

PAKISTAN'S DOMESTIC LEGAL RESPONSES TO EXTREMISM AS PART OF AN OVERALL COUNTER-TERRORISM STRATEGY

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Introduction

The aim of this study is to give an overview of Pakistan's legal responses to political violence by extremist group's post 9/11, including those under international obligations, and to assess the effectiveness of these responses. The study encompasses the period roughly coinciding with the time when Musharraf was at the helm of affairs in Pakistan (1999-2008). Pakistan's domestic responses to terrorism have encompassed, and attempted to address, the issue of extremist and sectarian violence which has plagued Pakistani society for over a decade. These were the issues that mainly compelled the Nawaz Sharif government in 1997 to enact the Anti-Terrorism Act¹ - the primary legislation in Pakistan dealing with terrorism, extremism and punishment for acts of terrorism. Many observers of Pakistani's legal scene have also highlighted that the ATA 1997 might have the aim to combat terrorism but it is often used as a tool to control political opposition and silence civil dissent.² Recently, this was starkly illustrated in the aftermath of the sacking of judges of the superior courts in March 2007 and the subsequent use of the ATA 1997 against civil society and protesting lawyers by the government³.

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¹ Henceforth, the Anti-Terrorist Act will be referred to as the ATA or the ATA 1997.

² For example see Charles Kennedy, "The Creation and Development of Pakistan's 'Anti-Terrorism Regime', 1997-2003" in Saeed Shafiq, *New Perspectives on Pakistan: Visions for the Future* (Oxford: Oxford University Press, 2007), pp 227 – 252 and Shabana Fayyaz, "Responding to Terrorism: Pakistan's Anti-Terrorism Laws", *Perspective on Terrorism* (Vol II, Issue 6), 2008.

³ The regime also made extensive use of the Maintenance of Public Order (MPO) Ordinance (1960) which allows it to "arrest and detain suspected persons" for up to 6 months. Many lawyers were detained under Section 16 which prohibits speech or acts "prejudicial to public safety or the maintenance of public order". Few lawyers found themselves charged under the more serious Sedition Laws (Section 124-A, Pakistan Penal Code which states "Whoever by words, either spoken or written, or by signs, or

In addition, the characteristic of post 9/11 terrorism as a transnational phenomenon with tentacles spread out across not only neighboring states but continents, the world community required of all states a more focused and intense cooperation in fighting the threat. In fact, post 9/11 world perception demanded such a response. More concretely, international obligations arising out of existing Conventions and United Nation Security Council Resolution 1373 of 28 September 2001 in particular placed Pakistan squarely under the world microscope. Pakistan singularly found itself, continues to do so seven years post 9/11, in the eye of the storm because of its close ties and perceived influence with the Taliban's as well as involvement of Pakistani citizens, and individuals with links to Pakistan, in terrorism. The fall of the Taliban's, and more importantly the emergence of Pakistan's tribal belt, in view of some, as center of safe heaven for the insurgents in Afghanistan has placed Pakistan more than any other country grappling with international scrutiny and calls for her do more in the so called war on terror. UNSCR 1373 amongst other things called on member states also to refrain from either actively or passively engaging in terrorist acts, prevent and suppress terroristic activities and criminalization of terroristic activities as well as suppression of financing of such acts. And off course, there are the major conventions on terrorism to which Pakistan is a party and places obligation on her to criminalize terrorist activities and assist other countries in suppressing and persecution of such activities. Therefore, the need to dwell on the contribution of Pakistan to suppressing international terrorism is also pertinent to our discussion and to indeed assess this contribution.

Thus, the current legal regime in operation in Pakistan is a product of factors operating at the domestic and international level. But many within the public perceive the legal regime that has evolved post 9/11 as in fact an alien and draconian, imposed under external influence to

by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excite or attempts to excite disaffection towards, the Federal or Provincial Government established by law shall be punished with imprisonment for life to which fine may be added, or with imprisonment which may extend to three years, to which fine may added, or with fine”

* Views expressed are of the author and do not necessarily reflect the opinion of any institution with which the author is affiliated.

satisfy western, and particular US, interests⁴. The perceptions of the wider war on terror as a war against Muslims thus also permeates through, and reinforces the perception of the laws of the land relating to terrorism especially when there is a popular feeling that it is under US pressure that the government is enacting anti-terrorism legislation. These laws are seen also as gagging the opposition and more recently the legal community in particular⁵. US wholehearted support for the Musharaf regime, in the face of opposition at home by democratic forces, for the past 7 years or so have enhanced these perceptions even more so.

The Laws as They Stood on the Eve of 9/11

When 9/11 occurred Pakistan was one of the few countries in the world that had in place laws, to deal with violent and extremist individuals and groups even if the system in place was immune to abuse for political purposes and weak structurally. The law to deal with such violent entities was the 1997 Anti-terrorism Act. The ATA 1997 as it stood on that terrible day had evolved in its short span of life, through amendments, ordinances and case law and was to go through further modification in order to make it not only more compliant with international requirements but also because of Pakistan's own domestic compulsion manifested in the form of increased violence by extremists and terrorist organizations. It would also be right to conclude from incessant changes to the Act that the laws had not been thoroughly thought out and had been enacted in undue haste and with little debate⁶.

Originally, when enacted, the ATA 1997 provided for the establishment of anti-terrorist courts (ATC) for speedy disposal of cases according to an objective highlighted in the preamble to the Act. Speedy disposal has been a constant theme, as an objective, in every

⁴ Pakistani politicians and military personnel, those in government – past and present - are always at pain in all forums to explain that the War on Terrorism is being fought in Pakistan's own interest; this is understandable if the popular perceptions mentioned above are to be countered.

⁵ Recently the leader of lawyers movement, Aitzaz Ahsan, expressed a popular sentiment when he accused President Bush of blocking the restoration of the judges. See 'Lawyer's show of strength today', *The New*, July 10, 2008.

⁶ During the debate on the ATA 1997 the Pakistan People Party came out strongly against the legislation and argued that the act was geared towards political victimization of the opponents of the Nawaz Sharif government whose security agencies the citizens had now to be protected from. See *The Dawn* (Karachi), August 17, 1997.