

# RESPONSES TO THE THREAT OF TERRORISM BY SPECIAL ENACTMENTS AND THROUGH THE CRIMINAL LAW

(A CASE STUDY OF PAKISTAN)

By

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## BACKGROUND

I am here to discuss “Responses to the threat of terrorism by Special Enactments and through the Criminal Law.”

Coming from Pakistan, I wish to discuss the same in the context of my country even though terrorism is now a global phenomenon. Pakistan, more than any other country in the world, appears from the number of terrorist attacks and the victims of such attacks to be the center stage of terrorist activity. It is for this reason also that I want to focus on Pakistan.

Terrorism is not a new phenomenon and it is certainly not restricted to Pakistan. Terrorism has been a part of the changing landscape of various nations throughout history. It has now taken a new dimension since the United States declared war on terrorism as an aftermath of the 9/11 attack on the World Trade Centre. The United States has formulated its own responses to the further threat of terrorism by enacting the Patriot Act and establishing Guantanamo Bay prison as have its other allies. Pakistan seems, at the behest of the US, to have adopted the US strategy rather than formulating and executing its own policy to combat terrorism. My discussion today will elaborate this point and conclude that it is for this reason that the Pakistan efforts to date have borne little result.

Pakistan has for the last several years been fighting a proxy war on behalf of the US, which has unabashedly been supporting an illegal military regime for the purpose against all democratic and diplomatic norms. Resultantly, in the last one year, Pakistan has suffered more casualties as a result of terrorist acts than Iraq and Afghanistan.

Reacting to 2<sup>nd</sup> June, 2008 bomb blast in Islamabad outside the Danish embassy which claimed at least eight precious lives, the US government admonished Pakistan, “not to allow terrorist to maintain safe haven on its soil”. The irony of the comment is lost both on the US and Pakistani governments. In spite of no – holds – barred war on terror, terrorism is on the rise. This calls for a serious review of flawed policy both by the US and Pakistan.

Looking back into history, the U.S funded nurseries of Mujahideen “holy fighters” organized in 1979 in the rugged terrain of the frontier regions of Pakistan as it required a “harvest of human heads” on a regular basis for fighting the “evil Soviet empire”. This period of Afghan War (1979–88) also saw another military dictator, General Zia-ul-Haq, being nurtured by the US. General Zia-ul-Haq’s government was instrumental in solidifying the Muslim clergy with the active support of the US. A large number of “madrassas” (religious seminaries) mushroomed across the country. These madrassas provided and continue to provide the manpower for most of the terrorist attacks and suicide bombings. Egged on by the US, Saudi Arabia also poured in lots of money which went primarily towards Sunni Muslim organisations. Fighters from Chechnya and Arab countries were encouraged and financed and facilitated for settling in these regions where they were required. After winning this war those who were trained for gun-running were abandoned and were hired by warlords in Afghanistan and neighboring areas. It is these very people who are now branded as “terrorists”.

Post 9/11, Pakistan was forced under threat of being hurled into the “stone ages” to conform to the changed US policy. Pakistan’s voluntary compliance remains questionable in this regard.

### Terrorist Activities:

International terror organizations, including al-Qa’ida and its supporters have carried out attacks in Pakistan. Violence stemming from Sunni-Shia sectarian strife and militant sub-nationalists have also claimed civilian lives. Although militant attacks occurred with greater frequency in the regions bordering Afghanistan: Balochistan, the Northwest Frontier Province (NWFP), and the adjacent Federally Administered Tribal Areas (FATA), these attacks have gradually spread through major urban centres, including Karachi, Lahore, Islamabad, and Rawalpindi.

The trend and sophistication of suicide bombings grew in Pakistan this year. The December 27 assassination of former Prime Minister Benazir Bhutto, in what the Pakistan government conveniently characterized as a suicide bombing after a political rally in Rawalpindi, was the most prominent suicide attack. Between 2002 and 2006, the Department recorded approximately 22 suicide attacks in the country, whereas in 2007 there were over 45 such attacks. These suicide attacks often resulted in large numbers of casualties. Several of them occurred in Islamabad and Rawalpindi. A number of these attacks aimed at well-protected government targets and made use of coordinated and complex operations, such as the November 24 and September 4 suicide attacks in Rawalpindi. On October 18, the most deadly suicide attack in Pakistan’s history took place against Bhutto’s homecoming procession in Karachi, killing over 130, and injuring hundreds more. In separate suicide attacks in Peshawar and Charsadda, extremists targeted

Federal Minister for Political Affairs Amir Muqam in November, and former Interior Minister Aftab Sherpao in December and April. Both survived, although there were civilian casualties.

Over 1,000 Pakistani military personnel have been killed since 2001 while carrying out counterterrorist operations.

### **Responses to Terrorism:**

Rising level of violence has presented a difficult challenge for Pakistan's law enforcement agencies which have themselves been the target of the terrorist attacks. Nonetheless, hundreds of suspected AQ operatives have been killed or captured by Pakistani authorities since September 2001; the Government of Pakistan has apprehended about 600 al-Qaeda operatives and foreign militants.

The terrorists captured by Pakistani authorities have included significant arrests, such as that of Abu Zubayda (March 2002 in Faisalabad), Khalid Sheikh Mohammad (March 2003 in Rawalpindi) and Abu Faraj al-Libbi (May 2005 in Mardan). Pakistan has also helped to freeze bank accounts of al-Qaeda and its affiliated welfare organizations, such as the Al-Rasheed Trust and the Rabeta Trust. The government has also launched an operation against al-Qaeda in Pakistan's Federally Administered Tribal Areas (FATA).

Nevertheless, it is a fact that terrorism has grown in the country—perhaps because of the government's lack of indigenous policy to combat terrorism. As and when the government chooses, it can produce ad hoc results in controlling the incidents of violence. For example, the efforts made by the Pakistani Government to control al-Qaeda's terrorist threat have produced some isolated results. This has especially been the case where there has been close cooperation between Pakistani, British, and American law enforcement agencies which exposed the August 2006 London-Heathrow bomb plot, leading to the arrest in Pakistan of Rashid Rauf and other alleged conspirators.

The Pakistani Government has tried to do its part to control the religious radicalism originating from Pakistan but the international network is big and well coordinated. There is need for international effort to control terrorism and to make Pakistan's law enforcement (a weak area) more strong and efficient. The government's crusade against banned organizations, hate material, or incitement by religious leaders continues sporadically. Madrassa registration, foreign student enrolment in madrassas, and financial disclosure requirements remains a source of friction between government and religious leaders. But recent reforms have been implemented in the "madrassas" to update their curriculum and to scrutinise their registration

and funding etc. It is perhaps too early to say whether this effort has borne fruit?

#### **Compliance with International Obligations:**

The U.N. Security Council, at the request of the United States, passed Resolution 1267 (1999) declaring collaborators of Taliban and Al-Qaida as terrorists. Since Talibans were engaged in the governance before Mr. Hamid Karzai's regime, lot of charities headquartered in Pakistan were engaged in dealing with Afghanistan for providing humanitarian aid and assistance like establishment of bakeries, hospitals and other institutions. Some of these charities were also active in Pakistan particularly in its backward areas. As a consequence of the United Nation Resolution 1267, scores of charities engaged in humanitarian work were outlawed, their funds were frozen and operations wound up by the Government of Pakistan pursuant to its International legal obligations under the United Nations (Security Council) Act, 1948 which mandated implementation of Security Council Resolutions.

Pursuant to the Security Council Resolution, the State Bank of Pakistan has frozen bank Accounts of all such organizations and individuals declared terrorists by U.N. or even communicated by U.S. Some affected parties have challenged some of the actions which are subjudice before the Supreme Court.

#### **Administrative Responses:**

Unfortunately, on 11<sup>th</sup> of September 2001 there was a military Government ruling Pakistan, The military ruler General Musharraf had no forum legitimate forum for the formulation of indigenous policy to combat terrorism or to offer well thought out collaboration to the US for helping and assisting it to fight terrorism. Therefore, Pakistan unhesitatingly implemented the US policy without question!

After October 2002 when an elected parliament came into existence there was an opportunity to debate the anti terrorist measures and accord ex-post facto approval thereby endorsing what has been happening including providing of air bases to US forces on our territories but the parliament, which completed its five years tenure in October 2007, did not even once embark upon any debate or question the measures taken to implement US framed anti-terrorist measures. This also included the ruthless bombing on northern area and blowing civilian population on suspicious of presence of foreign terrorists rounding up hundreds of peoples from the territories of Pakistan.

After February 18<sup>th</sup>, general elections in Pakistan the new Government started dealing with the threat of terrorism by negotiating with the "elders of

tribes” in the North West Frontier Province of Pakistan and Federally Administered Tribal Areas. The initiation of this process resulted in a complete halt in suicide and other bombing episodes on Pakistan territory but this action of the new Government was seriously objected to by US administration. During the months of March, April and May, Deputy Secretary and Assistant Secretary of the State paid 7 to 8 visits to Pakistan in rapid succession and there has been a public demand by the US for Pakistan to stop such negotiations with those “involved in terrorist activities”.

The newly elected parliament has yet to formulate any indigenous policy to combat terrorism.

### Legislation:

There are several anti-terrorist legislations in Pakistan:

#### 1. Anti Terrorism Act (ATA) 1997

Provides legal measures against terrorist individual and organizations for;

- Acts of terrorism
- Punishment for acts of terrorism
- Forfeiture of assets
- Proscription of terrorist organizations
- Freezing of funds, assets and bank accounts
- Criminalizes the fund raising, funding, money laundering and terrorist financing in any manner for benefit of terrorist individuals and organisations

The Anti-Terrorism Act enacted by the government of Mian Muhammad Nawaz Sharif in 1997 in response to increasing sectarian violence in Pakistan was widely condemned at the time as violating constitutional provisions and international humanitarian law because of the disproportionate power it gave the authorities. This Anti-Terrorism Act provided for certain excessive powers including shoot to kill on sight. Such powers were declared as *ultra vires* of the rights of citizens in a celebrated judgment of Supreme Court titled *Mehram Ali v. Federation of Pakistan* (PLD 1998 SC 1445). The same government also promulgated law establishing Military Courts for trial of terrorists. These laws were thoroughly examined by the Full Bench Supreme Court and they were declared *ultra vires* of the Fundamental Rights guaranteed to citizens of Pakistan under our Constitution in the well known case of *Sheikh Liaquat Hussain v. Federation of Pakistan* (PLD 1999 SC 504).

The wave of terrorist violence after September 2001 has allowed the government to further strengthen the Anti-Terrorism Act. An amendment to this Act in 2002, through an Ordinance, extended the length of time a person may be held by the authorities without charge on suspicion of terrorism from three months to one year. In 2004, this Ordinance and a number of additional provisions became parliamentary statutes through two amendments to the Anti-Terrorism Law.

## **2. Control of Narcotics Substance Act 1997**

Provides measures to deal with;

- Acquisition and possession of assets derived from narcotic offences
- Freezing of assets
- Tracing of assets
- Forfeiture of assets (including assets abroad)
- Taking over possession
- Reporting of suspicious transactions and assets acquired through dealing in narcotics

## **3. National Accountability Ordinance 1999**

Provides measures to initiate legal proceedings related to scheduled offences of corruption, freezing of property, reporting of suspicious financial transactions

## **4. State Bank of Pakistan's (SBP) Regulatory Regimes**

In the capacity of supreme regulator for banking and financial sector SBP empowered under various statutes has introduced stringent anti money laundering and anti terrorist financing regulations. The State Bank of Pakistan requires all informal money changers (or hawaladars) to register as authorized foreign exchange dealers and meet minimum capital requirements. Unlicensed "hawalas" are still operated illegally in parts of the country (particularly Peshawar and Karachi). The informal and secretive nature of the unlicensed "hawalas" made it difficult for regulators to effectively combat their operations. Most illicit funds are transacted through these unlicensed operators.

5. Anti-money Laundering Ordinance 2007 has been promulgated recently which would help in curbing terrorist financing.

## **Judicial Response and Consequences thereof:**

Hundreds of citizens and foreigners in Pakistan have been handed over by Pakistani authorities mainly to the US law enforcement agencies without following any legal or judicial processes even though the Constitution of Pakistan provides protection under its article 4 to be dealt with in accordance with law. This was reportedly done by paying millions of dollars as head money to “bounty hunters”—a mercenary act which is illegal under both national and international norms.

One of the reasons for sacked Chief Justice on 9<sup>th</sup> of March by President General Musharraf was his alleged judicial activism for issuing process of *habeas corpus* for those who had “disappeared” from their homes without a trace.

The U.S. unconditional support for sacking of 60 judges approximately on 3<sup>rd</sup> of November was on the same allegations that the judiciary in Pakistan was helping to protect terrorists in that they were asking for their production before the Court.

### **STRATEGIES**

*“An effective response to terrorism must always be in accordance with the rule of law and proportionate to the threat. A lawless approach risks alienating the population, or a section of it, without producing substantial benefit for the counter terrorism effort. This plays into the hands of the terrorist. And the law no longer comprises domestic legislation alone. Governments must have regard to our treaty obligations and to the requirements of international law.”*

*(Source: INQUIRY INTO LEGISLATION AGAINST TERRORISM by the rt Hon Lord Lloyd of Berwick October 1996)*

Nowhere in the world, has a nation ever been able to fight terrorism with legal instruments alone. Terrorism is not there because the laws are inadequate or that they are not draconian enough. Terrorism is a technique adopted by vested interest groups to achieve certain targets, to blackmail authorities into submission on a particular point or agenda or to divert them from their strategies or commitments which are widely known. This technique is always employed in the world context to achieve certain defined objectives.

Our experience in Pakistan also alludes to the same conclusion. While we have been able to handle successfully the ethnic, sectarian and religious types of terrorism the political terrorism at sub-national and national level is still insurmountable.

The country’s law enforcement agencies need to be strengthened. Improved investigative techniques and international cooperation have increased the

capability of the country's law enforcement institutions, but much remains to be done in this regard, especially in the police force. Apart from being regarded as corrupt, the police in Pakistan are ill-equipped and lack the resources to deal with the problem of terrorism. In-service training, especially for the lower ranks, is non-existent; the ratio of police personnel to the population that they serve is ill-adjusted to the task; and most police staff are kept busy with the task of providing security for VIPs etc.

### **Conclusion:**

The war on terror is important to Pakistan as it is to the west. From the number of terror attacks and the number of victims of such attacks which far exceed the total aggregating attacks of victims in the west, Pakistan is the centre point of the war on terror.

The foregoing discussion leads one to conclude that enactments and criminal laws are no remedy for curbing the malady or menace of terrorism. We need to adopt an out of the box approach. Whereas, legal regime is an essential part of responding to the threat of terrorism, yet this alone cannot achieve the objective. We require setting in motion a system incorporating a multi-pronged strategy which includes dialogue with all the stake-holders, granting concessions, declaring amnesty where necessary and retreating from rigid positions that have been taken on certain issues. Concept of victory in war against terrorism should be replaced by addressing the root causes of terrorism, namely, poverty, illiteracy, social inequity and injustice, political oppression. We should, therefore, continue to ameliorate the lot of people who are attracted towards terrorism because of these factors.

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