

## Combating Terrorism: Pakistan's Anti-Terrorism Legislation in the Post-9/11 Scenario

### Abstract

*The paper assesses the anti-terrorism legislation of Pakistan in the wake of the post-9/11 scenario with an argument that it has remained ineffective to curb the menace of terrorism by bringing the terrorists to justice. The paper also argues that the anti-terrorism legislation in Pakistan is not a new phenomenon. It has a long history of evolution according to the changing nature of the threat, faced by the country since its independence in August 1947. Various governments, since then, have crafted several legal frameworks to deal with the crimes that could not be tried under the regular judicial system of the country. However, the intense level of sectarian violence in Pakistan in the 1990s, compelled the government to promulgate Anti-Terrorism Act (ATA), with an aim to carry out speedy trials of the suspect terrorists. Being the cornerstone of Pakistan's anti-terrorism legal framework, the ATA 1997 mainly dealt with the threat of sectarian violence in the country. In the aftermath of the 9/11 incident, amid changing nature of the threat posed by the Al-Qaeda/Taliban-linked home-grown militant Jihadi and sectarian groups, Pakistan not only had to amend the anti-terrorism regime as devised under the ATA, but also to introduce new legislations to make the regime more stringent as per requirement of the regional and international obligations. The paper also identifies various drawbacks in the existing anti-terrorism laws of Pakistan, and emphasizes upon the need of their effective implementation.*

### 1. Introduction

Pakistan, since the 9/11 incident, has been facing an unprecedented threat of terrorism, which is mainly perpetrated by ideologically-driven terrorist groups with clear and unequivocal objectives of not only establishing control over the state apparatus, but also imposing their own interpreted Shariah all over the country. To achieve their goals, these groups target the state institutions, such as, the military installations, police stations, and the innocent civilians by using the improvised explosive devices, suicide bombings and other brutal means. In order to deal with such a grave threat of rising terrorism, Pakistan has, so far, adopted various counterterrorism measures, including the launching of military operations in the tribal areas of Federally Administered Tribal Areas (FATA)<sup>2</sup> and Provincially Administered Tribal Areas (PATA),<sup>3</sup> and the non-military means,

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<sup>2</sup> According to Article 246 of the 1973 Constitution of Pakistan the areas included in FATA are: Tribal areas adjoin the districts of Peshawar, Kohat, Bannu, LakkiMarwat, Dera Ismail Khan, Tank, and seven tribal agencies of Bajaur, Orakzai, Mohmand, Khyber, Kurram, North Waziristan and South Waziristan.

<sup>3</sup> Similarly, the PATA comprises the districts of Chitral, Dir and Swat (which includes Kalam), [Kohistan district], Malakand, the tribal area adjoining Mansehra district and the former state of

which include the introduction of anti-terrorism laws, which this paper mainly focuses on.

It must be noted that the anti-terrorism legislation in Pakistan is not a new phenomenon. Before the 9/11 incident, the anti-terrorism legislation in Pakistan was mainly aimed at either targeting the political opponents by the incumbent political party to counter “threats to the state”, or deal with the home-grown sectarian terrorism, which was at its peak in the 1990s. However, after the 9/11 incident, amid the growing terrorism, unleashed by Al-Qaeda, Taliban and the home-grown terrorist groups, various governments in Pakistan, since then, not only have amended the already existing legal frameworks dealing mainly with sectarian terrorism, but also introduced new legislations to make the anti-Terrorism regime more stringent.

In this regard, the paper is an attempt to analyze Pakistan’s anti-terrorism legislation and its drawbacks with an argument that the existing anti-terrorism laws in Pakistan have proved ineffective to curb the menace of terrorism in the country. The paper is divided into three parts. The first part deals with the anti-terrorism legislation in Pakistan before the 9/11 incident. The second part analyzes the anti-terrorism legislation in the post-9/11 scenario. And finally, the third part identifies various drawbacks in Pakistan’s anti-terrorism legislation.

## **2. Evolution of Pakistan’s anti-terrorism legislation**

Presently, Pakistan has been facing multi-dimensional threat of terrorism, which is far more different from the one which the country had been facing either before or during the 1990s. Before the 1990s, the main focus of the incumbent governments, as they envisaged, was to suppress anti-state political opponents by using the legal cover. During the 1990s, amid severe sectarian violence, the Pakistan Muslim League-Nawaz Group (PML-N) government promulgated the Anti-Terrorism Act (ATA) in August 1997 with the purpose of undertaking speedy trials of the suspect terrorists. However, today, the battle-hardened non-state actors, having links with international terrorist groups, have been waging an ideological war with the Pakistani State, thus, threatening the very existence of the country. In other words, these militant groups “have withdrawn or relinquished their loyalty to the State of Pakistan under Article 5 of the Constitution.”<sup>4</sup> In order to deal with this intractable challenge, Pakistan has both amended the previously existed anti-terrorism legal framework, such as, the 1997 ATA, as well as introduced several laws as per requirement of regional and international pressure in the post-9/11 scenario. The evolution of Pakistan’s anti-terrorism legislation can be divided into two phases: pre- and post-9/11.

### **2.1 Anti-Terrorism Legislation before 9/11**

Since the creation of Pakistan in August 1947, various governments have taken several legal initiatives to combat the perceived threat of “terrorism” as well as introduced “special legal measures to deal with certain criminal offences outside

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Amb; Zhob district, Loralai district (excluding Duki Tehsil), Dalbandis Tehsil of Chagai district, and Marri and Bugti areas.

<sup>4</sup>Ahmer Bilal Soofi, “Legal Solutions to Combat Terrorism in Pakistan”. Available at: <http://rsilpak.org/legal-solutions-to-combat-terrorism-in-pakistan/> (accessed: 22 October 2014).

the regular criminal justice regime [as] the regular criminal justice system was deemed incapable of delivering justice swiftly.”<sup>5</sup> These included: The Public and Representative Offices (Disqualification) Act (PRODA) 1949,<sup>6</sup> the Elected Bodies (Disqualification) Order (EBDO) August 1959,<sup>7</sup> Suppression of Terrorist Activities (Special Courts) Ordinance 1975,<sup>8</sup> and the ATA 1997, which has been considered as the cornerstone in anti-terrorism legislation of Pakistan.<sup>9</sup> However, this paper only deals with Pakistan’s anti-terrorism legislation, which it introduced during the 1990s and in the aftermath of the 9/11 incident.

The severe sectarian violence in Pakistan during the 1990s compelled the Nawaz Sharif government to take extra-ordinary measures not only to maintain the law and order situation in the country, but also to ensure speedy trials of the criminals, who could not be tried because of country’s erroneous judicial system.<sup>10</sup> As a result, the government introduced the Anti-Terrorism Act in 1997 in order to ensure prevention of terrorism, sectarian violence and the speedy trial of heinous offences.<sup>11</sup> Besides defining terrorism,<sup>12</sup> the Act also empowered the provincial governments to call military (Army, Navy and Air Force) and civilian armed forces (Frontier Constabulary, Frontier Corps, Rangers and Police) by requesting the federal government in order to prevent terrorist acts. (Section 4). For the speedy trials, the Act established ‘Special Anti-terrorist Courts’ (ATCs), to be headed by a session judge, or an additional session judge, district magistrate, deputy district magistrate, or an advocate with ten or more years of experience, appointed at the discretion of the government. (Section 13). Moreover, the ATA also required to conducting the trial of the offenses within seven days of the submission of the case to the court, which could not grant more than two

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<sup>5</sup> Shabana Fayyaz, “Responding to Terrorism: Pakistan’s Laws”, *Perspectives on Terrorism*, Vol. II, Issue 6 (March 2008), p. 10.

<sup>6</sup> Used as a political instrument, the Act allowed the Liaquat Ali Khan’s government to disqualify persons found guilty of misconduct.

<sup>7</sup> Promulgated by the Ayub regime, the Ordinance primarily targeted politicians of East Pakistan.

<sup>8</sup> The Ordinance was held in Sindh and the Punjab until its repeal in 1997 and remained a law in the North-West Frontier Province (NWFP) and Baluchistan until August 2001. [Charles H. Kennedy, “The creation and development of Pakistan’s Anti-terrorism regime, 1997-2002”, in Satu Limaye *et al* (eds), *Religious Radicalism and Security in South Asia* (Honolulu: Asia-Pacific Center for Security Studies, 2004), p. 387.

<sup>9</sup> See Anti Terrorism Act, 1997, Act No. XXVII of 1997, 20 August 1997. Available at: [https://www.unodc.org/tldb/pdf/Pakistan\\_Anti-terrorism\\_Act\\_1997.pdf](https://www.unodc.org/tldb/pdf/Pakistan_Anti-terrorism_Act_1997.pdf). (accessed: 25 October 2014).

<sup>10</sup> It was for the first time in the political history of Pakistan that the PML-N-led government adopted an anti-terrorism policy. Up until now, various governments formulated policies either to counter political opponents or to address ethno-national conflict. See Kennedy, “The creation and development of Pakistan’s Anti-terrorism regime, 1997-2002”, *op.cit.*, p. 388.

<sup>11</sup> See Anti Terrorism Act, 1997.

<sup>12</sup> The ATA 1997 defines terrorism as “Whoever, to strike terror in the people, or an any section of people, or to alienate any section of the people or to adversely affect harmony among different sections of the people, does any act or thing by using bombs, dynamite or other explosive or inflammable substance, or firearms, or other lethal weapons or poisons or noxious gases or chemical or other substances of a hazardous nature in such a manner as to cause the death of, or injury to, any person or persons, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community or display firearms, or threaten with the use of force public servants in order to prevent them from discharging their lawful duties commits a terrorist act.”

consecutive adjournments. (Section 19). The court had the special powers to try the criminal in absentia (Section 19), and the appeals could only be made in the government's created Special Anti-Terrorism Appellate Tribunals, whose decisions would be final and could not be challenged in any other court. (Section 31).

However, the Supreme Court's intervention, particularly in the famous 'Mehram Ali versus Federation of Pakistan' case,<sup>13</sup> brought some changes in the ATA. The Court declared that the ATCs would be subjected to the rules and procedures of the existing constitutionally established judicial system and follow the same or similar procedural rules as regular courts, including rules of evidence. Moreover, the Court also upheld the right of the appeal against the decisions of the special courts to the mandated regular courts, including High Courts and the Supreme Court.<sup>14</sup>

As a result of the Supreme Court's decision, the government had to amend the ATA. On 24 October 1998, the government issued 'Anti-Terrorism (Amendment) Ordinance 1998', which incorporated changes ordered by the Supreme Court in the Mehram Ali Case. Although the 'Anti-Terrorism (Amendment) Ordinance 1998' disbanded the Special Appellate Tribunals, it put in place the Special ATCs.<sup>15</sup>

However, the deteriorating law and order situation in Sindh, particularly Karachi, because of the ethnic violence and also the murder of Hakim Muhammad Saeed, former governor of Sindh, in October 1998, compelled the government to make further changes in the Anti-Terrorism laws. The government not only declared the state of emergency in Sindh and imposed Governor's rule under Article 232 of the Constitution in order to ensure peace, but also called in the Military to establish law and order situation in the province. In order to give a legal cover to the Military's powers, to be used in Karachi for ensuring peace, the government promulgated 'the Pakistan Armed Forces (Action in Aid of Civil Power) Ordinance 1998', on 20 November 1998. The Ordinance, which was restricted to only Sindh province, not only provided judicial powers to the Military, but also established military courts that could try civilians as well.<sup>16</sup> The Ordinance also outlined the definition of a 'new crime', known as the "Civil Commotion", which could be punishable for up to seven years of imprisonment. The term "Civil Commotion" was defined as:

Creation of civil commotion – 'Civil commotion' means creation of internal disturbances in violation of law or intended to violate law, commencement or continuation of illegal strikes, go-slows, lock-outs, vehicles snatching or lifting, damage to or destruction of State or private property, random firing to create panic, charging *bhatta [extortions]*, acts of criminal trespass (illegal *qabza*),

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<sup>13</sup> Mehram Ali, a member of the Shiite organization, Tehrik-e-Nifaz-e-Fiqh Ja'afria (TNJF), was accused of the killing of 23 people, including two Sipah-e-Sahaba Pakistan (SSP) leaders, in the Lahore High Court on 18 January 1997. Mehram Ali was caught, convicted and sentenced to death by the newly created ATC. For details see: Kennedy, "The Creation and Development of Pakistan's Anti-Terrorism Regime, 1997-2002", op.cit., pp. 388-392.

<sup>14</sup> Ibid., pp. 391-392.

<sup>15</sup> Ibid., p. 392.

<sup>16</sup> Ibid., p. 393.

distributing, publishing or pasting of a handbill or making graffiti or wall-chalking intended to create unrest or fear or create a threat to the security of law and order or to incite the commission of an offence punishable under Chapter VI of the Pakistan Penal Code (Act (XLV of 1860)).<sup>17</sup>

Amid strong opposition by the human rights groups to the Ordinance, which intended to grant unlimited powers to the government by using 'civil commutation' against its opponents, several petitions were filed in the Supreme Court against the validity of the Ordinance. The Supreme Court in its historic decision in the 'Liaquat Hussain versus Federation of Pakistan' case on 22 February 1999, repudiated the Ordinance by not only declaring the 'Pakistan Armed Forces (Acting in Aid of Civil Power) Ordinance 1998' unconstitutional, but also held that no civilians could be tried in military courts.<sup>18</sup> Although the government repealed the Ordinance on 27 April 1999, it included 'civil commotion' as a crime in the ATA through another Ordinance in August 1999. The Ordinance also allowed the establishment of ATCs all over Pakistan.<sup>19</sup> However, in the meantime, the Nawaz government was toppled up through a military coup by General Pervez Musharraf, then Chief of Army Staff, on 12 October 1999. General Musharraf inherited the same anti-terrorism regime from his predecessor. He introduced two amendments in the Anti-Terrorism Ordinance, 1999, on 2 December 1999. The first amendment extended the jurisdiction of courts, which included:

(1) Section 109 – abetment of offense; (2) Section 120 – concealing of a design to commit an offense; (3) Section 120 B – criminal conspiracy to commit a crime punishable by death or with the imprisonment greater than two years; (4) Section 121 – waging or attempting to wage war against Pakistan; (5) Section 121 A – conspiracy to commit certain offenses against the state; (6) Section 122 – collecting arms with the intent to wage war; (7) Section 123 – concealment with the intent to facilitate waging of war; (8) Section 365 – kidnapping ; (9) Section 402 – being one of the five or more persons assembled for the purpose of committing dacoity; (10) Section 402 B – conspiracy to commit hijacking.<sup>20</sup>

Similarly, under the second amendment, two special courts were established in Lahore High Court and Karachi High Court, which could also serve as Appellate Tribunals for ATC's decisions.<sup>21</sup> The Musharraf regime used these two amendments against the dismissed prime minister, Nawaz Sharif, who was in jail. On 6 April 2000, the Karachi ATC sentenced Sharif life imprisonment on two charges of hijacking and terrorism as he attempted to endanger the lives of aircraft passengers, including then Army Chief, Pervez Musharraf, by preventing the

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<sup>17</sup> See **Pakistan Anti-Terrorism (Amendment) Ordinance, 1999**. Available at: <https://www.unodc.org/tldb/showDocument.do?documentUId=2299&node=docs&cmd=add&country=PAK> (accessed: 25 October 2014).

<sup>18</sup> Quoted in Kennedy, "The Creation and Development of Pakistan's Anti-Terrorism Regime, 1997-2002", op.cit., pp. 394-395.

<sup>19</sup> Ibid., p. 396.

<sup>20</sup> Anti-Terrorism (Second Amendment) Ordinance, 1999 (2 December 1999). Ibid., pp. 398-399.

<sup>21</sup> Anti-Terrorism (Third Amendment) Ordinance, 1999 (2 December 1999). Ibid., p. 399.

aircraft from landing at the Karachi airport.<sup>22</sup> Later on, under a deal between the government and Sharif family, the latter left the country for Saudi Arabia in December 2000. The deal restricted Sharif from participating in Pakistani politics.<sup>23</sup>

Although the ATCs continued to function as regular courts under Musharraf, the deteriorating law and order situation compelled him to further amend the Anti-Terrorism regime. Therefore, on 15 August 2001, Musharraf issued Anti-Terrorism (Amendment) Ordinance, which empowered the government to ban any militant sectarian organization and freeze its assets if the former had the reason to believe that the latter was involved in terrorism. Under the Ordinance any organization could be designated as terrorist if it “(1) commits or participates in the act of terrorism; (2) prepares for terrorism; (3) promotes or encourages terrorism; (4) supports and assists any organization concerned with terrorism; (5) patronizes or assists in the incitement of hatred or contempt on religious, sectarian or ethnic lines that stir up disorder; (6) fails to expel from its ranks or ostracize those who commit acts of terrorism and presents them as heroic persons; or (7) is otherwise concerned with terrorism.”<sup>24</sup>

After enactment of the amended Act, the government not only banned Lashkar-e-Jhangvi (LeJ), a Deobandi militant group, and Sipah-e-Mohammad (SM), a Shia militant outfit, because of their involvement in sectarian violence in Pakistan, but also arrested hundreds of their members. Although the Musharraf regime had already started crackdown on the militant sectarian groups, the 9/11 incident provided an opportunity to the regime to easily comply with the international policies in the wake of the post-9/11 scenario, by amending the existing anti-terrorism laws in order to combat the Taliban/Al-Qaeda related terrorism within the country.

## **2.2 Anti-Terrorism Legislation in the post-9/11 scenario**

The post-9/11 international political scenario had a greater impact on the anti-terrorism legislation of Pakistan. Being a member state of the UN, it was obligatory upon Pakistan to ensure the implementation of the UN Resolutions, which were passed after the 9/11 attacks on the US. The Resolutions called upon states to work together in order ‘to prevent and suppress terrorism and its financing.’<sup>25</sup>

In essence, Pakistan adopted several measures, which included amendments in the existing anti-terrorism laws as per devised under the ATA of 1997, and also introduced several new laws and acts to effectively combat terrorism. As a first step, the government increased the number of ATCs in the country. By

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<sup>22</sup> “Life sentence for Nawaz Sharif”, *BBC News*, 6 April 2000. Available at: [http://news.bbc.co.uk/2/hi/south\\_asia/703536.stm](http://news.bbc.co.uk/2/hi/south_asia/703536.stm) (accessed: 24 October 2014).

<sup>23</sup> Quoted in Kennedy, “The Creation and Development of Pakistan’s Anti-Terrorism Regime, 1997-2002”, op.cit., p. 401.

<sup>24</sup> Quoted in Fayyaz, “Responding to Terrorism: Pakistan’s Anti-Terrorism Laws”, op.cit., p. 15. Also see: Anti-Terrorism (Amendment) Ordinance, 15 August, 2001.

<sup>25</sup> For details see UN Resolutions 1368 (passed on 12 September 2001) and 1373 (passed on 28 September 2001). Available at: [www.un.org/sc/ctc/resolutions.html](http://www.un.org/sc/ctc/resolutions.html) (accessed: 3 November 2014).

September/October 2001, the government established eleven new courts in the North-West Frontier Province (NWFP – now Khyber Pukhtunkhwa) and four in Sindh, thus, the total number of ATCs in the country increased to 41.<sup>26</sup> The government also promulgated the 'Anti-Terrorism (Amendment) Ordinance 2002' on 30 January 2002 with a 10-months mandate in order to speed up the pending trials. The Ordinance included the Military personnel, not below the rank of Lieutenant Colonel, as one of the three ATC members of the bench to ensure speedy trials. The Ordinance also called for targeting the entire terrorist network with severe punishment, including death penalty, to the people involved in aiding and abetting terrorism. Nevertheless, the Ordinance gave an appealing right to person found guilty.<sup>27</sup>

However, following severe criticism from various lawyers and human rights groups, particularly on the inclusion of the Military personnel as a member of the ATC, another amendment was made in the 'Anti-Terrorism (Amendment) Ordinance 2002' on 16 November 2002. Some new clauses were incorporated into the ATA, which dealt with the 'security of good behavior' to be met by the member of the proscribed group. The amendment gave more powers to the police to deal with terrorism by authorizing them to hold a suspect for up to 12 months without filing any criminal charges. The accused could only be released on presenting one or more sureties to prove his innocence; otherwise to be presented before the court within twenty-four hours.<sup>28</sup>

On 28 June 2002, the Musharraf regime introduced the 'Political Parties Order', which prohibited any political party from: (a) promoting sectarian, regional or provincial hatred or animosity (b) bearing a name as a militant group; and (c) imparting any military or paramilitary training to its members or other persons. (Section 3). The Order also contained a provision on the dissolution of the political party if it was 'foreign aided' or involved in 'terrorism'. (Section 15).

In order to further strengthen the anti-terrorism legal regime, the ATA 1997 was once again amended on 30 November 2004. Two new sub-sections, 4-A and 4-B were included in the Section 25 of the ATA 1997. These sub-sections gave right of the appeal to the victims or the legal heirs of the victim against the judgment of the ATC. The appeal could be filed in the High Court within thirty days of the ATC decision.<sup>29</sup> Similarly, on 11 January 2005, the Government of Pakistan enacted Anti-Terrorism (Second Amendment) Act 2004, which incorporated further modifications in the ATA 1997. According to it, the word '14-years' was replaced by 'imprisonment for life' as far as the maximum jail term

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<sup>26</sup> Fayyaz, "Responding to terrorism: Pakistan's Anti-Terrorism Laws", op.cit.

<sup>27</sup> "Army officers to be part of new ATCs: Law amended to expedite terrorism cases", *Dawn*, 1 February 2002.

<sup>28</sup> For details see: Anti-Terrorism (Amendment) Ordinance 2002' on 16 November 2002. Available at: <https://www.unodc.org/tldb/showDocument.do?documentUid=2300&node=docs&cmd=add&country=PAK> (accessed: 3 November 2014).

<sup>29</sup> Anti-terrorism (Amendment) Act, 2004, Gazette of Pakistan, Extraordinary, Part I, 30 November, 2004. Available at: <https://www.unodc.org/tldb/showDocument.do?documentUid=9929&node=docs&cmd=add&country=PAK> (accessed: 3 November 2014).

for the convicted militants was concerned.<sup>30</sup> In order to hear the appeals of the victims or heirs of the victim, the Act also called for establishing ‘Special Benches’ of High Courts, consisted of not less than two judges.<sup>31</sup> Under the Act, the terrorism-related cases could also be transferred from one province to another. The Act also enhanced the powers of the ATC to try offences related to the abduction or kidnapping for ransom as well as use of fire-arms or explosives by any device, including bomb blast, in a place of worship or court premises.<sup>32</sup> It also authorized the government to confiscate the passport of a person charged under the Act.<sup>33</sup>

In order to squeeze terrorist financing, the Government of Pakistan enacted anti-money laundering ordinances in September 2007 and March 2010. It must be noted that Pakistan is also the member of Financial Action Task Force (FATF).<sup>34</sup> Under the Section 5 of the Anti-Money Laundering Ordinance (AMLO) 2007, a powerful National Executive Committee was established with the task of formulating a strategy to fight money laundering, determining offences existed in Pakistan that might be considered to be predicate offenses, and make recommendations to the federal government for the effective implementation of the Ordinance. Under Section 6 of the Ordinance, Financial Monitoring Unit (FMU) was established with the mandate to receive and analyze Suspicious Transaction Reports, and to disseminate the information to concerned investigating and law enforcement agencies.<sup>35</sup> Under Section 21 of the Act, offences have been made non-cognizable and non-bailable.<sup>36</sup> The AMLO 2007 lost its legal authority in the wake of the 3<sup>rd</sup> November 2007 emergency, imposed by Musharraf. Consequently, the Parliament proclaimed a new Anti-Money Laundering Act (AMLA) in March 2010.<sup>37</sup>

The Swat and South Waziristan military operations in May and October 2009 respectively, caused a severe backlash from the Pakistani Taliban, who carried out attacks on Armed forces, civil armed forces and law enforcement agencies. The extra-ordinary security situation demanded more stringent laws to ensure severe punishment for the terrorists in order to deter terrorism. This required further amendments in the ATA 1997. On 1 October 2009, the government issued Anti-Terrorism (Amendment) Ordinance, which added new clauses to assist the framing of charges against the suspect militants. The Amendment permitted the ‘extra-judicial confession’ before the responsible investigative security personnel in the

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<sup>30</sup> Anti-terrorism (Second Amendment) Act, 2004, Gazette of Pakistan, Extraordinary, Part II, 11 January, 2005. Available at: [https://www.unodc.org/tldb/showDocument.do?documentUId=9928&q=anti-terrorism%20legislation%20in%20Pakistan&edit\\_btn=SEARCH](https://www.unodc.org/tldb/showDocument.do?documentUId=9928&q=anti-terrorism%20legislation%20in%20Pakistan&edit_btn=SEARCH) (accessed: 3 November 2014).

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Established in 1989, Financial Action Task Force (FATF) is an inter-governmental policy making body with a mandate to set international standards for combating money laundering and terrorist financing.

<sup>35</sup> Anti-Money Laundering Ordinance 2007, 30 September 2007. Available at: <http://www.sbp.org.pk/about/act/AML-Ordinance-2007.pdf> (accessed: 10 November 2014).

<sup>36</sup> Ibid.

<sup>37</sup> For details see Anti-Money Laundering Act No. VII of 2010, *The Gazette of Pakistan*, The Senate Secretariat (Islamabad), 27 March 2010. Available at: <http://www.sbp.org.pk/about/act/Anti-Act-2010.pdf> (accessed: 25 May 2013).

ATCs. Moreover, the remand period was extended from 30 to 90 days, and the burden of proof had been shifted to the accused.<sup>38</sup> The government, through a special presidential order, also extended the Ordinance to the PATA, and established new ATCs in Peshawar and the Malakand region.<sup>39</sup> Moreover, through the Amendment, the government also expanded the definition of 'terrorism' by including "attack on government premises, official installations, schools, hospitals and other public property."<sup>40</sup>

In the wake of the worsening security situation, the government promulgated '**the Regulations Action in Aid of Civil Powers – 2011**' for FATA and PATA which allowed a legal framework for the Military to conduct operations in KPK against militants.<sup>41</sup> The legislation not only empowered the armed forces to intern a suspect till the continuation of action in aid of the civil power, but also provided that a statement or deposition by any member of the armed forces, or any officer authorized on his behalf, shall be sufficient for convicting an accused. Moreover, the regulations also gave "a set of offences, punishable with death penalty or imprisonment for life or up to ten years along with fine and forfeiture of property."<sup>42</sup> Under section 14, an oversight board, comprising two civilians and two military officers, was established to review cases of each person interned within a period of time, not exceeding four months, from the issuance of the order of internment. The laws also allowed the authority to set up notified internment centers,<sup>43</sup> which were established near the Pak-Afghan border at Landi Kotal, Parachinar (Kurram Agency), in order to detain persons accused of terrorism.<sup>44</sup>

On 20 December 2012, Pakistan's National Assembly passed the "Investigation for Fair Trial Bill, 2012", which authorized the government to access 'data, information or material in any documented form...through audio visual device, CCTV, still photography, bugging, observation or any mode of modern devices or techniques obtained under the Act...documents, papers, pamphlets, booklets' for surveillance in cases related to terrorism. The government could also intercept 'emails, SMS, internet protocol detail record, call detail record and any form of computer based or cell phone based communication. It also included any means of communication using wired/ wireless/ internet protocol-based media/ gadgetry.'<sup>45</sup> The law could also provide legal framework to the

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<sup>38</sup> Khalid Khesghi, "Anti-terror ordinance may be extended to Malakand", *The News International*, 6 November 2009.

<sup>39</sup> Huma Yusuf, "Pakistan's Anti-Terrorism Courts", *CTC Sentinel*, Vol. 3, Issue 3, March 2010, p. 23.

<sup>40</sup> M. Zaidi, "Laws against terrorism", *Dawn*, 31 December 2012.

<sup>41</sup> "[FATA/PATA bill: President approves legal framework for army operation in Khyber Pukhtunkhwa](#)", *The Tribune*, 23 June 2011.

<sup>42</sup> "[New regulations give legal cover to detentions in tribal areas](#)", *Dawn*, 12 July 2011.

<sup>43</sup> *Ibid.*

<sup>44</sup> Nasir Iqbal, "Swat Taliban, Afghan govt nexus may give rise to terrorism, SC told", *Dawn*, 26 March 2013.

<sup>45</sup> "National Assembly passes controversial Fair Trial Bill", *The Nation*, 20 December 2012.

agencies to lawfully conduct the surveillance of an individual, who is likely to or suspected of engaging in preparations to conduct an act of crime or terror.<sup>46</sup>

**In the wake of the growing number of terrorist incidents and deteriorating security situation in the country,** Pakistan's Parliament, a few months before its dissolution after completing its five-year term, passed a series of amendments in the existing anti-terrorism legal framework. **Passed in March 2013, the Anti-Terrorism (Amendment) Bill 2013 aims to enable law enforcement agencies to take effective action against terrorism financing in Pakistan.**<sup>47</sup> **The Bill also empowers the government to confiscate property of any person involved in financing terrorism.**<sup>48</sup> **The Bill further extends the definition of terrorism through an amendment in Section 6, of the ATA 1997, according to which the threat of terrorism would now include, "intimidating and terrorizing the public, social sectors, business community and preparing or attacking the civilians, media persons, government officials, installations, security forces or law enforcement agencies."**<sup>49</sup> The Amendment also prohibits the issuance of passport, arms licenses and credit cards to the activists of banned outfits. Moreover, the new legislation also bars the leaders of the outlawed groups from travelling abroad.<sup>50</sup>

Similarly, on 8 March 2013, the out-going National Assembly passed a bill for the formation of a new independent body, National Counter-Terrorism Authority (NACTA).<sup>51</sup> The Senate passed the bill on 13 March 2013.<sup>52</sup> Headed by the Prime Minister, the Authority would comprise: Chief Ministers of all the provinces including Gilgit-Baltistan, the Prime Minister of Azad Jammu and Kashmir (AJK), the Minister for Law and Justice, one senator to be recommended by the Chairman Senate, one Member of National Assembly to be recommended by the Speaker National Assembly, the Secretary Ministry of Interior, the Director General Inter-Services Intelligence (ISI), the Director General Intelligence Bureau (IB), the Director General Military Intelligence (MI), the National Co-coordinator, the Director General Federal Investigation Agency (FIA) and the Inspector Generals of Police of all provinces, AJK and Gilgit-Baltistan.<sup>53</sup> Functions of the NACTA included: 'to receive and collate data/information/intelligence, and disseminate and coordinate between all relevant stakeholders to formulate threat

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<sup>46</sup> "Agencies get sweeping powers: National Assembly adopts Investigation for Fair Trial Bill", *The Business Recorder*, 21 December 2012.

<sup>47</sup> "Senate passes Anti-Terrorism Amendment bill", *Dawn.Com*, 5 March 2013. Available at: <http://beta.dawn.com/news/790462/senate-passes-anti-terrorism-amendment-bill> (accessed: 12 November 2014). Also see: *The Gazette of Pakistan Extraordinary*, Islamabad, 19 March 2013. Available at: [http://www.senate.gov.pk/uploads/documents/1364482779\\_599.pdf](http://www.senate.gov.pk/uploads/documents/1364482779_599.pdf) (accessed: 12 November 2014).

<sup>48</sup> *Ibid.*

<sup>49</sup> "Senate passes Anti-terrorism Second Amendment Bill 2013", *Pakistan Today*, 14 March 2013.

<sup>50</sup> "NA adopts Anti-Terrorism amendment bill 2013", *The News International* (web edition), 13 March 2013. Available at: <http://www.thenews.com.pk/article-92105-NA-adopts-Anti-Terrorism-amendment-bill-2013> (accessed: 12 November 2014).

<sup>51</sup> "NA passes bill to set up anti-terror authority", *Daily Times*, 9 March 2013.

<sup>52</sup> "Senate passes NACTA, Elections Laws Bills", *The Nation*, 14 March 2013.

<sup>53</sup> See National Counter-Terrorism Authority Act 2013. Available at: [http://www.senate.gov.pk/uploads/documents/1363071845\\_127.pdf](http://www.senate.gov.pk/uploads/documents/1363071845_127.pdf) (accessed: 15 November 2014).

assessments; to formulate comprehensive counter-terrorism and counter-extremism strategies; and to establish links with the international entities for facilitating cooperation in areas related to terrorism and extremism.’<sup>54</sup>

On 2 July 2014, the National Assembly passed the Protection of Pakistan Bill, which was previously promulgated as an ordinance by the President Mamnoon Hussain in October 2013. The Senate unanimously passed the Bill on 30 June 2014. The Bill aims to give law enforcement agencies more power to counter terrorism and with legal backing to increase conviction. The Bill designates a person an ‘enemy alien’ if his identity is not ascertained and is involved in waging of war or insurrection against Pakistan deprecation on its territory. An amendment to the Bill authorizes a law enforcement official, not below the grade 15, to shoot-on-sight a terror suspect, to search any premises and make non-bailable arrest, without any warrant, a person who has committed or is likely to commit a scheduled offence,<sup>55</sup> which is punishable with imprisonment for up to ten years. The Bill also empowers the law enforcement agencies to keep the suspect under ‘preventive detention’ for up to two months without presenting him before the court for trial. According to the Act, the preventive detention, would go into effect retrospectively, and allow the law-enforcement agencies and armed forces to arrest suspects and search houses without warrants.<sup>56</sup> An accused facing the charge of a scheduled offence would have the obligation to prove his innocence. An appeal against the final judgment of a special court shall lie to the High Court.<sup>57</sup>

In the wake of the ferocious terrorist attack on the Army Public School, Peshawar, on 16 December 2014,<sup>58</sup> the National Assembly and the Senate, on 6 January 2015, unanimously passed two Acts: the 21<sup>st</sup> Constitutional Amendment Bill and the Pakistan Army Act, 1952 (Amendment) Bill. The major aspect of these Acts is the establishment of the military courts to carry out speedy trials of the terrorists. These Acts would remain in force for two years from the date of their commencement.<sup>59</sup> It must be noted that the military courts were banned in

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<sup>54</sup> Ibid.

<sup>55</sup> Scheduled offences include: waging war or threatening the security of Pakistan; crimes against ethnic, religious and political groups or minorities, including offences based on discrimination, hatred, creed and race; use of arson, fire-bombs, suicide bombs, biological weapons, chemical weapons, nuclear arms, plastic explosives on public places, government premises, historical places, business concerns; killing, kidnapping, extortion, assault or attack of members of Parliament, judiciary, executive, media, and government employees, including the armed forces and law enforcement agencies, foreigners or internationally protected persons, welfare workers; attack on communication and interaction lines, energy facilities, aircrafts, airports, flight crew, gas or oil pipelines, national defense installations; cyber crimes; attack on mass transport systems, maritime navigation; hostage taking; and violence transcending national boundaries. (See: Protection of Pakistan Ordinance 2013, Gazette of Pakistan, Extraordinary, Part-I, 31 October 2013).

<sup>56</sup> Saba Imtiaz, “Analysis: Another repressive law”, *Dawn*, 3 July 2014.

<sup>57</sup> See Protection of Pakistan Ordinance 2013 (Amendment), Gazette of Pakistan, Extraordinary, Part-I, 22 January 2014. Available at: [http://www.na.gov.pk/uploads/documents/1391322775\\_795.pdf](http://www.na.gov.pk/uploads/documents/1391322775_795.pdf). (accessed: 15 November 2014).

<sup>58</sup> In the Peshawar carnage, more than 150 people, including 130 children, lost their lives.

<sup>59</sup> “Parliament approves military courts to try terrorists”, *The News International*, 7 January 2015.

Pakistan by the Supreme Court in February 1999. Moreover, as a result of the Peshawar incident, the government also abolished the moratorium on the execution of the death penalty in terrorism-related cases.<sup>60</sup> In the case of banning the terrorist groups, various Pakistani governments since 9/11 have outlawed 45 militant organizations in different phases. To begin with, the Musharraf regime banned LeJ and SM in August 2001. Amid regional and international pressure in the wake of the attack on the Indian Parliament on 13 December 2001, the Musharraf regime banned Jaish-e-Mohammad (JeM), Lashkar-e-Taiba (LeT), Sipah-e-Sahaba Pakistan (SSP), Tehrik-e-Ja'afaria Pakistan (TJP), Tehrik-e-Nifaz-e-Shariah Mohammadi (TNSM) and Tehrik-e-Islami on 14 January 2002. Al-Qaeda was outlawed on 17 March 2003, followed by Millat-i-Islamia Pakistan (former SSP), Khuddam-ul-Islam (former JeM) and Islami Tehrik-e-Pakistan (former TJP) on 15 November 2003. In 2008, when the country witnessed a surge in violence in tribal areas, the Pakistan Peoples' Party (PPP) government banned Lashkar-e-Islami, Ansar-ul-Islam, Haji Namdar Group and the Tehrik-e-Taliban Pakistan (TTP). In 2012, the government banned Ahl-e-Sunnat Wal-Jama'at (former SSP).<sup>61</sup> Recently, amid the terrorist attack on the Army Public School in Peshawar, the government was compelled to take stern action against the terrorist groups without making a distinction between 'good Taliban' and 'bad Taliban'. In this regard, the government has banned Jama'at-ud-Dawa (JuD – former LeT) and the Haqqani network.<sup>62</sup> Moreover, other groups which added to the list of the proscribed organizations are: Harkat-ul-Jihad Islami, Harkat-ul-Mujahideen, Falah-i-Insaniat Foundation, Ummah Tameer-i-Nau, Haji Khairullah Hajji Sattar Money Exchange, Rahat Limited, Roshan Money Exchange, Al Akhtar Trust, Al-Rashid Trust.<sup>63</sup>

Although Pakistan is well-equipped with the anti-terrorism laws, the scourge of terrorism has not been curbed. The country has been witnessing a continuous wave of terrorism, carried out by the TTP and its associated outfits. Following section addresses the drawbacks in Pakistan's anti-terrorism legislation:

### 3. Drawbacks in Anti-Terrorism legislation

The pre- and post-9/11 anti-terror legal regime of Pakistan illustrates that the anti-terrorism legislation has been continuously revisited by various governments in order to effectively counter the danger of terrorism. However, it is because of numerous drawbacks in the existing anti-terrorism laws that a complete elimination of terrorism in Pakistan has remained as tenuous as ever. These drawbacks can be divided into four broader categories: legal and constitutional flaws; security-related drawbacks; human rights violation; and institutional flaws.

#### 3.1. Legal and constitutional loopholes

There are several legal and constitutional flaws in Pakistan's anti-terrorism laws. It is because of these shortcomings that the anti-terrorism legislation has

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<sup>60</sup> "Ban on death penalty on terror cases lifted", *The News International*, 18 December 2014.

<sup>61</sup> "45 organizations banned in 11 years", *Dawn*, 10 September 2012.

<sup>62</sup> "Haqqani network and JuD banned", *Dawn*, 22 January 2015.

<sup>63</sup> *Ibid.*

remained less effective to convict the individual terrorist or the group. Some of the legal and constitutional flaws have been discussed below:

**a. Broad definition of terrorism:** The major shortcoming in Pakistan's anti-terrorism legal framework is the broad definition of 'terrorism' in the ATA. The continuous amendments in the ATA have expanded the array of criminal activities, such as, kidnapping for ransom, gang rape, arms trafficking, attack on government buildings, hospitals, schools, and media persons. Such crimes could, otherwise, be dealt with the Pakistan Penal Code (PPC) and tried in the regular courts. Consequently, not only has the burden of ATCs further increased and caused the backlog of pending cases, but also slowed the process of the prosecution of high-profile terrorists, and, thus, affected the very spirit of the ATA. According to [Ahmer Bilal Soofi, an expert in International Law and former caretaker law minister](#), the generalized language of the definition of terrorism in the ATA has "allowed openings to an ordinary station house officer or investigating officer to indict criminals committing ordinary offences under the ATA."<sup>64</sup> According to him, this is also "the cause of corruption at the level of investigation. Complainants in ordinary crime cases [would] start bribing police officers to include ATA offences in the FIRs [First Information Reports], leading to a large number of prosecutions under the ATA that [would] burden the anti-terrorism courts beyond their capacity. In that process, prosecutions of some high-profile cases [would] also suffer."<sup>65</sup>

**b. Application of anti-terrorism legislation on FATA:** Another shortcoming of the anti-terrorism laws of Pakistan is that they do not legally apply to the terrorists/militants, who hail from FATA, even if they are arrested from the settled parts of the country. In such a case, they have to be then transported to their respective agency, where they could be tried under the Frontier Crimes Regulation (FCR).<sup>66</sup> However, the militants could be tried under the ATA if they are arrested during the military operations, which have been conducted under Article 245 of the constitution that calls for the Military in 'Action in Aid and Civil Power.' It means that a detained militant from these areas could be tried under the ATA. But, for this, the arrested militant needs to be transferred from the crime scene and handed over to the Police for investigation. This leads to another problem. Since the suspect militant was not captured by the Police, which have neither prepared the challan (a traditional recovery memo), nor visited the scene of crime, but has to heavily rely upon the 'evidence', provided by the Military personnel, who arrested him. This weakens the case when the state prosecutor files the challan in the court against the arrested militant. Such a weakness in the case could easily be exploited by a defence lawyer. Consequently, the suspect militant could get away easily without being convicted or get bailed out before the conclusion of the trial.

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<sup>64</sup> [Ahmer Bilal Soofi, "Case for a new ATA", Dawn, 3 December, 2013.](#)

<sup>65</sup> Ibid.

<sup>66</sup> The FCR is a distinctive array of laws, designed by the British in 1848, to handle the FATA affairs. The FCR is built upon the notion of 'collective responsibility' doctrine, according to which the responsibility of the crime is bestowed upon the entire tribe. The Government of Pakistan holds its writ on the tribal agencies through political agents.

### 3.2. Security-related drawbacks

The anti-terrorism legislation is also silent on ensuring security of the witnesses, judges and the state prosecutors. There are various cases where witnesses have not appeared before the court at the time of trials of terrorists because of the security threat. As a result, terrorists have either been acquitted or their trials have been delayed on the basis of lack of evidence. This also undermines one of the major objectives of the anti-terrorism legislation, i.e., to ensure speedy trials of the terrorists and bring them to justice. An important case to mention is the brutal murder of Wali Khan Babar, a GEO TV reporter, in January 2011. During the course of court proceedings, six eye witnesses and one prosecutor, Naimat Randhawa, were killed until the Sindh government shifted the case from Karachi High Court to the ATC Shikarpur, along with the suspects and witnesses, in November 2013. In March 2014, the ATC convicted four persons and sentenced them to life imprisonment, while the two were awarded death sentences in absentia.<sup>67</sup> Similarly, the police officer, who killed one LeJ terrorist leader, Riaz Basra, cut a deal with the government and settled abroad after he had done the job. Moreover, the anti-terror court judge who convicted Malik Ishaq, Chief of LeJ, fled the country like the one who sentenced Salmaan Taseer's murderer, Mumtaz Qadri, to death.<sup>68</sup>

Moreover, fearing the severe backlash from the militant groups, the government itself has been reluctant to carry out the death sentence of the convicts as per orders of the ATCs. An example of this is the warning issued by the Punjabi Taliban in August 2013 to the PML-N government if the latter executed the former's colleagues, which were on the death row.<sup>69</sup> However, since government's lifting of moratorium on death penalty after the Peshawar incident in December 2014, sixteen terrorist have been hanged.<sup>70</sup>

### 3.3. The issue of Human Rights violation

The anti-terrorism laws in Pakistan have also been subjected to criticism of the human rights violation. Following are some loopholes related to human rights violation in Pakistan's anti-terrorism laws:

**a. Violation of 'innocent until proven guilty' right:** According to human rights advocates, the anti-terrorism laws of Pakistan violate the suspect's universal right of 'innocent until proven guilty.' For instance, under a 2009 amendment to the ATA, the suspect has to prove his/her innocence before the court. Failing to do so, would declare him/her guilty and would make him/her liable to be tried under the ATA legislations. Keeping in view the faulty investigation process and the corruption in the Police that still relies on 'eyewitness accounts' for evidence, one may not rule out abuse of the law, thus, increase the chances of victimization of

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<sup>67</sup> "Two awarded death, four life terms", *The News International*, 2 March 2014.

<sup>68</sup> Ayesha Siddiq, "[Countering terrorism](#)", *The Express Tribune*, 31 July 2013

<sup>69</sup> "Punjabi Taliban warn of reprisal if PML-N govt hangs militants," *Dawn*, 13 August 2013.

<sup>70</sup> "Pakistan hangs seven to show determination to fight terrorism", *The Washington Post*, 13 January 2015. Available at: [http://www.washingtonpost.com/world/pakistan-hangs-seven-to-show-determination-to-fight-terrorism/2015/01/13/61a71066-9b13-11e4-bcfb-059ec7a93ddc\\_story.html](http://www.washingtonpost.com/world/pakistan-hangs-seven-to-show-determination-to-fight-terrorism/2015/01/13/61a71066-9b13-11e4-bcfb-059ec7a93ddc_story.html) (accessed on: 20 January 2015).

the suspect at an alarming level. Moreover, the 'eyewitness accounts' as evidence are next to impossible to collect in cases related to terrorism.

**b. Extra-judicial confession:** According to human rights groups, the 'extra-judicial confessions' clause in the 2009 amendment to the ATA is mainly an evidence of allowing the investigators to torture suspects. The clause treats extra-judicial confessions recorded by security personnel as evidence in the ATCs. The clause, as a result, also gives wide-ranging powers to security agencies to treat the suspect by using extra-judicial means without being held accountable. Moreover, the provision related to putting time limits on completing the trial within seven days, compel the investigating officials to falsifying evidence and using coercive methods with suspects.<sup>71</sup> Moreover, the major criticism is that these laws have been misused by the Police and security agencies to keep the suspect in illegal detention without producing him/her before the court of law.

**c. Political victimization:** Since Pakistan's regular judicial system had failed to provide 'timely and inexpensive justice', the 1997 ATA created ATCs. However, the ATCs have remained vulnerable to political influence, thus, violating the basic human rights, as one could see in the case of Sardar Akhter Mengal, former chief minister of Baluchistan and President of the Baluchistan National Party (BNP). In June 2006, the ATC-V of Karachi declared him a "proclaimed offender" for taking some Army personnel hostage.<sup>72</sup> He was arrested in September 2006, and was kept illegally detained until his release in May 2008 by the newly elected provincial government of the PPP by withdrawing the case under Section 494 of the Criminal Procedure Code.<sup>73</sup> Similarly, Nawaz Sharif himself became the victim of his own devised ATA. After Sharif's removal from power, a case was registered, in November 1999, against him in the Karachi ATC for hijacking a PIA (Pakistan International Airlines) flight, which was carrying then Chief of Army Staff (COAS) General Musharraf and hundreds of other passengers from Colombo to Karachi on 12 October 1999. The ATC convicted Sharif and sentenced him to life imprisonment in April 2000. One could conjecture that had the case been brought to the regular court of Pakistan, the result might have been different. According to Charles Kennedy, "The thread of evidence linking Nawaz Sharif to the 'hijacking' was weak, at best."<sup>74</sup>

Moreover, the human rights activists also view that these ATCs lack independence because, according to them, the judges of these courts are accountable to the Executive, and since its promulgation in 1997, the ATA has been used by Presidents (the governments) for political victimization of their

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<sup>71</sup> Yusuf, "Pakistan's Anti-Terrorism Courts", op.cit., pp. 24-25.

<sup>72</sup> The prosecution accused Sardar Akhtar Mengal of kidnapping two Military Intelligence personnel with the help of his security guards on 5 April 2006, and held them hostage in his house, located in Defence Housing Authority (DHA), Karachi, with the intention of killing them. The Military personnel were released after a siege of Mr. Mengal's house by law enforcement agencies.

<sup>73</sup> "Mengal freed; worried about missing workers", *Dawn*, 10 May 2008.

<sup>74</sup> Kennedy, "The Creation and Development of Pakistan's Anti-Terrorism Regime, 1997-2002", op.cit., p. 400.

political rivals.<sup>75</sup> Quoted by Huma Yusuf, according to Justice Syed Hasan Shah Bokhari, a Judge of Karachi's ATC-I, "Until a democratic government was elected in February 2008, most ATCs were issuing convictions on the authorities' instructions, rather than on the basis of transparent trials."<sup>76</sup>

**d. Shoot-on-sight powers:** The Pakistan Protection Act gives the Police the powers of shooting-on-sight. The clause has increased the fears of its misuse by giving the Police a legal license to kill the suspects, particularly in extra-judicial encounters. According to I.A. Rehman, an eminent human rights activist and the director of the Human Rights Commission of Pakistan (HRCP), the power given to the Police officer of a BS-15 rank "is not of the officer's grade, but whether they can shoot people without a second opinion."<sup>77</sup> The Police in Pakistan have a notorious record of 'extra-judicial' killings in encounters. The Act would only give a legal cover to such killings. Surprisingly, there has been no condition, such as of the grade or rank, attached to army soldiers, Rangers, Frontier Constabulary, and Coast Guards for the use of force against the suspect militant.

### 3.4. Institutional flaws

Following are the institutional flaws in the anti-terrorism laws of Pakistan:

**a. Resurfacing of banned terrorist organizations:** The major institutional flaw in the anti-terrorism legislation is the lack of any effective mechanism to ensure the efficacy of the ban on the outlawed militant Jihadi and extremist groups, which not only have resurfaced with new names, but also "found innovative ways to survive and flourish." The banned LeT resurfaced with the new name of the JuD. It has portrayed itself as a welfare organization by establishing model schools madrassahs, health centers and hospitals, and continues to receive donations and funds through various sources, such as the hawala channel and Forex Exchange, thus making government measures less effective. Similarly, the SSP, after its banning in 2002 re-emerged with the new name of the Millat-i-Islamia Pakistan, which was again banned in 2003. However, the group once again reappeared as the Ahl-e-Sunnat Wal-Jama'at, but again outlawed in 2012.

**b. Shortage of funds for ATCs:** The shortage of funds and staff has largely affected the working conditions of the ATCs. Since the ATCs function as a parallel system to the regular courts, "the state prosecutors employed by the ATCs cannot even utilize the scant resources available to the regular session courts."<sup>78</sup> This has also increased the workload of the ATCs, and, thus, have consequently attributed to the delay in the trials of suspected terrorists. Presently, there are more than 17,000 cases under trial in Pakistan's ATCs. According to the Supreme Court, as many as 85 percent of those cases are not terrorism-related.<sup>79</sup> This further underlines the inefficacy of the anti-terrorism regime, under which a

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<sup>75</sup> Sitwat Waqar Bokhari, "Pakistan's Challenges in Anti-Terrorism Legislation", *Center for Research and Security Studies* (October 2013), pp. 40-41.

<sup>76</sup> Yusuf, "Pakistan's Anti-Terrorism Courts", op.cit., p. 24.

<sup>77</sup> Imtiaz, "Analysis: Another repressive law", op.cit.

<sup>78</sup> Yusuf, "Pakistan's Anti-Terrorism Courts", op.cit.

<sup>79</sup> "Army courts to try Pakistan terror suspects", *Daily Times*, 12 January 2015.

suspect terrorist cannot be legally detained for more than two months, and thus, they are released.

**c. Lack of coordination:** Another major institutional shortcoming in the anti-terrorism legislation is the lack of coordination on sharing of information among the leading intelligence agencies of the country. According to Ahmed Shuja Pasha, former ISI Director General, "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."<sup>80</sup>

**d. Weak Policing System:** The weak police system of Pakistan is also one of the contributing factors to the inefficacy of the anti-terrorism laws to prosecute the terrorists. According to Sitwat Waqar Bokhari, "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."<sup>81</sup> In Legal terms, a trial in the court could only be commenced after the preparation of the challan, which is the sole responsibility of the Police. According to Ms. Bokhari, it is "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."<sup>82</sup> This also hampers the very spirit of the ATA, which calls for expediting the trial by disposing of the case within seven days.

#### **4. Conclusion**

Pakistan has a long history of anti-terrorism legislation, which began as a national venture before the 1990s in order to deal with the sectarian violence and political opponents, to the fulfillment of bilateral and international obligations after the 9/11 incident in order to deal with the scourge of terrorism, perpetrated by the home-grown militant Jihadi and sectarian groups that have close links with Al-Qaeda and Taliban. Although Pakistan's anti-terrorism laws (since 1997) are a "bold departure from the normal legal system,"<sup>83</sup> and also are "an essential component of a multi-dimensional strategy toward the ever changing phenomenon of terrorism,"<sup>84</sup> particularly in the post-9/11 scenario, they have proved relatively less effective to prevent incidents of terrorism, which have been persistently occurring in the country.

Notably, the objective of Pakistan's anti-terrorism legislations is to deter terrorism by providing an effective and quick delivery of justice through ATCs. However, such an objective has yet to be achieved. It is essentially because of the broader definition of "terrorism" in the ATA that has overburdened the already under-staffed and financially-crunched ATCs. Moreover, the rampant corruption

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<sup>80</sup> Ibid., p. 41.

<sup>81</sup> Ibid., p. 32.

<sup>82</sup> Ibid.

<sup>83</sup> Kennedy, "The Creation and Development of Pakistan's Anti-Terrorism Regime, 1997-2002", op.cit., p. 390.

<sup>84</sup> Fayyaz, "Responding to Terrorism: Pakistan's Laws", op.cit., p. 17.

in the Police, faulty investigation and prosecution processes, and the lack of any mechanism to ensure the protection of the witnesses, judges and prosecutors, have caused the high rate of acquittals, and thus, further enhanced the inefficacy of Pakistan's anti-terrorism laws.

Furthermore, Pakistan's anti-terrorism laws are also largely prone to criticism by human rights groups, which are fearful of the misuse of these laws that have given extra-judicial powers to the Police and security agencies. The provision related to the completion of trial within seven days, according to the human rights groups, provides a certificate to the Police for employing heinous methods of torture against the suspect in custody without any accountability. Moreover, the security agencies have been authorized to keep the suspect militants, who are arrested during the military operations, in detention for up to two months, as enshrined in the Protection of Pakistan Act. This causes the 'enforced disappearance', and thus, leads to a clash between the anti-terrorism laws and the protection of fundamental human rights, which is the sole responsibility of the state.

Although the legal tools to prosecute and punish terrorists have expanded in recent years, there requires an effective anti-terrorism regime, which, in essence, needs to address the above-mentioned drawbacks in the existing anti-terrorism laws of the country in order to destroy the terrorist infrastructure and bring the terrorists to justice. It is true that the anti-terrorism laws are essentially of defensive in character and act in combination with the political, security, and administrative facets of the overall response to combat terrorism. However, what needs to be done is the implementation of anti-terrorism laws in letter and spirit.