

# REFORMING THE ANTI-TERRORISM ACT, 1997

## Amending the Definition of Terrorism under the Anti-Terrorism Act 1997

### SCOPE OF THE PROBLEM

The Anti-Terrorism Act, 1997 (ATA) is Pakistan's primary legislation addressing terrorism. It explicitly overrides all other legal provisions and applies to the entire country. Enacted with the intent to address acts of terrorism and provide 'speedy trials', ATA laid down a separate legal regime and established specialized Anti-Terrorist Courts (ATC). However, the law has failed to fulfill its mandate.

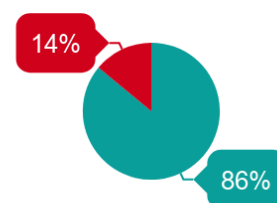
An analysis of the major reported judgments relating to the ATA by Research Society for International Law (RSIL) from 1998-2013<sup>1</sup> reveals that a large majority of cases registered under the ATA were not acts of terrorism per se. Rather, the cases registered appeared to be ordinary criminal offences which bore no indication of terrorist intent. This is backed by *Justice Project Pakistan's* report "Terror on Death Row" which shows that, by December 2014, more than 86% of prisoners tried in ATCs were not 'terrorists' as the term is commonly understood.<sup>2</sup> This has led to a significant backlog of cases with reportedly more than 17,000 cases still pending under the ATA in July 2014.<sup>3</sup> By July 2017, more than 5,000 cases were pending in around 50 anti-terrorism courts in Sindh alone.<sup>4</sup>

The misapplication of the ATA is largely due to the extremely broad definition of terrorism in the law, which allows the inclusion of offences bearing little or no connection to terrorism as it is traditionally understood. Section 6, the cornerstone of the ATA, is overly broad, vague and covers essentially any violent crime.

The definition of terrorism is additionally problematic as the punishments provided under the ATA are harsher than those provided for corresponding provisions under the Pakistan Penal Code and evidentiary standards are different which allows for easier convictions.<sup>5</sup>

Since the lifting of the moratorium on the death penalty in 2014, over 77 prisoners have been executed for sentences under the ATA.

### Sentenced to Death under the ATA



■ For crimes unrelated to terrorism  
■ For crimes related to terrorism

Source: "Terror on Death Row" by Justice Project Pakistan and Reprive

### CURRENT LEGISLATION

#### (i) SECTION 6(1) AND 6(3), ATA

The definition of terrorism contained in section 6 of the ATA is excessively vague and broad in nature. This is because defects in the language of the section reduce the importance of intent in terrorist acts, resulting in ordinary offences being tried as terrorism offences under the ATA.

<sup>4</sup>[6. **Terrorism.**-(1) In this Act, "terrorism" means the use or threat of action where:-

- (a) the action falls within the meaning of sub-section (2); and
- (b) the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect <sup>5</sup>[or a foreign government or population or an international organization] or create a sense of fear or insecurity in society; or
- (c) the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause <sup>1</sup>[or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians, including damaging property by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies:]

(3) The use or threat of use of any action falling within sub-section (2) which involves the use of firearms, explosive or any other weapon is terrorism, whether or not sub-section (1) (c) is satisfied.

<sup>2</sup>[(3A) Notwithstanding anything contained in sub-section (1), an action in violation of a convention specified in the Fifth Schedule shall be an act of terrorism under this Act.]

## **EXCESSIVELY BROAD AND VAGUE DEFINITION OF TERRORISM**

### **(i) SECTION 6(1)(b)**

On a plain reading, clause (b) of section 6(1) appears to require terrorism offences to involve a particular kind of intention. However, the word 'intention' is not explicitly used, and the clause relies on the words 'designed to'. Substantial case law does not view the words 'designed to' as being synonymous with intention. <sup>6</sup>

Section 6(1)(b) also classifies any action intended to "create a sense of fear and insecurity in society" <sup>7</sup> as terrorism. Any of the actions listed in section 6(2) can constitute an act of terrorism if they cause "fear and insecurity" in society which most crimes invariably do, even if they do not correspond to the traditional definition of terrorism. This provision has been widely misinterpreted by ATCs to try cases of violent crime that fall within the ambit of regular criminal courts. A salient example is that of Zafar Iqbal, who killed his father in an inheritance dispute and was sentenced to death by ATC in 2003. The Court stated: "*The cold blooded murder of father by his son is itself sufficient to create the sense of insecurity and terror in the people of the locality.*"

#### ***Proposed Action***

1. The words "the use or threat is designed to" should be replaced with "the use or threat is made with the intention of" in order to clarify the requirement of intent.
2. The words "or create a sense of fear or insecurity in society" should be omitted from the text of clause (b) to limit the application of the ATA. Creating a sense of fear or insecurity has a wider connotation than coercion and intimidation and overawing. The terminology is too vague and ambiguous to serve as an effective filter. In any case, the word 'intimidation' as used in numerous other jurisdictions, to the exclusion of the terms 'fear or insecurity' adequately captures the terrorizing effect that such offences have on society.

### **(ii) SECTION 6(3)**

In the case of Section 6(3), actions involving the use of firearms, explosives or any other weapon that are designed to intimidate or coerce the government or the public constitute terrorism regardless of the motive/purpose element of sub-section (1)(c).

The definition relinquishes the main distinguishing factor of terrorism in such cases, focusing purely on the design or intention behind the act. **Given that the action based approach towards Section 6 is already so prevalent under Pakistan jurisprudence, such a provision only further deteriorates the dwindling safeguards against the misuse of the ATA.** This overreach of the ATA undermines the moral and political force of its offences, and dilutes the special character of terrorism as a crime. It is difficult to conceive of a situation involving the use of explosives that is not designed to intimidate or coerce the government or the public and which at the same time is made for the purpose of advancing a religious, sectarian, ethnic (or other) cause.

#### ***Proposed Action***

1. Remove section 6(3) from the ATA

## **THE DISCONNECT BETWEEN MOTIVATION AND ACT - SECTION 6(1)(b) AND 6(1)(c)**

One of the most glaring defects relating to Section 6 is the inclusion of the word "or" between clauses (b) and (c) of sub-section 1. This has the effect of making these two clauses alternate requirements, considerably broadening the range of circumstances that would fall within the concept of terrorism. Importantly, this means that acts intended to coerce or intimidate the government or the public (under clause (b)) that are motivated by greed, revenge or hatred would also fall under the ambit of terrorism, including robberies or gang wars.

#### ***Proposed Action***

1. The word 'or' contained between sub-sections 1(b) and 1(c) should be replaced with the word 'and'.
2. The legislative intent behind sub-section 1(c) should be clearly defined in explanatory notes which clarify the role of motive in differentiating terrorism from other kinds of violent crime which also generates fear.

## LEGISLATIVE CHANGES TO THE DEFINITION

Original Definition	Proposed Definition
<p>[6. Terrorism.-</p> <p>(1) In this Act, “terrorism” means the use or threat of action where: (a) the action falls within the meaning of sub-section (2), and</p> <p>(b) the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect [or a foreign government or population or an international organization] or create a sense of fear or insecurity in society; or</p> <p>(c) the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause [or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians, including damaging property by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies].</p> <p>["Provided that nothing herein contained shall apply to a democratic and religious rally or a peaceful demonstration in accordance with law.]</p> <p>...</p> <p>(3) The use or threat of use of any action falling within sub-section (2) which involves the use of fire-arms, explosives or any other weapon, is terrorism, whether or not subsection 1(c) is satisfied. [(3A) Notwithstanding anything contained in sub-section (1), an action in violation of a convention specified in the Fifth Schedule shall be an act of terrorism under this Act;]</p>	<p>[6. Terrorism.-</p> <p>(1) In this Act “terrorism” means the use or threat of action where:</p> <p>(a) the action falls within the meaning of sub-section (2), and</p> <p>(b) the use or threat is designed to coerce and intimidate the Government, the public or a section of the public, a foreign government or an international organization; and</p> <p>(c) the use or threat is made for the purpose of advancing a political, ideological, religious, sectarian or ethnic cause</p> <p>["Provided that nothing herein contained shall apply to a democratic and religious rally or a peaceful demonstration in accordance with law.]”</p> <p>...</p> <p><b>3) Notwithstanding anything contained in sub-section (1), an action in violation of a convention specified in the Fifth Schedule shall be an act of terrorism under this Act;]</b></p>

### **SCHEDULED OFFENCES: LIMITING THE SCOPE OF THE THIRD SCHEDULE**

The Third Schedule gives Anti-Terrorism Courts exclusive jurisdiction to try certain offences regardless of whether they fulfil the ‘motive’ requirements for terrorism as established in Section 6 of the ATA, such as abduction or kidnapping for ransom, and use of firearms or explosives by any device. In addition, the Government has the power to “amend” the Schedule - it may “add”, “modify” or “omit” any entry. This provision has the effect of creating an exceptionally wide ambit of the ATA- the Government may, in practice, add any offence to the Third Schedule, which can then be exclusively tried by Anti-Terrorism Courts, regardless of whether the intent underpinning the offence corresponds to the traditional requirements for an offence of terrorism under section 6 of the ATA.

#### ***Proposed Action***

1. Given that all the present clauses of the Third Schedule are such that they can be adequately blended into the main body of the anti-terrorism statute, it is recommended that the Third Schedule is removed altogether
2. However, if the Third Schedule is kept in place, a proviso should be inserted following part 1 of the Third Schedule which states: “Provided that offences added in accordance with the provisions of section 34 must be read in conjunction with section 6(1)(b) and 6(1)(c)”

## **CONTRAVENTION OF DUE PROCESS: SECTION 21-H**

Section 21-H of the ATA pertains to the conditional admissibility of confessions made by an accused while in police custody. The provision states: “Notwithstanding anything contained in the Qanun-e-Shahadat, 1984... any confession made by the accused during investigation without being compelled, before a police officer not below the rank of a Superintendent of Police, may be admissible in evidence against him, if the Court so deems fit.”

In ordinary criminal cases, the use of confessions given to police officers or security forces – as opposed to those given to magistrates – is prohibited by the Qanun-e-Shahadat Order of 1984. **However, Section 21-H permits the use at trial of extra-judicial ‘confessions’ given to police or security forces in terrorism cases. In the absence of fundamental safeguards, there is a heightened risk of torture and coerced confessions, which, in any case, lead to wrongful convictions.**

Torture by police, as documented in the report ‘Policing As Torture’ by JPP, is a widespread and systemic problem in Pakistan.<sup>8</sup> **As such, the fact that a key safeguard against the use of evidence obtained through torture. is entirely removed in terrorism cases is a cause for grave concern.**

### **Proposed Action**

1. In order to counter rampant use of torture by police to coerce confessions, it is proposed that section 21-H of the ATA should be repealed.
2. Otherwise, confessions before a police officer must be made admissible only if a magistrate is not available to record the confession. Reasons are to be furnished as to why a magistrate could not record the statement. A magistrate may record the confessional statement of the accused while he is in police custody at the police station.

## **CONCLUSION**

This policy briefing has identified concrete, specific legislative amendments required to amend the definition of terrorism the ATA to create more stringent *mens rea* (motive) requirements that offences must correspond to in order to be tried by ATCs. This will reduce the scope of the ATA and will prevent ordinary crimes from being tried by ATCs.

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## **REFERENCES**

- 1 The Research Society of International Law conducted an extensive analysis of all the major reported judgments of the Supreme Court of Pakistan and Provincial High Courts relating to the Anti-Terrorism Act, 1997 covering the period 1998- 2013. Nearly 800 judgments were examined during this exercise. This Report borrows heavily on the findings of our case law study.
- 2 Justice Project Pakistan and Reprive. “Terror on Death Row”. December 2014. [Terror on Death Row] Available on: [http://www.reprive.org.uk/wp-content/uploads/2014/12/2014\\_12\\_18\\_PUB-Pakistan-Terror-Courts-Report-JPP-and-Reprive.pdf](http://www.reprive.org.uk/wp-content/uploads/2014/12/2014_12_18_PUB-Pakistan-Terror-Courts-Report-JPP-and-Reprive.pdf)
- 3 Al Jazeera, ‘Pakistan activists upset by new security law’, 13 July 2014; available at: <http://www.aljazeera.com/indepth/features/2014/07/pakistan-activists-upsetnew-security-law-201471316625972647.html>
- 4 Dawn News, ‘ATC cases’, 23 July 2017; available at: <https://www.dawn.com/news/1347002>
- 5 Justice Project Pakistan and Reprive. “Terror on Death Row”. December 2014.
- 6 See PLD 2005 Supreme Court 530, where the Supreme Court of Pakistan held that “a bare perusal of section 6 of the Act would reveal that the Legislature intends, by necessary implication, the exclusion of mens rea in dealing with the contravention of section 6 of the Act which cannot be incorporated, added or inserted in 6 by any Court as such insertion or addition can only be made by the Legislature.
- 7 Anti-Terrorism Act 1997, section 6(1)(b)
- 8 Justice Project Pakistan and Allard K. Lowenstein International Human Rights Clinic, Yale Law School, ‘Policing as torture: A report on systematic brutality and torture by the police in Faisalabad, Pakistan’, March 2014; available at: [https://law.yale.edu/system/files/area/center/schell/jpp\\_launch\\_report\\_050514.pdf](https://law.yale.edu/system/files/area/center/schell/jpp_launch_report_050514.pdf)



Justice Project Pakistan (JPP), ensures access to justice for the poorest Pakistani prisoners at home and abroad. Through public engagement, legal representation, and domestic and international advocacy, JPP combats the death penalty and torture, highlighting gross miscarriages of justice and violations of international standards.

In recognition of our work, in December 2016, JPP was awarded the National Human Rights Award, presented by the President of Pakistan.