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Definition of Terrorism and Its Impact on Criminal Justice System: A Critical Review

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Abstract

Terrorism in Pakistan has various manifestations, which includes sectarian, ethnic, religious, and political hues. The decade of 1990 was marked by sectarian terrorism in Pakistan. The history of previous laws on terrorism showed that the first ever law on terrorism; the Suppression of Terrorist Activities (Special Courts) Act was introduced in 1975, which did not have any definition of the term terrorism, however, it was followed by a few other laws promulgated from time to time, depending on the situations. Nevertheless, Anti-Terrorism Act was promulgated in 1997, in which terrorism was defined as per law, for the very first time in the history of Pakistan. The Act was amended many times to date. There are, however, a few flaws in the definition of terrorism in ATA, 1997; which severely impacted the criminal justice system of Pakistan. Police misuse ATA and registered cases under this law to increase the gravity of this issues, which resulted in the increase of workload on special courts, leading to delays in the dispensation of justice. The prosecution was never independent, as it was envisaged to be. They do not have an active role to play in the cases, while at the time of registration of FIRs, during investigations bringing forth witnesses and forensic evidence before the courts was the prime concern of the prosecutions. There was no regular and effective coordination between all three components of the criminal justice system of Pakistan at the top level. Due to faulty or fake FIRs, due to the absence of witnesses, faulty investigation, and sometimes judicial corruption; the courts dismiss the cases. Thereby, mostly the nominated culprits are released on the orders of the courts. In this scenario, there is a dire need to amend the definition of terrorism in ATA, 1997

Keywords: anti-terrorism laws, criminal justice system, police, sectarian extremism, terrorism

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Introduction

The phenomenon of terrorism was originated actively in Pakistan in 1970s. The decades of 1980 and 1990 were marked by sectarian and ethnic terrorism. The term terrorism is common and widely used in the Pakistani society, especially since 1990s terrorist attacks. However, after the incident of 9th September 2001; the phenomenon of terrorism took a different turn. From 2001 onwards, international terrorism started in Pakistan and the terrorist activities increased sharply, damaging major social and political institutions of Pakistani society. After military operation silence against Lal Masjid in Islamabad in 2007, suicide attacks and gun and grenade attacks gained new momentum and raged hard from 2009-2014. Military operation Zarb e Azb was launched against these increased terrorist's activities after the terrorist attack on APS, Peshawar in which more than 145 children were killed and many got injured.

Laws on terrorism evolved with the evolution of various forms of terrorism. The first ever law on terrorism was promulgated in 1975; followed by certain other laws in the decade of 1980 and finally, Anti-Terrorism Act was promulgated in 1997. In Pakistan, terrorism has been defined in the Anti-Terrorism Act, of 1997 but it has many flaws. Even the Supreme Court of Pakistan in its recent judgment declared that the definition of terrorism in the Anti-Terrorism Act, 1997 has been a subject of controversy. In this backdrop; on the one hand Pakistani criminal justice system has faced many problems in executing the operations against the terrorist's attacks, and on the other hand, many have been trialed under ATA, who never committed any terrorist act. The definition of terrorism was misused by police to lodge FIRs in those cases, which were actually cases of ordinary crimes. Various laws were made, and many courts were created to execute terrorist cases efficiently and quickly but due to issues attached with Pakistani police and prosecution, which were exacerbated due to the lack of a proper definition of terrorism, the courts could not serve the purpose of their creation, hence, these innocent victims were executed on the chargers of being involved in the terrorist activities.

Statement of the Problem

The definition of terrorism is not succinct and precise. Due to the absence of any clear legal definition, it is difficult to decide whether a criminal should be proceeded against the ordinary criminal law of Pakistan

or under ATA 1997. When ATA was framed, the intent behind the action was not given as much consideration as it has the effect of the crime, which was given. The criminal justice system, thus, failed to penalize the terrorists.

This research paper would analyze if there are any flaws in the definition of terrorism in Pakistani law.

The main research questions are:

1. What are the flaws and weaknesses in the definition of terrorism which have negatively impacted the criminal justice system?
2. How do they hamper the speedy dispensation of justice to terrorists?
3. How the definition can be made more succinct to improve its impact on the criminal justice system of Pakistan?

Significance and Scope of the Study

This study would assist the policymakers, senior officers of law enforcement agencies, prosecutors, and honorable judges to devise better ways and means of act to better curb the menace of terrorism from Pakistan. Weaknesses and flaws in the Pakistani system have been highlighted for the betterment and improvement of the police functionality that include registration of FIR, investigation, and production of witnesses. The fragility of prosecution and the infirmity of courts have also been discussed in detail. The study is also a guide for academicians, researchers, and students of law; both local and international; who wants to tread the threads of compensation of speedy justice to terrorists by the criminal justice system of Pakistan. Its scope includes deficiencies in the definition of terrorism and impact of those deficiencies on police, prosecution, and judiciary; being the most vital components of the criminal justice system.

Review of the Literature

A few attempts have been made to conduct research on the subject of terrorism in Pakistan. However, a study on “Prosecution of Terrorism Offences in Khyber Pakhtunkhwa” (2018) provided some insight into the working of police and judiciary in Pakistan’s criminal justice system. Deficiencies of investigation among the officers in KPK were pointed out in another study of 2018 conducted by UNODC. Moreover, another study on “Why do Terrorism Cases Fail in Court? An Empirical Analysis of Acquittal of ATA Cases in Punjab” provided a deep insight into the criminal

justice system and acquittal of terrorists by the courts. This study was conducted by a police officer (Ijaz Hussain, 2013, unpublished) in Punjab, which discussed the defects in FIRs, issues, and lacunas in the investigation process and shortcomings at prosecution. Significantly, another study on “Anti-Terrorism Law” carried out by Mr. Zulfiqar Hameed a police officer in Punjab (Published in *Stabilizing Police through Police reforms: Asia Society*) showed that most of the cases registered under ATA 1997 between 1995-97 were not actually cases of terrorism. A landmark judgment of Supreme Court of Pakistan dated 30 October 2019, in Criminal Appeals No. 95 and 96 of 2019, Civil Appeal No. 10-L of 2017, and Criminal Appeal No. 63 of 2013; gave insight into the history of terrorism on globe as well as evolution of terrorism and terrorist related laws in Pakistan. Lacunas in definition of terrorism and problems faced by criminal justice system to dispense justice in terrorism related cases have also been discussed in the same judgment. A lot of reports in international and national journals also helped for the better understanding and effectiveness of the criminal justice system in Pakistan.

Methodology

The key question in this research paper was to establish whether the current definition of “terrorism” is comprehensive, or it is flawed. To achieve this purpose, a qualitative research approach has been adopted by using content analysis and in-depth interviews techniques. Therefore, the researcher relied on the secondary as well as primary data gathered from different sources primarily, by studying numerous research papers, articles in journals, books, and other source material available on internet. Additionally, the researcher interviewed few police officers, Prosecutor General Punjab, judges of Sessions Courts as well as Anti-Terrorism Courts, lawyers, FIA officers, Secretary Law and Justice Commission of Pakistan, senior police officer at NACTA Islamabad, and academicians at QAU Islamabad. The selected bodies helped to collect data of various types and guided the researcher in accomplishing the current study. The data collected was majorly related to the registered cases by police officers and disposal rate of the cases by ATCs of all four provinces.

Structural Sub-Division The current study is divided in three sub-sections. The first section discusses the evolution of terrorism, its manifestations, and different definitions of terrorism in Pakistan. Furthermore, the second section. Discusses lacunas in definition of

terrorism, components of criminal justice system, and working of each component of criminal justice system in Pakistan. Deficiencies and challenges faced by police, prosecution, and judiciary are the major part of the third section. In the same preceding section, weaknesses in the whole system vis-a-vis definition of terrorism are analyzed to understand the impact of these definitions on the criminal justice system of Pakistan. In the last section the researcher summed up the paper by providing a comprehensive conclusion followed by certain recommendations for the betterment of the criminal justice system of Pakistan

Evolution of Terrorism and its Definition in Pakistan

The definition of terrorism evolved with the evolution of terrorism in Pakistan. Pakistan, since its birth, has been facing threats towards its existence from hostile neighbours. However, Afghanistan was the first country, which denied recognition of Pakistan. India has not been able to digest the appearance of Pakistan as an independent Muslim state on the map of the world to-date. There were many other domestic problems in Pakistan, which were exploited by others since Pakistan gained its independence. The first ever climacteric political murder of Pakistan, the assassination of Mr. Liaqat Ali Khan, took place in the inceptive years. It was done in effort to destabilize the country, which had seen the dawn of independence, by weakening its governance structure (Balouch, [2015](#)). Since then terrorism constituted as a prime threat for the state, government, and people living in Pakistan.

Evolution of Terrorism

To clearly understand and critically evaluate various key components incorporated in the definition of terrorism in Pakistani law, it is imperative to understand evolution and various manifestations of terrorism in various phases of history of Pakistan. Since 1970, the number of terrorist incidents increased in the country. Global Terrorism Database (GTD) recorded 15209 incidents of terrorism in Pakistan from 1st November 1970 to 31st December 2019. However, only 17 incidents took place from 1970-1979. As per Global Terrorism Index 2019, Pakistan is 5th most affected country by terrorism (Institute for Economics & Peace, [2019](#)). Total fatalities from 1970 to 31 December 2019 were 435,397, while total injured have been estimated 549,754 (Study of Terrorism and Responses to Terrorism [START], [2019](#)). Thehri Massacre that occurred on 6 June 1963, in which

118 Shia Muslims were killed in Thehri (District Khairpur) Sindh, was reportedly one of the initial incidents of terrorism in Pakistan (Levesque, 2016). Pakistani domestic politics was perforated with dissension in 1970s. In 1977 General Zia-ul-Haq toppled the elected government by executing Operation Fair play (Mishra, 2018). Elected Prime Minister Zulfiqar Ali Bhutto was hanged in 1979 and this act left the military coterie in Islamabad in seclusion. Soon after that, on 24th December 1979, Soviet Union invaded Afghanistan and Pakistan became a front-line state. Since 1979 the terrorist attacks started trajectory, in which the Russian (KGB) and Afghan Intelligence (KHAD) services were believed to be involved in the terrorist acts during this time (Saeed & Syed, 2018). Northwestern Frontier Province (now Khyber Pakhtunkhwa) became the target of these terrorist attacks, in which bombs were blasted at public places; to create maximum terror by causing maximum casualties to civilians. At the same time, Iran witnessed a revolution led by Khomeini, which dilated the schism between the Sunni Gulf and Shiite Iran. Both Iran and Saudi Arab made their ingress among mullahs of Pakistan and their proxy terrorists outfits developed their roots of conflict defined on sectarian lines. Saudi Arabs supported Zia-ul-Haq's regime as well as his Islamization ideology. They also supported him in his Afghan Jihad operation. On the other hand, the Shia community got support from Iran to gain influence in Pakistan. Tehrik-e-Nifaz-e-Fiqh-e-Jaffariya Pakistan (TJNF) was formed in 1979, which was representative of Shiite interest in Pakistan (Yusuf, 2012). It resulted in sectarian conflict between Deobandi and Shia groups, who thrived on the bloodshed in all the corners of Pakistan. To counter Shia organizations, Sipah-s-Sahaba Pakistan (SSP) was formed in 1985. It was followed by the emergence of various sectarian groups one after the other which including: the Popular Islamic Army (Shia) 1987; Sunni Tehreek (Sunni) 1992; Sipah-e-Muhammad (Shia) 1992; Tehreek-e-Nifaz-e-Shariat-e-Mohammadi (Sunni) 1994; Lashkar-e-Jhangvi (Sunni) 1996; Jundullah (Sunni) 2004, and Tehreek e Taliban Pakistan (Sunni) 2007. The spark of ethnicity, having its roots since the creation of Pakistan, was aired to become fire to rip apart the concept of nationhood among people. Ethnic groups were weaponized in the garb of Afghan Jihad (Javed & Nabi, 2017). This type of terrorism was especially witnessed in Karachi, where ethnic rivalry led to targeted killing of people (Aziz, 2016). The decade of the 1990s was marked by terrorist killings on sectarian and ethnic accounts.

By the end of the 20th century, the number of terrorist incidents reduced to the minimal numbers in Pakistan. However, the incident of 9/11 changed the pattern of world history and its views towards terrorism, leading to a surge in terrorist acts again after launching the of Operation Enduring Freedom in Afghanistan. Pakistan, as the neighbouring country of Afghanistan, due to its active involvement in the Afghan war against the Soviets as well as the post-Soviet era in which internal war started in Afghanistan, lead to the establishment of Taliban rule, which became the first target of terrorist's attack. Moreover, it is significant to note that global powers and Pakistan's enemies also had their involvement in increasing the terrorist attacks in Pakistan (Masood & Kumar, [2017](#)). Terrorists made their sanctuaries in Wana and writ of the government, which was challenged very much from the capital city by terrorists holding the fort in Lal Masjid Islamabad. Some prominent foreigners like Daniel Pearl, two Chinese nationals working at Gomal Zam Dam, head of UNHCR office Quetta John Solecki, Canadian reporter Beverly Giesbrecht, and a US worker Warren Weinstein; to name a few, were abducted by terrorists in various years between 2001-2010; in various areas of Pakistan. As soon as the Wana was invaded by Pakistan Army in 2003 and operation started against Mullahs of Lal Masjid in 2007, the terrorist activity reached its peak between 2003-2013. MQM added ethnic element, while insurgency in Baluchistan added nationalist feature to this sensation. National Action Plan in the aftermath of attack on Army Public School Peshawar led to the establishment of military courts. Terrorists dealt with iron hands and the massive number of terrorist's attacks reduced drastically (Malik, [2018](#)).

Dimensions of Terrorism in Pakistan

Terrorism in Pakistan is a mixture of political violence motivated by religious, ethnic, sectarian, and nationalist factors. From the above discussion, it is evident that each type of terrorism manifested itself strongly at a specific period of history and in different areas of the country. Additionally, these types of terrorist manifestations, terrorist planning, and flaming of terrorist activities by hostile countries has also been witnessed side by side. Interference and funding of sectarian organizations from Iran and Saudi Arabia is a fact that cannot be denied (Nawaz, [2016](#)). Due to several regime and system changes in Pakistan as well as military and air operations in Fata and Waziristan also flamed armed insurgency, which led

to the conduct of terrorist acts. Ideological anarchy also played an important role in flaming the rise of terrorism in the country.

Evolution of Terrorism-Related Laws in Pakistan

Pakistan did not have any major terrorist threats till 1971. After the emergence of Bangladesh on world map, Pakistan's existence was challenged and there were threats to the government of Zulfikar Ali Bhutto (Majeed & Hashmi, [2014](#)). Amidst these threats of existence by nationalists in NWFP as well as Balochistan and opposition parties, first ever anti-terrorism law of Pakistan, Suppression of Terrorist Activities (Special Courts) Act 1975, was enacted (Huma Yusuf, 2010). The term terrorism was, however, not defined in the statute. It was followed by different other laws from time to time that included Special Courts for Speedy Trial Ordinance 1987, Terrorist Affected Areas (Special Courts)

Ordinance 1990, Special Courts for Speedy Trials Ordinance 1991, and Special Courts for Speedy Trials Act 1992.

The years starting from 1990 to 31 December 1996 were marred with terrorist incidents. Table 1 below, shows the detail of 1322 various types of terrorist attacks committed in Pakistan (Study of Terrorism and Responses to Terrorism (START), [2019](#)).

Table 1
Year-wise Terrorism Summary

| Year | Terrorist incidents |
|------|---------------------|
| 1990 | 87 |
| 1991 | 150 |
| 1992 | 85 |
| 1993 | Nil |
| 1994 | 154 |
| 1995 | 666 |
| 1996 | 180 |

In January 1997, a terrorist act of bombing took place at/near Sessions Court Lahore. This incident compelled the government to legislate a new law on terrorism; Anti-Terrorism Act, 1997. For the very first time in history of Pakistan, terrorism was defined in this statute. This law was much stern than the previous laws and is in force to-date with different amendments incorporated into it from time to time, with the last one known

to be incorporated in 2018 (Jabri, [2018](#)). Additionally, these laws; a few other laws were also passed, which were relevant to the terrorism laws. These statutes mainly include but were not limited to, the Anti Money Laundering Act, 2010; Counter Insurgency (In Aid of Civil Power) Regulations, 2011; The Investigation for Fair Trial Act, 2013; Protection of Pakistan Ordinance, 2013, and Protection of Pakistan Act, 2014. However, this research paper mainly focused on the Anti-Terrorism Act of 1997 amended from time to time, which has been a prime definition of terrorism and was defined only in this statute.

Issues Related to Definition of Terrorism in Pakistan

Definition of Terrorism in Pakistani Legal System

In its present construction, the definition (Section 6 of the ATA, 1997 amended to-date) skirts wide variety of actions, used or threatened to be used with a political purpose to create a sense of fear or insecurity among public at large, which include but are not limited to, “death of a person or endangering one’s life; violence that causes physical harm; damage to public or private property; brutal murders; kidnapping for ransom; hostage taking; hijacking; aerial firing that creates terror in the public; forced sexual intercourse with a minor; breaking windows of vehicles during political rallies and cases of brutality”. More or less 18 crimes were listed within the scope of this definition of terrorism. The criterion for any act to be qualified as an act of terrorism is that it should be heinous and create terror among general masses. Due to the wide range of crimes covered under ATA, 1997 the seven members bench presided by Chief Justice of the Supreme Court of Pakistan in its verdict in October 2019 recorded in the judgment, “Before parting with this judgment we may observe that the definition of ‘terrorism’ contained in section 6 of the Antiterrorism Act, 1997 as it stands at present is too wide and the same includes so many actions, designs and purposes which have no nexus with the generally recognized concept of what terrorism is” (Supreme Court of Pakistan, [2019](#)).

Issues with Definition of Terrorism

- Preamble says it is an act to provide for the prevention of terrorism, sectarian violence, and for speedy trial of heinous offences. The term

“heinous offences” has not been elaborated in detail anywhere in the Act. Instead, even the words “heinous offences” have been repeated only once in ATA 1997.

- What is mainly lacking in this respect is definition of heinous offence and commission of heinous offence for political purpose and with the intention to destabilize the government or the state. The elements of a terrorist crime/action are i) *actus reus* or ii) *mens rea*. Actus reus is the physical conduct of an act, while mens rea is intention behind conduct of that act. A heinous act committed in pursuit of personal enmity does not qualify to be called a terrorist act.
- Dominant and foremost problem with the definition of terrorism is that scope of the definition is too wide. Most of the crimes covered under the definition of terrorism in ATA 1997 have already been covered under PPC. From 1999 to 2014, there had been 14 amendments to ATA (National Counter Terrorism Authority [NACTA], [n.d.](#)). With every amendment, the scope of definition of terrorism widened as more crimes were considered in the definition; keeping in view the changing mode of terrorist activities. Currently, the definition of terrorism incorporates the broad spectrum of pursuits, which include 18 types of crimes, although provisions to deal with most of these crimes are already available in PPC. Addition of “Third Schedule” to ATA 1997 has broadened the scope of terrorism too vast and many crimes can be included to this definition of terrorism now (Zaidi, [2016](#)).
- There was no standard definition and any objective test of the term “fear” in the Pakistani system. There are many actions that kept people under different fears. The act of hoarding a commodity produces a fear among people that certain goods might not be available for consumption in near future and they purchase them in bulk quantities. It causes political instability and social disruption. The intent, however, behind creating such fears is to earn profit. Can a FIR be lodged under ATA 1997 against a hoarder then? Fear and insecurity are produced by a certain action. What is important is to see the intent behind that action. A private crime may also cause widespread fear and insecurity but that would be a private crime and not a terrorist act.
- Word sectarian is used at many places in statute. Section 8 prohibits those actions, which are intended or likely to stir up sectarian hatred.

There are no special criteria discussed to establish a link between act/action and terrorism. In many cases, it was observed by the courts that cases were trialed under ATA 1997 but actually, they were cases of personal enmity and not of sectarian nature. In the case *Fazal Dad v Col. (Rtd.) Ghulam Muhammad Malik, and others* (PLD 2007 SC 571) it was observed by the honourable court that the elements of offences had no nexus with provisions of ATA 1997 (Supreme Court of Pakistan, [2019](#)). In many other cases that include *Mehram Ali and others v Federation of Pakistan and others* (PLD 1998 SC 1445), *Jamat-i-Islami Pakistan through Syed Munawar Hassan, Secretary-General v Federation of Pakistan through Secretary, Law, Justice and Parliamentary Affairs* (PLD 2000 SC 111), *Ch. Bashir Ahmad v Naveed Iqbal and 7 others* (PLD 2001 SC 521), *Mohabbat Ali and another v State and another* (2007 SCMR 142), *Tariq Mahmood v State* (2008 SCMR 1631), and *Muhammad Yaqoob and others v The State and others* (2009 SCMR 527); honorable courts have made the same observation (Supreme Court of Pakistan, [2019](#)).

- Due to ambiguity in the definition, courts were unable to decide whether it is an act of terrorist or not. There is confusion or misinterpretation.

Many crimes have been defined under PPC too like “offences against the human body” Chapter XVI, Hijacking Chapter XVII and intimidation and fear. Various Benches of the Supreme Court of Pakistan have differed from each other in different decisions on their understanding and interpretation of the term terrorism as defined in ATA 1997.

- Psychological damage of people by creating suspicion or loss of trust in government by use of any medium like printing, publication, and distribution of printed material; or spread of such material by means of IT tools (Facebook, SMS, WhatsApp messages) have not been included in the definition. Psychological damage, with intention to create political disharmony and mistrust in society is also an aspect of terrorism. Purpose of spreading rumors is sometimes also to create fear and mistrust among people, which is often motivated by political intentions. Although sections 6(2)(i) and 6(2)(p) of ATA 1997 are relevant but spread of rumors to create fear or use of social media to spread one’s beliefs to create hatred and factions in the society on religious or sectarian grounds is not covered under this law.

- Social disruption in the form of class warfare is an important aspect of terrorism. Creating disparity in society on the basis of distribution of wealth is a kind of terrorist act (Smelser & Mitchel, [2002](#)). Although it is done in clandestine manner, yet it becomes evident that from where the whole planning is being chalked out and executed. This aspect has been ignored, while framing the law.
- Terrorists may apply methods to damage environment by mixing certain gases/elements to the environment, which may cause damage to human health (Schweitzer & Fox, [2009](#)). It may lead to catastrophic situation in the country and destabilize the government. If such act is done with political intent, it falls in the ambit of terrorist act. Although there are different categories of acts mentioned in the statute that may harm human health but there is no mention of environmental hazard explicitly. It may also be included in the law.
- In modern types of terrorism, modern forms of energy are used, which include laser, electromagnetic, and radio energy (Bunker, [2015](#)). Nuclear weapons can be stolen (Stealing part is not covered under ATA). Among laser weapons, dazzler can cause flash blindness through direct radiation. U.S and Israel developed Tactical High Energy Laser (THEL) to shoot down even rockets (Schwartz et al., [2003](#)). Thermal blooming can be caused by the use of laser, which results in extra ordinary heat in a region. Thermal distortions occur by use of laser radiation, propagated in absorbing medium, which is air (Smith, [1977](#)). Laser can be used for terrorist acts by other means also, like use of Gas Dynamic Laser (GDL), which may be used for explosions. In future, the terrorist acts could be originated through the use of electromagnetic terrorism techniques, through which powerful electromagnetic waves, which can be generated by high-voltage pulse generators with the aim to disrupt the normal operation of technical system of a country (Schweitzer & Fox, [2009](#)). Through the use of this technique, the system of aircraft takeoff, and landing, telecommunication system, use of electronic devices especially in the management of nuclear power plant operations, electricity generation, and transmission and electronic equipment to control environmental hazards can be disrupted badly.
- In the US law dealing with terrorism, there are provisions regarding use of weapons of mass destruction for terrorism purposes but there is no such provision in Anti-Terrorism Act 1997 (Office of the Director

National Intelligence, [2001](#)). Terrorists may yield to use weapons of mass destruction but in absence of provision on use of such weapons, they can't be brought in the ambit of criminal justice system.

- The special category of federal offences, as incorporated in the US law, which have not been incorporated in ATA 1997. These acts of terror should be investigated by FIA as the chains of supply/transportation of weapons are spread across the provinces.
- There is no limit imposed on the possession of quantity of explosives. However, there should be some limitation regarding the quantity of explosives one can possess within prescribed limits of law. Comparison can be made with Control of Narcotics Substance Act (CNSA) of 1997. The level of penalty should be increased with increase in quantity of explosive material.
- A special category regarding attack on official buildings and security installations is not included. A symbol of national importance is missing in the law. Some buildings like GHQ, FIA Headquarters, Police Training Schools, Naval bases, dams, nuclear installations, installations of national importance like transmission wires, pipelines, and such other buildings are of supreme national importance as compared to any ordinary building like a school in the last village of Tharparkar, where even the students are not in attendance. US Law includes such special categories.

Components of Criminal Justice System

- There are two ways to combat terrorism. One way is to fight the terrorists through military. The other way is to fight with terrorists through criminal justice system. In democratic countries and in settled areas, terrorism is combatted through criminal justice system. In Pakistan, military waged war against terrorists in Agencies (tribal areas) as well as in those areas where militants had paralyzed the civil administration (Swat). In other, settled areas, of Pakistan criminal justice system is supposed to combat the menace of terrorism. The system of criminal justice is combination of government institutions and practices in a society to maintain social control and deter crimes, to mitigate further occurrence of crime by imposition of penalties on criminals and efforts to rehabilitate them. Criminal justice system in Pakistan has been inherited from British. The legal foundations,

procedures, and functions of this system are laid out in Criminal Procedure Code (CrPC) 1898 and Pakistan Penal Code (PPC) 1860. Criminal justice system has various components. For efficacy, these components have to work in close coordination with each other. It helps in swift remedy of sufferers of crimes and establishes writ of the government. It also helps safeguard legal rights of the criminals/accused. In short criminal justice system is a reflection of fidelity of people and government institutions in a country/society to deter, control and prevent crime in that society; and deals legitimately, while doing justice with criminals who violate law. Most important components of criminal justice system, relevant to terrorism and current topic are police, prosecution, and judiciary.

- Police is a paramount institution and premier pillar of criminal justice system. Police is responsible for protection of life and property of people under laws, rules, and regulations. The force functions under Criminal Procedure Code 1898 and Police Order 2002 to call the criminals on the carpet. The first action that police takes is registration of First Information Report (FIR), when a cognizable offence is committed. As provided in Articles 21, 23, 25, 49, and 50 of Qanoon-e-Shahadat Order 1984, FIR is a relevant fact. FIR may be lodged by a complainant orally or in writing to any police officer at a police station or on patrol. FIR may be lodged by any complainant or by a police officer himself. After registration of FIR, next step is to arrest the accused. After the accused is arrested, he/she is presented before the Anti-Terrorism Court of competent jurisdiction within 24 hours of arrest as required by Section 21E of ATA 1997. The accused is handed over to Police for investigation on 90 days' remand. After investigation, police prepare challan (Charge sheet) of the accused, investigate the case, and present their findings before ATC for decision. Counter Terrorism Department of Police is required to lodge FIR in cases of suicidal bomb attacks, IED/explosive cases, cases of extortion of money, kidnapping for ransom, and target killing. In other cases, the FIR is registered with regular Police stations (Interview of DPO Charsadda Mr. Irfan Ullah Khan SSP, 2020).
- Prosecution: To make prosecution an independent service and to separate it from police, Punjab Criminal Prosecution Act was passed in 2006. Similar Acts were passed in Balochistan in 2003, in Khyber Pakhtunkhwa in 2005, and in Sindh in 2009. Prior to that, prosecution

was a part of police department. There used to be a legal department consisting of DSP Legal, Inspector Legal, and Sub-Inspector Legal who provided prosecution service and assisted courts in deciding matters of criminal jurisdiction. The principles of prosecution, which prosecutors follow are that they see if the provisions of ATA 1997 have been followed or violated at the time of registration of FIR; whether the FIR has been registered properly or there are any technical flaws in that; whether appropriate sections of ATA 1997 have been applied properly or not; whether investigation has been conducted by Investigation Officer (IO) according to laws and prescribed procedures; improve the case by rectifying problems of FIR, and investigation; put the oral, documentary, forensic, and eye witness evidence in order according to requirement of ATA 1997; to ensure that facts reflected in FIR are corresponding with challan and to ensure that challan is submitted in the court within prescribed time. There are different powers and responsibilities entrusted to prosecutors under respective Acts of the provinces dealing with prosecution. In Punjab Criminal Prosecution Act, 2006 the powers of prosecutors are provided in Sections 9 and 10 of the Act.

- There is no specific mention of ATA in the law related to prosecutors or any special powers given under ATA regarding police. In Section 12 of Prosecution Act Punjab 2006, responsibilities of police towards prosecutors have been provided but there is no provision of any mechanism of penalty or punishment if any police officers fail to fulfill those responsibilities.
- Judiciary: Special Anti-Terrorism Courts have been established as provided in Section 13 of ATA 1997. This system is parallel to ordinary Sessions Courts. ATCs and other special courts were created because sessions courts could not dispense speedy justice in terrorism cases as there was already too much work load there. Delays in dispensation of justice at sessions courts are a routine matter, hence, the need was felt to establish ATCs for speedy trials and quick disposal to establish effective deterrence that could refrain terrorists from committing terrorist acts.
- As reflected in Table 2 in Section 3 of this paper, 73 Anti-Terrorism Courts have been established all over Pakistan since 2018. Currently, ATCs have been established at the Divisional level (Interview of Additional District and Sessions Judge Natasha Naseem Sipra Judge,

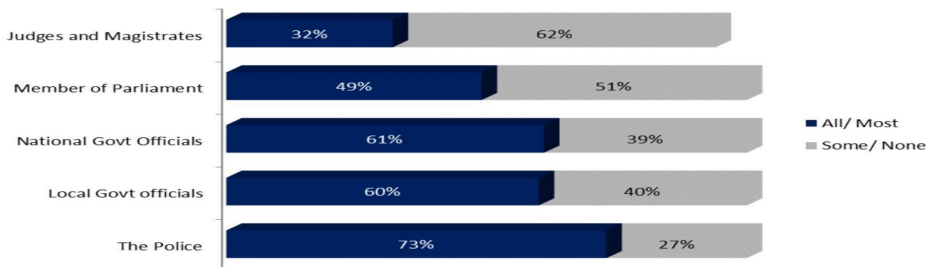
2020). According to Article 13(2) of ATA, 1997; where there are more than one Anti-Terrorism Courts at a Division, the Judge who is senior among those is the administrative head, whose duty is to deal with the physical and judicial remand of the accused. All the new cases are submitted to the administrative judge and he/she can entrust the cases to himself/herself or to the other Judge at the same division, *suo moto* or on the application of any party transfer; withdraw or recall any case pending before any other ATC in the area, before framing the charges. After the charges have been framed, the case can be transferred to any other judge in the same division with the permission of High Court regarding the competent jurisdiction. Administrative Judge also decides whether accused shall be discharged from the case or not.

- Appeal against the order of ATC Judge can be made before the High Court of competent jurisdiction and before the Supreme Court of Pakistan against the order of the High Court. Some special courts have also been established with a mandate to try cases related to terrorism under Protection of Pakistan Act (POPA) 2014. Military courts having the same mandate were established after the 21st amendment to the Constitution of Pakistan was passed by the legislature in January 2015.

Performance of ATC Courts and Military courts

Performance of ATCs has been discussed in detail in the preceding section. Briefly, perception of researchers, analysts, and general public is negative about the legal system of Pakistan; including Anti-Terrorism Courts. Below is given interesting data of perception of general public of Pakistan regarding corruption of different institutions and personnel of Pakistan (Bibi et al., [2019](#)).

Figure 1



Conviction rate by ATCs remained dreadfully low (Zaidi, [2016](#)). As a result of low conviction rate, the impression carried by Pakistani judicial system and in the aftermath of attack on APS Peshawar on 16 December 2014; military courts were established on January 7, 2015 through 21st constitutional amendment (Hassan et al., [2018](#)). The main purpose of the establishment of these courts was to dispense speedy justice to those who were involved in threatening the security of Pakistan and waging war against the sovereignty of the country (Sultan, [2015](#)). There is a mix opinion on the working of these courts as strong reaction came from human rights activists and punishments awarded by military courts were declared wrongful death executions in Pakistan (Bibi et al., [2019](#)). Supreme Court Bar Association filed a petition in the Supreme Court of seeking halt to death penalties. Recently, the Supreme Court of Pakistan has sought evidence details of 73 military courts' convicts (Aqeel, [2020](#)). The apex court also ordered Ministry of Defence to give details of sentences awarded by military courts in an appeal of the federal government against the verdict of Peshawar High Court in which all the convictions announced by military courts were set aside (Iqbal, [2020](#)).

Impact of Definition of Terrorism on Criminal Justice System of Pakistan

From the above discussion in the foregoing paragraphs, it is evident that there are many lacunas in the definition of terrorism. Due to some inherent shortcomings in the definition of terrorism, the pillars of criminal justice system are not able to perform according to the true spirit of ATA 1997 and conviction rate remained very low. Conviction rate of accused in last ten years has been 5.12% on an average. The table below shows that disposal per court per month on the average remained only 4.7%-5% during the years 2011-2015. After APS incident and establishment of military courts the disposal rate rose up to 6.9% in 2015. In 2017 the disposal rate was lowest in the decade, which was at 3% only.

Analysis of province wise data reflected in graphs B-E below shows that maximum total, maximum balance, and maximum pendency of ATA cases is in Sindh province, while average disposal rate per court per month is lowest in Balochistan. Rate of disposal of cases is generally very low in all the provinces. The maximum annual disposal of terrorism cases has been witnessed in Sindh (Interview of Secretary Law and Justice Commission of Pakistan Dr. Muhammad Raheem Awan, 2020).

Table 2

Year Wise Institution and Disposal of Terrorism Cases at Acts (Interview of Secretary Law and Justice Commission of Pakistan Dr. Muhammad Raheem Awan, 2020)

| Year | Number of courts | Pendency on 1 st January | Institution | Total | Disposal | Balance on 31 December | Disposal/month/court |
|------|------------------|-------------------------------------|-------------|-------|----------|------------------------|----------------------|
| 2011 | 46 | 2206 | 3778 | 5091 | 2726 | 2285 | 4.9 |
| 2012 | 49 | 2238 | 3623 | 5048 | 2743 | 2237 | 4.7 |
| 2013 | 47 | 2176 | 3901 | 5333 | 2828 | 2505 | 5.0 |
| 2014 | 55 | 2521 | 5055 | 6934 | 3113 | 3821 | 4.7 |
| 2015 | 58 | 3902 | 5997 | 9698 | 4801 | 4897 | 6.9 |
| 2016 | 57 | 4961 | 3796 | 8747 | 4530 | 4810 | 6.6 |
| 2017 | 58 | 5731 | 1675 | 6899 | 2089 | 4810 | 3.0 |
| 2018 | 73 | 4285 | 4058 | 8343 | 5264 | 3909 | 6.0 |
| 2019 | 73 | 3943 | 4699 | 8612 | 5450 | 3135 | 6.2 |
| 2020 | 73 | 3140 | 579 | 3704 | 934 | 2721 | 3.2* |

* Data of is up to 30th April 2020.

Figure 2

Graph B for the Period 1 January to 30 April 2020

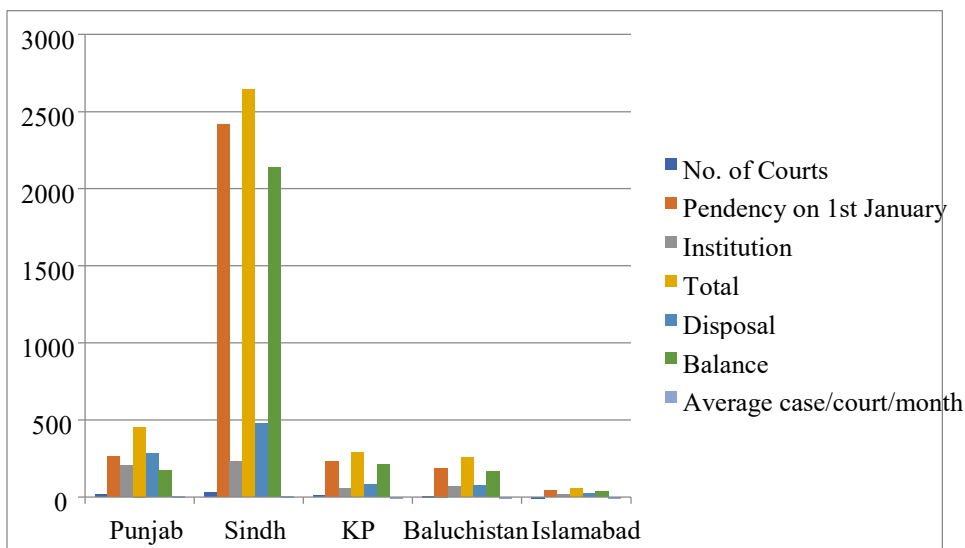


Figure 3

Graph C for the Year 2019

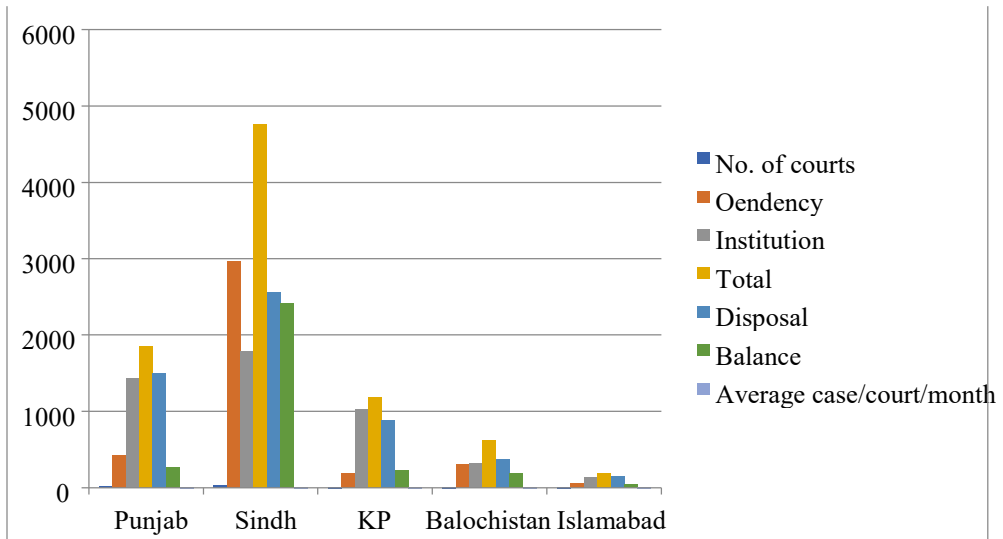


Figure 4

Graph D for the Year 2018

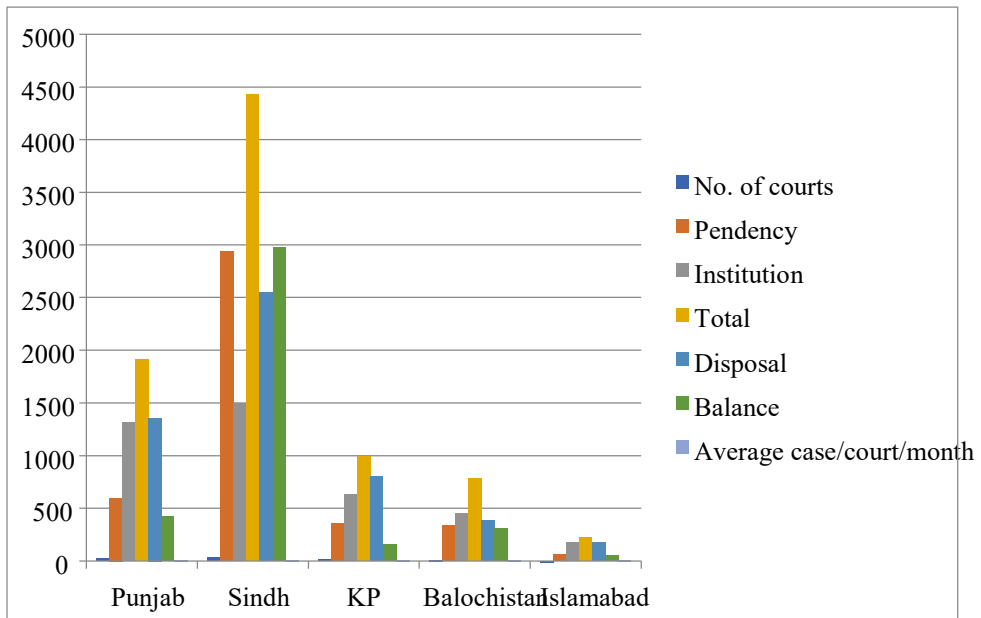
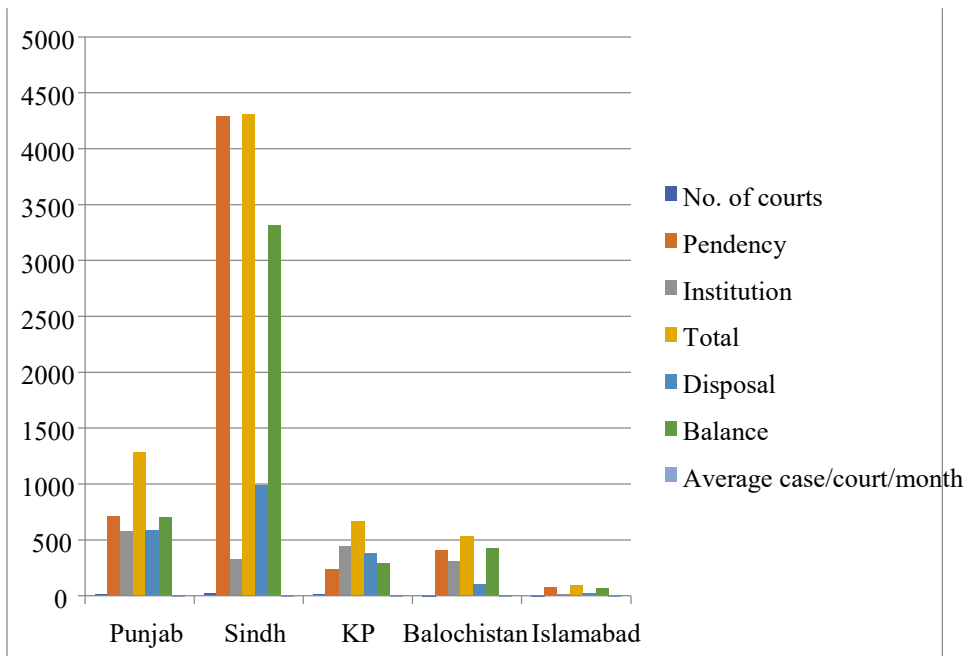


Figure 5*Graph E for the Year 2017*

Due to deficiencies in the definition of terrorism, the pillars of criminal justice system in Pakistan either exploit/misuse the definition or face some issues that hampers early and speedy dispensation of justice in Anti-Terrorism Courts. Following deficiencies were observed during the course of this research with regard to the working performance of police.

- 1) FIR is not registered properly. FIRs registered in cases of suicidal attacks and bomb blasts are registered against “anonymous” attackers and police are unable to conduct any meaningful investigations. In some cases where police claim to have arrested the perpetrators and planners of those attacks, courts release them, due to the lack of evidence (Gull, 2014). Most of the FIRs registered under the provisions of ATA are meant to increase the sinister element in the crime, based on malicious intention of police. FIR of an ordinary murder based on personal enmity is registered under ATA to put the accused party under pressure, to mount the severity in the case, while the same is not proven in the courts

that it was a terrorism case, and leads to increase in the number of acquittals.

- 2) Police rounds up many innocent people in the name of Pre-trial detention in the name of investigation or inquiry under ATA. On one hand, innocent people suffer detention for nothing and on the other hand thorough investigation of such a large number of people they are given relief by the courts.
- 3) Police subjects the suspects to torture, cruel, inhuman, and degrading treatment to obtain confessional statements, which is sheer violation of Article 7 and 14(3)(g) of International Covenant on Civil and Political Rights (ICCPR). Instead, police investigation should be developed on professional lines.
- 4) Number of cases registered by police are quite high. Table 3 shows the number of cases, which were registered in the past 10 years. Trying such a large number of cases annually doesn't go with the purpose and spirit of creation of Anti-Terrorism Courts. Most of these cases are cases of ordinary crimes having no intention of terrorism behind them.

Table 3

Progress of under trial cases in ATCs of Punjab 2009 to 2019 (Interview of AIG Monitoring and Crime Branch Ammara Athar, 2020).

| Year | Previous | Newly Instituted | Total | Convicted | Acquitted | Transferred to other courts | Total pending |
|------|----------|------------------|-------|-----------|-----------|-----------------------------|---------------|
| 2009 | 365 | 791 | 1156 | 150 | 450 | 149 | 407 |
| 2010 | 407 | 831 | 1238 | 240 | 593 | 79 | 326 |
| 2011 | 326 | 687 | 1013 | 167 | 401 | 117 | 328 |
| 2012 | 328 | 710 | 1038 | 132 | 381 | 167 | 358 |
| 2013 | 358 | 699 | 1057 | 151 | 444 | 161 | 301 |
| 2014 | 301 | 799 | 1100 | 158 | 445 | 112 | 385 |
| 2015 | 385 | 1110 | 195 | 296 | 610 | 204 | 385 |
| 2016 | 385 | 668 | 1053 | 119 | 320 | 236 | 378 |
| 2017 | 378 | 648 | 1026 | 147 | 353 | 199 | 327 |
| 2018 | 327 | 862 | 1189 | 356 | 434 | 116 | 283 |
| 2019 | 283 | 823 | 1106 | 346 | 281 | 213 | 266 |



Table 4

Percentage of Cases Registered Under ATA, 1997 (Interview of AIG Monitoring and Crime Branch Ammara Athar, 2020)

| Year | Explosive Act | Kidnapping for ransom | Police encounter | Multiple Murder | Murder | Acid Throwing | Other |
|------|---------------|-----------------------|------------------|-----------------|--------|---------------|-------|
| 2009 | 5.96 | 35.95 | 12.78 | 3.07 | 5.11 | 6.47 | 30.66 |
| 2010 | 3.09 | 34.27 | 16.57 | 2.53 | 3.51 | 5.48 | 34.55 |
| 2011 | 4.48 | 28.50 | 20.52 | 3.39 | 3.65 | 3.27 | 36.18 |
| 2012 | 4.12 | 30.38 | 15.27 | 1.44 | 4.98 | 9.48 | 34.33 |
| 2013 | 1.65 | 22.26 | 10.52 | 3.91 | 5.93 | 9.31 | 46.42 |
| 2014 | 5.43 | 14.23 | 17.36 | 3.58 | 7.52 | 8.48 | 41.2 |
| 2015 | 5.6 | 4.86 | 7.8 | 1.18 | 3.33 | 3.39 | 72 |
| 2016 | 18.08 | 4.63 | 14.77 | 1.87 | 4.29 | 8.04 | 47.18 |
| 2017 | 26.34 | 6.87 | 17.11 | 2.51 | 5.7 | 9.06 | 31.71 |
| 2018 | 17.49 | 8 | 16.57 | 2.87 | 4.43 | 7.83 | 42.14 |
| 2019 | 7.87 | 9.78 | 13.72 | 2.54 | 4.7 | 5.97 | 55 |

- 5) One most important factor is the number of complete Challan. Complete challan means that thorough investigation has been conducted and all the accused involved in crime have been held up. Incomplete challan means that all the accused involved have not been arrested and investigation of only arrested perpetrators has been completed and sent to court. The ratio of incomplete challan cases as shown in the Table 5 below leaves much to be desired in terms of the police performance.

Table 5

Complete and Incomplete Challan cases

| Year | Total Cases | Cancelled | Untraced | Incomplete Challan | Complete Challan | ATA Deleted | Under Investigation |
|------|-------------|-----------|----------|--------------------|------------------|-------------|---------------------|
| 2009 | 812 | 67 | 55 | 139 | 526 | 24 | 1 |
| 2010 | 571 | 74 | 57 | 169 | 269 | 2 | - |
| 2011 | 714 | 101 | 59 | 264 | 265 | 25 | - |
| 2012 | 622 | 65 | 48 | 240 | 237 | 232 | - |
| 2013 | 741 | 72 | 42 | 253 | 346 | 28 | - |

| Year | Total Cases | Cancelled | Untraced | Incomplete Challan | Complete Challan | ATA Deleted | Under Investigation |
|------|-------------|-----------|----------|--------------------|------------------|-------------|---------------------|
| 2014 | 864 | 58 | 54 | 292 | 437 | 20 | 3 |
| 2015 | 1767 | 126 | 88 | 291 | 1193 | 67 | 2 |
| 2016 | 907 | 35 | 28 | 133 | 674 | 35 | 2 |
| 2017 | 596 | 25 | 28 | 121 | 393 | 28 | 1 |
| 2018 | 766 | 32 | 18 | 126 | 526 | 63 | 1 |
| 2019 | 787 | 22 | 16 | 208 | 471 | 52 | 18 |

- 6) Investigation of any crime puts the criminal justice system into motion. In Pakistan, cases are destroyed at the stage of the investigation. Facts are distorted and molded by the nonprofessional and sometimes corrupt investigating officers in favor of the party they want to favour. They may give clean chit to any influential or wealthy person, who can influence them (Human Rights Watch, [2016](#)). Required level of evidence is not collected; rather evidence is concocted and fabricated in certain cases to favor any party. When the investigation is cross-examined in the court, it is found frivolous and cases are dismissed. It leads to an impression that courts are not working properly and the conviction rate is very low.
- 7) Investigation techniques of police are old and stereotyped. Modern techniques and technology applied in investigation in the developed world are not applied in Pakistan. Police complains of provision of a smaller number of staff and allocation of paltry sum for investigation purpose. Investigation officers are not well trained and they are not even willing workers. Many of them have not even gone through the provisions of “Investigation of Fair Trials Act, 2013” (Abbas, [2019](#)). Legal restrictions in terms of completion of investigation as enunciated in Section 173 CrPC also result in leaving lacunas in investigations. After the occurrence of usual crime, police hold up the known criminals of the area and conduct of an investigation. In the case of terrorist attacks, mostly the criminals/suicide bombers are young men, who are new entrants in the world of terrorism and have no criminal history. Some of them may not be even registered with NADRA. All these factors make investigation, a tedious process and police are unable to cope with the requirements due to a lack of training and resources. When the police are unable to find any lead or clue to a terrorist network, they nominate the usual suspects as culprits (Zaidi, [2016](#)). On these very

grounds, some judges do not view police evidence as credible and have been reported to be ill-treating/ridiculing the Police.

- 8) Police provide long lists of witnesses, especially in the high-profile cases. They do not ensure the quality of witness; rather they ensure quantity of witnesses. All those witnesses are not made familiar with all aspects of the case. When they appear in court and are unable to identify the accused, despite the claim is made that they are eyewitnesses, the witness becomes unreliable. Moreover, due to long lists, some of the witnesses do not appear before courts and court orders acquittal even if minor witnesses do not appear.
- 9) Preservation of crime scene for a collection of forensic evidence is not much in practice. An example can be given of the high-profile murder cases of ex-Prime Ministers of Pakistan Mr. Liaquat Ali Khan and Ms. Benazir Bhutto, whose crime scenes were washed immediately after their murder incidents took place (United Nations, [2010](#)). There are modern and well equipped forensic laboratories in Punjab, Islamabad, and Peshawar.. In Karachi, a modern forensic science laboratory was inaugurated in 2019 (Bhatti, [2019](#)). In Balochistan, there is no modern forensic science laboratory and the only outdated laboratory they have was established in 1984 in the Crime Branch of Quetta Police (Balochistan Police, [n.d.](#)). Though the findings of modern forensic laboratories were up to the mark but few years ago these results could also be managed. Quality of findings of these laboratories was such that courts didn't trust them and prosecutors relied more on eye witnesses than forensic evidence even in some high-profile cases (Case number 25, dated 21-4-1999, Malakand, Swat, ATC; case number 109, dated 8-4-2009, Faisalabad ATC; case number 384, dated 1-7-2008, Rawalpindi ATC 2). Modern evidentiary instruments, like emails, have also been accepted at courts at few occasions. According to Section 27-B of the amended ATA (2014) "Notwithstanding anything contained in this Act or Qanun-eShahadat [Islamic evidentiary codes], 1984 (P. O. No. 10 of 1984) or any other law for the time being in force, a person accused of an offence under this Act may be convicted on the basis of electronic or forensic evidence or such other evidence that may have become available because of modern devices or techniques referred to in Article 164 of the Qanun-e-Shahadat, (P.O. No. 10 of 1984): Provided that the Court is fully satisfied as to the genuineness of such evidence]." This

provision has not been utilized to the extent, as it was visualized by those who framed this law. There are certainly issues with forensic science laboratories also. The fingerprint data from Pakistan Automated Fingerprints Identification System is old and has not been updated since 2008. There is no all-inclusive and well-organized database of DNA available of those who were or remained involved in terrorist attacks.

- 10) There is lack of coordination between police, prosecution, and judiciary at the top level to achieve the common target of speedy trial and dispensation of justice to the terrorists. Though MoU was signed between police and prosecution department for early submission of Challans required under section 173 of PPC (Police, prosecution dept, [2023](#)). Even in this MoU Police has kept its upper hand, as in case of failure to comply with provisions of this MoU, the prosecutor can only make a complaint and recommend departmental action to the DPO of the district concerned, who also is a Police officer. Prosecution still seems not to be independent, but dependent on Police department.

Some issues are related to the working of the Independent Prosecution Service. The same are enumerated below:

- 1) Although Independent Prosecution Departments have been established at provincial level in all provinces since 2006 – 2007 but they are not as independent as they should. Prosecutor General is hired on contract basis. Prosecutor Generals in all provinces are rather powerless and edentate. They do not have requisite resources and legislative power behind them to work according to the requirements of modern the criminal justice system. Prosecutors can only look over the evidence collected by Investigation Officer; they cannot direct the Investigating Officer to collect evidence according to modern techniques. If IO destroys the evidence, prosecutor cannot assist court in deciding a matter. Prosecutor doesn't have the authority to direct the Police officer investigating the case to apply the correct section of law during the course of the investigation. In addition, if there is no evidence at all, Prosecutor has no authority to hand back the case to a Police officer, but he has to record his note (which is of no worth) and send it to the concerned court of law.
- 2) The Prosecutors lack training and incentives. They do not enjoy the central importance that they actually deserve. Courts, rather, blame

them for failing in establishing charges against accused in terrorist cases. Their main deficiencies include poor training and intellectual depth. All those accused in the high-profile case of Marriott Islamabad bombing were acquitted by the court. Justice Raja Akhlaq Hussain recorded his observation that “the prosecution routinely fails to produce evidence that can be upheld in a court of law” (Police, prosecution dept, [2023](#)). The same judge acquitted terror suspects accused of involvement in the killing of Lieutenant General Mushtaq Baig in Rawalpindi on the basis of a lack of evidence. Similarly, acquittal in many other high-profile cases was granted because prosecution miserably failed to establish the involvement of accused (Zaidi, [2012](#)).

- 3) There are no specific and designated prosecutors in districts to deal with terrorism cases. It leads to certain problems for police (Interview of DSP/SDPO Hashim Mehmood Baba of Nowshera Virkan, 2020). Specially, designated prosecutors can become expert in dealing with specific cases and such specialized staff can be a vital bank of expertise for the department also.

There are many complications on the part of judiciary, while dealing with terrorism cases. The factors that judiciary muddles with are listed below:

- 1) When the idea of establishment of ATCs was envisaged, their creation was meant to ensure speedy trials of cases so that effective deterrence could be established by criminal justice system against terrorists. It was decided that only one ATC would hear and decide only one case at a time and new case would be given hearing/trialed after the first case is decided. But this remained only a wish as there was first amendment introduced to ATA in 1999. With increase in crimes in the definition of terrorism, the scope of ATA increased, resulting in increase in workload of courts. Now the ATCs have backlog of 2721 cases.
- 2) There are some other reasons as well that cause delay in speedy trial of cases at ATCs. Pakistani lawyers are more of a kind of pressure group than law lords. They do not appear before courts on one pretext or the other and seek adjournments. The absence of witnesses also causes unnecessary delay in deciding the cases. Sometimes lawyers are on strike, sometimes on protests and sometimes they observe lockdown due to their scuffles with police, administration or doctors. The high-profile

defense councils are backed and supported by bar counsels and courts have no power to compel, impose a penalty on lawyers for non-appearance or to ensure the appearance of defense counsels by any means. In nutshell, the ATCs are not overburdened, but there is mismanagement in dispensation of speedy justice. The delays are caused by system, not by courts.

- 3) In ordinary criminal cases in Pakistani courts, the evidence is accepted on the basis of balance of probability. In case of ATCs, the prosecutors' have to bring witness and evidence, which is beyond the shadow of doubt. As mentioned above, prosecutors do not have any role in the collection of evidence. It is in actual the job of police officers. Moreover, the standards of evidence have been kept high intentionally as the penalties are very stringent and such penalties cannot be awarded without having solid proof. In certain cases, the accused is absconded and the case is contested by defense lawyers. In many such cases, the accused were given relief by the courts. ATC judges in Khyber Pakhtunkhwa have sometimes taken a relatively lenient view of the standards of evidence, because of widespread menace of terrorism. Mostly, the ATCs dismiss the cases if evidence is weak.
- 4) In the Pakistani criminal justice system, in cases of terrorism, heavy reliance is given to eyewitnesses only. Many other forms of evidence are accepted in the developed criminal justice systems around the world that include confessions, forensic evidence, use of classified information, physical evidence, and many more. In Pakistani system, absolute reliance is put on eyewitnesses, especially in ATCs. Keeping in view the nature of terrorist attacks in Pakistan; bomb blasts, suicide attacks, and bombs planted in populated areas, it is very difficult to obtain eye witness. People also fear that their life would be endangered if they become witness to terrorist attacks. Moreover, in case of bomb blast or suicidal attack, there are rare chances of any evidence left behind, except of DNA. The people present nearby also become victims of the attack, leaving behind no eyewitnesses. Due to this the people among public are unwilling to become witnesses in terrorism cases, police have to create witnesses and construct the witness statements (Zaidi, [2016](#)). Some terrorists make confessions before police but in court they refute the allegations. Police officers cannot become witnesses under Article 38 of Qanoon-e-Shahadat Order, 1984.

Although an amendment has been introduced in ATA 1997 in 2009 that extrajudicial confession before security personnel is admissible evidence in ATCs (Yusuf, [2010](#)). However, the eyewitness statement of Police officer, even when he/she was not on duty, is not admissible in the court of law. Travelling expense and other costs of witnesses is another problem. There is no mechanism that the travelling cost of witnesses is borne at the state expense. They have to pay their own logistical cost on the day they have to appear before court as witness.

- 5) Corruption in judiciary or judicial corruption is an important factor that cannot be ruled out in Pakistani system. Definition of corruption in judiciary is “the abuse of entrusted power for private gains” (Pozsgai-Alvarez, [2019](#)). There are many ways a judge can favour the accused party, which can be involved in any kind of corruption. Manipulation in fixing dates to delay the cases, permission for or acquittal of any evidence to justify acquittal of accused, direct bribery and influence by other judges are some examples. On account of corruption, Pakistan’s anti-terrorism courts cannot be relied on to ensure that suspected terrorists are served justice. (Yusuf, [2010](#); Kennedy, [2004](#)).

All these factors result in high acquittal rate from the courts. Public confidence in law has eroded and is further likely to erode if urgent measures are not taken. Not only public confidence, but confidence seems to have been eroded internationally also. A report of US State Department published in 2010, termed Pakistan’s anti-terror legal system as “almost incapable of prosecuting suspected terrorists” (Tariq & Rani, [2015](#)).

Conclusion

Definition of terrorism provided in Anti-Terrorism Act, 1997 has been amended many times. Numerous crimes have been added to it, keeping in view the changing requirements and techniques of terrorist acts. The prime purpose of framing the statute was speedy trial and early dispensation of justice in the crimes involving terrorist acts. This purpose has not been materialized so far. This is because ATA can be applied to almost all the violent offences in Pakistan. It has been misused by police. There are numerous deficiencies in the definition of terrorism in Pakistan. Cases of personal enmity have also been registered to grab the attention of terrorism, which makes it difficult for the courts to decide the matters under ATA.

All the components of the criminal justice system face or add certain issues with regard to application of present definition of terrorism in Pakistan. As there is no definition of heinous crimes, police register many cases of murder under ATA, 1997; though they may be a result of personal enmity. The police investigation is under-resourced and lacks the use of modern techniques. Police, prosecution, and judiciary do not have any well-coordinated mechanism at the top levels. Prosecution is independent only in papers; practically, they are toothless and have no control on police. It results in registration of faulty FIR, poor investigation, presentation of incomplete/faulty challan, and ill prepared witnesses/faulty evidence. Modern techniques of evidence are not relevant as much as an eyewitnesses are. Lawyers are mafia and cause intentional delay in dispensation of speedy justice in terrorism cases. Corruption in judiciary cannot be ruled out. As a result of these factors, courts dismiss the cases either because they do not fall under the definition of terrorism under ATA, 1997 amended from time to time; or prosecution is unable to provide solid evidence/witnesses and the matter is poorly investigated. The whole discussion proved the hypothesis that definition of terrorism in ATA, 1997 needs to be made succinct. Flaws in the definition hamper speedy dispensation of justice to terrorists. These flaws, rather, open the window of acquittal of terror suspects. In fact, there is a dire need to improve the definition of terrorism keeping in view the modern tools, techniques, and strategies employed by the terrorists.

Recommendations

- 1) The term “heinous” in the preamble needs to be defined and elaborated clearly. Until it is defined properly, the ambiguity would continue to prevail whether a crime is a terrorist crime or based on personal enmity.
- 2) Definition of terrorism needs to be revised and made succinct and focus on crimes related to terrorism only. Those crimes, which can be trialed in ordinary courts, should be omitted or there should be clarification as to crime of similar nature if conducted in such mode would be a terrorist act.
- 3) The term “fear” used in the statute may also be defined and its limits should be established. The term is quite broad and needs specific clarification to establish whether an act that produces fear among masses or society as a whole is act of terror or not.

- 4) Criteria should be formulated and incorporated in ATA 1997 to define the link between actions that are intended to or are committed to stir up sectarian hatred and terrorism. If a person speaks well about his/her sect and points out flaws in another sect from academic or legal point of view; such action should not be considered in the meaning of terrorism.
- 5) Those acts, which have so far not been made part of definition, may be included in definition. Such acts have been discussed in detail in 2nd part of the current paper.
- 6) Although it would be unique but any effort to create disruptions in the society on the basis of class warfare would be a good addition in the definition of terrorism. Through this addition, those who earn money by means of corruption and look down upon those who hard earn their money would be trialed under this law. It would help in reduction of earning of black money and corruption also.
- 7) Use of such modern methods/machinery that may damage environment may also be incorporated in ATA 1997, especially if there is political intent behind use of such methods/technology. There should be explicit mention of damage to environment in the Act, which lacks in definition in its present form.
- 8) Use of modern forms of energy for terrorist purpose should also be included in the definition of terrorism in ATA. These include use of laser, electromagnetic techniques, radio energy, and stealing of nuclear weapons.
- 9) New types of crimes like suicide bombing, planning of suicide bombing, armed insurgency, and special section on Weapons of Mass Destruction on the lines of US Law may be incorporated in the definition of terrorism.
- 10) There should be special category of federal offences, as incorporated in US law, incorporated in ATA 1997. These acts of terror should be investigated by FIA, in which cross border movement of terrorists in the provinces are involved.
- 11) Bar should be imposed on carrying the quantity of explosives, which currently is nowhere imposed in ATA 1997; on the same lines as is provided in Control of Narcotics Substance Act (CNSA) of 1997.

- 12) A special category regarding attack on official buildings and security installations that are symbol of national importance, on the lines of US law {Crimes and Criminal Procedure, Chapter 113B, Section 2332b (g)(B)}, may be incorporated in ATA 1997.
- 13) FIR in cases of terrorism should be registered only with approval of DPO of concerned district and he/she must exercise due diligence before ordering registration of any FIR wrongly.
- 14) Police investigation should be well resourced and must be developed on professional lines.
- 15) Police and prosecution should ensure quality witnesses only. Courts should also follow international standard of witnesses instead of relying merely on the eyewitnesses.
- 16) Coordination mechanism between police, prosecution, and judiciary must be made effective and on regular basis at top level. Coordination committee should be headed by a judge of High Court of the province concerned with senior police officer of DIG rank and Prosecutor General of the province as its concerning members.
- 17) Prosecution service should be made independent as it is envisaged in law. They must be given requisite authority to ensure that duties of police towards prosecution are ensured.
- 18) Designated and well conversant prosecutors should be posted in those districts where burden of anti-terrorism cases is heavy.
- 19) Intelligence agencies should keep vigilant check on judicial corruption. Judiciary should also be brought under the preview of NAB. If any member of judiciary is found involved in any corrupt practice, action under National Accountability Ordinance should be initiated against him/her.

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