identified with words like Jaish, Lashkar, or Sipah.... Foreign students and teachers would have to be registered with the concerned government agencies.... We should stop interfering in the affairs of others and stop using violence as a means to thrust our point of view on others.”[55]

The ATA legislation that had been on the statute well before 9/11, but had never been vigorously enforced except by one governing political party against rivals, was put into effect. Following the ATA clauses, the government said it could take actions against banned organizations: (1) their offices, if any would be sealed; (2) their assets and accounts would be frozen; (3) all literature and electronic media material would be seized; (4) the publication, printing or dissemination of press statements, press conferences, or public utterances by or on behalf of, or in support of, a proscribed organizations would be prohibited. The proscribed groups would also be required to submit accounts of their income and expenditure for their political and social activities and disclose all funding sources to those relevant authorities designated by the federal government.[56]

Interestingly, Musharraf’s regime also extended the umbrella of anti-terrorism goals into the political arena—seen by government opponents as political victimization. The Political Parties Order of June 28, 2002, adversely affected the rules of politics in the country. Section 3 of the Order prohibits any political party from: (1) promoting sectarian, regional or provincial hatred or animosity; (2) bearing a name as a militant group; (3) imparting any military or paramilitary training to its members or other persons”. Section 4 also requires that every political party maintain an official manifesto. And Section 15 provides for dissolution of any political party that is “foreign-aided” or is found “indulging in terrorism.”[57]

To paraphrase the analyst M Amir Rana, these steps by the government partly succeeded in stemming the tide of terrorism in Pakistan. Though the public fundraising, recruitment, and propaganda of the banned outfits have been curtailed to some extent, organizations have found innovative ways to survive and flourish. For instance, Jamaat-ud-dawwa (JD), placed on the Watch List on Nov. 15, 2003, has invested largely in legitimate business interests such as health, education, and real estate. Additionally, foreign donations through Hawala channel and Forex Exchange also help them survive. Reportedly, “JD (Jamaat-ud-Daawa) properties in Pakistan have been estimated worth sixty million rupees and it aims at achieving a target of 120 million rupees more during the next five years. Apart from these, the number of students in its model schools has reached ten thousand approximately and in madrasas it has touched six thousand. It is also establishing health centers and dispensaries. [58] If this trend continues, such organizations will not need public contributions and will not be affected by the government instituted bans either on funding, recruitment, propaganda, and so on. These trends not only frustrate the existent anti-terrorism regime but also allow the penetration of extremism within society that requires a comprehensive long-term, anti-terrorism vision.

Given this scenario, further amendments to the Anti-Terrorism Act of 1997 were added in November 2004. The

maximum jail term for supporters of militants was increased from 14 years to life imprisonment. The aim was “to strike at the support network of the terrorism and deter those who are providing financial, logistical and infrastructure support to the terrorists and remove loopholes in the Anti-Terrorism Act.” Sub-sections 4-A and 4-B were added to Section 25 of the Act of 1997; victims and their heirs obtained the right to appeal against the acquittal of accused by an anti-terrorist court.[59] Another amendment to the ATA authorizes the government officials to seize the passport of anyone charged under the law.

Along the same lines, the Pakistani government enacted the Anti-Terrorism (Second Amendment) Act on Jan. 10, 2005. This act also made necessary modifications and amendments to the ATA of 1997 and enhanced the minimum and maximum punishment for acts of terrorism. It curtailed the powers of the court for granting adjournments to ensure speedy trials. It provides for the constitution of Special Benches consisting of no less than two judges for disposal of appeals. The act allowed the transfer of cases of terrorism from one province to another. It also enhanced the jurisdiction of the courts dealing with abduction and kidnapping for ransom, finding and use of explosives in the places of worship, and court premises to be exclusively tried by Anti-terrorism Courts.[60]

At this juncture it is pertinent to note that in the post-9/11 phase Islamabad is also obliged to fulfill the obligation of being a United Nations member and ensure the implementation of the UN Resolution 1373 (2001), UN Resolution 1624 (2005), and submit periodic reports to the U.N. Security Council’s Counter-Terrorism Committee (CTC) from time to time.[61] In other words, anti-terrorism efforts are no longer a national enterprise and need to be upgraded and effectively monitored to be in line with guidelines formulated by the U.N.

Therefore, with the goal of bringing Pakistan into full compliance with legislative requirements necessary to implement U.N. Resolutions 1373 and 1624, a draft of the Anti-Money Laundering Bill (2005) was approved by the Federal Cabinet and presently waits to be enacted. Pakistan stated in its 2005 report to the CTC that the law aims “to make the financing of terrorism a predicate offense for money laundering; extend the banking and financial laws and alternative money transfer systems; and, regulate charitable, religious, and other non-governmental organizations.”[62]

Similarly, as a result of bilateral assistance from the U.K. and U.S., a Terrorist Financing Investigations (TFI) Unit, headed by a banker, has been set up at the Federal Investigation Agency (FIA) level. Additionally, a Computer Forensic Laboratory is now operational at FIA headquarters in Islamabad with the assistance of the U.S. Federal Bureau of Investigation (FBI).[63] More importantly, to monitor the entry and exit from land ports, sea ports, and air ports in Pakistan, a Personal Identification Secure Comparison and Evaluation System (PISCES) has been installed at sixteen locations with U.S. cooperation. Data and records of more than 26 million travelers have been stored with about 3445 hits in different categories of the watch list.[64]

What one gathers from going through the above-mentioned administrative measures is that anti-terrorism has traveled a long way from being solely a national enterprise to one that undercuts bilateral and international obligations of a state. The definitional spectrum of terrorist acts has also expanded over the years and so has the legal tools to prosecute and punish such acts. The state is well equipped legally to deal with the terrorism, but this has not resulted in reducing incidents of terrorism. Why is this so?

This stark reality brings forth certain conclusions that underpin the evolution and creation of anti-terrorism as pro-active measure on the part of Pakistan.

Concluding Remarks:

The the legal development to check and deter terrorist activities within Pakistan testifies to the proposition of this paper that anti-terrorism is an essential component of a multi-dimensional strategy toward the ever-changing phenomenon of terrorism. Anti-terrorism laws are essentially of preventative nature and work in conjunction with the political, military, and administrative aspects of the overall response to terrorism. To ensure that laws are implemented successfully depends on political will complemented by public support as well as institutional capacity. In the case of Pakistan, even application of anti-terror laws remains an unfulfilled objective. At times, charges are framed against a particular organization or person but action is delayed on account of “unexplained reasons.”

Secondly, the promises of an effective, efficient, and prompt delivery of justice via the anti-terrorist courts remain as elusive as ever. In examining the government report on how the anti-terror and special courts function,

one is struck by the sizeable balance of cases that are yet to be processed. Until they are, they remain in courts in all provinces and settled areas across the country. Statistics on Punjab since Jan. 1, 2005, to Dec. 31, 2005 portray a similar story: 11 anti-terrorist courts disposed of 1013 cases out of the total of 1742 cases, and 725 cases remain pending.[65] The report also highlights financial, manpower, and administrative constraints that continue to hamper the efficiency of the anti-terror courts or setup.

There is an essential need to invest in public education about the usefulness of such measures. Here, the role of civil society and media in projecting the viability of anti-terrorism remains to be harnessed to its maximum potential. Presently, deep polarization and gaps persist within society regarding Pakistan's role in the so-called war on terror and the expanded definition of terrorism. The domestic, legal, and administrative measures undertaken are often dubbed as means to please the external powers, specifically the U.S.

In summary, the dilemma for policy makers remains how to deny breathing space to terrorists - legally, morally, socially, and politically. The mindset that favors violence as means to an end must be changed through investment into public education, social development, and political representation. In short, to institute a cohesive anti-terror strategy on the sustained footing remains an uphill task for the present and future generation of policy makers and shakers alike.

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NOTES:

- [1] Saeed Shafqat, *Civil-Military Relations in Pakistan*, USA: Westview Press, 1997. p: 38.
- [2] Karl Von Vorys, *Political Development in Pakistan*, (Princeton: Princeton University Press, 1965), p: 189.
- [3] Note: Public Offices (Disqualification) Order of 1959, PODO aimed to silence political activism against the military rule. Like wise, Electoral Bodies (Disqualification) Order of 1950, EBDO sought to eliminate and silence political dissent terming these elements as "anti-state" and consolidate military rule of the General Ayub Khan. For the detailed account see, Saeed Shafqat, op.cit., p: 38 – 39.
- [4] Ibid. pp: 98 – 106.
- [5] *Preamble, Suppression of Terrorist Activities (Special Courts) Ordinance (XVIII)*, 1974.
- [6] Ibid.
- [7] *PLD 1975 Central Statutes 89*.
- [8] National Awami Party (NAP) was formed by the Khan Abdul Ghaffar Khan in 1951. The party's ideological orientation was a blend of Marxism, socialism and provincialism.
- [9] Saeed Shafqat, op.cit., p: 105.
- [10] *Sec.5 (2), Suppression of Terrorist Activities (Special Courts) Act 1975*. For the discussion of the 1975 act also see, Shaukat Rafique Bajwa, *Suppression of Terrorist Activities (Special Courts) Act, 1975*, (Lahore: Punjab Law House, 1997).
- [11] *Sec. 5(4), Ibid.*
- [12] *Sec. 8, Suppression of Terrorist Activities (Special Courts) Act (XV), 1975*.
- [13] Ibid.
- [14] Najam U Din, *Terrorist unless proven otherwise: Human rights implications of anti-terror laws and practice in Pakistan*, (Lahore: HRCP publication, 2007), p: 10.
- [15] *Sec. 39 (c), Anti-Terrorism Act (ATA), 1997*.
- [16] Najam U Din, op.cit., p: 7.
- [17] Mian Ghulam Hussain, *Manual of Anti-Terrorism Laws in Pakistan*, (Lahore: Afsari Printers, 2006).
- [18] Prime Minister Nawaz Sharif quoted in *DAWN*, November 29, 1997.
- [19] Ibid.
- [20] *Preamble, ATA, 1997*.
- [21] *Anti-Terrorism Act, 1997 (20 August 1997)*, PLD 1997 Central Statutes (unreported) 537.
- [22] Schedule, 547-48.
- [23] *Sec. 19 (1), ATA, 1997*.
- [24] *Sec. 19 (7), ATA, 1997*.
- [25] *Sec. 19 (8), ATA, 1997*.
- [26] *Sec. 19 (8-a), ATA, 1997*.
- [27] *Sec. 12, 14, 19, 24 -5, 29 & 31, ATA 1997*.
- [28] Interview, Justice A N Chohan, 10 June 2007, Rawalpindi. Justice A N Chohan is presently member of the International Court of Justice (ICJ) Hague, who was in 1997 serving the Federal Ministry of Law.
- [29] *Mehram Ali Versus Federation of Pakistan*, Ministry of Law, Islamabad.
- [30] Charles Kennedy, "The Creation and Development of Pakistan's Anti-Terrorism 1997-2002" in p: 397.
- [31] Justice Irshad Hassan Khan, Chief Justice of the Supreme Court of Pakistan, quoted in Mian Ghulam Hussain, *Manual of Anti-Terrorism laws in Pakistan*, Lahore: Afsari Printers, 2006, p: 9.,
- [32] Charles H Kennedy, op.cit, p: 392.
- [33] *Sheikh Liaquat Hussain and others Vs Federation of Pakistan, PLD 1999 SC 504 to 879*.
- [34] *Pakistan Armed Forces Ordinance, 1998 (20 Nov, 1999)*, PLD 1999, Central Statutes 156.

- [35] Note: The Military Courts were created and staffed by the military officers at the rank of Brigadier and above. Such Courts was given jurisdiction to award sentences, including death penalty for specific crimes.
- [36] *Pakistan Armed Forces Ordinance 1998, Sec. 6, 158.*
- [37] Senator Aitzaz Ahsan quoted in *Dateline*, 5/3/99, Islamabad.
- [38] *Liaquat Hussain versus the Federation of Pakistan, PLD 1999, SC 504.*
- [39] *Ibid.*
- [40] *Anti-Terrorism (Amendment) Ordinance, 1999 (27 April, 1999), PLD 1999 Central Statues 289.*
- [41] *Anti Terrorism (Second Amendment) Ordinance 1999 (27 August 1999) PLD 2000 Central Statues 2.*
- [42] *Anti- Terrorism (Second Amendment) Ordinance 1999 (2 December 1999) PLD 2000 Central Statues 8.*
- [43] *Anti- Terrorism (Third Amendment) Ordinance 1999 (2 December 1999) PLD 2000 Central Statues 78.*
- [44] *The News*, April 7 2000; *Dawn*, April 7, 2000.
- [45] *Dawn*, December 10, 2000.
- [46] According to the leading national English daily, *Dawn*, August 31 2001, 451 cases were pending in the Sindh based Anti-terrorist courts.
- [47] Devolution Plan came into effect on August 2001, based on five fundamentals: Devolution of Political Power, Decentralization of Administrative Authority, Deconcentration of Management Functions, Diffusion of the Power Authority Nexus, and Distribution of Resources to the Grassroots level. For more details see: [Http: //www/nrb.gov.pk/publication/LG_Final_Plan_2000.pdf](http://www/nrb.gov.pk/publication/LG_Final_Plan_2000.pdf).
- [48] *Anti-Terrorism (Amendment) Ordinance, August 15, 2001.*
- [49] *Ibid*, Section 11 A.
- [50] Kofi Annan, UN General Secretary, quoted in Abdul Sattar, *Pakistan's Foreign Policy- 1947 – 2005* (Karachi: Oxford University Press, 2007), p: 257.
- [51] Reported in *Dawn*, October 2001.
- [52] "New anti-terror Courts in Pakistan", *BBC News (online)*, February 1, 2002.
- [53] *Anti Terrorism (Amendment) Ordinance, November 16, 2002.*
- [54] Ministry of Interior, Islamabad.
- [55] President Musharraf speech on 12 January, 2002.
- [56] Mohammad Amir Rana, *The Seeds of Terrorism*, (London: New Millennium, 2005), p: 66.
- [57] Political Parties Order (28 June) 2002.
- [58] Muhammad Amir Rana, "Changing Tactics of Jihad organizations in Pakistan", available at: [//www.pips.com.pk/JihadOrg.asp](http://www.pips.com.pk/JihadOrg.asp).
- [59] Tasneem Gardezi, a member of the Parliamentary committee on Law, quoted in *Arab News*, October 20, 2004.
- [60] *Anti-Terrorism (Second) Amendment Act, 2005. Provision 13, Pages 6 – 10, Extra-ordinary Edition.*
- [61] UN Resolution 1373 (2001) was adopted by the Security Council at its 4385th meeting on September 28, 2001. It called on States to "work together to prevent and suppress terrorism through all lawful means and obliges all states to criminalize assistance to terrorist activities, deny financial support and safe haven to terrorists and share information about groups planning terrorist attacks". UN Resolution 1624 (2005) called on States to ensure "prohibition of incitement to commit terrorist acts". For more details see, [Http: //www.un.org/sc/ctc/resolutions.html](http://www.un.org/sc/ctc/resolutions.html).
- [62] [Http: //www.un.org/sc/ctc/country_reports/report_A.shtml](http://www.un.org/sc/ctc/country_reports/report_A.shtml).
- [63] Interview Director General FIA Mr Tariq Pervaiz, March 14, 2007.
- [64] *Ibid.*
- [65] *Administrative Tribunals and Special Courts , Annual Report 2005*, (Islamabad: Law and Justice Commission of Pakistan, 2006), p: 65.