

Amendments to Anti-Terrorism Law of Pakistan: An Overview

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Abstract

This article discusses the anti-terrorism legislation and later amendments to the laws in Pakistan. This is an interpretive research. The researcher used content analysis to discuss and analyze the amendments and their potential impacts in Pakistan. It is concluded that most of the amendments were motivated by extraneous factors than by indigenous factors. These amendments could not succeed in achieving the desired ends.

Keywords

Terrorism, Anti-Terrorism, Legislation, Pakistan, Amendments

Introduction

The basic legislation on terrorism in Pakistan is Anti-Terrorism Act, 1997 (ATA). It is a special legislation with both substantive as well as procedural provisions of law. In 2013, two amendment packages were introduced to ATA namely the Anti-Terrorism (Amendment) Act, 2013 and the Anti-Terrorism (Second Amendment) Act, 2013. The amendments are not the first ones to be introduced to ATA; a series of amendments in different time frames and with different motivations have been introduced to ATA. The instant article proposes to explore, after brief literature review, the narrative of amendments made to ATA since 1997, which will be followed by analysis of the content of the amendments and the factors prompting amendments in ATA in Pakistan.

Literature Review

A glance at the literature on anti-terrorism law in Pakistan shows some very important writings with the focus on development and application of the law. Kennedy (2004) has, after outlining in detail the development of the anti-terrorism regime, concluded that Pakistan's anti-terrorism regime has been a 'complete failure'. He has outlined in detail the context of some of the waves of amendments and how the anti-terrorism law regime has evolved. Fayyaz (2008) has held that anti-terrorism law's application has been an 'unfulfilled objective'. She also has taken an overview of the contexts of the amendments introduced in the law. Hameed (2012) has tried in his article to look into the weak areas of ATA and has tried to contribute towards improvement in the legal regime. His article intends to provide the solution and has made little effort to explore the development of ATA in Pakistan. Kennedy (2004) and Fayyaz (2008) have tangentially examined the development of ATA, but have not tried to systematically appraise the process of amendments in ATA and the effect of such changes.

An Overview of the Amendments

An overview of the amendments as per available record since 1997 is reflected through the following table:

S. No.	Short Title	PLD Reference
1.	Anti-Terrorism (Amendment) Ordinance, 1998 (Ordinance IX of 1998)	PLD 1999 Cent. St. 143
2.	Anti-Terrorism (Third Amendment) Ordinance, 1999 (Ordinance XX of 1999)	PLD 2000 Cent. St. 78
3.	Anti-Terrorism (Amendment) Ordinance, 2000 (Ordinance XXIX of 2000)	PLD 2001 Cent. St. 1
4.	Anti-Terrorism (Amendment) Ordinance, 2001 (Ordinance XXXIX of 2001)	PLD 2002 Cent. St. 107
5.	Anti-Terrorism (Amendment) Act, 2004 (Act X of 2004)	PLD 2005 Cent. St. 63
6.	Anti-Terrorism (Second Amendment) Act, 2004 (Act II of 2005)	PLD 2005 Cent. St. 82
7.	Anti-Terrorism (Amendment) Ordinance, 2009	Published in Special Supplement of PLD
8.	Anti-Terrorism (Amendment) Ordinance, 2010	Published in Special Supplement of PLD
9.	Anti-Terrorism (Amendment) Act, 2013	
10.	Anti-Terrorism (Second Amendment) Act, 2013	

The narrative of amendments to ATA starts with two judgements of the Supreme Court of Pakistan (SCP) that necessitated amendments to the law. These two judgements are *Mehram Ali versus Federation of Pakistan* and *Liaquat Hussain versus Federation of Pakistan*. The former examined the constitutionality of ATA while the latter appraised the vires of the Pakistan Armed Forces (Acting in Aid of Civil Power) Ordinance, 1998, which provided judicial powers to military officers and was introduced to expedite the adjudication of heinous cases and was linked to ATA. In *Mehram Ali Case*, the SCP found that many parts of the ATA were unconstitutional and ordered the government to weed the legislation of unconstitutional legal provisions. The *Liaquat Hussain Case* met the same fate with the added punch that the whole legislation of aid of civil power was struck down. The government of the day (i.e., Nawaz Sharif's second government) had then to comply with the judgements and had to amend the ATA accordingly through amendments. The second big set of amendments came after 1999 coup d'état when General Pervez Musharraf overthrew the government of Nawaz Sharif and prosecuted him for terrorism. In order to try Nawaz Sharif for hijacking, the offence was included in ATA and this was done by another set of amendments in 2000. The third wave of changes in ATA came after the 9/11. The UN Security Council passed 1373(2001), which obligated all states to amend their anti-terrorism legal regimes to

include measures prohibiting and punishing financing to terrorists. Accordingly, Pakistan complied through another set of amendments. Due to urgency of war on terror and due to special procedures and dedicated anti-terrorism courts, the definition of terrorism expanded phenomenally. The murder of Benazir Bhutto brought the fourth set of amendments. The federal government (Pakistan Peoples Party was leading the coalition government) got transferred the investigation and prosecution of the murder case of Benazir Bhutto, which was being heard by an Anti-Terrorism Court in Rawalpindi. The latest set of amendments was introduced through the Anti-Terrorism (Amendment) Act, 2013 and the Anti-Terrorism (Second Amendment) Act, 2013. The Anti-Terrorism (Amendment) Act, 2013 is a fruition of the earlier commitments of Pakistan at international level with respect to the Financial Action Task Force (FATF), an inter-governmental organization established in 1989 and tasked, *inter alia*, to develop international standards (in form of its recommendations) to safeguard international financial system. FATF had consistently urged Pakistan to amend its anti-terrorism law to tighten the asset seizure and counter-terrorism financing regimes. The main characteristic points of the 2013 amendments are that broad categories of amendments were introduced, which warrant some elucidation:

A. Definitional Amendments

In Common Law countries, legislations are drafted to express the will of the legislature. The will is expressed in legal jargon and with the help of drafting techniques. One such technique is to come up with a definitional clause in a piece of legislation. The definitional clause generally addresses the issues of capturing the abstract ideas of parliamentarians in black letter law form. In ATA 1997, Section 2 deals with general definitions, while Section 6 deals with the definition of offence of terrorism. The ATA (Amendment) Act 2013 amends both Sections 2 and 6. It amends Section 2 to redefine the concepts of 'money' and 'property' with the effect of widening the connotations and resulting in international applicability of the ATA. It also amends Section 6 to include application of all the offences defined in eight international conventions (outlined in Fifth Schedule to ATA 1997 read with its Section 34) relating to Unlawful Seizure of Aircraft, International Persons, Diplomatic Agents, Taking of Hostages, Violence at Airports, Safety of Maritime Navigation, Safety of Fined Platforms on Continental Shelf and Terrorist Bombings. The importation and nationalization of international law into ATA is a characteristic of this set of amendments. An important point worth noting is that the newly added Fifth Schedule has a clause which enables the Federal Government to specify through 'notification' any other convention or

international treaty to be included for application in Pakistan through ATA law. The delegation of power of incorporating of international law to the executive must be minutely examined as the domain is predominantly reserved for the legislature.

B. Counter Terrorism Financing Amendments

Counter Terrorism Financing (CTF) Regime of Pakistan's terrorism law is embedded in Section 11 and twenty four of its sister clauses (from Section 11A to 11X). While the new amendments introduce minor changes in Sections 11A, E, F, H, P, R, S, T, Section 11O attempts to simplify and empower both provincial and federal governments to affect seizure, freezing and detention of person and property involved in terrorism. In the previous form, only the provincial government had the power to affect seizure of property. The seizure and freezing of accounts is a tricky subject in Pakistan. Interestingly, the new amendments make no reference towards Anti Money Laundering Act, 2010 and by not addressing the extant legislation on the point, two regimes have become operational. One is under the AML Act, 2010 and the other under the new amendments. The primary law enforcement agency (i.e. Police), as usual, has been kept out of business and no trust is reposed in it. The exclusionary approach towards police and a multiagency environment for CTF is counterproductive: as in every case, the fragmentation of powers of counter terrorism agencies translates into benefiting criminals who exploit the legal and administrative lacunae in courts.

The second legislation of 2013 in the form of Anti-Terrorism (Second Amendment) Act, 2013 has introduced legal provisions that further expand the definition of 'terrorism' as contained in Section 6. The legislation has made minor amendments and has added Section 21EE which has, in theory, conferred power on the Superintendent of Police to call for information and for obtaining record from service provider companies.

Analysis

Based on the above narrative, it will be appropriate to now offer analysis on the amendments introduced so far. The following are noted in this regard:

1. Most of the amendments have been introduced through Ordinances (temporary legislation). The introduction of amendments through Ordinances shows that in the legislative domain in the anti-terrorism regime, the law of Pakistan is based on ad-hocism and temporal basis. It also reflects that most of amendments are made without much debate in the parliament.

2. The amendments have been motivated more by extraneous factors than by indigenous factors contributing to the improvement of law for the sake of dispensing criminal justice. The event-related narrative of amendments is but one example. Likewise, the first set of amendments of 2013 shows that the amendments were made to fulfill the international obligations.
3. The definition of the offence of 'terrorism' is in continuous expansive form at the moment. The accommodation of external factors and absence of input from the internal mechanisms affection criminal justice system has ended up in unnecessary broadening of the definition of the offence of terrorism. Instead of including to the point and precise definition, the inclusive nature of definition especially by way of cross-referencing it to the international instruments has blurred the legal definitional elements. For example, kidnapping for ransom *per se* (i.e., if not connected to terrorism) is treated as an act of terrorism. Likewise, extortion of money (if not connected to terrorism) and firing incidents in court premises are now treated as acts of terrorism.
4. The ATA, in theory, criminalizes the actual hard core terrorist acts as well as forward and backward linkages in the form of proscribing the terrorist organizations and by introducing a counter-terrorism financing and anti-money laundering regimes. In practice, however, it is a complete hotchpotch. The lines of responsibilities are blurred and overlapping: the local police is responsible for registering criminal cases that primarily address hard core terrorist acts; the proscription of the terrorist organizations is notified by federal and provincial governments through Ministry of Interior and the Home Department; the implementation of enforcing the notification is on the local police; the counter-terrorism financing and money laundering are lumped together and various organizations including local police, National Accountability Bureau, Federal Investigation Agency, Financial Monitoring Unit of Ministry of Finance are responsible to enforce the legal provisions. The hotchpotch has ruined the very architecture of the law and has also resulted in little or no prosecutions of counter-terrorism financing and money laundering. The criminals indulge in forum shopping vis-à-vis offences and investigation agencies.
5. In practice, the intelligence agencies investigate the cases of terrorism and 'handover' the terrorists to local police; the result is obvious as almost all the prosecutions fail. The intelligence agencies, which operate at federal level and have access to all the electronic databases of public record, the mobile phone companies and service provider companies in the country and have no training or legal obligation to collect admissible evidence take charge of the terrorism cases resulting in big information gap, which is ultimately reflected in the trial. Disconnect between theory and practice has to be addressed if any meaningful progress is desired.

End Notes:

¹PLD 1997 Cent. St. 535

²The copies of the Anti-Terrorism (Amendment) Act, 2013 and the Anti-Terrorism (Second Amendment) Act, 2013 are available on official website of National Assembly of Pakistan on: http://www.na.gov.pk/en/acts-tenure.php?tenure_id=1 [Accessed on 20 July 2013]

³Some of the important ones are: Kennedy, Charles (2004). *The Creation and Development of Pakistan's Anti-Terrorism Regime, 1997 to 2002, Religious Radicalism and Security in South Asia*, ed. Satu Limaye et al. (Honolulu: Asia Pacific Center for Security Studies, 2004), 387–412 available on: <http://www.apcss.org/Publications/Edited%20Volumes/ReligiousRadicalism/PagesfromReligiousRadicalismandSecurityinSouthAsiach16.pdf> [Accessed on 20 July 2013]; Fayyaz, Shabana (2008). *Responding to Terrorism: Pakistan's Anti-Terrorism Laws* available on:

<http://www.terrorismanalysts.com/pt/index.php/pot/article/view/39/html> [Accessed on 20 July 2013]; Hameed, Zulfiqar (2012). *The Anti-Terrorism Law of Pakistan: Need for Reform*, Social Science and Policy Bulletin, Vol. 3, No. 3, Lahore University of Management Sciences.

⁴The problem with legal documentation in Pakistan is that all legislations are published through official gazettes, which are not compiled religiously by any one publisher. The government has a reference section in Ministry of Law, Government of Pakistan, which keeps a manual track. The licensed publishers like Pakistan Legal Decisions (PLD) and Pakistan Legal Journal (PLJ), through their editorial boards publish what they get. References available to the author regarding amendments are: PLD 1999 Cent. St. 143, PLD 2000 Cent. St. 78, PLD 2001 Cent. St. 1, PLD 2002 Cent. St. 107, PLD 2005 Cent. St. 63, PLD 2005 Cent. St. 82, two amendments published in Special Supplements of PLD in the years 2009 and 2010. Finally, two latest amendments of 2013 have been introduced through the Anti-Terrorism (Amendment) Act 2013 and the Anti-Terrorism (Second Amendment) Act 2013.

⁵PLD 1998 SC 1445

⁶PLD 1999 SC 504

⁷PLD 1999 Cent. St. 156. The Ordinance empowered military officers with judicial powers and allowed them to try criminal cases.

⁸Section 6 of Anti-Terrorism Act, 1997 defines terrorism as:

1. In this Act. “terrorism” means the use or threat of action where:

- 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 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.
2. An “action” shall fall within the meaning of sub-section(1), if it:
- a. Involves the doing or anything that causes death;
 - b. Involves grievous violence against a person or grievous body injury or harm to person;
 - c. Involves grievous damage to property;
 - d. Involves the doing of anything that is likely to cause death or endangers a person's life;
 - e. Involves kidnapping for ransom, hostage-taking or hijacking;
 - f. Incites hatred and contempt on religious, sectarian or ethnic basis to stir up violence or cause internal disturbance;
 - g. Involve stoning, brick-batting or any other form of mischief to spread panic;
 - h. Involves firing on religious congregations, mosques, imambargahs, churches, temples and all other places of worship, or random firing to spread panic, or involves any forcible takeover of mosques or other places of worship;
 - i. Creates a serious risk to safety of public or a section of the public, or is designed to frighten the general public and thereby prevent them from coming out and carrying on their lawful trade and daily business, and disrupts civil (civic) life;
 - j. Involves the burning of vehicles or another serious form of arson;
 - k. Involves extortion of money (bhatta) or property;
 - l. Is designed to seriously interfere with or seriously disrupt a communications system or public utility service;
 - m. Involves serious coercion or intimidation of a public servant in order to force him to discharge or to refrain from discharging his lawful duties; or
 - n. Involves serious violence against a member of the police force, armed forces, civil armed forces, or a public servant.

3. The use or threat or 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.
4. In this section “action” includes an act or a series of acts.
5. In this Act, terrorism includes any act done for the benefit of a prescribed organization.
6. A person who commits an offence under this section or any other provision of this Act, shall be guilty of an act of terrorism.
7. In this Act, a “terrorist” means:
 - a. A person who has committed an offence or terrorism under this Act, and is or has been concerned in the commission, preparation or instigation of acts of terrorism;
 - b. A person who is or has been, whether before or after the coming into force of this Act, concerned in the commission, preparation or instigation of acts of terrorism, shall also be included in the meaning given in Clause (a) above.

⁹According to Article 89 of the Constitution of Pakistan 1973, an Ordinance is promulgated by the President when the parliament is not in session. It is a temporary legislation and the latest Eighteenth Amendment to the Constitution of Pakistan has introduced some limitation on it as now it cannot be extended more than twice at a time.

¹⁰Money laundering is defined at two places: one, in Section 3 of the Anti-Money Laundering Act, 2010 and two, in Section 11K of Anti-Terrorism Act, 1997.

¹¹Financial Monitoring Unit is established under Section 6 of the Anti-Money Laundering Act, 2010 and is tasked with dealing with money laundering.

¹²Section 23 of the newly introduced Investigation for Fair Trial Act, 2012 formally refers to this approach of handing over the evidence to local police after obtaining it through surveillance warrants.

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