

Countering Insurgency and Terrorism in Pakistan: Challenges and Recommendations

Muhammad Imran and Rohaida Nordin
Faculty of Law, Universiti Kebangsaan Malaysia

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Abstract: Since independence, terrorism has remained a constant existential threat for Pakistan. Political discord, sectarian violence and a deteriorating law and order situation have forced its various governments to take effective legal measures to cope these problems. However, all these laws remain unproductive due to a weak criminal justice system. Therefore, some special legal procedures are presented to deal with specific criminal offences outside the Pakistan's regular criminal justice system as it has been unable to provide justice speedily. During the 1990's extreme sectarian violence and a deteriorating peace situation in the country forced the government of the time to enact more stringent laws for the apprehension and speedy trial of suspected terrorists. This paper reviews the evolution of Counter Terrorism laws in Pakistan prior to 9/11. It also identifies the reasons for the failure in countering insurgency and terrorism in Pakistan. This paper demonstrates that poverty, external involvement, religious intolerance, religious madrassas, the Soviet and U.S. invasions of Afghanistan and Democratic instability are the root causes of breeding terrorism and insurgency in Pakistan. This paper concludes with suggestions to help eliminate the factors motivating terrorist activities and enhance the counter terrorism approach in Pakistan.

1 INTRODUCTION

Terrorism is a serious phenomenon of present times and has spread worldwide. Terrorism poses a serious threat to Pakistan in destabilising it socially, economically and politically (Ali, 2010). It poses a threat not only to security but also to the basic rights to life and freedom of its civilians assured under the Constitution of the Islamic Republic of Pakistan 1973. Terrorism has become a major problem for its government and a nightmare for its civilians (Wadhvani, 2011).

Laws are "dynamic" in nature and they change with the passage of time to reflect the needs of society. Generally, well-organised laws form an organised society. Although various governments during their tenure passed several Counter Terrorism laws, the vital factor of implementation always remained neglected (Perwaiz, 2016). Pakistan is in war-like situation against terrorists nowadays. Pakistan has lost 67,399 people in the war on terror" (Sabri, 2017). Economic losses are huge, which is highlighted in the report of the State Bank of Pakistan, stating that "extremist violence has cost the country \$118.3bn in direct and indirect losses from

2002 to 2016." According to this report "both economic growth and social sector development have been severely hampered by terrorism-related incidents" (Sabri, 2017). A review of the available literature shows that several causes contribute to the breeding of terrorism in Pakistan, including socio-economic inequalities, religious intolerance, foreign involvement and international conspiracy. These factors result in the failure of Counter Terrorism and Counter Insurgency measures in Pakistan (Naz, et al., 2013).

2 LEGAL MEASURES TO COUNTER INSURGENCY AND TERRORISM IN PAKISTAN

Pakistan has a long history of anti-terrorism laws as its various governments have enacted several laws, to meet the needs of the time, to combat insurgency and terrorism. The Public and Representative Offices Disqualification Act 1949 allowed for the trial of public officials and for disqualification from holding public office for up to 15 years. The Security of

Pakistan Act, 1952 and the Defence of Pakistan Ordinance, 1955 were frequently used for political objectives. Public Offices (Disqualification) Order, 1959 and Electoral Bodies (Disqualification) Order, 1959 were passed during Gen. Ayub Khan's rule to control political discord. The role of judiciary was bypassed and political dissent was controlled by these orders (Iqbal, 2006). The Suppression of Terrorist Activities (Special Courts) Ordinance (XVIII), 1974 was presented by the Zulfiqar Ali Bhutto's government to specifically cope with terrorism or terrorist activities. It was introduced in response to "nationalist" movements in the NWFP (now Khyber Pakhtoon Khawa) and Baluchistan. This law established special courts for the speedy trial of suspected terrorists. Later, after approval from Parliament it became 'The Suppression of Terrorist Activities (Special Court) Act of 1975'. But this law went against the basic concept of fair trial in several ways especially in section 8 which pre-assumed the guilt of the accused.

Various governments during their tenure attempted to introduce new laws for the apprehension and speedy trial of suspected terrorists. The Special Courts for Speedy Trial Act XV, 1987, The Terrorist Affected Areas (Special Courts) Ordinance, 1990 and The Terrorist Affected Areas (Special Courts) Act, 1992 were enacted to curb heinous crimes considered by the federal government to be terrifying, inhuman, unethical, leading to public outrage, and creating fear and anxiety. But various socio-political changes in Pakistan made these laws ineffective.

Therefore, the government introduced The Anti-Terrorism Act in 1997 in order to combat terrorism, sectarian violence and to ensure speedy trial of heinous crimes. To inhibit terrorist activities this Act allowed the provincial governments to call on the military and civilian armed forces by requesting from the federal government. The Act also launched Special Anti-Terrorist Courts for the speedy trial of the heinous offenses. Besides this, The Anti-Terrorist Act also made it mandatory to conduct the trial of the crimes within 7 days after the submission of the case to the court and in no more than 2 sequential adjournments. The courts also had specific authority to try the criminal in absentia while any appeals could only be made in Special Anti-Terrorism Appellate Tribunals and their judgments would be considered final and could not be challenged in any other court (ATA, 1997).

The Supreme Court of Pakistan made some alterations to The Anti-Terrorism Act in the renowned 'Mehram Ali versus Federation of Pakistan' case. The Supreme Court of Pakistan

announced that Anti-Terrorism Courts would be subject to follow similar procedural rules as regular courts, as well as rules of evidence. Additionally, the Supreme Court also sustained the right of appeal against the judgments of the Anti-Terrorism courts to the ordinary courts. Therefore, as a result of the decision of The Supreme Court, the government had to make amendments in the Anti-Terrorist Act and issued The Anti-Terrorism Amendment Ordinance 1998, which assimilated the changes ordered by the Supreme Court in the Mehram Ali versus Federation of Pakistan case. Though the Anti-Terrorism Amendment Ordinance 1998 dispersed the Special Appellate Tribunals, it kept the Special Anti-Terrorist Courts functional.

During this time, the deteriorating law and order situation in Sindh, especially in Karachi and the killing of Hakim Muhammad Saeed, a former governor of Sindh in October 1998, forced the government to make more changes to the Anti-Terrorism laws. The Government declared a state of emergency in Sindh, and imposed Governor's rule inviting the Military to establish law and order in the province. To give it legal power, the government launched the Pakistan Armed Forces (Acting in Aid of Civil Power) Ordinance, 1998. This ordinance was restricted to Sindh province and it established Military Courts which also had authority to trial civilians. This Ordinance also described a new crime called Civil Commotion, which can be punishable for up to 7 years of imprisonment or a fine, or both. Civil commotion included creation of in-house disturbances by violating the law, initiating or continuing prohibited strikes, lock-outs, vehicle theft, destruction of State or Public property, firing weapons to create fear, extortion, acts of criminal trespass, graffiti wall-chalking intended to create threat, and stimulating the commission of a crime punishable under the Pakistan Penal Code. The Supreme Court of Pakistan in its remarkable decision in the case of Liaquat Hussain vs. Federation of Pakistan on February 1999 rejected the Ordinance by declaring the Pakistan Armed Forces Ordinance 1998 unconstitutional. The Supreme Court also ruled that no civilians could be tried in Military Courts. Though, the government cancelled the Ordinance on April 27, 1999 it added civil commotion as a crime in the Anti-Terrorism Act through a new Ordinance in August 1999. Because of this Ordinance, Anti-terrorist Courts were established throughout the whole country. Later, Nawaz Sharif's government was dissolved by General Pervez Musharraf on Oct. 12, 1999. General Pervez Musharraf made two amendments to the Anti-Terrorism Ordinance 1999.

The first amendment extended the jurisdiction of courts in Sections 109, 120, 120 B, 121, 122, 123, 365, 402 and 402 B. Under the second amendment two special courts were formed in Lahore High Court and Karachi High Court which could also work as Appellate Tribunals for the decisions of Anti-Terrorist Courts. Although, the Anti-Terrorist Courts were working as ordinary courts under Gen. Pervez Musharraf’s government, the worsening law and order situation of the country forced him to make more amendments to the Anti-Terrorism system. General Pervez Musharraf introduced the Anti-Terrorism Amendment Ordinance on August 15, 2001 which allowed the government to ban and freeze the assets of any militant or sectarian organisation found to be involved in terroristic activities.

A Summary of Legal Measures Taken to Counter Insurgency and Terrorism in Pakistan.

Sr. No.	Legislation / Act Name	Objectives / Purpose
1	The Public and Representative Offices Disqualification Act, 1949	“The first constituent assembly passed the controversial Public and Representative Office (Disqualification) Act (PRODA), 1949, that provided for trial of public office holders and disqualification from holding public office for up to 15 years.”
2	The Security of Pakistan Act, 1952	“For special measures to deal with persons acting in a manner prejudicial to the defense, external affairs and security of Pakistan”
3	The Defense of Pakistan Ordinance, 1955	The Security of Pakistan Act, 1952 & The Defense of Pakistan Ordinance, 1955. “These laws were used by the government of the day to suppress civil liberties such as freedom of speech.”
4	Public Offices (Disqualification) Order, 1959	“Patterned after the often misused PRODA.”

5	Electoral Bodies (Disqualification) Order, 1959	“During General Ayub Khan’s military rule Public Offices (Disqualification) Order, 1959 and Electoral Bodies (Disqualification) Order, 1959 were enacted to control political dissent. By and large these laws had wide ranging applications, which were also used by the government of the day for countering terrorism.”
6	Suppression of Terrorist Activities (Special Courts) Ordinance (XVIII), 1974	The first law that specifically dealt with “terrorism” or “terrorist acts” This law, for the first time, established a parallel judicial system with exclusive jurisdiction for “speedy trials” of terrorists.
7	the Suppression of Terrorist Activities (Special Court) Act, 1975	A few months later the Parliament approved the Suppression of Terrorist Activities (Special Courts) Ordinance (XVIII), 1974 and it became the Suppression of Terrorist Activities (Special Court) Act of 1975.
8	The Special Courts for Speedy Trial Act XV, 1987	“For the establishment of special courts for speedy trial”
9	Terrorist Affected Areas (Special Courts) Ordinance, 1990	“To provide for the speedy trial of certain offences in terrorist affected areas.”
10	Terrorist Affected Areas (Special Courts) Act, 1992	“To provide for the speedy trial of certain offences in terrorist affected areas.”
11	Anti-Terrorism Act, 1997	“To provide for the prevention of terrorism, sectarian

		violence and for speedy trial of heinous offences and for matters connected therewith and incidental thereto.”
12	Anti -Terrorism (Amendment) Ordinance, 1998	“Dispersed the Special Appellate Tribunals, but kept Special Anti-Terrorist Courts functional.”
13	Pakistan Armed Forces (Acting in Aid of Civil Power) Ordinance, 1998	“Established Military Courts in the province that can try civilians also. This Ordinance also described a new crime called as Civil Commotion, which can be punishable for up to 7 years of imprisonment.”
14	Anti-Terrorism Ordinance, 1999	“First amendment extended the jurisdiction of courts. Second amendment two special courts were formed in Lahore High Court and Karachi High Court and they could also work as Appellate Tribunals for the decisions of Anti-Terrorist Courts.”
15	Anti-Terrorism (Amendment) Ordinance XXXIX Of 2001	“To ban any militant or sectarian organization and also freeze their assets if found involved in terrorism or terrorist activities in the State.”

3 THE PROBLEMS OF PAKISTAN'S CRIMINAL JUSTICE SYSTEM IN COUNTERING INSURGENCY AND TERRORISM

Lack of effective law enforcement is the major cause of breeding terrorism. It is considered as society's official struggle to attain compliance with the rules and regulations of society. Unfortunately, the law enforcement structure in Pakistan is very disappointing and it is ineffective in enforcing the laws of the country (Yusuf, 2014). According to the World Justice Project's 2016, the rule of law index shows Pakistan placed 106 out of 113 countries for regulating law enforcement. It also highlights that the Pakistan criminal justice system is slow and unproductive and that violation of laws is widespread in the country (Shehzad, 2017). The United States Institute of Peace shows that Pakistan's law enforcement agencies are constantly failing in fighting crime, sustaining the rule of law, providing security to citizens and combating increased violence and terrorism. Ineffective and unsuccessful law enforcement is considered as heaven for terrorist activities (Abbas, 2011). Pakistan's counter-terrorism legislation is full of flaws as indicated by Pakistan's Centre for Research and Security Studies (Bokhari, 2013). The first major flaw is that a large number of detained suspected terrorists are released without trial, because of the expiration of the allowed detention period, without any action. Other flaws include a lack of a proper system for collection and safe storage of evidence, a weak policing system, absence of prisons having high security for suspected militants, and a lack of a monitoring mechanism of mosques and religious madrasas. There are several weaknesses in the Anti-Terrorism Act which creates hurdles in eradicating terrorism from the country (Haider et al., 2015).

One of the reasons for the failure of Counter Terrorism measures in Pakistan is its weak policing system. The police rules (1934) and the police structure inherited from the British has not been amended to the modern-day needs. With the advancement in technology the problems of the 21st century are quite different from that of the 19th century. Therefore, the Pakistan police system should be modernised and changed to an effective legal and institutional structure based on transparency and accountability (Hassan, 2011). An efficient and effective police structure is vital for countering insurgency and terrorism in Pakistan. The other

reasons for the failure of Pakistan's criminal justice system includes political influence, inadequate training, corruption, insufficient equipment, lack of modern forensic services, legislative loopholes and weaknesses in the judicial department, all of which assists terrorist groups to escape punishment. The courts have to fulfil all the legal procedures and cannot convict accused persons without proper evidence (Abbas, 2011).

Since independence, no serious effort is made to reform Pakistan's justice system which was inherited from the British which was put in place to achieve their aims in Indian subcontinent in colonial times. For the development of a civilised society, a smooth functioning justice system is essential. Pakistan has never had an independent prosecution department which is crucial for an effective criminal justice system. In Pakistan there is no concept of independent prosecution which is often controlled by the executive and also used against political rivals. Only those prosecutors who harbour an interest in the ruling party are chosen (Arshad, 2017).

Lawyers also play a part in the failure of Pakistan's criminal justice system as many are trying to utilise the system for their own benefits. However, lawyers can play an important part in providing justice and making a strong criminal justice system. Unfortunately, Pakistan's Bar Council has failed to manage and properly regulate the legal community. As a result, people are losing faith in the justice system (Niazi, 2015).

Inadequate training of the investigation officers has also contributed to the failure of the criminal justice system of Pakistan, as this slows down the conviction rate. Most of the investigation officers do not have a legal education which is beneficial to conduct a thorough investigation (Abbas, 2016).

There is no witness protection mechanism in Pakistan's criminal justice system. As a result, those who provide evidence against high profile criminals and terrorists receive no protection. In various cases police officers investigating the terrorists and also witnesses are killed. For example, in Malik Ishaq's case, which resulted in 70 killings, but no-one was ever convicted (Kharal, 2011). At a later date, he was killed along with 13 terrorists in a "shootout" as he reportedly attempted to escape police custody (Qarni, 2015).

Judges are facing similar security threats. Several terrorism-related cases are pending in lower courts due to security threats. It was the failure of criminal justice system of Pakistan that the alleged terrorists involved in the Marriott Hotel Islamabad bombings

were released by the courts due to the lack of evidence (Gunaratna, 2008).

4 FACTORS BREEDING TERRORISM IN PAKISTAN

There are several factors which contribute to the initiation and support of terrorism in Pakistan which include injustice, poverty, unemployment, religious intolerance, an un-reformed education system, the unresolved Kashmir issue, separatist movements, external hands involvement, and Soviet and US invasions of Afghanistan (Haider et al, 2015).

The increasing number of terrorism in Pakistan caused by various factors which are as follows; Injustice is the top cause of breeding terrorism. If the legitimate complaints of the people are not resolved, then they may choose violent acts. Delays in the justice system are another reason for victims to be attracted to terrorist groups (Irshad, 2011). The unresolved Kashmir issue and the discriminating behaviour of the West in solving this issue are creating aggressiveness and violence among Pakistan's youth. Ultimately, they join terrorist organisations and are brain washed for the organisation's benefit (Jamal, 2012).

Social inequalities and inadequate economic conditions are major causes of breeding terrorism in Pakistan (Jamal, 2012). In Pakistan 60% of its population is living below the poverty line, being incapable of feeding and educating their children. Therefore, they send their children to religious madrassas to fulfil their children's basic needs. Religious madrassas are the epicentres of militancy in Pakistan. The youth taught through these religious Madrassas are educated with extremist ideas; they do not tolerate other religions and "even other sects of their own religion." Religious intolerance "adds fuel to the fire of terrorism" and it is a destructive influence on social harmony, political consistency and economic progress (Irshad, 2011).

Sectarian violence also has a destabilising effect on Pakistan, at its peak during Gen. Zia ul Haq's military rule. The Muttahida Quami Movement (MQM) created by Gen. Zia ul Haq to weaken the People's Party has a strong terrorist arm and was responsible for destroying Karachi's peace and prosperity. Its members were involved in extortion and targeted killings. It is also ran a campaign in Urdu speaking provinces consisting of Karachi and Hyderabad. But some other parties did not like the invasion of the "Urdu speaking community, Punjabis,

Pathans, Kashmiris and Baluchis in Sindh wanted an independent country named Sindhu Desh (Khushi, 2016).” Currently, several parties including MQM, Awami National Party, and Pakistan People’s Party, Jamaat e Islami and several other Sindhi Nationalist parties are fighting to have control over Karachi. Baluchis have created different terrorist groups for the separation of Baluchistan from Pakistan to form “Greater Baluchistan”. India is reportedly involved in supporting separatist movements of Baluchistan. Baluchi separatists are taking revenge by killing Punjabis for the persecution of Baluchis by the Pakistan Army in which Punjabis dominate (Khushi, 2016).

After the Soviet invasion in Afghanistan, religious Madrassas took on a new dimension as they were being used as training centres for so-called Jihadis. Many so-called Mujahedeen were trained and sent to Afghanistan to fight against Soviet forces. After the removal of Soviet Union from Afghanistan, a large number of the Mujahedeen returning to Pakistan indulged in terrorist activities (Wadhwani, 2011).

The Soviet war in Afghanistan was responsible for spreading terrorism and intolerance in Pakistan. The aftermath of the Soviet removal from Afghanistan transferred violence, extremism and weaponization into Pakistan's society resulting in sectarian and interfaith violence (Fazli, 2012). In last two decades over 4,000 people have been killed in sectarian violence. External hands involvement in Pakistan is also one of the root causes of spreading terrorism in Pakistan as it is believed that foreign intelligence agencies are sponsoring and training terrorists in Anti- Pakistan activities. The US, Indian and Israeli agencies are reportedly involved in terrorist attacks taking place in Pakistan (Ahmed, 2016).

Democratic instability caused by the military rules of General Ayub Khan, General Yahiya Khan and Gen. Zia ul Haq and General Pervez Musharraf resulted in political instability, bad governance and socio-economic collapse. This delicate situation along with the deteriorating law and order situation provided a fertile breeding ground for terrorism (Naz, et al., 2013).

The current education system in Pakistan is a colonial inheritance and has not been fully modernised to meet the ideological, scientific and advanced needs of the modern-day State. It is a neglected sector as Pakistan spends only 2.6 % of its GDP on education. It also does not adopt the principles of Islam to oppress the inter faith divisions (Bajoria, 2009).

After the incident of 9/11, religious extremism has developed into new forms. The US invasion in Afghanistan and use of combat drones in Pakistan's tribal areas has served to fuel religious extremism, leading to violent reactions. The US’s drone strikes have increased anti-Americanism in Pakistan as thousands of innocent civilians have been killed or injured in these strikes. Terrorists are using this collateral damage for their benefit because families of the people killed in drone strikes become an ideal nursery for suicide bombers. The purpose of suicide attacks is to create public outrage and also to set the public against the government and military as they fight a “war on terror” (Ahmed, 2016). The chart below shows that ‘War on Terror’ has increased terrorism in Pakistan.

The collapse of the state infrastructure in Afghanistan generated a vacuum which was rapidly filled by groups who took this battle upon themselves to continue to fight a lost battle. Some of them invaded into Pakistan's tribal areas, and clearing the tribal areas of foreign fighters by Pakistani armed forces has transformed Pakistan into a battle ground (Javaid, 2015).

Due to this battle Pakistan has lost thousands of its civilians, shown in table below.

Table 1: Casualties in Pakistan since 2003 to 2017. Data till 12 November 2017.

Years	Civilians	Security Force Personnel	Terrorists / Insurgents	Total
2003	140	24	25	189
2004	435	184	244	863
2005	430	81	137	648
2006	608	325	538	1471
2007	1522	597	1479	3598
2008	2155	654	3906	6715
2009	2324	991	8389	11704
2010	1796	469	5170	7435
2011	2738	765	2800	6303
2012	3007	732	2472	6211
2013	3001	676	1702	5379
2014	1781	533	3182	5496
2015	940	339	2403	3682
2016	612	293	898	1803
2017	460	189	458	1107
Total*	21949	6852	33803	62604

Source: <http://www.satp.org/satporgtp/countries/pakistan/database/casualties.htm>

5 RECOMMENDATIONS

- a. Pakistan must reform its criminal justice system to modern-day needs and make arrangements to implement the counter terrorism laws effectively.
- b. Madrassas should be reformed, and heads of those madrassas should be engaged to provide a long-term solution to the on-going problems resulting from religious intolerance.
- c. Pakistan's education system must be reformed according to the present needs. Pakistan's government should emphasise and promote technical education to help decrease unemployment in the country.
- d. Pakistan's government, general public and security agencies must work together with strong coordination in fighting terrorism.
- e. The United States must play its part in resolving the Kashmir issue to cope with the menace of terrorism in the region.
- f. The performance of the government must be improved by removing corruption which has lowered its integrity and credibility among the general public. Government and opposition parties must unite against International pressure and collaborate with each other in order to make an effective Counter Terrorism strategy.
- g. Pakistan must take measures to strengthen its border with Afghanistan in order to end terrorists' invasion and foreign involvement.
- h. Persons promoting religious intolerance, sectarian violence and extremism must be strictly punished. To promote inter-sect harmony; reform programs must be introduced through education, media and extra-curricular activities.

6 CONCLUSIONS

Pakistan's criminal justice system needs urgent procedural reforms as there are several weaknesses in the rules of evidence and it requires a strong will to implement the laws. Cases not completed within time end in no penalty imposed on accused parties, and in case of adjournment of the trial due to absence of appreciable evidence as is being used internationally for criminal trials. The creation of the military courts is not a long-term solution to problems of the criminal justice system of Pakistan. The solution to Pakistan's problems lies in reforming its criminal justice system. An independent prosecution department should be formed which should be free from government involvement in its functions. It is essential for the rule

of law and the supremacy of the Constitution of Pakistan that its Supreme Court should take satisfactory measures in order to "protect the mishandling of Justice". The Pakistan government should take measures to replace the "military approach" with a counter terrorism strategy controlled by civilian law enforcement agencies. It must implement the Anti-Terrorism Act both in letter and spirit, it is an abomination to possess laws and not implement them. It is essential to reform the Penal Code, Criminal Procedure Code and Evidence to meet current needs. The government should make it a priority identify and eliminate the factors contributing to spread terrorism in Pakistan.

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