



**Center for
Research &
Security
Studies**

*Pakistan-focused, Questions,
Independent Answers*

PAKISTAN'S CHALLENGES IN ANTI-TERROR LEGISLATION

By

Ms Sitwat Waqar Bokhari

Center for Research & Security Studies

**PAKISTAN'S CHALLENGES
IN
ANTI-TERROR LEGISLATION**

By
Ms Sitwat Waqar Bokhari

Center for Research & Security Studies
October, 2013

TABLE OF CONTENTS

ACKNOWLEDGMENT

FOREWORD

EXECUTIVE SUMMARY

Introduction

- The Current Situation.....i-x

Section A: Evolution of the Anti-Terror Policy in Pakistan since Mid-1975.....01

- The Suppression of Terrorist Activities (Special Courts) Act of 1975.....01
 - The Anti-Terrorism Act (ATA) of 1997.....02
 - Supreme Court's Interventions in the Evolution of Pakistan's Anti-Terror Policy.....04
 - Anti-Terrorism Legal Regime under General Pervez Musharraf till 9/11.....05
 - Anti-Terrorism Legal Regime in Pakistan after 9/11.....07
 - Anti-Terrorism Legal Regime Under President Asif Ali Zardari.....13
 - The Actions (in Aid of Civil Power) Regulation, 2011..... 17
 - The Investigation for Fair Trial Act 201218
 - The Anti-Terrorism (Amendment) Act, 2013.....19
 - National Counter-Terrorism Authority Bill 2013.....20
 - Anti-Terrorism (Second Amendment) Act, 2013.....20
 - Anti-Terrorism Regime under Nawaz Sharif23
 - Forming a Joint Intelligence Secretariat25
 - Nawaz Sharif approves stringent amendments in ATA, 1997.....26
 - The Anti Terrorism (2nd Amendment) Act, 2013
 - Pakistan Protection Ordinance 2013
- } See Annexes

Section B: Shortcomings in Pakistan's Anti-Terror Legislative Regime.....29

-
- The Broad Scope of Anti-Terrorism Courts.....30
- Release of Suspects without Trial.....30
- Collection of Evidence.....31
 - Poor Policing System.....32

● Absence of High Security Prisons for Terrorist Suspects & other related	
● Shortcomings.....	33
● Lack of Security for the Judges, Prosecutors & Witnesses	36
● Pending Cases and the Constant Violation of ATC Trials' Time frame	37
● Inadequate Funding	39
● Lack of a Monitoring Mechanism over Mosques & Religious Madrassa.....	39
Abuse of Anti-Terrorism Laws and the Lack of Political Will.....	40
Death Penalty – To hang or not to hang.....	41
● Section C: Overcoming the Loopholes in the Existing Legal Framework.....	43
●	
Legislation for Improvised Explosive Devices.....	44
● Drone Strikes as an Anti-Terrorism Strategy.....	44
Developing a Larger Mechanism to prosecute the 700 detained Terrorist	
Suspects.....	46
Conclusions	47
Annex.....	49
Notes.....	170

Acknowledgment

On behalf of the Centre for Research and Security Studies, I would like to express my gratitude to Ms Sitwat Bokhari for putting together this extremely useful piece of literature on the history of anti-terror legislation. In the words of Ahmer Bilal Soofi, prominent jurists, Sitwat has done an excellent job by tracing various phases of anti-terror legislation in Pakistan.

We also thank Mr. Murtaza Solangi, an electronic media professional and former Director General of Pakistan Broadcasting Corporation (PBC) for providing critical inputs into the report.

Thanks also go to Tahir Ikram, a professional editor based in Singapore, for his valuable editorial contribution to this report.

We at CRSS hope this paper will serve as a handy reference for all future studies on Pakistan's responses to terrorism and the evolution of anti-terror legislation since its birth in August 1947.

Imtiaz Gul
Executive Director
CRSS
October, 2013

FOREWORD

I have always maintained that to counter terrorism, solutions must be found within the corners of the Constitution. This is because the Constitution provides a fine balance between the preservation of fundamental rights and national security imperatives. Thus, although the Constitution prohibits the state from violating fundamental rights, yet it permits a pause in the enforcement of those rights whenever Armed Forces are called in aid of civil power under Article 245. Significantly, within the time zone of this constitutional pause, legislation to regulate the conflict and the use of force against the terrorists can be enacted.

This provides the constitutional space for legal framework such as internment to temporarily park the suspect terrorists during conflict until admissible evidence is collected against them. Such laws for counterterrorism operations not only discipline the actions of armed forces, but are also consistent with Article 8 of the Constitution which allows laws that are necessary to enable the Armed Forces and police to perform their functions of restoring and maintaining public order. Moreover, with due regard for the operational requirements for restoration and maintenance of public order, Article 237 of the Constitution allows for legislation granting indemnity to law enforcement agencies.

From a harmonious construction of the Constitution, it is therefore clear that fundamental rights must be enforced in peace time. However, during conflict especially when Armed Forces are called in aid of civil power, enforcement of fundamental rights is suspended to enable the Armed Forces to restore public order and revive the constitutional machinery of the state

It is within this constitutional scheme that recent conflict related legislation has been shaped and adopted. In this regard, the most important legal instrument is Action in Aid of Civil Power Regulations that not only creates internment regime but also provides for domestic implementation of ICCPR and CAT conventions, thus also making it the first implementing law for ICCPR in Pakistan. The second significant recent development is the enactment of Investigation for Fair Trial Act, 2013 by the Parliament that creates enabling and conducive space and environment to collect evidence through surveillance and interception means by using modern techniques and thus prevent crimes from happening. The third milestone is the substantial revision of the Anti-Terrorism Act, 1997.

It is heartening to note that the present Government is also evolving its strategy to counter terrorism within the framework of the Constitution. In this regard, I was recently co-opted in a meeting headed by Mr. Zahid Hamid in which the legal framework for the Rangers' counter-terrorism operation in Karachi was reviewed. The Government's determination to address and plug holes to existing counter-terrorism operations was obvious and very assuring. It was conveyed in the meeting that the Prime Minister himself is extremely interested in a similar strategy.

State institutions have moved on, as demonstrated in the book, to look for and to implement improved and modern legal tools and methods. While commenting on the internment framework in KPK, one of the leading professors of IHL said to me that detention frameworks during conflict actually save lives by curtailing the temptations for extra-judicial measures and killing.

The author has also reviewed the criminal justice system whose reform has to be an integral part of strategy for any counter-terrorism campaign because gains made on the battle field must not be carelessly lost in courts. The respective author, in this context, has correctly highlighted supporting mechanism such as witness protection and fast track procedures.

In my view, this booklet is one of the best published works that recaptures objectively without being opinionated, all the major milestones in legal strategy for counter-terrorism. The work deserves to be highly publicized as it will prove to be extremely useful for media, analysts and even policymakers.

Above all, this work elegantly demonstrates that finding and implementing creative solutions to counter terrorism within the scheme of the Constitution is indeed a hallmark of good statecraft and leadership.

The Center and my friend, Mr. Imtiaz Gul, deserve credit and kudos for commissioning such a work from a bright young scholar Ms Sitwat Bokhari. I hope the Center continues its constructive endeavors towards such issues.

Ahmer Bilal Soofi

Former Federal Law Minister &
Advocate Supreme Court of Pakistan
Islamabad, Pakistan
October 03, 2013

Executive Summary

On Oct 20, 2013, the Pakistani government fine-tuned its anti-terrorism legislation by declaring all peace-disrupting elements as 'enemies of the state' and making the protection of the life and property of citizens the primary goal of all state functionaries.

The Pakistan Protection Ordinance 2013 — promulgated by President Mamnoon Hussain on the advice of Prime Minister Nawaz Sharif — reinforced the Anti-Terrorism (Amendment) Ordinance 2013 introduced less than two weeks earlier.

The new ordinance declared the “security of life, property and dignified living of our people the prime goal for all functionaries of state,” said an official statement the president's office. In all areas where civilian forces are invited to aid civil power, it said, “joint investigation teams shall be constituted to conduct investigations into all heinous crimes”.

The presidential decree also provided for establishment of separate police stations and institution of designated federal courts to deal with criminal syndicates and to render inexpensive justice with promptitude as mandated by Article 37.

The new piece of legislation guarantees all military and civil armed forces the full protection of law to discharge their mission to restore peace in the country within the parameters of Part V of the Constitution – which deals with the relations between the federation and the provinces.

Under the new ordinance, those involved in organised crime syndicates could also be transferred to another part of the country for trial to ensure transparency and fairness in proceedings. State organs will be allowed to take suspects involved in crime syndicates into preventive custody. Special jails will also be designated for detaining hardened criminals and the minimum term of the imprisoned has now been set at 10 years.

The new ordinance also introduces measures to deal with refugees and foreign residents involved in terrorism, crime and other anti-state activities, according to the release. “The millions of non-Pakistanis on our soil for any reason including distressful conditions in their parent country, especially those since 1979, shall not be allowed to abuse the temporary liberty to commit depredation ...their local collaborators, handlers, facilitators and landlords providing unreported

accommodation and protection shall not be spared,” the presidential statement said (as quoted by The Express Tribune and the News on Oct 21.)

Earlier on Oct 10, 2013 the government had issued a presidential decree called “The Anti-terrorism (Amendment) Ordinance 2013”, yet another major step forward in the war against terrorism. The decree included over a dozen changes to the Anti-Terrorism Act 1997 (XXVII of 1997), and will remain in force until passed by the Parliament - the National Assembly and the Senate are not currently in session.

An ordinance is good for 90 days only, unless re-promulgated by the government for a similar period.

Under the Ordinance, suspects can be held for up to three months, eight weeks longer than envisaged under the original Anti-Terrorism Act. Through another amendment, robust new measures will be adopted for the protection of witnesses, judges and prosecutors.

The Ordinance allows permits use of text messages, telephone calls, emails, etc, as evidence against suspected terrorists and in criminal cases, such as extortion, targeted killing and kidnappings for ransom.

Additionally, provincial governments have been asked “to take necessary steps to ensure that prisoners in jails do not have access to mobile phones.” (For details See Annex Anti-terrorism (Amendment) Ordinance 2013)

Before these two landmark pieces of legislation, several anti-terrorism legal measures against terrorism and extremism had existed since the 1970s. In August 1997, under the Nawaz Sharif government, a comprehensive anti-terrorism legal framework emerged in the form of the Anti-Terrorism Act, 1997 (ATA 1997). The act created a parallel judicial system with special Anti-Terrorism Courts to hold speedy trials of terrorism suspects and the law is still in force today including few amendments successive governments made to the law to align it with the changing circumstances.

The 9/11 attacks on the United States put Pakistan on the forefront of the Global War on Terror (GWOt). This not only brought new security challenges to Pakistan but also exposed the deficiencies in the country's anti-terrorism legal framework. Involvement in the GWOt unleashed new, formidable dynamics of terrorism inside

Pakistan in the form of cyber-terrorism, children recruitment in suicide bombings, jail breaks, frequent sectarian massacres, and the growing social influence of radical groups, particularly those organizations banned in January 2002. However, despite the long history of revisions in the anti-terrorism regime over the years, the threat of terrorism has remained unperturbed by Pakistan's counter-terrorism measures.

There appear to be numerous loopholes in the existing anti-terrorism legal regime including the broad definition of terrorism in the ATA; poor policing, lack of a high security prison for terrorist suspects, lack of protection for witnesses and judges, inadequate funding and inept prosecution. Besides, there is also a lack of sufficient political will and seriousness on the part of the government to fully implement the existing anti-terrorism laws of Pakistan. For example, in the last whole decade, not a single convicted terrorist has been given his due punishment such as the death penalty despite the clear provision under Section 7 of the ATA law. The previous PPP government had imposed a moratorium on death penalty that expired recently, thus detaining thousands of convicted criminals and terrorists on death row. Moreover, there are also no provisions for safeguards against the abuse of such acts, which has often resulted in misuse of the law.

Backlogging of ATC cases, the absence of a proper mechanism to monitor madrassas for extremism and violence, proliferation of mobile phones in prisons, reliance on witnesses rather than forensics by the police for terrorism investigation and the lack of information sharing between the civil and military intelligence agencies for terrorism investigations are some of the other weaknesses in Pakistan's anti-terrorism regime that are discussed in length in this paper. The US Navy Seals' covert mission to kill Osama Bin Laden in 2011, the jail breaks of Bannu and D.I. Khan Prisons in the last two years as well as the ongoing terrorism in Balochistan manifest the inability of Pakistan's government to effectively control terrorism. The new government has devised a Joint Intelligence Secretariat that would work with the coordination of all intelligence agencies in Pakistan with NACTA (National Counter-Terrorism Authority) being at the center of the organization. It would be functional in the next six months and, if enforced with full commitment and political will, it could turn into an effective organization to counter terrorism.

The paper also discusses the two approaches to countering terrorism; use of force to defeat terrorism and the law enforcement to meet the same objective. The use of drone strikes to target suspected terrorists by the United States in Pakistan is the

war approach. The white paper issued by the US government legitimizing the US drone strikes in Pakistan's northwest region has been legally challenged by the former caretaker law ministry of Pakistan in a counter legal narrative. On the other hand, invoking Article 245 of the constitution to call in the armed forces in aid of civil power in the tribal areas of Pakistan is the law enforcement approach, where suspects can be arrested, investigated and tried in a court of law. The federal government has currently detained over 700 suspected terrorists in different internment centers in Pakistan's tribal areas whose prosecution cannot be held so long as the armed forces are stationed in the region under Action in Aid of Civil Power Regulation 2011. However, they also continue to be a threat to Pakistan's security in case they are accidentally released like in the recent jailbreak. A legal expert's proposition of a larger legislative mechanism to conduct speedy trials of these suspects is also discussed in the paper.

It would not be out of place to mention that, while this paper represents an overview of Pakistan's anti-terror legislation, it touches only briefly the latest amendments to the 1997 Anti-Terror Act (Ordinance 2013) and the Pakistan Protection Ordinance 2013, primarily because the paper was about to go into print when the new presidential decrees were promulgated. Both, documents, however, are part of the annexes and have been dealt with in the Executive Summary to put the entire counter-terror legislation in perspective as well as make the entire documentation available in this paper.

Introduction

Terrorist attacks are not new to Pakistan. Incidents of sectarian violence and terrorism openly began in the country in the 1980s. From 1974 to 2010, 4,438 terrorist attacks have been reported in Pakistan. From the onset of their occurrence, Pakistan's successive governments have tried to develop an anti-terrorism legislative mechanism to counter anti-state forces that were spreading violence. Various acts were enacted by different governments that came into power, mainly extending their powers while they were in office. The Nawaz Sharif government finally promulgated the Anti-Terrorism Act (ATA) in 1997, which still drives the anti-terror legal regime of Pakistan. Four years later, the September 11, 2001 attacks landed Pakistan at a crossroads in the U.S-led Global War on Terror (GWOt). The threat of infiltration of terrorists from the porous border on the Durand Line further exposed Pakistan to the looming threat of non-state terrorists. Pakistan's anti-terror legislative regime was now being put to a real test.²

Section A of the following paper examines the evolution of Pakistan's anti-terror legal regime in the light of the domestic political developments since mid-1970s to date. The amendments and developments in its anti-terror legal regime under the successive administrations of Nawaz Sharif, General Musharraf, Asif Ali Zardari and now the newly-elected government since May 2013 are discussed at length. These amendments and developments are also listed in a table on pg. 21. Section B pinpoints the lacunae and loopholes in the existing mechanism. The conclusions drawn in the light of analyses of some Pakistani lawyers and international counter-terrorism experts show that it is not only some loopholes in the anti-terror legal regime but the lack of political will that has led to the failure of counter-terrorism strategies in Pakistan. Section C discusses some legal expert(s) opinion on the use of US drones as an anti-terrorism technique, legislation regarding the use of Improvised Explosive Devices (IEDs) as well as suggestions for collecting evidence and improving the prosecution of terrorists.

However, before we proceed, it is necessary that the term “anti-terrorism” be understood. To define it in its literal meaning, anti-terrorism (AT) can refer to taking passive, defensive, protective or legal action against terrorism. Anti-terrorism efforts can constitute giving exemplarily severe penalties to convicted terrorists under anti-terrorism laws, offering monetary reward to those who provide information on suspicious terrorists and in some cases, even coercing the kin of the

accused so they would reveal valuable information.

When anti-terror laws are designed, an inter-play of the country's administration, Constitution, criminal, immigration, military laws and laws prescribed for war within the state and outside are considered. Hence, the anti-terror regime can neither be in isolation of the political, administrative, economic and societal dynamics of the home state and nor in isolation of the impact of the regional and international forces influencing it. However, it is important to understand that only the state reserves the administrative power to make and amend laws required for the security of its citizens. Through proper enforcement of the rule of law, terrorism can be successfully combated within a state, provided there is adequate political will, state capacity and public support in achieving anti-terrorism goals envisioned in the anti-terrorism laws.

The Current Situation

Pakistan is faced with unprecedented challenges in terms of its legislative framework to counter the growing threat of terrorism. Despite the establishment of a parallel judicial system with special Anti-Terrorism Courts (ATCs) created to hold speedy trials of terror suspects since 1997, the number of detainees has increased over the years while the rate of prosecution and conviction remains stunted. Of the trials which are completed swiftly, most result in the acquittal of the accused due to a lack of sufficient supporting evidence. According to a report by the US State department in 2010, the acquittal rate in Pakistan's Anti-Terrorism Courts was 75%. Moreover, the report termed Pakistan's anti-terror legal system as “almost incapable of prosecuting suspected terrorists.”³

While the acquittal rate is extreme on one hand, keeping internees in internment centers for long periods without trials is the other extreme that is simultaneously taking place. In March 2013, the Federal Government admitted before the Supreme Court the detention of 700 suspected terrorists in different internment centers captured during military operations in the FATA and KP region under the Action in Aid of Civil Power Regulation 2011 (discussed in detail later). According to the regulation, suspects should be kept in detention as long as the Armed Forces are called in “aid of civil power” and stationed in the region on the order of the federal government. In a Supreme Court hearing on January 24, 2013, Mr. Irfan Qadir, the Attorney General of Pakistan, stated that Pakistan is in a “war-like situation” in its

tribal areas and “while the operation is on, their status will remain the same.”³

At the moment there does not seem to be any sign of the Armed Forces being called back by the government as the endgame in the GWoT in Afghanistan has not become clear yet. Not only does the holding of suspects indefinitely in detention without trial violate international laws, it also highlights the loopholes in the anti-terrorism legislative framework of Pakistan to speedily and effectively combat terrorism. On a different note, the issue of these detained terrorists can have serious implications if internal regulations fail to hold them and any of the terrorist suspects gets released without trial. The worst the Peshawar High Court and Supreme Court are contemplating are the complications that can arise if these suspected terrorists cross the Durand Line and end up in Europe on forged documents. Such an alarming situation would definitely expose the deficiencies in Pakistan's legal system while also seriously damaging Pakistan's international standing.⁶

To understand the anti-terror laws driving the counter terrorism strategies of Pakistan today, it is important that we examine the evolution of Pakistan's anti-terrorism legislative framework from the mid-1970s. Following is an account of the developments brought to the anti-terror policy in Pakistan by successive governments.

Section A: Evolution of the Anti-Terror Policy in Pakistan

For the first thirty or so years, the government of Pakistan used “special” legal measures to handle criminal offences that did not correctly fit within the regular criminal justice regime. Until the 1970s, the Criminal Procedure Code (CrPC) created by the British in 1898, especially Section 144, had been the guiding principle in curtailing political subversion and anti-state elements. In the 1970s, the government of Pakistan started interpreting political violence, certain criminal offences and nationalist movements as acts of terrorism and sectarian violence. This was the first time that a parallel legal system was instituted to hold special trials for those who committed these crimes since the regular criminal justice system had been incapable of conducting speedy trials for all crimes.⁸

The first ever clear legal anti-terrorist policy aimed at countering terrorist activities in Pakistan emerged as the 1974 Ordinance later becoming the Suppression of the Terrorist Activities (Special Court) Act in 1975 after it was approved by the Parliament.

The Suppression of Terrorist Activities (Special Courts) Act of 1975

Under the Suppression of Terrorist Activities (Special Courts) Act of 1975, 'special laws' were created to govern “special courts” that would only deal with “terrorism” and “terrorist acts”. The act proposed anti-terror measures that would accelerate the performance of legal proceedings in courts. For example, Section 5 ruled out the permission to grant adjournments in court proceedings unless “necessary in the interest of justice” and stated that the trial should continue even if the accused absconds (provided he once appeared before the court in the case)⁹. A new provision introduced in the act stated that if the accused is found possessing an article that can be used in the execution of the offence he is accused of committing, then he is guilty until he convinces the court that he is innocent.¹⁰

This last provision is clearly in contrast with the universal principle that an accused person was innocent until proven guilty. It deferred the burden of providing proof largely on the accused and has been since seen as a grave issue while evaluating human rights record under anti-terror regime from the past and now.¹¹ The Suppression of Terrorist Activities (Special Courts) Act 1975 remained effective until it was repealed and replaced by the Anti-Terrorism Act (ATA) in 1997, which is still in force today.¹²

The Anti-Terrorism Act (ATA) of 1997

The ATA aimed at deterring future potential terrorists by creating a strong anti-terror legal mechanism with rigid deadlines for conducting trials and ensuring swift execution of severe penalties for the convicted. It expanded the powers of the ATCs with regard to combating “terrorism and sectarian violence” by providing a broad definition of a “terrorist”.¹³ A terrorist was defined as anyone who struck terror in people, or a section of people, alienated a section of people, or harmfully affected the harmony among different sections of people; attempted to use bombs, dynamites, or any other explosive or inflammable substance, or firearms, poisons, noxious gases, chemical weapons or any other lethal weapon or substance that can be hazardous in the manner to cause death, injury or any other damage to any person or persons. Moreover, destroying or disrupting the property or supplies or services necessary for the life of any community was also considered a terrorist act.¹⁴

Additionally, if anyone displayed firearms or threatened to use force against public servants to obstruct them from carrying out their lawful duties was also committing a terrorist act.¹⁵ Crimes subject to punishment outlined in the ATA (1997) ranged from murder, hateful offense against the religious beliefs of a class of people, using derogatory words to refer to the holy personage of any religious group, to kidnapping, robbery and banditry. Thus ATA provided a very broad definition of terrorist acts, which started to seem as an attempt by the ruling government to nearly bring any act of violence under the umbrella of terrorism.¹⁸

In the special Anti-Terrorism Courts, judges appointed could be session judges, additional session judges, district magistrates, deputy district magistrates or advocates employed by the government with 10 or more years of experience. Their tenure of office was not specified like it is in the regular judicial system and their period of service was thus at the discretion of the government. According to the Act, investigation of offences was to be completed within seven working days while, once the case was handed over to the court, the trial was to be completed in seven working days too. Additionally, the trial judge was especially warned not to grant more than two consecutive adjournments. If the presiding judge failed to abide by the time-frame, punitive action was to be taken against him. Trials of the accused could be held in their absence and appeals against conviction or acquittal granted by ATCs would be dealt with by the Special ATA Tribunal created on the decision of the government. Whatever the decision of the Appellate Tribunal, it was to be

considered final and further appeals would not be accepted.²⁰

Though the law was formulated and passed in haste, the Supreme Court intervened in time to amend some sections of the Act. The amendments introduced aimed to render the law more pragmatic and in favor of the interests of the public rather than merely allowing the aggrandizement of the independent power of the executive²¹. The Mehram Ali case is a relevant one to note here as it is not only considered the cause for the very enactment of the ATA (1997) by the Nawaz Sharif government in the first place but also the reason for the initial amendments by the Supreme Court in the act. Mehram Ali was a member of a religio-political Shia organization that ran by the name Tehreek Nifaz-e- Fiqah-e-Jaferia (TNFJ), Pakistan. On January 18, 1997, he detonated a remote controlled bomb in the area surrounding the Lahore Courts killing²² and injuring more than 50 people. Two prominent leaders, belonging to Sepah-Sahaba Pakistan (SSP), an anti-Shia organization of Disband Sunnis, were having their hearing in the Lahore Courts at that time. They were the main target of the explosion.²³

Mehram Ali was arrested immediately; however, his trial in the Sessions Court proceeded slowly. Shortly after the enactment of the ATA 1997, his case was transferred to the newly instituted special anti-terrorist court in Lahore, which convicted Mehram Ali on 23 different counts for murder in addition to several other sentences related to bombing.²³ He was ultimately handed down death sentence. Following his conviction, Mehram Ali appealed to Anti-Terror Appellate Tribunal in Lahore which upheld his conviction. Next, he submitted a writ petition to the Lahore High Court claiming, along with other things, that the creation of the special courts was in itself unconstitutional. Though the Lahore High Court upheld his conviction, it decided to hear Mehram Ali's appeal concerning the unconstitutionality of the "special courts".²⁴

Mehram Ali also filed an appeal to the Supreme Court of Pakistan, which took up the case of "Mehram Ali versus Federation of Pakistan" (PLD 1998 SC 1445). Though the Supreme Court also upheld his conviction, it finally passed the verdict to have him executed. In the wake of this case, however, the Supreme Court pronounced certain sections of ATA (1997) as unconstitutional and requiring amendment.²⁵

Supreme Court's Interventions in the Evolution of the Anti-Terror Policy

The Supreme Court declared amendments in the ATA (1997) aiming to subject the newly established anti-terror courts to the rules and procedures of the already existing constitutional judicial system. It stated that judges of anti-terror courts should have a fixed tenure of service. These courts should abide by the same procedural rules of the regular courts, including rules of investigation into all cases as well as conducting trials in the presence of the accused. Appeals regarding conviction and acquittal given by these courts should be made to the respective High Courts and ultimately the Supreme Court, thereby disbanding the special Appellate Tribunals. Thus, there would be no parallel legal system that would bypass the powers of the constitutionally established regular judicial system. The significance of the Mehram Ali versus Federation of Pakistan case was that it reinforced the importance of the independence of judiciary as enshrined in Article 175 of the Constitution. The Nawaz Sharif government incorporated all the amendments advised by the Supreme Court in the form of Anti-Terrorism (Amendment) Ordinance on October 24, 1998²⁶

Another evolutionary decision by the Supreme Court regarding the anti-terrorism legal regime came on February 22, 1999 in the case of Liaquat Hussain versus Federation of Pakistan. On November 20, 1998, the Nawaz Sharif government had promulgated the Pakistan Armed Forces (Acting in Aid of Civil Power) Ordinance (PAFO), which had been preceded by a spell of ethnic massacre in Karachi in October 1998. Hakeem Saeed, a renowned philanthropist and a former Governor of Sindh had been killed in such a deadly ethnic massacre on October 17, 1998. This had led the government to impose Governor's Rule in the Sindh province where the military had been called to restore the law and order situation.²⁷ The PAFO as devised by the Nawaz Sharif government proposed the formation of special military courts that would hold trials for civilians, thus making the existing anti-terrorism legal mechanism obsolete as all pending cases were to be transferred to the newly instituted military courts²⁸

These military courts had the jurisdiction of giving sentences, including even death penalty for some crimes. They were to be staffed by military officers with the rank of Brigadier and above. Trials could be conducted in absentia of the accused and appeals could only be made to Appellate Tribunals that were created by military authorities. When the Liaquat Hussain vs. Federation of Pakistan case was brought to the Supreme Court, the decision went against the introduction of PAFO.²⁹ The

government's argument in defense of the Ordinance was that it was justified under the “doctrine of necessity” to call in the Armed Forces “in aid of civil power” for restoring law and order. It was unanimously rejected by all nine judges. The Supreme Court stated that the military powers with reference to “aid to civil authority” in the Constitution did not extend to the establishment of special military courts or the authority of trying civilians and performing a parallel legal function side-by-side the regular courts.³⁰

However, there was one salient feature of PAFO that was not altogether rejected in the Supreme Court's verdict. It was called a “new crime” described in the Ordinance as the crime of “civil commotion”. The definition of “civil commotion” was very broad and thus was met with heavy criticism by human rights activists, the media and the opposition parties. “Civil commotion” was described as causing internal disturbance to violate law, commencing or continuing go-slows, lock-outs, illegal strikes or snatching vehicles, lifting vehicles, damaging or destroying state or private property, creating panic by firing randomly, charging “bhatta”, making graffiti or wall-chalking anywhere to produce fear, unrest or cause threat to security of law and order, distributing, publishing or pasting handbills anywhere as well as acts of criminals trespass as a crime that would be punishable with an imprisonment of up to seven years³¹. Though PAFO was repealed on April 27, 1999, “civil commotion” was incorporated as an amendment in the ATA (1997).³²

In its decision, the Supreme Court also recommended certain procedural amendments in the Anti-Terrorism Courts to improve their effectiveness such as dealing with only one case at a time and so on. The Nawaz Sharif administration made another revision of the ATA (1997) on August 27, 1999 according to which Anti-Terrorism Courts would be formed in any province of Pakistan. The previous verdict of the Supreme Court had considerably taken its toll on the incumbent government's anti-terrorism resolve. Moreover, his government did not sustain power for long as General Pervez Musharraf, by way of a military coup, overthrew him on October 12, 1999.³⁴

Anti-Terrorism Legal Regime under General Pervez Musharraf till 9/11

Under General Musharraf, the revisions in ATA (1997) were largely a result of the dynamic domestic, regional, and international context of politics. Within two months of General Musharraf's administration coming to power, on December 2, 1999, two amendments were made to the anti-terrorism regime. Not only was the

definition of the act of terrorism further expanded but numerous other provisions of Pakistan's criminal court were also added to the domain of Anti-Terrorism Courts.³⁶

The first amendment extended the jurisdiction of Anti-Terrorism Courts to cover the abetment of offense as a crime (section 109); obscuring a design to commit an offense (section 120); a criminal conspiracy leading to a crime punitive of death penalty or imprisonment of more than two years (section 120B); attempting to wage war against the state (section 121); conspiring to perpetrate certain offenses against Pakistan (section 121 A); collecting arms with the resolve to wage a war (section 122); conceal a design intended to facilitate waging a war (section 123); kidnapping (section 365); conspiring to perpetrate hijacking (section 402B) and being among five or more individuals gathered to commit armed robbery. The second amendment established two new special courts, which would have the power to “transfer, claim or readmit any case within that province” as well as serve as Appellate Tribunals for anti-terrorist courts.³⁸

With such amendments in ATA (1997), on April 6, 2000, President Musharraf was able to convict Nawaz Sharif of having conspired to hijack the PIA flight PK-805 on October 12, 1999, which had been carrying several passengers including the Army Chief General Musharraf. Not only would the regular courts have been unable to convict him on such grounds, but the anti-terrorism court of Karachi dealt with his case promptly - compared to the regular courts - sentencing him to life imprisonment. However, his life imprisonment sentence according to the amended ATA court was overshadowed by a deal made between the government and Nawaz Sharif's family whereby he and his family were to leave the country by December 2000 and not come back or participate in politics for the next 10 years.⁴⁰

In the coming months preceding the 9/11 attack, even though General Musharraf tried to assure people of effective and speedy justice through Anti-Terrorism Courts, delays still continued in these courts resembling those in the regular judicial system. The law and order situation was falling further into descent and incidents of sectarian violence spread uncontrollably across the country. Aware of the increasing domestic sectarianism and his diplomatic seclusion from the international community due to his support for the Taliban administration in Afghanistan, General Musharraf decided to alter his security policy for Pakistan. In a “Devolution Plan 2001” which he announced in a public address on Pakistan's Independence Day that year, he claimed to reform the political and administrative setup of the country. In his speech, he also proposed to amend the Anti-Terrorism

Courts law further to improve their efficacy for dealing with sectarian violence and lawlessness in the country.⁴²

Hence, the Anti-Terrorism (Amendment) Act was issued the following day on August 15, 2001, which added further powers to the domain of Anti-Terrorism Courts, including banning militant sectarian organizations and freezing their financial assets. According to the Amendment Act, the federal government could ban an organization if there was a reason linking the organization to be “concerned in terrorism”. “Concerned in terrorism” was elaborated as participating or committing an act of terrorism, making preparations for committing an act of terrorism, encouraging terrorism, providing assistance to an organization that was concerned in terrorism, stirring up disorder by inciting hatred or malice on sectarian, ethnic or religious grounds, presenting those who commit acts of terrorism as heroic persons and not expelling them from their ranks or being otherwise involved in terrorism.⁴⁴

After this amendment was enacted, the federal government banned two militant sectarian outfits, Sipah-e-Mohammad and Lashkar-e-Jhangvi, which were militant branches of Tehreek-e-Nifaz-e-Fiqah-e-Jaferia and Sipah-e-Sahaba respectively. Hundreds of their activists were also arrested. With these amendments in force and the 9/11 terrorist attacks happening just the following month highlighting the importance of an effective anti-terrorism regime, Pakistan had a challenge as well as a chance to vigorously implement its anti-terrorism regime.⁴⁶

Anti-Terrorism Legal Regime in Pakistan after 9/11

The events of 9/11 and the immediate declaration of the Global War on Terror by George Bush's administration brought Pakistan to the forefront of the war in South Asia. This was not only due to its strategic location right next to Afghanistan but also because of the inevitable historical influence it had on its neighbor. In the wake of such developments, Pakistan's anti-terrorism regime fell into the limelight and was dynamically enacted to ban extremist militant groups that had been involved in organizing and participating in violence inside and outside the country. In an attempt to strengthen the anti-terrorism setup in Pakistan, the number of Anti-Terrorism courts was increased. Eleven new courts in North West Frontier Province (now called Khyber Pakhtunkhwa) and four in Sindh were established in the months of September and October 2001. Towards the end of October 2001 there were 41 Anti-Terrorism Courts in Pakistan.⁴⁸

Shortly after three months in January 2002, General Musharraf's administration promulgated Anti-Terrorism (Amendment) Ordinance, which increased the number of judges from a single bench to three judges with one judge from the "military". The addition of a military officer was justified by the government as assisting in speeding up the otherwise slow trials. The law also claimed that all terrorism related cases would be moved to the new courts that will operate until November 30, 2002. However, extension could be allowed. Moreover the entire "terrorist network" would be targeted with anyone found even abetting or aiding terrorists also receiving a possible death sentence. The guilty also reserved the right to appeal. These laws were met with general consent by lawyers and judges. However, the only contention held by lawyers, judicial officers and human rights activists internationally was regarding the involvement of the military in the adjudication process.⁵⁰

Soon there was another Anti-Terrorism (Amendment) Ordinance on November 16, 2002. This Ordinance aimed at increasing the powers of the police to cope with terrorism. It added "Fourth Schedule" in the Anti-Terrorism Act (1997) and also prescribed a certain conduct required of the activists of the organizations and persons listed in the Fourth Schedule. According to this act, the law enforcement agencies could detain a suspect for up to a year without being challenged. Following this act, the government was able to ban six more militant outfits by the end of that year.⁵²

General Musharraf's handling of the anti-terror regime was also largely affected by the strain on Pakistan-India bilateral relations following the attack on the Indian Parliament on December 13, 2001. India had placed the entire blame on a Pakistan-based Jihadi organization called Lashkar-e-Tayyaba (LeT). In a diplomatic effort to placate the international community, General Musharraf assured that from then on no extremist outfit would be permitted to execute any subversive terrorist activity inside or outside the country. Students and teachers would have to get registered with their respective government agencies. He also emphasized that there should be no meddling in the domestic matters of others and violence should, by no means, be used to enforce one's own views on another group of people. Following this event, the government declared to thoroughly enact all the laws enshrined in ATA (1997) regarding banned outfits including sealing their offices, freezing their assets and accounts, seizing their literature and electronic media material, prohibiting all their publications, printing or any other channel of dissemination of press statements or public addresses.⁵⁴

As if the control on terrorist outfits was not tight enough, Musharraf's administration enhanced the purview of the anti-terrorism laws to include restrictions on the political arena as well. The Political Parties Order (PPO) was issued on June 28, 2002 which declared rules governing the political activities of political parties. This was largely viewed by Musharraf's political foes as a deliberate act of political victimization. Section 3 of the Order prohibited any political party from promoting sectarian, regional or provincial enmity, carrying a militant group name or providing military or paramilitary training to the persons affiliated with such activities. Section 4 made it mandatory for all political parties to keep an official manifesto while section 15 stated that any political party found to be taking foreign aid or "indulging in terrorism" would be dissolved.⁵⁶

Though the aforementioned measures by the government significantly aided in restricting various banned outfits from easily raising funds and recruiting more members, some powerful organizations still had other innovative tactics to survive and persist. For example, Jamaat-ud-Dawwa (JuD), an organization recorded on the Watch List since November 15, 2003, had expanded its assets to be worth 60 million rupees in only a few years of investment in the health, education and real estate sectors in Pakistan. It was also receiving foreign donations through Hawala Channel and Forex Exchange and aimed at increasing its assets to be worth 120 million rupees in the coming five years. Its model schools had an enrollment of more than 10,000 students whereas its madrassas had almost 6,000 students enrolled. All this was happening despite various impositions placed by the government. With the ever increasing influence of banned organizations in the country, one questions the very political will of the government in fully implementing its anti-terror laws.⁵⁸

On December 14, 2003, General Musharraf's convoy passing through the Jhanda Chichi Bridge in Rawalpindi was attacked by suicide bombers followed by another suicide attack on him on December 25, 2003 in front of a gasoline station, or petrol pump, near the same place. Both these attempts failed though. Two years later in 2005, the military court convicted 12 persons in this case; Adnan Rashid, an al Qaeda-linked former PAF junior technician, Nawazish Ali and Khalid Mehmood; two PAF chief technicians, Naik Arshad, Zubair Ahmed, Niaz Mehmood, Rashid Qureshi, Rana Naveed, Ikhlas Ahmed and civilians Ghulam Sarwar Bhatti, Amir Sohail and Mushtaq Ahmed. After their in-camera trial, the Field General Court Martial (FGCM) gave death sentences to Adnan Rashid and the other eleven accused men under the Army Act, 1952. This was later confirmed by the Vice Chief of the Army Staff.⁶⁰

Later in 2006, the convicts filed appeals in the Supreme Court against the FGCM ruling through counsel retired Colonel Mohammad Akram, Ikram Chaudhry and Hashmat Ali Habib.⁶¹ They stated that there had been no evidence against them and that they had been condemned totally unheard during the trial. Despite their requests that the apex court review the verdict of FGCM, the Supreme Court upheld the Lahore High Court's order, which had already earlier stated that under Clause 3 of Article 199 of the Constitution, the regular courts of Pakistan cannot hear cases related to the Armed Forces personnel. Hence, their appeals were dismissed on September 25, 2006.⁶²

In November 2004, the Musharraf regime added further amendments to ATA (1997) claiming to subvert the very support network of terrorism that provided financial and logistical support to the terrorists. The amendments increased the jail term for individuals supporting militants from 14 years at minimum to life imprisonment. Two additional amendments, sub-section 4-A and sub-section 4-B, were added to section 25 of ATA (1997), which provided victims and their heirs the right to appeal against the acquittal of a convict by an Anti-Terrorism court. A further amendment also authorized the government to confiscate the passport of anyone convicted under the ATA law.⁶⁴

Shortly on January 10, 2005, the government issued the Anti-Terrorism (Second Amendment) Act 2005. This act placed restrictions on the powers of the anti-terrorist courts to grant adjournments. The Special Benches of these courts were to have no less than two judges so appeals could be disposed of swiftly. Cases could be transferred from one province to another. The jurisdiction of these courts was also extended to cover cases of abduction, kidnapping for ransom, cases concerning the use of firearms or other explosives in sacred places of worship such as Imam Bargahs, churches, temples, mosques and even the court premises. Hence this Act aimed at making further modifications so that effective functioning of the special courts could be achieved.⁶⁶

Pakistan's anti-terrorism measures after the 9/11 event were no longer confined to the national level but were also shaped and monitored by guidelines advised by the United Nations Security Council's Counter-Terrorism Committee (CTC). As a member of this Committee, Pakistan was obliged to implement the UN Resolutions 1373 of 2001 and 1624 of 2005 in addition to submitting periodic reports on its anti-terrorism efforts to the Committee. For implementing these UN resolutions, Pakistan also needed to draft an Anti-Money Laundering Bill which it did in 2005.

by Musharraf to the Constitution remained. The Superior Court judges who were sworn in after November 3, 2007 also remained in office but took a new oath under the Third Schedule of the Constitution. Soon general elections were announced to be held on February 18, 2008 by General Musharraf. The political setup was finally going to be restored.

Despite constant revisions to the anti-terrorism laws of Pakistan, terrorism was progressively spreading. From July 2007 and throughout 2008, terrorists targeted security forces, political leaders and even political gatherings. The 2008 election campaigns were also subject to significant sabotage by terrorists. Less than two months before the 2008 general elections, the leader of Pakistan People's Party (PPP) and the former Prime Minister, Benazir Bhutto, was brutally shot dead after she had just addressed a rally in the garrison city of Rawalpindi. The rally was shortly bombed by a suicide bomber killing nearly 150 people while injuring 450. General Musharraf, who resigned himself in 2008 and went into a self-imposed exile to London and Dubai, returned to Pakistan in March 2013 to take part in the country's May 2013 elections.

On August 20, 2013, the Rawalpindi court accused him of murder stating that he did not provide adequate security to prevent the assassination of Benazir Bhutto in 2007. He had already been accused of treason by an anti-terrorism court on June 15, 2013 for his suspension of the Constitution in 2007, the imposition of the emergency rule and illegally detaining judges so they would not be able to challenge his re-election as president.

In the 2008 elections, the PPP won the majority and the newly elected PPP leader, Yousaf Raza Gilani, became the Prime Minister of Pakistan on March 25, 2008. Troubled by the increasing and intensifying crisis of terrorism to deal with, Yousaf Raza Gilani, during a visit to the United States, declared that the new government would adhere to the counter-terrorism strategy that had been followed by the Pervez Musharraf's administration.

Anti-Terrorism Legal Regime under President Asif Ali Zardari

Asif Ali Zardari, husband of the assassinated leader of PPP Benazir Bhutto, was sworn in as Pakistan's 11th President on September 9, 2008. The entire following year of 2008 found Pakistan amid intermittent bouts of suicide bombings across the country without any arrest or trial of their perpetrators being held. It was only when

However, it was enacted five years later in 2010. The law contained in the proposed bill stated that the financing of terrorism would henceforth be considered an offense of money laundering while laws regarding banking, financial and other alternative money transfer systems would be extended to regulate the money transferred to charitable, religious and other non-governmental organizations.⁶⁸

Similarly, with bilateral assistance from the United Kingdom and the United States, a Terrorist Financing Investigations (TFI) Unit was also set up at the Federal Investigation Agency level. A Computer Forensic Laboratory was created at Federal Investigation Agency's headquarters in Islamabad and made operational with assistance from the United States Federal Bureau of Investigation. Another step in ensuring anti-terrorism was the installation of a Personal Identification Secure Comparison and Evaluation System (PISCES) at sixteen different locations to monitor the entry and exit at land, sea and airports.⁷¹ This was installed with the cooperation of the United States as well and it has recorded data of more than 26 million travelers categorized into different categories of its watch list.⁷⁰

Another issue that emerged while developing the anti-terror regime in Pakistan was to address the threat of cyber-terrorism. Cyber-terrorism is when terrorist organizations or individuals cause enormous damage to societies, whose systems are computer-dependent, by assaulting and destroying their electronic communication infrastructure without their identity being revealed. This is alarming when particularly the defense-related institutions are targeted. The threat of cyber-terrorism is worse because a virtual cyber-terrorist attack can affect more people than a physical terrorist attack without the perpetrators being injured, killed or exposed.⁷¹ The Prevention of Electronic Crimes Act 2007 was enacted on December 31, 2007 to prevent any cyber-terrorist assault threatening to expose the confidentiality of Pakistan's national electronic network systems holding large amounts of sensitive data.⁷²

The Act also outlined punishments to prevent any misuse of these systems by anyone irrespective of their nationality, citizenship or physical presence as long as the security of Pakistan, its nationals or national harmony was put under threat. Moreover, under section 25, a mechanism of specialized investigation within the Federal Investigation Agency (FIA) was proposed, which would have a prosecution cell to investigate and prosecute such offenses. Under the act, several complaints were dealt with by the Federal Investigation Agency including those of UBL, Bank Alfalah, Wall Street Exchange Company and so on. The act was in force until it lapsed

in 2010 following which cyber criminals and con artists were freely committing cyber crimes while the law enforcement agencies had no law under which to take legal action against them.

In 2007, Pakistan's law and order situation had started to aggravate severely. The Lal Masjid clerics' stand-off with the government troops was an unfortunate event marking a further deterioration of Pakistan's internal security. After it ended in July 2007, Pakistan faced widespread extremist activities in the form of militancy and Talibanization throughout Pakistan, but more prominently in parts of Khyber Pakhtunkhwa (then NWFP) and the Tribal Areas. In response to this, the government carried out military operations in the Tribal Areas to control the growing instability and restore peace in the region. However, their attempts were fruitless. Seventy-one suicide attacks killed more than 900 people and injured around 1,574 in the year 2007 alone in Pakistan.

On November 3, 2007, President Musharraf declared a state of emergency and suspended the Constitution by promulgating the Provisional Constitution Order No. 1 of 2007 (PCO). His suspension of the Constitution to enforce the PCO was an attempt by him to forestall the imminent Supreme Court verdict aiming to address the issue of his eligibility for the office of presidency. The Provisional Constitution Order No.1 of 2007 suspended the fundamental rights contained in Articles 9, 10, 15, 16, 17, 19 and 25 of the Constitution. Under its section 3, it provided that the Supreme Court, High Court or any other Court would no longer enjoy powers to pass orders against the President, Prime Minister or any "authority designated by the President". Under Section 2 (4) of PCO, all persons who were assigned as judges of the Supreme Court, the Federal Shariat Court or a High Court before November 3, 2007, would be "governed and be subject to the Oath of the Office (Judges) Order, 2007, and such further Orders as the President may pass." According to PCO, the President could also issue any order to amend the Constitution and using this authority under PCO, General Musharraf amended article 175, 186-A, 198, 218 and 270 of the Constitution. However, under Section 2 (5) of the Order, Parliament and Provincial assemblies were still allowed to continue with their functions.

The Provisional Constitution Order No. 1 authorized General Musharraf with a wide range of powers that triggered enormous criticism not only within Pakistan but also abroad leading to countrywide protests against its imposition. As a result, the following month on December 15, 2007, the Provisional Constitution Order No. 1 was repealed and the Constitution was restored. However, the amendments made

in November 2008 a series of terrorist attacks in Mumbai, India, occurred that there was a renewed interest in Pakistan's anti-terrorism infrastructure. Regarding the Mumbai terrorist attacks, President Zardari stated these attacks “were directed not only at India but also at Pakistan's new democratic government and the peace process with India that we have initiated.” He went on to emphasize Pakistan's commitment to the “pursuit, arrest, trial and punishment of anyone involved in these heinous attacks.” Shortly within a year, the Rawalpindi anti-terrorism court indicted seven men involved in providing arms and training to the culprits in the Mumbai attacks. In January 2010, an anti-terrorist court judge in Rawalpindi rejected petitions that were seeking the acquittal of six of the seven Mumbai suspects. The trial is still in process.

The following year in 2009, the government of Pakistan conducted two military operations, one in Swat in May 2009 and the other in South Waziristan Agency in October 2009. The operations targeted Tehreek-e-Taliban Pakistan (TTP), a group of militants found to be behind some 80% of the terrorist attacks happening across the country over the past few years, including the assassination of the late Benazir Bhutto. Hundreds of militants were captured during these operations. The challenge that remained for the government was to revisit its anti-terrorism infrastructure in the light of the recent military operations. It was yet to be clarified by the government whether military operations against militants were to be taken as constitutionally categorized as law enforcement actions or if these operations were occurring “in aid of civil power” as per Article 245 of the Constitution. In the case of the latter, the fundamental rights of the detainees would then be suspended as long as the military operation was in process while their trials would be conducted under the regulation of Action in Aid of Civil Power Ordinance (1998) whereby mobile military courts would be set up.

However, the Supreme Court had previously, in *Liaquat Hussain v. Federation of Pakistan* case in 1999, given a ruling that military courts should be replaced with regular session courts. Thus, in October 2009 the Interior Ministry explained that all the militants captured in the military operations and security searches in the tribal areas of Swat, South Waziristan and others such as Bajaur and Khyber agencies would have their trials conducted according to the amended Anti-Terrorism Act in the special ATCs. Moreover, to emphasize that Pakistani Taliban and their supporters would be accountable to the law, anti-terrorism courts pronounced known militants as “proclaimed offenders” – meaning fugitives from the law – as soon as the army restored order in most parts of Swat and the local courts there

resumed their functions.

In August 2009, an anti-terrorism court based in Swat declared the chief of that area's Taliban, Maulana Fazlullah, along with six of his immediate supporters as "proclaimed offenders" and demanded that they appear in court within a week or else judgment would be given in their absence. Likewise, in the January of the next year, Muslim Khan, a Taliban spokesman along with twenty-three other Taliban kept in detention by the government were also pronounced as "proclaimed offenders" by an anti-terrorism court and still bear charges of kidnapping, treason, terrorism, murder, attempted murder and of having attacked government installations.

In the wake of these military operations, the number of suspected militants kept in detention grew very high. Especially three of the interrogation centers in Malakand, Fizagat and KhwazaKhela in the Swat Valley led human rights workers to demand the transparency and credibility of the detention and interrogation procedures being used. So much so, the credibility of the due process for detained militants started being questioned as reports claiming hundreds of bodies of suspected terrorists had been disposed of on the streets of Swat became public. In order see that terrorism suspects were not being treated in an extra-judicial manner and the anti-terrorism mechanism was being followed accurately, in August 2009 the Supreme Court of Pakistan declared the creation of special committees which would oversee the performance of anti-terrorism courts and also ensure speedy trials of all cases.

Shortly in October 2009, the government promulgated the Anti-Terrorism Amendment Ordinance (2009) containing new provisions for new terrorism-related offences to facilitate placing charges against the hundreds of suspected militants in detention. The detention period was also extended from 30 days to 90 days while the onus of proof was shifted to the suspect. Moreover, "extra-judicial confessions" recorded by security personnel were from now on admissible as evidence in anti-terrorism courts. In November 2009, President Asif Ali Zardari, on the advice of the Prime Minister, approved the extension of the amended Anti-Terrorism Act to Provincially Administered Tribal Areas (PATA) of NWFP as per the provision in Article 247 of the Constitution. New Anti-Terrorism Courts were set up in the region of PATA and Peshawar, including the Malakand Division, where Swat is situated, increasing the number of special courts in this region to 11. However, these courts were still highly ill-equipped, inadequately funded and faced constant trial delays. Thus the lack of progress in delivering justice to the hundreds of arrested militants waiting to

be tried under ATA continued.

Another threatening challenge in Pakistan's anti-terrorism legislative regime emerged when on October 2, 2009 the UN Committee on Rights of Child stated its concern regarding reports on children's recruitment in certain religious schools (madrassa-s) in Pakistan for participation in armed conflict and terrorist activities. The committee highlighted the absence of a preventive mechanism in Pakistan's anti-terrorism regime to check whether certain madrassas were recruiting children for such purposes. It also pointed out the need for a rehabilitative mechanism, which would emotionally and psychologically help recover those children who had been affected by terrorist groups.

As 2010 came, new terrorism-related challenges had emerged for Pakistan with various groups of terrorist networks employing new strategies to achieve their goal of spreading terror and political instability. One of these strategies had been to brainwash the youth and use them for carrying out suicide bombings. The existing anti-terrorism framework of Pakistan had still not evolved to include preventive measures to control the recruitment of children for terrorist activities. As these groups gained an immense amount of influence despite the presence of a full-fledged anti-terrorism mechanism since 1997, the effectiveness of the Act fell largely under question.

In July 2010, the Federal Interior Minister presented the Anti-Terrorism Amendment Bill 2010 in the Senate suggesting more stringent counter-terrorism measures for investigation of suspected terrorists. The bill stated that all trials of the detained terrorists will be recorded on camera, the remand period of the detainees will be 90 days, any kind of resistance against law enforcement agencies will also be taken as an act of terrorism and hence anyone running an illegal FM station will be subject to trial under the Anti-Terrorism Bill. The bill also declared that attacks against security forces or intended damage brought to commercial buildings will also be considered acts of terrorism and hence tried under the Anti-Terrorism Act.

Additionally, the investigation of terrorists will be conducted by sub-inspector officers or officers of higher ranks and the investigation team will comprise five members from the Federal Investigation Agency and other law enforcement agencies. Moreover, if the members of banned organizations continued terrorist activities, no passport would be issued to them, nor credit cards from financial organizations and they would not be allowed to avail any loan money from financial

institutions. Their arms licenses would not only become invalid but new arms licenses would not be issued to them. If anyone would be found with an explosive substance, whether he has an explosive device or not, without any legitimate reason, it would be assumed that his intentions were to carry out terrorist activities, unless proven otherwise by him.

The bill also contained a provision for seizing the assets of convicted terrorists, if found to be more than their known sources of income, as unquestionably acquired from terrorist activities. Additionally, licenses were to be issued to specialized persons by the federal government to intercept calls and messages of suspected terrorists. However, the bill remained pending in the Senate standing committee for two years despite various banned organizations freely rallying across the country due to a lack of stringent implementation of the anti-terrorism laws, after finally being withdrawn in 2012. Nonetheless, a similar bill was drafted in 2013, moved by the Minister for Law and Justice right 20 days before the National Assembly was due to expire. On March 14, 2013, the Senate unanimously passed it. It is discussed later in the paper.

The Actions (in Aid of Civil Power) Regulation, 2011

The Actions in Aid of Civil Power Regulation 2011 was promulgated by President Asif Ali Zardari on June 23, 2011 on the advice of then Prime Minister Yousaf Raza Gilani and the approval of the federal government. The legal framework invoked the “action in aid of civil power” clause under Article 245 of the Constitution to requisition armed forces in federally and provincially administered tribal areas of Pakistan for carrying out military operations against “miscreants”. “Miscreants” here was defined as anyone intending to or having committed a terrorist act under the law, be it an individual terrorist, a foreigner, a non-state actor or a group of such persons involved in waging war against Pakistan by raising unlawful armies. Though the military had already been present in these areas since 2009, the law now gave a legal cover to the detention of hundreds of suspected militants kept in the internment centers of the tribal areas where the Anti-Terrorism Act (1997) does not apply. The law was declared to be in effect from February 1, 2008, thus legitimizing all the illegal detentions of suspected militants from these areas since February 2008.

Under section 11 of the regulation, the duration of the internment of suspects would continue as long as the military operations would continue. It would only be

after the action in aid of civil power operation had stopped that their prosecution would take place. Additionally, the law also laid out provisions regarding how evidence against terrorists would be collected and preserved. Under section 19 of this regulation, in spite of any contradictory provisions laid out in chapter 10 of Qanun-e-Shahadat Order (The Evidence Act) 1984, all information and material collected by the internment authority of the Armed Forces would be considered credible evidence in court. A testimony by any member of the Armed Forces would be considered sufficient to convict the accused. Under section 15, torture of the internees during detention was totally prohibited. Moreover, officials of the Armed Forces in the internment authority were to receive training regarding standard human rights laws by an Oversight Board.

The Investigation for Fair Trial Act 2012

On December 20, 2012, the National Assembly passed the Investigation for Fair Trial Bill 2012, which had been discussed in the National Assembly for many months. Under the new law, the government allowed intelligence and law enforcement agencies to tap phone calls, SMS, e-mails, internet communication and carry out covert intelligence on anyone suspected to be implicated in terrorist acts after acquiring a warrant by a High Court judge for the purpose. The preamble of the bill highlighted the lack of modern investigative counter-terrorism techniques in Pakistan's anti-terror regime such as the use of covert surveillance, property interference, wire-tapping, communication interception and the like.

Acts that could be regulated according to this bill included intercepting and recording of telephone communication of suspects, video recording of suspected persons, events or situations, covert surveillance and property interference, access to data related to transaction, communication and collection of evidence through other modern devices and so on. Evidence obtained by means of such surveillance would be accepted in a court of law, provided surveillance warrants were issued by the High Court for the case. The maximum number of days for a warrant to be valid would be 60. The bill also stated that telecommunication and online service providers would cooperate with the persons conducting surveillance under a warrant. Moreover, these service providers would be provided with immunity "for having complied".

The bill was passed by the National Assembly after the government and the opposition reached a compromise where the government accepted 32

amendments from the opposition side. Concerns had been raised over privacy and civil liberties issues and a constant threat of the possible misuse of surveillance powers. An amendment proposed by the opposition demanded that any official found to be misusing the intercepted material should be treated judicially as a criminal. The following day, the leader of the opposition, Chaudhry Nisar, was reported as saying that his party still had objections on some of the points in the bill and would make changes to the law as soon as an opportunity arrived. However, on February 1, 2013, the Senate unanimously passed the ordinance. On February 20, 2013, President Zardari signed the bill into a law, thereby empowering spy agencies to intercept private communications of individuals suspected of any terrorist activities.

As the National Assembly was about to get dissolved at the end of its five-year term on March 16, 2013, the Parliament of Pakistan passed a series of amendments to improve Pakistan's anti-terrorism laws.

The Anti-Terrorism (Amendment) Act, 2013

In October 2011, the Financial Action Task Force (FATF) warned Pakistan for not providing an anti-terror action plan incorporating laws criminalizing terrorist financing and laws pertaining to freezing and confiscating of terrorists' assets as earlier advised by FATF in June 2011. In October 2011, Pakistan was listed as one of the five of the total 31 countries whose jurisdictions had not made sufficient progress in incorporating the anti-terror financing laws suggested by FATF. FATF advised Pakistan to amend its Anti-Terrorism Act to include the suggested provisions by February 12, 2012. Despite Pakistan's pleas to allow it at least the duration of one year for forming the required legislation due to complications involved in consulting different institutions and agencies, the FATF blacklisted Pakistan in February 2012. Consequently, in the light of FATF's guidelines, the Anti-Terrorism (Amendment) Bill 2012 was prepared and presented in the National Assembly on November 12, 2012.

The bill was passed by the Senate on March 5, 2013. The law it contained aimed to authorize government agencies with extended powers to seize, freeze and detain property or money of anyone suspected to be using it for financing terrorism. Moreover, the definition of terrorism was also amended under Article 6 of ATA (1997) by including "foreign government or population or an international organization" under the threat of terrorism. Among other amendments in the bill,

an important one was substituting “proscribed organizations” with the phrase, “an organization concerned in terrorism or a terrorist”. Hence, the focus of all legislation laid out in the provisions would not only be on proscribed organizations but all those organizations suspected to be involved in terrorism. However, keeping in view some of the strategies advised by FATF, Pakistan's financial laws still require significant tweaking to adequately counter the issue of terrorist financing in addition to money laundering itself.

National Counter-Terrorism Authority Bill 2013

Introduced in the National Assembly on January 31, 2013, the National Counter-Terrorism Authority Bill 2013 aimed to create a National Counter-Terrorism Authority (NACTA) for the purpose of devising counter-terrorism strategies and facilitating coordination and integration of anti-terror efforts among different agencies in Pakistan. The bill provided the structure of the proposed National Authority, which would be governed by a Board of Governors with the Prime Minister acting its Chairman and the rest of the members comprising federal and provincial ministers and chiefs of intelligence and law enforcement agencies. The position of a National Coordinator responsible for executing policies and plans approved by the board was also laid out. The Authority created under this bill could also receive foreign funds and advice.

The bill received much criticism on the grounds that the proposed National Authority was not going to be an independent body as it was to act under the bureaucracy. Moreover, the army would most likely be the one dominating if the heads of other agencies did not come for meetings. Despite all the criticism, the bill was approved by a majority and passed in the Senate on March 13, 2013. After it was created, it was soon put under the umbrella of the Interior Ministry. Since Intelligence Bureau and Inter-Services Intelligence are constitutionally answerable to the Prime Minister and not the Interior Ministry, there has since been a turf war between these groups resulting in a total ineffectiveness of the organization.

Anti-Terrorism (Second Amendment) Act, 2013

The Anti-Terrorism (Second Amendment) Bill 2013, presented in the National Assembly on February 25, 2013, was a reproduction of the Anti-Terrorism Amendment Bill 2010 introduced by then Federal Interior Minister in 2010, as discussed earlier, and which was withdrawn in 2012. The proposed Anti-Terrorism

(Second Amendment) Bill 2013, further amending the definition of terrorism, among other things, got passed by the Senate on March 14, 2013. The provisions contained in this bill were the same included in the Anti-Terrorism Amendment Bill 2010 earlier discussed in this paper. These included keeping the pre-charged detention period for suspected terrorists at 90 days, denying passports and arms licenses to members of banned outfits, considering the carrying of explosives without a lawful reason to be a terrorist act, running illegal FM radio stations and many other violent and suspicious activities as acts of terrorism.

Moreover, the detainees were prohibited to ask for release on bail or to file a petition for habeas corpus in any court of law. The accused were to be presented in court in-camera within 24 hours of their detention. The definition of the threat of terrorism now included “intimidating and terrorizing the public, social sectors, business community, security forces, government installations, officials and law enforcement agencies” as well.

Keeping in view the improved provisions contained in the three recently passed acts on anti-terrorism, the Investigation for Fair Trial Act 2012, the Anti-Terrorism (Amendment) Act 2013 and the Anti-Terrorism (Second Amendment) Act 2013, it seems that the Anti-Terrorism Act of 1997 has received its most required amendments in the last one year. However, despite such a strengthened anti-terror legal regime, the issue of terrorism hardly seems to be getting controlled. 2013, being the year of general elections, began with terrorists making every attempt to destabilize the country, sabotage election campaigns and the electioneering process. In March 2013, former President Asif Ali Zardari announced that elections would be held on May 11, 2013. The Taliban wasted no time in creating chaos before the elections by targeting the political candidates, offices, rallies and corner meetings of political parties.

Certain liberal and secular parties, which Tehreek-e-Taliban Pakistan claimed were “secular doctrine” parties, were targeted in Taliban attacks more than others. These included the Awami National Party (ANP), Pakistan People's Party (PPP) and Muthida Quami Movement (MQM). For example on December 22, 2012, the former KP Senior Minister and ANP Central leader Bashir Ahmed Bilour was brutally killed in a suicide attack while he was conducting his corner meeting. The al Qaeda-linked Tehreek-e-Taliban Pakistan not only claimed responsibility for the attack but also stated that it was to avenge the “martyrdom of their elder Sheikh Naseeb Khan”. The TTP spokesman, Ehsanullah Ehsan, also said that the Taliban would

continue targeting ANP. Several independent candidates along with their supporters were also targeted. In total, more than 130 political workers were killed in Taliban attacks.

In a bid to destabilize the country, Lashkar-e-Jhangvi (LeJ), a banned Sunni militant organization, conducted three terrorist blasts in Quetta on January 10, 2013 killing 93 people while severely injuring 121. A majority of the killed had belonged to the Hazara Shia community. Following the horrible sectarian killing, a sit-in, called by Quami Yakjehti Council (QYC), was observed for 4 days by hundreds of Shias protesting on Alamdar Road in Quetta while sitting alongside the bodies of the deceased despite the severe cold and rain of January. The bereaved families claimed that they would not bury the dead bodies until the government would hand over Quetta to the army and impose governor's rule. Finally on January 14, the government declared a state of emergency in Baluchistan and imposed governor's rule making Nawab Zulfiqar Magsi the Governor of Baluchistan. Mourning for the recent Quetta massacre had hardly subsided when another sectarian terrorist blast targeted the Shia Hazara Community in Quetta on February 16, 2013. More than 63 people were killed while almost 180 people were injured. Lashkar-e-Jhangvi again claimed responsibility for the attack.

Another incident of terrorism occurred on March 9, 2013 when a highly-charged mob consisting of almost 3,000 people set fire to 40 Christian houses in Joseph Colony located in the Badami Bagh area of Lahore, Punjab. The attack was supposed to avenge the blasphemy allegedly committed by a Christian who, though, had already been arrested by the police the day before the attack. Fifty-four of the 150 suspects arrested were charged with offences under the Anti-Terrorism Act.

While the secular and liberal parties were totally unable to campaign openly due to Taliban attacks, there were two political parties whose offices and election campaigns were left alone by the Tehreek-e-Taliban Pakistan. Pakistan Muslim League-Nawaz (PML-N) led by Nawaz Sharif and Pakistan Tehreek-e-Insaaf (PTI) led by Imran Khan benefited from their support for soft policies towards the terrorists, managed to hold mass political rallies across the country. On the Election Day, the voter turnout was around 60% marking the 2013 general elections the country's first democratic transition of power. The PML-N won the highest number of National Assembly seats thus making the government with a simple majority. Nawaz Sharif was elected as the country's Prime Minister, for the third time, on June 5, 2013 while Pakistan Tehreek-e-Insaaf formed a government in the terror-torn

province of Khyber Pakhtunkhwa.

Anti-Terrorism Regime under Nawaz Sharif

The two challenges the Nawaz Sharif government inherited from the previous governments are that of terrorism and a flagging economy. Regarding these challenges, Nawaz Sharif, in his pre-parliamentary address, stated that: “We have lost several lives, our economy is deteriorating... If Taliban offer us an option to have dialogue, we should take it seriously. Why can't we talk to the Taliban to make our country peaceful?” Nawaz Sharif's soft stance towards the Taliban terrorists did not remain promising for long as only 10 days later the Balochistan Liberation Army (BLA) and Lashkar-e-Jhangvi (LeJ) conducted three gruesome terrorist attacks in Quetta, though not jointly.

On June 15, 2013, the first attack was the burning down of the historical residency of Muhammad Ali Jinnah, the father of Pakistan's nation, located in Ziarat, Balochistan. The two-story building of Jinnah's residency was set ablaze by BLA, a separatist organization that claimed responsibility. The site has immense symbolic importance for Pakistan as Muhammad Ali Jinnah spent the last few days of his life there. Moreover, the BLA also replaced the flag of Pakistan on the building with their own BLA flag. Ironically, this had happened only days after the new Balochistan government had pledged to end guerilla warfare in Balochistan. The following two attacks the same day were conducted by Lashkar-e-Jhangvi and were not really related to the BLA's attack on the Quaid's historical residency. The Chief Minister of Balochistan, who had only taken office a week before, urged the security forces to end their abuse of rights in Balochistan in the hope that talks with separatist insurgents such as the BLA could be held.

Another terrorist attack the same day used improved explosives to explode Sardar Bahadur Khan (SBK) Women University's bus killing over 14 female students while wounding 19 others. Al Qaeda linked Lashkar-e-Jhangvi claimed responsibility for the explosion. Shortly, thereafter, when the wounded were being taken to the Bolan Medical College Hospital, the terrorists laid siege and carried out another explosion in the hospital complex killing 23 people. Four of the militants also died in the gun battle launched by the security forces while one was arrested.

Three terrorist attacks occurring in one day, one disrespecting the father of the nation, only 10 days after the election of the new Prime Minister, who has since long

held a soft stance towards extremist organizations, is symbolic of the fact that these terrorists were never interested in negotiations. Moreover, the continuous militancy and bloodshed clearly proves that the terrorist organizations in Pakistan have no positive agenda for this country. Nawaz Sharif has also been frequently criticized for his tolerance towards extremist sectarian groups. In the 2013 general elections, his party, the PML-N, and Ahl-e-Sunnat Wal Jamaat (ASWL) agreed not to compete against each other in 15 constituencies. Ahl-e-Sunnat Wal Jamaat (ASWL) was formerly known as Sipah-e-Sahaba Pakistan, a banned extremist organization since 2002, which morphed into a political party.

In a National Assembly discussion, following the attacks, Interior Minister Chaudhry Nisar and other senior lawmakers criticized the security agencies for the “dismal law and order situation” all over the country especially in Balochistan. He stated: “If so many agencies with so many resources cannot handle the security situation, what else can our government provide them?” The government also called on the parliamentary leaders to support it in countering terrorism. A national security policy to counter terrorism was planned to be formulated on June 20, 2013 in a meeting of the “civil armed forces”. On June 18, following threats by banned outfits, the federal government and Balochistan provincial government issued a high alert warning to the prison authorities of major and sensitive prisons in Balochistan where dangerous terrorists belonging to banned organizations were being detained. One of the cues was also perhaps Adnan Rasheed's statement in an interview published in a Jihadi magazine called “Azan” where he said, “I want to give them glad tidings that soon our brothers will strike on their cages to free them”.

Only a few days after this incident, on June 23, 2013 some gunmen dressed as paramilitary forces killed 9 foreign tourists in a western base camp of Nanga Parbat, Gilgit-Baltistan. Some of the tourists were from China while some from Ukraine. The TTP claimed responsibility for this as well. Not only this security failure was embarrassing for the new-born government, it was also considered severely harmful for the country's already declining tourist industry.

In July, the PML-N government developed a counter-terrorism policy, which they termed as National Counter-Terrorism and Extremism Policy. It included five elements; dismantle, contain, prevent, educate and reintegrate, which were different from the counter-terrorism strategy of the previous government, which was: development, dialogue and deterrence. The strategy proposed that imprisoned terrorists and former militants would be used to open dialogue with

terrorist groups that may be willing to abandon violence. Thus, despite the recent terrorist attacks, the PML-N government still wanted to keep the option of holding dialogue with terrorist organizations open. The government claimed that they would follow a more comprehensive anti-terrorism strategy, which would handle the issue of terrorism from different angles rather than the “mono-faceted approach” of military operations. The policy also contained that the National Counter Terrorism Authority (NACTA), which was created in 2009 and had been dysfunctional ever since it came under the Interior Ministry, would be at the center of the strategy controlled by the Prime Minister.

Forming a Joint Intelligence Secretariat

Only 10 days after the jail break, another symbolic attack took place, this time ruining the religious holiday of Muslims worldwide called Eid-ul-Fitr on August 9, 2013. A TTP spokesperson claimed suicide bombing targeted the funeral of a high police official, which was attended by 300-400 people including many important police officers. Some 30 people were killed on the spot while 62 were injured in the blast. This happened despite the security plan that the federal government and all four provinces had in place for the holy occasion of Eid-ul-Fitr. Following this, the Prime Minister urged the officials to present a draft of the Counter Terrorism Strategy by August 13 rather than its earlier stated date which was August 30. In a discussion over Pakistan's security situation with Interior Minister Chaudhry Nisar Ali Khan, Prime Minister Nawaz Sharif expressed the need of enhancing the role of security agencies in combatting terrorism and that the strategy should be implemented immediately. He also demanded a detailed report on the Balochistan situation.

On August 13, 2013, Interior Minister Chaudhry Nisar called a press conference in which he described a joint intelligence secretariat that would function with the coordination of all intelligence wings including the ISI and Intelligence Bureau (IB). He said this would be fully functional in the next six to seven months. While this Counter Terrorism Rapid Deployment Force would work round-the-clock to analyze all the intelligence reports with shifts for its workers, it would also take actions within hours once all intelligence would be gathered for a case. The organization would initially comprise 500 serving or retired personnel of the Armed Forces. However, later the strength would be increased to 2,000. In the second phase of the development of this organization, it would be expanded to create similar forces in all the four provinces as well. He also stated that the National Counter Terrorism

Authority (NACTA) would be reactivated and placed at the center of this organization.

The Interior Minister revealed that his ministry had prepared a complete security plan for Karachi. However, the first step would be to de-weaponize Quetta. He said that the first priority of the proposed framework would be the security of the country and then it would incorporate policies regarding the de-radicalization of militants or potential militants. Surely, there is a dire need of changing the mindset. He also said that there are over 28,000 unknown people living in Islamabad and Rawalpindi who do not even have national identity cards. All such people will be sent back to where they came from for security purposes.

Finally, he stated that a lot of money would be required to build and start the functioning of the proposed Joint Intelligence Secretariat. He stated that the framework of the joint intelligence secretariat would be given its final shape after an All Parties Conference (APC) had been held to build political consensus over the new national anti-terrorism policy. In the APC, the military leadership was to brief the political leadership so that the parliamentary leaders could discuss the agenda and form consensus on a proper strategy to address the enormous challenge of terrorism in the country. A joint policy regarding the use of US drone strikes as an anti-terrorism technique was also to be discussed.

Nawaz Sharif approves stringent amendments in ATA, 1997

On October 3, 2013, Prime Minister Nawaz Sharif approved several amendments in the Anti-Terrorism Act (ATA) 1997, as recommended by a committee, to sternly deal with extortionists, target killers, kidnappers for ransom and members of mafias in Karachi. With these amendments, the existing law will remain unchanged as no deletions or additions would be made.

These amendments will provide for establishment of a number of new Anti-Terrorism Courts (ATCs) in Karachi to quickly deal with hundreds of cases of heinous crimes registered during the ongoing targeted campaign. This decision aims at reducing burden on the already working ATCs in Karachi in view of hundreds of new cases, which have been lodged against criminals over the past one month. It has been decided to immediately accord final legal shape to these changes and present them in the federal cabinet meeting.

These amendments will be promulgated through a presidential Ordinance. Since

there is an across-the-board political consensus on making the Anti-Terrorism Act (ATA) 1997 stringent, there will be no problem in getting the changes approved from both houses of parliament. The prime minister has been reported as saying, "There should be no political victimization."

The proposed changes in the ATA empower officials of police, Armed Forces and civil Armed Forces to fire or order firing upon any person against whom they are authorized to use force. The previous ATA clause 5(2)(i) allowed these officers to fire upon a person only when they were fired upon. They are now permitted to resort to the extreme measure even without any firing by the concerned person. It shall be lawful for any such officer or any senior officer to fire, or order firing upon any person or persons against whom he is authorized to use force.

Another unique amendment specifies that the conviction of an accused shall be lawful solely on the basis of electronic or forensic evidence or such other evidence that may have become available because of modern devices or techniques, even if no corroborative testimony is on hand. According to a rare but extremely important proposed amendment, screens will be used during trial to shield witnesses, judges and prosecutors from public view. The trial may be held through video link or in jail premises. The provincial government shall take necessary steps to ensure that prisoners in jails do not have access to mobile phones.

The government, or where the amended ATA would be invoked, the Armed Forces or civil Armed Forces, for a period not exceeding three months and after recording reasons, will issue order for preventive detention of any person who has been concerned in any offence relating to the security or defence of Pakistan or any of its parts, or public order including target killing, kidnapping for ransom and extortion or the maintenance of supplies or services or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned for purpose of inquiry.

When the detention order has been issued by the Armed Forces or civil Armed Forces, the inquiry shall be conducted by a JIT comprising members of Armed Forces or civil Armed Forces, intelligence agencies and other law enforcement agencies, including a police officer not below the rank of superintendent of police (SP). Where it appears to the government that it would be in the interest of justice or expedient for protection and safety of judges, witnesses and prosecutor it may apply to the High Court Chief Justice for transfer of a case from an ATC in another

province and for this purpose it shall also seek concurrence of the High Court Chief Justice of the other federating unit. Similarly, the federal government may in the interests of justice and protection and safety of witnesses and investigations transfer the investigation of any case from one place to another in the same or another province.

The investigating officer (IO) or the agency to which the case is thus transferred may proceed from the stage the inquiry or investigation was left or may proceed with the case as if it had been organically entrusted to him or the agency. Where any person has been arrested by the Armed Forces or civil Armed Forces, he shall be handed over to the IO of the police station designated for the purpose by the provincial government in each district. Where the case is not decided within 30 days, the matter shall be brought to the notice of the high court chief justice concerned for appropriate directions. The trial will proceed uninterrupted from day-to-day after the ATC has scrutinized the case file to identify the issues and directed the prosecution to complete all pre-trial formalities.

Section B: Shortcomings in Pakistan's Anti-Terror Legislative Regime

Surely, a look at the evolutionary process of Pakistan's anti-terrorism legislative regime shows that Pakistan's struggle to curb terrorism has come a long way. Since 1997, the Anti-Terrorism Act of Pakistan has been amended once in 1998, thrice in 1999, once in 2000 and 2001, twice in 2002, twice in 2004, once in 2005, 2007, 2009, 2010 and twice in 2013. The amendments to Anti-Terrorism Act (1997) with their names and years as well as other terrorism-related Acts in Pakistan are listed in the table below.

No.	Amendments to ATA (1997) & other Counter -Terrorism Acts	Year
1.	Anti-Terrorism (Amendment) Act, 1998	1998
2.	Pakistan Anti-Terrorism (Amendment) Ordinance, 1999	1999
3.	Anti-Terrorism (Second Amendment) Ordinance, 1999	1999
4.	Anti-Terrorism (Third Amendment) Ordinance, 1999	1999
5.	Anti-Terrorism (Amendment) Ordinance, 2000	2000
6.	Anti-Terrorism (Amendment) Ordinance, 2001	2001
7.	Anti-Terrorism (Amendment) Ordinance, 2002	2002
8.	Anti-terrorism (Second Amendment) Ordinance, 2002	2002
9.	Anti-terrorism (Amendment) Act, 2004	2004
10.	Anti-terrorism (Second Amendment) Act, 2004	2004
11.	Anti-Terrorism (Second Amendment) Act, 2005	2005
12.	Provisional Constitution Order No. 1 of 2007 (PCO)	2007
13.	Prevention of Electronic Crimes Act, 2007	2007
14.	Anti-terrorism (Amendment) Ordinance, 2009	2009
15.	Anti-terrorism (amendment) Ordinance, 2010	2010
16.	Anti-Money Laundering Act, 2010	2010
17.	The Actions (in Aid of Civil Power) Regulation, 2011	2011
18.	The Investigation for Fair Trial Act 2012	2012
19.	The Anti-Terrorism (Amendment) Act, 2013	2013
20.	National Counter-Terrorism Authority Bill 2013	2013
21.	The Anti-Terrorism (Second Amendment) Act, 2013	2013
22.	Pakistan Protection Ordinance 2013	2013

Today, not only has the anti-terror regime gone beyond the scope of being a national enterprise, but the definition of “terrorism” has also broadened significantly to give way to a wide variety of legal tools to arrest, prosecute and

penalize perpetrators. However, despite continuous revising of the Anti-Terrorism Act (1997) to better legally equip the state to deal with modern day terrorism; the state of Pakistan has still been unable to reduce the incidents of terrorism. This section will examine the lacunae in the existing terrorism regime as well as the factors that have stood in Pakistan's way of using anti-terrorism laws effectively.

The Broad Scope of Anti-Terrorism Courts

Perhaps the first shortcoming of the Anti-Terrorism Act is very broad definition of “terrorism” which has widened the scope of Anti-Terrorism Courts beyond their capacity. The constant amendments made to the ATA have widened the range of criminal activities dealt with by the Anti-Terrorism Act to even include cases of kidnapping, extortion, arms trafficking and gang rape. This means with so many other criminals to prosecute other than the terrorist Taliban, the special Anti-Terrorism Courts have now an increased backlog of pending cases. The special Anti-Terrorism Courts, rather than only dealing with the cases where there is a connection with a terrorist organization or presence of terrorist intent, are now dealing with cases that should otherwise be dealt with under the ordinary law, i.e., the Pakistan Penal Code.

Take the example of the Karachi city alone in 2010 where 35 suspected Pakistani Taliban awaited trial in the special Anti-Terrorism Courts while there were also 56 cases related to other criminal activities under the Act pending in ATC I, 54 in ATC II and 89 in ATC III, the only three special Anti-Terrorism Courts in the city.

Release of Suspects without Trial

Another alarming loophole in the ATA is that many of the detained terrorists are released after the expiry of their detention without even undergoing a trial. Though theoretically in the ATA, investigation and prosecution of one case should be conducted within seven working days, the practice has been the contrary. The release of the suspects is occurring more frequently than the overall number of trials. For instance, the former Punjab government captured 152 suspected activists linked with proscribed organizations in joint raids conducted by intelligence agencies in different areas of Punjab. Out of these, 56 were released as their detention period expired.

According to another source, the newly elected Punjab government released 112

activists belonging to Lashkar-e-Jhangvi and Sipah-e-Sahaba Pakistan, the two banned organizations, in May 2013. These suspects had been captured by the former Punjab government led by Chief Minister Shahbaz Sharif following the deadly sectarian violence targeting the Hazara community in Quetta. The decision to determine what charges to frame against a suspect or to release him is made by Joint Investigation Teams (JITs) consisting of the ISI, FIA, IB and the police, after interrogating suspects in interrogation cells that they are transferred to from the internment center. If they consider him guilty, he is charged with an offense and sent to the nearest anti-terrorism court for trial. Otherwise he is released. A lacuna at this stage is that there is no transparent mechanism to show on what grounds a suspected terrorist was released while others were detained on charges of terrorism.

Collection of Evidence

The issue of the lack of a proper mechanism to collect and preserve authentic evidence to present in court is another serious shortcoming for the effectiveness of the ATA. Not only does evidence become scarce as witnesses flee in cases of powerful and dangerous terrorists, the lack of witness protection further aggravates the matter. Another way the evidence for terrorism suspects is lost is when suspects are transferred from different locations to the interrogation cells. This is particularly true in the case of FATA which is outside the jurisdiction of ATA. Captured militants from these areas have first to be detained in internment centers and then transferred to areas that fall under the jurisdiction of the ATA. In such cases, the Joint Investigation Teams (JITs) in the interrogation cells are not in direct contact with the local eyewitnesses who can provide credible evidence for the accused.

Moreover, when the suspected militants are removed from the “scene of crime” and sent to law enforcement agencies for investigation, since the police were not the ones who captured the terrorists, they do not get to inspect the scene of crime, recover weapons or prepare the traditional recovery memo. Their only source of evidence becomes the eyewitness accounts of the military personnel who captured them and the evidence provided by them. The end result of such a scenario is most likely that when the case is brought to the court, there are a lot of weak points in the evidence supporting the accusation and a competent defense lawyer for the suspected militant is easily able to use them for his client advantage. As a result, the militant is released right away on bail, declared innocent, or given only a mild

sentence. The whole process of capturing a militant by the Armed Forces then becomes useless.

Poor Policing System

The poor police system of Pakistan is perhaps also the foremost reason attributing to the failures in the ATCs' ability to execute speedy trials. The present police system in Pakistan is a continuation of the one created by the British in 1861 for the Indian Sub-continent and one which was according to the social, political and administrative requirements of that time. Today, not only has the technology in the world evolved but the nature of threats has also changed immensely. Unlike the developed countries where the police are highly trained and equipped, the training given to the police in Pakistan is not only just archaic in content, it is also weak in methodology. There is also an absence of a reliable performance appraisal system. The police of Pakistan are, unfortunately, also ranked as one of the most corrupt institutions in the country according to Transparency International.

This is extremely disadvantageous for Pakistan as it is the police that have the first link with the community down to the district level and their capability could considerably help detect and reduce much of terrorism at this level. Unfortunately, the negligence, incompetence and corruption of Pakistan's police system have largely contributed to the delays in the trials of not only most criminals but also suspected terrorists in various ways. For example, a trial in court can only commence after a case brief (challan) has been prepared. Either due to corruption, bribery or lack of skill, the police in Pakistan often fail to prepare case briefs in time thus leaving the courts with no option but to keep these trials on hold. The delay in these trials also leads to the violation of the very law contained in the Anti-Terrorism Act (1997), according to which the investigation and trial of one suspect should be disposed of within seven working days. Moreover, when case briefs are issued and trials do take place, the police, who are responsible for transporting and guarding prisoners, often fail to bring them to court on their trial dates.

Corruption in Pakistan's police system can also be held responsible for overcrowding the prisons. Many times, especially in the rural areas of Pakistan, the police register false cases in return for money. As a result, not only are innocent people put behind bars with real guilty criminals, it also leads to the overcrowding of prisons and thus backlogging of cases for courts to deal with. Such reasons urgently call for a serious evaluation and reform of Pakistan's police system. If the

police are sufficiently equipped and trained, the incidents of terrorism can be greatly monitored in Pakistan, especially at the district level. Even though the previous PPP government pledged to reform and transform Pakistan's police into a "superior service" with "operational autonomy, free from all financial and administrative pressures," none of this has materialized into reality yet.

The lead responsibility of internal security in Pakistan has instead been deferred to the Armed Forces, Rangers, Frontier Corps and intelligence bodies that are administered by the military instead of the police. As a result, the police in Pakistan have never been trained enough to become efficient and proactive in countering terrorism and maintaining security. According to Ahmer Bilal Soofi, a Supreme Court Lawyer and former caretaker Law Minister, the police officers in Pakistan are not even sure about the legal mandate they are operating under. The former caretaker law ministry carried out an exercise to find out the legal status of the Police Law governing the police officers across the country. The results showed a lack of uniformity in their policing approaches.

Moreover, he also stated that there are modern internationally recognized standard operating procedures on collecting evidence from the crime scene that our police are not even familiar with. These procedures rely heavily on laboratories rather than witnesses. While in Pakistan, the only source of evidence for the police remains the witnesses who usually disappear due to lack of witness protection. The other option for the police is to torture the suspects to the point of falsifying evidence. In such cases the First Information Reports (FIRs) are based on incomplete or inaccurate information to build up a court case, thus, leading to faulty prosecution.

Absence of High Security Prisons for Terrorist Suspects & other related Shortcomings

Pakistan's prison system is as corrupt and flawed as is its police system. This has been clearly manifested in the jail-breaks of Bannu in April 2012 and of D.I Khan Central Prison on July 30 this year. What is extremely absurd is that despite continuous domestic security threats and hundreds of terrorist attacks claiming thousands of lives, Pakistan, one of the most dangerous countries on earth, does not have a single federal high security prison. A high security prison would not only keep the most dangerous terrorist inmates segregated from other petty criminals but it would keep suspected terrorists under high security and constant

observation, which is much needed to avoid any future jail-breaks. Khyber Pakhtunkhwa, a province especially affected by terrorist violence, at least could have had one. What is even more alarming is that, even in this province, terrorist suspects are kept in the same barracks with prisoners who may be remanded prisoners, juveniles, first-time or low-level offenders. A lack of segregation between ordinary criminals and dangerous militant inmates also means that there is a high likelihood that the former can become susceptible to indoctrination by the latter.

Another drawback of the present prison system is that there is hardly a sufficient number of the required closed circuit TV (CCTV) cameras installed in prisons to check the activity of prisoners as well as the prison personnel for any kind of connivance. Even though funds were provided in all four provinces to install CCTV cameras, the technology was hardly extended to all the central jails. Moreover, due to undertraining and low salaries of prison officials, the superintendents in jails are mostly lax in maintaining discipline and order in the prisons. Rather than supervising the activities of the prisoners, they instead freely indulge in bribery and corruption, thus facilitating the easy smuggling of cellular phones to hardened militants in the process. Criminals and militants from inside the prison walls, hence, easily oversee and direct in the terrorist operations carried out by their fellow terrorists across the country. Even the police and prison officials admit that the general permissive environment in prisons in Pakistan, especially the easy proliferation of mobile phones and the common connivance of the prison staff for money, has allowed hardened militant inmates to control extensive criminal activities while in detention.

As mobile phones are easily available in jails, mobile phone calls are frequently made by jailed militants to their associates outside to plan their next move. Intelligence agencies have often intercepted many such calls. For example, several calls were intercepted by the intelligence agencies in 2010 from a jail in Timergara, located in the lower Dir District of Khyber Pakhtunkhwa, which was housing over 300 suspected terrorists. The prison authorities in Quetta also suspended some of their staff after they found them to be providing mobile phones to militant inmates. However, the incompetence of Pakistan's prison system in curtailing the activities of highly dangerous militants in detention became embarrassingly prominent in an incident in 2008. Omar Saeed Sheikh, the convicted killer of Daniel Pearl, used his own mobile phone from a Hyderabad jail in Sindh to make hoax calls to the President of Pakistan, the COAS of Pakistan and the operator of the Indian Foreign Minister. He was using a UK-registered mobile SIM and had made the calls only days

after the 26/11 Mumbai attacks, which had already tensed the relations between the two neighboring nuclear powers. The misunderstanding caused by his calls almost brought the two countries to the brink of war.

To counter the issue of easy access to mobile phones for prisoners, prison authorities in Pakistan planned to install jamming devices in the prisons to block cellular communication between militants and their outside associates. However, the Pakistan Telecommunication Authority (PTA) did not allow them to do so. Inspectors general of prisons from all four provinces informed a Senate Committee on Human Rights in a meeting in May 2011 that the Pakistan Telecommunication Authority was not only resisting their efforts to install additional jamming devices in prisons but, for the central jail of Karachi, PTA had also ordered that the jamming devices already installed be removed. A senior prison official then stated that it was definitely worth wondering whether the PTA was on our side or the prisoners'.

It is clear that the priorities of Pakistan's anti-terrorism regime should start from creating a federal high security prison and also installing CCTV cameras and jamming devices in all the prisons. This way not only the prison personnel will be deterred from freely indulging in corruption, the terrorist inmates would also be unable to make phone calls from within the prison walls. Furthermore, it is also highly urgent that their speedy trials take place in time so that the terrorists are penalized for their actions - deterring the rest of the terrorists from venturing into more violent operations - and the overcrowding of these prisons does not lead to the difficulty of the prison personnel in monitoring their individual activities. Strict action also needs to be taken against all those prison personnel who are involved in bribery, corruption or any other kind of connivance, which is hindering the justice system.

There is also a need for more probation and parole officers. A system to rehabilitate the prisoners that are released from such an environment so that the effects of their indoctrination by terrorist inmates can be reversed is also necessary. According to a former prisons official in Lahore, there needs to be a proper monitoring or vetting system for prison warders and officers who may be susceptible to conniving with religiously-driven militants with whom they share their ideological perspectives. This happened in Quetta where the banned Lashkar-e-Jhangvi, a Sunni militant organization, was able to maintain contact with their detained members via prison staff that held the same ideology. The organization was also recruiting other inmates into their membership this way. Seeing the above weaknesses in Pakistan's prison

system, it seems that along with the police, the prison system of Pakistan also requires a proper accountability and transparency in place if the growing incidents of terrorist attacks and jail-breaks are to be effectively reduced.

Lack of Security for the Judges, Prosecutors & Witnesses

Another major obstacle in the prosecution of suspected terrorists is the security concern for judges, state prosecutors and witnesses. The biggest shortcoming of the Anti-Terrorism Courts perhaps is the lack of witnesses at the time of trials of dangerous terrorists.

Witness and judges constitute a crucial part of effective counter-terror prosecution. Without witnesses, there can barely be any evidence to convict a suspect. Witnesses disappear as soon as they fear a threat to the lives of their families and themselves from the members of militant organizations who the accused belongs to. A prominent case to mention here is the murder of the GEO TV reporter Wali Khan Babar in January 2011. The investigators of this case felt immensely threatened and four of the victims linked to this case, who could provide credible testimony, were murdered. Over the course of the court proceedings, all the witnesses for the case were killed and the reason was that the Sindh government had not formulated the witness protection program demanded by the Supreme Court long ago.

In September 2013, the Sindh provincial assembly passed a piece of legislation to this effect, yet a comprehensive law containing this and several other aspects of CT-legislation both at the provincial as well as federal level have yet to be enforced.

According to prison authorities, militant inmates possessing mobile phones often make threatening calls to judges who are hearing their cases. In 2010, courts in Karachi and Lahore reportedly exonerated many hardened militants after the judges and witnesses concerned in their cases received threatening calls from them. Sometimes, judges, fearful of the consequences of convicting a terrorist, rather look for legal flaws that would lead to acquitting them instead. This surely results in faulty justice. The reasons are related to lack of witnesses', judges' and prosecutors' protection that either lead to the acquittal of the guilty or cause further delays in their trials.

Pending Cases and the Constant Violation of ATC Trials' Time frame

An inherent flaw in the Anti-terrorism Act (1997) is the short timeframe of seven working days within which the investigation of a terrorism case as well as its trial in court has to be concluded. Sub-section (7) of section 19, which deals with the procedure and power of the Anti-Terrorism Courts, states:

“The Anti-Terrorism Court shall, on taking cognizance of the case, proceed with the trial from day to day and shall decide the case within seven working days failing which an application may be made to the Administrative Judge of the High Court concerned for appropriate directions for expeditious disposal of the case to meet the ends of justice.”

It is interesting to note here that not a single terrorism case has ever been completed within seven days by an ATC in Pakistan. On the contrary, terrorism cases continue for months in courts. At the moment, 14 Anti-Terrorism Courts in Punjab have 1,100 cases pending; Rawalpindi's ATC has 51 cases pending while Islamabad has 15 cases pending. Some of these are the most high-profile terrorism cases that have been pending for many years. Furthermore, another sub-section under section 19 prohibits Anti-Terrorism Courts from granting adjournments in trials “for any purpose unless such adjournments, [are in their] opinion, necessary in the interest of justice” and that in any case, no adjournment should be “granted for more than two working days.” Contrary to this law, terrorism cases in ATCs have been adjourned continuously for weeks and even months.

The oldest case pending in Rawalpindi's ATC is regarding the suicide attack on General Musharraf during his presidency in December 2003. This case was registered by the Civil Lines Police. The Rawalpindi ATC has since then been trying two civilians; Rana Mohammad Faqir and Jamshed Raza, alleged to have been involved in the attack. Rana Mohammad Faqir, 65 years old, is accused of having parked his explosives-laden vehicle in front of Jinnah Park in Rawalpindi where the President's convoy was to pass by. Though, the vehicle laden with explosives did not explode, he was arrested two years later in 2005 for being involved in the plan and has since been detained at the Adiyala Jail awaiting his trial. There were 165 witnesses in this case out of which only 56 have been examined since 2003. A parallel trial regarding the same attack on retired Gen. Musharraf is also being conducted in the military court since 2004 which convicted 12 persons who are mostly serving soldiers. One of the convicts in that case is Rana Mohammad Faqir's son, Rana

Naveed. This has been discussed earlier (See pg. 12).

The second oldest case also pending in the Rawalpindi ATC, and one that is equally high-profile, is the murder case of former Prime Minister Benazir Bhutto. Benazir Bhutto was shot on December 27, 2007 followed by a brutal suicide bomb explosion on her rally. The case has been heard since 2008 and the accused have included retired Gen. Musharraf, two senior police officials and the leaders of Tehreek-e-Taliban Pakistan. There were also over 100 witnesses in this case. Only 16 have been cross-examined to date.

The third oldest case pending in the Rawalpindi ATC and also very high in significance is the 26/11 Mumbai attack case which killed 166 people in the Indian city of Mumbai. The accused in this attack are seven Pakistani suspects; namely Lashkar-e-Tayyaba (LeT) Commander Zakiur Rehman Lakhvi, Mazhar Iqbal, Abdul Wajid, Hammad Amin Sadiq, Jamil Ahmed, Shahid Jameel Riaz and Younas Anjum. There are also a large number of witnesses required to be cross-examined to build the case, a process whose progress has been negligible so far. Since 2009 until 2013, the case had been heard by the Rawalpindi Anti-Terrorism Court until it was recently transferred to the newly established Anti-Terrorism Court of Islamabad on June 15, 2013. Hearings in both the cases of Benazir Bhutto and the Mumbai attack have been adjourned more than 50 times on the request of the counsel.

Other than the non-submission of challans, the constant adjourning of hearings in ATCs is another primary reason for the continuous delays in the trials of suspected terrorists. According to a public prosecutor of the Federal Investigation Agency (FIA), the defense counsel can be mostly blamed for the delays in trials as they are the ones who continuously ask for adjournments. He stated that terrorist outfits have formed links with certain lawyers and have also managed to influence witnesses, investigation officers and judges in some cases. Terrorists closely observe court proceedings and then threaten witnesses and judges to ensure adjournments. Sadaqat Ali Khan, Prosecutor General Punjab, noted that though prosecution isn't always to be blamed with regard to terrorism cases, however, in many cases the incompetence of prosecution has been the cause for persistent delays. For example, from May 25, 2010 to June 25, 2013, seven challans, each with new accused persons, have been submitted to the Rawalpindi ATC regarding Benazir Bhutto's murder case. With so many challans, each containing new information, mean the court may need to hear the case from the beginning.

Perhaps it is not just due to terrorist threats and the lack of security for state prosecutors and judges that prosecution in courts fails to conclude cases on time. It can also be attributed to the general atmosphere of unwillingness, irresponsibility and the lack of strict accountability that prosecutors remain lax and slow in complying with the ATA laws. For example, Justice Manzoor Malik of the Lahore High Court, also the administrative judge of the Anti-Terrorism Courts of Punjab, issued an order on January 16, 2012 that all Anti-Terrorism Courts across Punjab would file their day-to-day proceedings before June 2012. Cases then started to be heard on a daily basis as is also required by ATA laws. However, soon the routine of inactivity and lethargy returned and adjournments were being granted again like before. This shows that if there is a strict monitoring system and willingness, the prosecutors are capable of performing their duties duly and conclude terrorism cases efficiently in lesser time.

Inadequate Funding

The reason special Anti-Terrorism Courts were created through the Anti-Terrorism Act (1997) was in the first place, in then Prime Minister Nawaz Sharif's words, "to impart timely and inexpensive justice." Ironically, the obstacles faced by Anti-Terrorism Courts have been understaffing, inadequate funding and perpetual corruption – the very issues in Pakistan's regular courts that lead to trial delays. Other than having more than 700 pending cases of suspected terrorists who cannot be legally kept beyond the 90-day limit, there are many administrative shortcomings in the anti-terrorism legal infrastructure mechanism too. The ATCs across the country are reported to have no clerical staff, no offices, stationary or archives of judgments kept by the staff. The working conditions are so poor for the judges and state prosecutors that sometimes the post of the judge remains vacant for months, hence attributing to the delay in the trials of suspected terrorists awaiting trial in that court. Clearly, these predicaments are manifestation of the fact that the government has not allocated sufficient funds for the Anti-Terrorism Courts infrastructure.

Lack of a Monitoring Mechanism over Mosques & Religious Madrassas

The increasing radicalization in madrassas in Pakistan can be traced back to Zia-ul-Haq's era during the 1980s when seminaries in Pakistan, funded by the United States and Saudi Arabian governments, indoctrinated their students with a jihadi ideology and sent them to Afghanistan to fight the Soviet invaders. Today, Pakistan has over

10,000 madrassas offering free education to over a million of children who cannot afford paid education and who the government has largely neglected. Contrary to the widespread belief as a result of media propaganda reinforcing the link between terrorism and madrassas in Pakistan, studies show not all madrassas in Pakistan are poisoning the minds of the youth enrolled in them. According to studies conducted on this issue, only 10-15% of the madrassas in Pakistan are involved in preaching violence and militancy.

Surely, these 10-15% of the over 10,000 madrassas in Pakistan are a challenge that the anti-terrorism regime of Pakistan should also address. In October 2009, the UN Committee on Rights of Child highlighted the issue of children's recruitment for purposes of carrying out terrorist activities in certain extremist madrassas in Pakistan. However, apparently the anti-terror regime of Pakistan has not matured to incorporate laws regulating the content taught in madrassas and to monitor the views propagated in the mosques across the country. Hate speech, sectarian violence and intolerance indoctrinating the general masses in certain mosques and madrassas have become a major cause of concern. Inarguably, unless the roots of terrorism in Pakistan will be undermined, the recruitment into the number of potential terrorists would increase.

Abuse of Anti-Terrorism Laws and the Lack of Political Will

With the introduction of special Anti-Terrorism Courts in the ATA (1997) also came opposition from human rights activists such as the Amnesty International. According to human rights groups, the controversial anti-terrorism framework has given in its wake wide-ranging powers to law enforcement personnel who can treat suspects in extra-judicial ways without any system of their accountability. The provision to complete a trial within seven days, for instance, can make the interrogating officers prone to using coercive measures against suspects and falsify evidence. In December 2009, a Peshawar High Court lawyer, Ghulam Nabi, challenged the Anti-Terrorism (Amendment) Ordinance 2009 promulgated by President Asif Ali Zardari by invoking Article 199 of the Constitution and emphasized that the amendment was a clear encroachment of basic human rights.

Also, because the judges of these courts are accountable to the Executive, human rights activists see these courts as lacking independence. Since 1997, the ATA (1997) has been seen as being used by Presidents (the governments) for political victimization of their political rivals. Until the 2008 election of a democratic

government, most ATCs had been issuing convictions on the instructions of the authorities rather than on the basis of fair and transparent trials. One such example is that of the sentencing of Prime Minister Nawaz Sharif to life imprisonment in April 2000 under the government of then Chief Executive Musharraf who accused him of having conspired to hijack flight PK-805. To make the accusations legitimate, President Musharraf had just recently introduced amendments to ATA (1997) in December 1999 that would favor the conviction of Nawaz Sharif under the stated charges.

However, in cases of real serious terrorism such as sectarian violence and targeted killing threatening the lives of civilians, there does not seem to be sufficient commitment on the part of the government to ensure their capture and prosecute them quickly. Shahid Hamid, a Supreme Court advocate and former governor of Punjab, in a roundtable conference at PILDAT, said that ATCs' rate of issuing convictions in cases of serious terrorism is far lower than the rate of convictions issued by regular courts in Pakistan for ordinary murder. According to former ISI DG Ahmed Shuja Pasha, there has hardly been any coordination between intelligence services in Pakistan such as the Military Intelligence, Naval Intelligence, Air Force Intelligence, Intelligence Bureau, Criminal Investigation Department and the Special Branch for sharing information on terrorism-related cases. All these reasons point out the lack of political will of the Executive as it is the Executive that is answerable..

Death Penalty – To hang or not to hang?

Pakistan presently maintains a moratorium on executions. This means even terror convicts cannot be executed. And this represents a dilemma, faced by the federal government in summer 2013 when human rights' activists appealed to the government of Pakistan not to resume the death penalty after a five-year moratorium on it expired in June 2013. In a joint letter issued to then President of Pakistan, Asif Ali Zardari and Prime Minister Nawaz Sharif, Human Rights Watch and the International Commission of Jurists stated that if Pakistan resumed executions for terrorists and criminals, it would be going in “opposition of the global and regional movement [which favors] the abolition of the death penalty”. The letter stated that terrorists should be prosecuted in “competent, independent and impartial courts”, which are in accordance with the international due process standards. Former President Zardari had asked Prime Minister Nawaz Sharif to halt all executions until he returns from his foreign trip and both have a meeting on the issue of whether to renew the moratorium or not.

The previous government had not been implementing the death penalty even for many of the terrorists and hardcore criminals, which experts saw as a basic reason for the rising terrorism and the boosting confidence of the banned organizations to continue militancy and terror. Although under section 7 of the Anti-Terrorism Act (1997), which is regarding the punishment for acts of terrorism, it says, “whoever commits an act of terrorism under Section 6, whereby (a) death of any person is caused, shall be punishable, on conviction, with death or with imprisonment for life, and with fine.” Despite this provision, death penalty for convicted terrorists in Pakistan has not been implemented since a decade.

A target killer by the name Saulat Mirza was convicted of having committed acts of terrorism described under section 6 of the ATA (1997) shortly after he committed 58 murders in Karachi in 2004. He has still not received his death penalty in the last 7 years, which is a violation of the anti-terrorism laws of Pakistan. The letter also said that not resuming the death penalty for Pakistan would be alarming seeing that there are over 7,000 people on the death row here including some very dangerous terrorists. Moreover, ATA (1997) proposes that death penalty only be given to a terrorist once he has been convicted. The US drone strikes claiming the lives of hundreds of people in Pakistan's restive tribal areas, on the contrary, do not even wait for prosecution, which is a bigger human rights issue that the government should review.

The Pakistani Taliban have also threatened to kill Prime Minister Nawaz Sharif and Chief Minister of Punjab Shahbaz Sharif in case the new born government resumes the death penalty. This is extremely worrying for Pakistan as the Pakistani Taliban have become powerful enough to successfully conduct jail-breaks and release top militants of al Qaeda and thus life imprisonment would not be an effective penalty for the powerful terrorists. With no death penalty, the terrorists would never get discouraged from continuing to work on their destructive agenda. The recent jail-breaks in Pakistan, the formation of Ansar-al-Aseer to free jihadi prisoners in January 2013 and the easy proliferation of mobile phones with the help of the corrupt prison officials in Pakistan's prison systems show that curtailing terrorism in Pakistan has definitely become an intractable challenge for the new government. Seeing that terrorism is on the rise in Karachi, Khyber Pakhtunkhwa, Balochistan and other parts of the country, not resuming the death penalty for terrorists, despite the provisions regarding it in the ATA (1997), will be seen as a major weakness of the new government that already has soft policies towards terrorism.

Section C: Overcoming the Loopholes in the Existing Anti-Terrorism Legal Framework

Today the threat of terrorism Pakistan faces is multi-dimensional and far different from the one faced in 1997, when the Anti-Terrorism Act 1997 was promulgated. Now, ideologically-driven transnational non-state actors have emerged as the biggest challenge to the very existence of the country. They question the writ of the state by inciting local population and build them into teams posing a more intractable challenge for Pakistan. The conventional anti-terrorism legal framework has clearly failed to counter these new threats. They demand creative legal strategies to prevent de-radicalize and prosecute. Some pragmatic legal steps have though just recently been achieved.

The Anti-Terror Act 2013 (Amended), the Pakistan Protection Ordinance 2013, preceded by the Investigation for Fair Trial Act 2012, for example, underscore necessary and long over-due legislative measures required for a comprehensive counter-terrorism strategy. The legislation authorizes security agencies to collect evidence regarding terrorists by tapping people's phone calls, SMS, emails and all private communications. Laws for legitimate surveillance as a means to detect suspicious activities in people's private communications forewarning the imminent execution of a terrorist attack have been conceived by India, UK and USA long ago as part of their solutions in countering terrorism. In November 2012, Lord Alex Carlyle, a British expert on counter-terrorism, in a conference on counter-terrorism at PILDAT, stated the reason for the high conviction rate of terrorism cases in UK as being a result of state prosecutors building their cases on the basis of credible forensic evidence, i.e., by tracing cell-phones of the terror suspects to track their movement. In these countries, the threat of terrorism is not even as grave as in Pakistan where such laws have only recently been put in place.

According to Ahmer Bilal Soofi, a positive development in the Fair Trial Act is that it will discipline the intelligence agencies. There is a difference between intelligence gathering and evidence gathering. This law prevents intelligence agencies from arbitrarily arresting suspects on the basis of whims and then making them disappear. The idea is to prevent an act of terror from happening. In the traditional law, it would only be after a terrorist had detonated a bomb that an FIR would be registered and the state would take an action to capture suspects. In the wake of such explosions, there would be a need to find witnesses who would describe the suspects that had detonated or helped detonate the bomb. Internationally, reliance on witnesses has decreased. The Fair Trial Act allows reliance on covert surveillance and intelligence after obtaining a warrant for collecting evidence against a suspect

for which there is no need to find witnesses to appear in court.¹⁸⁶

Legislation for Improvised Explosive Devices

An important aspect of counter-terrorism strategy is also preventing the making of Improvised Explosive Devices (IEDs) from chemicals. For this, the Fair Trial Act will be very useful in preventing miscreants or terrorists from making dual usage of chemicals for making IEDs or from attempting to transport them for the same purpose. Mr. Soofi stated that a lot of work is being done to bring new chemicals that are used in IEDs into the legislative fold. These chemicals will be reported as cognizable issues under an Explosive Act that will soon be coming up. In case of chemical weapons, Pakistan has already taken legal steps in the form of the Chemical Weapons Convention Implementation Ordinance 2000, which, in pursuance with the United Nations Security Council Resolution 1540, prohibits the development, production, transport, transfer or use of chemical weapons.¹⁸⁸

Drone Strikes as an Anti-Terrorism Strategy

When asked about US drones attacks as a counter-terrorism technique, Ahmer Bilal Soofi, a Supreme Court Lawyer and former caretaker Law Minister, stated that there are two approaches to countering terrorism; the war approach and the law enforcement approach. The use of drone strikes to target suspected terrorists by the United States in Pakistan is the war approach. Invoking Article 245 of the Constitution to call in the Armed Forces in aid of civil power in the tribal areas of Pakistan is the law enforcement approach, where suspects can be arrested, investigated and tried in a court of law. Using the law enforcement approach is always better than the war approach as serious issues of international law and politics can arise from intervening in another country using violent measures.¹⁹⁰

Surely, the legal arguments presented in a whitepaper issued by the US government and leaked on the NBC website claim to legitimize the use of drones against non-state Tehreek-e-Taliban terrorists in Pakistan's tribal areas posing a threat to the security of the US citizens. What was lacking on Pakistan's side was an assessment of their legal arguments and coming up with a counter legal narrative. Before the new government was elected in May 2013, the caretaker Law Ministry under Ahmer Bilal Soofi analyzed the US legal arguments given in the whitepaper in detail. The argument the US had made was that since there is an armed conflict between Tehreek-e-Taliban Pakistan, Al-Qaeda and the US government, the US has the right to follow these non-state actors wherever they go to target and destroy them. The

Pakistani caretaker law ministry, in its counter legal narrative, explained that the US argument completely violated the principle of nonintervention laid out in the United Nations Charter.¹⁹⁰

Moreover, speaking of the need for the US to interfere because these non-state actors in Pakistan are a threat to the US security, Mr. Soofi stated that they are posing a much more serious threat to the state of Pakistan. Their networks have spread their roots on the Pakistani soil and hence it is a bigger cause of concern for Pakistan. In all legitimacy, it is Pakistan's prerogative if it chooses military action or opts for negotiations. The excuse of threat for US security does not permit the US or any third state, under the international law, to have the right to cross the Durand Line and carry out manned and unmanned intervention in Pakistan. The counter legal narrative prepared by the caretaker law ministry has been forwarded to the ministry of foreign affairs and the ministry of defense of the new government.¹⁹¹

In Pakistani law, assistance is not provided in a law enforcement operation in a third state unless political consent has been given in favor of it. The caretaker law ministry, during its term of two months, also looked into this matter. There was a submission made by the Federal Government to the Chief Justice of Peshawar High Court stating that the federal government had nothing on record with the United States that permitted the US to carry out drone strikes in Pakistan. It was very important that the Federal Government clarified its legal position on the matter before the Chief Justice who gave a very clear verdict against the carrying out of US drone strikes in Pakistan. A similar case is also pending in the Lahore High Court where the Chief Justice called on the government to submit an explanation for the ongoing drone strikes in Pakistan by March 7, 2013. No reply has been received in that case so far.¹⁹²

In an interview to the CNN in April 2013, former President Musharraf admitted that his government had indeed secretly signed off a deal with the US to conduct drone strikes targeting suspected terrorists in Pakistan. It was not just former President Musharraf; the PPP government had also turned a blind eye to the issue during their administration. In a cable sent by then U.S Ambassador to Pakistan Anne Patterson in August 2008 and posted online by Wikileaks, Anne Patterson wrote about a meeting with the then interior minister Rehman Malik and Prime Minister Yousuf Raza Gilani in which she recalled a discussion over US drone strikes.¹⁹³

She wrote, "Malik suggested we hold off alleged Predator attacks until after the Bajaur operation. The PM brushed aside Rehman's remarks and said, 'I don't care if they do it as long as they get the right people. We'll protest in the National Assembly

and then ignore it.”¹⁹⁴

As for dealing with any matter, the legal stance is always the strongest one. The former caretaker law ministry's assessment of the US whitepaper has already pinpointed the legal loopholes in the US argument for carrying out drone strikes, which is a positive development. The counter legal analysis made by the former caretaker law ministry can be used in a diplomatic measure by the newly elected government to clarify Pakistan's legal position on the issue of drone strikes with the US and the global community at large. The newly elected Prime Minister Nawaz Sharif has also continuously emphasized that unlike the previous government his administration would not tolerate double standards on this matter. In a recent visit of the US Secretary of State John Kerry to Pakistan, Prime Minister Nawaz Sharif repeated his demand that the US stop its CIA-operated drone strikes in Pakistan. However, what was received in response from Kerry was more or less a non-committal reply. He said, “It's going to be very, very soon. I think it depends really on a number of factors, and we're working with your government with respect to that.”¹⁹⁵

Nevertheless, seeing that there is nothing legally put in writing by the federal government allowing the US to freely conduct drone strikes in Pakistan, it is time Pakistan should take a clear political position on the matter as well. Additionally, contrary to the belief of a few groups of people who see drone strikes as an effective strategy to countering terrorism, it is an illegal and blatant use of force against terrorists, which causes more collateral damage than actually curbing the very elements of terrorism.¹⁹⁶

Developing a Larger Mechanism to prosecute the 700 detained Terrorist Suspects

As already discussed in detail above, there are over 700 internees in seven different internment centers in the areas where the military has been called in aid of civil power in terms of Article 245 by the federal government. The names of these internment centers are; sub-jail Malakand, sub-jails Fizaghat and Palthom in Swat, district jail Timergara (which is non-functional), district Jail Lakki Marwat, district jail Kohat and Frontier Corps forts in Chitral, Mirkhai, Drosh and Timergara (also non-functional). The prosecution of over 700 people is surely a big challenge for the new government. However, moving on from the conventional ATC system, Ahmer Bilal Soofi says, there is a need for a larger legal infrastructure to prosecute these 700 suspects. He stated that there should be at least 50 special judges appointed at the special Anti-Terrorism Courts, with 50 prosecutors and 50 investigative officers who

should be in charge of building up these cases. These investigative officers should develop proper “challans” and provide documentation to sustain the conviction of these terrorists.¹⁹⁶

Clearly, the prosecution of over 700 terrorists is quite an ambitious exercise. The army will feel greatly relieved once the government will call it back. However, it depends on the agenda and vision of the new government that how it will go about it. These terrorists are a big threat to Pakistan and the international community. The federal government, being an entity, is duty bound to call in its Armed Forces for countering terrorism if it deems it as the best solution in its north-west tribal region. What is required of the new government is a legal mechanism to allow the prosecution of these detained terrorists while the Armed Forces continue their operations so that the increasing threat of transnational terrorists can simultaneously be curbed.¹⁹⁷

Concluding Remarks

Despite the presence of a parallel anti-terror judicial system since 1997, terrorism and an extremist mindset in Pakistan have grown to alarming levels. After reading the above historical narrative of its evolutionary journey to date, the following can be concluded about Pakistan's anti-terror legal regime.¹⁹⁸

First, the broad definition of “terrorism” in the Anti-Terrorism Act without any sufficient safeguards against abuse has led to the possibility of the misuse of the law. Secondly, the law has been ineffective in achieving its purpose i.e. to counter terrorism and punish terrorists. Thirdly, the events over the last decade show that Pakistan's inability in combatting terrorism is not so much due to the loopholes in its anti-terror laws but mostly due to the lack of political will on the part of the successive governments to actually end terrorism in the country. It is for this reason it was selectively used and not equally and fully implemented with regard to every terrorism incident with transparency and vigor.¹⁹⁹

Fourthly, the continuous low rate of issuing convictions, frequent acquittals and faulty or mostly stagnant prosecution by ATC judges can be largely attributed to the lack of witnesses and judges' protection as well as the many shortcomings in Pakistan's prison and police systems that the state should really reform now.²⁰¹

Fifthly, the soft policies of the current government towards terrorists have not alleviated the terrorist activity in the country but rather spawned it as evident in the recent D.I Khan jail-break and the persistent occurrence of terror in Balochistan. 202

Sixth, despite the provision in ATA (1997) to execute convicted terrorists, the previous PPP government's imposed moratorium on death penalty was not only a violation of the anti-terrorism laws of Pakistan but it heightened the morale of the terrorists. With the introduction of Ansar-al-Aseer, an organization tasked to free jihadi prisoners, militant detainees will always be confident that they will be released from jail by their fellow militants.²⁰³

Finally, if the newly-elected government is really earnest in destroying the widespread networks of Pakistani terrorists, a long-term anti-terrorism strategy – backed by a comprehensive legal framework - would have to include a redefined and energetic focus on improving the quality of education that can trigger critical thinking.²⁰²

Such a strategy will target all those who have little or no access to state-sponsored education. This could help in dissuading the poor from looking at for free food, boarding/lodging that religious seminaries often offer as an incentive. These seminaries propagate their own narratives, embedded in medieval content which hardly induces critical thinking and is devoid of innovative elements altogether. As a consequence, they essentially foster an exclusive tunnel vision that can easily translate into militancy and extremism.²⁰¹

Any long-term anti-terrorism strategy would have to factor in the need for expanding free and quality education. Radical socio-economical remedial measures are absolutely essential for the success of any anti-terrorism laws or counter-radicalization tools by the government or the civil society at large, and the first major step to neutralize and eliminate such mindset will begin with a comprehensive counter-terrorism legal framework and its strict enforcement.²⁰⁰

“Extremely Useful Guide on Evolution of Anti-Terror Legislation”

Ahmer Bilal Soofi

Former Federal Law Minister &
Advocate Supreme Court of Pakistan



This booklet is one of the best published works that recaptures objectively without being opinionated, all the major milestones in legal strategy for counter terrorism. The work deserves to be highly publicized as it will prove to be extremely useful for media, analysts and even policymakers.

The author Ms Sitwat Waqar Bokhari has also reviewed the criminal justice system whose reform has to be an integral part of strategy for any counter terrorism campaign because gains made on the battle field must not be carelessly lost in courts. The author has correctly highlighted supporting mechanism such as witness protection and fast track procedures.

Above all, this work elegantly demonstrates that finding and implementing creative solutions to counter terrorism within the scheme of the Constitution is indeed a hallmark of good statecraft and leadership.

The Center deserves credit and kudos for commissioning such a work from a bright young scholar Ms Sitwat Waqar Bokhari. I hope the Center continues its constructive endeavors towards such issues.

Center for Research & Security Studies, Islamabad

House # 36-B, St # 30, Sector F-8/1, Islamabad.

Tel: 92-51-831 4801-03, Fax: 92-51-831 4804

E-mail: mail@crss.pk Web: www.crss.pk

Peshawar Office:

Flat # 306, 3rd Floor,
Badshah Tower, Bara Road,
Peshawar Cantt.

Tel: 091-5252311-12

Fax: 092-5252310

Quetta Office:

437/D Flat # 6,
Near Masjid Aqsa,
Samungli Housing Scheme,
Samungli Road Quetta
Tel: 081-2863590

Swat Office:

Shamal Building,
2nd Floor Haji Baba
Chowk, Mengora Swat
Tel: 09246-726862
Fax: 0946-726863