



### NEED FOR REFORMING THE ANTI-TERRORISM ACT 1997 (ATA)

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The Anti-Terrorism Act 1997 (ATA) is the primary substantive law that governs counter-terrorism measures by Pakistan. The legislative intent underpinning the ATA was to increase the power of law enforcement agencies to prevent and investigate terrorism and create special courts to expedite trials of terrorist suspects.<sup>1</sup> By virtue of being a special law, the ATA has an overriding effect on any other general laws. The Anti-Terrorism Courts (ATCs) are overburdened with cases because even the ordinary criminal cases are also being treated under ATA 1997 due to the broad definition of terrorism in the Act. The often relied upon criteria applied by judges is to determine whether the Act “created terror in the public” i.e. what was the effect of the unlawful action.

A fundamental flaw within the ATA is the vague and overly broad definition of “terrorism” under its provisions. This allows offences bearing no nexus to militancy and proscribed terrorist networks to be tried under its provisions. A study by Justice Project Pakistan and Reprieve in December 2014 discovered that as many as 80 per cent of those convicted of terrorism related offences under the ATA were accused of offences that had nothing to do with terrorism as it is commonly understood. Furthermore, 86.3 per cent of those sentenced to death by the ATCs were convicted for offences bearing little or no connection to terrorism.<sup>2</sup>

<sup>1</sup> Anti-Terrorism Act 1997, Preamble.

<sup>2</sup> Terror on Death Row, Justice Project Pakistan, p-10.

The preamble of the ATA lays out the intent of the law in the following words: “the prevention of terrorism, sectarian violence and for speedy trial of heinous offences and for matters connected there with and incidental there to.” The inclusion of heinous offences, which are not defined within the law, widens its scope beyond crimes of terrorism and sectarian violence to almost all acts of violence. In addition to the preamble, Section 6 of the ATA lays out the definition of terrorism. The original definition, at the time of the enactment of the law was limited to two paragraphs. However, successive amendments have broadened it to an unwieldy 28 paragraphs that extends to all violent crimes. However, it is to be noted that not all violent crimes can be categorized as terrorism.

The Third Schedule in the ATA contains a list of “scheduled offences” that may be exclusively tried by Anti-Terrorism Court. Section 34 of the ATA gives the Government the power to “add”, “modify” or “omit” any entry in the Schedules. According to the National Public Safety Commission’s “Manual on Anti-Terrorism Act, 1997”(2008), all offences included in the Third Schedule are executable by the Anti-Terrorism Courts “even if an offence is committed for absolutely private motives and having no connection with terrorism.”

Whether a crime committed on private motives can be charged under the law of terrorism is a big question mark on the efficiency of this particular law.

### Third Schedule Offences



*Source: Justice Project Pakistan (JPP)*

In addition to the problems discussed, the important issue is that the police is not well-versed with the law, and this lack of legal knowledge often leads to adversely affecting the prosecution's case. The police deal fatal blows to the prosecution's case by committing procedural defects such as delaying the lodging of an F.I.R (Full Investigation Report), improperly registering the F.I.R, misidentifying the roles of the accused and nominating an unnecessary number of persons as the accused. Although the investigation commences with the registration of an F.I.R, there is an overreliance on its importance with consequently little attention paid to the actual crime scene.

All these oversights significantly damage the prosecution's case and contribute to the high rate of acquittals in ATC cases. According to an official in Counter Terrorism Department, 11 cases were reviewed personally by him, which were filed to ATCs for trial. His professional assessment is that the motive behind all cases was personal enmity, political rivalry, or any other malignant intentions of the police and the people who filed those cases - even though the crime had no nexus to the ATA.<sup>3</sup>

Furthermore, potential human rights abuses are prevalent while arresting suspects, as well as under the remand procedure of ATA. These violations mostly arise due to the failure to follow the proper procedures (excessive use of force, fake encounters, inconsistent case diaries, etc.) and the misapplication of the relevant provisions. One of the major reasons for the human rights violations, as mentioned above, is the poor investigation skills of the police. Investigative tools in Pakistan are not up to date with scientific developments, even though evidence required through modern means is admissible under the law. Since the police do not have requisite training and are consequently negligent while performing their duties, they fail to effectively use the mechanisms and tools available to them.

Revising and updating the terrorism laws is the need of the hour. Amendments should be considered to widen the scope of the ATA's restrictions on terrorist financing, kidnapping for ransom or extortion, or other crimes committed by terrorist organizations to raise funds. Clauses of ATA should be considered for serious implementation on the role of intelligence organizations in counter terrorism, Protecting Witnesses, Police Officers, Courts, and Prosecutors. The definition of "terrorism" must be revised considering the internal and external security challenges faced by Pakistan. Police training program to understand the existing legal structure of terrorism laws is considered to be the backbone in establishing law and order situation across the country. The laudable performance of Pakistani police officers while serving in various UN peacekeeping operations also show promise to the cause.

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<sup>3</sup> Interview by Anonymous, August 10, 2018.