

# PERSPECTIVES ON TERRORISM

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## Risk Assessment and the Terrorist

By Karl Roberts, John Horgan

### Introduction

Given the scale of challenges posed by the threat of terrorism and the perpetually limited resources available to counter terrorism, there is widespread agreement – if on nothing else - on the fact that there is an urgent need to find ways to prioritise the use of those resources. In this research note we argue that a greater consideration of the role of psychology in the development of risk assessment procedures may well be a useful tool to enable such prioritisation in a number of critical areas. It ought to be noted at the outset that there are many obvious challenges facing efforts to design risk assessment tools. Questions necessarily emerge about who needs to be assessed for risk and additionally - stemming from the conceptual confusion over what is meant by terrorism, and by extension, *extremism* - we might also wonder what is being risk-assessed? And finally then, we might ask what factors are related to the level of risk posed, and how we might identify these. At present we do not have complete answers to all of these questions, but this research note aims to explore some of these issues as a first step in the design of risk assessment tools for development in counter-terrorism.

### Definitions

The term *risk* is generally associated with the likelihood of danger or harm. In the context of offense, harm may incorporate physical, sexual and psychological damage inflicted upon an individual or group of individuals by a particular event or events. It therefore follows that a *risk assessment* is a projection of the likelihood that a hazard, i.e. a harmful behaviour, or event, will occur. Additionally, other terms such as “dangerousness” have also been used in discussions of risk and refer to particular individuals or even groups of individuals who present a high risk of harm to others. While the goals of risk assessment may reveal different functions depending on the specific settings in which they are used, in general risk assessments are tools adopted to make the best possible predictions about future events in order to minimise the harm to others.

### Hazard Identification

In discussing what risk assessment entails, a number of important factors need to be considered. The first is referred to as *hazard identification*. This involves a clear and unambiguous specification of the nature of the hazard. Within the field of psychology, the hazard is usually the behaviour that is likely to cause harm. For example hazards might include a physical or sexual assault, the use of firearms, verbal insults etc. It is important to clearly identify the hazard so that the end users (e.g. security analysts) of the risk assessment clearly understand the predictions (or hypothesis) stated.

In the case of terrorism, proper hazard identification is critical as there are many potential hazards to consider. As with defining what is meant by “crime”, there are multiple behaviours and activities that could reliably constitute “terrorism.” Terrorism can encompass extortion, bombing, activities associated with the preparation of bombs, shooting, arson, and a variety of other diverse behaviour. Given this, a wide range of risk assessment may be possible, and as such we might for example seek to examine factors that increase or decrease the likelihood of terror group *membership*. At another level we might also be interested in the hazard a terrorist group or an individual member of a terror group presents in terms of the likelihood of a terrorist *attack*. At another level still, we might be concerned about the risk of occurrence of *particular* expressions of terrorist violence, for example, whether we are likely to see shootings or suicide bombings by a particular group.

Doubtless, for each of these hazards there are a number of shared and specific risk factors that may raise or lower the risk of the particular hazard. Moghaddam has identified a metaphor of terrorist engagement that suggests the presence of various levels of involvement. [1] The factors he describes as being associated with different levels of involvement can be considered as risk factors for progression into and through terrorist organisations and this may well form a useful starting point in specifying risk factors associated with particular types of hazard in this context. Similarly, Horgan presents a model of involvement in terrorism that is based upon the identification of risk factors for initial involvement, but develops Moghaddam’s metaphor by distinguishing

between the factors that govern involvement and those factors that govern engagement in terrorist activities. [2] The factors that predict involvement, and the qualities that govern the progression to deeper and deeper levels of commitment, may not necessarily have a bearing on the ways in which individuals come to engage in terrorist activity. The significance of this issue in understanding how risk (broadly speaking) may be conceptualized, is critical. In criminological terms, these distinctions are not new (e.g. Clarke and Cornish)[3] but they have rarely been applied to thinking about terrorists (with some exceptions, e.g. Taylor)[4].

### **Frequency of a Hazard**

Another important issue in risk assessment is the predicted frequency of a given hazard within a specified time frame. This essentially refers to how often a hazard is likely to occur within a period of time. It is important to clearly specify the time frame under consideration because different durations of time are likely to be related to different levels of opportunity to commit offenses. For example, a forensic psychologist compiling a risk offense report for a parole hearing would typically be interested in the likelihood of the individual committing another offence within, say, six months, two or even ten years of release from prison. All other things equal, the longer the time frame, the greater the opportunity the offender may have to offend, so six months may offer fewer opportunities for re-offense than, say, two years. Furthermore, when considering the time frame it is important that the predicted frequency of the hazard is set within a time frame that is practically useful. Over a large time frame the hazard may be unmanageable. For example, a prediction that an individual is likely to carry out an offense, say, a bombing, some time in the future is likely to be less useful in managing a risk and in prioritising resources than a prediction that there is a high likelihood of a bombing within a clearly specified time frame, like six months. In the context of terrorism the time frame may be of additional importance given that terrorist groups on occasion may work towards specific dates, e.g. specific anniversaries. Although the date may be several years in the future, the risk of offense does not diminish with time but increases as the key date approaches.

Similarly, the terrorist group may engage in other activities in support of the future event, e.g. activities designed to obtain required funding, collection of weapons, identification and training of recruits to carry out the attack, surveillance of target sites etc. Each of these supporting activities in themselves could be a hazard that may be subject to additional risk assessment.

### **Problem of Low Base Rates**

One of the difficulties in violence risk assessment in general is the problem of low base rates. Essentially what this means is that the hazard in question is not very common relative to other forms of behaviour. For example, the base rate for homicide in the United States in 2005 was 6.1 cases per 100,000 people. In comparison, the rate for major cardiovascular diseases was 277.3 cases per 100,000 people and an overall premature death rate by all causes was 798.8 cases per 100,000 people. [5] Homicide then is relatively unlikely compared with other risks to life. In a similar vein, terrorist acts have a low base rate. For example in 2005, 56 US civilians were killed as a result of terrorism which leads to an estimated death rate due to terrorism of 0.019 cases per 100,000 people (assuming a United States population of 295,500,000 in 2005). [6] Terrorist violence may therefore be considered to be a relatively rare event, despite the potentially enormous consequences it may bring. With a low base rate hazard, a statement that it is unlikely to occur is likely to be an accurate reflection of its likelihood; however such a prediction may not be very useful as it does nothing to allay public fear and is of little use in attempting to manage what risk there might be.

In addition, and related to the point above, the risk management issue only becomes meaningful when we accept that terrorist events only represent the tip of the iceberg. The successful terrorist event - for example, a bombing - will only happen because it is sustained and enabled through a series of informal but related activities.

Risk assessments therefore need to be mindful of their usefulness and specificity in the light of unlikely events. A rare event may be of low frequency but being able to suggest those factors that increase or decrease its likelihood and ultimately how likely it is, may enable law enforcement to plan more effectively. In any event, this also highlights how a narrow focus of what constitutes "terrorism" may in itself be one of the most obvious obstacles to risk management.

### **Dynamic Risk Assessment**

Hazards are part of the social world and are not separate from it; as such there may be risk factors that serve to

raise or reduce the likelihood of a hazard occurring that may change over time. There are two broad classes of these risk factors - *static* risk factors and *dynamic* risk factors. Static risk factors are factors that do not change over time. These are typically historical or categorical factors, for example, the gender of an individual, features of their childhood, e.g. family discord, periods spent in local authority care, nationality, date of birth, experience of abuse during childhood, etc. Dynamic factors, on the other hand, do change over time and these can be under or outside the control of individuals. For example, the availability of weapons and explosives, changes in social support for an individual and/or a particular group, activities of security forces etc. A risk assessment therefore needs to consider both static and dynamic factors. To illustrate, in the context of violence risk assessment, a commonly used risk assessment tool is the HCR20 Violence Risk Assessment Scheme.[7] This was designed to assess risk of violence for individuals with a mental or personality disorder. The HCR20 assesses an individual’s propensity for violence across a range of ten static (historical) and ten dynamic (clinical and risk management) factors. **Table 1** lists the relevant risk factors.

**Table 1: HCR20 Risk factors for violence** (Webster, Douglas, Eaves, & Hart, 1997).

Historical Factors	Clinical Risk and risk management
Previous violence.	Lack of insight.
Young age at first violence.	Negative attitudes.
Relationship instability.	Active symptoms of major mental illness.
Employment problems.	Impulsivity.
Substance use problems.	Unresponsive to treatment.
Major mental illness.	Plans lack feasibility.
Psychopathy.	Exposure to destabilizers.
Early maladjustment.	Lack of personal support.
Personality disorder.	Noncompliance with remediation attempts.
Prior supervision failure.	Experiencing stress.

As may be seen, the static or historical factors are unchangeable as they are events and characteristics that are in the past, whereas the dynamic, clinical and risk management factors, may change, e.g. the individual may find social support by starting a new relationship or may no longer be experiencing the symptoms of major mental illness. Risk management strategies may also serve to change these dynamic factors; for example, an individual may be placed in an environment where they are unable to experience destabilizers such as drugs or alcohol thus reducing risk of violence.

**Specific Risk Factors**

In addition, for any given hazard there are risk factors that will increase and others that will decrease the likelihood of a hazard occurring. A risk assessment therefore needs to be sensitive to both types of risk factors and the degree to which they impact the likelihood of the hazard occurring. All too often in risk assessment the focus is upon factors that raise a hazard’s risk whilst neglecting factors that reduce risk. This is illustrated by reference to the HCR20. For example, a previous diagnosis of Psychopathy significantly raises the likelihood of an individual to be violent in the future. In contrast, should the individual become involved in a close relationship with someone whom they develop a close and mutual affectionate attachment with, the risk of violence is likely to be reduced because the individual may now have some form of social support (a lack of social support being a risk factor for violence). To appreciate how this may be relevant to understand risk as it applies to the

terrorist, the availability of weapons and explosives may increase the risk but a change in the public image of the terrorist group, dwindling membership and reduced community support may all serve to reduce it. Further research is likely to be able to further illuminate the relationship between differing factors and types of terrorist risk.

### **Repeated Risk Assessment**

Dynamic risk factors, by nature, change over time. This means that that the risk may rise or fall with changes in an individual's behaviour, circumstances and the specific risk management strategies being employed. Therefore it is desirable that risk assessments are carried out on a regular basis to reflect these changes. As a very simple example, a terrorist group may present a lower risk of carrying out an attack in the absence of explosives; however the risk that they pose will change should they somehow acquire them. It is important to acknowledge here also the possibility that the absence of certain types of weapons may be influential in the development of other forms of threat by the terrorist group. The need to obtain funds with which to purchase explosives or weapons, for example, may increase the risk of the group carrying out the supporting criminal activity. Risk assessment thus needs to be an on-going process that is sensitive to the emergence of new forms of threat. The difficulty with on-going risk assessment is of course identifying when to carry out each assessment - should this be hourly, daily, weekly, monthly etc? Unmistakeably, the regularity of a risk assessment needs to be determined by the particular circumstances of the group or individual of interest. For instance, terror groups evolve over time. Sometimes they may be very active in response to events, at other times - due to changes in membership, the attitude of the greater society, and the particular expressions their activities take - their level of activity may be reduced or change in nature, frequency or scope. More regular risk assessment should be made for groups or individuals that are known to be particularly active at any given time. It may be that for certain individuals, the risk assessment may need to be done on a daily basis due to identified intentions to act. Essentially, it follows that any risk assessment should be flexible and related to the demands of the particular circumstances.

### **Modelling Risk**

A part of the development of risk assessment tools is the production and testing of models of a specific hazard risk. A risk model will specify the precise relationship between risk factors and the occurrence of the risk. Usually different risk factors will have different types of relationship with the specified hazard. Some risk factors may have a positive relationship with the hazard such that identifying the presence of that risk factor increases the likelihood of the hazard occurring. Sometimes the relationship will be negative, indicating that the occurrence of the risk factor serves to reduce the likelihood of the hazard occurring. Also, risk factors are likely to have different strengths of relationship with the particular hazard so that the presence of some factors will have a greater effect upon the hazard occurrence than others. By way of an example, regular drug use is positively correlated with risk of violence, serving therefore to *increase* the risk of violence whereas the existence of an extended social network of friends is negatively correlated with risk of violence, serving to *reduce* the risk of future violence. Drug use has a stronger association with risk of violence than does an extended social network so that where regular drug use is identified, even when an individual has an extended social network, the risk of violence will increase but not by as much as if the individual had no social network. Hence the risk model can help identify not only which factors impact a hazard risk, but in which ways they impact it and how they collectively combine to change risk.

A risk assessment based upon a particular risk model may be helpful in counter terrorism activities by identifying which risk factors are most influential in changing the level of risk. This could be useful in prioritising resources relevant to the specific risk factors. By way of a simple example, a risk assessment model may specify that increasing the number of members of a group increases the likelihood of a terrorist attack and that this has a greater contribution to increasing risk than, say, the amount of money the group has access to. In prioritising resources it might therefore be opportune to target recruitment activities as opposed to financial activities. The challenge of course is to generate and test appropriate risk models for the various hazards relevant to counter-terrorism.

### **Risk Assessment Tools for Terrorism**

The creation of empirically valid risk assessment models for aspects of terrorism that can form the basis for risk assessment tools is likely to be a useful enterprise. Risk assessment tools such as HCR20 have shown promise and proved their worth in a range of fields related to harm reduction. For example, the police in the United

Kingdom have made use of risk assessment tools for the prediction of domestic violence and have identified reductions in the number of cases of domestic murder since the introduction of such tools. In prison settings, risk assessment tools are being used to predict harmful behaviour such as sexual violence, stalking and physical violence and have had a significant impact upon decision-making at parole hearings and in creating risk management strategies for offenders on release from prison. The most successful (in assessing the risk of the hazard) of these risk assessment tools are evidence-based, derived from empirical research that has identified significant risk factors and the relationship that they have with the particular hazard. However, in the case of terrorism although some researchers have produced models that implicitly suggest potential terrorism risk factors, to date there has been little systematic study of the specific relationship between these risk factors and aspects of terrorism. Such research is vital as a prelude to any attempt to create useful risk assessment tools for terrorism.

Of course one of the underlying problems in attempts to conceptualize and devise such tools is in the identification of the hazard – what would a terrorism risk assessment tool seek to predict? Depending on our ability to conceptualize the relationships between the core factors outlined in this research note, this could be in a number of areas, including the risk of a given individual seeking involvement in a terror group, the risk of a group engaging in violence, the particular risk of violence an individual poses or even the risk of particular types of violence (bombings, suicide attacks, WMDs etc.) posed by an individual or group.

### **Context of Risk Assessment**

In devising risk assessment tools for terrorism another important issue relates to the context in which the risk assessment tool is to be used. An understanding of the importance of context places particular requirements and constraints upon risk assessments. This applies especially in terms of the purpose of the risk assessment, in the types of information that are available to influence the risk assessment and in the capacity of individuals to those charged with carrying out the risk assessment. For example, in prisons, risk assessments might be required to aid parole decision-making and might seek to identify the risk an individual poses on release over some specified time frame. In the context of law enforcement the need may well be different, for example, to identify the risk of specific types of violence in the immediate future.

In different contexts, different types of information may be available. In prisons, reports from mental health professionals and prison staff might be available, and would typically be expected to include reports from interviews and psychometric assessments of the individual. Supporting these would sometimes be accounts by prison staff detailing their observations of an individual's behaviour over a significant period of time. Other information on the nature of the offenses an individual has committed and details of an individual's background and lifestyle would also be expected to be available. Together these amount to a significant collection of behavioural information. In contrast, law enforcement personnel are unlikely to have at their disposal such a rich source of behavioural information about a given suspect. They may have details of behaviour from observations and details of the individual's interests and activities from surveillance and reports of informers, but this is likely to be relatively narrow and limited. Given this, risk assessment tools need to be mindful of the sorts of information that is likely to be available to those doing the assessment, and their ability to ascertain significance in and out of all apparent contexts.

Additionally, the capacity of individuals in a particular context to carry out the risk assessment needs to be considered. In prison a risk assessment could legitimately require the assessor to interview an individual as part of the assessment. In the law enforcement arena this might prove difficult if not impossible – some jurisdictions would certainly not allow law enforcement interviews with individuals who were not under arrest not to mention the risk of compromising intelligence operations by carrying out such interviews. Therefore, it is likely that very different kinds of tools will need to be designed for use in different contexts.

### **Risk Management**

While the identification of risk factors and their relationship to a hazard might be an important step towards conceptualizing the hazard, a risk assessment in itself is of limited use in reducing the likelihood of a hazard occurring. For this reason it is generally expected that risk assessment and risk management would be closely related. Therefore risk assessment needs to be the first stage in the development of risk management strategies. In essence a risk management strategy involves a plan for implementing actions that may be taken to minimise the likelihood of the hazard occurring. In managing risk it should not be forgotten that there are risk factors that serve to *increase*, i.e. factors positively related to, the likelihood of the hazard occurring, and factors that *de-*

crease, i.e. factors negatively related to, the likelihood of a hazard occurring. A risk management strategy may therefore attempt to mitigate those factors increasing the risk and perhaps encourage those factors that reduce the risk. In the context of terrorism, mitigating factors that may increase risk might include attempts to actively disrupt a terror group's ability to recruit new members, infiltration of the group by security forces, disruption of its capacity to obtain weapons, capture of group members and strengthening defenses against terrorist activity. Encouraging factors that serve to reduce risk may include, for example, encouraging the wider society to report suspicious activity, attempt to persuade members of society not to join terror groups, and increasing the rewards of non-participation in terror groups. It is therefore desirable, and sensible, that risk assessment be couched within an approach to risk management where risk assessment specifies the hazard and factors related to its occurrence and a strategy is devised to mitigate or protect against it.

### Conclusion

This research note has considered a variety of issues relevant to thinking about how risk assessment as conceptualized in forensic settings might relate to the development of tools to assess and ultimately manage terror risk. In considering the relevance of these issues for terrorism, it is important not to be distracted by the feature differences of the contexts driving the current examples (e.g. forensic settings), but to see how the consideration of which risk issues are conceptualized provides us with the basis of a framework for developing risk assessment tools that may have similar positive impacts in the context of terrorism. Certainly if tools could identify risk factors for involvement in terrorism, on varying levels, this may aid counter-terrorism work in designing strategies that impact those risk factors and contribute to the prioritisation of resource allocation in planning exercises. Similarly, identifying those factors that make attacks more or less likely could aid in targeted counter-terrorism strategies. Risk assessment of those convicted of terrorist acts whilst in prison could certainly inform parole decisions and may inform methods of risk management should they be released.

Taking the points raised within this research note together, an agenda for research in terrorism risk assessment begins to emerge. In designing risk assessment tools an important first step is conceptualising the risk - exactly what hazard is being assessed? Once this important question has been answered, the next phase is to develop empirically valid risk assessment models linking risk factors to the hazard. Once generated, risk models will specify which factors need to be considered in designing risk management strategies and how the degree of risk will be altered by changes in specific risk factors. The design of risk assessment tools in counter-terrorism will need to be informed by relevant theory and empirical research. The research will necessarily require the collection and consideration of data describing various risk factors so that relevant factors and their precise relationship to the hazard in question can be derived. This is an area in which collaboration between psychologists skilled in forensic risk assessment and practitioners working within counter-terrorism can collaborate towards mutual benefit with the sharing of ideas, data and research methodology. Potential benefits for the researcher include an opportunity to study factors relevant to the aetiology of different terrorist behaviour; for the practitioner: empirically valid tools to be used in countering terrorist activity. Certainly, there does appear to be a need for psychologically informed risk assessment tools as part of counter-terrorism strategy. The experience from other spheres of criminal justice indicate that evidence-based, empirically valid risk assessment tools not only aid resource prioritisation but can aid attempts to manage a variety of diverse hazards.

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**John Horgan** is Director of the International Center for the Study of Terrorism at Penn State. His forthcoming book *Walking Away from Terrorism: Accounts of Disengagement from Radical and Extremist Movements* will be published by Routledge at the end of 2008.

### NOTES:

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[5] National Center for Injury Prevention and Control (2008), *WISQARS Injury Mortality Reports*.



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## Responding to Terrorism: Pakistan's Anti-Terrorism Laws

By *Shabana Fayyaz*

### Introduction

In the post-9/11 landscape, effectively checking political violence and terrorism in Pakistan through preventative legal measures remains a challenge at both state and local levels. Literally speaking, anti-terrorism (sometimes abbreviated as AT) generally refers to passive, defensive, protective, or legal measures against terrorism. Efforts to deter terrorism may take the form of severe penalties under anti-terrorism laws, such as circulating descriptions or photographs of terrorists in the media, offering rewards for information, or might involve a naturally evolved deterrent, such as pressuring the kin of terrorists. As Niccolò Machiavelli wrote in *The Prince*, “fear is maintained by a never failing dread of punishment.”

How do these principles of anti-terrorism apply to Pakistan? Have stringent laws reduced acts of terrorism and deterred those who might commit them? This paper aims to understand and explore these key concerns while charting the evolutionary process of anti-terrorism laws within Pakistan. The analysis is based on the framework detailed in the following arguments/pointers:

Anti-terror laws crosscut boundaries between administration, constitution, criminal, immigration, military law, and laws of war within and beyond. That is, one cannot analyze the anti-terror regime of any state in isolation from its domestic environment that is composed of political, administrative, societal, and economic variables. Parallel to this, the impact of the regional and the international factors cannot be minimized.

The State reserves the right to make and amend laws for the security of its citizens.

Rule of law is the key to the success of anti-terror mechanisms within the state.

Anti-terror laws form a critical component of the comprehensive counterterrorism policy of the government.

Public support, political will, and state capacity are vital in lessening the gap between anti-terrorism goals (as envisaged in the laws) and their practice or implementation.

This paper follows systematic analyses of anti-terrorism policy by tracing the contributions of earlier governments to the development of anti-terror laws in Pakistan. Part one of the paper looks into the historical background of the present anti-terror regime. Salient points and the context of the Suppression of Anti-terrorism Act of 1975 and the Anti-terrorism Act of 1997 by the Nawaz Sharif government are discussed in this section. Part two of the paper discusses the Musharraf government's amendments to the earlier anti-terror craft. Here, the gap between the perception/intent of the anti-terror legal regime and the reality on ground will also be discussed side by side.

### Part One: Evolution of Anti-terror Mechanism in Pakistan

Marcus Tullius Cicero, Roman philosopher, orator, lawyer, and politician, once stated that “the soul, mind, and meaning of a State lie in its Laws”. That is, laws are a reflection of the state's mindset and commitment to fight issues like terrorism. As the very nature of terrorism has evolved into a complex and multi-faceted phenomenon, so has the state's response to it. For more than three decades in Pakistan the government has introduced “special” legal measures to deal with certain criminal offences outside the regular criminal justice regime. The government in the 1970s interpreted political violence, nationalist movements, and certain criminal offences as acts of terrorism and sectarian violence and thus instituted a parallel legal system to try those who commit these crimes. The regular criminal justice system was deemed incapable of delivering justice swiftly.

Here, the decisive role of the politics that heavily influenced the adoption and usage of the anti-terror mechanism as a means to suppress dissent and extend executive control over the legislature and political opponents cannot be ignored. Very often the laws under the garb of “anti-terrorist measures” that deal with anti-state (at times political/bureaucratic opponents of the regime of the day) elements were in fact used for political purposes. Historical analysts have termed Prime Minister Liaquat Ali Khan's adoption of the Public and Represen-

tative Officer (Disqualification) Act of 1949, PARODA, as a political instrument that was “used as a political weapon and succumbed to political considerations.”

Prior to the Suppression of Terrorist Activities Act (1975) various regimes in Pakistan used the British-crafted Criminal Procedure Code, especially Section 144, to control political activity and suppress anti-state activities. Under British rule, it was designed to allow a District Magistrate to prohibit large gatherings and carrying of arms during times of civil disobedience.[1] Under General Ayub Khan’s military rule there existed “whole series of repressive measures abolishing all civil liberties, censoring the press, and imposing extraordinary penalties for criminal acts.”[2] The Security of Pakistan Act (1952), the Defense of Pakistan Ordinance (1955), and the Defense of Pakistan Rules (1965), were also frequently used for political objectives. The role of the judiciary was infringed upon and political dissent was controlled by the enactment of Public Offices (Disqualification) Order (PODO) of March 1959 and the Electoral Bodies (Disqualification) Order (EBDO) of August 7, 1959, respectively.[3]

Interestingly, the very definition of terrorism was purely politically charged and domestic in nature. Those in opposition to the federal or central government were deemed “traitors” and were equated with “anti-state” principles, against the integrity of Pakistan as a whole. The so-called anti-terror mechanisms instituted through revival of old and new ordinances, military martial law orders and decrees, and the limitation of the role of the judiciary remained vague and ill-defined. The ambiguity factor was exploited for the benefit of the government of the day and terrorism was dealt with on an *ad hoc* basis, at times with the regular judicial system or through Executive Decrees or Ordinances outside the existing judicial set-up. This resulted in a blurred distinction between political opposition and political violence. As a result, all opposition to the central government was dubbed “anti-state” rather than being perceived as merely “anti-government.”

In the early 1970s, the Z A Bhutto government facing violent opposition and nationalist movements in the NWFP (North West Frontier Province) and Baluchistan resolved to undertake all “necessary steps” to stop the politics of terrorism and secession.[4] In October 1974, the government established “special” courts for “suppression of acts of sabotage, subversion, and terrorism”. [5] The stated objective of the 1974 ordinance was to provide “special provisions” for suppressing such acts and to establish “special” courts with exclusive jurisdiction for “speedy trials” of such crimes.[6] The creation of “special courts” meant a departure from the regular judicial system in order to address the violence and ensure swift justice. The 1974 ordinance was approved by parliament and a few months later became the Suppression of Terrorist Activities (Special Court) Act of 1975.[7] A new era began in Pakistan’s legislative history wherein “special” laws and courts dealing with “terrorism” or “terrorist acts” became the norm.

Likewise, the definition of “terrorist acts” became much broader and the list of offenses that could be tried by “special” courts also expanded. To quote a seasoned historical analyst, Saeed Shafqat, “Wali Khan’s NAP (National Awami Party)[8] was banned and its top leadership was arrested. Police raided Peshawar university campuses to recover “foreign arms”.... Wali Khan was charged with conspiring against the state and a special tribunal was set up to try him.”[9]

**The Suppression of Terrorist Activities (Special Courts) Act of 1975** incorporated a number of measures to expedite the slow legal process. Adjournments in court proceedings were not granted unless “necessary in the interest of justice.”[10] The Act also provided that once the accused had appeared before the court, the remaining trial could proceed even if the accused subsequently absconded.[11] It departed from the universal principle of presuming the accused innocent until proven guilty.[12] That law presumed the accused guilty when found in possession of any article which could be used in the commission of the offence he was accused of committing, or when apprehended “in circumstances which tend to raise a reasonable suspicion that he has committed such [an] offence.”[13] It was then that the accused had to convince the court of his or her innocence. This shift in the onus of proof is regarded as a serious issue in evaluating the human rights record under the past and present anti-terror regime. The situation is well captured by the comments of Human Rights Commission of Pakistan (HRCP) Consultant Mr. Najam U Din, “Against such a shift in the onus of proof, all that the most innocent of accused can do is present proof of past good behavior or blanket pleas of innocence.”[14]

The 1975 law remained in force until being repealed and replaced by the Anti-Terrorism Act (ATA) of 1997, [15] which is the principle “special” anti-terror law currently in force. In between these two laws, the government introduced a range of laws aimed at dealing with “special” needs, and the laws were mainly directed at expeditious adjudication of cases concerning acts of terrorism.[16] These laws included the Special Courts for Speedy Trial Ordinance (1987), the Terrorist-Affected Areas (Special Courts) Ordinance (1990), and the Ter-

rorist-Affected Areas (Special Courts) Act (1992).[17] What follows after the introduction of the Anti-Terrorism Act (ATA) in 1997 is essentially an account of efforts by the government to depart from standard legal practice and of some interventions by the judiciary to put limits in place upon such “special laws.”

ATA was the brain child of the Nawaz Sharif government that sought to “impart timely and inexpensive justice by establishing a parallel legal system.”[18] ATA was preceded by many years of sectarian violence and terrorist incidents across the country. Nawaz Sharif’s government felt that “unless criminals and terrorists get severe punishment, the violence and growing rate of crime cannot be stopped.”[19] The law encompassed “special” measures to expedite trials. It embraced the expanded objective of preventing “terrorism and sectarian violence” and providing “speedy trial of heinous offences.”[20] The law aimed to act as a deterrent for would-be terrorists by incorporating the broader definition of terrorism and rigid deadlines to ensure speedy justice. ATA was a definite departure from the regular judicial system and an attempt by the government to dominate the proceedings of terrorism-related cases. The Act defined terrorism as:

Whoever, to strike terror in the people, or in any section of people, or to alienate any section of the people or to adversely affect harmony among different sections of the people, does any act or thing by using bombs, dynamite or other explosive or inflammable substance, or firearms, or other lethal weapons or poisons or noxious gases or chemical or other substances of a hazardous nature in such a manner as to cause the death of, or injury to, any person or persons, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community or display firearms, or threaten with the use of force public servants in order to prevent them from discharging their lawful duties commits a terrorist act.[21]

Crimes within the purview of the ATA of 1997 included murder, the malicious insult of the religious beliefs of any class, the use of derogatory remarks in respect of the holy personage, kidnapping, and various statutes relating to “robbery and dacoity.”[22] Such a broad definition of terrorist acts was seen as blanket cover available to the ruling government to define virtually any kind of violence as terrorism.

Concurrently in 1997, ATA created special “anti-terrorist courts.” This again was a departure from the existing judicial system and an attempt to create a parallel system directly staffed and monitored by the executive rather than the judiciary. A judge in an anti-terrorist court could be a session judge, or an additional session judge, district magistrate, deputy district magistrate, or an advocate with ten or more years of experience appointed by the government. Such judges would have no specific tenure of office, serving at the discretion of the government.

The law required investigation of offences within seven days.[23] Once the case is submitted to court, the trial is to be conducted within seven days,[24] and the trial judge is specifically barred from granting more than two consecutive adjournments.[25] Failure to adhere to the time frame could result in disciplinary action against the presiding judge.[26] Those accused of crimes could be tried in absentia and appeals against conviction and acquittal of such courts would lie *only* with the Special ATA Tribunal, created at the discretion of the government. The decision of the Appellate Tribunal would be final, and no further appeal could be entertained.[27]

The law was prepared and passed in haste, and it was the Supreme Court’s timely intervention that led the government to amend various sections of the law, making it more practical and people-friendly.[28]

At this instance one must look into the famous Mehram Ali case that is often cited as pretext for the issuance, and later on amendment, of ATA 1997. On January 18, 1997, Mehram Ali, a member of militant Shia organization called Tehrik Nifaz Fiqah-i-Jaferia (TNFJ), detonated a remote-controlled bomb in the vicinity of the Lahore courts, where the two leaders of the Sepah-Sehaba Pakistan (SSP), an anti-Shia group of Sunnis, were brought for a hearing before the additional session judge. The explosion killed twenty-three people, including the two Sunni leaders, and injured more than fifty people. Mehram Ali was caught on the spot but his trial before the Sessions court went forth slowly.

Following the introduction of ATA 1997 the case was transferred to the newly constituted anti-terrorist court. The court convicted Mehram Ali on twenty-three counts of murder and various other sentences relating to the bombing, and sentenced him to death. He filed an appeal before the newly constituted Anti-Terror Appellate (ATA) Tribunal, also in Lahore. The ATA upheld his conviction. The petitioner then filed a writ petition before the Lahore High Court claiming, among other things, that the formation of the special courts violated the provisions of the Constitution. The Lahore High Court claimed jurisdiction to hear the appeal, but held that the con-

viction should still stand. Mehram Ali then filed an appeal to the Supreme Court of Pakistan. In its decision, *Mehram Ali Versus Federation of Pakistan*,<sup>[29]</sup> the Court upheld Mehram Ali's conviction and he was later executed.

The court declared certain sections of ATA 1997 to be unconstitutional and in need of amendment. It was declared that the newly constituted anti-terror court would be subject to the rules and procedures of the existing constitutionally established judicial system, including: (1) the judges of such courts would have fixed and established tenure of service; (2) such special courts would be subject to the same or similar procedural rules as regular courts, including rules of evidence, etc; and (3) decisions of special courts would be subject to appeal before the relevant constitutionally mandated regular courts. Namely, the appeal against the decision of the special court would lie with the respective High Courts and ultimately with the Supreme Court. Moreover, no parallel legal system can be constructed that bypasses the operation of the existing regular courts.<sup>[30]</sup>

The conclusion of the *Mehram Ali Case* (PLD 1998 SC 1445) marked the importance of the independence of a judiciary, particularly in reference to the Article 175 of the Constitution. Justice Irshad Hassan Khan, Chief Justice of the Supreme Court of Pakistan, in the *Mehram Ali vs. Federation of Pakistan* judgment observed:

I would add a note of caution that sacrifice of justice to obtain speed disposition of cases could hardly be termed as "justice". A balance ought to be maintained between the two commonly known maxims, "justice delayed is justice denied" and "justice rushed is justice crushed". I do not suggest that speed and efficiency ought not to be ultimate measure of a Court but it should not be at the expense of justice.<sup>[31]</sup>

Against this backdrop, the Nawaz Sharif government had to incorporate the changes as suggested by the Supreme Court in the Mehram Ali case. As a result, ATA 1997 was amended, and on October 24, 1998, the Anti-Terrorism (Amendment) Ordinance was issued. Under this ordinance, anti-terrorism courts remained in place and the judges of such courts were granted tenure of office; special Appellate Tribunals were disbanded and appeals against the decision of the anti-terror courts would henceforth be submitted to the respective High Courts; and restrictions were placed on ATA 1997's provisions regarding trials in absentia to accord with regular legal procedures.<sup>[32]</sup>

Another landmark Supreme Court decision on February 22, 1999, in the famous *Liaquat Hussain vs Federation of Pakistan*<sup>[33]</sup> marked another step in the evolution of the anti-terrorism legal regime. The decision was against the introduction of the Pakistan Armed Forces (Acting in Aid of Civil power) Ordinance<sup>[34]</sup> (PAFO) on November 20, 1998. The ordinance was promulgated by the Nawaz Sharif government following the spree of ethnic killings that gripped Karachi in October 1998. The targeted killing of Hakim Said, a well-known philanthropist and a former Governor of Sindh, on October 17, 1998, led to the imposition of Governor Rule (Emergency) in Sindh province. The military was called in to restore law and order in the province. Author bio? s means to an end hasr hered be helpful ordinances have been italicized . . .through the PAFO's broad judicial powers - were conferred on it.

The most glaring feature of the PAFO was the creation of special Military Courts <sup>[35]</sup> to try civilians. This step reduced the existent anti-terrorist mechanism nearly irrelevant, as all pending cases before the anti-terrorism courts could be transferred to the newly established military courts. The ordinance allowed the trial in absentia and appeals could only be lodged in the Appellate Tribunals to be created by the military authorities. Thus, the regular and constitutional judicial mechanisms established to try terrorism-related cases were bypassed and the executive relied solely on military means to administer law and order and ensure justice across the board.

Another so-called innovation of the Ordinance was the creation of a "new crime" punishable with a penalty of up to seven years of vigorous imprisonment. This new crime, referred to as the crime of "civil commotion," stated:

Civil commotion means creation of internal disturbances in violation of law or intended to violate law, commencement or continuation of illegal strikes, go-slows, lockouts, vehicle snatching/lifting, damage to or destruction of state or private property, random firing to create panic, charging bhatta (protection money / extortions), acts of criminals trespass, distribution, publishing or pasting of a handbill or making graffiti, or wall – chalking intended to create unrest or fear or create a threat to the security of law and order.<sup>[36]</sup>

The Ordinance was heavily criticized by the human rights activists, media, and opposition parties. Opposition Senator Aitzaz Ahsan questioned the definition of “civil commotion” and observed:

Actions of publishing handbills or wall-chalking or going on strike for economic crises have nothing to do with Terrorism. Intent of law is to suppress all expressions of opposition to government of Prime Minister Nawaz Sharif. .... It betrays the real face of the government. They talk of democracy; they come to the Parliament talking of democracy but this is one of the most amazing documents of legislation they have produced. Obviously, [the new laws] are intended to strengthen the grip of the government of the political activity in the country.[37]

The Supreme Court’s unequivocal decision in *Liaquat Hussain versus Federation of Pakistan* wholly repudiates the impugned ordinance, declaring it to be “unconstitutional, without legal authority, and with no legal effect.” The unanimous decision of the full nine-member bench also rejected the government’s contention that the ordinance was expedient and defensible under the so-called “doctrine of necessity.”[38] The Supreme Court recorded in its judgment that civilians cannot be tried by military courts; the special courts cannot perform parallel function to those assigned to regular courts, and; the military powers with regard to “aid to civil authority” do not extend to the creation of courts or the exercise of judicial functions.

It also observed that “the cases in which sentences have already been awarded but the same have not yet been executed shall stand set aside and the cases stand transferred to the Anti-Terrorists Courts already in existence or which may hereinafter be created in terms of the guidelines provided hereunder for disposal in accordance with the law.”[39] The Court’s decision also laid down certain procedural amendments to be followed for enhancing the efficacy of the existent anti-terrorist courts. For instance, it was observed that only one case at a time is to be assigned to the Anti-terrorist court.

The aforementioned Supreme Court verdict had a strong bearing on the Nawaz Sharif government’s anti-terrorist resolve, and on April 27, 1999, the PAFO was repealed, but “civil commotion” was added as crime to the fold of ATA 1997.[40] On August 27, 1999, the Nawaz Sharif government made yet another amendment to the ATA 1997 to allow for the creation of anti-terrorism courts in any province of Pakistan.[41] This was the last revision to the craft of anti-terrorism regime by the Nawaz government before it was ousted out of office by the military coup led by General Musharraf on October 12<sup>th</sup> of the same year. These events lead us to the second part of the paper that looks into the question of how the Musharraf regime has built upon the anti-terror craft of previous governments.

### **Anti-Terrorism Legal Craft under General Musharraf**

Since October 1999, the anti-terrorism legal regime has been a mix of both change and continuity. The ATA of 1997 has been revised and amended amid the changing political and strategic context at the domestic, regional, and the international level. It is essentially an interplay of the national, regional, and global understanding of the issue of terrorism following the terrorists attacks on 11 September. As discussed previously, strategic political issues and differences also overshadowed the adoption of the amendments to the anti-terror legal regime. The intent being the speedy disposal of the cases or political foes, and the disposal of the Nawaz Sharif case under the amended ATA is a case in point.

### **Pre-9/11: Anti-Terrorism Legal Drive under General Musharraf**

The December 2, 1999, twin amendments to the anti-terrorism ordinance expanded the definition of the act of terrorism and enhanced the ambit of the anti-terrorism courts to include several other provisions of Pakistan’s criminal court. According to the first amendment, the courts’ extended jurisdiction would now include: (1) Section 109 – abetment of offense; (2) Section 120 – concealing of a design to commit an offense; (3) Section 120 B – criminal conspiracy to commit a crime punishable by death or with the imprisonment greater than two years; (4) Section 121 – waging or attempting to wage war against Pakistan; (5) Section 121 A – conspiracy to commit certain offenses against the state; (6) Section 122 – collecting arms with the intent to wage war ; (7) Section 123 – concealment with the intent to facilitate waging pf war; (8) Section 365 – kidnapping ; (9) Section 402 – being one of the five or more persons assembled for the purpose of committing dacoity ; (10) Section 402 B – conspiracy to commit hijacking.[42] The Dec. 2<sup>nd</sup> amendment set up two new special courts to be and empowered to “transfer, claim, or readmit any case within that province.” These courts also served as Appellate Tribunals for the anti-terrorist courts.[43]

Having made such amendments to the existing craft of the anti-terrorism regime, charges were framed against Nawaz Sharif under the newly added sections of the ATA. Sharif was charged with hijacking and threatening the lives of the passengers (that included Army Chief General Musharraf as well) as the aircraft was short of fuel and could not comply with the directives to land outside Pakistan. Bypassing the regular court system that otherwise could have delayed the proceeding of Sharif's case enabled the anti-terrorism court (ATC – Karachi), on April 6, 2000, to convict Sharif of conspiracy to hijack the PIA flight and sentence him to life imprisonment. [44]

That life imprisonment sentence imposed on Sharif under the amended ATA never fully materialized, as a deal was struck between the government and Sharif's family. In December 2000, Sharif and his family were allowed to leave the country for Saudi Arabia. It was reported that under the terms of the deal, Sharif agreed to abstain from politics and remain outside Pakistan for 10 years or so. Additionally, the Sharif family was fined more than 20 million rupees (\$400,000) and agreed to the forfeiture of property worth in excess of 500 million rupees (\$10 million) as part of the deal. [45]

The remaining pre-9/11 phase was marked by further deterioration of law and order, and incidents of sectarian nature became a regular feature on the home front. Despite Musharraf's promise of restoring the writ of the state and ensuring effective and speedy justice, anti-terrorism courts had very significant dockets and delays similar to the regular judicial setup. [46] Musharraf was mindful of the rising tide of sectarianism at home, and while facing diplomatic isolation on the international front as the sole supporter of the Taliban regime in Afghanistan, he began to rethink the parameters of the security policy in operation.

General Musharraf's public address to mark Pakistan's Independence Day (August 14, 2001) reflected the altered security understanding of his regime. He announced a "Devolution Plan 2001" [47] to restructure the country's political and administrative setup. The speech also envisioned a plan to use and amend the anti-terrorism courts to deal with the lawlessness and sectarian violence.

Consequently, the Anti-Terrorism (Amendment) Act issued on August 15, 2001, expanded the purview of the anti-terrorism courts and instituted clauses to proscribe militant sectarian outfits and freeze their financial assets. [48] The Amendment Act empowered the Federal government to ban an organization "if it has a reason to believe that organization is concerned in terrorism." "Concerned in terrorism" is defined as an organization that: (1) commits or participates in the act of terrorism; (2) prepares for terrorism; (3) promotes or encourages terrorism; (4) supports and assists any organization concerned with terrorism; (5) patronizes or assists in the incitement of hatred or contempt on religious, sectarian or ethnic lines that stir up disorder; (6) fails to expel from its ranks or ostracize those who commit acts of terrorism and presents them as heroic persons; or (7) is otherwise concerned with terrorism. [49]

Following the enactment of the amended ATA, the government banned two sectarian organizations, namely: Lashkar-i-Jhangvi (LJ) and Sipah-i-Mohammed (SMP), both militant off-shoots of the Tehrik-i-Nifaz-i-Fiqah-i-Jafferia and Sipah-i-Sahaba, respectively. Additionally, hundreds of activists belonging to these two militant organizations were also rounded up. September 11 soon changed the whole scenario of the anti-terrorism regime, not only for Pakistan, but for the whole world. Pakistan's regime was provided an opportunity and a challenge to vigorously implement its anti-terror craft at home and in its bilateral, regional, and international interactions.

### **Anti-Terrorism and the Impact of 9/11**

The events of 9/11 marked what U.N. Secretary General Kofi Annan called a "seismic shift in international relations." [50] Given Pakistan's strategic location and influence on Afghanistan, its role in the U.S.-led Global War on Terrorism (GWOt) implied changes in its domestic and global strategic posture. By joining the international coalition, Pakistan became the frontline state in the GWOt and enacted laws to ban extremist and militant groups that organized or participated in acts of violence both inside and outside the country.

As an immediate measure, a campaign to expand the number of anti-terrorist courts was undertaken to strengthen existent anti-terror mechanisms. During September and October 2001, eleven new courts were established in the NWFP (North West Frontier Province) and four in Sindh. By the end of October 2001, Pakistan had forty-one anti-terror courts. [51] In January 2002, Anti-terrorism (Amendment) Ordinance was promulgated. This enhanced the single bench to three members of the anti-terror courts and introduced "military personnel" as a third member. The government held that this step was taken "to speed up the lengthy adjudication

process.” Under the new law:

- All terrorism cases will be transferred to the new courts
- Courts will function until November 30 but can be extended
- The entire “terrorist network” was to be targeted
- People who aid and abet terrorists face possible death penalty

A person found guilty had the right to appeal [52]

This act of military involvement in the judicial setup was critically received by lawyers, judicial circles, and international human rights groups. In yet another bid to strengthen the legal regime and ensure rule of law, the government issued the Anti-terrorism (Amendment) Ordinance on November 16, 2002. This Act enhanced the powers of the police to deal with terrorism. By inserting Fourth Schedule into the ATA of 1997, clauses were added regarding the “security of good behavior” to be fulfilled by the activists of the organization or person whose name is recorded in the Fourth schedule list. The Act also provided law enforcement agencies to hold a suspect for up to one year without challenge.[53] By the end of 2002, the government banned another six militant organizations, namely Jaish-e-Mohammad, Lashkar-e-Tayyaba(LeT), Sipah-e-Sahaba Pakistan (SSP), Tehrik-e-Jafria Pakistan (TJP), Tehrik-e-Nifaz-e-Shariat-e-Mohammadi, Tehreek-e-Islami (Ex TJP), and placed one organization, Sunni Tehrik, on the Watch List.[54]

Musharraf’s decisions were also impacted by the Indo-Pak standoff in the wake of an attack on the Indian Parliament (New Delhi) on Dec. 13, 2001, which India fully blamed on LeT (Lashkar-e-Tayyaba), a Pakistan-based Jihadist outfit. Responding to the Indian accusations, the Pakistan government assured the international community that “no one would be allowed to carry out any territorial or subversive activities in or outside the country. No party in [the] future will be allowed to be identified with words like Jaish, Lashkar, or Sipah.... Foreign students and teachers would have to be registered with the concerned government agencies.... We should stop interfering in the affairs of others and stop using violence as a means to thrust our point of view on others.”[55]

The ATA legislation that had been on the statute well before 9/11, but had never been vigorously enforced except by one governing political party against rivals, was put into effect. Following the ATA clauses, the government said it could take actions against banned organizations: (1) their offices, if any would be sealed; (2) their assets and accounts would be frozen; (3) all literature and electronic media material would be seized; (4) the publication, printing or dissemination of press statements, press conferences, or public utterances by or on behalf of, or in support of, a proscribed organizations would be prohibited. The proscribed groups would also be required to submit accounts of their income and expenditure for their political and social activities and disclose all funding sources to those relevant authorities designated by the federal government.[56]

Interestingly, Musharraf’s regime also extended the umbrella of anti-terrorism goals into the political arena—seen by government opponents as political victimization. The Political Parties Order of June 28, 2002, adversely affected the rules of politics in the country. Section 3 of the Order prohibits any political party from: (1) promoting sectarian, regional or provincial hatred or animosity; (2) bearing a name as a militant group; (3) imparting any military or paramilitary training to its members or other persons”. Section 4 also requires that every political party maintain an official manifesto. And Section 15 provides for dissolution of any political party that is “foreign-aided” or is found “indulging in terrorism.”[57]

To paraphrase the analyst M Amir Rana, these steps by the government partly succeeded in stemming the tide of terrorism in Pakistan. Though the public fundraising, recruitment, and propaganda of the banned outfits have been curtailed to some extent, organizations have found innovative ways to survive and flourish. For instance, Jamaat-ud-dawwa (JD), placed on the Watch List on Nov. 15, 2003, has invested largely in legitimate business interests such as health, education, and real estate. Additionally, foreign donations through Hawala channel and Forex Exchange also help them survive. Reportedly, “JD (Jamaat-ud-Daawa) properties in Pakistan have been estimated worth sixty million rupees and it aims at achieving a target of 120 million rupees more during the next five years. Apart from these, the number of students in its model schools has reached ten thousand approximately and in madrasas it has touched six thousand. It is also establishing health centers and dispensaries. [58] If this trend continues, such organizations will not need public contributions and will not be affected by the government instituted bans either on funding, recruitment, propaganda, and so on. These trends not only frustrate the existent anti-terrorism regime but also allow the penetration of extremism within society that requires a comprehensive long-term, anti-terrorism vision.

Given this scenario, further amendments to the Anti-Terrorism Act of 1997 were added in November 2004. The



maximum jail term for supporters of militants was increased from 14 years to life imprisonment. The aim was “to strike at the support network of the terrorism and deter those who are providing financial, logistical and infrastructure support to the terrorists and remove loopholes in the Anti-Terrorism Act.” Sub-sections 4-A and 4-B were added to Section 25 of the Act of 1997; victims and their heirs obtained the right to appeal against the acquittal of accused by an anti-terrorist court.[59] Another amendment to the ATA authorizes the government officials to seize the passport of anyone charged under the law.

Along the same lines, the Pakistani government enacted the Anti-Terrorism (Second Amendment) Act on Jan. 10, 2005. This act also made necessary modifications and amendments to the ATA of 1997 and enhanced the minimum and maximum punishment for acts of terrorism. It curtailed the powers of the court for granting adjournments to ensure speedy trials. It provides for the constitution of Special Benches consisting of no less than two judges for disposal of appeals. The act allowed the transfer of cases of terrorism from one province to another. It also enhanced the jurisdiction of the courts dealing with abduction and kidnapping for ransom, finding and use of explosives in the places of worship, and court premises to be exclusively tried by Anti-terrorism Courts.[60]

At this juncture it is pertinent to note that in the post-9/11 phase Islamabad is also obliged to fulfill the obligation of being a United Nations member and ensure the implementation of the UN Resolution 1373 (2001), UN Resolution 1624 (2005), and submit periodic reports to the U.N. Security Council’s Counter-Terrorism Committee (CTC) from time to time.[61] In other words, anti-terrorism efforts are no longer a national enterprise and need to be upgraded and effectively monitored to be in line with guidelines formulated by the U.N.

Therefore, with the goal of bringing Pakistan into full compliance with legislative requirements necessary to implement U.N. Resolutions 1373 and 1624, a draft of the Anti-Money Laundering Bill (2005) was approved by the Federal Cabinet and presently waits to be enacted. Pakistan stated in its 2005 report to the CTC that the law aims “to make the financing of terrorism a predicate offense for money laundering; extend the banking and financial laws and alternative money transfer systems; and, regulate charitable, religious, and other non-governmental organizations.”[62]

Similarly, as a result of bilateral assistance from the U.K. and U.S., a Terrorist Financing Investigations (TFI) Unit, headed by a banker, has been set up at the Federal Investigation Agency (FIA) level. Additionally, a Computer Forensic Laboratory is now operational at FIA headquarters in Islamabad with the assistance of the U.S. Federal Bureau of Investigation (FBI).[63] More importantly, to monitor the entry and exit from land ports, sea ports, and air ports in Pakistan, a Personal Identification Secure Comparison and Evaluation System (PISCES) has been installed at sixteen locations with U.S. cooperation. Data and records of more than 26 million travelers have been stored with about 3445 hits in different categories of the watch list.[64]

What one gathers from going through the above-mentioned administrative measures is that anti-terrorism has traveled a long way from being solely a national enterprise to one that undercuts bilateral and international obligations of a state. The definitional spectrum of terrorist acts has also expanded over the years and so has the legal tools to prosecute and punish such acts. The state is well equipped legally to deal with the terrorism, but this has not resulted in reducing incidents of terrorism. Why is this so?

This stark reality brings forth certain conclusions that underpin the evolution and creation of anti-terrorism as pro-active measure on the part of Pakistan.

### **Concluding Remarks:**

The the legal development to check and deter terrorist activities within Pakistan testifies to the proposition of this paper that anti-terrorism is an essential component of a multi-dimensional strategy toward the ever-changing phenomenon of terrorism. Anti-terrorism laws are essentially of preventative nature and work in conjunction with the political, military, and administrative aspects of the overall response to terrorism. To ensure that laws are implemented successfully depends on political will complemented by public support as well as institutional capacity. In the case of Pakistan, even application of anti-terror laws remains an unfulfilled objective. At times, charges are framed against a particular organization or person but action is delayed on account of “unexplained reasons.”

Secondly, the promises of an effective, efficient, and prompt delivery of justice via the anti-terrorist courts remain as elusive as ever. In examining the government report on how the anti-terror and special courts function,

one is struck by the sizeable balance of cases that are yet to be processed. Until they are, they remain in courts in all provinces and settled areas across the country. Statistics on Punjab since Jan. 1, 2005, to Dec. 31, 2005 portray a similar story: 11 anti-terrorist courts disposed of 1013 cases out of the total of 1742 cases, and 725 cases remain pending.[65] The report also highlights financial, manpower, and administrative constraints that continue to hamper the efficiency of the anti-terror courts or setup.

There is an essential need to invest in public education about the usefulness of such measures. Here, the role of civil society and media in projecting the viability of anti-terrorism remains to be harnessed to its maximum potential. Presently, deep polarization and gaps persist within society regarding Pakistan's role in the so-called war on terror and the expanded definition of terrorism. The domestic, legal, and administrative measures undertaken are often dubbed as means to please the external powers, specifically the U.S.

In summary, the dilemma for policy makers remains how to deny breathing space to terrorists - legally, morally, socially, and politically. The mindset that favors violence as means to an end must be changed through investment into public education, social development, and political representation. In short, to institute a cohesive anti-terror strategy on the sustained footing remains an uphill task for the present and future generation of policy makers and shakers alike.

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#### NOTES:

- [1] Saeed Shafqat, *Civil-Military Relations in Pakistan*, USA: Westview Press, 1997. p: 38.
- [2] Karl Von Vorys, *Political Development in Pakistan*, (Princeton: Princeton University Press, 1965), p: 189.
- [3] Note: Public Offices (Disqualification) Order of 1959, PODO aimed to silence political activism against the military rule. Like wise, Electoral Bodies (Disqualification) Order of 1950, EBDO sought to eliminate and silence political dissent terming these elements as "anti-state" and consolidate military rule of the General Ayub Khan. For the detailed account see, Saeed Shafqat, op.cit., p: 38 – 39.
- [4] Ibid. pp: 98 – 106.
- [5] *Preamble, Suppression of Terrorist Activities (Special Courts) Ordinance (XVIII)*, 1974.
- [6] Ibid.
- [7] *PLD 1975 Central Statutes 89*.
- [8] National Awami Party (NAP) was formed by the Khan Abdul Ghaffar Khan in 1951. The party's ideological orientation was a blend of Marxism, socialism and provincialism.
- [9] Saeed Shafqat, op.cit., p: 105.
- [10] *Sec.5 (2), Suppression of Terrorist Activities (Special Courts) Act 1975*. For the discussion of the 1975 act also see, Shaukat Rafique Bajwa, *Suppression of Terrorist Activities (Special Courts) Act, 1975*, (Lahore: Punjab Law House, 1997).
- [11] *Sec. 5(4), Ibid.*
- [12] *Sec. 8, Suppression of Terrorist Activities (Special Courts) Act (XV), 1975*.
- [13] Ibid.
- [14] Najam U Din, *Terrorist unless proven otherwise: Human rights implications of anti-terror laws and practice in Pakistan*, (Lahore: HRCP publication, 2007), p: 10.
- [15] *Sec. 39 (c), Anti-Terrorism Act (ATA), 1997*.
- [16] Najam U Din, op.cit., p: 7.
- [17] Mian Ghulam Hussain, *Manual of Anti-Terrorism Laws in Pakistan*, (Lahore: Afsari Printers, 2006).
- [18] Prime Minister Nawaz Sharif quoted in *DAWN*, November 29, 1997.
- [19] Ibid.
- [20] *Preamble, ATA, 1997*.
- [21] *Anti-Terrorism Act, 1997 (20 August 1997)*, PLD 1997 Central Statutes (unreported) 537.
- [22] Schedule, 547-48.
- [23] *Sec. 19 (1), ATA, 1997*.
- [24] *Sec. 19 (7), ATA, 1997*.
- [25] *Sec. 19 (8), ATA, 1997*.
- [26] *Sec. 19 (8-a), ATA, 1997*.
- [27] *Sec. 12, 14, 19, 24 -5, 29 & 31, ATA 1997*.
- [28] Interview, Justice A N Chohan, 10 June 2007, Rawalpindi. Justice A N Chohan is presently member of the International Court of Justice (ICJ) Hague, who was in 1997 serving the Federal Ministry of Law.
- [29] *Mehram Ali Versus Federation of Pakistan*, Ministry of Law, Islamabad.
- [30] Charles Kennedy, "The Creation and Development of Pakistan's Anti-Terrorism 1997-2002" in p: 397.
- [31] Justice Irshad Hassan Khan, Chief Justice of the Supreme Court of Pakistan, quoted in Mian Ghulam Hussain, *Manual of Anti-Terrorism laws in Pakistan*, Lahore: Afsari Printers, 2006, p: 9.,
- [32] Charles H Kennedy, op.cit, p: 392.
- [33] *Sheikh Liaquat Hussain and others Vs Federation of Pakistan, PLD 1999 SC 504 to 879*.
- [34] *Pakistan Armed Forces Ordinance, 1998 (20 Nov, 1999)*, PLD 1999, Central Statutes 156.

- [35] Note: The Military Courts were created and staffed by the military officers at the rank of Brigadier and above. Such Courts was given jurisdiction to award sentences, including death penalty for specific crimes.
- [36] *Pakistan Armed Forces Ordinance 1998, Sec. 6, 158.*
- [37] Senator Aitzaz Ahsan quoted in *Dateline*, 5/3/99, Islamabad.
- [38] *Liaquat Hussain versus the Federation of Pakistan, PLD 1999, SC 504.*
- [39] *Ibid.*
- [40] *Anti-Terrorism (Amendment) Ordinance, 1999 (27 April, 1999), PLD 1999 Central Statues 289.*
- [41] *Anti Terrorism (Second Amendment) Ordinance 1999 (27 August 1999) PLD 2000 Central Statues 2.*
- [42] *Anti- Terrorism (Second Amendment) Ordinance 1999 (2 December 1999) PLD 2000 Central Statues 8.*
- [43] *Anti- Terrorism (Third Amendment) Ordinance 1999 (2 December 1999) PLD 2000 Central Statues 78.*
- [44] *The News*, April 7 2000; *Dawn*, April 7, 2000.
- [45] *Dawn*, December 10, 2000.
- [46] According to the leading national English daily, *Dawn*, August 31 2001, 451 cases were pending in the Sindh based Anti-terrorist courts.
- [47] Devolution Plan came into effect on August 2001, based on five fundamentals: Devolution of Political Power, Decentralization of Administrative Authority, Deconcentration of Management Functions, Diffusion of the Power Authority Nexus, and Distribution of Resources to the Grassroots level. For more details see: [Http: //www/nrb.gov.pk/publication/LG\\_Final\\_Plan\\_2000.pdf](http://www/nrb.gov.pk/publication/LG_Final_Plan_2000.pdf).
- [48] *Anti-Terrorism (Amendment) Ordinance, August 15, 2001.*
- [49] *Ibid*, Section 11 A.
- [50] Kofi Annan, UN General Secretary, quoted in Abdul Sattar, *Pakistan's Foreign Policy- 1947 – 2005* (Karachi: Oxford University Press, 2007), p: 257.
- [51] Reported in *Dawn*, October 2001.
- [52] "New anti-terror Courts in Pakistan", *BBC News (online)*, February 1, 2002.
- [53] *Anti Terrorism (Amendment) Ordinance, November 16, 2002.*
- [54] Ministry of Interior, Islamabad.
- [55] President Musharraf speech on 12 January, 2002.
- [56] Mohammad Amir Rana, *The Seeds of Terrorism*, (London: New Millennium, 2005), p: 66.
- [57] Political Parties Order (28 June) 2002.
- [58] Muhammad Amir Rana, "Changing Tactics of Jihad organizations in Pakistan", available at: [//www.pips.com.pk/JihadOrg.asp](http://www.pips.com.pk/JihadOrg.asp).
- [59] Tasneem Gardezi, a member of the Parliamentary committee on Law, quoted in *Arab News*, October 20, 2004.
- [60] *Anti-Terrorism (Second) Amendment Act, 2005. Provision 13, Pages 6 – 10, Extra-ordinary Edition.*
- [61] UN Resolution 1373 (2001) was adopted by the Security Council at its 4385<sup>th</sup> meeting on September 28, 2001. It called on States to "work together to prevent and suppress terrorism through all lawful means and obliges all states to criminalize assistance to terrorist activities, deny financial support and safe haven to terrorists and share information about groups planning terrorist attacks". UN Resolution 1624 (2005) called on States to ensure "prohibition of incitement to commit terrorist acts". For more details see, [Http: //www.un.org/sc/ctc/resolutions.html](http://www.un.org/sc/ctc/resolutions.html).
- [62] [Http: //www.un.org/sc/ctc/country\\_reports/report\\_A.shtml](http://www.un.org/sc/ctc/country_reports/report_A.shtml).
- [63] Interview Director General FIA Mr Tariq Pervaiz, March 14, 2007.
- [64] *Ibid.*
- [65] *Administrative Tribunals and Special Courts , Annual Report 2005*, (Islamabad: Law and Justice Commission of Pakistan, 2006), p: 65.

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## Leaderless Jihad: The Modern Face of Terror: Book Review

*By Joshua Sinai*

Radical Muslims represent a minority within the Muslim world. If most Muslims are not extremists, why are so many young Muslims drawn to extremist interpretations of Islam as the basis for establishing radical regimes in their societies? How do they become radicalized? What is the tipping point from radicalization to terrorism? Finally, how can violent radicalism be countered and defeated?

These questions are discussed in Marc Sageman's important book, "Leaderless Jihad: Terror Networks in the Twenty First Century" (University of Pennsylvania Press, 2008; 208 pages, \$24.95). Dr. Sageman, a forensic psychiatrist and political sociologist, is also a former CIA case officer who worked with the *mujahideen* in Afghanistan in the late 1980s. He is also the author of the groundbreaking *Understanding Terror Networks*, which was published in 2004 and has become one of the leading studies on the global Islamist terror movement.[1]

In "Leaderless Jihad" Dr. Sageman, whom I know professionally, updates and expands his earlier work on what drives radical elements of a society to terrorism. Dr. Sageman's research is unique in the field of al-Qaeda studies, in particular, because of his "evidence-based" approach. Here he has assembled profiles of individual operatives to generate insights about their personal characteristics and motivations, recruitment patterns, organizational formations, and warfare. Whereas his earlier study is based on the compilations drawn from unclassified, open sources of profiles of some 172 individuals; this study is based on more than 500 profiles, making it a valuable resource for the academic community. One drawback of the book is that it does not provide a summary of the database in an appendix.

According to Dr. Sageman, the al-Qaeda-led Islamist social movement consists of several thousand members (out of a worldwide Muslim population of more than one billion). It is "composed of social networks that mobilize people to resort to terrorism. These networks may become formal organizations, like al-Qaeda or its Indonesian affiliate, Jemaah Islamiyah, depending on shifting circumstances." (p. 31)

Moreover, while al-Qaeda "Central" is currently headquartered along the Pakistan-Afghanistan frontier, its "social movement has spread far beyond the original organization." (p. 31) According to Dr. Sageman, this makes the organization even more dangerous because as a social movement it has dramatically grown beyond its organizational origins.

Dr. Sageman believes today's al-Qaeda (and the social movements it has spawned) is the product of three historical waves. The first wave consisted of the "old guard," the veterans of the anti-Soviet campaign in Afghanistan who joined Usama bin Laden in forming the core of al-Qaeda "Central" in the 1980s. The second wave joined al-Qaeda in the 1990s after training in its camps in Afghanistan. Al-Qaeda "Central" was predominant during this phase, closely directing its operations around the world.

The third wave, however, is the post-2001 generation of radicals, who joined al-Qaeda following the overthrow of the Taliban in Afghanistan and the U.S.-led invasion in Iraq. Although it lost its safe haven and training facilities in Afghanistan, the al-Qaeda-led social movement is even more pervasive because of its global reach as well as its links to al-Qaeda "Central" along the Pakistan-Afghan border. Furthermore, the organization has had great success on the Internet, where it has radicalized a new generation of activists, including many among second-generation Muslim immigrants in Europe and North America. This was the group, for example, that carried out the suicide attacks against London's transportation system in July 2005.

How are the members of al-Qaeda's third wave mobilized into becoming "warriors for Islam?" Dr. Sageman writes that they view themselves, rightly or wrongly, as "heroes, fighting for justice and fairness" to transform their societies.

Moreover, Dr. Sageman asserts, their radicalization is facilitated by a four-prong process (which is not necessarily linear): (1) an individual's sense of moral outrage in response to perceived suffering by fellow Muslims

around the world; (2) how the individual might interpret such moral outrage within the context of a larger war against Islam; (3) whether or not the sense of "moral outrage" resonates with one's own experience (for example, discrimination or difficulty in making it in Western society) and, finally, (4) being mobilized by networks that take one to the next level of violent radicalization in the form of terrorist cells. To this, I would add a fifth prong (which I would place between Dr. Sageman's first and second prongs): the influence of radical Islamic texts, such as Sayyid Qutb's *Milestones*, which had a profound influence in radicalizing bin Laden, Ayman al-Zawahiri, and other al-Qaeda leaders, operatives, recruits and supporters.

Like any masterpiece, Dr. Sageman's book is not perfect in all aspects. Some of his arguments are insufficiently explained or inadequately sourced. Dr. Sageman's use of citations is inconsistent and incomplete. Some endnotes list the authors' first names and the date of their publications, but not the titles or page numbers. This makes it cumbersome to check the validity of the cited information.

Aside from these criticisms, there is so much more to commend in Dr. Sageman's book. The chapter on "How to Study Terrorism in the Twenty-First Century" is required reading for every university course; similarly, the chapter on "The Atlantic Divide" is a provocative analysis of the different trajectories of radicalization in Europe and the United States, and the chapter on "Terrorism in the Age of the Internet" is one of the finest overviews of this subject.

Dr. Sageman concludes that "the threat from al-Qaeda is self-limiting, [as] is its appeal, and global Islamist terrorism will probably disappear for internal reasons..." because of the atrocities committed by al-Qaeda and those acting on its behalf (p. 150). The most appropriate counter strategy, according to Dr. Sageman, "should be one of restraint with respect to the greater challenge: preventing young Muslims from joining the terrorist social movement..." (p. 150).

To counter the social movement inspired by al-Qaeda, Dr. Sageman proposes a strategy to "take the glory and thrill out of terrorism." Military operations against them should be conducted swiftly and precisely, with such terrorists considered "common criminals" (p. 151). The sense of "moral outrage" by young Muslims can be diminished by helping to resolve local conflicts that al-Qaeda's propaganda highlights as injustices against the Muslim world. The young jihadists want to become heroes, so they need to be provided with alternative role models, such as Muslim soccer stars and other successful community leaders.

This is all true. Aside from addressing their concrete grievances, however, governments still need to formulate effective responses to counter their desire to impose anti-modern religious orthodoxy over their respective societies and communities. What sort of alternative ideologies and role models can be provided to such militants and their supporters that are likely to be embraced by them? Dr. Sageman's book is valuable because researchers can apply this question against his empirical approach and findings in order to advance the state of knowledge on this issue.

Dr. Sageman's incisive observations based on carefully examined evidence, astute insights and scholarship make "Leaderless Jihad" the gold standard in al-Qaeda studies. Like his earlier book, it deserves to be widely read in the field of terrorism studies.

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This is a revised and expanded version of Dr. Sinai's review of Dr. Sageman's book, which originally appeared in *The Washington Times* on February 19, 2008. Reprinted with permission.

#### NOTES:

[1] See my review of Dr. Sageman's *Understanding Terror Networks* in *The Washington Times*, May 25, 2004.

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