

EVALUATING THE EFFECTIVENESS OF PAKISTAN'S ANTI-TERRORISM ACT: CHALLENGES IN EXECUTION AND PROPOSED SOLUTIONS

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Individual Research Paper

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⁴ I hereby declared that this paper is the end-product of my own efforts, research and writing and has not, in whole or in part, been submitted elsewhere for assessment and its contents are not plagiarized. This paper reflects my own views and is not necessarily endorsed by the Faculty or the Institute.

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1. Introduction

Pakistan has grappled with the persistent and devastating threat of terrorism for decades, a menace that has claimed thousands of lives, destabilized the nation's economy, and eroded its social fabric. In response to this pressing challenge, the government of Pakistan has introduced a series of laws and policies aimed at countering terrorism. Among these, the Anti-Terrorism Act of 1997 (ATA) stands out as the most prominent and comprehensive legislation. ATA defines terrorism, establishes special courts and tribunals, prescribes punishments for terrorist acts and related offenses, and grants authorities the power to take preventive and coercive measures against terrorism. Importantly, ATA also incorporates international obligations and standards on counter-terrorism, aligning with United Nations Security Council resolutions and Financial Action Task Force recommendations.

Despite the existence of ATA, Pakistan has struggled to effectively mitigate terrorism and bring its perpetrators to justice. The implementation of ATA has encountered numerous hurdles and challenges, including legal loopholes, procedural delays, resource limitations, political interference, human rights violations, and widespread public mistrust. These factors have collectively undermined the credibility and effectiveness of ATA in its crucial role of combating terrorism. Therefore, it is imperative to conduct a comprehensive appraisal of ATA, assess its strengths and weaknesses, and provide recommendations for enhancing its implementation and surmounting the challenges it faces.

The Anti-Terrorism Act 1997 (ATA) serves as Pakistan's primary legal framework for preventing, investigating, and prosecuting terrorist offenses. Enacted in response to the escalating terrorism threat within Pakistan, ATA has significantly contributed to reducing the incidence of terrorism in the country.

This paper aims to offer a comprehensive evaluation of ATA, encompassing an analysis of its strengths, weaknesses, and recommendations for improvement. Additionally, the paper will examine into the obstacles hindering the effective implementation of ATA, such as capacity and resource deficiencies within the criminal justice system and a lack of coordination among various government agencies.



2. Research Questions:

1. How far Anti-Terrorism Act 1997 is effective in Countering Terrorism in Pakistan?
2. What are the Impediments in Countering Terrorism in the Country?

3. Methodology:

To draw inferences in this piece of research mixed method of research was adopted. These were certain primary sources, were consulted. Furthermore, secondary sources would also be analyzed. Both research techniques quantitative and qualitative were adopted.

4. Scope of Study:

This would be useful at many fronts particularly for making Counter Terrorism Policies in the entire country. The study will also helpful for the researchers who are intended to do research in this field.

5. Appraisal Of Anti-Terrorism Act 1997

i. Historical perspective Pakistan's Anti-Terrorism Legislation:

Pakistan's journey in crafting an effective anti-terrorism legal framework unfolds within the context of its inherited legal system and evolving security challenges. At the core of Pakistan's criminal laws lies the Pakistan Penal Code, 1860 (PPC), a legacy from the British colonial era, adapted to align with Islamic values. However, the PPC, despite its historical significance, has limitations when it comes to addressing the intricacies of terrorism-related crimes. While it encompasses sections dealing with offenses like waging or attempting to wage war against Pakistan, collection of arms for such purposes, sedition, mutiny, mischief, and hijacking, the PPC falls short of providing a comprehensive response to the ever-evolving traits of security challenges.

In recognition of the inadequacy of the PPC, Pakistan initiated the development of special legislation known as the "Suppression of Terrorist Activities (Special Courts) Acts" between 1974 and 1997. These special acts were primarily conceived to combat prolonged sectarian violence, particularly during the era of Zia's regime. This series of special legislation included acts such as the "Suppression of Terrorist Activities (Special Courts) Act 1975," "Special Courts for Speedy Trial Ordinance 1987," "Terrorist Affected Areas (Special Courts) Ordinance 1990," "Special



Courts for Speedy Trials Ordinance 1991," and "Special Courts for Speedy Trials Act 1992." However, the effectiveness of these special acts was limited, and Pakistan continued to grapple with escalating terrorist activities, including target killings and sectarian conflicts, most notably in Karachi and other regions.

It was in this context of rising sectarian conflicts that Pakistan embarked on the development of a dedicated counterterrorism legal regime starting in 1997. This marked the emergence of Pakistan's primary and substantive law specifically designed to address terrorism - the Anti-Terrorism Act 1997 (ATA). Nevertheless, with the passage of time, ATA encountered its share of challenges and complexities in its implementation.

ATA has been amended several times to adapt to the changing nature of the terrorist threat. Other special laws have supplemented ATA, such as the Investigation for Fair Trial Act (2013) and Protection of Pakistan Act (2014), to respond to some of the other areas of the terrorist threat not covered by ATA. A constitutional amendment was passed in January 2015 to set up special military courts for dealing with terrorism cases for a period of two years.

ii. Dynamic Challenges & CT framework

A critical point to consider is the necessity to shift the focus of ATA from inter-communal conflicts to terrorism, thus avoiding case backlogs. However, this adjustment alone may not sufficiently address the multifaceted landscape of terrorism in Pakistan. This is primarily due to the diverse factors contributing to this security challenge, which encompasses not only criminal acts but also ideological dimensions. The security challenges in Pakistan have evolved, involving various actors, including ideological elements, rendering the landscape of counterterrorism far more intricate and multifarious than what was initially envisioned during the era of ATA's inception. Following laws have also been enacted to address different challenges associated with terrorism:

- Anti-Money Laundering Ordinance, 2007
- The Prevention of Electronic Crime Act, 2007
- Anti-Money Laundering Act, 2010
- Action (in Aid of Civil Power) Regulations (AACP) in 2011
- Protection of Pakistan Ordinance, 2013
- National Counter Terrorism Authority Act, 2013



- Protection of Pakistan Act, 2014
- The Prevention of Electronic Crime Act, 2016

iii. Strengths of ATA 1997:

- Comprehensive Legal Framework:** ATA provides a comprehensive legal framework to combat terrorism.
- Specialized Anti-Terrorism Courts (ATCs):** The establishment of ATCs, as mandated by ATA, enables expeditious trials in terrorism cases. While the system is not without flaws, it has resulted in a higher rate of conviction for terrorism-related offenses compared to regular courts.
- International Cooperation:** ATA aligns with international counterterrorism standards. This alignment has allowed Pakistan to collaborate with other countries in addressing global terrorism. An example is Pakistan's adherence to the United Nations ¹⁶ Convention for the Suppression of Financing of Terrorism, as mentioned in the provided text.

iv. Weaknesses of ATA 1997:

- Ambiguities and Loopholes:** ATA contains ambiguities and loopholes that can be exploited by terrorists, leading to legal challenges. For instance, the provisions in Section 10, which allow officers to shoot on sight without clear guidelines, have raised concerns among policymakers and scholars, resulting in instances where the powers granted have been misused.
- Inadequate Investigation Period:** ATA's requirement of completing investigations within one week of arrest, as well as concluding trials in seven days, is insufficient for a fair and thorough examination of a case. This short timeframe can result in rushed trials and may violate the right to a fair trial, contributing to high acquittal rates.
- Broad Definition of Terrorism:** ATA's broad and action-based definition of terrorism, as seen in Section 6, has placed a considerable burden on ATCs. This definition encompasses actions rather than intent, resulting in an extensive range of cases being tried under ATA, which could be dealt with under existing criminal legislation. This issue has been addressed in ⁶ The Ghulam Hussain case is a landmark judgment by the Supreme Court of Pakistan, authored by Justice Asif Saeed Khosa, which lays down a conclusive and narrow scope of the definition of terrorism and its application with respect to criminal cases.



v. Limitations/ Caveats

- a. **Resource Constraints:** Despite the legal framework, Pakistan's capacity to conduct comprehensive financial investigations in terrorism cases remains limited. The use of virtual currencies and complex financial systems has created a need for enhanced resources, including advanced technology and skilled personnel. However, these resources are often lacking, as exemplified by Pakistan's challenges in dealing with terror financing allegations and its placement on the FATF grey list.
- b. **Capacity Gaps:** Post-FATF action plan, there has been a focus on capacity building for terrorism investigators and prosecutors. However, inconsistency in capacity building regimes, transfers, and postings of officers, and a lack of specialized training has led to capacity gaps, particularly among officers investigating terrorism cases, as seen in the example provided where officers are borrowed from provincial police with minimal knowledge of terrorism investigations.
- c. **Coordination Challenges:** While coordination mechanisms like Joint Investigation Teams (JITs) exist, there is a significant implementation gap. These forums are not optimally utilized, and there is a lack of coordination at the operational level. NACTA's role in coordinating counterterrorism responses has diminished post-FATF, resulting in coordination challenges, as indicated in the text.
- d. **Legislative Gaps:** ATA does not specify the minimum threshold for deploying the armed forces under Section 4, leading to a lack of clarity regarding the circumstances necessitating military involvement. Additionally, the punishments under Sections 11EE and 11D for individuals being members of proscribed organizations lack clarity and have been a subject of diverse judicial interpretations.
- e. **Prioritization Gap:** Counterterrorism investigations, and terrorism investigations in particular, do not receive their due share of attention and resources in the provincial Counter-Terrorism Departments (CTDs). Resources are often diverted towards intelligence gathering, incident response, and internal security operations, as illustrated in the text.

6. Hurdles in implementation of ATA

The implementation of the Anti-Terrorism Act (ATA) in Pakistan has faced numerous hurdles and challenges, which have impeded its effectiveness in countering terrorism. These hurdles can be categorized into several key areas:



i. Capacity Issues:

The absence of a unified National CTD hampers the strategic response to terrorism investigation. One of the major challenges is the lack of adequate infrastructure and resources for law enforcement agencies and the criminal justice system. This includes issues such as outdated equipment, insufficient forensic capabilities, and a lack of modern investigative tools. Pakistan faces a shortage of well-trained law enforcement personnel, prosecutors, and judges specialized in counterterrorism. This deficiency can result in delays and inefficiencies in the legal process.

As per the data collected in a survey from CTD indicates that 75% of the IOs and 85% of the TF prosecutors considered lack of specialized capacity building as the most important issues.

ii. Underutilization of Legal provisions:

Recently, an amendment has been made in section 19 of ATA, 1997 to enable CTDs to employ modern investigative techniques such as controlled delivery, undercover operations, accessing computer systems and intercepting communications. But no concrete step has been taken towards the implementation of these provisions. There is a priorities gap.

iii. Security Concerns:

Law enforcement agencies and personnel are often targeted by terrorist organizations. The threat of retaliation can hamper counterterrorism efforts and deter witnesses from coming forward. The dynamic nature of security challenges, including inter-communal conflicts, ideological actors, and transnational elements, complicates the implementation of ATA. Adapting the law to address these evolving challenges is a persistent issue.

iv. Legal and Procedural Hurdles:

ATA contains ambiguities and legal loopholes that can be exploited by terrorists, leading to legal challenges. These ambiguities can undermine the credibility and effectiveness of the law. The ATA's requirement to complete investigations within a week of arrest and conclude trials in seven days is often seen as insufficient for thorough scrutiny of cases. This can lead to rushed trials and potential violations of the right to a fair trial. Broad and action-based definition of terrorism in



ATA has led to an extensive range of cases being tried under the ATA, which could be addressed by existing criminal legislation. This has created a backlog of cases.

v. Political Interference:

In some instances, ATA has been misused for political purposes, leading to the arrest of political opponents on terrorism charges. Such abuse undermines public trust in the legal system and the ATA's original intent.

vi. Human Rights Violations:

The implementation of the ATA has sometimes involved extrajudicial actions that have resulted in human rights abuses. These actions can damage Pakistan's international reputation and pose legal and ethical challenges. Sections 11EE and 11D of the ATA, which deal with restrictions on individuals being members of proscribed organizations, lack clarity, leading to diverse interpretations and complications in prosecutions.

vii. Coordination Challenges:

There are coordination challenges among various law enforcement agencies and departments. Effective cooperation between these entities is crucial for a successful counterterrorism strategy. The intelligence gaps, constantly evolving tactics by the terrorism financiers, and availability of limited resources hamper the effectiveness of Terrorism investigations in a big way. Despite the institutional mechanisms being in place, ensuring effective cooperation, information sharing and combined operational-level efforts remain crucial and as well as challenging because of different mandates, structures, and competing preferences of different agencies and departments and stakeholders.

viii. Unclear Threshold for Armed Forces Deployment:

ATA does not specify a clear threshold for deploying the armed forces under Section 4, causing a lack of clarity regarding when military involvement is warranted.



ix. Changing Security Landscape:

ATA was initially designed to address inter-communal conflicts and sectarian violence. Adapting the law to address the evolving and diverse landscape of terrorism in Pakistan, involving ideological actors and transnational elements, presents a formidable challenge. Rapid advancement in ICT, digitalization of financial transactions, and rapid growth of cryptocurrencies provide immense exploitative opportunities for TF financiers and consequently add to the challenges of TF investigations.

x. Legislative Compliance:

Pakistan's placement on the Financial Action Task Force (FATF) grey list due to deficiencies in implementing anti-money laundering and counterterrorism financing measures poses an additional challenge to the effective implementation of ATA.

7. Recommendations

ATA is the core law that governs the security landscape related to terrorism activities and thereby required to be implemented in true letter and spirit. To overcome hurdles, limitations, and enhance the implementation of ATA in Pakistan would include a comprehensive approach aimed at strengthening the legal framework, improving capacity, and enhancing coordination. Here are some key recommendations:

- i. In order to bridge the huge coordination gap both at the national level and among the provincial CTDs, there is a need for the establishment of a National CTD in line with the FIA; to coordinate, devise strategies and execute its decisions for effective, sustainable and robust ATA implementation in Pakistan. The National CTD shall have an exclusive mandate to pursue proactive and wide-range terrorism investigations.
- ii. The provincial CTDs need to employ special investigative techniques provided under recent ATA amendments such as undercover operations and intercepting communications, accessing computer systems and controlled delivery. The implementation of these specialized and advanced investigative techniques requires formulation of rules, sufficient resources, technical equipment, specialize human resource and special trainings along with



an elaborate backup support system and coordination among various departments/ stakeholders.

- iii. Amendment in the ATA to provide a more precise and concise definition of terrorism. Focus on the intent or motive rather than solely on the action, which will reduce the burden on the Anti-Terrorism Courts (ATCs) and ensure that only terrorism-related cases are tried under the ATA.
- iv. The transfers/postings of officers/officials and lack of consistency in capacity building regime, lead to the capacity and skill gaps which resulted in poor quality Terrorism investigations and prosecutions. Terrorism cases require specialized investigators and prosecutors with requisite knowledge and expertise. CTDs are having police officers of the rank of inspectors borrowed from provincial police as TF investigators. These officers are least motivated and have minimal or no understanding of the complexities involved in investigations. Given their educational background and capacity, they are not even able to grow as professional and skilled TF investigators. Therefore, ATA is required to be amended to adjust core structures of CTDs e.g. investigation powers of terrorism cases may be assigned to the rank of Under officer/Senior Under Officer and investigative tasks may also involve the rank of Corporal (according to service structure of CTD Punjab)
- v. Capacity building of the provincial CTDs in financial forensics, data analytics and technical tools to respond to the challenge of highly specialized and complex realm of Terrorism investigations.
- vi. Define a clear threshold and criteria for the deployment of armed forces under Section 4 of the ATA. This will provide guidance on when military involvement is warranted.
- vii. Provide clearer and more specific punishment guidelines in Sections 11EE and 11D of the ATA. This will reduce ambiguity and the potential for diverse interpretations.
- viii. Ensure harmonization between ATA, the Pakistan Penal Code, and other relevant legislation to streamline legal procedures and minimize legal complexities.
- ix. Build the investigative capacity of law enforcement agencies by providing resources for intelligence gathering, analysis, and sharing. Encourage the use of modern investigative tools, such as controlled delivery and data analysis.



- x. Establish mechanisms for effective coordination among various law enforcement agencies and departments, ensuring information sharing and a more cohesive approach to counterterrorism.
- xi. Implement strict oversight and accountability mechanisms to prevent extrajudicial actions and human rights violations during counterterrorism operations. Ensure that law enforcement agencies adhere to due process and international human rights standards. Review the ATA's provisions related to the investigation period and trial duration to align them with international fair trial standards. Ensure that suspects have adequate time for preparation and that the right to a fair trial is respected.
- xii. Reinforce NACTA's role as a central coordinating body for counterterrorism efforts. Ensure that NACTA has the capacity and authority to coordinate and monitor actions across different agencies and departments.
- xiii. Encourage the active use of JITs for terrorism investigations, ensuring the participation of experts from various departments. JITs should contribute to the effectiveness of counterterrorism efforts.
- xiv. Provide FMU with the capacity to conduct meaningful financial analysis on suspicious transactions and financial data. This will help convert financial intelligence into actionable information. Strengthen cooperation with international counterparts, especially neighboring countries, to address cross-border financial flows related to terrorism.
- xv. Enhance witness protection programs to encourage individuals to come forward with critical information, especially in the context of security threats.
- xvi. Develop community-based programs to raise awareness about the dangers of terrorism and encourage community members to report suspicious activities. Community engagement can play a vital role in countering radicalization.

8. Conclusion

These recommendations, when implemented comprehensively, can help overcome the weaknesses and limitations of the ATA and improve its implementation in Pakistan. It will require a concerted effort from government bodies, law enforcement agencies, and civil society to address the multifaceted challenges posed by terrorism in the country. Addressing these hurdles is essential



for improving the implementation of the ATA and enhancing Pakistan's ability to combat terrorism effectively.

In conclusion, the fight against terrorism in Pakistan is a complex and multifaceted challenge. While the ATA serves as a strong legal foundation, its effectiveness is contingent upon overcoming the hurdles that have impeded its implementation. The recommendations presented offer a comprehensive and practical roadmap to strengthen the ATA, improve capacity, and enhance coordination, ultimately contributing to a safer and more secure Pakistan. Implementing these recommendations will require dedication, cooperation, and sustained efforts from all stakeholders, with NACTA playing a central role in coordinating these endeavors.

9. References:

1. Imran, Muhammad, and Rao Qasim Idrees. "Anti-Terrorism Legal Framework in Pakistan and Challenges before the Criminal Justice System." *Pakistan Journal of International Affairs* 3, no. 2 (2020).
2. Jawad, Ayesha. "An evaluation of Anti-Terrorism laws in Pakistan: Lessons from the past and challenges for the future." *Security and Defence Quarterly* 38, no. 2 (2022): 16-30.
3. Khan, Muhammad Asif, and Pervaiz Khan. "Defining Terrorism in National Laws: An Overview of the Definition of Terrorism in the Anti-Terrorism Act of Pakistan (1997)." *JL & Soc'y* 47 (2016): 115.
4. Parvez, Tariq, and Mehwish Rani. *An Appraisal of Pakistan's Anti-Terrorism Act*. United States Institute of Peace, 2015.
5. Raza, Hassnain. "Determining the Scope of the Anti-Terrorism Act 1997-Ghulam Hussain v the State." *LUMS LJ* 8 (2021): 170.
6. Rehman, Hidayat Ur. "Analyzing Definition of Terrorism as Contained in Anti-Terrorism Act, 1997 in Perspective of Principle of Legality with Emphasis on Element of Intention and Issues Ancillary to it." *Pakistan Journal of Criminology* 10, no. 3 (2018): 18-28.
7. THE ANTI-TERRORISM ACT 1997 (XXVII OF 1997). Retrieved from <https://nacta.gov.pk/wp-content/uploads/2017/08/Anti-Terrorism-Act-1997.pdf>

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