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The Role of the Judicial System and Law
Enforcement Agencies in Combating Terrorism in
Pakistan

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Declaration

I hereby declare that my thesis/dissertation entitled “The Role of the Judicial System and Law Enforcement Agencies in Combating Terrorism in Pakistan,” is the result of my own work and includes nothing that is the outcome of work done in collaboration except as declared in the Preface and specified in the text, and is not substantially the same as any work that I have submitted, or is concurrently submitted, for a degree, a diploma or other qualification at the University of Buckingham or any other University or similar institution except as declared in the Preface and specified in the text. I further state that no substantial part of my thesis has already been submitted, or is concurrently submitted for any such degree, diploma or other qualification at the University of Buckingham or any other University or similar institution except as declared in the Preface and specified in the text.

Signature: MUHAMMAD TAHIR MAHMOOD

Date: 30.11.2020

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List of Abbreviations

ATA Anti-Terrorism Act

ATC Anti-Terrorism Court

BLA Baluchistan Liberation Army

CPEC China-Pakistan Economic Corridor

CTD Counter-Terrorism Department

DCO District Co-ordination Officer

DPO District Police Officer

DSP Deputy Superintendent of Police

DHA Department of Homeland Security

FATF Financial Action Task Force

FIF Falah-e-Insaniyat Foundation (Human Welfare Foundation)

FIA Federal Investigation Agency

FIR First Information Report

IMU Islamic Movement of Uzbekistan

ISPR Inter-Services Public Relations

ISI Inter-Services Intelligence

IB Intelligence Bureau

JeM Jaish-e-Muhammad

JuD Jamat-ud-Dawah

KPK Khyber Pakhtunkhwa Province

LeT Lashkar-e-Taiba

LeJ Lashker-e-Jhangvi

MQM Muttahida Qaumi Movement

NACTA National Action Counter-Terrorism Authority

NAP National Action Plan

PIPS Pakistan Institute of Peace Studies

PC Punjab Constabulary

RPO Regional Police Officer

SSP Sipah-e-Sahaba Pakistan

SHO Station House Police Officer

TTP Tehrik-e-Taliban Pakistan

TMO Town Municipal Officer

USIP United States Institute of Peace

Chapter 1 – The Role of the Judicial System and Law Enforcement Agencies in Combating Terrorism in Pakistan

1.1 Introduction

Two thousand years ago, 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.

Terrorism is a global and seemingly intractable phenomenon that has become a global security concern in recent years with an ability to have an impact on virtually every country on the planet. Policymakers across the world have been working relentlessly to determine the most effective counter-terrorism response to this rising threat and it is fair to say that no single state has yet achieved a perfect solution.

Since the end of the Cold War and the acceleration of globalisation, terrorist movements with broad transnational reach have increasingly spread their ideologies to numerous different parts of the world and have achieved tremendous agility and impact. The 9/11 attacks in the U.S. in 2001 brought the Al Qaeda movement very firmly to the world’s attention and launched a new era of struggle against such decentralised and transnational ideological movements. More recently, the rise of Daesh in the Levant region has provided a further

recruiting-ground for the most radical and violent members of society, not just in the Middle East but across many parts of the world. The United Nations has called on nations throughout the world to enact new anti-terrorism laws and to take steps to co-operate with other countries in various counter-terrorism measures.

After the 11th September 2001, the United Nations Security Council unanimously adopted Resolution 1373 (2001)¹, declaring that “*all states shall observe and implement the measures to combat terrorism.*” (Full text of a Resolution 1373, (2001) available on Annex A).

Countries all over the world are implementing new laws and methods to combat terrorism through reforms in the criminal justice system, adopting the latest criminal investigation techniques and developments. However, as examined by this thesis, law enforcement’s failure to successfully prosecute offenders has become a significant concern in Pakistan. The police are usually responsible for this failure, but other pillars of Pakistan’s criminal justice system, the judiciary and prosecution are also accountable. Research conducted by RAND into “*How Terrorist Groups End*” concluded that efficient and capable police and intelligence networks, rather than the use of military force, give better counter-terrorism results.² This report suggested that there is not an absolute military solution in the fight against terrorism, but rather effective police systems and strong and independent criminal justice infrastructures. Only law enforcement agencies and the judiciary can establish the writ of the state.

¹ United Nations Security Council Resolution. 1373. (September 28, 2001). 4385th meeting.

² Abbas, Hassan. (April 2009). *Police and Law Enforcement Reforms in Pakistan: Crucial for Counterinsurgency and Counter-terrorism Success*. Institute for Social Policy and Understanding.

This research presents an analysis of the capacity limitations and flaws of the judicial system in prosecuting terrorism with a particular focus on how terrorist cases are filed and prosecuted in Pakistan's criminal legal system.

In 2007, the President and Chief of Army Staff at the time, General Pervez Musharraf, removed the Chief Justice of Pakistan, Iftikhar Ahmad Chaudhary. This decision sparked the lawyer's movement; Pakistani lawyers took to the streets in protest with the support of political parties and civil society to demand the independence of the judiciary and the restoration of democracy by the military regime. This movement spread all over Pakistan, ending during the general election in 2008 with the restoration of the Chief Justice. The author was part of this movement as a lawyer. As a result of this movement's success, the judiciary gained more powers and interfered in the executive domain, causing divisions among the judiciary, parliament and military establishment. As a result of this conflict among the state's institutions, the judiciary has failed to make any judicial reforms and developments in the criminal and the civil justice system.

Historically, when the military establishment has seized power during military coups in Pakistan, the judiciary has facilitated, validated, and provided legal protection for those interventions. This practice continued in Pakistan when the military used the Supreme Court, the intelligence and law enforcement agencies, governmental institutions and some banned religious organisations against the Nawaz Sharif government (2013-2018) to remove him from power and the

Supreme Court of Pakistan disqualified him, ruling in 2017 that he could never again hold public office.³

The military and its coalition allies have aggressively manipulated the political process. The military establishment has systematically undermined and delegitimised Pakistan's political parties whilst simultaneously co-opting politicians into giving their support.⁴ These objectives have been achieved by banning some political parties and forcing politicians to join parties and coalitions approved by the military establishment. At the time of writing, the civilian government (Pakistan Tahreek-e-Insaaf, PTI) in Pakistan is a significant example of a military-controlled and installed government.⁵ The military establishment has undermined the autonomy of the civil government and parliament for the last 70 years. As a result, there is political instability, the parliament and the judiciary have not focused on judicial development, legal reforms, and strengthening law enforcement institutions.

Pakistan has suffered terrorism, which is used as a tool by a variety of groups with an array of motivations, such as ethnicity, religion and sectarianism. However, after 9/11, terrorism increased and spread very rapidly in the country. According to Pakistan's Prime Minister, Pakistan has lost thousands of lives, the internal security system has been disturbed and the economy has suffered a loss

³ Constitution Petitions No. 29, 30 of 2016 and Constitution Petitions No. 03 of 2017, Judgment. (April 20, 2017). Supreme Court of Pakistan.

⁴ Rizvi, Hasan Askari. (2011). *Democracy in Pakistan, in A Future for Democracy*. 117, 216-18. Wilhelm Hofmeister ed. 2011.

⁵ Shackle, Samira. July 27, 2018). *Imran Khan has won over Pakistan. But real power still lies with the army. The Guardian*. <https://www.theguardian.com/commentisfree/2018/jul/27/imran-khan-won-pakistan-power-army-military-election> (Accessed on 12 August, 2019).

of \$123 billion since 9/11.⁶ The state of Pakistan has taken few steps and hard measures to control terrorism including the National Action Plan (NAP) 2015, military operations (Sawat Operation, Operation Zarb-e-Azab, and Operation Rad-ul-Fasad), multiple counter-terrorism legislations and de-radicalisation reform programs. After these efforts, terrorist attacks have considerably reduced in the period between 2014 to 2018.⁷

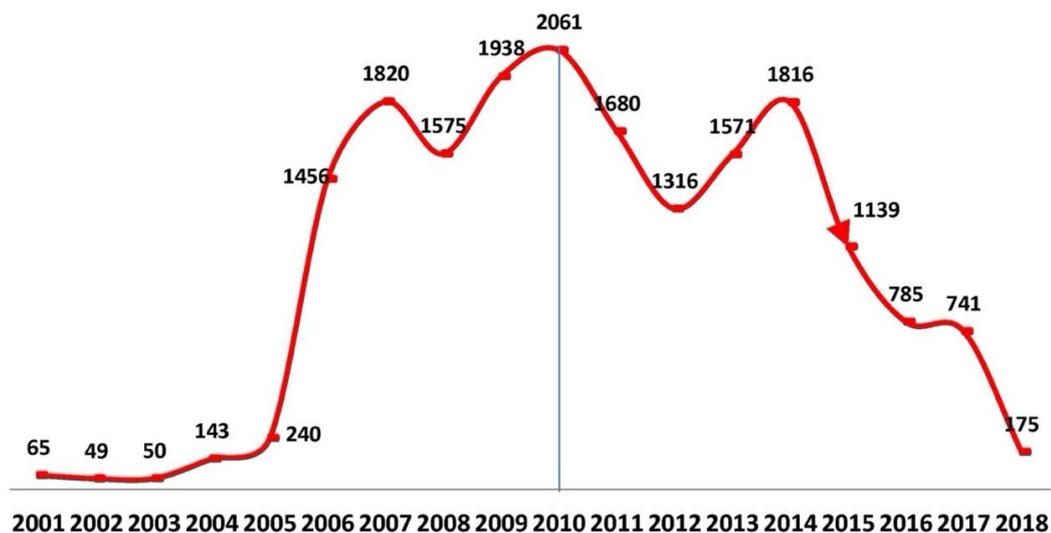


Figure 1: Decline in Terrorism Incidents in Pakistan. Source: National Action Counter-Terrorism Authority (NACTA) Pakistan.⁸

Figure 1 shows that incidents of terrorism in Pakistan increased after 9/11 in 2001. In the period between 2005 to 2014, Pakistan suffered its highest rate of terrorist attacks, reaching its peak in 2010 with 2061 incidents of terrorism. However, after the terrorist attack on the Army Public School in Peshawar in

⁶ Khan, Imran. (November 19, 2018). Pakistani Prime Minister Blasts Donald Trump's Criticism, Says U.S. Led War on Terror Caused 75,000 Casualties and \$123 billion in Losses. *Newsweek*. <https://www.newsweek.com/pakistan-pm-blasts-trump-criticism-1222469> (Accessed on Sep 30, 2020).

⁷ National Internal Security Policy. (2018-2023). Ministry of Interior Government of Pakistan. <http://moidemo.nadra.gov.pk/download/national-internal-security-policy-2018-2023/> (Accessed on June 13, 2019).

⁸ *National Counter Extremism Policy Guidelines*. (January 2018). National Counter-Terrorism Authority (NACTA), Pakistan.

December 2014, Pakistan launched a major military operation against the Tehrik-e-Taliban Pakistan (TTP) and other militant groups in the area of North Waziristan, Pakistan in January 2015. As a result, incidents of terrorism decreased, at its lowest in 2018 at 175.

Terrorism has had a severe impact on Pakistan since 9/11, 2001. At the time of writing, the military establishment claim that they have gained control of the security situation in the country, but independent sources argue that terrorist groups are still operating in Pakistan.⁹

As of January 2016, Pakistan has fifty-four Anti-Terrorism Courts (ATC) that deal with terrorism-related cases. Furthermore, several special anti-terrorism laws have been enacted, including the Protection of Pakistan Act 2014 and a Constitutional Amendment in January 2015 that established temporary two-year military courts for prosecuting terrorists which were subsequently extended for a further two years. These special courts are dedicated to pursuing terrorists and criminals who challenge the writ of the state of Pakistan. Many special laws have been passed, but the primary legislation designed to deal with terrorism-related cases is the Anti-Terrorism Act 1997.

⁹ Limodio, Nicola. (October 2018). *Terrorism Financing, Recruitment and Attacks: Evidence from a Natural Experiment in Pakistan*. Bocconi University.
Financial Action Task Force (FATF). (October 2019). *Anti-money laundering and counter-terrorist financing (AML/CFT) measures in Pakistan*. Fourth Round Mutual Evaluation. <http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-pakistan-2019.html>
Alyssa Ayres. (July 18, 2019). *"Pakistan, Terrorism, and Meeting Trump."* Council on Foreign Relations. <https://www.cfr.org/blog/pakistan-terrorism-and-meeting-trump> (Accessed on November 14, 2019).

Pakistan adopted the Anti-Terrorism Act 1997 to address terrorism and sectarian, political, and ethnic violence. In 1997, then Prime Minister Nawaz Sharif's government promulgated the Anti-Terrorism Act (ATA 1997). The Parliament of Pakistan passed this Act in 1997 and, as of 2015, this law has been amended several times to deal with extremist activities in the country. The Anti-Terrorism Courts (ATC) were established because the parallel ordinary criminal judicial system (known as "District Courts") is not considered capable of prosecuting terrorism-related cases. The ordinary courts were suffering from significant backlogs which led to trial delays, and they did not offer stringent enough punishments for crimes defined as terrorism under the ATA 1997. It was initially envisaged that an ATC trial would take less than seven working days, but with numerous offences being tried in the ATCs, cases can now take months or even years to run their full course. Many amendments have been made to the law regarding what constitutes a crime of terrorism, but very little attention has been paid to the court administration and case management.

Pakistan has one of the highest rates of terrorism-related deaths of civilians and security forces in the world after Iraq and Afghanistan. More than 60,000 lives were lost in the period from 9/11 until 2018.¹⁰ The country's military bases, police stations, pipelines, railways, hotels and schools have been targeted; even mosques, churches and religious shrines have not been spared. Internationally, Pakistan's image has been negatively affected. The terrorists pose an existential threat to the state and its value system. According to the Pakistan Institute of

¹⁰ Ghafoor, Asif. April 14, 2019). Director General Asif Ghafoor Inter-Services Public Relations. Press Conference. <https://www.dailymotion.com/video/x76xav8> (Accessed on June 10, 2019).

Peace Studies (PIPS), “*religious extremism is the common prevalent factor in all the visible trends and patterns of radicalisation in Pakistan.*”¹¹

It is evident that Pakistan’s judicial system and law enforcement agencies are inadequate for coping with terrorism-related matters. Due to the lack of training and expertise in terrorism-related issues, the judges of the special courts under the Anti-Terrorism Act are unable to dispense justice. The overstretched definition of ‘act of terrorism’ added several unrelated offences to the ambit of Section 6 of the Anti-Terrorism Act 1997, resulting in overburdened courts. For example, between 2008 to 2013, 79,863 cases of abduction and 2,092 cases of kidnapping for ransom were reported in Pakistan.¹² While these offences come under the jurisdiction of the Anti-Terrorism Court. The law enforcement structure, especially the police, are poorly trained and are only capable of dealing with non-terror related crimes.

Pakistan’s criminal justice system has been suffering from the chronic malaise of inordinate delays and poor conviction rates. Because of inadequate physical and human infrastructure, over two million cases are pending in the Supreme Court of Pakistan, Federal Shariat Court, High Courts and District Judiciary (including all civil and criminal cases).¹³

¹¹ Basit, Abdul & Rathore, Mujtaba Muhammad. April, 2010). *Trends and Patterns of Radicalization in Pakistan*. 3 PIPS Res. J. Conflict and Peace Studies 16.

¹² Gishkori, Zahid. (October 10, 2013). NCMC Report. *Pakistan Witnesses Rise in Rape Cases*. *Tribune News*. <https://tribune.com.pk/story/616029/ncmc-report-pakistan-witnesses-rise-in-rape-cases/>. (Accessed on Sep 15, 2018).

¹³ Law and Justice Commission of Pakistan, Consolidate statement. (June 15, 2020). http://ljcp.gov.pk/nljcp/assets/dist/news_pdf/courts.pdf (Accessed on Sep 30, 2020).

There are several legislative defects and lacunae in the anti-terrorism legislation, such as the broader definition of terrorism which includes several non-terror related offences. Therefore, many cases are transferred to the ordinary courts due to the lack of jurisdiction of the Anti-Terrorism Courts. The non-cooperation of counsels, lack of witness protection, and insufficient evidence are the major causes of delays in the disposal of cases. Because of lack of training and funding, investigative agencies are not able to use the latest investigation techniques, such as forensic evidence and modern devices; many hardcore terrorists are thus acquitted from courts.

It is clear that after decades of abuse and neglect, Pakistan's law enforcement forces and the criminal legal system are failing to combat terrorism effectively, to uphold the law, to provide basic security to citizens and to fight against extremism. Since 1947, regardless of ethnic conflicts, sectarian disputes and sharp rises in militant activities, lawmakers have not adequately placed the law enforcement and the criminal legal system at the top of their priority list for investment and reforms. As a result, the overall infrastructure is poorly organised. In the domain of counter-terrorism, despite the sharp rise in terrorist attacks across the country, no significant investment has been made in developing specialised expertise.¹⁴

¹⁴ Abbas, Hassan. (February, 2011). *Reforming Pakistan's Police and Law Enforcement Infrastructure*, Special Report 266. United States Institute of Peace (USIP).

Improvement in the criminal justice system is the most vital part of providing justice, establishing the rule of law and maintaining law and order. The establishment of the military tribunals proved that ordinary District Courts and Special Anti-Terrorism Courts have failed to deal with terrorism-related cases, and the existing criminal justice system is incapable of processing cases against hardcore extremists involved in terrorism. While the military courts were being set up, the government promised to reform the criminal justice system and strengthen its counter-terrorism institutions during the first two years of the tribunals, but no action was taken to implement these plans. These military courts were extended for further two years under the 23rd Constitutional Amendment¹⁵ in April 2017. This extension period elapsed in March 2019 and they are now seeking yet another extension. The major political parties in Pakistan criticise the military courts and their trial processes and are therefore reluctant to grant them a further two-year extension.

The establishment of the military courts is not a permanent solution. Experts and critics argue that the civil justice system should be improved rather than bolstered with military courts. After months of consultation with all relevant stakeholders, the National Action Counter-Terrorism Authority (NACTA) and the Law and Justice Commission drafted their recommendations for the improvement of the criminal justice system through reforms in the legislative framework, law enforcement, investigation, prosecution and the judicial system.¹⁶

¹⁵ 23rd Constitutional Amendment (April 3, 2017), The Gazette of Pakistan.

http://na.gov.pk/uploads/documents/1491460727_515.pdf (Accessed on 15 Sep 2019).

¹⁶ National Action Counter-Terrorism Authority (NACT) Pakistan. (August 2017). *Criminal Justice System Reforms*. <https://nacta.gov.pk/criminal-justice-reforms/> (Accessed on February 10, 2018).

Legal experts have raised many questions regarding the effectiveness of Pakistan's criminal justice system and law enforcement agencies in the fight against terrorism. Some identify their institutional capacity and a lack of political will. In contrast, others highlight the flaws in the anti-terrorism legislation, the broad terrorism definition, insufficient funds, long delays, procedural errors, lack of security for witnesses, prosecutors, judges and the non-cooperation of lawyers.

This thesis will explore and examine in-depth Pakistan's strategy to fight against terrorism and the measures adopted by the state to cope with this issue, such as the Anti-Terrorism Act 1997 and the National Action Plan 2015. To analyse the capability of Pakistan to tackle militancy, this research will focus on the strength and the ability of the criminal justice system and law enforcement agencies because both institutions play a pivotal role in combating terrorism in any state.

1.2 Methodologies

Since the research aim is to analyse, assess and evaluate Pakistan's counter-terrorism strategy with special reference to the judicial sector and its development, this study will adopt a combination of black-letter methodology and socio-legal methodology.

1.2.1 Black-letter methodology

The black-letter approach will be adopted in this research project because it is a starting point for legal analysis. Good legal research skills are a necessary step in attaining the ability to 'think like a lawyer' and achieving valid legal reasoning outcomes. Therefore, the black-letter method is an intuitive aspect of legal research.¹⁷ According to Mike McConville and Wing Hong Chui, "*legal research may be carried out for varied reasons. Some use it to identify the sources of law applicable to understanding a legal problem and then find a solution to the problem that has been identified. While others would use research as a tool to extend our knowledge of aspects of law and the operation of the legal system that is of great interest.*"¹⁸ Therefore, the principal significance of black-letter methodology is that it focuses on legal doctrines contained in the primary sources of law. In this research thesis, emphasis will be placed on providing a detailed description of the criminal justice system in Pakistan and the Anti-Terrorism Act 1997 regarding Pakistan's capability of combating terrorism.

¹⁷ Dawn, Watkins. and Burton, Monday. (2013). *Research Methods in Law, Doctrinal research: researching the jury*, 1st Edition, pub. Routledge London.

¹⁸ McConville, Mike. and Wing Hong Chui, (2007). *Research Methods for Law*, Edinburgh University Press Ltd.

The use of doctrinal methodology alone is restrictive as it does not examine the topic from a wider perspective.¹⁹ The black-letter approach only focuses on legal analyses, such as what the law was previously, what the law is now and whether there are indications as to how the law might be evolving or developing, rather than analysing the morality and effectiveness of the law. The black-letter methodology is also selective in interpreting rules and provides commentary on points of law within the context legal doctrine only. It relies on the provisions of the law, court judgements and statute to explain the law.²⁰ Furthermore, the black-letter approach does not answer some of the particular research questions that this research study has put forward, such as ‘how are the provisions of the Anti-Terrorism Act 1997 in Pakistan applied in practice?’, ‘are law enforcement agencies in Pakistan implementing the provisions of the Act?’ and ‘is Pakistan’s criminal justice system capable of adequately prosecuting suspects of terrorism?’. To answer these questions, a broader legal analysis will be required. One that is enabled by a combination of methodologies beyond a simple black-letter approach, for example one that includes socio-legal methodology.

¹⁹ Banakar, Raza. (2011). *The paradox of Contextualization in Socio-legal Research*. (I.J.L.C 487, 2011) p. 487

²⁰ Wing Hong, Chui. and McConville, Mike. (2007). *Research Methods for Law*. Edinburgh University Press, p. 3

1.2.2 Socio-legal Methodology

As discussed above, black-letter methodology focuses on the primary sources, namely case laws and statutes. As such, it focuses on laws from a ‘textbook perspective’ rather than on their application in practice.²¹ Therefore, a doctrinal approach alone is not enough to address the research questions raised in this thesis. An alternative methodology, such as socio-legal approach, will also be adopted. This is likely to include both qualitative and quantitative research methods that examine both the impact of the law in action and the role played by the judiciary and law enforcement institutions in order to comprehensively address the research questions. The socio-legal approach assumes that no examination of a law is complete unless it includes an empirical understanding of how it is used in practice. The main advantage of the socio-legal approach is that it focuses on the policy behind the laws as much as the laws themselves. Accordingly, socio-legal methodology will be used in this thesis to investigate how the Anti-Terrorism Act 1997 is applied in practice in Pakistan, developments in the criminal justice system and the role of Pakistan’s law enforcement agencies in combating terrorism.

The main strength of the socio-legal methodology is that it exposes discrepancies between the law in theory and the law in practice.²² Therefore, the socio-legal methodology will be used in this thesis to examine the impact of the law in action as well as the critical role played by the social actors. This methodology thus

²¹ Law Teacher, *Writing a law dissertation methodology*. Law Study Resources. <https://www.lawteacher.net/law-help/dissertation/writing-law-dissertation-methodology.php> (Accessed: 18 December 2019)

²² Harris, Philip. (1986). *Curriculum Development in Legal Studies*. Law Teacher 112.

bridges between the law and social policy. The black-letter methodology defines the rules as they're written in textbooks, while the socio-legal approach focuses on the functions and the implications of these rules. For instance, in Pakistan, it is alleged that there is a wide gap between laws in theory and their practical implementation by the responsible authorities. Therefore, by using both black-letter and socio-legal methodologies, this thesis will better understand Pakistan's anti-terrorism laws, its criminal justice system and the ability of its law enforcement agencies in tackling terrorism.

Laws exist within a culture; hence there is a need to look at the structure in which laws operate within society in order to understand what they are and how they function and, more importantly, to conduct a more realistic analysis of the legal system that is being investigated.²³ The black-letter and the socio-legal approaches therefore make this research logical and able to be understood in practical terms.

²³ Lirieka, Meintjes-Van Derwalt. (2006). *Comparative Method; Comparing Legal Systems or Legal Culture*. Speculum Juris. p.58

1.3 The Statement of Research Aims

The aims of the research project are to critically examine Pakistan's counter-terrorism strategy with a particular emphasis on the judicial sector under the title of "The Role of the Judicial System and Law Enforcement Agencies in Combating Terrorism in Pakistan." This thesis' specific aims are as follows:

- To analyse the effectiveness of law enforcement agencies and the criminal justice system under the Anti-Terrorism Act 1997 of Pakistan in the fight against terrorism.
- To evaluate whether a reformed and strengthened law enforcement structure and criminal justice system in Pakistan is helping the state to achieve its counter-terrorism objectives as defined by the National Action Plan (NAP) 2015.
- To identify and critically examine any flaws in the criminal legal system and counter-terrorism policy in Pakistan as well as their potential impact on the overall delivery of the National Action Plan. The central axis of this research project is to understand the role of law enforcement agencies and the criminal justice system in coping with the issue of terrorism in the country.
- To explore counter-terrorism strategies and judicial development in Pakistan, specifically the Anti-Terrorism Act 1997.
- To evaluate the capacity and the ability of law enforcement agencies to fight effectively against terrorism.
- To examine the coordination between Pakistan's intelligence agencies and its police force, their resources, their counter-terrorism training and how they maintain the writ of the state.

- To analyse the implementation of the significant points of Pakistan's National Action Plan. These include: the use of death penalty in terrorism-related cases; the establishment of the military courts; the ban on militant organizations and armed groups; the targeting of terrorist and other militant organisations' finances; the registration of seminaries and other madrasa reforms; the restriction on media that promotes and glorifies terrorists and terrorist organizations; Federal Administered Tribal Areas (FATA) reforms and reforms in the criminal justice system.

1.4 Data Collection and Interviews

Information and data have been gathered from multiple sources throughout the course of this research project. During various visits to Pakistan, a number of experts were contacted in the hope that they would agree to be interviewed. However, this is difficult in Pakistan because most officials are reluctant to openly discuss matters of security, intelligence and terrorism. This challenge could have been mitigated if it were possible to travel to tribal areas on the Pakistan-Afghanistan border, such as the North and South Waziristan Agencies, Khurram Agency, Malakand Agency and the other areas of FATA (Federally Administered Tribal Area), to obtain first-hand information from the victims of Taliban and other militant attacks as well as victims of government forces during Operation Zarb-e-Azb. However, after careful evaluation, it was concluded that the safety risks involved in conducting field research in these areas were too severe. Therefore, the author travelled to more secure areas of Pakistan to carry out field assessments and interviews.

For the completion of this thesis, the author relied on multiple primary and secondary sources, such as Anti-Terrorism Act 1997, legislations, superior/higher courts judgements, legal reports, textbooks, academic papers, journal articles, online sources, news reports and newspapers publications. Furthermore, up-to-date quantitative and qualitative data was gathered from different institutions and departments, including Inter-Services Public Relations (ISPR), National Action Counter-Terrorism Authority (NACTA), Counter-Terrorism Department (CTD), Anti-Terrorism Courts, the Judicial Tribunal Report on the Gojra Incident of 2009,

Pakistan's law enforcement agencies and Ittihad Tanzim-ul-Madaris Pakistan (the Joint Organization of Religious Seminaries Pakistan).

However, there were difficulties in obtaining the records of a number of suspects that were arrested or detained by the security forces, court proceedings and judgments of the military tribunals in terrorism-related cases in Pakistan. However, this has not affected the overall results, findings or recommendations of this thesis.

This research project results from desk-based research of specialised publicly available papers, electronic sources and qualitative interviews with the following experts. I selected the following set of experts for qualitative interviews because they are all prominent figures in Pakistan and are experts on terrorism-related issues and the criminal justice system in the country. These include journalists, legal experts, former intelligence and police officers and tribal lords. Therefore, these experts' opinions are invaluable in enhancing this research's understanding of militancy in the country, the criminal justice system and the state's strategy in the fight against terrorism. These respondents are as follows:

- Mr. Najam Sethi, senior journalist, founder of *The Friday Times* Newspaper and former care-taker Chief Minister of Punjab, Pakistan.
- Mr. Saleem Safi, senior journalist and an expert on Tehrik-e-Taliban Pakistan (TTP) and Afghan issues. He is an author of the book,

*Afghanistan: The Role of the US, Taliban and Pakistan's religious parties*²⁴, Islamabad, Pakistan.

- Mr. Rahim-ul-Yousif Zai, senior journalist and an expert on political and security analysis who has interviewed Osama Bin Laden and Afghan Taliban leader Mullah Omar, Peshawar, Pakistan.
- Mr. Sajjad Haider, senior journalist and national security expert, Lahore, Pakistan.
- Dr. Moeed Yousif, Director South Asia Affairs at United Institute of Peace (USIP), Washington DC, USA.
- Mr. Ahmad Bilal Sufi, International law expert and former Law Minister, Lahore, Pakistan.
- Mr. Justice (Rtd) Malik Abdul Qayyum, Lahore, Pakistan.
- Mr. Aitzaz Ahsan, former law Minister and prominent senior lawyer. Lahore, Pakistan.
- Lt General Amir Riaz, Corps Commander, Lahore Pakistan.
- Mr. Malik Ayoub Khan Afridi, Chief tribal lords of Dara Adam Khel, Peshawar, Pakistan (which suffered three suicide attacks by Taliban).
- Mr. Yousif Khan Afridi, Chairman Peace Committee, Khyber Agency. Province Khyber Pakhtunkhwa, Pakistan.
- Some high ranking present and former police officers in Pakistan.

²⁴ Safi, Saleem. (2004). *Afghanistan: US, Taliban, Aur Pakistan Ki Deeni Jumaton Ka Kirdar (Afghanistan: US, The Role of the US, Taliban and Pakistan's religious parties)*. Islamabad, Pakistan.

This thesis consists of three components: the National Action Plan (NAP) 2015, the Anti-Terrorism Act 1997 and the Gojra incident in 2009 as a case study. At the time of writing, according to the author's knowledge, this thesis is the first piece of doctoral level research on the National Action Plan (NAP) in Pakistan. The NAP is the manifestation of a national consensus which consists of 20 points that the government aims to implement in order to eliminate extremism and terrorism from the country. The implementation of the National Action Plan has been controversial in Pakistan. The government claims the practical application, but independent sources are dissatisfied with this claim. This research study will also explore the criminal justice system in Pakistan with particular reference to the application of the Anti-Terrorism Act 1997, which is the primary legislation that deals with terrorism-related cases. To evaluate the criminal justice system, this research has relied on different sources, such as the Anti-Terrorism Act 1997, judgements of the superior courts, data from anti-terrorism courts, military courts and interviews with legal experts.

Finally, the Gojra incident in 2009²⁵ is discussed as a case study. This case accurately demonstrates the capacity of Pakistan's criminal justice system to prosecute criminals and the ability of law enforcement agencies to tackle large-scale civil disorder. Furthermore, this case was registered under Section 7 of the Anti-Terrorism Act 1997. (The case study research methodology is available in Chapter 6).

²⁵ Gojra is a town of Faisalabad Division, Province Punjab, Pakistan.

1.5 Title of Thesis

“The Role of the Judicial System and Law Enforcement Agencies in Combating Terrorism in Pakistan”

1.6 Significance of the Study

This research will identify Pakistan’s counter-terrorism strategy and evaluate the ability of Pakistan to fight against terrorism. More specifically, it will focus on 20 points of Pakistan’s National Action Plan (NAP), in particular those that impact the criminal justice system, law enforcement agencies and the Anti-Terrorism Act 1997. This study is significant because it will:

- a) Identify and critically examine flaws in Pakistan’s legal system and counter-terrorism policy.
- b) Offer a detailed analysis of the complexity of terrorism and political violence throughout Pakistan.
- c) Explore Pakistan’s ability to tackle terrorism, which is critically important to not just the regional but also the global terrorism landscape.
- d) Deliver a detailed analysis of one of the most critical frontline states in the global struggle against terrorism.
- e) At the time of this research project, the author is not aware of any PhD thesis that has been published or conducted regarding the counter-terrorism strategy in Pakistan with particular reference to the National Action Plan 2015 and to the judicial sector. Therefore, this thesis will explore and analyse Pakistan’s counter-terrorism strategy and suggest recommendations for policymakers.

1.7 Structure of the Thesis

The dissertation is divided into seven chapters. Chapter 1 includes the following contents: introduction, methodology, statement of the research aims, data collection and interviews, significance and contribution of the study and structure of the thesis. Chapter 2 provides a history of terrorism in Pakistan. It will be helpful to understand the politico-economic and social developments in Pakistan and the starting point of terrorism in the country.

In Chapter 3, a complete literature review is carried out, consisting of publications from various experts, researchers, scholars and academics that study the causes of terrorism in Pakistan. This literature review will discuss the significant theoretical academic arguments and counterarguments on the topic. Furthermore, this chapter will also highlight some key questions that will be put forward by this research and establish their rationale. In doing so, this study's original contribution to the existing literature and wider academic context will be established.

Chapter 4 provides an overview of the implementation of the National Action Plan 2015. Specifically, those points that relate to reforms in existing anti-terrorism laws. At the end of this chapter, the obstacles to the implementation of the National Action Plan will be discussed.

Chapter 5 identifies judicial developments and flaws in the criminal justice system of Pakistan. The primary objective of this chapter to conduct a multifaceted analysis of the Anti-Terrorism Act 1997 by examining the significant deficiencies

in the definition of terrorism under the ATA 1997, the powers it grants to the Anti-Terrorism Court, the special police powers it provides and the state of witness protection under it.

Chapter 6 presents a case study of the Gojra Incident in 2009. The goal of this is to evaluate Pakistan's ability to fight against large-scale civil disorder with particular reference to the role of the judiciary and law enforcement agencies. More specifically, it will focus on the ability of the criminal justice system to prosecute the cases under the Anti-Terrorism Act 1997. This chapter includes the following content: case study methodology; the introduction of Gojra town; the background of the Gojra incident; facts of the incident; the performance of law enforcement agencies, the administration and the intelligence agencies; fixation of the responsibilities; court trial; and the establishment of the Model Criminal Trial Courts.

Finally, Chapter 7 provides a conclusion and will suggest several recommendations to policymakers in Pakistan regarding the improvement of the criminal justice system and enhancing the ability of law enforcement agencies.

Chapter 2 – History of Terrorism in Pakistan

2.1 Introduction

This chapter will discuss and explore the history of terrorism in Pakistan. It will focus on the last four decades of history, starting with the coup by General Zia-ul-Haq in 1977. It will be argued that this was the period in which Pakistan's problems with contemporary terrorism began and subsequently developed from. This chapter will also critically examine Pakistan's counter-terrorism policy from 2014 to 2018 which will provide an insight into the effectiveness of law enforcement action against terrorism in Pakistan.

There is much debate and discussion surrounding terrorism in Pakistan. This chapter will examine this phenomenon through its historical, religious, political, economic and social contexts, laying the groundwork for an examination into how well, or otherwise, law enforcement policy has fared.

Geographically, Pakistan is situated where the ancient Indus and Gandhara civilizations once stood. Since 1947, Pakistan has kept the attention of world powers pursuing their politico-economic interests. Pakistan was founded on the basis of the "Two Nation Theory" that would separate the Muslims and Hindus of undivided India. This new state started its journey of social, economic, and political development according to the narrative of its founder, Muhammad Ali Jinnah. At first, Pakistan was considered to be a peaceful country, but after the

Soviet invasion in Afghanistan in 1979, the country witnessed a sudden change in its social and political-economic system.

2.2 Terrorism

Pakistan has faced numerous challenges from radicalisation throughout its history, largely posed by ethnic, sectarian and religious groups in the country. According to the Pakistan Institute of Peace Studies (PIPS), extremism is defined in different ways, primarily in political, religious, and sociological terms. However, despite its multiple definitions, “*extremism is the common aspect of all the [above] trends and militancy in Pakistan*” (Abdul Basit, 2010)²⁶ which has subsequently led to terrorism in the country. Indeed, Pakistan has suffered the highest rates of terrorism-related deaths of civilians and security forces in the world after Iraq and Afghanistan, losing more than 60,000 innocent lives in the period from 9/11 until 2017.²⁷

Sectarian conflicts increased during the Soviet/Afghan war during the 1980s and continued to become more frequent and widespread afterwards throughout the 1990s.²⁸ This is because Jihadist movements in Afghanistan changed their *modus operandi* by adopting terrorism as a fundamental strategy, a form of extremism that was more violent than the sectarian conflicts in the region at the time.

²⁶ Basit, Abdul. (2010). *Trends and Patterns of Radicalization in Pakistan*. 3 PIPS Res. J. Conflict and Peace Study 16.

²⁷ South Asia Terrorism Portal (SATP), <http://www.satp.org/satporgtp/countries/pakistan/database/casualties.htm>. (Accessed on May 24, 2018).

²⁸ Luqman, Saeed., Shabib Haider, Syed., & Martin, Roger P. (2014). *Historical patterns of terrorism in Pakistan*. Defense and Security Analysis, ResearchGate.

Terrorism can be viewed as a consequence of extremism, which results in different manifestations of violence. The rise of extremism in Pakistan can be traced back to General Zia-ul-Haq's military regime (1977-88) and his Islamisation policies. According to a report published by the International Crisis Group in 2009:

Militant jihadi organisations benefited from state patronage, for the first time, during General Zia-ul-Haq military government from 1977 to 1988. They were backed by the national and international forces for the purpose of fighting in the U.S.-led anti-Russian Jihad in Afghanistan, and during this time, General Zia promoted Sunni ideology in the country. This trend of radicalisation continued during the democratic government in the 1990s. Pakistan's government, military and its intelligence agencies used jihadi groups in India-administered Kashmir and the support of the Afghan Taliban. During this time, Sunni radical groups have grown up [sic.], and sectarian violence became the primary source of terrorism in Pakistan.²⁹

The military coup by General Zia-ul-Haq in 1977 and the hanging of Zulfikar Ali Bhutto, the Prime Minister at the time, in 1979, isolated the country from the international community. After his execution, Zulfikar Ali Bhutto's son, Mir Murtaza Bhutto, who was in exile, formed the terrorist group 'Al-Zulfikar'.³⁰ This was a political group rather than a religious extremist Jihadi group. This group conducted a series of terrorist attacks in Pakistan, including the hijacking of Pakistan International Airlines flight PK-236 in 1981.³¹

²⁹ International Crisis Group Pakistan. (2009). *The Militant Jihadi Challenge*. Asia Report No. 164, March 13, 2009. <http://www.crisisgroup.org/-/Files/asia/south-pakistan/164> (Accessed on Sep 17, 2019).

³⁰ Richard S. Ehrlich. (March 12, 1981). *Al-Zulfikar: Pakistan's new terrorist group*. <https://www.upi.com/Archives/1981/03/12/Al-Zulfikar-Pakistans-new-terrorist-group/7097353221200/> Bashir, Tariq. (October 31, 2014). *The Story of Al-Zulfikar*. *The Friday Times*. <https://www.thefridaytimes.com/the-story-of-al-zulfikar/> Accessed on March 17, 2019).

³¹ Insider.pk. (2012). List of Airline Hijack Incidents Involving Pakistan. <http://insider.pk/travel/list-of-airline-hijack-incidents-involving-pakistan-with-photos-and-summaries>. (Accessed: April 10, 2019).

General Zia adopted a policy of Islamisation in the country in order to strengthen his military government. Zia promoted Islamists to positions within the civil service, military and judiciary, and placed more power in the hands of the Inter-Services Intelligence (ISI) directorate.³² This Islamisation significantly provoked religious tension in the country.³³ Democratic political forces were marginalised whilst religiously motivated parties and ethnic groups were promoted, such as Jamaat-e-Islami (JI), Jamiat Ulema Islam (JUI), Jamiat Ulama Pakistan (JUP) and MQM in Karachi and Hyderabad. Subsequently, these religious and ethnic groups fuelled terrorism in the country.

However, some Pakistani political figures and academic scholars such as Ijaz Khan and Ahmad Rasheed do not put all blame on General Zia-ul-Haq for the growth of militancy and extremism in Pakistan. They argue that the alliance between the Pakistani establishment and religious political parties and religious fundamentalists had begun much before Haq's era. It was a natural alliance because Pakistan was established in 1947 on religious grounds as an independent Muslim state. Therefore, Pakistani policymakers have found religious groups to be a natural choice for alliance and have used them as a foreign policy tool against India, which has not accepted Pakistan as an independent state.³⁴

³² Eamon, Murphy. (2014). *The Making of Terrorism in Pakistan: Historical and Social Roots of Extremism*. New York. Routledge. pp. 83-85.

³³ Rashid., & Ahmad, K. (2011). *Sectarian War: Pakistan's Sunni-Shiite Violence and its Links to Middle East*. Oxford. Oxford University Press.

³⁴ Shamil, Shams. (August 17, 201617). *Pakistan's Islamization – before and after dictator Zia-ul-Haq*. DW Asia. <https://www.dw.com/en/pakistans-islamization-before-and-after-dictator-zia-ul-haq/a-19480315> (Accessed on March 28, 2020).

During an interview with Mr. Najam Sethi, he stated that *“before General Zia era, our (Pakistani) identity was South Asian Pakistani, but after that our identity has become Middle Eastern. Before we used to say “God Bless you,” but now said “Allah Bless you,” because Middle Eastern Muslims, including Saudi Arabia, use the phrase “Allah Bless you.” If you ask four young people of our generation, who are you? First, they will say, Muslim, then Punjabi, Sindhi, Baluchi, or Pushtoon, and in the last [sic.] they will say, Pakistani. So, after 70 years of independence, still, we have an identity problem. Therefore, unemployed and frustrated youth usually join their regional groups to promote their identity and, internationally, join religious groups to promote their faith and become the part of different militant organisations”*.³⁵ (Najam, Sethi. personal communication, March 16, 2019).

After the Soviet invasion of Afghanistan in 1979, the social and political scenario changed in Pakistan and Islamic and militant groups found a common purpose in the Jihadi movement to defeat the Soviet Army. The international forces, especially the U.S., the UK and Saudi Arabia, encouraged the Jihadi culture in Pakistan and promoted the militant organisations throughout the country. The sole and unifying agenda of these organisations was to defeat the Soviet Army. The U.S., the UK, Saudi Arabia and other Gulf countries fully supported Pakistan and supplied armed militant groups with weapons, money, training and politico-moral support. Pakistan thus became a fertile land for militant and Jihadi organisations and their so-called “Islamic Holy war” (Michael, 2007).³⁶

³⁵ Sethi, Najam. (2019). a senior Pakistani Journalist, and former care-taker Chief Minister of Punjab, Interview in London on March 16, 2019.

³⁶ Michael, Sabir. (2007). *Terrorism a Socio-Economic and Political Phenomenon with Special Reference to Pakistan*. Journal of Management and Social Sciences. Vol. 3, No.1, pp. 35-36.

The Afghan-Soviet war ended in February 1989, following which the international community discontinued their cooperation with jihadist organizations and completely changed their political agenda. When the Soviets left Afghanistan, militant organisations dispersed, many of them moving into neighbouring Pakistan. These groups were highly trained, well-armed, well-financed and rich in political influence due to their connections with religious and other political parties. Some groups were fully supported and backed by the Pakistani government, as well as its intelligence and law enforcement agencies. For example, according to a well-informed Pakistani journalist, “*throughout the 1990s, one or two intelligence officers in each district of Pakistan were tasked with helping out members of the state-supported militant groups if police created any problem for them*” (Khaled Ahmed 2006).³⁷ During the Afghan war, a massive quantity of arms and ammunition was brought into Pakistan, stored away and later used by these groups in order to carry out sectarian, ethnic, tribal and political violence.³⁸ This was the turning point for terrorism and militancy in Pakistan.

Furthermore, the Iranian revolution in 1979 resulted in a competition for international influence between two rival Islamic states, Saudi Arabia and Iran, which exacerbated sectarian militancy in Pakistan. The Saudi Sunni monarchy supported General Zia’s Islamic ideology and religious Sunni political organisations and militias, while Iran helped out the Shiite community to gain influence in the region. Consequently, this sparked sectarian conflict and violent

³⁷ Ahmed, Khaled. (May 2007). in discussion with the author. Washington, DC.

³⁸ See, n. 36, p. 29.

clashes between Sunni and Shiite groups.³⁹ Sipah-e-Shaba Pakistan and Lashkar-e-Jhangvi are Sunni militant groups and Sipa-e-Muhammad, a Shia militant group, are prominent examples of sectarian organisations. Lashkar-e-Jhangvi conducted several terrorist attacks in Pakistan, specifically against the Shia Hazara community in Baluchistan. Shia Muslims constitute 20% of Pakistan's population,⁴⁰ while Sunni Muslims account for 75%.⁴¹

Another factor in the rise terrorism in Pakistan is that of transnational terrorism, in which radicalised groups and individuals follow the narratives, doctrines and ideologies of militant and Jihadi organisations from other countries. In this regard, the domestic security challenges that Afghanistan has faced for the last decades as well as the creation of Daesh (ISIS) in Iraq have enhanced the threat of terrorism in Pakistan as well as globally. For example, the concept of an Islamic State was created in a Mosque in Iraq by Abu Bakr al Baghdadi,⁴² but very quickly travelled from Northern and Western Iraq to Syria, other parts of the Middle East, Africa, and Asia.⁴³ The Islamic State's ideology of militancy, radicalisation, jihadism and concept of a so-called Caliphate spread throughout the globe. As a result, numerous transnational militant groups adhere to Daesh's ideology. This has been demonstrated by attacks in Pakistan, Paris, Brussels, Germany,

³⁹ Waterman, David. (2014). *Saudi Wahhabi Imperialism in Pakistan: History, Legacy, Contemporary Representations and Debates*. Faculty of Literature, Languages, Arts, Social Sciences and Humanities. University of La Rochelle, pp. 254-258.

⁴⁰ Rehman, Ur Zia. (June 9, 2019). *Shia Islam in colonial India and Pakistan. The News*. <https://www.thenews.com.pk/tns/detail/567927-shia-islam-colonial-india-pakistan> (Accessed on October 1, 2020).

⁴¹ *Islam In Pakistan*. <https://www.globalsecurity.org/military/world/pakistan/islam.htm> (Accessed on October 1, 2020).

⁴² *Timeline: The Rise, Spread, and Fall of the Islamic State*. Wilson Centre. <https://www.wilsoncenter.org/article/timeline-the-rise-spread-and-fall-the-islamic-state> (Accessed on Sep 30, 2020).

⁴³ Irshaid, Faisal. (December 2, 2015). *Isis, Isil, IS or Daesh? One group, many names*. BBC NEWS. <https://www.bbc.co.uk/news/world-middle-east-27994277> (Accessed on September 27, 2020).

Barcelona, London, Manchester and Turkey which were claimed as being IS-inspired but were actually planned in other parts of the world.

Over the last four decades, Pakistan has faced different types of extremism alongside ethnic and sectarian violence, including the insurgency in Baluchistan fronted by secular nationalists that was allegedly backed by foreign support,⁴⁴ as well as religious and politically motivated terrorism in Afghanistan and Kashmir.

According to an EASO⁴⁵ report (European Asylum Support Officer) 2017, the armed militant groups in Pakistan can be divided into four major categories:

- The anti-state militant groups such as the Tehrik-e-Taliban Pakistan (TTP);
- The India and Afghan-centric groups;
- The sectarian orientated militant groups;
- The secular nationalist groups such as Baloch militants.⁴⁶ These are not jihadist groups.

⁴⁴ Pakistan blamed India and Afghanistan's intelligence agencies involved in Baluchistan. The arrest of Kalboshan Yadav Indian Spy from Baluchistan in 2016, Pakistan present it as proof.

⁴⁵ European Asylum Support Officer (EASO). (August 2017). Country of Origin Information Report (COI), Pakistan Security Situation. pp. 21.

⁴⁶ Almeida. C. Journalist in Pakistan). (August 2017). interviewed conducted by EASO 11 April 2017 in Islamabad, Report on Pakistan Security Situation. pp.21.

2.3 Ethnic Conflict

Ethnic conflict started to appear in Pakistan in the 1980s, especially in Karachi and Hyderabad, and reached its peak by 1990.⁴⁷ This decade can be referred to as the period of sectarian and ethnic warfare in Pakistan and was characterised by deadly focused clashes between Sunni, Shiite and other communities.⁴⁸ An understanding of the ethnic conflict in these cities requires an understanding of the different ethnic communities that reside there, such as Mujahir (Urdu speaking), Pashtuns (Pashto speaking), Punjabi speaking and Sindhi, etc.

After the independence of Pakistan in 1947, approximately eight million people migrated from India to Pakistan with circa 20% settling in Sindh and the majority settling in Hyderabad and Karachi. These were predominantly Urdu speaking people, called 'Muhajirs,' who were comparatively more educated and skilled than other local and migrated communities. Because of their education and skills, many of them obtained high-status positions within the civil bureaucracy. However, other communities began to resent them for having these roles and for their influence at the provincial and central level. With the passage of time, the Muhajir community became marginalised in southern Pakistan by competing groups. It also became increasingly difficult for the Urdu speaking ethnic population to retain their social and political positions. In 1984, the Muhajir community formed a political party called the "Muttahida Qaumi Movement" (MQM) as a way of promoting their own separate identity. As this ethnic

⁴⁷ Verkaaik, Oskar. (Sep 20, 2016). *Violence and Ethnic Identity Politics in Karachi and Hyderabad*. Volume 39, 2016 – Issue 4, *South Asia: Journal of South Asian Studies*. pp. 841-854.

⁴⁸ Saeed, Luqman., & Martin, Roger P. (2014). *Historical Patterns of Terrorism in Pakistan*. Defense and Security Analysis.

organisation's power and influence grew, the military establishment began to view MQM as a security threat.⁴⁹

After the establishment of MQM, ethnic violence increased dramatically. Indeed, kidnappings, target killings and torture by ethnic militant groups became more and more widespread in Karachi and Hyderabad during this time. In 1992, the government launched a significant law enforcement operation with the help of the military against the MQM and other ethnic militant groups, however this operation was unsuccessful.

⁴⁹ F, Haq. (1995). *Rise of the MQM in Pakistan*. Politics of Ethnic Mobilization, Asian Survey 35, No.11, pp. 990-1004.

2.4 Sectarian Conflict

The history of the sectarian conflict began just after the creation of Pakistan. In 1950, right-wing religious political parties and other religious organisations expressed their disdain for the Ahmadis⁵⁰ and pressured the government to declare them to be non-Muslim. From 1950 to 1953 there were riots on the streets and on the 5th March 1953, Martial Law was imposed in Punjab after deadly clashes between security forces and protesters. After these long protests from the religious communities, Prime Minister Zulifqar Ali Bhutto declared Ahmadis to be non-Muslim.⁵¹

The emergence of sectarian clashes between Shiite and Sunni communities in Pakistan can be partially viewed as a consequence of domestic political misadventures and the turbulent international politics of late-1970s. The further emergence of a growing jihadist culture in particular was to carry the seed of sectarian hatred into the next decade when it became the main ideological motivation behind terrorist activity in the country.⁵²

Murphy undertakes an examination of Pakistan as an epicentre of terrorism and examines Islam's role in this. He observes that most victims of terrorism are Pakistanis resulting from Muslim-on-Muslim aggression and states that because sectarian violence is so prevalent, it is difficult to distinguish it from terrorism.⁵³

⁵⁰ Ahmadis are followers of Mirza Ghulam Ahmad Qaddayani (1835-1908), who claimed to be the reformer and later on the Messiah of Islam. *BBC News*, (May 28, 2010), "Who are the Ahmadi." http://news.bbc.co.uk/1/hi/world/south_asia/8711026.stm. (Accessed on July 14, 2019).

⁵¹ Paracha, Nadeem F. (October 29, 2019). *The 1974 Ouster of the 'heretics': What really happened?* *Dawn News*. <https://www.dawn.com/news/1057427> (Accessed on May 10, 2019)

⁵² See, n. 48, p. 3.3

⁵³ Eamon, Murphy. (2014),. *The Making of Terrorism in Pakistan: Historical and Social Roots of Extremism*. New York, Routledge, pp. 83-85.

As previously mentioned, Iran and Saudi Arabia have supported religious Shiite and Sunni militant organisations in the region because of their own interpretation of Islam. Saudi Arabia provided not only financial support to the Jihad in Afghanistan, but also substantial financial and moral support to Pakistan's military government and its policy of Islamisation in the country. On the other hand, Iran provided support to Shiite religious political parties and militant organisations in Pakistan. During this time, some sectarian militant organisations were established, such as Tehrik Niffaz Fiqqah Jafariah; a Shiite militant organisation formed in 1983, supported and backed by Iran.

In response, Sipah Sahaba Pakistan (SSP) - a Sunni sectarian militant organisation - was formed by Haq Nawaz Jhangvi in 1985. The author witnessed the formation of this organisation in Faisalabad, Pakistan. This organisation converted into the deadlier militant group, Lashkar-e Jhangvi. This organisation has an affiliation with Tehrik-e- Taliban Pakistan (TTP) and has collaborated with them in carrying-out deadly terrorist attacks in Pakistan, most notably on the Army General Headquarters (GHQ) in Rawalpindi and the killing of Hazara Shiites in Quetta, Baluchistan. According to South Asia Terrorism Portal (SATP), from 2001 to May 2018, 471 acts of terrorism were committed against Shiite communities, killing 2,693 and injuring 4,847.⁵⁴

During the second period of Nawaz Sharif's government (1997-1999), the sectarian violence reached its peak with widespread suicide bombings, targeted killings and kidnapping. The military therefore launched a major operation against

⁵⁴ South Asia Terrorism Portal (SATP) database, (Accessed: 24 May 2018).
http://www.satp.org/satporgtp/countries/pakistan/database/Shias_Killed_Pakistan.htm.

these organisations. However, by this time militant groups had become significantly powerful and resilient, meaning that large-scale killings occurred throughout the country in response to the government crackdown.⁵⁵

⁵⁵ See, *n. 48, p. 33.*

2.5 Unrest in Baluchistan

Despite constituting 43% of the total area of Pakistan, Baluchistan contains only 5% of the total population. Strategically and geographically, Baluchistan is a significant province of Pakistan, bordering Afghanistan to the north and north-west; Iran to the south-west; Punjab, Sindh, Khyber Pakhtunkhwa (KPK) and the Federally Administered Tribal Area (FATA) to the north-east; and the Arabian Sea to the south. Baluchistan is known for its natural resources and minerals, including coal, oil, gas, gold and many other precious metals. The precise value of these resources is undetermined, but they are estimated to be worth multiple billions of dollars.⁵⁶ Another valuable quality of Baluchistan is Gwadar Port, in which China has invested billions of dollars under the China-Pakistan Economic Corridor (CPEC) project for the development of the port, energy projects and other infrastructure in Baluchistan. The CPEC could play a pivotal role in the country's economic development and could make Pakistan a global economic power, provided that nationwide security and stability is ensured.

The leading cause of turmoil and insurgency in Baluchistan is demographic concerns. Baloch nationalist political parties blame the federal government for rendering the Baloch population a minority in Baluchistan.⁵⁷ The Baluchi identity is recognised as an ethnic community just as much as the Punjabis in Punjab, Sindhis in Sindh and Pashtuns in Khyber Pakhtunkhwa (KPK), however half of Baluchistan's population is made up of Pashtuns and Punjabis. The Baluch

⁵⁶ Sohail, Sadia., Ahmad, Sohail., & Jehan, Noor. (2017). *Distribution of Resources Revenue in Baluchistan: A Gap in Pakistan's Policy Making*. Vol. 2, No. 1 (2017), Global Regional Review (GRR), pp. 1-15.

⁵⁷ Jamal, Umair. (February 11, 2016), *Pakistan's Balochs Fear Ministry Status in Their Own Province*. *The Diplomat*. <https://thediplomat.com/2016/02/pakistans-balochs-fear-minority-status-in-their-own-province/>. (Accessed on June 13, 2019).

community fears that the central government, Pashtuns and Punjabis are gaining too much control of their region's resources and infrastructure.⁵⁸ These concerns, coupled with a general sense of deprivation and underinvestment, have led Baluch nationalists to express a desire for the secession and independence of Baluchistan.

Allegedly, the Baluchistan movement has been morally and financially supported by neighbouring states, and Pakistan blames India and Afghanistan for providing to these insurgents with weapons, training and moral support.

The present insurgency reached its peak when the Pakistani army killed tribal lord and former governor of Baluchistan, Nawab Akbar Bugti, on 26 August 2006 and Dera Bugti became an epicentre of militant attacks. After the killing of Nawab Akbar Bugti, his grandson, Nawab Brahumdah Bugti, formed a political organisation, the Baluch Republican Army (BRA), a Baluch nationalist militant group. At the time of writing, he is in exile in Geneva and, according to Inter-services Intelligence (ISI), he is involved in terrorist attacks in Baluchistan with the help of the Indian Intelligence Agency, RAW.⁵⁹ He has also been behind several target killings and suicide attacks against Pakistani forces and Pakistan and Chinese economic interests (China-Pakistan Economic Corridor, CPEC⁶⁰) in Baluchistan.⁶¹

⁵⁸ Akhtar, A.S. (2007). *Baluchistan versus Pakistan*. Economic and Political Weekly 42. pp.45-46.

⁵⁹ Khan, M Ilyas. (May 6, 2015). *What lies behind Pakistani charges of Indian 'terrorism'*. BBC News. <https://www.bbc.co.uk/news/world-asia-32604137>. (Accessed on June 11, 2019).

⁶⁰ China-Pakistan Economic Corridor (CPEC). <http://cpec.gov.pk>. (Accessed on October 1, 2020).

⁶¹ Yusufzai, Rahimullah. (August 22, 2020). Changing dynamics of Baloch insurgency. *Arab News*. <https://www.arabnews.pk/node/1722881> (Accessed on Sep 29, 2020).

Apart from Baluch nationalist militant groups, other terrorist organisations, such as Lashkar-e Jhangvi and Tehrik-e-Taliban Pakistan (TTP), are also involved in attacks on the Shiite Hazara community in Baluchistan.



Figure 2: Baloch separatists have been waging a bitter war against the Pakistani army for years (image from 2006), Source: BBC News.⁶²

⁶² See, *n. 59*, p. 39.

2.6 Pakistan after the “War on Terror” (2001-2010)

After 9/11, the U.S. government and its allies launched their so-called “war on terror” in Afghanistan. Once again, Pakistan became a frontline state and provided logistical support to U.S. and NATO forces. Pakistan also made its airbases available to coalition forces in order for them to conduct airstrikes on Afghanistan. The Pakistani government, led by then-President General Pervez Musharraf (1999 to 2008), decided to cooperate with the U.S. in its war against the Taliban government in Afghanistan and Al-Qaida. General Musharraf (the army chief who deposed Nawaz Sharif in a coup) justified his decision to support the West in his book, *In the Line of Fire*:

I also analysed our national interest. First, India had already tried to step in by offering its bases to the U.S. If we did not join the U.S., it would accept India’s offer. What would happen then? India would gain a golden opportunity with regarding Kashmir [sic.]. Second, the security of our strategic assets would be jeopardised. We did not want to lose or damage the military parity that we had achieved with India by becoming a nuclear weapons state.⁶³

In response, militant religious organisations, including Al-Qaida and other regional terrorist groups, specifically Tehrik-e-Taliban Pakistan and Lashkar-e-Jhangvi, brutally attacked Pakistani forces, law enforcement, civilians, infrastructure and, especially, foreign installations. According to SATP, since 9/11, Pakistan has lost more than 60,000 lives and billions of dollars have been lost due to economic and infrastructure damage. In 2004, Pakistani military forces launched Operation “Search and Destroy” in Wana (a tribal area) against the

⁶³ Musharraf, Pervez. (2006). *In the Line of Fire*. London, pp. 67.

combined militant groups of the Taliban and Al-Qaida.⁶⁴ The primary purpose of this operation was to eradicate foreign terrorist groups from this tribal area, but it was ultimately unsuccessful. The fundamental cause of this failure was a lack of communication and coordination between the army, the frontier corps and the intelligence agencies.⁶⁵

Another major insurgency occurred in 2007 when terrorist militants affiliated with the Taliban and Al Qaida used the Lal Masjid (Red Mosque) as a base and safe haven in the capital of Pakistan from which to launch attacks on the Pakistani armed forces and foreign NGOs.⁶⁶ They also kidnapped police personnel and foreigners and created a general climate of fear in the capital city. In order to bring an end to the situation, General Pervez Musharraf's government decided to undertake a large-scale operation against the militants. According to government sources, 154 militants were subsequently killed and 50 captured. In response, revenge attacks by militants severely spiked, with casualties of these attacks jumping from 1471 in 2006 to 3598 in 2007.⁶⁷

Law and order in Pakistan was gravely challenged during these years by alarmingly frequent militant attacks. Pakistan's image on the world stage was thus negatively impacted and the economy suffered significant losses. Until 2014,

⁶⁴ Rizwa, Zeb. (March 24, 2004). *The Wana Operation: Pakistan Confronts Islamic Militants in Waziristan*. The Central Asia-Caucasus Analyst. <https://www.cacianalyst.org/publications/analytical-articles/item/8870-analytical-articles-caci-analyst-2004-3-24-art-8870.html> (Accessed on December 10, 2019).

⁶⁵ Rasheed, A. (2008). *Descent into Chaos*. London: Allen Lane.

⁶⁶ The Story of Siege. (July 10, 2007). *The Guardian* <https://www.theguardian.com/news/gallery/2007/jul/10/pakistan.internationalnews> (Accessed on April 15, 2019).

⁶⁷ See, n. 47, p. 33.

terrorists were efficiently targeting the civilian and security forces through suicide bombings, targeted killings, kidnappings.

2.7 Pakistan's War on Terror and Counter-terrorism Policy (2014 to 2018)

On 16 December 2014, six terrorists belonging to Tehrik-e Taliban Pakistan (TTP) attacked the military-administrated school in Peshawar and massacred 145 people, including 132 school children. The Prime Minister of Pakistan, Nawaz Sharif, called an 'All Political Parties Conference' (APC). After lengthy discussions with political stakeholders, the military establishment and law enforcement agencies, Pakistan adopted a new counter-terrorism policy in January 2015 named the National Action Plan (NAP), consisting of 20-points with the purpose of combating terrorism. These included: lifting the ban on the death penalty; the establishment of special military courts to try hard-core criminals; the establishment of trained and well-equipped counter-terrorism forces; countering hate speech; reforms and registration of religious seminaries (Madrassas); controls on the financing of terrorist groups; and operations against armed militant groups.

2.8 2.8 Operation Zarb-e-Azb 2015

In January 2015, Pakistan launched a major military operation, called 'Zarb-e-Azb', against militant groups and terrorist organisations in tribal areas following the launch of the National Action Plan. The primary focus was the North Waziristan region which was under the control of Tehrik-e-Taliban Pakistan (TTP), Al-Qaida, Lashkar-e-Jhangvi, the Islamic Movement of Uzbekistan (IMU), the Chechen Islamic Jihad Union, the East Turkistan Islamic Movement and other various militant groups at the time. The Pakistani military claims that Operation Zarb-e-Azb successfully reduced regional violence and cleared most areas of

militants, except for a few pockets and sleeper cells. The state, meanwhile, has regained some public trust.⁶⁸ According to the former Director-General of Inter-Services Public Relations (ISPR), Lt Gen Asim Bajwa, nearly 3500 militants were killed while 490 soldiers lost their lives during the operation. Furthermore, he said that 992 sleeper cells were destroyed, 253 tonnes of explosives were recovered, 7500 bombs were destroyed, 2800 mines were removed and 3500 rockets were recovered during the operation and an area of 4304 sq/km was cleared.⁶⁹ *“The militants had enough explosives to continue bombing for 15 years with up to seven bombings every day,”* he said.⁷⁰

However, it is difficult to gauge the authenticity of the claim because there is only one source of information, which is ISPR itself. ISPR is the public relations office of Pakistan’s Army, and no independent media was allowed to visit the areas. However, independent sources claim that Operation Zarb-e-Azb has not yet been completed and that militants, including those in Tehrik-e- Taliban Pakistan (TTP), have fled to neighbouring Afghanistan and are carrying out attacks from there.⁷¹ At the time of writing, these groups remain active in Afghanistan.

The military establishment claims that they have gained control of the security situation in the country. However, the average Pakistani is not aware of the

⁶⁸ Basit, Abdul. (June 27, 2016). *Pakistan’s Counterterrorism Operation: Myth vs. Reality*. *The Diplomat*. <https://thediplomat.com/2016/06/pakistans-counterterrorism-operation-myth-vs-reality/> (Accessed on April 13, 2020).

⁶⁹ Inter-Services Public Relations (ISPR), (June 13, 2015), No PR-171/2015-ISPR, Rawalpindi, Pakistan. <https://www.ispr.gov.pk/press-release-detail.php?id=2914>. *The Economic Times*, (June 15, 2016), *Operation Zarb-e-Azb*. <https://economictimes.indiatimes.com/news/defence/490-pakistan-soldiers-3500-militants-killed-in-operation-zarb-e-azb/articleshow/52766005.cms>

⁷⁰ Bajwa, Asim. (June 13, 2015). Inter-Services Public Relations (ISPR), No PR-171/2015-ISPR. Rawalpindi, Pakistan.

⁷¹ See, n. 43, p. 31.

realities of the situation on the ground in the Federally Administered Tribal Areas (FATA). At the time of writing, incidents of terrorism are at an all-time low. This is demonstrated by reliable data published by the South Asia Terrorism Portal (SATP)⁷² regarding major incidents of terrorism-related violence in Pakistan. This data shows that, that during the period of 2018, there was a total of 40 incidents of terrorism in which 195 people were killed and 158 injured, including security personnel and civilians. This has reduced significantly from previous years, with 2061 terrorism-related incidents in 2010 and 489 in 2017.⁷³

From a strategic point of view, the government and military in Pakistan should continue to not only clear-out militant groups from these areas, but also hold those areas afterwards and ensure that militants do not reappear. In order to bring about a logical end to Operation Zarb-e-Azb, the government should also facilitate the resettlement of internally displaced people's (IDPs) and families to their homes safely and respectfully. Operation Zarb-e-Azb was the legacy of the former Chief of Army Staff, General Raheel Sharif.⁷⁴

⁷² South Asia Terrorism Portal (SATP) is the largest website on terrorism and low intensity warfare in South Asia, and creates the database and analytic context for research and analyses of all extremist movements in the region.

⁷³ South Asia Terrorism Portal (SATP), *Major incidents of terrorism-related violence in Pakistan-2018*. <https://www.satp.org/satporgtp/countries/pakistan/database/majorincidents.htm> (Accessed on June 9, 2019).

⁷⁴ Fazil, Muhammad Daim. (December 2, 2016). *The Legacy of General Raheel Sharif*. National Security. *South Asian Voices*. <https://southasianvoices.org/legacy-general-raheel-sharif/> (Accessed on December 21, 2019).

2.9 Conclusion

Pakistan has experienced numerous challenges from extremism throughout its history, largely posed by ethnic, sectarian and religious organisations in the country. However, due to the military coup by General Zia-ul-Haq in 1977 and the Soviet invasion of Afghanistan in 1979, the country saw its extremism develop into terrorism. During this period, the aforementioned ethnic, sectarian, religious and secular nationalist groups became part of militant and jihadis organisations. International actors, most notably the U.S., encouraged the Jihadi movement in Pakistan and used these religious forces and fundamentalist groups as allies against the Soviets during the Cold War.⁷⁵

After the end of the Afghan-Soviet war in 1989, these militant and Jihadi groups scattered, with many migrating into neighbouring Pakistan. Consequently, Pakistan is confronted by terrorism at the hands of these militant groups. To control this militancy, Pakistan launched several military operations against terrorist organizations in its tribal areas, most notably Operation Zarb-e-Azb in 2015. Military sources claim that terrorism has been reduced and tribal areas have been cleared of militancy as a result of this operation, however independent sources disagree with this claim. Although Operation Zarb-e-Azb has had a substantial positive impact on the overall security situation in Pakistan, maintaining the writ of the state and reducing the size of the threat, the struggle remains far from over.

⁷⁵ Shamil, Shams. (August 17, 2016/17). *Pakistan's Islamization – before and after dictator Zia-ul-Haq*. DW Asia. <https://www.dw.com/en/pakistans-islamization-before-and-after-dictator-zia-ul-haq/a-19480315> (Accessed on March 28, 2020).

Chapter 3 – Literature Review

3.1 Introduction

In the period from 9/11 until 2018, Pakistan has had one of the highest rates of terrorism-related deaths amongst its civilians and security forces in the world, behind Iraq and Afghanistan. According to DG ISPR: *“We paid the price for this. Over 81,000 Pakistanis, including personnel of the armed forces, were either martyred or injured. The overall impact on the economy of Pakistan amounted to over \$300 billion in losses.”*⁷⁶ Internationally, Pakistan’s image has been negatively affected and the economy has suffered extra burdens due to sanctions.

After 9/11, countries around the world implemented new counter-terrorism strategies to address this threat. However, before implementing policies aimed at tackling terrorism, it is first necessary to understand its root causes because without a clear understanding of the fundamental causes of militancy and radicalisation, countries cannot adopt a comprehensive counter-terror strategy.

Therefore, this chapter will review the existing literature on the root causes of terrorism. In order to gain clarity on this issue, this chapter will identify how, where and why terrorism occurs. More specifically, this chapter will focus on which of these causes are applicable in the case of Pakistan. Furthermore, to successfully

⁷⁶ Ghafoor, Major General Asif, DG Inter-Services Public Relations (ISPR), (April 29, 2019). *Gulf News Asia*. <https://gulfnews.com/world/asia/pakistan/naya-pakistan-government-to-take-control-of-30000-madrassas-across-country-1.1556545286343> (Accessed on June 10, 2019).

fight against terrorism, an effective counter-terrorism strategy is crucial. This chapter will present short analyses of the effectiveness of counter-terrorism strategies in the United States, the United Kingdom and Pakistan. “Effectiveness” is a complex component of counter-terrorism policy and is very difficult to measure accurately and objectively.

3.2 Causes of Terrorism in Pakistan

This section will attempt to explain what is meant by ‘the root causes of terrorism’, what these root causes are and which of them are applicable in the context of Pakistan.

Scholars and experts have described several different general causes of terrorism. In this section, I will discuss the debates surrounding these causes in order to evaluate the security situation in Pakistan.

It is evident that ungoverned spaces, weak government institutions, disenfranchised peripheral populations and strong anti-Western and anti-American sentiments make Afghanistan and Pakistan suitable places for the incubation and spread of extremist ideologies (Najib Sharifi).⁷⁷ Neill suggests that poverty, demographic factors, social inequality and exclusion, dispossession, and political grievances are direct or indirect causes of the fostering of terrorism (O’Neill 2002).⁷⁸ According to Gurr (1970), terrorism is a method of political violence that is used by predominantly non-state groups to achieve their strategic goals, together with mutinies, political assassinations and small-scale guerrilla wars.⁷⁹ Martha Crenshaw (1981) argued that terrorism is a purposeful activity that is the result of an organisation’s decision that it is a politically viable method of opposing a government.⁸⁰ Nasail, M.B. (2003) says that as long as there is poverty, inequality, injustice and repressive politics, militant Islamic tendencies

⁷⁷ Najib, Sharifi. (2014). *ISIS Makes Inroads in Afghanistan*. Foreign Policy, October 1, 2014.

⁷⁸ O’Neill, William. (2002). Conference Report, *In Responding to Terrorism, What role for the United Nations?* Report of a conference organized by the International Peace Academy, New York, 25-26 October 2002, published by International Peace Academy.

⁷⁹ Gurr, Ted Robert. (1970). *Why Men Rebel*. Princeton, CA: Princeton University Press.

⁸⁰ Martha, Crenshaw. (1981). *Comparative Politics* Vol. 13, City University of New York, pp. 379-399.

will grow throughout the world.⁸¹ Charles (2007) proposes the contemporary school of thought on the root causes of terrorism which asserts that political and economic deprivation are the leading causes of terrorism.⁸² Some other experts such as Brennan-Galvin (2002)⁸³, Massey (1996)⁸⁴ and Ross (1993)⁸⁵, argue that rapid urbanisation and the unemployment and poverty it generates is another root cause of terrorism which enables the recruitment and organisation of terror cells.

Some scholars assert that religious extremism is the primary cause of terrorism. *“Religion is crucial for these acts since it gives moral justifications for the killing and provides images of cosmic war that allows activists to believe that they are waging spiritual scenarios [sic.]”* (Zafar, 2007).⁸⁶ This does not mean that religion causes terrorism, but it does mean that religion is often used justification for bloodshed and catastrophic acts of terrorism. As evidence, we can observe that the majority of the terrorist movements, such as Al-Qaida, Taliban, Lashkar-e-Taiba, Lashkar-e-Jhangvi, Jaish-e-Muhammad, Al-Shabaab, ISIS (Islamic State) and so forth are fuelled by religious motivations, or at least claim to be. Murphy asserts that *“Islam is not the religion of violence, but different Muslim sects adapted multiple religious and cultural traditions from different mores* (Murphy E, 2015).⁸⁷

⁸¹ Nasail, M.B. (2003). *The Role of Civil Society in Conflict Resolution*. Source: International Seminar on Conflict Resolution, February 15-17, 2003.

⁸² Charles, Townshend. (2002). *Terrorism a very short Introduction*. Oxford University.

⁸³ Brennan-Galvin, Ellen. (2002). *Crime and violence in an urbanizing world*. Journal of International Affairs 56(1), pp. 123-145.

⁸⁴ Massey, Douglas S. (1996). *The Age of Extremes: Concentrated Affluence and Poverty in the Twenty-First Century*. Demography 33(4), pp. 395-412.

⁸⁵ Ross, Jeffrey Ian. (1993). *Structural Causes of Oppositional Political Terrorism: Towards a Causal Model*. Journal of Peace Research 30(3), pp. 317-329.

⁸⁶ Muhammad, Imtiaz Zafar. (2007). *Violence Terrorism and Teaching of Islam*. Higher Education Commission, Pakistan.

⁸⁷ Eamon, Murphy. (2015). *The Making of terrorism in Pakistan: Historical and Social Roots of Extremism*. New York, N.Y.: Routledge, 2014, Journal of Strategic Security 8, no. pp.83-85.

However, more recent analysis has suggested that the radicalisation thesis may not be as straightforward as it seems. A study conducted by the ICCT in the Netherlands noted that scholars such as Horgan and Sageman have subsequently observed there are too many false positives in the radicalisation thesis, such as the fact that the most recent terrorists have not displayed a particular ideological radicalism in their past, and that most political and ideological radicals are not terrorists (ICCT, 2013).⁸⁸

There has been a considerable amount of empirical work undertaken in certain Muslim communities living in diverse European countries. McGilloway, Ghosh and Bhui undertook an extensive survey of academic outputs on the radicalisation of Muslims in the West up to 2012 (McGilloway et al. 2015).⁸⁹ While it was noted that empirical research on such issues remains deficient, the project identified 17 major studies based on original primary research. These broadly identified that identity factors (namely problems with Muslim identity in Western contexts) are prevalent across many of the subject-groups, but also that there are no easily identifiable trends in what drives someone to become a terrorist and what does not.

A major study by the RUSI think-tank in the UK reported that most of the recent terrorist attackers in northern Europe with supposed ISIS affiliation were not particularly religious or ideological in their past, but in fact had a history of crime

⁸⁸ ICCT (2013). *The end of radicalisation?* <https://icct.nl/publication/the-end-of-radicalisation/> (Accessed on Oct 3, 2020).

⁸⁹ McGilloway A, Ghosh P and Bhui K. (2015). *A systematic review of Pathways to and processes associated with radicalization extremism amongst Muslims in Western societies*. *International Review of Psychiatry* 27 (1): 39-50.

and delinquency (RUSI, 2017).⁹⁰ This supports Horgan's and Sageman's more recent doubts about the radicalisation thesis. It may therefore be the case that a preoccupation with individuals and their pathways into radicalism can sometimes miss the importance of movements and groups in recruiting individuals to their ranks. Therefore, there is a need to consider the mechanisms by which they do so, such as the role of the internet, and the popularity of radical religious preachers and bloggers.

According to Rahim-UI-Yousif Zai,⁹¹ the majority of Deeni Madrasas (religious seminaries) are key points of transmission for terrorism and provide Pakistan's militant organisations with great opportunities for recruitment. When asked why the world is not ready to acknowledge the sacrifices of Pakistan in the war against terrorism during an interview carried out for this thesis, Mr. Saleem Safi⁹² and Mr. Ahmad Bilal Sufi⁹³ raised the crucial point that although Pakistan has grown surgically adept at killing terrorists, it remains unable or unwilling to destroy the ideas that fuel them.

The former Chief of Army Staff Gen Pervez Musharraf (1999-2008) has pointed out that: *"the wrong understanding and misinterpretation of the religion is the important cause of terrorism."*

⁹⁰ Sexton, Mark. (December 1, 2017). *What's in a Name? Proposing New Typologies for 'Foreign Fighters'*. RUSI Journal. <https://rusi.org/publication/rusi-journal/what's-name-proposing-new-typologies-foreign-fighters> (Accessed on Oct 4, 2020).

⁹¹ Yusufzai, Rahimullah. (2018). Senior Journalist, expert on Taliban and Al-Qaida, Peshawar, Pakistan.

⁹² Safi, Saleem. (2018). senior journalist, expert on TTP and Afghan issues, Islamabad, Pakistan.

⁹³ Sufi, Ahmad Bilal. (2018). International Law Expert and former law minister, Lahore, Pakistan.

He asserts that, in Pakistan, there are many clerics who have limited knowledge of the teaching and values of Islam. They misguide the people for their vested interests in the name of religion.⁹⁴

Gen. Pervez Musharraf further described the causes of terrorism in an International Seminar on Global Terrorism in Islamabad on the 29th August 2007, stating that:

Political deprivation and alienation are an arch cause of terrorism. This leads to hopelessness. The power of powerlessness, which then leads to these terrorist acts... [sic.]. A lack of education and poverty are equally responsible for the increase in terrorist activities. The illiterate are wrongly given the hope to go directly into the heaven if he/she commits the terrorist act [in the name of] of God or religion. Thus, in circumstances where there is lack of education and poverty, it becomes easier for the masterminds of the terrorist groups to launch the offences at the cost of the socio-economic compulsion and ignorance of the poor masses [sic.].⁹⁵

Sectarian and ethnic conflicts are further causes of terrorism and are forms of militancy that Pakistan has experienced a great deal of. Sectarian terrorism, defined as violence among different sects within Islam, such as Sipah-e- Sahaba Pakistan, Lashkar-e-Jhangvi, and Sipah-e-Muhammad sectarian organisations. The most vicious threat to the Pakistani state comes from Islamist terrorist organisations that engage in a wide array of terrorist attacks against security forces and civilians, many of which are explicitly motivated by sectarianism.⁹⁶

⁹⁴ Michael, Sabir. (2007). *Terrorism a Socio-Economic and Political Phenomenon with Special Reference to Pakistan*. Journal of Management and Social Sciences, Vol.3, No1, pp.35-46.

⁹⁵ Musharraf, Pervez. (August 29, 2007). Former Chief of Army Staff and President of Pakistan, 1999-2008, International Seminar on Global Terrorism on August 29, 2007, organized by Institute of Regional Studies (IRS), Islamabad.

⁹⁶ Fair, Christine, C. (Sep 25, 2015). *Explaining Support for Sectarian Terrorism in Pakistan: Piety, Maslak and Sharia*. Walsh School of Foreign Service, Georgetown University, Washington, DC 2007, USA.

According to data collected by Mesquita, between 1988 to 2011, terrorist attacks committed by sectarian organisations have claimed the lives of 5783 Pakistanis.⁹⁷

It is a difficult to gauge the specific conditions and grievances that play a fundamental role in the spread of terrorism in individual countries because socio-political, religious and ethnic factors vary between states, especially between developing countries. Steinberg (2002) states that, unless we make it harder for them to recruit new members and sustain their actions in the long run, militant groups will reconstitute themselves.⁹⁸ In the present era, terrorist organisations use modern devices to spread their messages and ideologies among their sympathisers and facilitators, most significantly the internet and social media platforms provide different means through which people are being radicalised or encouraged to commit acts of terrorism.⁹⁹

Some other scholars, such as Madriz (2001)¹⁰⁰, Simon (2003)¹⁰¹, Chomsky (2003)¹⁰², Ehrlich (2003)¹⁰³, Marshall (2002)¹⁰⁴ and Micklethwait (2003)¹⁰⁵ argue that the use of force against terrorism (e.g. the War on Terror) is not sufficient unless it addresses the causes of terrorism, only a comprehensive approach can defeat it.

⁹⁷ Mesquita, de Bueno. (2013). The BFRS Political Violence in Pakistan Dataset. https://webspace.princeton.edu/users/esocweb/ESOC%20website%20publications/BFJRS_2013_PK_Data_v10.pdf. (Accessed on Sep 28, 2020).

⁹⁸ Steinberg, James B. (2002). *Counterterrorism: Anew Organizing Principle for American National Security*. The Brookings Review 20(3), pp. 4-7.

⁹⁹ *Concepts of Terrorism; Analysis of the rise, decline, trends and risk*. (December 2008). Transnational Terrorism, Security and Rule of Law. p. 93.

¹⁰⁰ Madriz, Esther. (2001). *Terrorism and Structural Violence*. Social Justice 28(3), pp. 45-56.

¹⁰¹ Simon, Steven. (2003). *The New Terrorism*. The Brookings Review 21(1), pp. 18-24.

¹⁰² Chomsky, Noam. (2003). *Power and Terror*. Post 9/11 Talks and Interviews, Tokyo: Little More.

¹⁰³ Ehrlich, Paul R. (2004). *Some Roots of Terrorism*. Population and Environment, 24 (2), pp. 183-192.

¹⁰⁴ Marshall, Rachelle. (2002). *The Bush administration declare war on terror, but ignores its causes*. The Washington Report on Middle East Affairs 21(1), pp. 6-9.

¹⁰⁵ Micklethwait, John. (2003). *From Sarajevo to September 11*. Policy Review, no. 117, pp. 49-63.

However, another group of scholars disagree with the concept that there are 'root causes' of terrorism because it detracts from the idea the "moral clarity" that they believe is necessary to confront terrorism.¹⁰⁶ They deny that terrorist organisations have any legitimacy whatsoever for their actions and they suggest that the notion of root causes is "misleading as an explanation for terrorism or a prescription for dealing with it".¹⁰⁷ Indeed, according to these scholars the very idea of root causes of terrorism legitimises and justifies the actions of terrorist groups when there can be no possible excuse for any such activity. Would it therefore be more appropriate to discuss these causes in terms of "the basic conditions that generate terrorist activities"¹⁰⁸ or the "enabling conditions of terrorism"?¹⁰⁹

Furthermore, militant organisations emerge and commit acts of terror when multiple socio-political and religious conditions coincide. It is thus clear that no individual factor alone can be a root cause of terrorism when there are multiple reasons behind the emergence of terrorist organisations and their activities. Different militant groups follow different ideologies and offer different justifications for their actions, but they are unified by their sole purpose of destabilising the political and economic environments in which they operate in order to achieve their strategic goals.

¹⁰⁶ Bennett, William J. (2003). *Why we Fight. Moral Clarity and the War on Terrorism*. Washington DC, Regnery Publishing Inc.

¹⁰⁷ Jervis, Robert. (2002). *An Interim assessment of September 11: What has changed and what has not?* Political Science Quarterly 117 (1), pp. 37-54.

¹⁰⁸ Ehrlich, Paul R. (2004). *Some Roots of Terrorism*. Population and Environment 24(2), pp. 183-192.

¹⁰⁹ O' Neill, William. (2002). Concept Paper, *Beyond the Slogans: How Can the UN Respond to Terrorism?* in Responding to Terrorism: What Role for the United Nations?, Report of a conference organized by the International Peace Academy, New York, 25-26 October 2002, Published by International Peace Academy.

Root causes are essential for understanding and explaining terrorism, whilst policy is crucial for restraining it. According to Mani (2004)¹¹⁰, “effective prevention that will reduce terrorism requires investing in sustainable development, poverty reduction, progressive education, improved governance and the strengthening of the rule of law.

According to the former Chief Justice of Pakistan Mr. Justice Iftikhar Muhammad Chaudhary that:

Without an independent judiciary [...] people gradually lose their commitment to the constitutional system provided by the state. More gradually, they become indifferent to its survival. In the course of time, they become apathetic, cynical and resigned. A system that will not enforce their rights alienates the people. They then choose to follow those who challenge it, even those who oppose it by military force. Thus, are crucial battles being lost.¹¹¹

Since gaining independence in 1947, Pakistan has spent approximately half of its life under military rule whereby military governments have used the judiciary, law enforcement organisations and intelligence agencies against their opponents and against democratic political forces in general. This means that Pakistan is not well provisioned in tackling political violence.

Pakistan, alongside Afghanistan, Iraq and Syria, is one of the most affected countries in the world in terms of terrorism¹¹² and, over the years, militancy has

¹¹⁰ Mani, Rama. (2004). *The Root Causes of Terrorism and Conflict prevention*. in Weiss, Terrorism and the UN. Before and After September 11, edited by Boulden Jane, and G. Thomas, Bloomington, Indiana University Press.

¹¹¹ Ahsan, Aitzaz. (2009). *The Preservation of the Rule of Law in Times of Strife*. The International Lawyer, Vol. 43. No 1. pp.73-76. Published by: American Bar Association.

¹¹² Institute for Economics and Peace, Global Terrorism Index 2019. <http://visionofhumanity.org/app/uploads/2019/11/GTI-2019web.pdf> (Accessed on December 20, 2019).

become ever more widespread and lethal. It can be therefore be expected that the root causes of terrorism in Pakistan are likely to be connected with poverty, unemployment, urbanization and the misinterpretation of religion. According to an official report of 2018, Pakistan's unemployment rate stood at 5.7%¹¹³ while, 64% of the population is younger than 30,¹¹⁴ many of whom are educated but jobless. Pakistan has a very high rate of migration from rural to urban areas, which, according to the 2017 Census stands at 36.4%, up from 32.5% in 1998. As a result, approximately half Pakistan's population will be living in urban areas by 2025.¹¹⁵ However, very few necessary services and amenities will be available to them, such as food, housing, healthcare, education, etc. In these circumstances, frustrated young men easily become susceptible to joining radicalised organisations. Another critical factor is the misinterpretation of religion. At the time of writing, there are 32,272 religious seminaries in Pakistan, with circa 2.6 million students studying at these madrassas¹¹⁶ that only offer religious education and promote jihadi ideology.

In the light of the above discussion, weak government, poverty, political instability, social and economic deprivation, inequality, injustice, urbanisation, sectarian and ethnic conflicts and misinterpretation of religion could be said to be the leading causes of terrorism in Pakistan. These causes are applicable in the present

¹¹³ Pakistan Bureau of Statistics. (2018). *Pakistan Unemployment Rate*. Trading Economics. <https://tradingeconomics.com/pakistan/unemployment-rate> (Accessed on 28 December 2019).

¹¹⁴ Human Development Reports. (July 24, 2018). United Nations Development Programme. <http://hdr.undp.org/en/content/unleashing-potential-young-pakistan> (Accessed on November 21, 2019).

¹¹⁵ The United Nations Development Programme. (May 8, 2019). *Sustainable Urbanization*. https://www.pk.undp.org/content/pakistan/en/home/library/development_policy/dap-vol5-iss4-sustainable-urbanization.html (Accessed on 21 November 2019).

¹¹⁶ *Naya Pakistan: Government to take control of 30,000 madrassas across country*. (April 29, 2019). *Gulf News Asia*. <https://gulfnews.com/world/asia/pakistan/naya-pakistan-government-to-take-control-of-30000-madrassas-across-country-1.1556545286343> (Accessed on May 13, 2019).

context. Pakistan therefore needs to understand the causes of terrorism to fight against terrorism and militancy.

A considerable obstacle to the implementation of effective counter-terrorism policies is a lack of the necessary will and mind-set on behalf of the political establishment. If parliament were to use its collective wisdom to introduce a robust strategy that ensures a fair and balanced criminal justice system compatible with the Constitution of Pakistan, then it is likely that these problems could be successfully countered. All stakeholders, including the civil government and the military establishment, should be on the same page and work in the same direction with a focused agenda: combating terrorism. Therefore, Pakistan needs to address the causes of terrorism and adopt a comprehensive counter-terrorism strategy to eliminate militancy within the country. Furthermore, Pakistan also needs to introduce better economic reforms that reduce poverty and promote economic prosperity, combined with more investment in social welfare systems and projects in its rural areas to counter the overwhelming levels of migration to urban areas.

3.3 Counter-terrorism Strategy

The events of the 11th September 2001 changed the world, causing almost every country to focus on its internal security systems and implement new anti-terrorism laws. Police institutions around the world devised their own counter-terrorism strategies.¹¹⁷ The most visible change was the reaction of countries to emerging threats of terrorism, and how lawmakers, policymakers and law enforcement agencies adopted mechanisms to deter these threats. For example, after 9/11, the United Nations Security Council unanimously adopted a Resolution 1373, which encouraged member states to list terrorism as a severe crime under their domestic legislation.¹¹⁸

The United States was the first country after 9/11 that took steps to implement comprehensive anti-terrorism laws in order to facilitate effective counter-terrorism measures. Most famously, the U.S. Patriot Act was passed in October 2001, with the purpose of “*Preserving Life and Liberty.*”¹¹⁹ This law enabled the U.S. law enforcement agencies to access telephone and e-mail communications, medical histories, financial records and other information to facilitate in-depth investigations. Moreover, the enforcement of these new laws was further guaranteed by the establishment of a new agency, the Department of Homeland Security (DHS), which was granted full legal support by the U.S. Congress and the Executive.

¹¹⁷ Deflem, Mathieu. (2006). *Global Rule of Law or Global Rule of Law Enforcement?* International Police Cooperation and Counterterrorism. The Annals of the American Academy of Political and Social Science, Vol. 603, “*Law, Society, and Democracy: Comparative Perspectives,*” Sage Publications, pp. 240-251.

¹¹⁸ United Nations Security Council Resolution 1373. (2001). Adopted by the Security Council at its 4385th meeting on 28 September 2001.

¹¹⁹ The USA Patriot Act 2001, *Preserving Life and Liberty.* US Department of Justice. <https://www.justice.gov/archive/ll/highlights.htm> (Accessed on July 10, 2018).

The United Kingdom introduced strict anti-terrorism laws after 9/11 in the form of the Anti-Terrorism Crime and Security Act 2001.¹²⁰ Under this Act, anti-terrorism laws gave special powers to the UK's law enforcement agencies to conduct proactive, preventative operations. This Act provides the police with extensive discretionary powers to carry out their investigations. According to Walker (2009), countering terrorism demands 'anticipatory police interventions' and the ability to carry out of searches.¹²¹

In the UK, the 2003 Counter-Terrorism Strategy included a new approach called "Prevent," which proposed policy options aimed at preventing individuals from being drawn into terrorism as a longer-term societal strategy. The European Council adapted this policy to be applied at the broader pan-European level, launching its own Counter-Terrorism Strategy in 2005. Many individual European states have used the principles of 'Prevent' to establish their own domestic counter-terror strategies. These are now collectively known as Counter-terrorism Strategies.

Furthermore, New Control Orders have assigned unprecedented legal powers to the British police and other UK law enforcement agencies, including a provision that allows them to impose a curfew on any individual(s) for a duration of up to 16 hours at any location as-needed, without having to delay action by seeking approval from the British authorities. Under the Anti-Terrorism Act 2000,¹²² the

¹²⁰ Anti-Terrorism Crime and Security Act 2001. <https://www.legislation.gov.uk/ukpga/2001/24/contents> (Accessed on July 12, 2018).

¹²¹ Walker, C. (2009). Blackstone Guide.

¹²² Terrorism Act 2000. <https://www.legislation.gov.uk/ukpga/2000/11/contents> (Accessed on July 15, 2018).

British police could detain any individual suspected of terrorism (without charging him/her) for a maximum of 28 days. Efforts were also made to increase this maximum detention time to 90 days, however this proposal was withdrawn due to the objections of the opposition party and human rights organisations. The purpose of these laws is to enable British law enforcement agencies to monitor and investigate suspects of terrorism on a more comprehensive and flexible legal basis.

The United Kingdom's counter-terrorism strategy is well defined and specifies a clear role for the judiciary. In 1979, the then-British Secretary of State for the Home Department, Merlyn Rees (Labour Party), spoke in the House of Commons on the issue of renewing the Prevention of Terrorism (Temporary Provisions) Act 1976 (PTA), given the law's exceptional nature with respect to concerns over the suspension of liberty. Rees agreed that *"the powers contained in this Act are exceptional"* and that *"the Act represents a temporary infringement of civil liberties,"* but he also stated his belief that *"it was, and remains, a necessary infringement... to ensure that the police have adequate powers to deal with a savage and dangerous minority who have no respect for the life or civil liberties of others".*¹²³

A landmark judgment of the House of Lords in *Secretary of State v. Rehman*¹²⁴ unanimously upheld the decision of the Secretary of the State to deport a Pakistani-born Imam because the Security Services alleged that he was involved

¹²³ Fisher, M, Kathryn. (2015). *New Security Challenges, Security, Identity, and British Counterterrorism Policy*. Hampshire, pub. Palgrave Macmillan. p. 72.

¹²⁴ *Secretary of State for the Home Department v. Rehman*. (October 2001). UKHL 47.

in terrorist activities in the Indian sub-continent. Lord Hoffmann concluded that “*judicial deference to the executive was in order because the executive had secret information and expertise in the matter of national security and democratic legitimacy that the judiciary did not.*” This decision provided support for the idea that, when faced with the horrors of terrorism, judges would allow the executive and the legislature to take responsibility for protecting their citizens. In *A. v. Secretary of State*,¹²⁵ the House of Lords considered Part IV of the Anti-terrorism, Crime, and Security Act, which provided for the indefinite detention of non-citizens involved in terrorism who could not be deported because of the substantial risk of torture.

The above judgments were made on the principle that courts should be aware of the limitations of their own institutional capabilities, especially concerning classified information that they have not seen.

At the international level, the 9/11 attacks caused a policy rethink that led to an increased emphasis on the causes of terrorism as well as the “hard” security responses to terrorist attacks and movements.

The early institutional strategies of the EU and the U.S. led to a general acceptance of the notion that ‘radicalisation’ leads to ‘terrorism’. According to this concept, the path to terrorism starts with a “vulnerable individual” who may be drawn into violent radicalism by a number of driving factors, including socio-economic marginalisation, disdain for Western foreign policy and issues of conflicting identity experienced by some Muslims living in Western society. The

¹²⁵ *A. v. Secretary of State for the Home Department*. (December 2004). UKHL 56.

American scholar, John Horgan, developed the notion of “routes into terrorism” (Horgan, 2008)¹²⁶ which has largely underpinned our wider understanding of radicalisation theory. Scholars such as Borum (2003),¹²⁷ Wiktorowicz (2004),¹²⁸ Moghadam (2006),¹²⁹ Pressman (2006)¹³⁰ and Sageman (2008)¹³¹ were all proponents of what is sometimes called “stage” models of radicalisation. Such thinking has had a significant influence on counter-terrorism policy in areas such as the development of “counter-radicalisation” strategies and the targeting of vulnerable institutions and environments, such as prisons and the education sector. There has also been some discussion about whether and how religious institutions and teachers should be part of the picture.

Fourteen years after 9/11, Pakistan adopted a counter-terrorism strategy called the National Action Plan (NAP) in January 2015. The NAP is a manifestation of national consensus between all political parties and other key actors, including the military establishment, who all agreed on this policy. The government aims to enact all initiatives under the framework of the 20 points that make up the National Action Plan in order to eliminate extremism and militancy from the country.

According to Justice (Rtd) Malik Abdul Qayyum,¹³² the National Action Plan highlighted the importance of capacity building and the need to overhaul the criminal justice system, courts, police, prosecution and prisons. The military

¹²⁶ Taylor, M., and Horgan, J. (2008). *A Conceptual Framework for Addressing Psychological Process in the Development of the Terrorist*. *Terrorism and Political Violence* 18: 585-601.

¹²⁷ Borum, R. (2003). *Radicalization into Violent Extremism: A Review of Social Science Theories*. *Journal of Strategic Security* 4(4): 7-36.

¹²⁸ Wiktorowicz, Q. (2005). *Radical Islam Rising: Muslim Extremism in the West*. Lanham, Rowman and Littlefield.

¹²⁹ Moghadam, A. (2006). *Palestinian Suicide Terrorism in the Second Intifada: Motivations and Organizational Aspects*. *Studies in Conflict and Terrorism* 26 (2006), pp.65-92.

¹³⁰ Pressman, D E. (2006). *Countering Radicalisation: Communication and Behavioural Perspectives*. The Hague: Clingendael Centre for Strategic Studies.

¹³¹ Sageman, M. (2008). *Leaderless Jihad*. Philadelphia, University of Pennsylvania Press.

¹³² Justice (Rtd) Malik Abdul Qayyum. (Feb 17, 2019). Lahore, Pakistan. Personal communication.

courts set up after the 21st Constitutional Amendment have certainly fortified the criminal justice system; however, this is a temporary arrangement. Consequently, appropriate permanent legislation is needed in order to make the criminal justice system fit for purpose. Concerning the effectiveness of police, the government should focus on enhancing the police's counter-terrorism capabilities and should establish specialised units that have access to military-grade equipment and training. Furthermore, improvements in the quality of investigations into cases of terrorism are a prerequisite of effective counter-terrorism measures, such improvements demand better training, a greater use of technology, access to forensic labs and an integrated national database (Justice (Rtd) Malik Abdul Qayyum, personal communication, February 17, 2019, Lahore, Pakistan).

The implementation of the National Action Plan, however, has been controversial. The government claim that the 20-points of the National Action Plan and writ of the state have been successfully established throughout the country, but independent sources are dissatisfied with this claim. According to Frederick Rawski, the ICJ's Asia Director, *"there is no sign of the promised reforms to strengthen the ordinary criminal justice system to effectively and fairly handle terrorism-related cases."*¹³³

Legal experts, human rights organisations and some political parties in Pakistan have expressed their concern and reservations regarding the implementation of this policy. The Peshawar High Court suspended the convictions of 70 people

¹³³ Frederick, Rawski. Asia Director. (April 1, 2019). *Pakistan: as military courts lapse, Government must prioritize reform of the criminal justice system*. International Commission of Jurists. <https://www.icj.org/pakistan-as-military-courts-lapse-government-must-prioritize-reform-of-the-criminal-justice-system/> (Accessed on January 6, 2020).

that had been convicted by military tribunals on terrorism-related charges based on appeals that were filed by convicted people. The Court passed an order stating that *“the proceedings had been conducted in bad faith and that there was effectively no evidence against the convicted persons.”*¹³⁴ Furthermore, the International Commission of Jurists discussed in a report that *“the operation of military courts in Pakistan has come at great cost to human rights and the judiciary’s independence.”*¹³⁵

Unfortunately, in Pakistan, criminal investigation methods are severely outdated and no new laws or modern approaches have been adopted to address these concerns. Moreover, it seems that these practices will persist unless the existing terrorism laws are not amended to meet the advanced needs of the present situation.

Pakistan’s counter-terrorism strategy, as defined by the National Action Plan, will be analysed in Chapter 4 of this thesis in order to evaluate the legitimacy of the government’s claim that the National Action Plan has been successfully implemented to the letter.

¹³⁴ Peshawar High Court, Writ Petition 536-P of 2018. (October 18, 2018).

¹³⁵ International Commission of Jurists. (2019). *Military Injustice in Pakistan*. Briefing Paper, January 2019.

3.4 Conclusion

This chapter has analysed and reviewed the root causes of terrorism, as well as the counter-terrorism strategy that has been employed by Pakistan with reference to the strategies implemented by the United States and the United Kingdom. The significant concept that has been discussed in this chapter that without identifying the root causes that drive “vulnerable individuals” to become part of militant and radicalised groups, countries cannot form an effective, comprehensive counter-terrorism policy and therefore stand no chance of winning the war against militancy.

Scholars and experts have identified the multiple causes of terrorism in general. It is therefore difficult single-out any one factor that is particularly significant in fuelling the spread of militancy and drawing disenfranchised individuals into violent radicalism. However, a different group of experts disagree with the narrative of there being root causes behind terrorism. From their point of view, the concept of root causes offers justification to terrorist organisations for their militant activities, while terrorism cannot be tolerated for whatever reason.

However, political instability, socio-economic marginalisation, injustice, sectarian and ethnic conflicts and the misinterpretation of religion are currently the major causes of militancy in Pakistan. Furthermore, poverty, unemployment and urbanisation that is accelerating faster than the rate at which resources and services can be made available are also leading causes of terrorism in Pakistan. In these circumstances, discontent and marginalised young men readily join militant organisations. Therefore, Pakistan needs to address these issues to

effectively control terrorism and stop young people from becoming part of radicalised groups.

As discussed above, the National Action Plan is Pakistan's counter-terrorism strategy, but the measures outlined in its 20 key points are insufficient. Specifically, the issues of developing and renovating the criminal justice system and strengthening the infrastructure of law enforcement agencies are not adequately addressed. However, before coming to a judgment on the effectiveness of Pakistan's counter-terrorism strategy, it is essential to first analyse the National Action Plan 2015, which will be examined in Chapter 4.

Chapter 4 – National Action Plan 2015

4.1 Introduction

After the Army Public School incident on the 16th December 2014, which was one of the most egregious terrorist attacks in Pakistan's history and a cause of widespread national outrage, the Prime Minister of Pakistan called the All Political Parties Conference (APC) and, after a lengthy discussion, announced a new counter-terrorism policy framework called the National Action Plan (NAP) 2015 in order to combat terrorism. As the result of the All Party Conference, the National Action Plan is therefore the manifestation of a national consensus that the government claims to be set on implementing.¹³⁶ The government aims to continue the implementation of the National Action Plan alongside other initiatives to eliminate extremism and terrorism from the country.¹³⁷

The National Action Plan's (NAP) implementation structure consists of the Federal Apex Committee, the National Counter-Terrorism Authority (NACTA) and the Provincial Apex Committees. This institutional mechanism is chaired by the Prime Minister, nine cabinet members, the Chief of Army Staff and intelligence chiefs. The National Action Plan's key points relate to reforms in existing anti-terrorism laws, the establishment of military courts to trial hardcore criminal cases, the implementation of the death sentence, the renovation of the criminal justice system, banning radical organisations from operating in the country and

¹³⁶ Ministry of Information, Government of Pakistan. http://infopak.gov.pk/InnerPage.aspx?Page_ID=46 (Accessed on November 14, 2019).

¹³⁷ Ministry of Information, Government of Pakistan. http://infopak.gov.pk/InnerPage.aspx?Page_ID=46 (Accessed on November 14, 2019).

preventing them from reorganizing under new names, clamping down on the financing of terrorism, FATA reforms, hate speech, madrasas reforms, etc. This thesis, however, is most concerned with determining the extent to which these points have been implemented to the letter throughout Pakistan. This research project will thus analyse whether Pakistan has achieved its counter-terrorism objectives as defined by the National Action Plan. Furthermore, this study intends to evaluate the implementation of the significant points of the National Action Plan and their impact on Pakistan's security situation. To achieve this goal, this research has relied on different sources, such as data from the National Action Counter-Terrorism Authority Pakistan (NACTA), the Counter-terrorism Department in Punjab (CTD), anti-terrorism courts, articles, interviews with experts and field research.

4.2 The 20-Points of the National Action Plan (NAP)¹³⁸

1. *Implementation of the death sentence for those convicted in cases of terrorism.*
2. *Special trial courts under the supervision of the Army. The duration of these courts will be two years.*
3. *Militant outfits and armed gangs will not be allowed to operate in the country.*
4. *NACTA, the anti-terrorism institution will be strengthened.*
5. *Strict action against the media; newspapers and magazines, that promote hatred, extremism, sectarianism and intolerance.*
6. *Choking financing for terrorists and terrorist organisations.*
7. *Ensuring against the re-emergence of proscribed organizations.*
8. *Establishing and deploying a dedicated counter-terrorism force.*
9. *Taking effective steps against religious persecution.*
10. *Registration and regulation of religious seminaries.*
11. *Ban on the glorification of terrorists and terrorist organizations through print and electronic media.*
12. *Administrative and development reforms in FATA with an immediate focus on the repatriation of IDPs.*
13. *The communication network of terrorists will be dismantled completely.*
14. *Measures against the abuse of the internet and social media for terrorism-related purposes.*
15. *Zero tolerance for militancy in Punjab.*
16. *Ongoing operation in Karachi will be taken to its logical end.*

¹³⁸ National Action Plan (NAP). (2015). National Counter-Terrorism Authority (NACTA). <https://nacta.gov.pk/nap-2014/> (Accessed on June 13, 2020).

17. *Baluchistan's government to be fully empowered for political reconciliation with complete ownership by all stakeholders.*
18. *Dealing firmly with sectarian terrorists.*
19. *Formulation of a comprehensive policy to deal with the issue of Afghan refugees, beginning with registration of all refugees.*
20. *Revamping and reforming the criminal justice system.*

4.3 Overview of the Implementation of the National Action Plan

Among the 20 points of the National Action Plan, eight stand out as being the most critical. These are: the lifting of the ban on the death penalty, the establishment of military courts, the ban on militant organisations and armed groups from operating in the country, the choking of terrorist financing and activist organisations, the registration of seminaries and other madrasa reforms, the restriction on media that promotes and glorifies terrorists and terrorist organizations, FATA reforms and reforms in the criminal justice system. However, the remaining 12 points are also very important measures that any responsible country must implement in order to fulfil its obligations to govern the state. The matter of the National Action Plan's implementation has been controversial. The government claims that it has been effectively implemented, but the judiciary and wider civil society are dissatisfied with this claim. Moreover, legal and security experts state that the most points of the National Action Plan have not been adequately addressed except for the establishment of the military courts and the lifting of the ban on the death penalty.

4.4 Points 1 and 2 of the National Action Plan

After inaugurating the National Action Plan, the Sharif government announced that two significant demands of the military would be actioned without delay: the lifting of the previous government's 2008 moratorium on the death penalty; and on the 6th January 2015, the passing of the 21st Constitutional Amendment alongside amendments to the Pakistan Army Act 1952, empowering special military courts to try suspects of terrorism. The special military tribunals were established in January 2015 with authorisation from Pakistan's parliament to operate for two years in order to conduct trials of hardcore criminals involved in terrorism and militant activities in the country. This was subsequently extended for a further two years in March 2017 by a 23rd Constitutional Amendment passed by the parliament. This extension period lapsed in March 2019.

After the 21st Constitutional Amendment in January 2015, the Government has established 11 military tribunals to hear "terrorism" related cases.

In 2015, when these military courts were first empowered to try terrorism-related cases. It was promised by the government that during these two years, the government would take the necessary steps to reform the criminal justice system and strengthen existing anti-terrorism institutions. Every state is bound to protect its people from terrorism and to investigate, prosecute and bring criminals to justice, but military tribunals are not a permanent solution.

According to the 23rd Constitutional Amendment¹³⁹ and amendments to the Pakistan Army Act 1952, the military tribunals have jurisdiction to try individuals, militant groups and organisations that use the name of religion or sect and engage in acts of militancy and terrorism, including:¹⁴⁰

- War against the state.
- Those involved in attacks against armed forces, law enforcement agencies and civil and military installations.
- Kidnapping for ransom.
- The storage or transportation of explosive materials.
- Using vehicles for terrorist attacks.
- Creating fear, terror or insecurity in Pakistan or being involved in any terrorist activities outside of the country.
- Involved in the financing of terrorism.

Furthermore, the military tribunals also have jurisdiction to try certain offences under the Anti-Terrorism Act 1997.

Provincial apex committees comprised of military and civilian officials are responsible for selecting the cases related to terrorism offences and refer them to the Ministry of the Interior for final approval before they are forwarded to the military courts.

¹³⁹ 23rd Constitutional Amendment. (March 2017). <https://pakistanconstitutionlaw.com/23rd-amendment-2017/> (Accessed on 13 October 2019).

¹⁴⁰ *Military Injustice in Pakistan*. (January 2019). Briefing Paper, International Commission of Jurists, p. 6. <https://www.icj.org/wp-content/uploads/2019/01/Pakistan-military-courts-Advocacy-Analysis-brief-2018-ENG.pdf> (Accessed on December 17, 2019).

Between January 2015 and January 2019, military courts have handed down death sentences on 345 criminals and 56 of those convicted have been executed. The remaining 289 executions have been suspended because their appeals are pending in the higher courts. The army media outlet, Inter-Services Public Relations (ISPR), announced that 296 people were given different terms of imprisonment ranging from 5 years to life sentences and five of the accused were acquitted.¹⁴¹

Table 1: Cases decided by military courts by Jan 2019

Number of trials concluded	646
Convictions	641
Death sentences	345
Imprisonment sentences	296
Acquittals	05
Number of convicts executed	56

Source: International Commission of Jurists, "Military Injustice in Pakistan" Jan 2019

According to certain confidential military sources in Pakistan, since the establishment of the military tribunals in January 2015 up to the time of writing, death sentences have been given by the military courts to terrorists belonging to various militant organisations including: 97 of Tahreek-e-Taliban Pakistan (TTP), 17 Islamic Movement of Uzbekistan (IMU), 13 Al-Qaida, 14 Sipa-e-Sahaba, 9 Lashkar-e-Jhangvi (LeJ), 6 Lashkar-e-Islam, 3 Jaisha-e-Muhammad and 4 linked to the Jandullah terrorist group. The remaining 182 have ties with different proscribed militant organisations. Al-Qaida and its affiliated militant groups, such as the Islamic Movement of Uzbekistan and Jandullah, switched their allegiance to Daesh in 2014 but later turned back, while Lashkar-e-Islam is an offshoot of

¹⁴¹ Gul, Ayaz. (January 16, 2019). *Watchdog: Pakistan's Military Courts Disaster for Human Rights*. South and Central Asia. <https://www.voanews.com/a/watchdog-pakistan-s-military-courts-disaster-for-human-rights/4745687.html> (Accessed on August 13, 2019).

TTP. These militant groups have been involved in several terrorism incidents in Pakistan. A brief discussion about these groups is conducted in point 3 of the National Action Plan.

It is worth noting that of the 646 cases that have been ruled upon by the military courts, not all of the judgments are available to the public. There is only one source of information in this regard; the media statements which are provided by the Inter-Services Public Relations (ISPR), the military's public relations office. Families of the convicted people claim that the military courts have denied their requests for the copies of the written judgments.¹⁴²

The International Commission of Jurists (ICJ) said that the military justice system in Pakistan is a “glaring surrender” of human rights and fundamental freedoms. The ICJ cited serious fair trials violations in the operation of military courts, including denial of the right to counsel of choice; failure to disclose the charges against the accused; denial of a public hearing; a very high number of convictions, more than 97 percent, based on “confession” without adequate safeguards against torture and ill-treatment.¹⁴³

The judgments passed by the military tribunals cannot be challenged in the civilian courts according to law. However, the petitioners can file an appeal against any judgment or sentence given by the military court in the high courts or Supreme Court of Pakistan. In October 2018, the Peshawar High Court dismissed

¹⁴² See, for example, Lahore High Court, Writ Petition No. 5 of 2016 and Peshawar High Court, Writ Petition No. 2979 of 2015. See also Hasnaat Malik, *Top court stays execution of three military court convicts*. *Express Tribune*, 10 May 2016, accessed at: <http://tribune.com.pk/story/1100489/top-court-stays-execution-of-three-military-court-convicts/> and “SC to take up appeals against military courts’ verdicts”, *Dawn News*, 25 February 2016, accessed at: <http://www.dawn.com/news/1241804>

¹⁴³ International Commission of Jurists. (January 2019). *Military Injustice in Pakistan*. Briefing Paper. <https://www.icj.org/wp-content/uploads/2019/01/Pakistan-military-courts-Advocacy-Analysis-brief-2018-ENG.pdf>. (Accessed on March 4, 2019).

the sentences of 70 people who were tried by the military courts in terrorism-related cases.¹⁴⁴

The court passed an order to release all 70-convicted people because it concluded that proceedings in the military courts were based on bad faith, and no reliable evidence was collected against them. The High Court further observed that one solitary junior lawyer with only five-years of experience was made available as a defence counsel to all accused people, meaning that they had no right to their own private counsel. The primary source of evidence against the accused people was based on “confessional statements.” The Government has subsequently challenged the judgment passed by the Peshawar High Court in the Supreme Court of Pakistan which, at the time of writing, is still pending with all of those convicted remaining in jail in the meantime.

Article 10-A of the Constitution of Pakistan 1973 guarantees that *“the right to a fair trial and due process is a fundamental constitutional right to every citizen.”*¹⁴⁵ As well as being a clear violation of this provision, the military courts in Pakistan and their proceedings are also in clear violation of international laws and treaties, such as the International Covenant on Civil and Political Rights (ICCPR) which was also ratified by Pakistan. Article 14 of the International Covenant on Civil and Political Rights (ICCPR) guarantees that *“everyone shall be entitled to a fair and*

¹⁴⁴ Peshawar High Court, Writ Petition 536-P of 2018. (18 October 2018).

¹⁴⁵ Article 10-A. *Constitution of the Islamic Republic of Pakistan 1973.*

<http://www.pakistani.org/pakistan/constitution/part2.ch1.html> (Accessed on November 14, 2019).

public hearing by a competent, independent, and impartial tribunal established by law."¹⁴⁶

Furthermore, the United Nations Human Rights Committee has made it clear that the right to a fair trial before an independent and impartial court under Article 14 of the ICCPR applies to all courts, whether ordinary or specialized, civilian or military.¹⁴⁷ As Asma Jahangir, a prominent lawyer and human rights activist, stated: *"it is the need of the hour to strengthen civil courts by strengthening bar associations in the country as military courts are no solution to combat terrorism [sic]."*¹⁴⁸

The establishment of military courts undermines the separation of judicial power and breaches the basic principle of the right to a fair trial, which is guaranteed by the Constitution of Pakistan 1973. The legal community, civil society and political parties in Pakistan have stated their concern on the proceedings in the military courts. Therefore, given these concerns, it is clear that these courts cannot be a long-term feature of Pakistan's counter-terrorism strategy. Indeed, their failings demonstrate the need for the country's regular criminal justice system to be reinforced.

¹⁴⁶ Article 14, International Covenant on Civil and Political Rights (ICCPR), Criminal Justice, UN Human Rights Committee. <https://www.refworld.org/docid/478b2b2f2.html> (Accessed on October 14, 2019).

¹⁴⁷ *Human Rights Committee General Comment 32, "Article 14: Right to Equality before courts and tribunals and to a fair trial,"* (General Comment 32) UN Doc. CCPR/C/GC/32, para 22.

¹⁴⁸ Asma. Jahangir. (February 19, 2017). *Dawn News*. http://epaper.dawn.com/print-imageview.php?StoryText=19_02_2017_002_001 (Accessed on Feb 20, 2019).

Finally, in regard to the extent to which these points of the National Action Plan have been implemented, it is clear that these have been effectively brought to fruition. However, after the above discussion it is also evident that they have not been implemented in good faith as they have resulted in multiple violations of the basic principles of the rule of law and have failed to deliver fair, independent and impartial trials.

4.5 Point 3 of the NAP

Point 3 of the National Action Plan states that *“militant outfits and armed organisations will not be allowed to operate in the country.”*

In this section, an overview of five militant and terrorist organisations active in Pakistan will be provided, Jaisha-e-Muhammad (Je), Lashkar-e-Taiba (LeT), Lashkar-e-Jangvi (LeJ), Tahrik-e- Taliban Pakistan (TTP) and the Haqqani Network. This short analysis explores the accusation, despite claims to the contrary, that the military establishment, which has almost full control over national security and anti-terrorism policy in the country, still distinguishes between “bad” jihadi groups, i.e., those targeting the security forces, and “good” jihadi groups, mainly those perceived to promote Pakistan’s strategic objectives in India and Afghanistan. These latter groups are not carrying out terrorist activities inside Pakistan.

Anti-India organisations, such as Jamaat-ud-Dawa (JuD), the renamed version of the banned Lashkar-e-Tayyaba (LeT), and Jaisha-e-Muhammad (JeM) had expanded their militant activities through so-called social welfare fronts. Armed Afghan groups backed by the Pakistan government, such as the Haqqani Network, have not been targeted in ongoing operations (Operation Zarb-e-Azb, and Operation Radu-ul-Fasad) in the Federally Administered Tribal Areas (FATA). Instead, the Haqqanis, such as the LeT/JD, have been kept off Pakistan’s list of terrorist groups.¹⁴⁹ But Pakistan is taking action against “bad”

¹⁴⁹ International CRISIS GROUP. (2017). *Revisiting Counter-terrorism Strategies in Pakistan: Opportunity and Pitfalls*. (www.crisisgroup.org). (Accessed on Dec 16, 2019).

jihadi groups like Lashkar-e-Jhangvi (LeJ) and Tahrik-e-Taliban Pakistan (TTP). It is time for Pakistan to end this policy towards armed militant organisations, either in Pakistan or in neighbouring countries.

To aid in the analysis of the landscape of violent extremist organisations (VEO) in Pakistan, already-existing militant groups and jihadist organisations can be sorted into the six following categories:

- 1) Jihadist organisations focused on the Kashmir conflict between India and Pakistan, including Hizbul Mujahedeen, Jashe-e-Muhammad (JeM) and Lashkar-e-Taiba (LeT).
- 2) Sectarian militant groups, including Sipah-e Sahaba Pakistan (SSP), Lashkar-e-Jhangvi (LeJ) and Sipha-e Muhammad.
- 3) Tehrik-e-Taliban Pakistan (TTP) focuses on the creation of an Islamic State in Pakistan and the implementation of Shariah Laws.
- 4) The Afghan Taliban, the primary movement in Afghanistan for the establishment of an Islamic State, enforcement of Shariah Laws, and ejection of external forces.
- 5) Al-Qaida and its affiliated militant groups, such as the Islamic Movement of Uzbekistan (IMU) and Jandullah, both of whom switched their allegiance to Daesh in 2014 but later turned back.
- 6) Regional and tribal jihadist groups, such as Punjabi Taliban and Haqqani network.

In Pakistan, different militant organizations and jihadist groups have different objectives and motives.¹⁵⁰ Jihadi groups carrying out militant activities in India and Kashmir have always been tolerated by Pakistani authorities as they don't target Pakistani forces and civilians. The Afghan Taliban is preoccupied by events in Afghanistan and not interested in global jihad. At the same time, the Pakistani Taliban are primarily interested in Pakistan, in gaining power within an Islamic State and in implementing of Shariah Laws. The Haqqani network focuses on Afghanistan, operating very closely with the Afghan Taliban, and has strong links with Pakistan's intelligence agency, ISI.

The Government of Pakistan has promised in the National Action Plan that the state will not allow any terrorist, Jihadi, militant or armed groups or organisations to operate inside, or indeed outside, Pakistan, but this point is yet to have been completely implemented at the time of writing. Since 9/11, Pakistan has added 71 organisations to the Ministry of the Interior's list of proscribed groups under Section 11-B-(1) Schedule-1. ATA 1997.¹⁵¹

The Minister of the State for the Interior, Shehryar Afridi, declared in a statement to the media that operations against banned and proscribed militant organisations and armed groups will continue until the objectives, as outlined by the National Action Plan, have been achieved.¹⁵² The question is whether or not Pakistan's law enforcement authorities are taking the necessary measures against

¹⁵⁰ Mufti, Mariam. (June 2012). *Religion and Militancy in Pakistan and Afghanistan*. A Report on the CSIS Program on Crisis, Conflict, and Cooperation. Centre for Strategic & International Studies.

¹⁵¹ National Action Counter-Terrorism Authority (NACTA), <https://nacta.gov.pk/wp-content/uploads/2017/08/Proscribed-OrganizationEng.pdf> (Accessed on October 10, 2019).

¹⁵² *Nation Newspaper* (2019), <https://nation.com.pk/06-Mar-2019/operation-against-proscribed-organisations-to-continue-till-achievement-of-objectives-afridi> (Accessed on Nov 19, 2019).

proscribed organizations including Jaish-e-Muhammad, Jamaatud Dawah (JuD), Falah-i-Insaniat Foundation (FIF) and other banned organisations?

By the first quarter of 2019, the law enforcement agencies in Pakistan arrested more than 100 activists, took control of 200 madrasas and seized other assets belonging to banned organisations. The Punjab Government seized control of 160 madrasas, 32 schools, 4 hospitals, 180 ambulances and 155 dispensaries that were assets of banned organisations. A senior official announced to the media that law enforcement agencies had gained control of two Jaish-e-Muhammad madrassas and 46 properties belonging to the Jamaat Dawah (JuD) and Falah-i-Insaniat Foundation (FIF) in Faisalabad, Punjab province.

In the province of Sindh, law enforcement agencies conducted operations against banned organisations, resulting in the acquisition of over 56 properties, including madrassas and schools. Such operations are ongoing in the province of Khyber Pakhtunkhwa and Baluchistan and have already led to the seizure of dozens of facilities which were previously controlled by proscribed organisations.¹⁵³

¹⁵³ *Nationwide crackdown on banned outfits intensifies.* (March 7, 2019). *Dawn News.* <file:///Users/muhammadmahmood/Desktop/Nationwide%20crackdown%20on%20banned%20outfits%20intensifies%20-%20Pakistan%20-%20DAWN.COM.webarchive>. (Accessed: May 1, 2019)

It is possible that Pakistan has decided to take decisive action against banned and proscribed militant organisations in order to get Pakistan out of the Financial Action Task Force's grey list¹⁵⁴ which initially fell onto after having failed to adequately control terror financing. However, without an adequately designed, effective and comprehensive counter-terrorism strategy, Pakistan is far from achieving any significant success.

¹⁵⁴ Financial Action Task Force (FATF), is the international body that deals with the issues of terror financing. <https://www.fatf-gafi.org> (Accessed on October 4, 2020).

4.5.1 Jaish-e-Muhammad (JeM)

On the 1st May 2019, Maulana Masood Azhar, leader of Jaish-e-Muhammad (JeM), was declared to be a terrorist by the United Nations Security Council under Resolution 2368 (2017),¹⁵⁵ proposed by the US, Britain, and France. After this Resolution, Maulana Masood Azhar had his assets and bank accounts frozen and became the subject of a travel ban.

Jaish-e-Muhammad is a Sunni, Pakistan-based militant group which was previously supported by state institutions. JeM focuses on the Kashmir conflict between India and Pakistan, the implementation of Shariah Laws and the ejection of external forces from Afghanistan. JeM was established in January 2000 by Maulana Masood Azhar, who was a part of Harkat-ul-Mujahadeen (HuM), with the support of Inter-Service Intelligence Agency (ISI, Pakistan's intelligence agency), Osama Bin Laden and the Afghan Taliban. According to the European Foundation for South Asian Studies, JeM received funding from Inter-Services Intelligence Agency (ISI), the Afghan Taliban and several other Sunni militant groups in Pakistan. JeM consists of several hundred militant supporters.¹⁵⁶ The primary aims of this group are to oppose the Indian administration in Kashmir and unite it with Pakistan, as well as the implementation of Shariah laws in the country. JeM promotes Pakistan's objectives in Indian control Kashmir, which provides a possible explanation for why Pakistan tolerates this group. After 9/11, in December 2001, the United States declared JeM to be a foreign terrorist

¹⁵⁵ Muhammad Masood Azhar Alvi. United Nations Security Council, Resolution 2368. (2017). May 1, 2019.

¹⁵⁶ *Pakistan Army and Terrorism; an unholy alliance*. (August 2017). European Foundation for South Asian Studies (EFAS). <file:///Users/muhammadmahmood/Desktop/Pakistan%20Army%20and%20Terrorism%3B%20an%20unholy%20alliance%20-%20EFSAS.webarchive> (Accessed on October 3, 2020).

organisation and Pakistan formally banned JeM in 2002. However, Pakistan continued to serve as a safe haven for certain regionally focused militant groups, such as Haqqani network, Lashkar-e-Taiba and Jaish-e-Muhammad from which they could operate.¹⁵⁷ In February 2019, JeM claimed responsibility for a deadly bomb attack in Indian Administrated Kashmir which killed 40 troops.¹⁵⁸ This incident brought India and Pakistan to the brink of war.

In the early 2000s, JeM carried out multiple deadly attacks in India, Afghanistan, and Pakistan. In October 2001, JeM attacked the assembly building in Indian Administrated Kashmir, killing 30 people¹⁵⁹ and, in December of the same year, JeM attacked the Indian parliament in collaboration with Lashkar-e-Taiba (LeT), killing 14 people.¹⁶⁰ JeM was also involved in the beheading of American journalist, Daniel Pearl, and an attempted suicide attack against the president of Pakistan, General Pervez Musharraf, in 2002.¹⁶¹ JeM was closely linked with Al-Rashid Trust and have shared office spaces across Pakistan. The United States banned Al-Rashid Trust in September 2001 on the grounds that it was a financial facilitator of Al-Qaida and the Taliban.¹⁶² The Al-Rashid Trust subsequently

¹⁵⁷ *Country Report on Terrorism 2019: Pakistan*. (June 24, 2020). Bureau of Counterterrorism, U.S. Department of State. <https://www.state.gov/reports/country-reports-on-terrorism-2019/pakistan/> (Accessed on October 4, 2020).

¹⁵⁸ *Pulwama attack: What is militant group Jaish-e-Mohammad*. (February 15, 2019). *BBC News*. <https://www.bbc.co.uk/news/world-asia-47249982> (Accessed on 17 September 2019).

¹⁵⁹ *Militants attacks Kashmir assembly*. (October 1, 2001). *BBC News*. http://news.bbc.co.uk/1/hi/world/south_asia/1574225.stm (Accessed on September 18, 2019).

¹⁶⁰ *India arrests 4 over parliament attack*. (December 15, 2001). *CNN* <http://edition.cnn.com/2001/WORLD/asiapcf/south/12/14/india.suspect/> (Accessed on September 18, 2019).

¹⁶¹ Styszynski, Dr Marcin. (December 2014). *Still a Force to Reckon with: Jaish-e-Mohammad*. Foreign Analysis, No. 13/ December 2014. <https://cf2r.org/foreign/still-a-force-to-reckon-with-jaish-e-mohammad-2/> (Accessed on September 15, 2019).

¹⁶² *Al-Rashid Trust: Mapping Militant Organizations*. (July 19, 2012). <https://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/117> (Accessed on September 30, 2020).

changed its name to the Aid Organisation of the Ulema (AOU). The United States thus declared AOU to be a financier and facilitator of terrorism in April 2002.¹⁶³

The Foreign Minister of Pakistan, Shah Mahmood Qureshi, stated in an interview to CNN that *“Pakistani authorities know that Maluna Masood Azhar is in Pakistan, but he is very unwell.”* In response to the question; ‘why does Pakistan not just arrest him?’, Qureshi said that India needs to provide reliable evidence to convince the Pakistani judiciary, *“there is a legal process to arrest or convict any person in Pakistan.”* On March 5, 2019, Mr. Qurashi said that Pakistan is ready to take action against the assets and bank accounts of militant groups in the country.¹⁶⁴

However, at the time of writing, not a single member of Jaish-e-Muhammad has been prosecuted and no concrete measures have been taken against this militant organisation. According to the U.S. Bureau of Counterterrorism Report 2019, Pakistan has made no effort to prosecute terrorist leaders, such as the founder of JeM, Maulana Masood Azhar, who continues to reside in Pakistan under the protection of the state, despite government denials.¹⁶⁵

¹⁶³ Designation of 10 Terrorist Financiers Fact Sheet. (April 19, 2002). U.S. Department of the Treasury. <https://www.treasury.gov/press-center/press-releases/Pages/po3014.aspx> (Accessed on October 2, 2020).

¹⁶⁴ CNN. (March 5, 2019). <https://edition.cnn.com/videos/tv/2019/02/28/amanpour-shah-mehmood-qureshi.cnn>, <https://edition.cnn.com/2019/03/05/asia/pakistan-militant-asset-seizure-intl/index.html> (Accessed on Oct 10, 2019).

¹⁶⁵ *Country Report on Terrorism 2019: Pakistan*. (2019). Bureau of Counterterrorism, U.S. Department of State. <https://www.state.gov/reports/country-reports-on-terrorism-2019/pakistan/> (Accessed on October 4, 2020).

4.5.2 Lashkar-e-Taiba (LeT)

Lashkar-e-Taiba (LeT) is a Sunni militant organisation, established in 1987 in Lahore, Punjab province, Pakistan. LeT aims to oppose Indian control in Kashmir from within both Kashmir itself and India. The leader of LeT, Hafiz Muhammad Saeed, considers India, Israel and the United States to be his biggest enemies. LeT is firmly against attacks on any Muslims and against the Pakistani state. Pakistan has always tolerated this organisation, with the establishment considering it to be an asset.

However, in 2001 this group was designated as Foreign Terrorist Organisation by the United States.¹⁶⁶ The former president of Pakistan, Pervez Musharraf, banned Lashkar-e-Taiba in January 2002.¹⁶⁷ However, in spite of this ban, LeT has a vast network in the country, including training camps, financiers, political and religious rallies and recruitment operations. This group's sub-organisation, Jumata-ul-Dawa (JuD), has an extensive social service infrastructure, running schools, an ambulance service, blood banks and mobile clinics in Pakistan. JuD regularly publishes an Urdu language monthly journal and other publications in English and Arabic. LeT and JuD, receive donations and funds from Saudi Arabia and other Gulf states.¹⁶⁸

¹⁶⁶ Source: [South Asia Terrorism Portal](#), [Stanford University](#), [Long War Journal](#), [Washington Post](#), [CNN](#) https://www.satp.org/satporgtp/countries/india/states/jandk/terrorist_outfits/lashkar_e_toiba.htm (Accessed on Oct 12, 2019).

¹⁶⁷ Profile: *Lashkar-e-Taiba*. (April 10, 2015). *BBC News*. <https://www.bbc.co.uk/news/world-asia-32255076> (Accessed on March 15, 2020).

¹⁶⁸ Sources: [U.S. Department of State](#), [South Asia Terrorism Portal](#), [Carnegie Endowment for International Peace](#), [Long War Journal](#) <https://www.state.gov/j/ct/rls/crt/2016/272233.htm> https://www.satp.org/satporgtp/countries/india/states/jandk/terrorist_outfits/lashkar_e_toiba.htm <https://carnegieendowment.org/2013/06/12/lashkar-e-taiba-capable-of-threatening-u.s.-homeland-pub-52081> <https://www.longwarjournal.org/archives/2016/07/pakistan-friend-or-foe-in-the-fight-against-terrorism.php> (Accessed on December 5, 2019)

The United States has determined them to be a Foreign Terrorist Organisation and holds them responsible for terrorist attacks in Mumbai in November 2008 that killed 168 people.¹⁶⁹

In the light of the Financial Action Task Force's (FATF) recommendations, Pakistan is taking action against Lashkar-e-Taiba and has seized its assets, including religious seminaries, schools, hospitals, etc. However, significant criminal proceedings have not been carried out against the members of Lashkar-e-Taiba. The leader of the organisation, Hafiz Muhammad Saeed, was arrested in July 2019, but there has not yet been sufficient progress in his court trial at the time of writing. In other words, his arrest could be considered to be more of a "protective custody" aimed at satisfying the FATF and the international community. It is therefore a failure of Pakistan's commitment to take effective steps against proscribed organisations under the National Action Plan.

¹⁶⁹ Source: Foreign Policy. (November 25, 2017). <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-lashkar-e-tayyiba-let-leader/> (Accessed on Feb 3, 2019).

4.5.3 Lashkar-e-Jhangvi (LeJ)

Founded in 1996, Lashkar-e-Jhangvi (LeJ) is a Sunni militant organisation and an offshoot of Sipa-e-Sahaba Pakistan (SSP) (SSP was founded in the author's home district of Faisalabad). LeJ is a sectarian militant group that strives for the creation of an Islamic State in Pakistan and the implementation of Shariah Laws. LeJ's leadership consists of jihadis who participated in Afghan Jihad against Soviet forces during the period of 1979 to 1989. LeJ mainly targeted the Shia community, especially the Hazara Shia community in Quetta, Baluchistan, and, in recent years, it has carried out several deadly attacks and target killings in Pakistan and Afghanistan.¹⁷⁰ LeJ has well-coordinated links with other Pakistan-based militant organisations, including Jaisha-e-Muhammad and Harakat-ul-Mujahideen (HuM). This group was labelled as a Foreign Terrorist Organisation by the United States in 2003.¹⁷¹

Lashkar-e-Jhangvi is a terrorist organization that has challenged Pakistan's government and security forces on multiple occasions. Pakistan's military establishment has always considered Lashkar-e-Jhangvi to be a "Bad" Jihadi organisation. This militant organization was a major target of security forces during Operation Zarb-e-Azb and Operation Radd-ul-Fasaad.¹⁷² Therefore, it is evident that Pakistan is taking significant measures against Lashkar-e-Jhangvi.

¹⁷⁰ Roggio, Bill. (May 6, 2015). FDD's Long War Journal. <https://www.longwarjournal.org/archives/2015/05/3-jihadists-groups-merge-with-movement-of-the-taliban-in-pakistan.php> (Accessed on Jan 10, 2018).

¹⁷¹ Source: South Asia Terrorism Portal. <https://www.satp.org/satporgtp/countries/pakistan/terroristoutfits/lej.htm> (Accessed on Sep 13, 2019).

¹⁷² Pakistan Army launches 'Operation Radd-ul-Fasaad' across the country. (June 21, 2017). Dawn News. <https://www.dawn.com/news/1316332> (Accessed on July 13, 2019).

4.5.4 Tehrik-e-Taliban Pakistan (TTP)

Tehrik-e-Taliban Pakistan (TTP) is a militant organisation, founded in 2007 in the South Waziristan agency of the FATA in Pakistan. TTP's primary aim is the establishment of an Islamic State and the enforcement of Islamic Laws in Pakistan. Many individuals and splintered groups are part of TTP. According to one source, TTP has approximately 30,000 fighters who have received training in Pakistan and Afghanistan from Al-Qaida and the Afghan Taliban. This organisation has been involved in a large-scale kidnapping for ransom, targeted killings and deadly suicide attacks on armed forces, law enforcement, civilians and on infrastructure.

This group support the Afghan Taliban and share its ideology and objectives. However, unlike the Afghan Taliban which predominantly targets the US-led coalition forces in Afghanistan, their military bases and the US supported Afghan Government, the Tehrik-e-Taliban Pakistan focuses on Pakistan's government and its security forces. The Government of Pakistan banned TTP in August 2008, the United States declared it to be a terrorist organization in 2010 and it was sanctioned by the United Nations in 2011.¹⁷³

Since 2007, the TTP has brutally attacked Pakistani forces, law enforcement, civilians, infrastructure and, especially, foreign installations with the aim of conquering society with their own value system. Pakistani security forces have

¹⁷³ Sources: [South Asia Terrorism Portal](https://www.satp.org/satporgtp/countries/pakistan/terroristoutfits/ttp.htm), [Stanford University](https://cisac.fsi.stanford.edu/mappingmilitants/profiles/tehr-i-taliban-pakistan), [CNN](https://www.cnn.com/2016/01/20/asia/pakistan-taliban-profile-2016/index.html), [U.S. Department of State](https://www.state.gov/j/ct/rls/other/ddsdsdes/143210.htm)
<https://www.satp.org/satporgtp/countries/pakistan/terroristoutfits/ttp.htm>
<https://cisac.fsi.stanford.edu/mappingmilitants/profiles/tehr-i-taliban-pakistan>
<https://www.cnn.com/2016/01/20/asia/pakistan-taliban-profile-2016/index.html>
<https://www.state.gov/j/ct/rls/other/ddsdsdes/143210.htm> (Accessed on Sep 16, 2019).

launched several military operations, including Sawat Operation in 2009, Operation Zarb-e-Azb in 2015 and Operation Radd-ul-Fasaad in 2017. As a result of Operation Zarb-e-Azb, TTP and affiliated militant groups fled to neighbouring Afghanistan and continue to carry out attacks from there.

4.5.5 Haqqani Network

Haqqani Network is a Sunni militant organisation, founded in Afghanistan in 1970. Currently, this organization operates in North Waziristan, Quetta, Baluchistan and in South-Eastern Afghanistan. Darul Uloom Jamia Haqqania Akora Khattak, a prominent religious seminary in the province of KPK, Pakistan, was where the Haqqani Network and the Taliban were conceived. Indeed, the founder and the leader of the Haqqani Network, Siraj-ud-Din Haqqani, studied at Darul Uloom. Their primary objective in Afghanistan is the establishment of an Islamic State, the enforcement of Shariah Laws and the ejection of external forces from Afghanistan. The Haqqani Network operates under the umbrella of the Afghan Taliban and has very close links to Al-Qaida, yet this organisation has its own, independent structure.¹⁷⁴

The U.S. and the Afghan Government accuse Pakistan of providing weapons, training, funding and shelter to the Haqqani Network and the Afghan Taliban's leadership in Pakistan, which is substantiated by the fact that these militant groups launch attacks from Pakistan on the Afghan and the U.S. Coalition forces in Afghanistan. According to the U.S. officials, as of February 2016, "*Sirajuddin Haqqani, the Amir (leader) of [the] Haqqani Network was freely moved in Pakistan [sic.], and frequently visited [the] Inter-Service Intelligence (ISI) headquarters in Rawalpindi, Pakistan.*"¹⁷⁵ The United States and other International Forces also

¹⁷⁴ Jeffery A, Dressler. (October 2010). *The Haqqani Network*. From Pakistan to Afghanistan, Afghanistan Report 6, Institute for the Study of War, Washington, DC, pp. 5-33.

¹⁷⁵ Roggio, Bill. (July 12, 2016). *Pakistan: Friend or Foe in Fight Against Terrorism*. FDD's Long War Journal. <https://www.longwarjournal.org/archives/2016/07/pakistan-friend-or-foe-in-the-fight-against-terrorism.php>. Vanda Felbab-Brown. (January 5, 2018). *Why Pakistan support terrorist groups, and why the U.S. finds it so hard to induce change*. BROOKINGS. <https://www.brookings.edu/blog/order-from-chaos/2018/01/05/why-pakistan-supports-terrorist-groups-and-why-the-us-finds-it-so-hard-to-induce-change/> (Accessed Feb 4, 19).

accuse Pakistan of distinguishing between what it deems to be ‘un-acceptable’ and ‘acceptable’ militant groups (un-acceptable militant groups include Tahreek-e-Taliban Pakistan, Lashkar-e-Jhangvi and their affiliated groups, while acceptable groups include the Haqqani Network and the Afghan Taliban). However, Pakistan has categorically denied this accusation and has claimed that Pakistan has launched extensive operations against them, such as Operation Raha Najaat in 2009 in South Waziristan, Operation Zarb-e-Azab 2014 in North Waziristan and surrounding Tribal areas and Operation Radd-ul-Fassad in 2017 in urban areas of the country against armed, militant and terrorist organisations. Major General Asif Ghafoor, DG Intern Services Public Relations (ISPR), stated after these extensive military and intelligence-based operations (IBO’s) that *“today we can say with conviction, evidence, and logic that there is no organised terrorist infrastructure present in Pakistan.”*¹⁷⁶

Pakistan is also helping to convince the Haqqani Network and the Afghan Taliban to enter into peace talks with the U.S. and the Afghan Governments in order to build peace and prosperity in Afghanistan. At the time of writing, this dialogue process is continuing in Doha, Qatar. The Haqqani Network was designated as a foreign terrorist group by the U.S. in 2012.¹⁷⁷

At the time of writing, the actions taken against militant groups in Pakistan are largely a result of pressure from the international community and the Financial

¹⁷⁶ Ghafoor, Asif. (April 29, 2019). *Gulf News Asia*. <https://gulfnews.com/world/asia/pakistan/naya-pakistan-government-to-take-control-of-30000-madrassas-across-country-1.1556545286343> (Accessed on July 20, 2019).

¹⁷⁷ Source: Stanford University. https://cisac.fsi.stanford.edu/mappingmilitants/profiles/haqqani-network#highlight_text_9403 (Accessed on July 16, 2019).

Action Task Force (FATF). The FATF warned that if Pakistan does not implement strict and irreversible measures against the financing of terrorism and banned militant organisations by June 2020, the FATF will take serious action. The FATF named banned terrorist organisations, such as Lashkar-e-Taiba (LeT), Jaisha-e-Muhammad (JeM), the Falaha-i-Insaniat Foundation, Lashkar-e-Jhangvi (LeJ), Tahrik-e-Taliban Pakistan (TTP), Al-Qaida, the Haqqani Network and Daesh as their primary concerns.

Bill Roggio, the editor of the *Foundation for Defence of Democracies Long War Journal*, stated that many militant organisations are still active in Pakistan and are known to the state. It would appear that Pakistan only takes them under protective custody in response to mounting international pressure.¹⁷⁸

Pakistan is facing pressure from global powers to implement visible and irreversible measures against terrorist organizations carrying out militant activities in India and Afghanistan. The Prime Minister of Pakistan has promised that his government would no longer tolerate such outfits operating within its jurisdiction.¹⁷⁹

The military establishment claim that they have gained control of the security situation in the country, but independent sources argue that terrorist groups are still functioning in Pakistan. However, the evidence presented in this section

¹⁷⁸ Toby, Dershowitz., & Serena, Frechter. (April 17, 2019). *FATF's Leniency with Iran could create a precedent for Pakistan*. Foundation for Defense of Democracies (FDD).

¹⁷⁹ *Why Pakistan must crackdown both 'good' and 'bad' Taliban*. (March 5, 2019). *Gulf News*. <https://gulfnews.com/world/asia/pakistan/why-pakistan-must-crackdown-both-good-and-bad-taliban-1.62471780> (Accessed on October 5, 2019).

demonstrates that Pakistan is taking some necessary measures to implement the third point of the National Action Plan, regarding militant organisations and armed groups operating in or outside of the country. However, at the time of writing, these measures are evidently not being implemented to their full extent and, in certain cases, are being enforced selectively.

4.6 Point 6 of the National Action Plan

Point 6 of the National Action Plan: choking financing for terrorists and terrorist organisations.

Choking terrorist financing has been recognized an essential component of the fight against terrorism in the National Action Plan 2015. Beforehand, several laws were enacted in Pakistan's legal system which address money laundering and terror financing, such as Anti-Terrorism Act 1997 and Anti-Money Laundering Act 2010.

Militant groups and terrorist organisations have traditionally collected funds from different sources in Pakistan, including donations, fundraising camps and rallies, charities, fundraising for social welfare purposes, funds for the Kashmir cause and funds for the Afghan jihad. Further revenue sources include illegal activities, such as kidnappings for ransom, bank robberies, smuggling, drugs; and funding from international sympathisers and supportive states, especially Saudi Arabia and other Gulf countries.

During the Soviet-Afghan war, militant organisations received substantial funding from legitimate international sponsors and supporters. At that time, there was no restriction on fundraising, even some shops had charity boxes for these organisations. After the Soviet-Afghan war, international actors withdrew their financial support.

In terms of funding after the Soviet-Afghan war, these groups have turned to innovative revenue streams. Firstly, many of small business use the Hawala system, which is very popular and common in the region, especially in Pakistan, Afghanistan, Iran, Saudi Arabia and the wider Middle East for sending and receiving money. This Hawala system, which is an informal money transfer system, provides an opportunity for these organisations and groups to transfer or receive money without the fear of detection. Furthermore, Pakistani society religiously believes in charity and donations, and with only 15% of the total population using the banking system, people are reliant on cash transactions.¹⁸⁰ Therefore, people in Pakistan generally give money for the Kashmir cause, the Afghan jihad and other social welfare purposes to these organisations in the form of charitable cash donations. Indeed, sections of the Pakistani community, especially followers of religious political parties, believe that these groups are soldiers of Islam and that they are carrying out righteous jihad in Kashmir and Afghanistan.

After 9/11 in 2001, the situation changed completely, with almost every country bound by new national and international laws that have imposed sanctions and restrictions on funding sources for individuals involved in terrorism, armed militant groups and terrorist organisations.

However, in Pakistan, militant outfits such as Jumata-ul-Dawa, Lashkar-e-Taiba and Jaisha-e-Muhammad took responsibility for the collection of their own funding and were offered protection by the state and regional intelligence officers

¹⁸⁰ Source: National Action Counter-Terrorism Authority (NACTA), "*Terror Financing in Pakistan.*" <https://nacta.gov.pk/research-completed> (Accessed on June 10, 2019).

throughout the 1990s.¹⁸¹ After the U.S. invasion in Afghanistan against the Taliban regime and Al-Qaida in 2001, militancy sharply increased. These militant groups attacked Pakistani forces, law enforcement, civilians, infrastructure and, especially, foreign installations. Because Pakistan was allied with the U.S. in the 'War on Terror', providing U.S. and coalition forces with logistical and intelligence support, militant organisations targeted Pakistan's security forces by way of revenge. These militant groups, such as al-Qaida, the Taliban, Lashkar-e-Jhangvi, the Islamic Movement of Uzbekistan also operated on Pakistani soil in order to target Afghan and U.S. coalition forces, as well as militant activities in Pakistan.

Starving terrorist organisations of their finances is therefore one of the most vital points of the National Action Plan in countering terrorism in Pakistan. International actors, including some international institutions, also expressed their grave concerns over terrorist financing in Pakistan and emphasised the need for the government to implement strict measures against banned militant outfits. The Financial Action Task Force (FATF) is a prominent international body, established by the G7, that sets the criteria for money laundering and deals with the issues of terrorist financing. The Financial Action Task Force has placed Pakistan on its terrorist financing watch-list and has asked the state to take the necessary steps to crack down on terrorist financing by June 2020. Therefore, if Pakistan does not demonstrate that it has implemented stringent measures and that it is serious about terrorist financing, Pakistan could be placed on the blacklist.

¹⁸¹ Ahmed, Khalid. (May 2007). in discussion with the author, Washington, DC.

In response, Pakistan is taking serious steps to cut off terrorist financing and to target assets belonging to banned organisations, such as Lashkar-e-Taiba (LeT), Jamat-ud-Dawa (JuD), Falaha-i-Foundation (FIF), Jaisha-e-Muhammad (JeM), Lashkar-e-Jhangvi (LeJ), the Taliban, Al-Qaida, the Haqqani Network, Daesh, and numerous others.¹⁸²

However, monetary institutions and the concerned ministry have made little visible progress in choking terrorist and militant organisations' revenue streams. Indeed, these are complex investigations that would be typically carried out by experts investigators. The Federal Investigation Agency (FIA), is the only agency in Pakistan that has specialised financial investigation experts and a dedicated unit for investigations into the financing of terrorism and money laundering. Provincial Counter Terrorism Departments do not have such specialised officers that can conduct investigations into financial matters. However, the National Action Counter-Terrorism Authority (NACTA) claims that it has established a dedicated unit to carry out investigations against terrorist financing and money laundering.¹⁸³

Point 6 of the National Action Plan is about terrorist financing and money laundering. Pakistan made some progress and has implemented some measures to restrict terrorist financing. However, the FATF plenary meetings held in Paris from the 24th to the 29th June 2018 "*identified Pakistan as a jurisdiction with*

¹⁸² *Nationwide crackdown on banned outfits.* (March 7, 2019). *Dawn Report.* <https://www.dawn.com/news/1468098> (Accessed on October 21, 2019).

¹⁸³ Ramay, Shakeel Ahmed. (October 2016). *National Action Plan: Implementation Gaps and Successes.* Sustainable Development Policy Institute (SDPI).

*strategic AML/CFT deficiencies.*¹⁸⁴ It is the joint responsibility of the federal and provincial governments, law enforcement agencies, monetary institutions, and the concerned ministry to coordinate the implementation of adequate measures against terrorist financing. Therefore, Pakistan needs to properly enforce the measures taken against illegal money transfers such as the ‘Hawala System,’ promote effective inter-agency coordination among federal and provincial authorities on terrorist financing and, more specifically, Pakistan needs to strengthen its anti-money laundering laws and prosecution.

¹⁸⁴ Staff Report. (June 30, 2018). *FATF gives Pakistan 10-point action plan to counter terror financing*. Plenary Meetings, June 24-29, 2018, Paris. <https://www.pakistantoday.com.pk/2018/06/30/fatf-gives-pakistan-10-point-action-plan-to-counter-terror-financing/> (Accessed on August 20, 2019).

4.7 Point 10 of the National Action Plan

Point 10 of the National Action Plan is about religious seminaries, their registration and bringing them into the mainstream education system.

Madrasas, or religious seminaries, are religious educational institutions that are usually controlled and run by religious organisations through a self-designed regulatory mechanism in Pakistan. During the initial days of Islam, the aim of the madrasas was the spread of knowledge, moral ethics and teachings of the Quran and Sunnah.

At the time of independence in 1947, there were very few madrasas in Pakistan, however their numbers have increased enormously since. Indeed, according to the Pakistan Education Statistics 2016-17, there are 32,272 madrasas in the country. Of these madrasas, 946 (3%) are run by the public sector and 31,326 (97%) are run by the private sector. The total number of people enrolled in religious seminaries is 2.6 million, of whom 1.38 million (64%) are male and 788 (34%) are female.¹⁸⁵

According to the DG ISPR, only 100 of all madrasas were found to be offering radicalised education programmes. Furthermore, he claims that Jamaat-ul-Dawa (JuD) and Falah-e-Insaniyat Foundation (FIF) control 300 madrasas between

¹⁸⁵ *Pakistan Education Statistics 2016-17*. (March 2018). National Education Management Information System, Academy of Educational Planning and Management, Ministry of Federal Education and Professional Training, Government of Pakistan.
https://www.academia.edu/37290442/Pakistan_Education_Statistics_2016_17 (Accessed on October 3, 2020).

them, as well as schools, hospitals, a publishing house and an ambulance service.¹⁸⁶

Table 2: Total Number of Madrasas in Pakistan¹⁸⁷

Status	Punjab	Sindh	KPK	Balu-Chistan	Islam-Abad	GB	AJK	FATA	TOTAL
Home Dept	13798	10033	3028	2959	354	145	1404	551	32,272

Historically, the number of madrasas increased very sharply after the Russian invasion in Afghanistan in 1979. Jihadi organisations established religious seminaries and received support and funding from national and international sympathisers. During that time, these madrasas were being used for jihadi training, to promote jihadi culture and as a base camp for jihadi organisations. Pakistan under General Zia’s regime, the ISI, US-led coalition forces, the CIA, Saudi Arabia and many other Gulf states fully supported and encouraged them by providing them with funding, training, weapons and logistical support.¹⁸⁸ During this golden era for jihadi organisations and foreign fighters, individuals and

¹⁸⁶ Ghafoor, General Asif, DG ISPR. (April 29, 2019). *Naya Pakistan: Government to take control of 30,000 madrassas across country*. *Gulf News Asia*. <https://gulfnews.com/world/asia/pakistan/naya-pakistan-government-to-take-control-of-30000-madrassas-across-country-1.1556545286343> (Accessed on May 3, 2019).

¹⁸⁷ *National Counter Extremism Policy Guidelines*. (January 2018). National Action Counter-Terrorism Authority (NACTA), Pakistan. <https://nacta.gov.pk/wp-content/uploads/2018/02/NCEP-Guidelines.pdf> (Accessed on May 9, 2019).

¹⁸⁸ Prados, John. (Sep 2002). *Notes on the CIA’s Secret War in Afghanistan*. *The Journal of American History*. Vol 89, No 2, JSTOR, Oxford University Press, pp. 466-471.

groups travelled to Pakistan from all over the world to join in Jihadi efforts and activities.

These religious seminaries encouraged and promoted jihadi culture during the Afghanistan-Russian war from 1979 to 1989. The Afghan and Pakistani Taliban, the Haqqani Network, Jasiha-e-Muhammad, (JeM), Lashkar-e-Jhangvi (LeJ), Lashkar-e-Taiba (LeT) and many other militant and terrorist organisations and groups are by-products of these madrasas, most notably Darul Uloom Jamia Haqqania Akora Khattak, a prominent religious school in Pakistan. Maulana Sami-ul-Haq, assassinated on the 2nd November 2018 at his residence in Islamabad, was the Chancellor of Darul Uloom Jamia Haqqania and is regarded as the *“Father of the Taliban.”*¹⁸⁹ This religious seminary is the birthplace of the Taliban. The late leaders of Taliban, Mullah Muhammad Omar and Mullah Muhammad Mansur, as well as the leader of the Haqqani network, Siraj-Ud-Din Haqqani, were all students at Darul Uloom.

The religious seminaries in Pakistan belong to different religious schools of thought, such as the Sunni, Deobandi, Barelvi, Ahl-e-Hadees and Shia school of thought. Many experts, such as Rahim-Ullah-Yousifzai,¹⁹⁰ consider religious seminaries in Pakistan to be breeding grounds for terrorism. They quote the significant example of Lal Masjid (Red Mosque) in the capital of Pakistan. The military operation of July 2007 against this organisation resulted in the death of

¹⁸⁹ Hope, Russel. (November 4, 2018). *‘Father of the Taliban’ Maulana Sami-ul-Haq buried after being stabbed to death.* Sky News. <https://news.sky.com/story/father-of-the-taliban-maulana-samiul-haq-buried-after-being-stabbed-to-death-11543935> (Accessed September 29, 2020).

¹⁹⁰ Yousifzai, Rahim-Ullah. (July 2018). Senior Journalist, expert on Taliban and al-Qaida, Peshawar, Pakistan. Personal conversation.

154 militants and the capture of a further 50, which subsequently incited a new wave of terrorism throughout Pakistan.¹⁹¹

The plan to reform the madrasas and their practices and to integrate them into the mainstream educational system is a key point of the National Action Plan 2015. Under the National Action Plan, the government has decided to take control of madrasas all over the country. Initially, the state will spend 2 billion Rupees (\$15 million) to bring them into the mainstream educational and hate speech will be banned throughout educational establishments. The government have already consulted religious scholars, religious political parties and academics from multiple disciplines in order to bring religious seminaries into mainstream contemporary educational system.¹⁹²

The government decided that all madrasas will be registered under the Ministry of Education, whereas beforehand they were listed under “the purview of the Ministry of Industries and Commerce.”¹⁹³ The government has also decided that their curricula will include contemporary subjects, such as English, the sciences, mathematics, Pakistani affairs, global civilization studies and civic studies. Another necessary step in reforming the madrasas is data collection. In order to implement this, the National Action Counter-Terrorism Authority (NACTA), in consultation with Ittihad-ul-Tanzeem-ul-Madaris Pakistan (the joint organization

¹⁹¹ *The New York Times*. (July 10, 2007). <https://www.nytimes.com/2007/07/10/world/asia/10pakistan.html> (Accessed on August 14, 2018).

¹⁹² Ghafoor, General Asif, DG ISPR. (April 29, 2019). *Naya Pakistan: Government to take control of 30,000 madrassas across country*. *Gulf News Asia*. <https://gulfnews.com/world/asia/pakistan/naya-pakistan-government-to-take-control-of-30000-madrassas-across-country-1.1556545286343> (Accessed on May 3, 2019).

¹⁹³ Gul, Ayaz. (April 29, 2019), “Pakistan Moving to Bring Madrassas Under State Control,” VOA, South and Central Asia. <https://www.voanews.com/south-central-asia/pakistan-moving-bring-madrassas-under-state-control> (Accessed on December 17, 2019).

of religious seminaries), have developed “Madrasas Data and Registration Forms” which will be sent to provincial governments and the law enforcement agencies for approval. All madrasas will be bound to keep records of foreign students and will maintain audited accounts. Only registered madrasas will be allowed to operate.¹⁹⁴ However, religious political parties and other religious groups oppose these policies that bring any change to their processes.

According to critics of madrasas education, these religious seminaries offer only religious education, with students spending most of their days memorising the Holy Quran.¹⁹⁵ Madrasa education is the only form of schooling that is available to millions of low-income families who cannot afford to send their children to public and private schools which demand fees. Therefore, these madrasas provide them with free education, free food and free boarding facilities. Madrasa education usually consists of eight years of studies in a Dars-i-Nizami, and a further two years for the title of Mufti. However, when the students come out from these madrasas after ten years’ education, they have very few job opportunities because they have no other academic skills or knowledge outside of religion. As a result, these unemployed, religiously educated people, are often desperate and are susceptible to getting involved in extremism, which leads to some of them joining militant groups or organisations.

¹⁹⁴ National Action Counter-Terrorism Authority Pakistan (NACTA), “*Madaris Reforms.*” <https://nacta.gov.pk/madaris-reforms/> (Accessed on August 13, 2019).

¹⁹⁵ *Gulf News Asia*, (April 29, 2019). <https://gulfnnews.com/world/asia/pakistan/naya-pakistan-government-to-take-control-of-30000-madrassas-across-country-1.1556545286343> (Accessed on July 18, 2019).

During an interview held in Pakistan with Rahim-Ullah-Yousifzai,¹⁹⁶ he stated that the majority of Deeni Madrasas (religious seminaries) are breeding grounds for terrorism, providing recruitment opportunities to militant organisations in Pakistan. Point 10 of the NAP, which calls for the “registration and regulation of religious seminaries”, has not yet been fully implemented. The majority of madrasas receive funds from abroad, mostly in the form of cash donations, which the authorities are largely unable to monitor and regulate. Moreover, although it is meant to be assisting the government in regulating these religious schools, the Ittihad Tanzim- ul- Madaris Pakistan (ITMP) (the Joint Organization of Religious Seminaries Pakistan) agreed to audit only 5% of all madrasas.

The religious political parties in Pakistan oppose the government’s decision to bring these madrasas into the mainstream educational system, change their curriculum, register the madrasas, collect data on them, monitor their funding and maintain audit reports of them. They argue that they have their own independent mechanisms and curricula, that they themselves know what to teach how to teach and they insist that people individually give them donations. They rejected the allegation that religious seminaries are hotbeds of terrorism that fill the ranks of militant and terrorist organisations. They accuse the government of implementing these measures against madrasas in order to appease the international community and portray Pakistan as a liberal country.¹⁹⁷

¹⁹⁶ Yousifzai, Rahim-Ullah. (July 2018). Senior Journalist, expert on Taliban and Al-Qaida, Peshawar, Pakistan. Personal Conversation.

¹⁹⁷ Bashir, Mohsin. (March 21, 2019). *Why madrassah education reforms don't work in Pakistan*. Journal Third World Quarterly, Taylor and Francis Online, pp. 595-611.

Maluna Fazl-ur-Rehman, the Amir (president) of Jamiat Ulma Islam (JUI), asserts that he doesn't want madrasas to be registered with the National Counter Terrorism Authority, stating that "*if the government start this war, its days are numbered*".¹⁹⁸

Therefore, there is a deadlock between the religious forces and the government regarding the implementation of madrasa reforms and their integration into the mainstream educational system.

¹⁹⁸ *Times of Islamabad*. (September 14, 2018). <https://timesofislamabad.com/14-Sep-2018/madrassa-reforms-fazal-ur-rehman-strange-response-surface> (Accessed on Jan 9, 2019).



Figures 3 & 4: Jamia Muhammadia, a madrasa in Pakistan's capital Islamabad.¹⁹⁹

¹⁹⁹ Hadid, Daa. (January 10, 2019). *Pakistan Wants to Reform Madrassas. Expert Advise Fixing Public Education First.* NPR News. <file:///Users/muhammadmahmood/Desktop/Pakistan%20Wants%20To%20Reform%20Madrassas.%20Experts%20Advise%20Fixing%20Public%20Education%20First%20:%20NPR.webarchive> (Accessed on March 13, 2020).

4.8 Point 11 of the National Action Plan

Point 11 of the National Action Plan: ban the glorification of terrorists and terrorist organizations in print and electronic media.

Before the NAP, electronic and print media competed with each other to report terrorist incidents, publish interviews with militants and present the narrative of different terrorist organisations, therefore providing them with opportunities to convey their messages to the public, the government, the security forces and the international media. Therefore, terrorist organisations were able to exploit electronic and print media very effectively to recruit new adherents.²⁰⁰ Indeed, because of this media exposure, these organisations were successful in their objective of gaining publicity and waging psychological warfare. Consequently, it was decided in the National Action Plan that a strict ban will be imposed on media outlets providing airtime and publicity to militant and terrorist organisations. The Pakistan Electronic Media Regulatory Authority (PEMRA) is responsible for the implementation of this policy and for monitoring any violations of it.

According to legal amendment made in 2015 to the Punjab Maintenance of Public Order Ordinance No. 31 of 1960, *“a person shall not, by words spoken or written, use any formal forum to support terrorism or terrorists, or attempt to create sympathy for any terrorist or terrorist organisation, or to oppose the action of Pakistan army, air or naval force, police or rangers against any terrorist or terrorist organisation [sic.]”*²⁰¹

²⁰⁰ Hassan, Kiran. (March 19, 2018). *Social Media, Media Freedom and Pakistan’s War on Terror*. The Commonwealth Journal of International Affairs, Volume 107, 2018.

²⁰¹ *Bans glorification of terrorists*. (January 21, 2015). *Dawn News*. <https://www.dawn.com/news/1158400> (Accessed: May 18, 2019).

Therefore, the Pakistani government has imposed a strict ban on electronic and print media outlets from telecasting live reports of a terrorist incident, publishing interviews with militants or otherwise exposing any narratives or activities that promote their agendas. It is a positive step in the right direction, meaning that it therefore possible to conclude that point 11 of the National Action Plan has been implemented to an encouraging extent.

4.9 Point 12 of the National Action Plan

Point 12 of the National Action Plan: Administrative and development reforms in FATA with an immediate focus on repatriation.

Pakistan's Federally Administered Tribal Areas, known as FATA, is an area of 27,225 sq.km. on the border of Pakistan/Afghanistan. FATA is a very complex tribal area that has been administratively divided into seven agencies: Bajaur, Mohmand, Khyber, Kurram, Orakzai, North Waziristan and South Waziristan. Each agency has its own administrative headquarters and is governed by Political Agents, appointed by the Governor of KPK. According to the census of 2017, the total population of the Federally Administered Tribal Areas of Pakistan is 5,001,676 (of whom 2,556,292 are male and 2,445,357 are female).²⁰²

²⁰² Pakistan Bureau of Statistics, Government of Pakistan. <http://www.pbs.gov.pk/content/population-census> (Accessed on October 19, 2019).

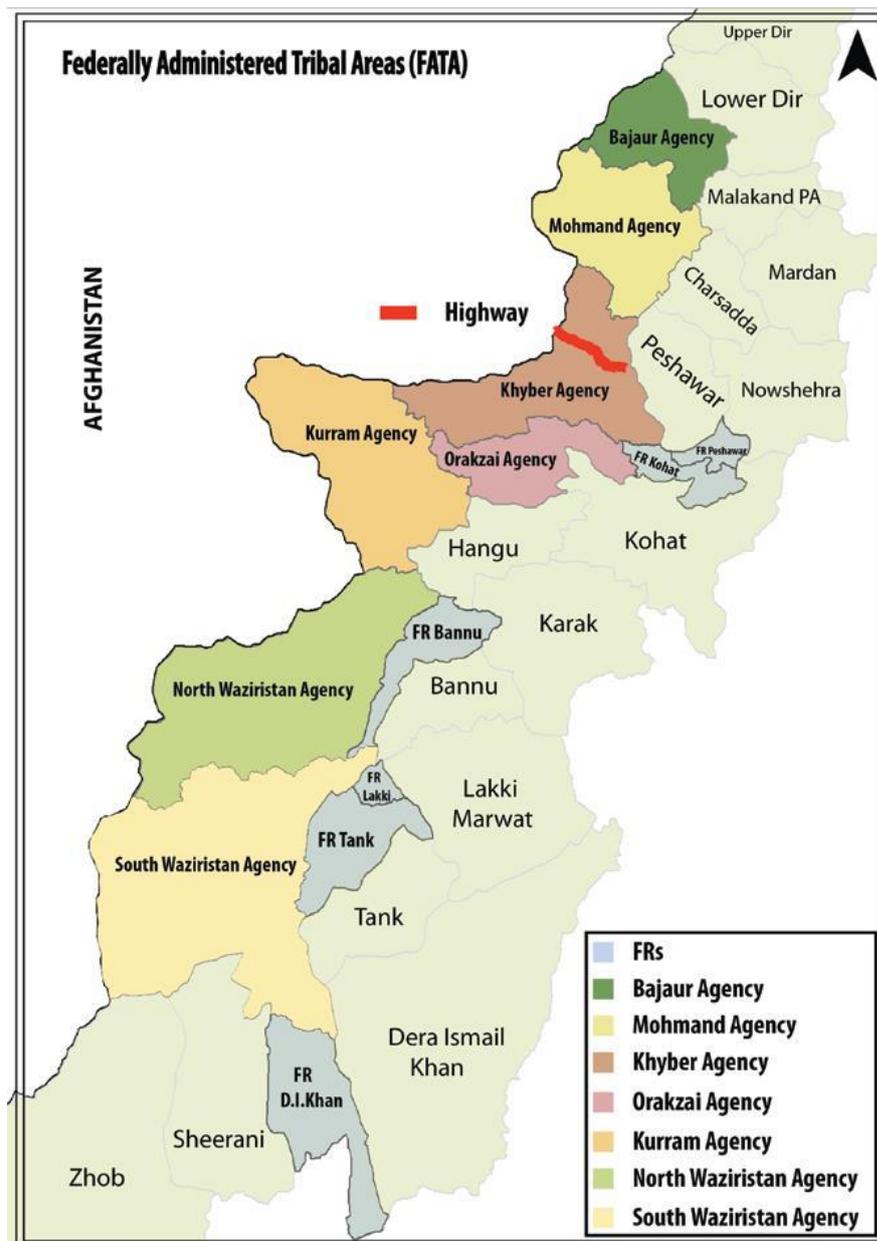


Figure 5: Map Federally Administered Tribal Areas (FATA) Pakistan.²⁰³

²⁰³ Map Federally Administered Tribal Areas (FATA) Pakistan.²⁰³

<https://nchr.gov.pk/wp-content/uploads/2019/01/Report-on-FATA-Reforms.pdf> (Accessed on April 10, 2020).

Since 9/11, the Federally Administered Tribal Areas (FATA) has been considered to be one of the most violent and dangerous regions in the world.²⁰⁴ After the U.S. operation against the Taliban regime in Afghanistan in 2001, thousands of militants, including members of Al-Qaida, the Taliban, the Haqqani Network, and many other foreign fighters fled to Pakistan. The FATA is also the birthplace of Tahreek-e-Taliban Pakistan (TTP). These militant organisations use these areas as a hideout, for their training camps, to store their weapons and as a base from which to carry out attacks on U.S. Coalition Forces in Afghanistan and terrorist attacks in Pakistan.

In 2004, Pakistani military forces launched an operation in South Waziristan, against the Taliban, Al-Qaida and Uzbek fighters. However, this operation was not successful and militant groups responded by brutally attacking Pakistani forces, law enforcement and civilians.²⁰⁵ As a result, Pakistan lost thousands of lives and suffered damaged to its economic infrastructure. Pakistan's security landscape was turbulent during those years. Indeed, civilians and law enforcement felt exceptionally at risk of suicide attacks, bombings, targeted killings and other acts of terror, which ultimately generated an atmosphere of fear and threat in Pakistani society.

In December 2014, after the deadly terrorist attack on the military administrated school in Peshawar, military forces launched a major operation called Operation Zarb-e-Azb against militants residing in tribal areas, with a particular focus on

²⁰⁴ *FATA- A Most Dangerous Place*. (January 7, 2009). Centre for Strategic and International Studies. <https://www.csis.org/analysis/fata-most-dangerous-place> (Accessed on August 13, 2019).

²⁰⁵ *Pakistan's Tribal Areas: Appeasing the Militants*. (December 11, 2006). International Crisis Group, Asia Report No 125. pp. 14-20.

North Waziristan, which was the stronghold of Tahreek-e-Taliban Pakistan (TTP), Al-Qaida, Uzbek fighters and other militant groups. Operation Zarb-e-Azb reduced militancy in the country, causing these militants to flee these Federally Administered Tribal Areas and cross the border into Afghanistan. Pakistan's government and military forces therefore claim Operation Zarb-e-Azb to have been successful.²⁰⁶

The FATA reforms, as stipulated in point 12 of the National Action Plan, aim to the implement of the legal and administrative system of the rest of the country in these areas. Up until these reforms were proposed, the FATA were governed by Article 247 of the Constitution of Pakistan and administrated by the colonial –era Federal Crimes Regulation 1901 (FCR).²⁰⁷

In order to implement these reforms, Nawaz Sharif's government formed a special six-member FATA Reforms Committee headed by the Foreign Minister, Sartaj Aziz. After eight months of consultation with tribal lords, political parties and other relevant actors, alongside multiple visits to the Federal Administered Tribal Areas, the committee put forward four recommendations for FATA reforms: (1) merge the FATA with KPK province; (2) make the FATA a separate province; (3) provide the FATA with a new autonomy arrangement, like that of the Gilgit-

²⁰⁶ Basit, Abdul. (June 27, 2016). *Pakistan's Counterterrorism Operation: Myth vs. Reality. The Diplomat*. <https://thediplomat.com/2016/06/pakistans-counterterrorism-operation-myth-vs-reality/> (Accessed on August 14, 2019).

²⁰⁷ Chowhan, Ali Nawaz. Chairman National Commission for Human Rights Pakistan. "FATA Reforms: Contextual Analysis and Legislative Review." <https://nchr.gov.pk/wp-content/uploads/2019/01/Report-on-FATA-Reforms.pdf> (Accessed on Nov 4, 2019).

Baltistan Council; and (4) keep the FATA's status as it is with minor reforms in FCR laws.²⁰⁸

The proposal to merge the FATA with KPK province received substantial backing from major political and religious parties, including the Pakistan Muslim League, the Pakistan People's Party, Pakistan Tahreek-e-Insaf, Jamat-e-Islami and some regional parties, such as Awami National Party and the Pashtun Nationalist Awami National Party. In December 2016, a unanimous resolution was passed by the KPK provincial assembly in favour of this merger,²⁰⁹ while only two political parties opposed it, JUI-F and the Pakhtunkhwa Milli Awami Party. Maulana Fazlur Rehman, the leader of the JUI-F, protested this bill in the National Assembly, asserting that the merger of the FATA with KPK province could create border issues with Afghanistan. He demanded that the matter should be settled through a referendum in the Federal Administered Tribal Areas,²¹⁰ but the majority members of the Parliament rejected this proposal.

However, despite the debate in the National Assembly and the Senate among political parties and key stakeholders, the 25th Constitutional Amendment 2018 was passed by Pakistan's parliament in May 2018 in favour of the merger of the FATA with the KPK province.²¹¹

²⁰⁸ Ali, Imtiaz. (2018). *Mainstreaming Pakistan's federally Administered Tribal Areas*. Special Report, United Institute of Peace (USIP).

²⁰⁹ *KPK Assembly for Merger into Province*. (December 15, 2016). *Nation*. <http://nation.com.pk/newspaper-picks/15-Dec-2016/kp-assembly-for-fata-merger-into-province> (Accessed on April 11, 2018).

²¹⁰ Amir, Wasim. (May 16, 2017). *PML-N ally Fazal opposes FATA reforms in NA*. *Dawn News*. <https://www.dawn.com/news/1333406> (Accessed on June 13, 2018).

²¹¹ Ministry of Law and Justice, Government of Pakistan, 25th Constitutional Amendment 2018. <https://pakistanconstitutionlaw.com/25th-amendment-2018/>. National Assembly, 25th Constitutional Amendment 2018 for the merger of FATA with the KPK province. http://www.na.gov.pk/uploads/documents/1527169356_307.pdf (Accessed on Dec 10, 19).

After the merger of the FATA with KPK province, several administrative and legal changes needed to be made in the tribal areas. Consequently, the government announced a five-year plan to facilitate the full legal and administrative integration of FATA into KPK province. At the time of writing, the KPK holds 43 seats in the National Assembly, 12 of which were added after the merger with the FATA.²¹² The FATA reforms also dictate that the number of seats in the KPK provincial assembly will increase, seven tribal agencies will be converted into KPK districts, local governments will be established in these areas through direct local elections and administrative and development powers will be transferred to the grassroots level.²¹³ After Pakistan's parliament passed the 25th Constitutional Amendment 2018, the Federal Crime Regulations 1901 (FCR) has become the null and void, meaning that Pakistan's legal system and regular courts extended to the tribal areas. After the FATA has been completely integrated into the KPK, the police force will be responsible for maintaining law and order in these regions as they do in other parts of Pakistan.

In the light of the above discussion, it is evident that point 12 of the National Action Plan has been significantly implemented since the merging of the FATA and KPK province through constitutional and legal changes. However, more steps need to be taken in order to fully implement Pakistan's administrative and judicial systems, to fully repatriate IDPs and, most importantly, to maintain law and order in these areas and enforce the writ of the state. There should be no place in

²¹² See the website of the National Assembly of Pakistan. <http://www.na.gov.pk/en/composition.php> (Accessed on August 10, 2019).

²¹³ Bebathe, Mohammad Ali. (September 29, 2016). *Integrating FATA*. *Express Tribune*. <https://tribune.com.pk/story/1190930/integration-of-fata/> (Accessed on Feb 15, 2018).

Pakistan for terrorists, militant groups, training camps, militant hideouts and sympathizers of terrorist organisations.

The greatest significance of this integration of the seven agencies and six frontier regions of the FATA into KPK Province is that there are no longer any ungoverned areas in Pakistan. Law enforcement agencies may implement their writ and maintain law and order in areas that were previously under the control of various militant groups. By increasing the access that law enforcement agencies, including the regular police force, and the administration have to these tribal areas, the state will be able to better control cross border terrorism. Moreover, a comprehensive judicial structure under the Supreme Court of Pakistan might improve justice in society.

With the merger now implemented, it is now time that political and economic stability is developed in this region by creating job opportunities and fostering prosperity. In order to establish a democratic society, the government should encourage people to form political parties and participate in the general election. These efforts will improve the security landscape not only in the tribal areas, but also throughout the rest of Pakistan and will marginalise militant groups and their sympathisers in the region.

4.10 Point 20 of the NAP

Point 20 of the NAP: revamping and reforming the criminal justice system.

Point 20 of the National Action Plan highlights the importance of reforming the criminal justice system, which is the most critical factor in Pakistan's fight against terrorism. After parliament passed the 21st and 23rd Constitutional Amendments in January 2015 and March 2017 respectively, military courts were established to try all terrorism-related cases. However, this was a temporary arrangement, initially authorised for two years and then subsequently extended for a further two. When the military courts were established, the government promised that it would fully reform the criminal justice system and strengthen Pakistan's anti-terrorism institutions by the end of their two-year period of operation. This would be achieved by enhancing the capabilities of the police, overhauling the judicial system, amending prosecution and introducing appropriate anti-terrorism laws.

The development of the judicial sector as part of a wider counter-terrorism strategy is the area of greatest interest to this research project. It will therefore be discussed in further detail in chapter 5.

Table 3 present a summary of all the key points of the National Action Plan 2015. It demonstrates the progress that the National Action Plan has made in each of its key points between 2015 and 2018. Furthermore, this table highlights the measurements that have been implemented by the government in achieving the objectives of the National Action Plan.

Table 3. Overview of the Implementation of Points 1,2,3,6,10,11,12 & 20 of the NAP 2015

Point No	National Action Plan Item	2016	2018	Remarks
1	Implementation of death sentence for those convicted in cases of terrorism.	The number of trials concluded 105, convictions 81, death sentences 77, life imprisonments 4, acquittals 24, number of convicts executed 12.	The number of trials rose to 646, convictions 641, death sentences 345, life imprisonments 296, acquittals 5, number of convicts executed 56.	Lifting the predecessor government's 2008 moratorium on the death penalty was a controversial decision. The ICJ criticised the alarmingly high conviction rate (97%) high number of executions. Legal experts and some political parties assert that this should not be a permanent solution and that the civil judicial system should be strengthened instead.
2	Special military courts. The duration of these courts would be two years.	The number of convictions was 81.	The number of convictions rose to 641 (conviction rate of 97%)	11 military courts were established after the 21 st Constitutional Amendment was passed in January 2015 to try terrorism-related cases. Legal experts, human rights organisations and some political parties in Pakistan have expressed concerns and reservations over proceedings in the military court which, they believe, are carried out based on bad faith, a lack of transparency, inadmissible evidence, secrecy, confessional statements based on torture and ill-treatment and violations of the basic principles of fair and independent trials.
3	Militant outfits and armed groups will not be allowed to operate in the country.	No action has been taken against "good" Jihadi organisations. Operation Zarb-e-Azb was carried out in North Waziristan against "bad" jihadi organisations, such as TTP and Al-Qaida.	Pakistan's Ministry of the Interior has placed 71 organisations on its list of proscribed groups under Section 11-B-(1) Schedule-1. ATA 1997. Pakistan has taken strict measures against banned groups and has seized control of their assets, including madrasas, schools, hospitals and their bank accounts.	Point 3 of the NAP was originally ignored by the government but under mounting international pressure, Pakistan is now taking action against banned militant organisations. Critics accuse Pakistan of distinguishing between "bad" jihadi groups, i.e. those targeting the security forces, and "good" jihadi groups, namely those perceived to promote Pakistan's strategic objectives in India and Afghanistan.

6	Choking financing for terrorist and militant organisations.	At first, no action was taken to implement this point. Although, several pre-existing laws have relevant provisions for terrorist financing, e.g. the Anti-Terrorism Act 1997, and Anti-Money Laundering Act 2010.	Pakistan is taking serious steps to control terrorist financing and target assets belonging to banned organisations, such as Lashkar-e-Taiba (LeT), Jamat-ud-Dawa (JuD), the Falaha-i-Foundation (FIF), Jaisha-e-Muhammad (JeM), Lashkar-e-Jhangvi (LeJ), the Taliban, Al-Qaida, the Haqqani Network, Daesh and many other banned groups.	In the first quarter of 2019, law enforcement agencies in Pakistan arrested more than 100 activists, took control of 200 madrasas and seized other assets belonging to banned organisations. The Punjab government took control of 160 madrasas, 32 schools, 4 hospitals, 180 ambulances, 155 dispensaries belonging to banned organizations. The Financial Action Task Force (FATF) warned that if Pakistan hadn't taken serious action against terror financing and banned militant organisations by May 2019, it would have been transferred from their grey list to their blacklist. Therefore, Pakistan has begun to implement serious counter-measures under mounting international pressure.
10	Registration and regulation of religious madrasas.	The total number of religious seminaries in Pakistan is 32,272. Madrasas reforms regulate their functions and bring them into the mainstream educational system. This is a key point of the National Action Plan 2015. But there was little to no progress.	According to ISPR, circa 2.5 million students are currently studying at madrasas and, of Pakistan's madrasas, 100 have been found to be providing radicalised information to children in an effort to push them towards extremism. The Government decided to bring them into the mainstream system, regulate their funding, register them, change their curriculum. 2 billion Rupees (\$15 millions) were invested in these reforms.	The religious political parties in Pakistan oppose the government's decision to bring these madrasas into the mainstream education system, changes to their curriculum, the registration of madrasas, data collection on them, checks on their funding and audit reports. They argue that they have their own independent mechanism. In assisting the government in its efforts, the Ittihad Tanzim-ul-Madaris Pakistan (the joint organization of religious seminaries in Pakistan) agreed to audit only 5% of the total madrasas. Political, religious and legal experts argue that it is very hard to fully implement point 10 of the National Action Programme because religious sentiment is very high in Pakistan, and people not ready to accept any change in their religious structure.

11	Ban on the glorification of terrorists and terrorist organisations in print and electronic media.	A legal amendment was made in 2015 to the Punjab Maintenance of Public Order Ordinance No 31 of 1960. According to this amendment, the glorification of terrorists and terrorist organisations will not be allowed in print and electronic media.	This law has been fully implemented by the Pakistani media. The Pakistan Electronic Media Regulatory Authority (PEMRA) is responsible for implement this law.	Before the National Action Programme, electronic, and print media were competing with each other to report terrorist incidents, publish interviews with militants and present the narratives of different terrorist organisations, thereby providing them with opportunities to convey their messages to the public, the government, the security forces and international media. It was thus decided in the National Action Plan that a strict ban will be imposed on the media giving air time and exposure to militants and terrorist organisations.
12	Federal Administered Tribal Areas (FATA) Reform	Six members of a special new FATA Reform Committee were appointed by the Prime Minister, headed by the Foreign Minister. At first, they made no progress.	The 25 th Constitutional Amendment 2018 was passed by parliament in May 2018 in favour of integrating the Federal Administered Tribal Areas (FATA) into KPK province.	After the integration of the FATA into KPK province, many new administrative and legal frameworks would be brought to tribal areas, such as administrative control, Pakistan's judiciary system and more representation in the parliament. FATA reforms have been constitutionally and legally enacted, administrative and judiciary changes are yet to be brought in, IDPs remain unhoused and law and order and the writ of the state are yet to be fully enforced.
20	Revamping and reforming the criminal justice system.	No progress	Still there is no development in the criminal justice system except under the new judicial policy in which the Chief Justice of Pakistan established 116 model courts in the country in order to deal with murder and narcotics cases at a high pace.	The government decided in the National Action Plan to strengthen and reform the criminal justice system, but insufficient progress has been made in this regard. In April 2019, the new judicial policy established 116 model courts: 36 in Punjab, 27 in KPK, 27 in Sindh, 24 in Baluchistan, and 2 in Islamabad. During the first 12 days, these courts ruled on a total of 1523 cases: 642 murder cases and 881 narcotics cases. But no progress has been made in reforming the country's criminal justice system itself. Anti-terrorism laws, enhancing the capabilities of the police force and other law enforcement agencies and improving prosecution would all be advantageous measures.

The government taken some steps towards implementing the remaining points of the National Action Plan, progress remains unsatisfactory. Apex Committees have been established all four provinces under civil and military leadership, and a further 16 committees have been formed to monitor the implementation of the National Action Plan. A force of 10,000 military personnel has been deployed in the provinces to reinforce the police force in their operations and, as of 2019, 10,700 personnel from various law enforcement agencies alongside new recruits have joined the Special Counter-Terrorism Force to fight against terrorism. This force has received specialised training and is well equipped. As a result of combined civil-military intelligence-based operations in Karachi, terrorism has declined by 77% and targeted killings and robberies are down by 69% and 30% respectively. Furthermore, 70,000 people have been arrested, including 890 terrorists, and 17,000 weapons have been recovered.²¹⁴

The implementation on the other points of the National Action Plan is in progress. For example, operations carried out against proscribed organisations have resulted in 7,923 people being placed on the Fourth Schedule and 188 members of militant groups being placed on the Exit Control List (ECL). The government has taken steps against hate speech, 1,961 cases of violations have been registered and 7,000 people have been arrested for the misuse of loudspeakers. Moreover, 97.9 million mobile SIMs have been verified by the National Data Regulator Authority (NADRA) and 5.4 million mobile SIMs have been blocked.²¹⁵ Furthermore, Karachi is Pakistan's largest city and financial hub, but it remains

²¹⁴ Khan, Asad Ullah. (February 2019). *National Action Plan: Achievements and Limitations*. Institute of Strategic Studies Islamabad.

²¹⁵ National Counter Terrorism Database, National Counter-Terrorism Authority (NACTA). <https://nacta.gov.pk/national-counter-terrorism-database/> (Accessed on June 15, 2019).

one of the most dangerous and violent cities in the world.²¹⁶ The Federal government launched an operation in Karachi with the help of the Pakistan Rangers and other law enforcement agencies against militant groups and their activities, most notably targeted killings and kidnappings for ransom.²¹⁷ As a result of this operation, 59,000 criminals have been arrested, including 1,730 that were involved in murder cases, 715 terrorists and 120 kidnappers.²¹⁸

According to an official report of Pakistan's Ministry of the Interior, approximately 3,500 Afghan refugees have been deported. They were suspected to have been involved in terror-related activities in Pakistan, including 2,932 from KPK, 195 from Baluchistan, 1 from Islamabad, and 376 from the FATA.²¹⁹

At the beginning of 2017, terrorist organisations, including Tahreek-e-Taliban Pakistan (TTP), Lashkar-e-Changi (LeJ) and JuA carried out a series of militant attacks in the urban areas of Pakistan, especially in Punjab province.²²⁰ Operations against militancy in Punjab are also part of the National Action Plan. The present Army Chief, Qamar Javed Bajwa, launched an operation in February 2017 by the name of "Operation Radd-ul-Fassad", which was conducted all across the country in an effort to oust militant groups, focusing especially on the

²¹⁶ Hollie, Mckey. (June 6, 2018). *Pakistan works to clean up Karachi, once world 'most dangerous city*. Fox News. <https://www.foxnews.com/world/pakistan-works-to-clean-up-karachi-once-worlds-most-dangerous-city> (Accessed on February 11, 2019).

²¹⁷ Rehman, Zia Ur. (2018). *Karachi Operation*. Comprehensive review of NAP. <https://www.pakpips.com/web/wp-content/uploads/2018/03/karachi-operation.pdf> (Accessed on July 17, 2019).

²¹⁸ Crime Statistics in Karachi, Counter Terrorism Department Sindh (CTD). http://www.sindhpolice.gov.pk/announcements/crime_stat_all_cities.html (Accessed Jan 12, 2019).

²¹⁹ Report Ministry of Interior Pakistan. <https://www.interior.gov.pk/index.php/media-moi/news-moi/registration-form> (Accessed on January 13, 2019).

²²⁰ Shah, Kriti M. (April 1, 2017). *Radd-ul-Fasaad assessing Pakistanis new counter-terrorism operation*. Observer Research Foundation. <https://www.orfonline.org/research/radd-ul-fasaad-assessing-pakistans-new-counterterrorism-operation/> (Accessed on June 16, 2018).

urban areas of Punjab.²²¹ During this operation, the Pakistan Rangers were given special powers to tackle militancy in Punjab. According to official figures, during this operation, 33,772 combat operations were conducted, and 5,560 cases were registered, while thousands of weapons, computers and IEDs were recovered.²²²

However, it is difficult to gauge the authenticity of the official claims regarding the levels of implementation and success achieved by the National Action Plan. There are limited sources of information, such as the Inter-Services Public Relations Office (ISPR), the National Action Counter-Terrorism Authority Pakistan (NACTA), the Counter-terrorism Department (CTD) and some official reports. However, independent media have not been granted access to inside information or data. For example, media has not been able to oversee operations in the tribal regions, proceedings in the military courts or interviews of suspects arrested for terrorism-related offences. Independent experts have raised many questions on the implementation of the National Action Plan. Some blame a lack of institutional capacity and political will for its shortcomings, while others highlight Pakistan's weak and flawed criminal justice system.

²²¹ Hannah, Johnsrud., & Frederick W, Kagan. (August 25, 2017). *Pakistan's Counter-Militant Offensive: Operation Raddul Fasaad*. <https://www.criticalthreats.org/analysis/pakistans-counter-militant-offensive-operation-raddul-fasaad> (Accessed on September 10, 2019).

²²² Crime Statistics, Counter Terrorism Department Punjab (CTD). <https://punjabpolice.gov.pk/crimestatistics>. The data shared in the Senate by the Ministry of Interior during the Question-Answer session. http://www.senate.gov.pk/uploads/documents/questions/1489117899_531.pdf (Accessed on Sep 14, 2019).

4.11 Obstacles to the Implementation of the National Action Plan 2015

The evidence presented thus far demonstrates that the implementation of a policy as ambitious as the National Action Plan is incredibly difficult to achieve in a fragile state such as Pakistan. Federal and Provincial governments, law enforcement agencies and judicial institutions do not have the capacity, training or resources to fully implement the National Action Plan.

The lack of a unifying strategy and varying uncoordinated approaches between provincial governments and institutions is another obstacle. Pakistan's three-tier structure consists of: The Federal Apex Committee, including army and intelligence chiefs'; Provincial Apex Committees; and the National Counter-Terrorism Authority (NACTA). This mechanism headed by the Prime Minister. On most of the issues regarding the implementation of the National Action Plan, provincial governments run by opposing political parties are not ready to cooperate with each other, adopting different approaches according to their political interests. Law enforcement agencies, especially the intelligence agencies, are sometimes reluctant to share their intelligence and strategy with other institutions and provincial governments.

Some political parties voice their concerns and apprehensions in regard to operations that are carried out within their political jurisdiction. For example, in the province of Sindh, the Pakistan People's Party and MQM have very serious reservations on the Pakistan Rangers' operations. They claim that these operations, led by the Federal government through the Pakistan Rangers and

anti-terrorism laws, are being used to target provincial officials and leaders in a form of political victimisation, such as when a 460 billion Rupees corruption case was brought against Dr. Asim in Karachi.²²³ Therefore, certain political forces are unwilling to cooperate with law enforcement agencies in the implementation of the National Action Plan.

Furthermore, religious political parties and forces have very deep sympathies towards banned organisations and religious seminaries. These religious forces thus cause resistance and hindrance in the implementation of the National Action Plan, especially in regard to madrasa reforms and banned organisations. The provincial governments fear backlash from these religious political parties and religious movements because they lack the ability to control their die-hard followers. These religious forces are a major obstacle in the implementation of the National Action Plan.

Another obstacle in the implementation of the National Action Plan is that, at the time of the writing, there are sixteen committees that monitor its implementation. This is clearly an excessive number of committees as it is very difficult for them to approach each other and coordinate their efforts, thus hindering the decision-making process.

Therefore, as made abundantly clear by the obstacles discussed above, the implementation of the National Action Plan and its numerous objectives has been and continues to be an incredibly difficult task.

²²³ Tanoli, I. (May 7, 2016). *Dr Asim Indicted in Rs 460bn corruption case*. Dawn News. <https://www.dawn.com/news/1256861> (Accessed on April 17, 2018).

4.12 Conclusion

At the time of writing, Pakistan has been unable to comprehensively implement the 20 points of the National Action Plan. During this strategy's first three years, there was almost no progress except in points 1 and 2. However, after 2017, Pakistan began to show some improvement in other areas of the National Action Plan, especially points 3,6,10,11, and 12. However, this progress has not been the result of the state's strong will or its the capacity to implement a policy of this scale to the letter, but rather it has resulted from mounting international pressure and the fear of international economic sanctions. The state's performance and success in implementing the National Action Plan ought not to be determined by the high numbers of raids, arrests and registered cases, it should be judged on whether it has sufficiently demonstrated a comprehensive and clear strategy, capabilities in fighting against terrorism, the effective use of resources, a strong will, reforms in the criminal justice system and the effective coordination of the Federal government, Provincial governments and law enforcement and intelligence agencies.

Chapter 5 – Judicial Development in Pakistan (Criminal Judicial System)

5.1 Introduction

Before the partition of India, a near fully-fledged judicial structure and legal system was in effect under the British rule in the Indian Sub-Continent. After Pakistan gained independence in 1947, this colonial-era judicial system continued to be used virtually unchanged by this newly established state. The Lahore High Court continued as normal, whereas the Sindh Chief Court and the Courts of the Judicial Commissioners in NWFP (presently Khyber Pakhtunkhwa 'KPK' Province) and Baluchistan were upgraded to comprehensive High Courts. The Federal Court was also established,²²⁴ which was renamed 'the Supreme Court of Pakistan' by the Constitution of Pakistan 1956.

District Courts were also established under the name of Session Courts in order to deal with criminal cases and civil matters in every district under the administrative control of a provincial high courts. The British era's Code of Civil Procedure 1908 and the Criminal Procedure Code 1898 are primary laws which outline the fundamental principles of civil and criminal procedures respectively. The Constitution of Pakistan 1973 authorises the federal government to establish specialised courts or tribunals in order to better facilitate new legislations, as was the case with the Anti-Terrorism Courts.

²²⁴ The Federal Court of Pakistan Order 1948. Repeal of the Federal Court Act, 1937. Report No. 121. Law and Justice Commission of Pakistan.

Pakistan has adopted an anti-terrorism law in order to address terrorism as well as sectarian, political and ethnic violence. In 1997, then-Prime Minister, Nawaz Sharif, promulgated the Anti-Terrorism Act (ATA 1997) and, as of 2015, this law has been amended several times to deal with extremist activities in the country. Anti-Terrorism Courts (ATC) were established because the parallel ordinary criminal judicial system (known as 'District Courts') is not considered capable of prosecuting terrorism-related cases. The ordinary courts were suffering from significant backlogs, leading to trials delays, and they did not offer stringent enough punishments for crimes defined as terrorism under the ATA 1997. Many amendments have been made to the law regarding what constitutes a terrorism-related crime, but very little attention has paid to court administration and case management.

The rise of terrorist attacks in Pakistan and the failure to prosecute those accused of terrorism has become a significant concern. There are many weaknesses and flaws in the various components of Pakistan's criminal justice system. In most cases, the police are responsible for this failure, but the two other pillars of Pakistan's criminal justice system, the judiciary and the prosecution, are also accountable. This chapter presents an analysis of the shortcomings and flaws of Pakistan's criminal justice system in relation to prosecuting instances of terrorism.

This chapter will also analyse whether a reformed and strengthened criminal justice system in Pakistan is helping the state to achieve its counter-terrorism objectives as defined by the National Action Plan 2015. The main focus of this study is to understand the role of the criminal justice system in countering the

threat of terrorism within the country. The primary aim of this chapter is to analyse the Anti-Terrorism Act of 1997 (ATA) by examining its flawed definitions of terrorism, the powers it grants the Anti-Terrorism Court and its provisions for special police powers and witness protection. Furthermore, this chapter begins with a detailed analysis of the amendments made to the ATA 1997 between 1998 and 2015. A significant part of this chapter focuses on the judicial interpretation of terrorism under Section 6 of the Act. This chapter also reveals how this contradicts how terrorism is defined and interpreted by the superior courts in Pakistan.

5.2 Enactment of the Anti-Terrorism Act (ATA) 1997 and Amendments in the Anti-Terrorism Laws

Mr. Muhammad Nawaz Sharif was elected as Prime Minister of Pakistan in October 1990. At that time, ethnic and sectarian violence was increasing, with Karachi and Hyderabad becoming hotspots.²²⁵ Kidnappings, targeted killings and torture were widespread in Karachi and Hyderabad. The government launched an operation against sectarian and ethnic armed groups with the help of the military and the Pakistan Rangers in order to reinstate law and order.²²⁶ To curb violence in the urban areas of Sindh province, the government took various law enforcement measures, including the introduction of a curfew in Karachi and Hyderabad for short lengths of time. Furthermore, the government introduced and amended various laws to empower law enforcement agencies and the judiciary, including Special Courts for Speedy Trials Ordinance 1987,²²⁷ the Terrorist-Affected Areas (Special Courts) Ordinance 1990²²⁸ and the Terrorist-Affected Areas (Special Courts) Act 1992.²²⁹

During the 90s, ethnic, and sectarian violence increased sharply in Pakistan. The militant wings of political and religious organisations, including the Muhajir Qaumi Movement (MQM), Sunni Tahreek, Sipah-e-Sahaba Pakistan (SSP) and Sipah-

²²⁵ Siddiqui, Niloufer. (May 27, 2015). *Sectarian Violence and Intolerance in Pakistan*. Policy Analysis, Middle East Institute.

²²⁶ Research Directorate, Immigration and Refugees Board, Canada. (December 1, 1992). *Pakistan: Information on the activities of the Mohajir Qaumi Mahaz (MQM) in 1992, especially with respect to the national government of Pakistan and the Sindh provincial government*. Citation PAK12609, Canada: Immigration and Refugees Board of Canada.

²²⁷ Special Courts for Speedy Trials Ordinance 1987. (November 16, 1987). The Gazette of Pakistan. http://www.na.gov.pk/uploads/documents/1336457750_417.pdf (Accessed on March 14, 2019).

²²⁸ Fayyaz, Shabana. (2008). *Responding to Terrorism: Pakistan's Anti-Terrorism Laws*. Vol 2, No 6, Perspectives on Terrorism.

²²⁹ Tariq, Aisha. (2019). *Defining Terrorism: Its Application and Implications in Pakistan*. Vol. 16, No 1, Pluto Journals, JSTOR, PP. 117-136.

e-Muhammad became key stakeholders in this violence.²³⁰ Law and order deteriorated, and Pakistani society was feeling increasingly insecure. The government thus established a number of Anti-Terrorism Courts (ATC) throughout the country to convict those suspected of terrorism-related offenses, even going as far as to impose the death penalty as punishment for the crime of terrorism.

The ATA 1997 empowered military and civilian forces to use a substantial degree of force against militants. For example, it enabled law enforcement and military personnel to enter and search any premises without a search warrant where they have sufficient reason to suspect the presence of militant or terrorist activities. Furthermore, the ATA provided military and law enforcement personnel with legal protection from being prosecuted for any act that they committed whilst carrying out official duties.

In 1998, the Supreme Court of Pakistan determined in *Mehram Ali v. the Federation of Pakistan*²³¹ that specific provisions of the Anti-Terrorism Act 1997 were unconstitutional and subsequently ordered for changes to be made in three particular domains. The Supreme Court's ruling found:

1. *That the judges of the ATCs should serve fixed terms.*

²³⁰ Research Directorate, Immigration and Refugee Board, Canada. (July 1, 1999). *Sectarian Violence. Pakistan: A Country Study*. <file:///Users/muhammadmahmood/Desktop/Refworld%207C%20Sectarian%20Violence.webarchive> (Accessed on November 7, 2019).

²³¹ *Mehram Ali v. the Federation of Pakistan* (1998) 1998 SC 1445.

2. *That the ATCs should be subjected to the same or similar procedural rules as ordinary courts, including rules surrounding evidence and procedure.*
3. *That appeals of decisions made in the ATCs would be handled by the relevant constitutionally mandated regular court.*

This judgement provided a legal safeguard for those accused of terror-related crimes and guaranteed the independence of the Anti-Terrorism Courts by fixing the tenure of its judges and by naming the provincial High Courts as the courts of appeal for ATC judgements.

In the light of the above-said judgment, the government rectified these concerns surrounding ATA by way of the Anti-Terrorism (Amendment) Ordinance of 1998²³² and made the following amendments:

1. Fixed the tenure of office for judges of the Anti-Terrorism Courts for three years.
2. The military and civil armed forces were henceforth required to justify in writing their reasons for searching any premises and/or suspect or suspects.
3. The power of the ATCs to try the accused in absentia was curtailed.
4. Before the trial of an accused in absentia, the ATCs shall publish a proclamation in at least three national newspapers and the court shall appoint a legal defence counsel for the accused.

²³² Pakistan Anti-Terrorism Amendment Ordinance 1998.
http://www.vertic.org/media/National%20Legislation/Pakistan/PK_Anti-Terrorism_Amendment_Ordinance_1999.pdf (Accessed on March 15, 2019).

5. Amended Ordinance 1998 further provided that, under the ATA, a defendant whose appeal is pending before an appellate tribunal could file an appeal in their provincial High Court and that they could appeal against the High Court judgment in the Supreme Court of Pakistan, should it be required.

After the targeted killing of the former governor of Sindh, Hakim Muhammad Saeed, in Karachi on 17 October 1998²³³, allegedly committed by the MQM's armed wing, law and order deteriorated even further in the province of Sindh, specifically in Karachi and Hyderabad. In response to this, the Federal government imposed a state of emergency in Sindh in October 1998. To regain control of the security situation, the Federal government promulgated a new ordinance, by the name of the Pakistan Armed Forces Ordinance (PAFO) 1998,²³⁴ in order to provide legal protection and justification for sending the military into Sindh in order to maintain law and order. Under this ordinance, a new offence called "civil commotion" was introduced to judicial proceedings against civilians in the military courts, rather than in the Anti-Terrorism Courts. Civilian commotion is defined as:

The creation of internal disturbances in violation of law or with the intention of violating the law; the commencement or continuation of illegal strikes, go-slows, lock-outs and vehicle snatching or lifting; damage to or destruction of state or private property; random firing to create panic; charging Bhatta; acts of criminals trespass [illegal sabra – i.e. illegal appropriation of property]; the distribution, publishing or pasting of a handbill; or making graffiti or wall-chalking intended to create unrest or fear or create a threat to security or law and order.

²³³ *Who Really Killed Hakeem Saeed*. <http://akchishti.blogspot.com/2009/03/who-really-killed-hakim-saeed.html> (Accessed on: June 19, 2019).

²³⁴ Pakistan Armed Forces (Acting in Aid of Civil Power) Ordinance [PAFO] 1998. <http://nasirlawsonline.com/laws/pafo.htm> (Accessed on March 11, 2019).

Legal experts, civil society, media, and human rights organisations criticised the PAFO. Indeed, the Supreme Court Pakistan dismissed the PAFO's provision that the government could hold judicial proceedings against a civilian in a military court, determining that "*no civilian shall be tried by a military court*" in *Liaquat Hussain vs the Federation of Pakistan*.²³⁵

After this Supreme Court ruling, the government revoked the Pakistan Armed Forces (Acting in Aid of Civil Power) Ordinance 1998 but retained 'civil commotion' by including it as an offence under the Anti-Terrorism Act 1997. Furthermore, many amendments were made to the ATA 1997 in 1999. Under these amendments, the government was stripped of the right to appoint a legal counsel of its own choosing in the case of the defendant's absence during the trial, the definition of terrorism was expanded and all cases pending before the military tribunals shall be transferred to the Anti-Terrorism Courts.

In October 1999, General Pervez Musharraf, the Chief of Army Staff at that time, came in power after a successful coup against the democratically elected government of Nawaz Sharif. Once in office, he enforced the Provisional Constitution Order No. 1 and 9 of 1999²³⁶ and made several amendments in Sections 18 and 25 of the Anti-Terrorism Act 1997. These amendments added new provisions to the act, such as;

Concealing the intention to commit an offence; abetment of an offence; criminal conspiracy to commit a crime punishable by death or with imprisonment of more than two years; waging or attempting to wage war against Pakistan; conspiracy to commit certain offences against the state;

²³⁵ *Liaquat Huaasin vs. the Federation of Pakistan*. (1999). PLD 1999 SC 504.

²³⁶ Provisional Constitution (Amendment) Order. 9, 1999, No. 2-10/99-Min, Part 1. (November 15, 1999) Pakistan.

collecting arms with the intent to wage war; concealment with the intent to facilitate waging of war; kidnapping; being one of the five or more persons assembled for the purpose of committing dacoity; and conspiracy to commit hijacking.

Musharraf's military government also established two special courts under the Ordinance 2000 which served as appellate tribunals against the judgments of the Anti-Terrorism Courts and which had powers to transfer any case within the jurisdiction of a province. The Musharraf military regime used this ordinance against the deposed Prime Minister Nawaz Sharif in an aircraft hijacking case. In April 2000, Karachi's Anti-Terrorism Court sentenced Mr. Sharif to life imprisonment.²³⁷ He later went into exile with the help of Saudi Arabia. Therefore, it is clear that a military dictator used this ordinance as a tool against a democratically elected government.

After the emergence of sectarian violence in Pakistan after 9/11, the Musharraf government revised its national security policy and promulgated the Anti-Terrorism (Amendment) Ordinance 2001.²³⁸ Under the Amended Ordinance 2001, the government defined a terrorist organisation as a group that:

- a) *Commits or participates in acts of terrorism.*
- b) *Prepares for terrorism.*
- c) *Promotes or encourages terrorism.*
- d) *Supports and assists any organisation concerned with terrorism.*

²³⁷ Sharif Sentenced to Life for Musharraf Plot. (2000). *The Guardian*.

<https://www.theguardian.com/world/2000/apr/07/pakistan.lukeharding> (Accessed on: June 19, 2019).

²³⁸ The Anti-Terrorism (Amendment) Ordinance 2001. Ministry of Law and Justice, Pakistan. <http://www.molaw.gov.pk/molaw/userfiles1/file/Anti-Terrorism%20Act.pdf> (Accessed on June 10, 2019).

- e) *Patronises and assists in the incitement of hatred and contempt on religious, sectarian or ethnic lines that stir up disorder.*
- f) *Fails to expel from its ranks or ostracise those who commit acts of terrorism and presents them as heroic persons.*
- g) *Is otherwise implicated in terrorism.*²³⁹

Furthermore, the Anti-Terrorism (Amended) Ordinance 2001 empowered the government to ban any group or organisation if it had reasonable grounds to believe that:

- a) *An organisation was involved in terrorism;*
- b) *It operated under the same name as an organisation listed in the First Schedule or operated under a different name.*
- c) *Or the First Schedule was amended by the Federal government in any way to enforce proscription.*²⁴⁰

The ordinance also provided legal safeguards to banned organisations if they believe that the Federal government's order is unjustified. An organisation or group could invoke their right for a review of the decision by submitting an appeal to the Federal government within thirty days, the application for which would subsequently be reviewed within 90 days. In case of refusal, the organisation could use their right to appeal against the decision of the Federal government in the provincial High Court.

²³⁹ See. n. 238, p. 138.

²⁴⁰ See. n. 238, p. 138.

The Anti-Terrorism (Amended) Ordinance 2001 empowered the Federal government to add any individual or organisation to their watch list if the government suspected on reasonable grounds that an act, individual or group fell within the definition of terrorism. Being added to this watch list would entail being under surveillance for six months. After the hearing, the Federal government could seal an individual or group's office; freeze their accounts; ban their literature, posters, electronic and digital material and publications; and forbid them from making any statement to the press. The ordinance also authorised the Federal government to arrest, prosecute and sentence any person that had committed or had been linked to a terrorist act with seven-years in prison. SSP, SeM and LeJ, militant organisations that were actively involved in sectarian violence and terrorist activities in and outside of Pakistan, were banned under the Anti-Terrorism (Amendment) Ordinance of 2001.

The Anti-Terrorism (Amendment) Ordinance 2001 expanded the definition of 'terrorism', adding to it several other unrelated offences, such as crime that caused 'grievous' injury to a person or harmed property, with an emphasis on the word 'harm.' Unfortunately, this expanded definition quickly led to Anti-Terrorism Courts becoming overwhelmed due to their suddenly overstretched jurisdiction, which ultimately resulted in delays and the disposal of the cases.

After 9/11, terrorism increased and spread very rapidly throughout the country, resulting in the loss of thousands of innocent lives and economic losses of billions of dollars. The state of Pakistan has taken several steps and hard measures in an effort to control terrorism. For example, the government has implemented a

series of anti-terrorism legislation and, between September and October 2001, it increased the number of Anti-Terrorism Courts to eleven in the province of Khyber Pakhtunkhwa (KPK) and four in the province of Sindh. By the end of 2001, forty-one Anti-Terrorism Courts had been established throughout Pakistan in order to strengthen its judicial infrastructure and tackle terrorism-related cases. Furthermore, another Anti-Terrorism (Amendment) Ordinance 2002 was enacted in January 2002.²⁴¹

Under the Anti-Terrorism (Amendment) Ordinance 2002, Musharraf's Government added a number of Pakistan-based groups, operating both domestically and in Afghanistan, to its list of proscribed organisations, including Hizbul Tehreer, Millat-e-Islamia Pakistan and Islami Tehreek Pakistan, which were splinter groups of Sipah-e-Sahaba Pakistan (SSP) and Sipah-e-Muhammad Pakistan (SMP).²⁴² By introducing the Ordinance 2002, President Musharraf attempted to dismantle Pakistan's network of terrorist and militant organisations in his capacity a front-line ally of the international community's 'war on terror' in Afghanistan against Al-Qaida and the Afghan Taliban. Pakistan was also facing mounting international pressure to curb the network of terrorist organisations based in Pakistan.

²⁴¹ Anti-Terrorism (Amendment) Ordinance 2002, Official Gazette. (November 15, 2002). No. M-302/L-7646, Pakistan.

²⁴² *List of Banned Organizations in Pakistan*. (2012). *The Express Tribune*. <http://tribune.co.pk/story/456294/list-of-banned-organization-in-Pakistan> (Accessed: 19 June 2019).

Once again, in November 2004 the Anti-Terrorism Act (ATA) was amended under the Anti-Terrorism (Amendment) Ordinance 2004.²⁴³ In this amendment, sentences were increased for those convicted for assisting in the commission of, or otherwise facilitating, acts of terrorism from fourteen years to life imprisonment. The Amended Ordinance also provided the right to appeal within thirty days in the High Court against decisions made in the Anti-Terrorism Courts. In the case of acquittal by the Anti-Terrorism Court, the complainant may lodge an appeal against the acquittal within thirty days in the High Court. Under the Ordinance, the enhancement of the sentences for facilitating terrorists and the added right to appeal for complainants, which usually entails the state protesting the acquittal by the ATC, the government has made laws far tougher on terrorists and their facilitators.

The government made further amendments and promulgated the Anti-Terrorism (Second Amendment) Act 2005.²⁴⁴ Under the Amended Act, maximum penalties for different offences under the ATA were increased. Sentence periods of six months increased to two years; periods of one and three years increased to five years; periods of five years rose to seven years; and sentence periods of fourteen years extended to life imprisonment. Furthermore, the Act of 2005 prevented the ATC from allowing the defence council to make more than two adjournments during the trial and, if the defence counsel did not attend court proceedings, the court would appoint a state counsel to defend the accused. In Pakistan's judicial system, adjournments are characteristic delay tactics and are used as a tool by defence counsels, and it is the major cause of delay in the disposal of cases.

²⁴³ Anti-Terrorism (Amendment) Ordinance 2004. *Criminal and penal law*. PAK-2004-L-86210, Pakistan.

²⁴⁴ Anti-Terrorism (Amendment) Ordinance 2005. PAK-2005-L-81775, Pakistan.

Under the Anti-Terrorism (Second Amendment) Act 2005, the High Court of each Province shall establish a special bench to hear the appeals against the decisions of the Anti-Terrorism Courts. These special appellate benches are also prevented from allowing not more than two consecutive adjournments. The 2005 amendment also authorised Anti-Terrorism Courts to trial cases of kidnappings for ransom; the use of explosives or firearms in mosques, imam bargahs (Shia mosques), churches, temples or any other place of worship; and the use of explosives or firearms within the premises of the courts.

In 2007, terrorism had reached its peak in Pakistan, which was experiencing a severe threat from militant organisations and religious extremism. The Lal Masjid (Red Mosque) incident²⁴⁵ in Islamabad, Pakistan's capital also happened in 2007. Afterwards, terrorism increased sharply. Pakistan was a front-line ally of the United States in its 'War on Terror' in Afghanistan, taking several measures against terrorist organisations, including the dismantling of their training camps and the capture of dozens of hardcore terrorists linked with Al-Qaida and the Taliban. Notably, Abu Zubaydah, the training chief of Al-Qaida, was captured from the author's home town Faisalabad on the 22nd March 2002²⁴⁶ and was handed over to U.S. forces. In reaction to this, more than seventy suicide attacks occurred throughout the country in 2007.²⁴⁷ Terrorist organisations targeted military and civilian forces, law enforcement and the country's infrastructure.

²⁴⁵ *Siege of Pakistan's Lal Masjid Ends*. (July 11, 2007). Al-Jazeera. <https://www.aljazeera.com/news/asia/2007/07/2008525134739873412.html> (Accessed on April 9, 2018).

²⁴⁶ Zubaydah, Abu. (2002). *The Rendition Project*. <https://www.therenditionproject.org.uk/prisoners/zubaydah.html> (Accessed on April 10, 19).

²⁴⁷ *Taliban take credit for suicide attacks in Pakistan*. (July 22, 2007). FDD's LONG WAR Journal. https://www.longwarjournal.org/archives/2007/07/taliban_take_credit.php. *Terrorist attacks soar, deaths down from 2007 peak: Study*. (2012). REUTERS. <https://www.reuters.com/article/us-security-attacks-idUSBRE8B306M20121204>

In 2008, democracy was restored once again after nine years of military rule in Pakistan. During the election campaign, two times Prime Minister, Benazir Bhutto, was assassinated in Rawalpindi in a suicide attack for which Tahreek-e-Taliban Pakistan (TTP) took responsibility.²⁴⁸ The newly elected leader of the Pakistan People's Party, Asif Ali Zardari, subsequently came into power. At that time, terrorism was on the rise in Pakistan. In order to cope with this rising terrorist threat, the new government made a series of Amendments to the Anti-Terrorism Act. In 2010, the Anti-Terrorism (Amendment) Ordinance 2010 was enacted, making amendments to Section 6 of the Anti-Terrorism Act. Under the Amended Section 6, several offences were added to the definition 'terrorism' in the ATA, such as efforts to 'intimidate and terrorise' the public, social sectors and the business community; and preparatory attacks upon civilians, government officials, installations, security forces or the law enforcement. After these changes to the ATA, the government highlighted the changing face of terrorism from inter-sectarian violence to domestic militancy which sought to threaten state security, to destabilise state infrastructure and challenge the democratically elected government.

Once again in 2013, the government promulgated to the Anti-Terrorism Act through presidential ordinance by implementing the Anti-Terrorism (Amendment) Act 2013.²⁴⁹ Under the Amended ATA 2013, the government extended the jurisdiction of the Anti-Terrorism Court to include cases of property-related and

²⁴⁸ *Benazir Bhutto Killed in attack*. (December 27, 2007). *BBC News*. http://news.bbc.co.uk/1/hi/world/south_asia/7161590.stm. *Who assassinated ex-Pakistan leader Benazir Bhutto?* (January 11, 2018). *BBC News*. <https://www.bbc.co.uk/news/av/world-asia-42638528/who-assassinated-ex-pakistan-leader-benazir-bhutto> (Accessed: June 20, 2019).

²⁴⁹ Anti-Terrorism (Amendment) Ordinance 2013. PAK-2013-L-96211, Pakistan.

monetary offences, extortion and terrorist financing. The Amendments also empowered the government to seize control of assets belonging to banned organisations, whereas beforehand only finances could be seized. The Anti-Terrorism (Amendment) Act 2013, broadened the definition of terrorist activities to include attacks on foreign countries' citizens, foreign government officials and members of international organisations. The aim of this amendment was to increase the jurisdiction of the Anti-Terrorism Courts, which faced a higher risk from terrorist activities.²⁵⁰

Another change was made by the Anti-Terrorism (Second Amendment) Act 2013. The amendments provided several forms of protection to the political and democratic process of Pakistan. For example, it determined that the Anti-Terrorism Act would not apply to “democratic and peaceful religious or political demonstrations or rallies that are held in accordance with the law.” Before this, under the military government, the ATA was being used as a tool against the political opponents to suppress them. The Amendment also imposed restrictions on banned individuals and organisations by prohibiting them from international travel and being issued passports and arms licences. The amended act also outlined admissible forms of evidence in the Anti-Terrorism Court trials, such as an electronic form of evidence. It provided greater clarity on the rules surrounding security and the disposal of evidence being collected during terrorism-related cases, investigations and hearings before an Anti-Terrorism Court.²⁵¹

²⁵⁰ *Taliban issues threat to foreign horde' of aid workers in Pakistan helping flood relief effort.* (2013). *The Daily Mail*. <http://www.dailymail.co.uk/news/article-1306597/Taliban-threat-foreign-aid-workers-Pakistan.html>. (Accessed: May 15, 2019).

²⁵¹ Noor, S. (2013). *Evolution of Counter-Terrorism Legislation in Pakistan*. *Conflict and Peace Studies*.

On 6 January 2015, the 21st Constitutional Amendment²⁵² and amendments to the Pakistan Army Act 1952 empowered Special Military Courts to try all terrorism-related cases. The Special Military Tribunals were established in January 2015, they were initially authorised by Pakistan's Parliament to carry out trials of hardened criminals and terrorists for a period of two years, however this was subsequently extended for another two years by the 23rd Constitutional Amendment²⁵³ in March 2017. This extension period came to an end in March 2019. Legal experts, human rights organisations, political parties and judges from the superior courts have expressed their reservations about proceedings in these military tribunals. Therefore, at the time of writing, Parliament is reluctant to give them any further extension.

The aim of the Anti-Terrorism Act 1997 was to strengthen the existing legal mechanisms and law enforcement structure. In this regard, Anti-Terrorism Courts were formed under the Section 13 of the Anti-Terrorism Act in order to facilitate swift trials of terrorism-related cases. Indeed, according to Section 19 (7) of the ATA, these cases would be decided within a period of seven days. Furthermore, the ATA gave Pakistan's law enforcement agencies many powers that would allow them to adequately investigate acts of terrorism.

Unfortunately, since the enactment of the Anti-Terrorism Act, the prosecution of terrorism offences have not been able to realise their full potential. For example, thousands of terrorism cases are pending in ATCs, which will take years to

²⁵² 21st Constitutional Amendment 2015, Pakistan.

http://www.na.gov.pk/uploads/documents/1420547178_142.pdf (Accessed on August 11, 2019).

²⁵³ 23rd Constitutional Amendment 2017, Pakistan. <https://pakistanconstitutionlaw.com/23rd-amendment-2017/> (Accessed on August 11, 2019).

conclude. Furthermore, conviction rates are extremely low, thus showing that there are flaws in the criminal justice system, specifically in regard to investigations prosecution capacities. After an analysis of the reported rulings of ATCs and appellate courts, it was revealed that the majority of the cases registered under the Anti-Terrorism Act did not fall within the definition of terrorism, such as the judgment of **1999 PCr. LJ 929 Lahore High Court** in a kidnapping case and **2003 YLR 1977, Karachi Sindh High Court** in a robbery case. These courts assert that the cases were not under the jurisdiction of the Anti-Terrorism Court and thus ought to have been trialled in the ordinary courts. Therefore, the distinction between ordinary crimes under the Pakistan Penal Code 1860 and acts of terrorism under the Anti-Terrorism Act 1997 are vague, which has led to Anti-Terrorism Courts becoming overwhelmed, resulting in delays in the disposal of the cases.

5.3 Overview of the Anti-Terrorism Act 1997

Any offence which falls within the meaning of “terrorism” as defined under Section 6 of the Anti-Terrorism Act 1997 would be triable under the Act.

Section 6. Terrorism (1) in this act, “terrorism” means the use or threat of action where;

- a) The action falls within the meaning of sub-section (2); and*
- b) The use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect [or a foreign government or population or an international organisation] or create a sense of fear or insecurity in society; or*
- c) The use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause [or intimidating and terrorising the public, social sector, media persons, business community or attacking the civilians, including damaging property by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies], [Provided that nothing herein contained shall apply to a democratic and religious rally or a peaceful demonstration in accordance with law [sic].*

(The full wording of Section 6 is available on Annex B)

5.3.1 Discussion

Upon consultation of Section 6 of the Anti-Terrorism Act 1997, it is evident that there is improper distinction between ordinary crimes and acts of terrorism, which is demonstrated by the fact that one of the most common criticisms from the legal community concern the broad definition of the act of terrorism. Indeed, consulting Section 6 raises questions over whether a specific act constitutes terrorism or not and over what the purpose, motivation or objective of the act is. Furthermore, what are the consequential effects of such an act on the individual, society and the state?

The superior courts of Pakistan have outlined the nature and gravity of the act and its effect on society, groups of people and the state. Therefore, this interpretation focuses on the “action-based approach.” In the Constitutional Petition, the Lahore High Court refers to its judgment of **1999 P Cr. LJ 929 Lahore**, where the accused was involved in the kidnapping of a married woman and the case was under trial before the Anti-Terrorism Court. The accused challenged the jurisdiction of the Anti-Terrorism Court on the ground that this offence falls within Section 365 of the Pakistan Penal Code and is thus triable in an ordinary court and not an Anti-Terrorism Court. The ATC rejected the application on the grounds of heinous nature of the offence. The accused filed a Constitutional Petition before the Lahore High Court. In accepting the petition, the Lahore High Court determined that *“a distinction between a terrorist act and a run of the mill crime has to be maintained, because otherwise, as would presently be seen [sic.], it would violate the intention of the legislature.”*²⁵⁴

²⁵⁴ Lahore High Court. (1999). P Cr. LJ 929, Lahore.

The offences of using explosive devices or fire-arms and stopping public servants from their duties are fall under the Pakistan Penal Code 1860, and are thus triable in ordinary courts. However, when these offences are coupled with the intentions, aims and objectives of terrorism as defined under Section 6 of the Anti-Terrorism Act, they become acts of terrorism. Therefore, the basic concepts of what constitute an act of terrorism are motive, intention and objectives.

Therefore, some judgments of the Supreme Court of Pakistan supported the action-based approach to determine whether an offence is an act of terrorism under Section 6 of the ATA and identify its consequential effects and impacts on others. However, in some cases, the Supreme Court limited the scope of the ATA, particularly in personal enmity cases which come under the jurisdiction of the ordinary courts of law and do not fall under of Section 6 of the Anti-Terrorism Act.

However, under the Anti-Terrorism (Amendment) Ordinance 2001, the term "*terrorist act*" has been substituted for the word "*terrorism*." The offences mentioned in Section 6 (2) can thus only be heard by the Anti-Terrorism Courts if the crime is committed with the intention clarified in clauses (b) or (c) of subsection (1) of Section 6. The Lahore High Court decided in **2004 P Cr. LJ 210 Lahore** that the Anti-Terrorism (Amendment) Ordinance 2001 brought about a significant change in the definition of terrorism which shifted the focus onto the "design" or the "purpose" behind an offence rather than action.

Another case, *Ahmed Shah and others vs The State*, was reported in **2003 YLR 1977 Karachi**, whereby a robbery (dacoity) was committed in a public place which resulted in the injury of two children. The Sindh High Court held that Anti-Terrorism Courts had no jurisdiction because the offence did not fall under Section 6, of the ATA. The 'intention' of the accused was a simple robbery, and the children were injured by gunfire during the incident. So, on the ground of 'intention,' this case did not fall within the jurisdiction of the ATC.

The Lahore High Court Judgment in **Basharat Ali vs Special Judge, ATC Gujranwala (PLD 2004 Lahore 199)** is one of the most significant and detailed judgments highlighting the importance of the motive and purpose of offence, and its consequential effects. According to the reported case, on the base of on-going personal enmity, one group murdered four people and injured eight others in Gujranwala, Province of Punjab. The case was registered under the Anti-Terrorism Act 1997 against the accused party. After the investigation, a Challan (prosecution report) was submitted to the Anti-Terrorism Court in Gujranwala for the trial of the case. Meanwhile, the petitioner filed an application before the Court under Section 23 of the Anti-Terrorism Act 1997 for the case to be transferred to the ordinary courts of law because terrorism was not involved in this incident. Although this case did not fall within the jurisdiction of the Anti-Terrorism Court, the application was rejected by the court of trial. The petitioner challenged this order in the Lahore High Court.

Justice Asif Saeed Khan Khosa (former Chief Justice Supreme Court of Pakistan) passed a detailed judgment explaining the legislative intention behind the replacement of the word 'terrorist act' with the word 'terrorism' in the Anti-Terrorism (Amendment) Ordinance 2001 under Section 6 of the ATA. Some essential extracts from the judgment are presented below.²⁵⁵

Terror and terrorism are concepts quite distinct from each other, and the quintessence of the two notions is not difficult to distil. Terror is a manifestation of fright, dread, fear or insecurity and is a possible consequence of acts that may not necessarily be motivated to create such an effect, whereas terrorism is an activity designed to create such an effect of terror. The critical difference between the two is the design and purpose of the act as understood in the criminal jurisprudence as *mens rea*. In the case of terror, the act; or the *actus reus*, is not motivated to create fear and insecurity in the society at large but the same is actuated with a desire to commit a private crime against targeted individuals; etc. and the fear and insecurity created by the act in the society at large is only an unintended consequence or a fall out thereof, whereas in the case of terrorism the main purpose is the creation of fear and insecurity in the society at large and the actual victims are, by and large, not the real targets. Every crime, no matter what its magnitude or extent, creates some sort of fear and insecurity in some section of the society, but every felony or misdemeanour cannot be branded or termed as terrorism. Thus, the real test to determine whether a particular act is terrorism or not is the motivation, object design, or purpose behind the act and not the consequential effect created by such an act.

It is concluded from this judgment that every crime or felony which creates fear, shock, horror, or insecurity in society does not fall in the definition of terrorism under Section 6, of the Anti-Terrorism Act. Terrorism is an entirely different phenomenon that has specific objectives and motives and intends to destabilise society, government or incite political change.

²⁵⁵ *Basharat Ali vs. Special Judge*. PLD (2004). Lahore 199. Anti-Terrorism Court Gujranwala.

The superior courts in Pakistan also adopted the “action-based approach” to interpret terrorism. There are several judgments of the Supreme Court of Pakistan where courts determined the effect of an action and its impact on society or section of the public to create a sense of fear and insecurity. In a case reported in **PLD 2003 SC 224**, the Supreme Court decided that;

We have to see the psychological impact created upon the minds of the people. It is also not necessary that the said act must have taken place within the view of the general public so as to bring it within the encompass of the Act. Even an act having taken place in a barbaric and gruesome manner, if it had created fear and insecurity, would certainly come within the purview of the ATA [sic].²⁵⁶

Concerning this ruling, in the case of ***Mst. Raheela Nasreen v. the State and another (2002 SCMR 908)*** whereby a husband was murdered by a batman with the aid of the man’s wife from inside the residence. The case was tried in the Anti-Terrorism Court because this murder created a sense of fear and insecurity among army officers even though they had not seen the incident, but the batman was a trusted person employed by the deceased army officer.

In another case, reported in ***PLD 2003, SC 704***, the Supreme Court held that;

If a sense of fear, insecurity, in the people at large or any section of the people or disturbance of harmony amongst different sections of the people is created, Section 6, will be attracted. It is the cumulative, effect of all the attending circumstances which provide tangible guidelines to determine the applicability or otherwise of said subsection.²⁵⁷

Therefore, ordinary cases of brutal nature which have a resounding impact upon society would fall under the Anti-Terrorism Act 1997. These precedents have

²⁵⁶ *PLD 2003, SC 224*. (2003). Supreme Court of Pakistan.

²⁵⁷ *PLD 2003, SC 704*. (2003). Supreme Court of Pakistan.

been set by the Supreme Court regarding the interpretations of Section 6 in a number of cases, which have been followed and relied upon by the Provincial High Courts in several judgments.

After careful review of the judgments made by the superior courts, it is evident that that the definition of the term 'terrorism' has remained the most complicated issue in terrorism-related cases. Due to the contradictive and vague interpretations of the term 'terrorism' under Section 6 of the Anti-Terrorism Act, the jurisdiction of the Anti-Terrorism Courts is usually challenged by the defendants. Furthermore, the inconsistent judgments of the superior courts has created confusion regarding the jurisdiction of the Anti-Terrorism Act.

5.4 Legislative flaws and defects relating to Section 6, Anti-Terrorism Act 1997

The contradiction and overly stretched interpretation of term 'terrorism' under the Anti-Terrorism Act 1997 by the superior courts created confusion between acts of terrorism and ordinary criminal offences. The precedents of the superior courts provide significant discretionary powers to the judiciary, prosecutors and law enforcement agencies. Most information regarding the Section 6 originates from the Anti-Terrorism (Amendment) Ordinance 2001, for which most of the wording derives from the United Kingdom's Terrorism Act 2000.²⁵⁸

The definition of 'terrorism' under Section 6 of the Anti-Terrorism Act contains three major elements:

- a) The **actions** that constitute terrorism include a wide range of offences that cause death, such as grievous violence, damage to property, abduction for ransom, the use of explosives, hijacking, hostage taking, extortion, serious threat to public servants and many other actions. These actions are set out in Section 6 (2) of the ATA;
- b) The **intention** behind these above said actions must be designed to threaten or intimidate the general public, a particular community, foreign government or an international organisation for the purpose of creating fear or insecurity. These elements of intention set out in Section 6 (1) (b) of the Anti-Terrorism Act.
- c) The **motive** behind the actions is to create conflict among the ethnic, religious and sectarian groups and to destabilise the political structure of

²⁵⁸ Section 1, UK Terrorism Act 2000.

the country. These standards of a motive set out in Section 6 (1) (c) of the Anti-Terrorism Act.

The definition of 'terrorism' under Section 6 of the Anti-Terrorism Act contains a number of variations, those will be discussed below.

Section 6 (1) (b), ATA

6. *Terrorism, (1) In this Act, "terrorism" means the use or threat of action where;*

b) The use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or a foreign government or population or an international organisation or create a sense of fear or insecurity in society [sic].

After close review of Section 6 (1) (b), to include any offence in the definition of terrorism, it must have been "designed" and "intended" to incite fear. However, as we have seen in the previous discussion, in many judgments the superior courts used the word "intention" in interpreting terrorism offences, for example, in a reporting judgment in **PLD 2005 Supreme Court 530**, the Supreme Court of Pakistan held that *"a bare perusal of section 6 of the Act would reveal that the Legislature intends, by necessary implication, to exclude mens rea when dealing with the contravention of Section 6 of the Act, which cannot be incorporated, added or inserted by any Court as such insertion or addition can only be made by the Legislature. The words "designed to" as used in Section 6 of the Act do*

not mean that the offence must be committed with the intention to create terror, sensation or insecurity but it depends upon the nature of the offence, and its result on the basis whereof intention of the offender could be determined.”

Under the definition of terrorism, the word “designed to” is also used in the United Kingdom’s Terrorism Act 2000, but it explicitly interpreted in the meaning of “intention.”²⁵⁹

Another legislative complication in Section 6 (1) (b) is the result of a criminal action, i.e. does it “*create a sense of fear or insecurity in the society?*” This phrase is often used and quoted by the judiciary when applying Section 6. But in different judgments, the Supreme Court (***PLD 2003 SC 224, PLD 2003 SC 704, PLD 2005 SC 530***) has relied on an action-based approach and has used the phrase “*the impact or effect of an act*”. The words “create a sense of fear or insecurity in the society” has a broad meaning and multiple possible interpretations, which can create ambiguity.

Section 6 (1) (c), Anti-Terrorism Act

Terrorism means the use or threat of action where:

- c) Threat is made for the purpose of advancing a religious, sectarian or ethnic cause or intimidating and terrorising the public, social sector, media persons, business community or attacking the civilians, including damaging property by ransacking, looting, arson*

²⁵⁹ Anderson Q.C, D. (2013). The Terrorism Acts in 2012, Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006, London.

or by any other means, government officials, installations, security forces or law enforcement agencies [sic].

In Section 6 (1) (c) of the Anti-Terrorism Act, emphasis is placed on the word “*purpose,*” but more appropriate words would be “*intention or motive*”, which are used in the Australian definition. According to Saul (2008), “*the definition of terrorism should apply in a relatively narrow and exceptional circumstances*”.²⁶⁰ Section 6 (1) (c) uses the phrase “*made for the purpose of advancing a religious, sectarian or ethnic cause.*” While other countries emphasise political, religious and ideological causes. According to the Australian Human Rights and Equal Opportunities Commission, the essential elements of terrorism are political, religious and ideological violence. These motives distinguish terrorism from ordinary crime.²⁶¹ By including sectarian and ethnic causes without qualification, the definition of terrorism is unnecessarily expanded the courts become overwhelmed.

The Second Amendment in the Anti-Terrorism Act 2013 expended Section 6 (1) (c) by including the words “intimidating” and “terrorising”:

“intimidating and terrorising the public, social sector, media persons, business community or attacking the civilians, including damaging property by ransacking, looting, arson by any other means, government officials, installations, security forces or law enforcement agencies.”

²⁶⁰ Saul, Ben. (2008). *The Curious Element of Motive in Definition of Terrorism: Essential Ingredient or Criminalising Thought*. The University of Sydney Law School, Council of Australian Government Review of Counter Terrorism Legislation.

²⁶¹ Human Rights and Equal Opportunities Commission quoted in the Report of the Security Legislation Review Committee. (2006). p 56.

This is further broadened in Section 6 (3) of the ATA

(3) “The use or threat of use of any action falling within subsection (2) which involves the use of firearms, explosive or any other weapon is terrorism, whether, or not sub-section (1) (c) is satisfied.”

By adding the word “intimidating” under the 2013 amendment, more confusion when applying the act, because the essential element behind terrorism is ‘motive’ or ‘intention’, rather than how it is perceived by others. However, any action involving the use of firearms, explosives or any other weapon with the intention of intimidating or threatening the government or the public is terrorism regardless of the motive or intention behind the action.

In Pakistani society, firearms are readily available, and the State has little control over their possession because there is no specific criteria for issuing firearms licences. Furthermore, if the police recover a firearm in the possession of someone without a valid licence, it is a bailable offence under the Pakistan Penal Code 1860. Pakistan is a litigant society where people have personal enmities, and in a weaponised culture the use of weapons is ordinary, and heinous criminal incidents thus are commonplace. In such a society, it is even more essential to prove the intention or motive behind the action.

Section 6 (2) (c) of the Anti-Terrorism Act 1997 says:

“Involves grievous damage to property, including government premises, official installations, schools, hospitals, offices or any other public or private property including damaging property by ransacking, looting or arson or by any others means.”

In Pakistan’s present law and order landscape, categorising “serious damage to property” as an act of terrorism makes sense. In the past decades, militants have damaged government installations; religious premises, including mosques, shrines and churches; hospitals; historical sites, such as Quaid-e-Azam, Muhammad Ali Jinnah’s (founder of Pakistan) residency in Ziarat, Baluchistan; schools; and many other public and private properties. A significant example of this is that dozens of schools were blown up by the terrorists in one night during the Swat insurgency from 2008 to 2010.²⁶² During these incidents, there were sometimes no casualties, but a clear message and threat was being sent to the State, thus creating large-scale fear and insecurity.

There are also complications in the definition of “damage to property” under Section 6 (2) (c) of the Anti-Terrorism Act. It is challenging to define grievous damage to property. Does it relate to the threat to life? Is it something accidental? Is cash value factored in when assessing damage to property? Is it simply a matter of inconvenience?

²⁶² *Girls School Blown up in Swat*. (2010). *The News*. <http://www.thenews.com.pk/Todays-news-7-3083-Girls-school-blown-up-in-swat>. (Accessed: 15 June 2019).

Furthermore, there is no need to make specific reference to the properties, be they government premises, official installations, schools, hospitals, offices or any other public or private property. Instead, the simple definition of “*damage to property or destruction of property*” is sufficient in deciding when to apply the legislation. If the legislative intention is to limit the scope of Section 6 (2) (c) to include only the government-related premises, then exclude the words “*public or private property*”. While, the crimes of ransacking, looting, or arson fall within the ambit of ordinary criminal law.

5.5 Special Courts under the Anti-Terrorism Act 1997

Under Article 10 A, every citizen of Pakistan has the fundamental right to a fair and independent trial with due process; under Article 4, they have the right to be dealt with in accordance with the law; and Article 37 (d) ensures the promotion of social justice and the eradication of social evils with regards to inexpensive and expeditious justice. These rights are guaranteed by the Constitution of the Islamic Republic of Pakistan 1973.

After the occurrence of any crime, whatever its nature, it will be handled in accordance with the laws of the land and due process, but sometimes there is a need to take extraordinary measures to deal with exceptional circumstances. In the past couple of decades, Pakistan has faced terrorism and militancy that has damaged the very social fabric of the country. The already existing criminal justice system is incapable of dealing with this considerable threat to the country and its people. Therefore, Pakistan needs to take extraordinary measures and enact drastic legislation to fight against terrorism.

5.6 Judicial Powers of the Anti-Terrorism Courts under the Anti-Terrorism Act 1997

Under the Anti-Terrorism Act 1997, special powers have been provided to judges to allow them to better deal with terrorism-related cases. Any offence that falls within the jurisdiction of the Anti-Terrorism Act must be tried in an Anti-Terrorism Court. This thesis has established the discretionary powers of the special court's judges can be based on their interpretation of a particular case.

The powers of a judge under Anti-Terrorism Act reproduced below:

Section 8, 9 and 11 (1), Anti-Terrorism Act 1997

- *The courts may seize any material or recording that a person produces in a manner which likely to stir up sectarian hatred.*

Section 11 (H), Anti-Terrorism Act 1997

- *The courts may seize the money or property of a person convicted of an offence where he uses 'fundraising' as a means to further the cause of terrorism.*

Section 11 (I), Anti-Terrorism Act 1997

- *Where he uses money or other property for the purposes of terrorism;*

Section 11 (J)

- *Where he enters into or becomes concerned in an arrangement as a result of which money or other property is made available for the purpose of terrorism;*

Section 11 (K)

- *Where a person enters into or becomes concerned in any arrangement which facilitates the retention or control of terrorist property (money laundering);*

Sections 11 L and 11 M

- *Where he fails to disclose information to the police, having believed or suspected that another person has committed an offence under the Act.*

Section 11 (Q), Anti-Terrorism Act 1997

- *In addition, the court may make a forfeiture order against a person convicted of an offence under any of the above-mentioned sections.*

Section 11 (V), Anti-Terrorism Act 1997

- *A person shall also be convicted under this Act for the offence of directing terrorist activities, the result of which shall be imprisonment for life and forfeiture or confiscation of his assets within or outside Pakistan.*

Section 15, Anti-Terrorism Act 1997

- *The ATA provides ATC's with the autonomy to decide a place of sitting for a terrorism trial if it considers it expedient or desirable to do so. This would entail holding the trial of a case at any place, including a mosque, other than the ordinary place of sitting.*

Section 17, Anti-Terrorism Act 1997

- *ATC's may also try any offence other than the scheduled offence with which the accused may be charged simultaneously at the same trial.*

Section 19 (7), Anti-Terrorism Act 1997

- *The Court shall, on taking cognisance of a case, proceed with the trial from day to day and shall decide the case within seven days, failing which an*

application may be made to the Administrative Judge of the High Court concerned for appropriate directions for expeditious disposal of the case to meet the ends of justice.

Section 21 (D), Anti-Terrorism Act 1997

- *An ATC shall have the powers or jurisdiction to grant bail or to otherwise release an accused person in any case heard by the ATC.*

Section 21 (M), Anti-Terrorism Act 1997

- *An ATC, while trying any offence under the Act, may also try any other offences with which an accused may be charged at the same trial.*

By examining the powers of the Anti-Terrorism Courts, it is evident that the principal defect in Section 19 (7) of the ATA is the requirement for the case to be ruled upon within seven days. This is an unrealistic approach and is very rarely achievable, especially in Pakistani society. There are many reasons for this, such as the common use of adjournments by the defence counsel as a delay tactic. In Pakistan, prominent lawyers regularly deal with multiple criminal cases at a time, ranging from the lower judiciary to the higher judiciary. They are thus very busy and it is hard for them to appear in the multiple courts at the same time.

Once case proceeding begin in an Anti-Terrorism Court, several people are involved in the trial, including the victim, the accused, witnesses, counsels from both sides, a prosecutor and an investigation officer. The most important factor during the hearing of the case is the testimony of witnesses that are reluctant to give their testimony in court due to the threat from the accused parties, not only to themselves but also to their families. Many cases have been reported in

Pakistan whereby witnesses have lost their lives before or after giving their testimony, specifically in terrorism-related cases.

Furthermore, there is no effective witness protection system in Pakistan,²⁶³ and sometimes it is even difficult for them to travel from their home to court. There has also been a trend of prosecutors and investigation officers giving flimsy excuses for court absences. Indeed, delaying tactics are commonly employed by counsels from both sides. Usually, they mutually decide upon their availability for the case proceedings, maybe once a week or once every two weeks. Under the pressure of Bar Associations, the judges cannot force them to follow the court instructions and make sure of their availability.

Therefore, Section 19 (8) of the Anti-Terrorism Act 1997 stated that *“An Anti-Terrorism Court shall not allow more than two consecutive adjournments during the trial of the case. If the defence counsel does not appear after two consecutive adjournments, the Court may appoint a State Counsel with a least seven years of experience in criminal matters for the defence of the accused from the panel of advocates maintained by the Court for the purposes in consultation with the Government and shall proceed with the trial of the case [sic.]”* but this never implemented in practice.

Article 10 (A) of the Constitution of Pakistan guarantees that *“every citizen has the indispensable right to a fair trial and due process,”* but due to the abovementioned obstacles, it is not possible to complete ‘due process’ within

²⁶³ See. pp. 174 to 179.

seven days. As a result, the disposal of cases takes months or even years. Therefore, due to the lack of due process, the acquittal rate of trials held in the Anti-Terrorism Courts are very high. For example, according to Prosecutor General of Punjab, in 2014 Anti-Terrorism Courts heard 785 terrorism-related cases throughout the province yet convicted only 196, resulting in an acquittal rate of 75%.²⁶⁴ According to a report maintained by the US State Department, the acquittal rate in Pakistan's anti-terrorism courts is approximately 85%.²⁶⁵

In conclusion, after an objective analysis of Section 19, subsections (7) and (8) of the Anti-Terrorism Act 1997 regarding the provisions to “*decide the case within seven days*” and that the “*ATC shall not give more than two consecutive adjournments during the trial of the case*”, it is clear that both are un-realistic approaches. However, the government should adopt a realistic approach to decide the cases within a given timeframe, which should be increased to three or six months rather than seven days. It should also be the responsibility of law enforcement agencies to provide protection to witnesses and to escort them to court at the time of the hearing. Regarding unnecessary adjournments, the Court should take strict measures, such as imposing financial penalties on the responsible side. By adopting unrealistic approaches, the full potential of these Special Courts cannot be achieved. As stated by the Supreme Court of Pakistan in *Mehram Ali and others v. Federation of Pakistan* (PLD 1998 Supreme Court 1445), “*justice delayed is justice denied*” and “*justice rushed is justice crushed*.”²⁶⁶

²⁶⁴ Parvez, Tariq. & Rani, Mehwish. (2015) *An Appraisal of Pakistan's Anti-Terrorism Act*. Special Report, USIP, Washington.

²⁶⁵ Country Reports: *South and Central Asia Overview*. (July 2012). U.S. Department of State, office of the Coordinator for Counterterrorism, Country Reports on Terrorism, pp. 142.

²⁶⁶ Mr. Justice (Rtd) Irshad Hasan Khan, former Chief Justice Supreme Court Pakistan. (1998). *Mehram Ali and others v. Federation of Pakistan*. 1998, SC, 1445.

5.7 Special Police Powers under the Anti-Terrorism Act 1997

Law enforcement agencies, especially the police force, play a crucial frontline role in the fight against terrorism. Hence, without a capable police force, it is impossible to fully tackle militancy. In Pakistan, police forces are trained to deal with ordinary crimes via traditional investigation techniques, and are therefore not well versed in using modern techniques or the latest investigation methods, such as forensic investigation, electronic surveillance, etc. On the other hand, militant and terrorist organisations are highly trained and literate in using technology and innovative methods.

The capacity of Pakistan's police service to deliver on all these fronts is severely impeded by political manipulation. As the Pakistani writer, Ayesha Siddiqi, points out:

How can 11,000 cops in Islamabad, effectively guard (and in some cases, monitor) 81 embassies, 76 ambassadors' residences, 22 UN offices, 14 hospitals, 20 universities, 1,044 schools and colleges, 77 markets, and 305 madrassas. In addition, they have to protect the head of state, government, and other dignitaries who visit the capital. It is an impossible task.²⁶⁷

In order to cope with the issue of terrorism, law enforcement agencies, including the police and civil armed forces, should not only well equipped and highly trained, but also legally protected and fully authorised to effectively perform their duties through proper legislation. Furthermore, point 8 of the National Action Plan 2015 expressed the need for a dedicated counter-terrorism police force.

²⁶⁷ Siddiqi, Ayesha. *Perils of Policing*. (November 20, 2009). *Dawn*.

In the fight against militancy and terrorism in Pakistan, special powers have been granted to law enforcement agencies by the Anti-Terrorism Act 1997 and the Investigation for Fair Trial Act 2013.

Under Section 5 of the Anti-Terrorism Act 1997, special powers have granted to the police, armed forces and civil armed forces in coping with terrorism-related matters and restoring the writ of the state. These special powers are outlined below:

Section 5 of the Anti-Terrorism Act 1997 [sic.]

1. *Any police officer, or member of the armed forces, or civil armed forces, who are present or deployed in any area may, after giving sufficient warning, use the necessary force to prevent the commission of terrorist acts or scheduled offences, and, in so doing shall, in the case of an officer of the armed forces or civil armed forces, exercise all the powers of a police officer under the Code.*
2. *In particular, and without prejudice to the generality of the provisions of sub-section (1), and officer of the police, armed forces and civil armed forces may;*
 - i. *After giving prior warning use such force as may be deemed necessary or appropriate, bearing in mind all the facts and circumstances of the situation, against any person who is committing a terrorist act or a scheduled offence, it shall be lawful any such officer, or any senior officer, when fired upon to fire, or order the firing upon any person or persons against whom he is authorised to use force in terms hereof;*

- ii. *Arrest without a warrant, any person who has committed an act of terrorism or a scheduled offence or against whom a reasonable suspicion exists that he has committed, or is about to commit, any such act or offence; and*
- iii. *Enter and search, without a warrant, any premises to make an arrest or to take possession of any property, firearm, weapon or article used, or likely to be used, in the commission of any terrorist act or scheduled offence.*

Section 5 (1) of the ATA has granted absolute powers to the police, armed forces, and civil armed forces to take any necessary action to stop an act of terrorism from being carried out. This section has provided extensive discretionary powers to law enforcement agencies, which has been regularly misused by the authorities. For example, Section 5 (2) provided legal protection to the law enforcement agencies, allowing them “to fire, or order the firing upon, any person or persons against whom he is authorised to use force.” These powers are very controversial and are a highly debated issue in the legal community and wider civil society because there have been instances of law enforcement agencies using these powers for extra-judicial killings. For instance, on the 19th January 2019, police murdered four people, including a husband and his wife along with their 11-year-old daughter in Sahiwal District, Province of Punjab. The police declared them to be terrorists,²⁶⁸ however the investigation proved that they were all innocent.

²⁶⁸ *Sahiwal: The curse of extra-judicial killings still haunts Pakistan.* (January 21, 2019). *Gulf News*. <https://gulfnews.com/world/asia/pakistan/sahiwal-the-curse-of-extra-judicial-killings-still-haunts-pakistan-1.1548069678108> (Accessed: June 26, 2019).

In Constitutional Petitions no. 22 and 25 of 1999 (PLD 2000 Supreme Court 111), the Supreme Court held that:

If the provisions of Section 5 of the Anti-Terrorism Act are enacted in their present form, there will be horrible and far-reaching consequences. [...] Law enforcing agencies cannot be given a licence to kill indiscriminately any person who is allegedly involved in terrorist activities or other offences as defined under the Act. Clearly, such a right is to be exercised as a preventive measure and ought to be deployed in retaliation, lest it be tantamount to legalising police extra-judicial killings in the garb of exercise of power by a Police Officer vesting in him under Section 5 (2) (1) of the Act.

After the above-said judgment, Section 5 (2) (i) was amended through Anti-Terrorism (Amendment) Ordinance 2001. In case of such a situation, the police officer, armed forces member and civil armed forces member can only fire upon an individual if they have been fired upon first. Law enforcement can therefore only fire upon suspects in self-defence. The aims of the Supreme Court are to give protection to the general public or ordinary criminals from extra-judicial killings. It is clear that this amendment has not been followed by law enforcement in practice. Many incidents have been reported, including the Sahiwal incident and the killing of Malik Ishaq,²⁶⁹ whereby law enforcement staged an extra-judicial killing as a retaliation in order to pass it off as self-defence, which is common practice in Pakistan.

In light of this analysis, the powers granted under Section 5 (2) (i) of the act, regarding use of force, should only be exercised as a last resort or in extraordinary circumstances, such as firing upon a suicide bomber. The use of

²⁶⁹ *Malik Ishaq: Pakistan Sunni militant chief killed by police.* (July 2015). *BBC News*. <https://www.bbc.co.uk/news/world-asia-33699133> (Accessed: June 25, 2019).

force should not exceed beyond what is necessary as to counter the incident. The government and courts should take strict measures against extra-judicial killings.

Under Section 5 (2) (ii) of the Anti-Terrorism Act, special powers granted to the police to arrest any suspect without a warrant, provided that there exists reasonable suspicion that they have committed, or are about to commit, any such act or offence. However, under Section 54 of the Criminal Procedure Code 1898 Pakistan (Cr.P.C.), the police may arrest any person suspected of a cognisable offence without warrant or prior permission from a Magistrate.

These are basic powers that are required by law enforcement agencies to control these crimes. Therefore, there are no contradictions or defects in Section 5 (2) (ii).

Under Section 5 (2) (iii) of the Act, law enforcement agencies, including police, armed forces and civil armed forces are authorised to enter and search any premises without a warrant in order to make an arrest or to take possession of property or firearms, while Article 14 (1) of the Constitution of Pakistan guarantees the *“inviolability of the dignity of a man, etc. The dignity of man and, subject to law, the privacy of home, shall be inviolable.”*

In the case of **Mehram Ali (1998 MLD 1411 Lahore)**, Justice Karamat Nazir Bhandari stated that the *“legislature has to lay down necessary conditions such as those contained in the Criminal Procedure Code 1898 to place a check on the*

powers of the Police Officer. The power in the present form is liable to be misused.”

Therefore, there is a considerable possibility that the extensive powers granted to law enforcement agencies will be misused, so there should be some limitations, such as search warrants from a Magistrate before entering and searching a property.

5.8 Witness Protection in Terrorism Trials under the Anti-Terrorism Act 1997

Inadequate and defective witness protection systems would appear to be another critical problem. Those who testify against powerful criminals and militants in courts receive no security. In dozens of cases, police officers investigating militants have been gunned down, and vice versa. Famously, despite having a police charge sheet including at least seventy counts of murder, Sipah-e- Sahaba Pakistan terrorist, Malik Ishaq, was never convicted, but police eventually killed him in an extra-judicial killing (Asad Kharl, 2010).²⁷⁰ Judges, specifically from the lower courts also face grave threats, and they are thus reluctant to rule against members of militant groups, thus resulting in long delays in case proceedings due to fear of violence. The courts released terrorists arrested for their involvement in the Islamabad Marriot hotel bombing and some significant attacks in Punjab Province for lack of evidence.²⁷¹ According to Abbas, “*the police had to put the individuals under ‘house arrest’ afterwards to buy time before challenging the verdicts in the High Court*”.²⁷²

Legal experts have raised many concerns about the capacity of Pakistan’s judicial system and law enforcement agencies in countering terrorism. The protection of judges, prosecutors, lawyers and witnesses are very crucial for the independence of the judiciary, specifically in terrorism-related cases.

²⁷⁰ For details, see Sabrina Tavemise and Waqar Gilani, (August 5, 2009). *70 Murder, Yet Close to Going Free in Pakistan*. *New York Times*.

²⁷¹ Parvez, Tariq. & Rani, Mehwish. (August 2015). *An Appraisal of Pakistan’s Anti-Terrorism Act*. Special Report no. 377, United Institute of Peace (USIP), Washington, DC.

²⁷² Abbas, H. (2011). *Four Marriot Bombing Accused Put under House Arrest*. (April 22, 2010). *Daily Times*.

Witnesses play a pivotal role in reaching the conclusion of any case. Therefore, the protection of witnesses and his or her family is crucial, more specifically, in an environment of fear, and threat. Terrorist organisations take advantage of fear to intimidate witnesses and their families, with many incidents reported in Pakistan of witnesses and their families losing their lives. For example, in 2001 a witness in a trial, named Fida Hussain, testified against the founder of Lashkar-e-Jhangvi (LeJ) Malik Ishaq and lost 12 members of his family, five of whom were also witnesses in the trial.²⁷³

Pakistan's criminal justice system is unable to provide protection to witnesses and their families. After a criminal incident, a lengthy procedure begins from the point of initial investigation to the point of trial, during which time the witness must appear before several investigation agencies to provide his or her statements. During this process, he/she remains in a vulnerable position the protection of law enforcement agencies. Furthermore, there is no mechanism to hide the identity of witnesses during the investigation and trial process. In these circumstances, the criminals can easily intimidate the witness.

In the case of Pakistan, where several militant organisations and armed groups exist, witnesses are reluctant to testify against criminals, specifically in terrorism-related matters. As a result, in the event of a lack of credible evidence and witness testimony, courts are unable to punish hardcore criminals, resulting in acquittals of terrorists from courts.

²⁷³ *Blood flows freely in Pakistan*. (October 5, 2011). *Asia Times*.

However, Section 21 of the Anti-Terrorism Act 1997 empowered Anti-Terrorism Courts to take essential measures to provide safeguards to witnesses. These are outlined below:

Protection for judges, counsels, public prosecutors, witnesses and persons concerned with court proceedings;

1) *The Court may, subject to the availability of resources, make such necessary orders or take such measures, as it deems fit, within available resources, for the protection of witnesses, judges, public prosecutors, counsels and other persons concerned in court proceedings for an offence under this Act, which may also include the following measures;*

a) *Proceedings may be held in camera, or under the restricted entry of members of the public, where necessary for the protection of the judge, witnesses or a victim's family members or to protect persons from crowding or storming the court to intimidate the judge or to create a threatening atmosphere;*

b) *The names of the judges, counsel, public prosecutors, witnesses and persons concerned with court proceedings shall not be published; and*

c) *During any inquiry, investigation or court proceedings, wherever the matter of the identification of the accused arises, adequate protection shall be provided to a witness identifying any accused, in order to protect the identity of the witness from the accuse.*

2) *For purposes of protection of the judges, accused, witnesses, prosecutors and defence counsel and anyone concerned with the court proceedings, the Government may adopt such other measures as may be appropriate*

or may be prescribed, and the Armed Forces shall also provide comprehensive protection and security to the judges, accused, witnesses, prosecutors, investigators, defence counsel and all those concerned in the court proceedings.

3) The Government shall extend protection to a judge, a counsel, public prosecutor and the witnesses during investigation of an offence and proceedings under this Act, and thereafter, as may be considered necessary.

The language of Section 21 of the Anti-Terrorism Act 1997 may sound appropriate, but the ground reality shows a lack of strategy. Under this Section, numerous powers are granted to the Judges of the Anti-Terrorism Courts, but they have been minimally implemented. Only the Judges of the Anti-Terrorism Courts are protected by the armed forces, whilst the remaining concerned persons in trials, specifically witnesses, remain in a vulnerable position.

However, on the other side, court administrators argues that due to the lack of funding and shortage of security personnel, they are not able to provide security to all witnesses, lawyers, prosecutors and other concerned persons. Furthermore, due to the lack of technical expertise, they not able to facilitate in-camera trials.

Developed countries have adopted modern devices and techniques to record the witness's testimonies, such as live video recordings that hide the original identity. In Pakistan, courts and law enforcement agencies should also take strict

measures to provide comprehensive security to witnesses and their families during investigations and trials, especially in terrorism-related cases, such as maximum possible efforts to hide their identity and, if necessary, their relocation to a safe place. It should be the responsibility of law enforcement agencies to escort them from their home to the court. During the investigation, if an investigation officer realises that a witness is likely to be threatened, they should file an application to the Court under Section 21 of the Anti-Terrorism Act for appropriate instructions regarding witness security. These measures could be helpful in enhancing the confidence of witnesses in the judiciary and law enforcement agencies, which would ultimately positively impact case trials.

5.9 Conclusion

As reflected in the title of this section (Overview of the Definition of “Terrorism” under Section 6, Anti-Terrorism Act 1997) of chapter five, the beginning point is the definition of terrorism under Section 6. In light of the analysis of the various subsections of Section 6, it is evident that there are lacunas and legislative defects in the definition of terrorism in Pakistan. The broader definition of terrorism that includes many offences which fall under ordinary criminal law, alongside contradictions in the precedents set by the superior courts, have created confusion and have led to the overwhelming of the Anti-Terrorism Courts. Whilst discussing the definition of terrorism in the House of Commons, Hansard stated that *“it is bad law, as well as bad politics, to sweep people into the definition of ‘terrorism’ when they are just straightforward criminals. Terrorism is not general criminality by another name. It is a specific form of criminality; that is why it was the act of terrorism defined as criminality against the state and the government.”*²⁷⁴

Therefore, it is the responsibility of the lawmakers, and the superior courts to define the term ‘terrorism’ as concisely and appropriately as possible.

Under Sections 8 to 23 of the Anti-Terrorism Act 1997, extensive powers have been granted to the Anti-Terrorism Courts. After an objective analysis of Section 19, subsections (7) and (8) of the Anti-Terrorism Act 1997 regarding the provisions to *“decide the case within seven days”* and that the *“ATC shall not give more than two consecutive adjournments during the trial of the case”* it is evident

²⁷⁴ House of Commons Standing Committee D: Terrorism Bill, 1st Sitting. (January 18, 2000).

that both are un-realistic approaches. However, the government should adopt a realistic approach to rule upon cases within a certain timeframe. This timeframe should be extended to three or six months, rather than seven days. It should also be the responsibility of law enforcement agencies to protect witnesses and escort them to court at the time of the hearing. Regarding unnecessary adjournments, the court should take strict measures against them, such as financial penalties for the responsible side. By adopting unrealistic approaches, the potential of these Special Courts has not been realised.

It is evident that the powers granted under Section 5 (2) (i) of the Act concerning the use of force should only be exercised as a last resort or in extraordinary circumstances, such as firing upon a suicide bomber. This use of force should not exceed that what is necessary to counter the incident. The government and courts should take strict measures against extra-judicial killings.

Under Section 21 of the ATA 1997, the courts should instruct the court administrators and law enforcement agencies to take every possible step to ensure swift trials and to provide witnesses with freedom from threatening environments, specifically in terrorism-related cases, for the due process of law. According to Aitzaz Ahsan, the independence of the judiciary stems not only from constitutional provisions, but also from when its judges, lawyers, prosecutor, witnesses and all others concerned can proceed without fear.²⁷⁵

²⁷⁵ Ahsan, Aitzaz. (2009). *The Preservation of the Rule of Law in Times of Strife*. The International Lawyer, Vol. 43, No. 1, American Bar Association, pp.73-76.

The Anti-Terrorism Act 1997 is vital legislation in the fight against terrorism. This Act provides extensive powers to the judiciary and law enforcement agencies to fight against terrorism. With the passage of time, many Amendments have been made to fulfil the requirements of the judiciary and law enforcement. However, there remain several legislative defects and lacunas. There is also a need to improve interdepartmental coordination between the police, civil and armed forces and the intelligence agencies regarding arrests and investigations into terrorism-related cases. Therefore, the strengthening of the criminal justice system in Pakistan needs more attention, investment, and strategic development.

Chapter 6 – Case Study of the Gojra Incident 2009

6.1 Case Study Methodology

A case study research design is an intensive study of a single case or a small number of cases that serves to provide a more generalisable insight into a larger population of cases (Lee Cojocar, 2016).²⁷⁶ The individual context that is being examined is viewed as a case of something broader, just as extensive sample analysis is also generally considered as exemplary of a more general phenomenon. Case study research is a way of learning that refers to a context in great depth and often combines qualitative and quantitative methods of research. “A case connotes a spatially delimited phenomenon observed at a single point in time or over some period of time. It may be a political unit with a defined area of semi-sovereignty, an organisation, a social group or an individual” (John Gerring and Dino Christenson, 2017).²⁷⁷

A case study research does, however, have a number of limitations and are a relatively recently developed method. Indeed, “historically, case studies did not include controlled observations and took place in the context of psychotherapy (Kazdin, 2003).²⁷⁸ This has since been mitigated, in contemporary applications, though, investigators make use of interventions and control (Cytowic, 1993).²⁷⁹

²⁷⁶ Lee, Cojocar. (2016). *Selecting Cases for Intensive Analysis: A Diversity of Goals and Methods*. Sociological Methods and Research, Vol. 45(3) 392-423.

²⁷⁷ John, Gerring., & Dino, Christenson. (2017). *Applied Social Science Methodology*. Cambridge University Press. P. 139.

²⁷⁸ Kazdin, A.E. (2003). *Research design in clinical psychology*. (4th edition), Boston: Allyn and Bacon.

²⁷⁹ Cytowic, R. E. (1993). *The Man who tasted shapes*. MIT Press edition, Cambridge, MA: MIT Press.

*Mills, Boteler, and Oliver, 1999*²⁸⁰). According to Gawrylewski (2007), “case studies are for teaching purposes rather than research questions.”²⁸¹ In case study research, it is difficult to see which elements lead to particular behaviours and which are merely correlated with those behaviours, there is the problem of too many competing hypotheses and no way to see which ones are best.²⁸²

The qualitative case study methodology employed by mainstream historical sociology allows researchers to examine the specificities of the context being studied through an analytic lens derived from a broader range of theoretical and empirical literature. With the combinations of balanced and analytical approaches to arrive at causal explanations, qualitative case study research draws on contemporary theoretical frameworks to investigate points of interest while allowing for the experimental testing of hypotheses and the reformulation of causal propositions in the light of emerging evidence (Goldstone, 1998;²⁸³ Gerring, 2004²⁸⁴). Tilly (1997) considers a case to be a particular in which causal mechanisms and variables function ambiguously at different levels of examination of its spatial and institutional boundaries.²⁸⁵

²⁸⁰ Mills, C. B., Boteler, E. H., & Oliver, G. K. (1999). *Digit synaesthesia: A case study using a Stroop-type test*, *Cognitive Neuropsychology*, 16, 181-191.

²⁸¹ Gawrylewski, A. (2007) *Case reports: Essential or irrelevant?* The Scientist. www.the-scientist.com/?articles.view/articleNo/25081/title/Case-reports-Essential-or-irrelevant/ (Accessed on December 20, 2020).

²⁸² Bernard C, Beins. (2019). *Research Methods: A tool for life*. Fourth edition, Cambridge University Press. P. 355.

²⁸³ Goldstone, Jack A. (1998). *Initial Conditions, General Laws, Path Dependence, and Explanation in Historical Sociology*. *American Journal of Sociology*, Vol. 104, No. 3, pp. 829-845.

²⁸⁴ Gerring, J. (2004). *What is the Case Study and What is Good For?* *American Political Science Review*, Vol. 98, No. 2, pp. 341-354.

²⁸⁵ Tilly. (1997). *Means and Ends of Comparison in Macrosociology*. *Comparative Social Research*, Vol. 16, pp. 43-53.

The case study methodology facilitates the in-depth analysis of a specific entity confined by structural and temporal boundaries, allowing for a variety of investigative goals to be achieved, ranging from the testing and reinforcement of existing hypotheses to the establishment of new causal claims. Case studies involve the in-depth study of one or a few people, institutionally or otherwise.²⁸⁶

As discussed above, case studies are investigations that focus on an individual or a group of people in-depth. This research will therefore examine the Gojra incident of 2009 as a case study because it is pertinent to the two essential elements of counter-terrorism that have been discussed throughout this research project; the criminal justice system and law enforcement agencies. This case provides an accurate and representative insight into the capacity of both of these institutions. This case study is also significant in understanding the lacunas in the criminal judicial system, prosecution, police investigations, as well as the inadequacy of witnesses protection, specifically in criminal cases. Furthermore, this case was registered under Section 7 of the Anti-Terrorism Act 1997, which is an integral part of this thesis.

The goal of this case study is to evaluate the effectiveness of Pakistan's ability to fight against large-scale civil disorder, with particular reference to the judicial sector and law enforcement agencies. To achieve this objective, the study will focus on the ability of law enforcement agencies and the administration to tackle incidents that incite terror, fear and insecurity in society. More specifically, it will

²⁸⁶ See, n. 282, p. 184.

focus on the ability of the criminal justice system to prosecute the criminals under the Anti-Terrorism Act 1997.

To gain a comprehensive understanding and facilitate a thorough discussion of the Gojra incident 2009, multiple sources of data were called upon, including: field research; visits to the Christian colony in Gojra; interviews with local residents, the local police and local government officials and lawyers; judicial files from the Anti-Terrorism Court in Faisalabad; judicial inquiry reports; copies of First Information Reports (FIRs); testimonies of witnesses; and newspaper reports and articles. This project obtained witness testimonies and copies of FIRs from the Judicial Commission Report, which was commissioned by the Provincial Government of Punjab at that time in order to determine the facts of the incident. The FIRs consist of the first statements that were given by victims to the police regarding the incident for the registration of the criminal case. Therefore, these documents are significant in establishing the facts of the case.

Because this incident happened in 2009, it was challenging to gathered data. For instance, complainant, Mr. Almas Hameed, alongside other important witnesses, had left the country because of fear and threat, and were not ready to talk about this incident when approached. However, this research is thankful to the administration of the Church in Gojra for help in this regard. Gratitude must also be expressed towards the authors' former colleagues from when he practiced as a lawyer at the District Court in Faisalabad, Pakistan. They helped obtain legal records and documents, such as the judicial inquiry report, judicial file, copies of FIRs and testimonies of the witnesses.

The study will also focus on legislation and law enforcement strategies employed in Pakistan. The study has two objectives:

- To describe the structure of law enforcement agencies and the criminal justice system in Pakistan;
- To evaluate the capability of both institutions to tackle large-scale civil disorder or other such incidents in Pakistan.

6.2 Introduction

The town of Gojra in Pakistan was established in 1896 with the colonisation of Lyallpur (now Faisalabad). It was upgraded to a “B” class location in 1925 and was awarded the status of ‘Tehsil’ (Town) in 1982. Modern day Gojra town, situated 30 miles from Faisalabad, lies within the Faisalabad Division’s administrative reach. Gojra town is also famous being the town of origin of many great hockey players, including many prominent members of Pakistan’s hockey team, it was thus nicknamed the “Olympia of Pakistan.”

The total population of Gojra town is 656,007, 59,596 of whom are Christians according to 2017 Census.²⁸⁷ The majority of people belong to the middle and lower classes, with mixed rural and urban cultures. There are three police stations; police station City Gojra, police station Sadar Gojra, and police station Nawan Lahore, Gojra. The Local Government of Gojra town, called Union Council, consists of 24 members elected in local body elections, headed by the Tehsil Nazim (Town Municipal Administration). There are 337 Mosques, 19 Imambargahs (Shia Mosques), 34 Churches and 6 Baitul Zakar (Ahmid’s Mosques). Administratively, Gojra town is under the management of the District Co-ordination Officer (DCO) and District Police Officer (DPO) of District Toba Tek Singh, and the Regional Commissioner and Regional Police Officer (RPO) of Faisalabad Division.

²⁸⁷ Pakistan Bureau of Statistics. (2017). <http://www.pbs.gov.pk> (Accessed: August 1, 2019).

6.3 Background of the Gojra Incident

A rumour was spread amongst the residents of Izaafi Abadi, a Chak (village) outside of Gojra (number 362/JB) in the province of Punjab, that the participants of a wedding ceremony desecrated the Holy Quran on their way to the Bride's house in the middle of the night of the 25th and 26th (Saturday/Sunday) of July 2009. This culminated in the shameful persecution of the town's Christian population.

In the late afternoon of that day, a self-appointed council of arbiters comprised of local residents, namely Abdul Ghafoor, Muhammad Afzal Shahid and Abdullah Shaukat, held a meeting at a market in Izaafi Abadi in which the Talib Masih (father of the groom, Masih means Christian) and Mukhtar Masih (father of the Bride) were to appear to explain their position about the allegations that their wedding party desecrated the Holy Quran. The proceedings of this meeting attracted a considerable number of local residents and from surrounding areas. During the meeting, harsh words were exchanged between the Muslim participants and the Christians participants, resulting in an altercation between them, from which the Talib Masih and Mukhtar Masih escaped. After they were announced by the loudspeakers of the Mosques, the rumour about the desecration of the Holy Quran was spread very quickly around the areas surrounding Gojra town. Muslims gathered at Korian Bus Stop (the centre point of Gojra), blocked the main road between Gojra and Faisalabad and set the tyres of nearby vehicles on fire. Some Muslim protesters entered Izaafi Abadi (Izaafi Abadi is Christian colony in Gojra town), ransacked it, and set a number of buildings on fire including a Church, and also took a few cattle belonging to the

Christians. Meanwhile, the police and local government interfered, attempting to negotiate with the mob with the help of local MP, Mr Bilal Asghar Warraich, in order to disperse the protesters.

The next day, the situation didn't escalate any further, however on Saturday the 1st August 2009, a public meeting of local Muslims was held at Malkanwala Chowk Gojra regarding the incident. After the meeting, approximately 100-150 people moved towards the Christian colony, chanting anti-Christian slogans and pelting them with stones. The Christians retaliated with indecent gestures and, eventually, gunfire, which resulted in the injury of 3-4 members of the Muslim crowd. After word got out that Muslim protesters had been injured, a firefight between both sides ensued. The situation continued to escalate despite the efforts made by the local police to quell the violence. Even local political leaders, social workers and religiously influential figures failed to defuse the. In the evening, members of the mob entered the Christian colony where they wreaked havoc. In the end, it was found that 96 families of the Christian colony had been affected, 68 houses and some Churches had been torched, items worth millions of Rupees had been stolen or destroyed. Moreover, 7 Christians lost their lives and a further 18 were injured: 3 Christians and 15 Muslims, a few of whom were policemen and Tehsil Municipal Administrators.

6.4 Facts of the Incident

The day after the incident, the Government of Punjab set up a one-man Tribunal of Inquiry under the West Pakistan Tribunal of Inquiry Ordinance 1969, vide Notification No. SO(IS-II)3-52/2009, to determine the full facts of the incident, determine who was responsible for what and to produce a detailed report with recommendations. Mr. Justice Iqbal Hameed-ur-Rehman, Judge of the Lahore High Court, was appointed as head of the Tribunal of Inquiry.

It was mentioned in the Notification that *“the matter is of public importance and has attracted the attention of local and international media with regard to the security situation in the country and it is expedient in the public interest to determine the facts of the incident [sic].”*

Mr. Justice Iqbal Hameed-ur-Rehman described the inquiry in his report, which states the following [sic]:

On 5.8.2009 at 8:30 am, I proceeded from Lahore to Gojra by road along with Mr. Irfan Saeed (Registrar of the Tribunal), Mr. Muhammad Nasir (private secretary) and Mr. Umar Draz Shakir (court officer). I reached the Camp Office Gojra at 11:15 am, where in the company of Syed Muzaffar Ali Shah, Additional District and Session Judge, Gojra, Mr. Naeem Amir Civil Judge Gojra, Regional Police Officer (RPO) Faisalabad left for inspection of the sites of the incidents, i.e. Christian colony (Basti Eesayan), and Izaafi Abadi Village Korian located in Chak No. 95/JB, Gojra. However, prior to it, I paid a visit to the Catholic Church, Gojra, where I was received by Father Shafique, Father Shabbir and other members of the Christian community. They also accompanied us to the aforesaid places of incidents.

I visited Gorja’s Christian colony first, where I found that almost all the Christians’ houses had been burnt to ashes and reportedly eight persons had lost their lives. I was also told that the valuable household items of those affected had either been taken away or destroyed by the assailants.

The torching of three Churches and the Noble Bible was also pointed out. After that, I visited the place of first and second incidents, i.e. Izaafi Abadi Village Korian, located in Chak No. 95/JB situated at a distance of seven kilometres from Gojra town, where I also found that almost all the dwellings of the Christians, including a Church, had been burnt and the Christians told of how their household items, as well as the animals, had also been taken away by the miscreants.

Most of those affected in both places were very vocal about the way by which their houses were burnt to ashes. They complained about the use of chemicals for torching their dwellings and disclosed that the fire could not be extinguished despite their best efforts. Consequently, necessary directions were sent to Assistant Superintendent of Police (ASP) Gojra to secure the burnt material and to send it to the Office of the Chemical Examiner as well as Pakistan Ordinance Factory Wah Cantt, for the purpose investigating which chemicals were allegedly used.

The Inquiry Tribunal had nineteen sittings at the Camp Office Gorja, during which they documented evidence. For example, 567 witnesses appeared before the Inquiry Tribunal and 13 statements made by the police and administration officials were recorded. Mr. Justice Iqbal Hameed-ur-Rehman completed his Inquiry Report on the 2nd October 2009 and submitted it to the Punjab Government.

6.5 First Incident on the 25th July 2009

According to the contents of the First Information Report (FIR) No. 426/09 of Police Station Sadar Gojra, Muhammad Ashraf (S/O Sher Muhammad, R/O Chak No. 95/JB) presented a written complaint to Zulifqar Ali, Sub-Inspector of Police, claiming that on the 25th July 2009 at 9:00 pm, he was with Abdul Ghafoor and Muhammad Afzal in front of the Public Call Office (PCO) in Izaafi Abadi. From this vantage point, he witnessed Talib Masih and Sadiq Masih along with others performing Mehndi.²⁸⁸ However, whilst the group escorted the daughter of Mukhtar Masih to her house, dancing to the beat of the drum, Mr. Ashraf remarked that they were showering each other currency notes and sheets of paper. The following morning, whilst on the way to his shop, he and others noticed that the aforementioned sheets of paper, now lying in the street, contained Arabic text. It was further claimed that these pieces of paper were in fact cut out from the pages of the Holy Quran, which were collected and shown to the public as proof. As a result, this news of the desecration of the Holy Quran quickly spread throughout the village.

Afterwards, the matter was taken up with Mukhtar Masih, who confessed to the desecration of the Holy Quran during the ceremony of Mehndi and promised to produce Talib Masih before the Muslims of Izaafi Abadi to face an inquiry. Consequently, a Panchayat (council of elders of the village) was convened on the evening of the 30th July 2009 in Izaafi Abadi, which was attended by respectable people of the village. In this meeting, instead of showing repentance or regret,

²⁸⁸ Mehndi is a ceremony in Pakistan, India, and Bangladesh where both the families get together one night before the wedding.

Talib Masih not only abused the members of the Panchayat, but also used filthy language to insult the Holy Quran and Hadith, thus stirring up and provoking religious sentiments amongst the Muslims.

6.5.1 Police Account

Jamshed Iqbal Nasir (witness No. 564), who was Station House Officer (SHO) at Police Station Sadar Gojra on duty at the time of the incident, stated that he received a wireless message on the 30th July 2009 at 08:05 pm that a man by the name of Muhammad Afzal, a resident of Chak No. 95/JB, had called 15 (official emergency police number in Pakistan) to inform the authorities that Christians had desecrated the pages of the Holy Quran during their Mehndi ceremony and that they had subsequently been made to sit by the Muslims. Police were thus sent out to bring them into custody. After that, he instructed Zulifqar Ali, Sub-Inspector, to attend the scene and, after bringing the incident to the attention of his senior officers, he set off to attend the scene himself with other officers. He disclosed that, upon his arrival, he found Zulifqar Ali and other officials confronting a large mob of stick-wielding, emotionally charged protesters who had already set the houses of Christians colony on fire. He stated that no information regarding the alleged desecration of the Holy Quran had been received by the police any source beforehand.

Raja Ghulam Abbas, Deputy Superintendent of Police (DSP) Gojra, (witness No. 560) stated that on the 30th July 2009 at 08:15 pm, he was sitting in his office when he got a phone call informing him that the Muslims of Izaafi Abadi Korian (Chak No. 95/JB) had forced Talib Masih and Mukhtar Masih to sit, having

accused them of desecrating of the Holy Quran during a Mehndi ceremony. After that, he called Jamshed Iqbal Nasir, Station House Officer (SHO) Police Station Sadar Gojra, to instruct him to attend the scene and, after putting on his uniform, he set off for Izaafi Abadi himself. During the transit, he also checked the positions of the other police personnel who were later found to have all been at the scene.

He further stated that he reached the scene at 09:15 pm but, by that time, approximately one thousand people had already assembled at Bus Stop Korian and had proceeded to block the road and set tyres on fire. Moreover, 30-40 houses in Izaafi Abadi had already been torched. Consequently, he checked the position of the SHO who, along with other officials, was in Izaafi Abadi, but the protestors did not let him pass. He has also mentioned that he did not get any information regarding any incident of a desecration of the Holy Quran prior to the event.

Inkassar Khan, the District Police Officer (DPO) for District Toba Tek (Witness no. 512), stated that no incident of the desecration of the Holy Quran was reported to the local police. Such reports emerged on the evening of the 30th July 2009, when the crowd started torching the houses of Christians.

Imran Sikandar Baloch, the District Coordination Officer (DCO) for District Toba Tek (Witness no. 557), stated that upon his arrival at the site, the Town Municipal Officer (TMO) for Gojra, the District Police Officer (DPO) for Toba Tek and local MP, Bilal Asghar Warriach, informed him that the mob was infuriated because

Talib Masih had allegedly desecrated the Holy Quran on the 26th July 2009. It was only on that day, the 30th July 2009, that people came to know of the incident. After this became known, a group of protesters gathered at the scene, arrested Talib Masih and handed him over to the police, but police let him off. After that, the mob burnt down the village and was now chanting slogans against the police.

Mr. Tahir Hussain, Commissioner for Faisalabad (Witness no. 567), stated that no information regarding any desecration of the Holy Quran in Izaafi Abadi had been received prior to the incident of arson.

Nadeem Hassan Asif, Secretary of the Home Department of the Government of Punjab Province (Witness no. 579), stated that on the 30th July 2007, it was learned that violent protest had erupted at Gojra over the alleged desecration of the Holy Quran.

According to the reports of the Intelligence Agencies, the pieces of paper containing the Verses of the Holy Quran were, in fact, the cuttings of the pages of the book of Islamic Studies for 9th class.

Muhammad Ashraf, the complainant of case FIR No. 426/09, registered to Police Station Sadar Gojra Under Section 295-B Pakistan Penal Code, stated that he himself saw the Christians showering dancers with the pieces of paper along with the currency notes. In the following morning, Abdul Ghafoor (Witness no. 497) and Muhammad Afzal (Witness no. 499) noticed that the pieces of paper lying in the street were, in fact, the cuttings bearing the Verses of the Holy Quran.

However, Muhammad Ashraf's account is not supported by Abdul Ghafoor (Witness no. 497), Muhammad Afzal (Witness no. 499) or Muhammad Abdullah (Witness no. 498), because they stated that they were not in the company of Muhammad Ashraf and saw the cuttings bearing the Verses of the Holy Quran on the morning of the 26th July 2009.

The other Muslims of Izaafi Abadi, whose testimonies were recorded under witness numbers 455 to 477 and 482 to 487, have provided yet more accounts of when they saw the pieces of papers bearing the verses of the Holy Quran. Some of them claim that they saw the cutting of pieces on the 30th July 2009 in the hands of Abdul Ghafoor. Whereas the female witnesses claim that they saw the cuttings of the Holy Quran in the hands of Mrs. Abida Parveen (Witness no. 503). However, Mrs. Abida Parveen stated that neither she nor her daughter showed the pieces of papers that they had collected to anyone except Mrs. Haleema Bibi.

On the other hand, all Christian witnesses, including those affected by the incident, denied the desecration of the Holy Quran. Even the witnesses who referred to the incident in question during their depositions did not state that they had any direct knowledge in this regard. Furthermore, the police and administrators, as stated above, deny any evidence of this having happened.

In this case, a total of 580 witness statements were recorded, but no positive legal evidence has come forward that there existed any dispute between the complainant of case FIR No. 426/09, and the accused. The record also lacks any

indication of there being an animus present between the witnesses mentioned in the FIR and the nominated accused. Nothing within the record suggests that there had been any communal disturbance of any nature in Izaafi Abadi. It is evident that no one from the village or the adjoining area reported any incident of desecration of the Holy Quran to the Police. Indeed, there was no report of any such incident picked up upon by the Intelligence Agency prior to the incident.

References were made to statements given by the following: Zia Ullah Khan (Witness no. 113), in-charge of Special Branch, Faisalabad; Mr. Masood Ahmad Pervaz (Witness no. 132), District Officer for the Intelligence Bureau; Mr. Muhammad Ijaz Akram (Witness no. 577), Joint Director of the General Intelligence Bureau; Mr. Muhammad Ashraf Khan (Witness no. 170), Deputy Director of Inter-Services Intelligence (ISI); Mr. Shaukat Ali (Witness no. 578), Director of ISI; and Mr. Muhammad Ashraf (Witness no.170), who claimed a sense of resentment was prevailing in the Muslim community of the Izaafi Abadi Korian Gojra, due to the desecration of the Holy Quran during a Mehndi ceremony that was being carried out by members of the Christian community.

6.6 The Incident on July 30, 2009

According to the First Information Report (FIR) No. 429/09, recorded by Police Station Sadar on the 31st July 2009, Master Mehnga Masih (s/o Lal Masih), a resident of New Abadi (Chak No. 362/JB, Korian), presented a written complaint to Zulifqar Ali, Sub-Inspector of Police, alleging therein that on the 30th July 2009 at 07:00 pm, a group of people wielding-sticks, firearms, kerosene and chemicals attacked Izaafi Abadi, torched the houses, robbed the items lying therein and took away the animals of the Christians. He named the following as having been involved: (1) Ramzan Gujjar Nazim, (2) Rana Taj, (3) Mouti Gujjar, (4) Amjad Nai, (5) Afzal Nai, (6) Abdul Ghafoor, (7) Shahzad, (8) Aslam Butt, (9) Shahzad (s/o Aslam Butt), (10) Babar Butt, (11) Iftikhar, (12) Sadiq Mistri, (13) Rafiq Mistri, (14) Sharif Mistri, (15) Arshad, (16) Asghar, (17) Ramzan, (18) Akram, (19) Sharif, (20) Ishaq and (21) Sarfraz, along with hundreds of other unknown people.

They defiled the Churches and also desecrated the Noble Books because Talib Masih and his wedding party had been falsely accused of having desecrated the Holy Quran. Whereas Qari Noor Muhammad, Abbas Qadri and Aleem Raza had fanned the issue by provoking the people to act against the Christians through the announcements made in loudspeakers of the Mosques. He maintained that the said actions of the said persons resulted in the creation of a sense of fear and insecurity among the Christians community.

6.6.1 Police and Administration Version

Mr. Imran Sikandar Baloch, (Witness no. 557), the District Coordination Officer (DCO) for Toba Tek provided the following account in his in his affidavit (W-557/1-18);

22:37 hours: While I was at home, the Commissioner of Faisalabad called and asked whether any village burning incident had taken place at Gojra? I told him that I had no such information, but I would check and let him know in a while. I called Asghar Majeed Baloch, Deputy District Officer (Revenue) Gojra, who also denied knowing any such incident. I then called Rana Nawaz, Tehsil Municipal Officer Gojra, who told me that a village (Chak No. 95/JB), a few kilometres from Gojra, had been burnt by an angry mob as some alleged incident of desecration of the Holy Quran by a Christian had occurred at the said village. I asked him to call the fire brigade from Gojra and Municipal Authority Toba Tek, Singh.

Then I called the Commissioner and told him of what had happened. Thirdly, I called Executive District Officer (Health) for Toba Tek to place Gojra on high alert, supplement it with additional ambulances from neighbouring Rural Health Centres and call all available doctors. 23:00 hours: I left for the site of the incident along with Mr. Inkisar Khan, the District Police Officer, Toba Tek Singh. Meanwhile, I informed the Commissioner of Faisalabad of the latest developments and that I was proceeding to the site.

23:22 hours: We reached the Gojra by-pass on the Pansera city side and found DSP Gojra along with a convoy of police vehicles lined up behind him at some half a kilometre before the Korian stop. Further away, we could see the light of flames and a mob chanting. The mob had burnt two wooden carts and had not blocked the road but had also held the fire trucks at bay. The Deputy Superintendent of Police (DSP) Gojra advised us to not go ahead, but the District Police Officer (DPO) and I decided to proceed. We stopped some 100 meters away from the mob and got out of our vehicles. Both of us observed the mob for a while and met the TMO Gojra and local MP Mr. Bilal Warriach. They both told us that the mob was infuriated as allegedly Talib Masih from Chak 95/JB had desecrated the Holy Quran on 26th July 2009.

It was only that day the people had come to know of the incident. So consequently, a group of protesters had gathered at the spot; arrested Mr. Talib Mash and handed him over to the police. The police had let off the

accused, and consequently, the mob had burnt the village and was chanting slogans against the police. Fortunately, the residents of the Christian colony had already evacuated.

Furthermore, also stated in his affidavit (W-557/1-18), the following is his account of the night of the 30th to the 31st July 2009:

00:05 hours: I informed the Commissioner of Faisalabad; the Secretary to the Chief Minister, Dr. Tauqir Shah; and the Home Secretary of Punjab about the situation. The Commissioner of Faisalabad instructed me to disperse the mob and begin relief activities. Meanwhile, he too was on his way to Gojra along with the Regional Police Officer of Faisalabad (RPO). The TMO told me that one Qari Noor Muhammad was leading the mob, and he might be the one to talk to. We requested local MP to go inside the mob and fetch Qari Noor Muhammad, which he accordingly did.

Qari Noor Muhammad demanded;

- a) The Station House Officer (SHO) for Sadar Gojra, to be suspended instantly;
- b) The Sub-Inspector of Police for Sadar Gojra, to be suspended instantly;
- c) Those accused of blasphemy to be arrested within 24 hours; and
- d) That Christians never return to Chak 95/JB.

The District Police Officer (DPO) instantly agreed to the suspension of both the above-mentioned officials and promised to arrest the accused at the earliest convenience. We remained quiet on the last demand, but local MP Mr. Bilal Warraich announced that the Christians wouldn't come back. Finally, negotiations were successful. The DPO and I addressed the crowd, and the crowd eventually dispersed.

01:06 hours: After successful negotiations and monitoring the fire extinguishing activity, the DPO and I reached the DDO Office Gojra, where Qari Noor Muhammad along with local religious leaders Rana Tariq, Maulana Muhammad Shafique and Qari Muhammad Asif were present. They had announced a strike call for the next day, Friday morning. I negotiated with them and had Qari Noor Muhammad promise that no untoward incident would take place on Friday, otherwise he would be held personally responsible.

02:13 hours: The Commissioner of Faisalabad, Regional Police Officer (RPO) for Faisalabad and City Police Officer (CPO) for Faisalabad arrived

at the DDO Office Gojra, I briefed them on the incident and the subsequent negotiations.

Mr. Tahir Hussain, Commissioner of Faisalabad (Witness no. 567), stated that he received the message from local sources around 11:15 pm on the 30th July 2009 that some miscreants were burning Christian houses in Korian. After that, he contacted the DCO who informed him that he was already at the scene and was trying to negotiate with local religious leaders. He has added that he informed the Chief Minister of the Secretariat of Punjab and contacted the RPO. Afterwards, he and the RPO left for Gojra where they contacted local religious leaders who swore to remain peaceful while offering Friday prayer.

On Friday the 31st July 2009, as was routine, Muslims were assembling for Jumma prayer (Friday prayer) in the Mosques. Before the prayer, the religious leaders and khateeb (speakers) addressed the participants. During the Jumma sermons, the religious leaders and the speakers condemned the incident of the desecration of the Holy Quran. They criticised the police's lenient attitude towards the Christians. As well as the routine assemblages for Jumma prayer, two meetings were also held at Gojra town. The first one was convened by Ahal-e-Sunnat-Wal-Jamaat (Sunni Movement) in the forenoon which reportedly was attended by a few people.

A second public meeting had been convened and organised by a number of religious and political parties and various actors from Gorja's business community. Some banned organisations also participated in the meeting. The meeting was attended by a considerable number of people and was addressed

by prominent figures of the town, including Abdul Khaliq Kashmiri, Nafees-ur-Rahman (Sipah-e-Sahaba Pakistan, SSP), Syed Sarfraz Hussain (Islamic Movement), Mian Muhammad Saleem (Ahl-e- Hadith), Rehmatullah Arshad (Jamaat-e-Islami), and Maulana Muhammad Aslam.

In the meeting, a call was made to observe a strike on Saturday the 1st August 2009. The call to observe the strike and attend the meeting was made in the mosques and through other available sources. Reference is made to the statements of Rehmatullah Arshad (Witness no. 425), Zia Ullah Niazi of SP Special Branch (Witness no. 113) and the Director of Intelligence Bureau (Witness no. 115).

On the other hand, the police and administration started reconciliation process between the Muslim and Christian communities by convening meetings of key stakeholders, and also took other precautionary and preventive measures to avoid any untoward incident during the strike. Mr. Asghar Majeed Baloch, DDO for Gojra (Witness no. 321), stated that after controlling the situation at Korian, the Commissioner and the RPO of Faisalabad reached the site and then came to his office. They separately had meetings with the Muslim and Christian leaders and pleaded for them to keep peace and to abstain from disturbing law and order.

6.7 The Incident on the 1st August 2009

According to the First Information Report (FIR) No. 462/09, recorded on the 1st August 2009, one Almas Hameed lodged a written complaint in which he maintained that a number of people convened for a meeting at 11:00 am, during which they rallied the crowd and went on to attack the Christian colony. In this complaint, he named: (1) Qadir Awan; (2) Faisal Butt; (3) Jani Nai; (4) Shabbir Qasai and his two sons; (5) Subhani; (6) Khalid Panwala; (7) Hamad; (8) Latif, an ex-councillor; (9) Qari Noor Muhammad; (10) an Imam from the Mosque of Awan Colony; (11) an Imam from the Mosque of Chamra Mandi; (12) Noor Ansari; (13) Molvi Nisar; (14) Molvi Usman.

They all were in possession of firearms, kerosene and chemicals. They discharged their weapons, killing Hameed Masih and injuring Atiq Masih. The said invaders subsequently set the house of the complainant on fire using chemicals and petrol. However, six members of Hameed Masih's family were inside the building at the time as they had gathered around his corpse to mourn his death, they therefore burned to death.

The assailants kept on torching the buildings of the Christian colony, including Churches, by means of chemicals and petrol. They also burnt and desecrated the Noble Bible. He further disclosed that trained militants from Sipah-e-Sahaba Pakistan (SSP), including Molvi Yaqoob and Din Muhammad, had been called for the rampage. Almas Hameed alleged in the above-mentioned FIR that this incident was a continuation of the incident of the 30th July 2009 at Izaafi Abadi. The police and the District Administration, including the District Co-ordination

Officer (DCO) and District Police Officer (DPO), had been informed of the situation, but they did not take proper action. Therefore, a repeat incident occurred whose horrific nature plunged the Christian community into a further sense of fear and insecurity.

6.7.1 Police and Administration Account

The statement of the District Police Officer for Toba Tek Singh is significant in understanding the facts of the event, as well as in understanding the ability of law enforcement to handle this considerable disruption to law and order.

Mr. Inkasar Khan, District Police Officer (DPO) for Toba Tek Singh (Witness no. 512), stated the following in his affidavit (W-512/A.1-17); (Full text available on Annex C).

The main event of the day was the shutter down (strike) announced by 'Anjuman-e-Tajaran (Traders Union) in Gojra city. However, at 07:15 in the morning, I got a call from the DSP/HQ in Gojra informing me that all the Punjab Constabulary Reserves (PC) had come back to the police station and had refused to perform further duty as they were saying that they had to go back at 10:00 a.m.

I had deputed four DSPs, i.e., the DSP/HQ, DSP/Organized Crime, DSP/Kamalia and DSP Sadar along with the SHOs of Rajana, Sadar, Kamalia and the Inspector CIA of Gojra and Toba Tek to perform duties at Gojra on the 31st of July as well as 1st of August 2009. All the duties were shown in the programme, although PC Reserves had not arrived at Gojra in full detail before 2:30 pm on 31st July after the main events of Friday prayers had passed.

I also called the Inspector PC present in Gojra, but he was still waiting for the order from his superiors to assume duty. On getting this information, I started making calls to the RPO for Faisalabad to let him know the severity of the situation and called him at his office, from where I was told that he was busy in a meeting. As a last resort to get in touch with the RPO for

Faisalabad, I called his gunman and wireless operator and told them to go into the meeting and ask him to attend my call. Later at around 11:25 a.m. I tried again to call the RPO at his personal cell number, and this time, the message seemed to have reached him that I wanted to talk to him desperately, and he attended the call. During the conversation, I briefed him that the services were needed of the PC force, which was not performing its duty. The RPO told me to get in touch with Assistant Inspector General Admin (AIG) who would arrange it for me.

I summoned all the available police officers to the scene of the gathering, the crowd had swelled up to 2500-3000 people, mostly young. Having assessed that the crowd was growing and becoming rowdier, I asked the DSP for Gojra to stand at the entrance to the alley that led to the Church and to not let anyone from the crowd into the alley, and also to control the people in the Christian colony. A group of Muslim protesters had moved to the Christian colony. Here it is to be noted that the deployment of PCs which had been placed on duty at the Christian colony was not available at the moment when the disruption started.

We had to resort to tear gas shelling to ward off the oncoming crowd because, at that point, we needed to show our resolve and also make the crowd aware that the use of force was an option that would be called upon if they did not settle down. At around 3:00 pm, the RPO, along with the Commissioner, had arrived at the Railway Platform from which the DCO was trying to talk to the crowd. As they arrived at the scene, I was asked to send a force to cover them but withdrawing forces would have compromised the whole of the front line against the mob.

After staying there for several minutes, the RPO turned back with the Commissioner and Minister towards the Town Municipal Administration (TMA) Office. At 3:25 pm, I ordered all forces coming from Faisalabad to go to the Railway Station. However, as no order to the same effect was forthcoming from the RPO to the incoming officers, they also proceeded to the TMA office despite my request to them to come to the front line.

However, I went to meet the RPO and Commissioner in the TMA Office, as the episode was being controlled by the DSPs at their respective points and designated areas. I had already given them the instructions, as to how to react in case of any eventuality. On the way, we were informed that a group of masked miscreants just appeared out of nowhere from the streets and alleys and started firing upon and setting light to the Christian colony. I, with the help of the other senior police officers and the DCO, controlled the situation, put out the fire and rescued the injured persons. This barbaric

incident, unfortunately, ended into the loss of seven lives. To minimize the damage, we handled the evacuation process from the very start of the incident as a priority. The rumour already in the air triggered the miscreants to reach the scene and create havoc.

Ahmad Raza Tahir, Regional Police Officer for Faisalabad Division (Witness no. 514) and Mr. Tariq Saleem, Inspector General of Police, Punjab Province (Witness no. 580), did not provide any detail about the incident came about. However, they maintained that they remained in contact throughout and kept on giving necessary instructions to the officers working at the site.

Mr. Imran Sikandar Baloch was the District Co-ordination Officer (DCO) for District Toba Tek Singh, Faisalabad Division, at the time of the incident. He described the facts of the incident in detail in his affidavit, which he submitted to the Inquiry Tribunal. His affidavit provides a comprehensive insight into Pakistan's law enforcement agencies and the level of co-ordination between different governmental institutions that are responsible for maintaining law and order and the writ of the state. Mr. Baloch (Witness no. 557), proclaimed the following in his affidavit (No. W-557-A.1-18) (Full text available on Annex D):

The DPO and I reached Gojra Town some 200 meters away from the Christians colony. The situation, as far as we could see, was that a mob of at least 1500 people had gathered, including boys and men. At the other end, there were many boys/men standing on the roofs of the Christian colony, and they too were pelting stones at the Muslims mob. I could hear occasional gunshots too.

The mob told us that the Christians had fired first and had killed five people, including a ten-year-old girl. They also complained that police had been beating them instead of firing upon the Christians. I told them that no death had taken place and they were misinformed.

We were talking to the mob and had brought the situation under control. Just then, someone discharged a firearm into the air from the Christian colony and the mob rushed once-again towards it. I called the Commissioner of Faisalabad and told him that the situation was dire, and the police desperately needed reinforcement. He said he would do something.

The police used the tear gas and dispersed the mob at that point, but due to the change of wind, it backfired on us. At that point, I realized that the situation called for evacuation. So, I started walking along the street; knocking on each door, and asked women and children to leave. I even knocked at the ill-fated house, where seven people had died, and asked a woman to leave. Lots of women picked up their children and left at that point. I then asked some Christians elders present at the spot to shift women and children from other houses as well as to deeper locations. At that point, I also observed that the three DSPs who were present earlier were nowhere to be seen.

I could see masked men, at least 2, with pistols. A man in white shalwar qameez (long white shirt and matching trousers), fired two shots in the air. A boy with a red bandana, with 'Sunni Tehrik' written over it, ran close to the street that led down to the Christian colony and fired straight at someone within. I called the Commissioner of Faisalabad, once again to plead for reinforcements. He told me that he was about to enter the city.

I received a call from the DPO, and he said that the situation was very tense at the scene and the mob was on the verge of entering the Christian colony. At the same time, I called the Commissioner and told him that I was going inside the Christians colony along with the police. We proceeded and stopped at a petrol station along the railway track, some 300 meters away from the front line, as vehicles could not go there directly. We scaled down the wall and started walking towards the Christians colony. In the distance, we could see smoke. Once we reached the colony, my officers, Nadeem Qasim, Religious leaders and I went inside the colony first. There, I saw massive looting taking place, with young boys smashing TV sets and washing machines in the streets; some of them were taking away small electronics items. We pushed the boys back with the Religious leaders reciting the Quran loudly.

The crowd withdrew and looting stopped for a while. Just then someone pushed a child's dead body on a cart. It was then that I realised that the area had not been completely evacuated and there might be casualties. I called the Town Headquarter Hospital (THQ) and enquired about casualties. I was told that there were seven dead and 18 (3 Christians and 15 Muslims) injured so far, three of whom had already been operated upon and none were critical. The Christians injured had burn marks, while all the Muslims had received gunshot wounds. The TMO for Gojra and I drew a rough map of the area and

started going from door to door, inspecting fully and partially damaged houses. We counted 68 houses in total.

I received a call from Col Shahbaz of the Pakistan Rangers in Bahawalpur District. He told me that a force of 120 men and six officers would reach us by night, and that we had to arrange worthy accommodation and food for all, but by then seven lives had lost and 18 were injured, while 68 Christian houses had been torched.

Tahir Hussain, the Commissioner of Faisalabad Division (Witness no.567) stated that on the 1st August 2009 at around 01:30 pm, he went back to his office where he was made aware of the Gojra incident through the media. He contacted the DCO for Toba Tek Singh, who informed him about the situation. After that, he contacted the Minister for Local Government in Punjab, who informed him that he would be arriving in Faisalabad in half an hour. He added that he, along with the Minister and the RPO for Faisalabad, travelled to Gojra at around 2:00 p.m. and went directly to the scene. The Minister, assisted by the local political leadership of the Pakistan Muslim League (N), tried to convince the mob to settle down, but the crowd didn't back down. Therefore, he went to the TMA building and instructed the RPO to control the situation. He added that, subsequently, the DCO informed him that the crowd had started burning the houses. After that, rescue operations were arranged, and he informed the Home Department as well as the Chief Minister Secretariat about the gravity of the situation, due to which the Pakistan Rangers were sent in.

Note: Statements made by Mr. Mushtaq Hussain, Sub-Inspector of police (witness no. 548), and Mr. Raja Ghulam Abbas, Deputy Superintendent of Police (DSP) for Gojra (witness no. 560), are available in Annexes E and F respectively.

After examining the facts of the incident, First Information Reports (FIRs), statements of the witnesses before the Inquiry Tribunal and affidavits submitted by the police and administrative officers, the following points have been derived;

- 1) The reason behind the aggression re-exhibited by the Muslim community was the alleged desecration of the Holy Quran.
- 2) Initially, the number of protesters who converged upon the Christian colony was no more than 200, the majority of whom were teenagers.
- 3) The protestors expressed their anger by chanting slogans against the Christians and pelting their colony with stones. Some members of the colony retaliated with indecent gestures and targeted gunfire whilst traversing the rooftops.
- 4) As a result of the gunfire that came from the Christian colony, 3/4 members of the Muslim mob sustained firearm injuries, which led to the rumour being spread that the Christians had killed some Muslims. Though unconfirmed, this news started to attract the people from the nearby town of Gojra and other adjacent areas to the scene like a magnet. The mob around the Christian colony thus kept on swelling, resulting in an assemblage which comprised thousands of people.
- 5) Law enforcement at the scene was overwhelmingly outnumbered and they didn't have the ability to make timely interventions in order to prevent either side from escalating the situation.
- 6) That the situation could not be controlled and lasted for a long time, during which a great deal of harm was done to both sides, as a result the number of injured protesters kept on increasing.

- 7) The protesters were not being led by any particular person and thus could not be tamed or negotiated with.
- 8) The miscreants took the situation for granted and utilised the protests to wreak havoc.
- 9) Law enforcement failed miserably to control the situation and seemed helpless from every angle.
- 10) This incident resulted in the torching of 68 houses, including 3 Churches, and the theft and/or destruction of many household items with an estimated value of 57,162,600 Rupees (\$ 400,000), according to Liaqat Hussain, District Officer Building, Toba Tek Singh (Witness no. 561).
- 11) In total, seven lives were lost (all Christians) and 19 others were injured, including 3 Christians, 12 Muslims, three police officers and Muhammad Nawaz Khan, the TMO for Gojra.²⁸⁹
- 12) The case was registered under Section 7 of the Anti-Terrorism Act 1997.

²⁸⁹ Reference is made to the statement of Dr. Muhammad Bashir, Acting Medical Superintendent, THQ Hospital Gojra (Witness no. 495).

6.8 Performance of the Law Enforcement Agencies, Administration and Intelligence Agencies

As a result of this incident, the Christian community in Gojra suffered great losses, including loss of life and displacement from their houses. The incident captured the attention of National and International print and electronic media, and therefore presented a negative image of the country in regard to its treatment of minorities and ability to preserve religious harmony. It was a failure of the government, law enforcement, local administrations and the intelligence agencies. As Intelligence Agencies reported, nothing happened regarding the desecration of the Holy Quran, the pieces of paper in the hands of these academically and religiously illiterate people were in fact from an Islamic Studies textbook for school kids. The breakdown of the incident shows that the responsible institutions had failed to assess the gravity and sensitivity of the situation. The police, intelligence agencies, local administration and political figures of the three Districts of the Faisalabad Division, including District Faisalabad, District Toba Tek Singh and District Jhang had failed to control a few hundred protesters and save the lives and properties of the Christian community.

6.8.1 Lack of Capability and Inefficiency of the Police

A significant initial factor in the rapid escalation of this incident was the decision to allow the public meetings, convened by the religious organisations, to be held on Friday the 31st July 2009, this truly added fuel to the fire. Another shocking failure of law enforcement was to allow some proscribed organisations to participate in these public meetings, and even deliver speeches. Although this is a blatant infringement of Section 11 of the Anti-Terrorism Act 1997, the police took no steps to prevent it from happening.

While putting forward their version of events, local police have accused PC Platoons of refusing to perform their duties, thereby limiting the capacity of the police present at the incident to act with force and rendering them unable to properly cope with the situation. However, this stance does not appear to be fully representative of the truth. These PC Platoons in Gojra had been brought in for one night only and concerned police officers, such as the Regional Police Officer (RPO) for Faisalabad, had failed to put in a request for an extension to their deployment.

It has been established that the police were trying to protect a small colony of Christians from an angry mob. It has also been proved by the statements and affidavits of the witnesses that, at the beginning, there were only about 100 to 200 protestors, most of whom were teenagers. These protestors chanted slogans against the Christians and pelted them with stones. In response, the residents of the colony climbed over the roofs, made indecent gestures and opened fire on the mob; as a result, some of the protestors were injured. At that time, the role of

the police was nothing more than that of the spectators, and sufficient deployment had not been made, specifically at the most vulnerable points.

It has also been proved by the records that the first group of protesters reached the Christian colony between 11:30 am and 12:00 noon. According to his own statement, it was at that time that the DPO arrived there and subsequently failed to lead the police force with proper direction. Therefore, the rumours about Muslims being killed by the Christians acted as fuel and attracted more Muslims from the surrounding areas. By this point, the police had ultimately failed to adopt a proper strategy, meaning that the only real difference between them and the protesters was the difference in clothing. The scene of this incident remained a battlefield for more than four hours. The DPO, in his capacity as commander of police, was present, but throughout this incident, he could not arrange for sufficient reinforcements or adopt a strategy to better respond to the changing circumstances. Meanwhile, the mob kept on growing in numbers, increasing to thousands of protesters, and rapidly became less and less controllable. Indeed, this was the most crucial phase, one which demanded quick decisions, effective actions and the right strategy, but unfortunately, all of these were missing.

It is accepted that the DPO left the scene of the incident at an absolutely critical moment in order to go to the TMA Office with the Provincial Minister. At this moment, a number of miscreants took charge of the mob and stormed the Christian colony. They opened fire on its inhabitants indiscriminately and set the houses on fire, allegedly with chemicals and petrol. As a result, seven Christians from one family lost their lives.

Finally, it has been observed in the statements made by official witnesses and affidavits submitted by the District Police Officer (DPO) and District Coordination Officer (DCO) for Toba Tek Singh that they lacked the ability to deploy force at key moments and suffered from a deficiency of tear gas cannisters. However, the police forces of three entire Districts were controlling this incident. Therefore, this raises significant questions about the quality and quantity of the training and investment that the police receive from the state.

6.8.2 Negligence of the Local Administration

There is no denying that figures from the local administration were present at the scene of the incident in an attempt help the police gain control of the situation, such as when local leaders arrived at the site to negotiate with the protesters. However, upon arrival of the Provincial Minister, all of them, including the Commissioner of Faisalabad and the District Coordination Officer (DCO) for Toba Tek Singh, left the site and accompanied him to the TMA office. This was a critical turning point that provided miscreants with an opportunity to storm the Christian colony and inflict serious damage to its inhabitants and their property.

It is common practice in Pakistan that when a VIP, especially a political personality from the government, visits a location, the local administration and law enforcement divert their attention away from their primary duties in order to be at this figure's immediate disposal. In this case, the Commissioner and Regional Police Officer (RPO) for Faisalabad, both of the highest-ranking officers in the Faisalabad Division, left the scene. According to their own statements and the affidavits of the DCO, they had to wait for the arrival of the Mr. Dost Muhammad Khosa, Provincial Minister for Local Government, in order to accompany him to Gojra.

However, as a field officers, if they had been present at the scene earlier, their experience and abilities could have been invaluable in controlling the situation before it escalated. This would have also mitigated the gap in communication that existed between them and the officers at the scene. It was also highlighted in the statement of the DPO for Toba Tek Singh that he kept on trying to contact the

RPO for Faisalabad to inform him of the situation, but he was uncontactable for a considerable amount of time. So, the negligence of the local administration from the highest rank is also a reason for this unfortunate incident.

6.8.3 Lack of Coordination among the Intelligence Agencies, Law Enforcement Agencies and the Local Administration

Special Branch was supposed to have warned the local police of any prospective eventualities or incidents. It has since come on record that the incident of the desecration of the Holy Quran did happen in Izaafi Abadi Village Korian, Gojra Town. However, the first report initiated by the Special Branch into this event was on the 31st July 2009. Indeed, it was Special Branch's responsibility to arrange for more personnel to be deployed to Gojra and collect ample information to inform operational decision-making. It is clear from the record that no such activities were carried out.

Furthermore, mob was effectively hijacked by banned religious organisations, which seized the opportunity to wreak havoc in the Christian colony. There is not a single indication in any of Special Branch's reports of anybody having possible connections with such organisations, indeed, these reports do not offer any explanation for how such organisations got invited to Gojira. Instead, the reports submitted by Special Branch offer a narration of the incident. This is of little value to law enforcement, it is not the job of Special Branch to simply report events of this nature, that is the job of news reporters.

Moreover, the Intelligence Bureau (IB) and Inter-Services Intelligence (ISI) also fell short of their own potential by failing to supply the local government with enough timely information to take preventive measures against this incident. For example, according to Muhammad Ashraf, Deputy Director ISI (Witness no. 132), sensitive and relevant information pertaining to the alleged desecration of the

Holy Quran was available prior to the 30th July 2009, however it was not provided to the local police or the local administration. Even after the incident, they failed to identify the people who caused and facilitated the escalation of this event.

After careful examination of the evidence; including witness statements and the Inquiry Tribunal Report, it is evident that there had been prior plan or conspiracy behind the attacks carried out against the Christian colony by the protesters. Indeed, none of the witnesses, including those affected, provided any reason to believe that these attacks were anything other than spontaneous. It is clear that there were no pre-existing disputes or tensions between the Muslims and the Christians of Gojra before the incident that resulted from the alleged desecration of the Holy Quran in Izaafi Abadi Village, Korian. It appears that things got out of the hand due to the inefficiency and the lack of capacity for foresight of those responsible for the prevention of the crime and the maintenance of law and order. Naturally, responsibility for this unfortunate incident also lies with the miscreants who exploited the situation, but there may not have been an incident to exploit at all had the responsible authorities; namely the police, the local administration and the intelligence agencies, properly assessed the gravity and the sensitivity of the situation.

6.9 Fixation of the Responsibilities

The one-person Inquiry Tribunal led by Mr. Justice Iqbal Hameed-ur-Rehman, a Judge from Lahore High Court, collected necessary documentary evidence including the statements of 567 witnesses, during the process of the inquiry and submitted the report to the Government of Punjab on the 2nd October 2009.

At the end of the Report, Mr. Justice Iqbal Hameed-ur-Rehman allocated the blame, stating that [sic.] *“before fixation of the responsibilities, it is necessary to reiterate that a nightmare had been seen by everyone concerned in the preceding night of 31st July 2009, in the shape of ugliest aggression on one religious’ community over the other. The situation demanded something extra from the persons sitting at the helms of affairs who unfortunately instead of discharging their duties diligently, due to their commission and omissions became responsible for happening of the tragic incident. Hence, on the basis of the findings recorded, I fix the following responsibilities;*

- 1) Mr. Mustaq Ahmad, Sub-Inspector/Acting SHO, Police Station City Gojra
 - He did not order the arrest of any of the people behind the public meetings, the announcements or the strike in the Gogra town.
- 2) Mr. Raja Ghulam Abbas, Deputy Superintendent of Police (DSP), Gojra
 - He failed to lead the local police from the front.
 - He did not perform his duty as assigned to him to the satisfaction of his senior.

3. Mr. Inkisar Khan, District Police Officer (DPO), Toba Tek Singh

- He utterly failed to comprehend the situation and did not exercise any of the relevant power vested in him to prevent this unfortunate incident.
- He neither took any precautionary or preventive measure nor made any recommendation in this regard.
- He proved himself to be an inefficient and ignorant officer, knowing nothing about the existence of the Committees and Boards in the District, which had been established for the purpose of crime prevention, the maintenance of law and order and to cope with emergencies.
- He did not liaise with the District Mayor, even with regard to the functions for which he had been made responsible to an aforesaid person under the provisions of Section 144 Criminal Procedure Code (Illegal assembly of the people).
- Firstly, he failed to request the deployment of a sufficient number of PC Platoons and, secondly, those that he had requested were only under orders for the 31st July 2009. He did not make timely arrangements with the concerned authorities to extend the PC Platoons' deployment, which resulted in the police forces becoming swiftly overwhelmed.
- After incorrectly assessing the situation, he was content that all was under control and left Gojra, leaving his subordinates to control the situation.

- He let the meetings of the 31st July and the 1st August go ahead, even though they were even attended by some proscribed organisations.
- The security plan (W496/G/1-2 and W496/H/1-4), issued by him on the 1st August proved to be inadequate and unworkable.
- He exhibited inexperience while dealing with the situation at the scene.
- He relied upon external officers who were unfamiliar with the town and, for reasons best known to him, did not assign officers to safeguard the most vulnerable points, i.e. the Christian colony.
- While making his statement before the Tribunal, he concealed the facts and also told a lie.

4. Mr. Ahmad Raza Tahir, Regional Police Officer (RPO), Faisalabad

- He failed to assess the gravity of the situation and did not advise or guide his subordinates properly.
- He kept himself away from the troubled areas that fell within his jurisdiction.
- In letter W-514/A, dated the 31st July 2009, he did not request a sufficient number of PC Platoons to be deployed, and those that he had obtained were only assigned for one day. Moreover, upon receipt of the PC platoons (order no. W-573/C), he failed to take the matter up the relevant authorities in a timely manner in order to secure an extension, which led to an improper handling of the situation.

- Despite having sufficient police personnel at his disposal, in a letter (no. 14440, dated the 4th September 2009) sent by him in pursuing directions from the Tribunal of Inquiry, it was stated that he failed to provide re-enforcement to the then-DPO for Toba Tek Singh, despite his repeated demands. This concern was voiced by the DPO in question (Witness no. 512) on the day of occurrence, i.e. the 1st August.
- Despite having knowledge of the deteriorating situation at the scene of the incident, he opted to wait for and accompany a VIP instead of focusing his attention on gaining control of the situation.
- He consistently reassured the Government that everything was under control, which was very irreflective of the reality of the situation.

5. Mr. Imran Sikandar Baloch, District Coordination Officer (DCO), Toba Tek Singh

- Although he claimed during his statement (witness no. 557) given before the tribunal that he thrice convened meetings of the District Intelligence Committee during the month of July 2009, a letter from the Home Department, dated the 5th September 2009, submitted to the Inquiry Tribunal revealed that there are no records of meetings having held between the District Crime Control Committee, the District Intelligence Committee and the District Emergency Board during the period of the 2nd July to the 31st July 2009. This therefore demonstrates his falsehood and untrustworthiness.

- He failed to assess and comprehend the gravity and the sensitivity of the situation. He thus did not properly exercise the powers vested in him by the West Pakistan Maintenance of Public Order Ordinance 1960, despite the fact that the details of the large-scale public unrest, which had serious radical components, were known to all the relevant authorities.
- He failed to pass crucial information gathered by the Intelligence Agencies onto the police, and he also withheld his advice.
- He had been actively involved in the process of controlling the situation at the scene at first, but he later opted to leave the site to accompany a VIP without having been ordered to do so.
- He also provided false reassurance to his superiors and failed to recommend the Government to step in once it was clear that the police and District Mayor were unable to take appropriate actions.

6. Mr. Zia Ullah Khan, In-charge Special Branch, Faisalabad

- He and those working under him did not perform their duties with due diligence, professionalism or competence.
- After the disturbance surrounding the alleged desecration of the Holy Quran on the 30th July, he failed to fully comprehend the sensitivity and gravity of the situation and did nothing to prepare for potential unrest, including the collection of necessary information in advance.
- He did not arrange for extra personnel to gather intelligence in Gojra to assist the police in designing and implementing a security plan.

7. The Intelligence Bureau and Inter-Services Intelligence (ISI)

- The Intelligence Bureau and Inter-Services Intelligence (ISI) also failed to perform their functions efficiently, therefore preventing the government from implementing preventative measures in a timely manner. The reports submitted by them were also too vague, they were unable to isolate the individuals who were working behind the scene to orchestrate the incident to the 1st August 2009.

8. Secretary of the Home Department and the Provincial Police Officer Punjab

- As for Mr. Nadeem Hassan Asif, Secretary of the Home Department for the Government of Punjab, and Mr. Tariq Saleem Dogar, the Inspector General of Police (IGP) in Punjab, they were not expected to be at the field. They were supposed to act and react to the information provided by the field officers. They have categorically stated in their testimonies that they were continuously informed by the field officers that the situation was under control. Since they were to depend upon the feedback of the field officers, they cannot strictly be held responsible for any commission or omission on their part.

6.10 The Court Trial

After the incident of the 1st August in Gojra town, in which seven people were burnt alive and 68 houses were torched, a criminal case was registered in First Information Report No. 462/09 by Police Station City Gojra, dated the 1st August 2009, under Section 7 of the Anti-Terrorism Act 1997 by a complainant, named Almas Hameed. In this case, Almas Hameed Masih was able to name seventy people, while 800 were unidentified. Mr. Almas Hameed Masih lost seven family members, including his father, wife, sister, brother, sister-in-law and two children, who were burned alive in this incident.

6.10.1 Section 7 of the Anti-Terrorism Act 1997

Whoever commits a terrorist act shall (a) if such act has resulted in the death of any person be punished with death; and (b) in any other case be punishable with imprisonment for a term which shall not be less than seven years but extend to life imprisonment, and shall also be liable to fine.

Out of 70 nominated accused people, 68 were granted bail-before-arrest while remaining two – Atif alias Neeru and Ghulam Abbas were detained by the police. The prosecution department for Toba Tek Singh completed the Chalan (case investigation report) and submitted it to the Anti-Terrorism Court Faisalabad.

During the trial of the case in the Anti-Terrorism Court Faisalabad, the Court summoned the petitioner and witnesses for their statements, but none of them appeared in the Court. However, five important witnesses and the complainant, Mr. Almas Hameed Masih, had left the country, while the remaining witnesses

withdrew their statements and filed their affidavits in the court in favour of the accused, affirming that the accused were named by mistake and had no role in the incident.

In June 2012, the Chief Public Prosecutor pleaded in the court that “eyewitnesses and the complainant had left the country, their attendance in court was very important and their absence should have led to the suspension of the trial.” The court accepted the plea of the Chief Public Prosecutor and the applications from those accused, ruling that the case could not proceed because the complainant and witnesses were not in Pakistan, and their appearance before the court and their testimonies are crucial.

Therefore, the court deferred the hearing of the case and said that the court would take up the matter upon their return to the country. The case file has been sent to the record room. Finally, all of the accused have been released from the court. At the time of writing, this case is still pending before the Special Anti-Terrorism Court in Faisalabad.

The author contacted Mr. Naveed Zafar, the lawyer who was representing the complainant, Mr. Almas Hameed Masih, in the Anti-Terrorism Court Faisalabad, and asked about the facts of the case’s proceedings. He stated that the key eyewitnesses and the complainant received death threats and were forced to leave the country, including threats from Mr. Abdul Qadir Awan, President of the Muslim League in District Toba Tek Singh, who was also accused in this case; the Islamic Organisation; and from the local leadership of the militant

organisation, Sipah-e-Sahaba Pakistan. Simultaneously, the remaining witnesses who were present in the country withdrew their statements and filed affidavits in favour of the accused, claiming that the accused were named by mistake and had no connection to the Gojra town incident. The police were provided protection, but they also testified in favour of the accused, rather than complainant and witnesses. Therefore, in these circumstances, it was very hard for the complainant and witnesses to participate in court proceeding of the court. Ultimately, the case has been closed and all of those accused have been released.

The defence lawyer, Mr. Furrakh Gulzar, was contacted for the purpose of this research, but he refused to answer any questions.

Mr. Justice Iqbal Hameed, Justice of Lahore High Court, the head of the Inquiry Tribunal, stated in his Inquiry report that *“the Gojra tragedy must be taken seriously and should be done without further loss of time to avoid a replay of the gruesome episode [sic].”*

The Chief Minister of Punjab at the time of the incident, Mr. Muhammad Shahbaz Sharif, assured the Christian community after the incident that *“the findings of the judicial inquiry into Gojra incident would be implemented in letter and spirit.”*²⁹⁰

²⁹⁰ Kharal, Asad. (March 10, 2013). *Looking back: Not a single person convicted for Gojra riots*. *Express Tribune*. <https://tribune.com.pk/story/518585/looking-back-not-a-single-person-convicted-for-gojra-riots/> (Accessed July 28, 2019)

Peter Jacob, Executive Director of Centre for Social Justice, said that *“the month of August brings back the memory of the extremely sad incident in Gojra. It is even more disheartening to think that justice is yet to be delivered for this tragic incident.”*²⁹¹

²⁹¹ International Christian Concern Pakistan Correspondent. (2018). *Pakistani Christians Still Awaiting Justice for Gojra Nine Years Later*. Monthly Magazine, Washington D.C.

Table 4: Overview of the Gojra Incident 2009.

No			Remarks
1	Gojra Town	Faisalabad Division, Punjab Province, Pakistan	The total population of Gojra town is 656,007, 59,596 of whom are Christians according to the census 2017. There are three police stations, 337 Mosques, 19 Imambargahs (Shia's Mosques), 34 Churches, and 6 Baitul Zakar (Ahmid's Mosques).
2	Local Government	Union Council Gojra Town	The local government consists of 24 members, elected by local body elections, headed by the Tehsil Nazim (Town Municipal Administrative).
3	Police and District Administration	Division: Faisalabad, District: Toba Tek Singh.	Administratively, Gojra Town is under the management of the Regional Police Officer (RPO) for Faisalabad, Division, the District Police Officer (DPO) for Toba Tek Singh, the Regional Commissioner of Faisalabad Division and the District Co-ordination Officer (DCO) for Toba Tek Singh.
4	The First incident on the 25 th July 2009	Background of the incident	A rumour was spreading in Gojra Town regarding the desecration of the Holy Quran by Christians during a wedding ceremony, and a criminal case was registered against Mr. Talib Mesih under the FIR no. 426/2009 at police station Sadar Gojra.
5	The incident on the 30 th July 2009	Muslim protesters attacked Christians	According to the FIR no. 429/2009, dated the 31 st July 2009, the police station Sadar Gojra received a complaint from Mr. Master Mehnga Mesih that a group of people were attacking Christians with sticks, firearms, kerosene and chemicals, and they were torching their houses and robbed them of their possessions.
6	The incident on the 1 st August 2009	Muslim protesters again attacked the Christian colony	According to the contents of the FIR no. 462/2009, dated the 1 st August 2009, registered by Police Station City Gojra, Mr. Almas Hameed reported that 14 named people along with eight hundred unknown others attacked the Christian colony, resulting in seven lost lives, 120 injured and 68 torched houses.
7	Inquiry Tribunal	Mr. Justice Iqbal Hameed-ur-Rehman, Judge of Lahore High Court	The Government of Punjab established a one-man tribunal of inquiry under the West Pakistan Tribunal Ordinance 1969, vide notification no. SO(IS-11)3-52/2009 on the 2 nd August 2009 to determine the full facts of the incident, fix responsibilities and to furnish the detailed report with recommendations.

8	Police version	Mr. Inkasar Khan, District Police Officer (DPO) for Toba Tek Singh, (witness no. 512)	He stated that, previously, the incident of desecration of the Holy Quran was never reported by any agency to the local police, and news of the event was received for the first time on the evening of the 30 th July 2009 when the crowd started torching the houses of the Christians.
9	Administration version	Mr. Imran Sikander Balouch, District Co-ordination Officer (DCO) for Toba Tek Singh, (witness no. 557)	He stated that, upon his arrival at the site, the Town Municipal Officer (TMO) for Gojra, the District Police Officer (DPO) for Toba Take Singh and local MP, Bilal Asghar Warriach, told him that the mob was infuriated because Talib Masih (from Chak no 95/JB) had allegedly desecrated the Holy Quran on the 26 th July 2009. It was only on that day, i.e. the 30 th July, when the people came to know of the incident. Thereafter, a group of protesters gathered at the spot, arrested Talib Masih and handed him over to the police, but police let him off. After that, the mob burnt the village.
10	Intelligence agency version (ISI)	Name of officer undisclosed	According to the reports of the Intelligence Agencies, the pieces of paper containing the Verses of the Holy Quran were, in fact, cuttings from the pages of an Islamic Studies textbook for schoolkids.
11	According to the reports of the Intelligence Agencies, the pieces of paper containing the Verses of the Holy Quran were, in fact, the cuttings of the pages of the book of Islamic Studies for 9 th class.	Lack of capability and inefficiency of the police, negligence of the local administration and a lack of coordination among the intelligence agencies, law enforcement agencies and the local administration.

12	Fixation of the responsibilities	Inquiry tribunal report	The one-man Inquiry Tribunal under Mr. Justice Iqbal Hameed-ur-Rehman, Justice of Lahore High Court, collected necessary documentary evidence, including 567 witness statements, over the course of the investigation and submitted the report to the Government of Punjab on the 2 nd October 2009. At the end of the Report, he fixed the responsibilities and stated that the Gojra incident was a complete failure of the police, the district administration and the intelligence agencies.
13	Registration of the criminal case	Anti-terrorism Court, Faisalabad, Pakistan	After the incident on the 1 st August 2009 in Gojra, in which 96 families of the Christian colony had been affected, including the torching of 68 houses and some Churches, the deaths of 7 Christians and 18 injuries, a criminal case was registered in First Information Report No. 462/09 on the 1 st August 2009 at Police Station City Gojra under Section 7 of the Anti-Terrorism Act 1997 by a complainant named Almas Hameed. In this case, the complainant, Almas Hameed Masih, named 70 people, while 800 were unidentified. Mr. Almas Hameed Masih lost seven family members, including his father, wife, sister, brother, sister-in-law and two children, who were burned alive in this incident.
14	Court Trial	Anti-terrorism Court, Faisalabad, Pakistan	Out of the 70 named defendants, 68 were granted bail-before-arrest, while the remaining two – Atif alias Neeru and Ghulam Abbas – were detained by the police. During the trial in the Anti-Terrorism Court in Faisalabad, the court summoned the petitioner and witnesses for their statements, but none of them appeared. However, five important witnesses and the complainant, Mr. Almas Hameed Masih, had left the country. At the same time, the remaining witnesses withdrew their statements and filed their affidavits in favour of the accused, claiming that the accused were named by mistake and had no role in the incident. In June 2012, the Chief Public Prosecutor pleaded in the court that because the “eyewitnesses and the complainant had left the country, and their attendance in the court are very important, their absence should result in the suspension of the trial of the case.” The court accepted the plea of the Chief Public Prosecutor. At the time of writing, this case is still pending before the Special Anti-Terrorism Court in Faisalabad.

Photos of the Gojra Incident 2009 from multiple sources



Figure 6 - Source: Pakistan Christian Post²⁹² (Victims of the Gojra incident)



Figure 7 - Source; Catholic Television²⁹³

²⁹² Muslim Killers of Gojra Christians walking free; 4th anniversary of Gojra carnage. (July 31, 2013). Pakistan Christian Post. <http://www.pakistanchristianpost.com/head-line-news-details/4415> (Accessed on September 28, 2020).

²⁹³ Mall, Asif. (March 3, 2017). *Recalling the Gojra Incident Pakistan 2009*. Catholic Television. <https://www.catholic-television.com/christian-persecution-blasphemy-law-pakistan-gojra-incident-2009-asif-mall/> (Accessed on January 14, 2019).



Figure 8 - Source: Salem News²⁹⁴



Figure 9 - Source: Pakistaniat.com²⁹⁵

²⁹⁴ Bowder, Bill. (August 5, 2009). *Pakistan government has 'duty' to help Christians*. *Church Times*. <https://www.churchtimes.co.uk/articles/2009/7-august/news/uk/pakistan-government-has-duty-to-help-christians> (Accessed on April 17, 2019).

²⁹⁵ Mian, Atif. (August 1, 2009). *Pakistanis Die, Pakistanis Cry: Christians Killed and Homes Burnt in Gojra*. *Pakistaniat.com*. <https://pakistaniat.com/2009/08/01/christians-killed-gojra/> (Accessed on January 14, 2019).



Figure 10 - Source: Pukhtunkhwa Times²⁹⁶



Figure 11 - Source: Pakistan Defence²⁹⁷

²⁹⁶ Sohail, Cynthia. (August 9, 2017). *8th Anniversary of Gojra Incident*. Pukhtunkhwa Times. <http://pukhtunkhwatimes.blogspot.com/2017/08/pakistan-8th-anniversary-of-gojra.html> Accessed on January 14, 2019).

²⁹⁷ *Looking Back: Not a single person convicted for Gojra riots*. (March 10, 2013). Pakistan Defence. <https://defence.pk/pdf/threads/looking-back-not-a-single-person-convicted-for-gojra-riots.239373/> (Accessed on January 14, 2019).



Figure 12 - Source: CNN²⁹⁸



Figure 13 - Source: Asia News²⁹⁹

²⁹⁸ 6 Killed in Pakistan as Muslims burn Christian homes. (August 3, 2019). CNN. <https://edition.cnn.com/2009/WORLD/asiapcf/08/01/pakistan.sectarian.violence/?iref=nextin> (Accessed on January 14, 2019).

²⁹⁹ Chaudhary, Kamran. (Feb 5, 2016). Punjab: Muslims fund the construction of a Catholic church. Asia News. <http://www.asianews.it/news-en/Punjab:-Muslims-fund-the-construction-of-a-Catholic-church-37381.html> (Accessed on January 14, 2019).



Figure 14 - Source: LUBP³⁰⁰



Figure 15 - Source: The New York Times³⁰¹

³⁰⁰ Ebadi, Laila. (July 20, 2010). *Where is the Gojra report?* LUBT Net. <https://lubpak.net/archives/19557> (Accessed on September 28, 2020).

³⁰¹ Tavernise, Sabrina. (August 2, 2009). *Hate Engulfs Christians in Pakistan.* The New York Times. <https://www.nytimes.com/2009/08/03/world/asia/03pstan.html> (Accessed on January 14, 2019).

6.11 The Establishment of the Model Criminal Trial Courts

Between 2008 to 2018, there was a period of judicial activism in Pakistan whereby the judiciary intervened in all areas of political life; exercising executive powers and reversing decisions which fell within the regulatory frameworks of other state institutions.³⁰² Most significantly, as part of its drive against political corruption, the judiciary ousted two elected prime ministers. The president's power to dissolve elected assemblies had been removed by 2009, but the Supreme Court's power to oust parliamentarians for not fulfilling basic criteria, such as those of morality and sagacity, under Articles 62 and 63 of the Constitution of Pakistan³⁰³, remained, and they became vehicles for the unelected judiciary to manipulate the arrangement of elected power.

Therefore, in the last decade, the superior judiciary has become more active within its own judicial limitations and has manipulated the political process in the country.³⁰⁴ The removal of Prime Minister Gilani, who was found to be in contempt of court, and the disqualification of Prime Minister Nawaz Sharif under Article 62 based on misdeclaration of assets and allegations of corruption, are significant examples. However, not a slight effort was made to actually strengthen the judicial system in Pakistan, let alone the criminal justice system. By the first quarter of 2019, no significant changes or developments, such as anti-terrorism laws, judicial structure or the enhancement of the capabilities of law enforcement

³⁰² Siddique. (2015). *Judicialization of Politics: Pakistan Supreme Court's Jurisprudence after the Lawyer's Movement*. In *Unstable Constitutionalism: Law and Politics in South Asia*, edited by Mark Tushnet and Madhav, 159-91. New York: Cambridge University Press.

³⁰³ Qualification for Membership of Majlis-e-Shoora, Article 62, Constitution of Pakistan 1973, and Disqualification of Membership of Majlis-e-Shoora, Article 63, Constitution of Pakistan 1973.

³⁰⁴ Umair, Jamal. (May 01, 2018). *Is growing judicial activism in Pakistan coming at the expense of democracy in the country? The Diplomat*. <https://thediplomat.com/2018/05/democracy-and-judicial-activism-in-pakistan/> (Accessed on Sep 13, 2019).

agencies, had been made by the legislatures or the superior judiciary.³⁰⁵ This was therefore a failure to meet the promises made in the National Action Plan 2015.

However, the former Chief Justice of Pakistan, Mr. Justice Asif Saeed Khosa, took some initiative and established the Model Criminal Trial Courts on the 1st April 2019 to deal with already pending murder and narcotics cases (not terrorism cases) throughout the country for the purpose of expeditious and inexpensive justice under Article 37 of the Constitution of Pakistan 1973. This announcement was made in March 2019 during the meeting of the National Judicial (Policy Making) Committee (NJPMC), headed by the Chief Justice of Pakistan, and attended by the Chief Justices of the Federal Shariat Court and High Courts.

Initially, 110 Model Courts were established in four provinces of Pakistan, including Islamabad. The structure of the case proceeding in these courts has been explained to lawyers, prosecutors, witnesses and concerned parties, and will thus be followed. The lawyers must appear in the court for case trials, if they are unable to appear before the court on the day of the hearing, they will have to inform the court, who will subsequently replace them. To ensure the timely disposal of the cases, courts will not grant any adjournments. The Superintendent of Police Investigations of each district will be responsible for the attendance of witnesses at court trials, except in cases of medical exemption. A monitoring and evaluation cell under the supervision of the Chief Justice of Pakistan will oversee the operation of these Model Trial Courts, and the performance of the courts would be reviewed after every two months. The time for the disposal of the cases

³⁰⁵ *Judicial activism*. (June 11, 2019). *Dawn Newspaper*. <https://www.dawn.com/news/1463137> (Accessed on August 20, 2020).

is three months. Given Pakistan's current security landscape, extra security will be provided to judges and witnesses.

According to the latest statistics of the Law and Justice Commission of Pakistan (LJCP), there are 1,869,886 cases pending with the judiciary. Among these cases, 38,539 are pending in the Supreme Court, 147,542 in the Lahore High Court, 93,335 in the Sindh High Court, 30,764 in the Peshawar High Court, 6,030, in the Baluchistan High Court, and 16,278 in the Islamabad High Court. The pendency of the district judiciary of Punjab is 1,184,551, Sindh 97,673, Khyber Pakhtunkhwa (KPK) 204,030, Baluchistan 12,826, and Islamabad 37,753³⁰⁶ (this data includes all types of cases in Pakistan, pending in the lower and the superior judiciaries).

According to the Consolidated Progress Report of the Model Criminal Trial Courts presented by Mr. Sohail Nasir, the District and Session Judge for Islamabad and the Director-General responsible for monitoring of the Model Courts, between the 1st April 2019 and the 15th June 2019, Model Courts across Pakistan ruled upon a total of 5,647 cases so far, including 2,236 murder cases and 3,411 narcotics cases. Amongst these, the Model Courts issued 175 death sentences, 535 sentences of life imprisonment and 1,352 other varying degrees of penalty. They also imposed fines to the tune of 260 million Rupees in different convictions, while remaining acquitted.³⁰⁷

³⁰⁶ Statistics of the Law and Justice Commission of Pakistan (LJCP). (June 30, 2019). http://ljcp.gov.pk/nljcp/assets/dist/news_pdf/courts.pdf (Accessed on Dec 17, 2019).

³⁰⁷ Malik, Asad. (June 18, 2019). *Dawn News*. <https://www.dawn.com/news/1488843> (Accessed on August 7, 2019).

As the Chief Justice of Pakistan stated earlier, these courts were established to provide expeditious and inexpensive justice to the people of Pakistan. The Model Courts also ruled upon a few cases that had been pending for decades, for example, the Model Court in KPK ruled upon a 40-year old murder case that had first been registered in 1979, as well as a 25-year-old case in Sindh that had been registered in 1994. These courts also ruled upon 5 murder cases that had been pending for 20 years and 35 murder cases that had been pending for 15 years. The setup of Model Courts by the former Chief Justice of Pakistan, Mr. Justice Asif Saeed Khosa, was considered to be a “silent revolution” in the judicial history of Pakistan, and not much publicised by the media.

Although the aim of the Model Criminal Trial Courts to expeditious and inexpensive justice in Pakistan has been met so far, there has also been some criticism from the legal community. More than 4,000 defendants have been acquitted by the Model Courts from the last two and half months, which is a very high acquittal rate, and this is because of shoddy investigations and the failure of the police to collect sufficient evidence. Indeed, “justice rushed is justice crushed.” In the beginning, lawyers protested against the ‘no adjournment’ principle, so later courts decided that the hearing of the cases would be determined with the mutual consent of lawyers.

The Vice-Chairman of Pakistan’s Bar Council, Mr. Amjad Shah, stated that for the swift trial of the cases, there need to be trained and qualified prosecutors, investigation officers and forensic experts. Whereas Mr. Raheel Kamran Sheikh, Executive Member of Pakistan’s Bar Council, expressed that there should be a

mechanism to keep a record of the causes of acquittals; whether it was the result of an inadequate investigation, the incompetence of the prosecution or false statements from the witnesses.

The establishment of the Model Criminal Trial Courts (MCTC) has so far been appreciated, but these courts are just a few months old. This will be determined in the coming years. Indeed, the Anti-Terrorism Courts were formed in 1997 on the same principle of “expeditious and inexpensive justice,” but they are yet to reach their full potential

The establishment of the Model Criminal Trial Courts (MCTC) has been the only real contribution towards the renovation Pakistan’s criminal justice system that has been made with the last couple of decades and is even considered have been a “silent revolution” in the judicial history of the country. However, it is not enough to meet the objectives as mentioned and promised in the National Action Plan 2015.

Finally, the establishment of the Model Criminal Trial Courts poses many questions. Why are they only for already pending cases of murder and narcotics? Why are they not for terrorism cases, which is the gravest threat to Pakistan’s security and stability? Perhaps the dominant institutions in Pakistan want to use military tribunals to combat terrorism, rather than a robust ordinary criminal justice system.

Chapter 7 – Conclusion

7.1 Research Conclusions

Understanding what draws individuals into terrorism has been a major academic priority for many years which has accelerated greatly since the 9/11 attacks. In unsettled and unstable parts of the world, terrorism has merged into general insurgency and political violence, and, in many respects, the appeal of violence and revolutionary movements seems somehow more understandable. Even in more settled, secure and prosperous parts of the world such as Western Europe. However, the advent of extreme terrorist violence seems much more complex and perplexing. A range of serious terrorist attacks in European cities has made the imperative of understanding the causes of terrorism and its sympathisers ever more pressing.

Over recent decades, terrorism has grown, causing fear and insecurity in almost every society, which has affected human behaviour. A growing number of terrorist incidents in Pakistan has increased the potential threat that sectarian, ethnic and religious factions could pose to society as a whole. At the time of writing, the trend of militancy in Pakistan is more dangerous and more lethal than ever before. In this regard, turmoil in Afghanistan directly impacts upon Pakistan's society. The conflict in Karachi between the ethnic communities, the insurgency in Baluchistan and the presence of militant and sectarian organisations in Pakistan provide grounds for terrorism. Data for recent terrorist incidents shows that the number of terrorist attacks has declined in Pakistan, but the level of the potential threat of

terrorism is still high. The objectives of the militant and terrorist organisations are to destabilise the country and create a prevailing sense of fear and insecurity in society.

The history of terrorism in Pakistan started just a few years after the inception of independence in 1947. In 1950, the right-wing religious political parties and faith-based organisations started a movement against Ahmadis, seeking to declare them non-Muslim, which consequently incited riots. The sectarian organisations were promoted during the era of General Zia-ul-Haq's military regime from 1977 to 1988. During this period, Islamisation flourished in the country, and Saudi Arabia played a role in strengthening the religious and radical organisations. The Soviet invasion of Afghanistan in 1979 provided fuel to militancy and Jihadism in the region. Religiously motivated organisations and groups participated in the Soviet-Afghan war, thereby making it a "Holy War." But at the end of this war in 1989, these highly trained, well equipped Jihadist organisations scattered, most of them moving into Pakistan. As a result, Pakistan became an epicentre for Jihadist and militant organisations and groups.

Therefore, until now, Pakistan could defeat the wave of militancy in the country. There are many reasons for this, but the essential factors have been the lack of coordination among the governmental institutions; regional vested interests of the civil government and the military establishment; the differentiation between good and bad militant organisations; political instability; injustice; lack of reforms in the criminal justice system; lack of madrasa (seminaries) reforms; and the misinterpretation of religion.

The 20-point National Action Plan is a policy instrument that has been utilised by Pakistani policymakers following the terrorist attack on a military-administrated school in Peshawar on December 16, 2014. The National Action Plan is the manifestation of a national consensus, backed by all political and military stakeholders, to tackle the terrorism in the country. The most critical points of the National Action Plan have not yet been implemented, namely reforms in the existing anti-terrorism laws, reforms in the criminal justice system, control on proscribed organisations, the choking of terror financing and madrasa reforms. There is also a lack of coordination between the apex committees and the National Action Counter-Terrorism Authority (NACTA).

The establishment of military courts and proceedings against suspected terrorists have been criticised by the superior courts, legal experts, human rights organisations and political parties. They have expressed their concerns that present proceedings violate the basic principles of the rule of law and fair, independent and impartial trials. The upgrading of the anti-terrorism laws and the criminal justice system is the most critical point of the National Action Plan, but insufficient attention has been given to the implementation of this point, except for a few amendments in the Anti-Terrorism Act 1997. The intelligence agencies, specifically Inter-Services Intelligence (ISI) and Military Intelligence (MI), have superior authority and a better range of sources, but they are reluctant to share their information with other intelligence agencies and law enforcement agencies. As a result, they hinder progress in this domain.

It was promised in the National Action Plan 2015 that strict measures would be implemented against terrorist financing, money laundering and proscribed organisations. However, not a single step had been taken until to the end of 2018. In 2019, with mounting international pressure, especially from the Financial Action Task Force (FATF), Pakistan is finally taking steps to control the financing of terrorism. For example, on the 16th July 2019, Pakistan arrested Hafiz Muhammad Saeed, the head of Lashkar-e-Taiba. This arrest was carried out for two reasons: first, the Financial Action Task Force warned Pakistan to take action against Lashkar-e-Taiba and its leadership; and second, the Prime Minister of Pakistan, Imran Khan, was visiting the United States on the 20th July 2019 and would have a meeting President Donald Trump in which he wanted to show Pakistan's commitment to fighting terrorism.

To control militancy and radicalisation in the country, madrasa reforms are crucial. Therefore, regulating their functions and bringing them into the mainstream education system are key points of the National Action Plan. To accomplish these objectives, the concerning authorities of Pakistan had many meeting with Ittihad-ul-Madaris Pakistan (the joint organization of religious seminaries), but the religious forces are a major obstacle in this regard. They oppose the government's decision to bring these madrasas into the mainstream education system and refuse for any changes to be made to their mechanisms.

However, an area of success in delivering the National Action Plan's objectives has been that the glorification of militants and terrorist organisations would no longer be allowed in electronic or print media. The Pakistan Electronic Media Regulatory Authority (PEMRA) is responsible for the implementation of this policy

and for monitoring any violation. Point 12 of the National Action Plan, regarding FATA reforms, has also been implemented after passing the 25th Constitutional Amendment 2018. After this Amendment, the Federal Administered Tribal Areas (FATA) were merged with KPK Province, but many things need to be done regarding the implementation of administrative measures and maintaining law and order.

After examining the National Action Plan 2015, it is evident that point 1, the implementation of the death sentence; point 2, the establishment of the military tribunals; point 11, the ban on the glorification of terrorists and terrorist organisations; and point 12 regarding FATA reforms, have been implemented as of the end of 2019, but the remaining points have not yet been implemented or have not been able to achieve their desired results.

The Pakistani judiciary has played a critical role in managing the institutional dissonance between Pakistan's military and civilian political parties. Both the military and political parties have sought to gain support and acquiescence through pursuing policies of institutional weakening and building institutional interlinkages with the judiciary. As institutional interlinkages between the military and judiciary have diminished over time, the judiciary has grown more autonomous from the military and has ultimately played an important role in helping political parties survive and ensuring the transition of the state to civilian democratic rule.

However, the Pakistani case shows that whilst an independent judiciary may help facilitate a return to democratic rule, it may also undermine democratic consolidation as the pursuit of judicial supremacy can lead to the judiciary regulating political parties, filtering their leadership and picking favourites among them. The 2018 elections demonstrated the judiciary's impact on democratic consolidation, as the courts engineered the political landscape, weakening the incumbent Muslim League Party and setting the stage for the Pakistan Tehreek-e-Insaf (PTI) Party to rise to power for the first time. Today, Pakistan's judiciary has not yet reconciled the institutional dissonance between the military and political parties. Instead, there are now three institutional visions for the state: a military-centred praetorian democracy, a party-centred parliamentary democracy and a judiciary-centred judicial democracy, and the three visions coexist in a state of constant tension, leaving political parties confronting interventions from the military and the judiciary. Consequently, democracy in Pakistan is unstable and unconsolidated.

Throughout Pakistan's history, the military establishment has used the judiciary to validate their military coup against political opponents. For example, the hanging of Zulifqar Ali Bhutto is called the "judicial murder" of Pakistan's history. Moreover, the judiciary played a role in the dismissal of Benazir and Nawaz Sharif's governments and, more recently, the disqualification of Prime Minister Yousif Raza Gillani and Prime Minister Nawaz Sharif. After the restoration of the former Chief Justice, Iftikhar Ahmad Chaudhary, as a result of the lawyer's movement in 2008, the judiciary gained more independence and subsequently interfered in the domain of executive powers, thereby destabilising the

government. These powers were immensely enjoyed by the recently retired Chief Justice of Pakistan, Mr. Mian Saqib Nisar (31 December 2016 to 17 January 2019), who completely changed Pakistan's political landscape by promoting PTI, thereby undermined the other political forces.

Therefore, Pakistan's superior judiciary paid very little attention to reforming the judicial system or strengthening the criminal justice system, its court structure, case management, prosecution departments or law enforcement agencies. Given the rise of terrorist attacks in Pakistan, law enforcement's failure to successfully prosecute the accused has become a significant concern. Usually, the police are responsible for this failure, but two other pillars of Pakistan's criminal justice system; the judiciary and prosecution, are also accountable.

Furthermore, terrorism has been a significant threat to internal security. To deal with this significant threat, the Anti-Terrorism Act 1997 was introduced as the primary legislation to cope with terrorism, which laid down the legal structure and formed the Special Anti-Terrorism Courts. After careful analysis of certain Sections of the Anti-Terrorism Act, it is clear that there are lacunas and legislative defects in the definition of terrorism in Pakistan. The broad definition of terrorism that includes many offences which ought to fall under the jurisdiction of ordinary criminal courts, alongside multiple contradictions in the precedents set by the superior courts, creates severe confusion and has hugely overburdened the Anti-Terrorism Courts.

Therefore, point 20 of the National Action Plan, regarding revamping and reforming the criminal justice system, has been entirely ignored by the legislatures and the superior judiciary, which have failed to enhance the capabilities of the police, overhaul the judicial system, improve prosecution and develop appropriate legislation in the anti-terrorism laws. The police department is meant to enforce the orders of executive and judiciary. Its primary functions used to be the prevention of crime, to set the law into motion upon the commission of any offence, to carry out investigations, to maintain law and order and to execute the orders of competent authorities. However, due to lack of training, they lack the ability to fight against heinous crimes such as terrorism, and due to a shortage of resources, they have usually failed to perform their duties.

7.2 Recommendations

- While major counter-terrorism operations such as operation Zarb-e Azb and operation Radd-ul-Fasaad appear to have delivered substantial impact, the size and complexity of the threat mean that the struggle is far from over. The government and military in Pakistan should continue to not only clear areas of militants, but to also hold those areas afterwards and ensure that militants do not reappear.
- In order to continue carrying out these military and security operations effectively, Pakistan should continue to develop their military and security capabilities. This should include the improvement of intelligence collection and exchange, and the training and equipping of law enforcement and military personnel.
- Dialogue with the Taliban in Afghanistan remains crucially important as longer-term strategy. Not only has the conflict been raging for many years without a tangible military solution; but there is a serious risk of a whole new generation of militants being radicalised by the Taliban and joining the fight. This means that there is little alternative but to explore diplomatic solutions to the crisis. It is also the case that engaging with the Taliban could have the effect of marginalising Daesh in the region and ensuring that they do not gain a substantial foothold.
- It is clear that the causes of radicalisation and disenfranchisement in the region are closely related to the structural problem of unemployment, poor education and a severe lack of economic prospects. Many of these factors have driven young people into the arms of the violent extremist organizations (VEOs) in the past and will continue to do so until the socio-

economic picture substantially improves. For these reasons, economic investment and development should also be critically important elements of the longer-term strategy in tackling militant activity across the country.

- It is recommended that the undue influence of the madrasas that preach extreme and violent messages, be addressed. This can be achieved through the twin strategy of improving Islamic teaching in such madrassas; and in improving general educational provision, such that the influence of extremists upon the next generation is reduced and moderated.
- Ideology is important in the sense that certain movements may use it to develop a warped narrative to recruit angry and disaffected young people. So, Pakistan needs to consider the mechanism by which they do so, such as the role of the internet, and the popularity of radical preachers and bloggers.
- Pakistan should take strict measures and irreversible actions against proscribed organisations without differentiation between “good” jihadi groups, those perceived to promote Pakistan’s strategic objectives in India and Afghanistan; and “bad” jihadi groups, i.e., those targeting the security forces and civilians in Pakistan.
- There should be an effective mechanism for the sharing of information between law enforcement agencies, the intelligence agencies and the National Action Counter-Terrorism Authority (NACTA) in order to better cope with the issue of terrorism in Pakistan.
- The recommendations of the Financial Action Task Force (FATF) regarding sufficient regulations against terrorist financing and banned organisations should be implemented.

- The country's democratic structure should strengthen and empower the civilian elected governments. Both the military establishment, which has almost full control over national security, anti-terrorism policy and foreign policy, and the superior judiciary, who excessively exercises executive powers, undermine the democratic political process and political leadership. Their role should definitely be minimised.
- For the swift implementation of the National Action Plan, there should be a comprehensive strategy that allocates specific roles to the federal and provincial governments, law enforcement agencies and the intelligence agencies, which would allow them to operate in unison and would also give them timelines in which to achieve the objectives.
- The National Action Counter-Terrorism Authority should project a national counter-terrorism narrative to defeat the extremists and militants' narratives through the media, educational institutions and sermons in mosques, especially during the Friday prayer.
- The establishment of military tribunals should not be a permanent solution to combat terrorism, there is a need to strengthen the ordinary criminal justice system and anti-terrorism institutions, which would guarantee every citizen the right to a fair trial and due process.
- Militant outfits, armed groups, their sympathisers and facilitators should not be allowed to operate in Pakistan or use its soil to facilitate efforts against any other country.
- Pakistan should regularise its monetary and banking system according to international norms in order to control terrorist financing and money laundering. The government should impose restrictions on the Hawala

system, which is an informal money transfer system often used by militant and terrorist organisations. Fundraising for the purposes of charity and social welfare by proscribed organisations should not be allowed.

- Religious seminaries are a major area for promoting jihadi culture in Pakistan; therefore, Madrasa or religious seminary reforms are a crucial point of the National Action Plan. Pakistan should thus take every possible step to bring them into the mainstream education system, change their curriculum, register them, collect data on them, check their funding and maintain audit reports of them.
- Pakistan's Federally Administered Tribal Areas (FATA) reforms have been implemented through 25th Constitutional Amendment, resulting in their merger with KPK province. However, administratively, much more needs to be done. There should be no place for terrorists, militant groups, training camps, militia hideouts or sympathisers of terrorist organisations.
- Pakistan needs to review its counter-terrorism strategy by strengthening the criminal legal system, training and well-equipping its law enforcement agencies, improving the prosecution department, adopting modern investigation techniques and fostering political will.
- The broad definition of terrorism under Section 6 of the Anti-Terrorism Act 1997, which includes many other offences which ought to fall under the jurisdiction of the ordinary courts of law, alongside contradictions in the precedents set by the superior courts, creates confusion and has led to the Anti-Terrorism Courts becoming overburdened. Therefore, it is the responsibility of lawmakers and the superior courts to define the term "terrorism" as concisely and appropriately as possible.

- Under Sections 8 to 23, of the Anti-Terrorism Act 1997, extensive powers have been granted to the Anti-Terrorism Courts. After an objective analysis of Section 19 subsections (7) and (8) of the Anti-Terrorism Act 1997 regarding the provisions to “*decide the case within seven days*” and that the “*ATC shall not give more than two consecutive adjournments during the trial of the case*”, it is evident that both are un-realistic approaches that do not reflect the realities of the judicial system of Pakistan. However, the government should adopt a realistic approach to decide upon these cases within the allocated timeframe, and the time limit should increase to three months or six months rather than seven days.
- It should also be the responsibility of law enforcement agencies to provide protection to witnesses and to escort them to court at the time of the hearing.
- Regarding unnecessary adjournments, the court should take strict measures, such as imposing cash penalties on the responsible side.
- After the analysis, it is clear that the powers under Section 5 (2) (i) of the Act, regarding the use of force, should only be exercised as a last resort or in extraordinary circumstances, such as firing upon a suicide bomber. The use of force should not exceed what is necessary to resolve an incident. The government and courts should take strict measures against extra-judicial killings.
- Under Section 21 of the ATA 1997, the Courts should instruct to the court administrators and law enforcement authorities to take every possible step to provide guarantee witnesses freedom from fear and threat, specifically in terrorism-related cases for the due process of law and speedy trials

- There is also a need to improve coordination among the police, civil and armed forces and the intelligence agencies regarding arrests and investigations into terrorism-related cases. Therefore, the strengthening of the criminal justice system in Pakistan needs more attention, investment, and strategy.
- The prosecution department plays a very significant role in the preparation of cases and presents them in the courts. Therefore, legally qualified and experienced prosecutors should be appointed to the prosecution department.
- The establishment of the Model Criminal Trial Courts (MCTC), to facilitate expeditious and inexpensive justice in Pakistan, is the only contribution that has been made to renovating the criminal justice system. So far, they have been effective and thus offer a glimmer of hope, but they are not enough to achieve the desired objectives, as mentioned and promised in the National Action Plan 2015. A possible solution would be to trial pending terrorism-related cases in the Model Criminal Trial Courts.
- Finally, to make the country a peaceful society that promotes economic growth and political stability; provides security to its citizens; and projects Pakistan's image internationally as a secure, responsible and civilised state, all stakeholders, including the civil government, the military establishment, the judiciary and political parties should be on the same page and work in together with one aim: "to combat terrorism."

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Annexes

Annex A

The United Nations Security Council unanimously adopted a Resolution 1373 (2001)³⁰⁸ that all states shall observe and implement the following measures to combat terrorism:

- a) *Prevent and suppress the financing of terrorist acts;*
- b) *Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;*
- c) *Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;*
- d) *Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial*

³⁰⁸ United Nations Security Council Resolution. 1373, (4385th meeting, 28 September 2001).

or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of persons;

- e) All states shall refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;*
- f) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other states by exchange of information;*
- g) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;*
- h) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other states or their citizens;*
- i) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflect the seriousness of such terrorist acts;*
- j) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or*

support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;

- k) Prevent the movement of terrorists or terrorist groups by effective border control controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents.*

Annex B

Section 6. Terrorism (1) In this act, “terrorism” means the use or threat of action where;

- d) The action falls within the meaning of sub-section (2); and*
- e) The use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect [or a foreign government or population or an international organization] or create a sense of fear or insecurity in society; or*
- f) The use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause [or intimidating and terrorizing the public, social sector, media persons, business community or attacking the civilians, including damaging property by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies], [Provided that nothing herein contained shall apply to a democratic and religious rally or a peaceful demonstration in accordance with law].*

(2) An “action” shall fall within the meaning of sub-section (1), if it;

- a) Involves the doing of anything that causes death;*
- b) Involves grievous violence against a person or grievous bodily injury or harm to a person;*
- c) Involves grievous damage to property [including government premises, official installations, schools, hospitals, offices or any other public or private property including damaging property by ransacking, looting or arson or by any others means].*

- d) *Involves the doing of anything that is likely to cause death or endangers person's life;*
- e) *Involves kidnapping for ransom, hostage-taking or hijacking; [involves use of explosive by any device including bomb blast or having any explosive substance without any lawful justification or having been unlawfully concerned with such explosive];*
- f) *Incites hatred and contempt on religious, sectarian or ethnic basis to strip up violence or cause internal disturbance;*
- g) *Involves taking the law in own hand, award of any punishment by an organization, individual or group whatsoever, not recognized by the law, with a view to coerce, intimidate or terrorize public, individuals, groups, communities, government officials and institutions, including law enforcement agencies beyond the purview of the law of the land;*
- h) *Involves firing on religious congregation, mosques, imambargahs, churches, temples and all other places of worship, or random firing to spread panic, or involves any forcible takeover of mosques or other places of worship;*
- i) *Creates a serious risk to safety of the public or a section of the public, or is designed to frighten the general public and thereby prevent them from coming out and carrying on their lawful trade and daily business, and disrupts civic life;*
- j) *Involves the burning of vehicles or any other serious form of arson;*
- k) *Involves extortion of money (Bhatta) or property;*
- l) *Is designed to seriously interfere with or seriously disrupt a communication system or public utility service;*

- m) Involves serious coercion or intimidation of a public servant in order to force him to discharge or to refrain from discharging his lawful duties;*
- n) Involves serious violence against a member of the public force, armed forces, civil armed forces, or a public servant;*
- o) Involves in acts as part of armed resistance by groups or individuals against law enforcement agencies; or*
- p) Involves in dissemination, preaching ideas, teaching and beliefs as per own interpretation of FM stations or through any other means of communication without explicit approval of the government or its concerned departments.*

(3) The use or threat of use of any action falling within sub-section (2) which involves the use of firearms, explosive or any other weapon is terrorism, whether or not sub-section (1) © is satisfied.

(3A) Notwithstanding anything contained in sub-section (1), an action in violation of a convention specified in the Fifth Schedule shall be an act of terrorism under this Act.

(4) In this section “action” includes an act or a series of acts.

(5) In this Act, terrorism includes any act done for the benefit of a proscribed organization.

(6) A person who commits an offence under this section or any other provision of this Act, shall be guilty of an act of terrorism.

(7) In this Act, a “terrorist” means;

- a) An individual who has committed an offence of terrorism under this Act, and is or has been concerned in the commission, preparation, [facilitation, funding] or instigation of acts of terrorism;*

b) An individual who is or has been, whether before or after the coming into force of this Act, concerned in the commission, preparation, [facilitation, funding] or instigation of acts of terrorism, shall also be included in the meaning given in clause (a) above].

Annex C

Mr. Inkasar Khan, District Police Officer (DPO), Toba Tek Singh, (Witness no. 512), stated in his affidavit W-512/A.1-17 as under;

The main event of the day was shutter down (strike), announced by 'Anjuman-e-Tajaran (Traders Union) in Gojra city. However, at 07:15 in the morning, I got a call from DSP/HQ who was placed in Gojra that all the Punjab Constabulary Reserves (PC), had come back to the police station and had refused to perform further duty as they were saying that they had to go back at 10:00 a.m. As soon as the undersigned got to learn that the PC Reserves had refused to perform duty, DSP/HQ was asked to get in touch with the officers in-charge of PC force in Gojra and ask him to tell his force to keep performing their duties as the situation was serious in Gojra, and it would be more damaging, if the force had withdrawn. The PC Reserves had been placed in the form of 20-30 people app, on all the sensitive points, including two Churches.

The place of initial incident in Korian, and all the other important points, and installations as the call was for the strike. In addition, I had deputed four DSPs, i.e., DSP/HQ, DSP/Organized Crime, DSP/Kamalia and DSP Sadar along with SHOs of Rajana, Sadar, Kamalia, Inspector CIA of Gojra, and Toba Tek Singh to perform duties at Gojra on the 31st of July as well as 1st of August 2009. So that, effective measures could be adopted to restrict the demonstrations to peaceful means. Overall, DSP Gojra had been made in-charge of the security plan, and he was instructed to keep

in close liaison with me if any issue arises. It is worth mentioning here again that during the whole episode all the facts and incidents were either reported to me by DSP/HQ or DSP Sadar, or either inquired from DSP Gojra, who never took the trouble to inform me.

Furthermore, DSP Sadar and DSP/HQ had been attached with DSP Gojra to assist him in his duties. Both DSPs, along with DSP Kamalia, remained in Gojra as per the security plan of 31st July and 1st August 2009. All the duties were shown in the programme although PC Reserves had not arrived at Gojra in full detail before 2:30 p.m. on 31st July after the main events of Friday prayers had passed.

Earlier in the day, at around 07:00 a.m. the PC Reserve at Church on Samundri road had deserted their duty without any approval from District police. The situation was managed by the positioning of strength which was received from the Police Lines in their place. Meanwhile, in order to make up the deficiency of PC force, I ordered DSP/HQ to send force from Lines and other reserves, to be stationed at Churches and Christians colony as the main threat was for the Churches along with place of occurrence of the 30th July, that is Korian, as many dignitaries were coming to visit the area on that day, including Minister Dost Muhammad Khosa. The 4 vehicles of Elite received from Faisalabad were deployed for patrolling in the city area as well as escort duties. Therefore, when the PC Reserves refused to perform the duty, reserves already stationed at Korian

were asked to come to city Gojra in order to cover their duties along with Elite vehicles.

On the 1st of August, I and the DCO Toba Tek Singh had to attend Judicial Conference under the chair of Mr. Justice M.A. Zafar regarding Judicial Policy, and we were waiting till 11:00 a.m. for the information about the meeting. But later on, we were informed that conference had been cancelled, and then I and DCO planned for Gojra, meanwhile, at around 10:30 a.m., DSP/HQ, informed me that a crowd about 200 people had gathered at Gojra main square, and they were doing 'Taqareer' (speeches).

On getting this information, I started making calls to RPO Faisalabad, to let him know the severity of the situation and called at his office, from where I was told that he was busy in a meeting. I called his personal mobile between 10:42 and 10:47 a.m. twice to inform him about the situation, but it was not responded. I got in touch with Additional Deputy Inspector General of Police (ADIG), on behalf of RPO Faisalabad, and informed him that the crowd was raising and we needed to have the service of Punjab Constabulary (PC) in Gojra and it could only be possible if RPO talked to Inspector General of Police Punjab Province or Commandant Punjab Constabulary. I had already faxed the request for the extension of duties of PC to RPO. Again, I tried to call RPO Faisalabad at 11:15 a.m. but not succeeded.

I also called the Inspector PC present in Gojra, but he was still waiting for the order from his superiors to assume duty. Meantime, I deemed it necessary for keeping in view the situation in Gojra. The Inspector-General of Police Punjab Province office should be informed of the rebellious attitude of the PC, and a special report was made and faxed promptly to IGP Punjab, along with copies to RPO and Commandants PC. By this time, the congregation was going on in Gojra with the whole strength of PC absent, and in order to make up for the deficiency, Police Stations were asked for collecting the force in the Police Lines immediately.

In addition, I ordered my own office, staff to prepare themselves and start making a reserve so that they could be taken to Gojra. As a last resort to get in touch with RPO Faisalabad, I called his gunman, and wireless operator and told them to go inside the meeting and tell RPO to attend my call. Later at around 11:25 a.m. I tried again to call the RPO at his personal cell number, and this time, the message seemed to have reached him that I wanted to talk to him desperately, and he attended the call. During the conversation, I briefed him that the services were needed of the PC force, which was not performing its duty. RPO told me to get in touch with Assistant Inspector General Admin (AIG), who will arrange it for me.

As already mentioned, different small processions were moving around in the Gojra city, and duty was being deployed as and when required from the available force. By the time, when the congregation had dispersed, no

PC Force had returned to duty around 11:00 a.m. and the crowd started moving towards the Church. A group of Muslims protesters had moved to the Christian Colony, and I became aware at 11:45 a.m. about it. After that, I instructed to DSP Sadar, DSP Kamalia, and DSP/HQ to move to the spot instantly along with all available strength they had. Before reaching there, the crowd had started pelting stones, and there was also report of firing. Here it is to be noted that the deployment of PC which had been placed at the duty of the Christians Colony was not available at the moment when disruption started.

I was in touch with DSP Sadar, who told me that there was some tear gas shelling carried out, and one police officer was injured because of stone-throwing. Initially, the reported incident was that a person from the crowd had been injured because of firing from the Christian side, and that was inciting the crowd. I and DCO, reached at the place of disturbance at 12:50 p.m. I was asked about the situation from the RPO office and then I demanded for more strength and informed them that PC reserves had yet not joined duty.

From 1:00 p.m. onwards, I and the DCO, employed different means and methods to have the crowd and the mob under control and to keep it peaceful. I summoned all the available police force at the crowd had swelled up to 2500/3000 people, mostly young. The position of the crowd was that on the side of the railway track, where the Christian colony was situated. The main demand of the mob was the firing which was being

continuously carried out by some Christians standing on the rooftops of the Christians Colony, be stopped. I and the DCO were trying to calm down the crowd as they were demanding that since there was consistent firing from the Christians Colony.

Assessing the situation that the crowd was increasing and becoming rowdier, I asked to DSP Gojra to stand at the entrance to the alley, which led to the Church, and not to let anyone from the crowd into the alley, and also to control the people in the Christian Colony. In the whole setup, his role was the most critical. As I was severely handicapped by lack of police strength and as we needed to cover the whole colony so as to stop the miscreants from entering the Christians Colony. I distributed the available force amongst the DSPs and appointed the DSP/Sadar to perform duty at the railway track side towards the platform in order to engage the crowd. DSP/HQ was asked to manage all the strength at the spot and other forces that were coming from outside, in addition to stand at the bottom of the overhead bridge, so as to stop the crowd from that side, and DSP Kamalia was positioned to stand on the side of the alley, which leading to the Church. I had Inspector Security, Mr. Abdul Saboor, performing duty with me, who was passing orders on my behalf and calling the wireless control to manage the strength.

After the initial phase of appointing and positioning the force, I and the DCO, asked the crowd to come to the platform, so as to distract them away from the Christians Colony. In the meantime, Town Nazim Gojra (Mayor of Gojra), Mr. Asad Chhema came there and was also trying to pacify the

crowd. A megaphone was used by me, DCO and Town Nazim to ask the crowd to settle down. At that point, their demands were the suspensions of the police officers who used force against them, and for legal action against the persons who were directly firing on the crowd from the rooftops in the Christians Colony, and according to them, one Muslim person had killed, which was basically a rumor spread around by some miscreants bent upon inciting the crowd. We agreed to listen to their complaints, and the situation seemed to be calming down.

At the same time, when we were negotiating with the crowd, a volley of fires from the Christians Colony disrupted our talks. DSP Gojra was inside the Christians Colony, but he could not get the firing stopped. By this time, the crowd on the railway track was moving in different groups. A section of the group was very agitated, and it seemed that they were being motivated to go further by some outsiders. The main section of the crowd went towards the Christians Colony. I organized the force so as to cover all the entry points of the colony. I also sent a desperate request to RPO Faisalabad, to send a maximum force to Gojra, because now it seemed that they would have to be controlled through force.

We had to resort to tear gas shelling to ward off the oncoming crowd because at that point we needed to show our resolve and also make the crowd aware that show and use of force was an option that would be relied upon if they did not settle down. Due to tearing gas shelling, the crowd did disperse, but due to the direction of the wind, the gas was coming back to

us. Another problem being faced at that point, the shortage of strength, and the number of tear gas shells were also less, and I wanted to conserve their use till RPO Faisalabad came along with extra strength. I had also sent a message for Armored Personnel Carrier (APC), AT 01:55 p.m. to Faisalabad. By that time, the crowd had been infiltrated by some men who seemed determined to motivate the crowd further, through verbal commands. The crowd was being excited by these outsiders, and as when we moved the mob back, someone from the crowd fired in the air to buck them up, and there were cries of getting weapons from the mob. Along the way, I and DCO had also impressed upon the residents of the Christians Colony to vacate the houses and as such evacuation was being carried out simultaneously.

The RPO and Commissioner Faisalabad had left for Gojra town along with Provincial Minister at 02:10 p.m., keeping in view the distance from Faisalabad to Gojra, which was maximum 40-45 minutes. I devised the strategy to engage the crowd so as to consume more time until more strength was received from Faisalabad. I had also asked for more tear gas shells as we were running out of them. Till that time, the crowd had turned against the police, as they were saying that was being fired upon by the Christians as well as by the police. In fact, they were directing their anger upon me and were becoming more violent. For some time, the Christians came out of the colony and wanted to fight with the mob, but we pushed them back. I had again asked all the Police Stations to send as much strength and tear gas as possible at the spot. However, it is worth

mentioning that already, the district police were stretched to the limit in terms of strength.

At around 2:24 p.m., I got a call from RPO's personal cell number, and he asked about the situation. He was told that the situation was very serious and that we were wanted more strength, and more senior police officer because it could not be covered all by myself. I also reminded him about my request in the day regarding lack of cooperation by the Punjab Constabulary (PC). He said, to remain calm and he was about to reach Gojra. At about 2:44 p.m., I got a call from the Inspector General of Police Punjab (IGP) and asked about the situation, and I also told him that more strength was needed to control the crowd. He said, to remain calm, and more police force was on the way. As the total force, not amounting to more than 60-70 police officers, had been there for about 3 hours and was engaged in stopping the crowd, and chasing it away from moving towards Christians Colony.

It was exhausted, because of the inhaling of the tear gas, I was also feeling nauseatic. In the ongoing struggle, 5 police officers and 15-18 other people from the mob, were injured. Furthermore, I had received blows and injuries on my back because of stones and bricks thrown at me. In the meantime, I was engaged in asking the DSPs to carry out aerial firing and tear gas shelling. In this struggle, one Constable named Usman, who was in front of me, was hit by a bullet on his neck, and he was rushed to the hospital, and Assistant Sub-Inspector (ASI), also injured, as he was trying to repel

the mob from entering the Colony through tear gas shelling. In order to control the inflow of outsiders coming into Gojra, I had also ordered all concerned officers to put up pickets around Christians Colony and not to let anybody to go beyond without checking. The ongoing resistance by police was becoming difficult, as the mob had now grown to more than 5000-6000 at least. However, I kept on exhorting upon all DSPs, Inspectors, upper subordinates and Constabulary through my personal efforts and verbal commands to not to let these mobsters enter the Colony, despite the lack of force and to put in their best efforts in view of the approaching reinforcements from Faisalabad.

It was in this anticipation that when I received a call asking me as to where should the ROP and Commissioner were supposed to come, that my return query was as to how much force did the RPO have with him, to which the reply was 4 vehicles of the elite. I asked them specifically, to reach the spot where the disturbance was going on at the ground. At around 3:00 p.m., RPO along with Commissioner had arrived at the Railway Platform from where at not too distance a place DCO was trying to talk to the crowd. As they arrived at the spot, I was asked to send force to cover them, but withdrawing force from the spot meant that the whole front against the mob would have been uncovered.

However, after staying there for some minutes, the RPO turned back with the Commissioner and Minister toward Town Municipal Administration (TMA) Office. At 3:25 p.m., all the force is coming from Faisalabad was

ordered to come to the Railway Station by me. However, as no order to the same effect was forthcoming from RPO to the incoming officers from Faisalabad, proceeded to TMA office along with their force also, despite my request to them to come to the trouble area. Again, DSP Gojra was ordered to conduct the available force into the trouble spot, but he was not available for contact. It is also worth mentioning that had the RPO stayed at the spot, it was a situation that could have been controlled by his command along with all the officers from other districts and their accompanying force. Meanwhile, I got a call from the DCO, asking me to come to the Town Nazim Office as all the officers were asking me to come there. When I heard that all the strength from Faisalabad, had been called by SSP/Operations Faisalabad, to Town Nazi Office, it was considered appropriate to go there as per the earlier call of DCO and get suitable orders from RPO, since being senior in rank police officer who had arrived at the spot, who was commanding the force of three Districts.

However, I went to meet the RPO and Commissioner in TMA Office, as the episode was being controlled by the DSPs at their respective points and designated areas. I had already given them the instructions, as to how to react in case of any eventuality.

I appraised the officers about the situation and demanded extra reinforcements to handle the situation and immediate dispatch of collected force at the TMA Office, as the deficiency of force could have seriously hampered the control at the Christians Colony. The RPO, very kindly

directed the SSP/Operations, Faisalabad, and DPO Jhang District to accompany me along with the force to handle the situation. We rushed to the spot to implement the directions and guidance provided by the Commissioner and the RPO.

On the way, we were informed that a group of masked miscreants just appeared out of nowhere from the streets and alleys and started firing and arson at the Christians Colony. I, with the help of the other senior police officers and the DCO, controlled the situation and put down the fire and rescued the injured persons. The gory incident, unfortunately, ended into the loss of seven lives. To minimize the loss, we handled the evacuation process from the very start of the incident on a priority basis. The rumor already in the air triggered the miscreants to reach at the spot and create havoc.

Annex D

Mr. Imran Sikandar Baloch, was the District Co-ordination Officer (DCO), District Toba Tek Singh, Faisalabad Division, at the time of the incident. He described the facts of the incident in details in his affidavit, which he submitted to the Inquiry Tribunal. His affidavit presented a comprehensive picture of Pakistan's Law enforcement agencies, co-ordination among the different governmental institutions, who are responsible for maintaining law and order, and writ of the state in the country.

Mr. Imran Sikandar Baloch, DCO, District Toba Tek Singh, (Witness no. 557), stated in his affidavit No. W-557-A.1-18, as under;

"I, requested to Mr. Kamran Michael, who was Federal Minister for minorities, to visit the site, but he said, he is in Lahore and could not come. I, asked him to send Mr. Amer Jan Sahotra, or Mr. Tahir Khalil Sindhu, Christian MPs, or local influential leaders and he promised, he would do instantly.

12:48 hours: Commissioner Faisalabad, called and I told him about the happening and what I had asked Mr. Kamran Michael. 12:48 hours: I called the Executive District Officer (EDO) Health, Toba Tek Singh, to get an overview of emergency facilities at the Town Headquarter Hospital, Gojra. 12:50 hours: Town Municipal Officer (TMO) Gojra, called me and said that he was present at the site, and the mob was not letting the Fire Brigade passing through inside the Christians Colony. I asked him to also call for

fire brigade vehicles surrounding areas. There are two fire brigade vehicles in District Toba Tek Singh, and make sure that one vehicle should remain in District. At that point, I decided to leave for the site, so, accompanied with the DPO Toba Tek Singh, I left for the Christians Colony Gojra.

13:00 hours: I and the DPO reached the petrol station, some 200 meters away from the Christians Colony. Mr. Rana Nawaz, TMO Gojra, was already at the scene. We scaled down a small wall and walked along the main railway line to reach the outward face of the Christians Colony. The situation as we could see that a mob of at least 1500, including boys and men, had gathered all along with the Railway platform, and further down the railway line. There was an open space of at least 50 meters between the railway track and the Christians Colony. There was a food godown on the side of the Christians Colony, and the mob had already burnt one shop, close to the food godown. Around 60-70 mobsters had lined up along the wall of the food godown and were pelting stones at the Christians Colony. At the other end, there were many boys/men standing on the roofs of the Christians Colony, and they too were pelting stones at the Muslims mob. I could hear occasional fire shots too.

I pushed the mob away from the godown wall towards the railway line. I, and the DPO, both stood in the middle and tried to talk. There was a complete frenzy, and we could not hear our own voices. The visible from the mob told us the Christians fired first and had killed five people,

including a ten years old girl. They also complained that police had been beating them, instead of firing at the Christians. I told them, no death had taken place, and they were misinformed. A megaphone was brought in, and both of us climbed up the platform, and the DPO tried talking first. Either the crowd was too noisy, or the megaphone was not working well, that we could hardly convey our message.

13:30 hours: We were talking to the mob and had brought the situation under control, when Mr. Asad Zaman, Town Nazim Gojra, arrived there. He told the mob that he had just come from the hospital, and there was no casualty. Just then, someone shot an aerial fire from the Christians Colony, and the mob again rushed toward the godown wall. We rushed back to the sole tree along the wall of the godown, and the Town Nazim disappeared.

14:02 hours: I called Commissioner Faisalabad, and told him that the situation was dire and the police desperately needed reinforcement. He said he would do something.

A part of the mob started gathering on the other side of the food godown and tried to enter from the street, running parallel along the back wall of the food godown. I rushed in the Christians colony, shouting and urging the Christians to get off from the roofs. Inside, a pitched battle of stones was being fought between the Christians and the Muslims mob. DPO had already reached that point, and the Christians started to subside behind

the cover of the DPO, while the Muslims mob some 20 meters away got rowdy and rowdy, and the police used the tear gas. The street was narrow, and the stone shelling was intense, I, stood behind a small extended wall, while TMO Gojra was standing in the open. I pulled him behind the cover, but just then a stone hit under his right eye, and he started to bleed.

The tear gas dispersed the mob from that point, but due to the change of wind overtook us. At that point, I realized that the situation called for evacuation. So, I started walking along the street; knocking on each door, and asked women and children to leave. I even knocked at the ill-fated house, where seven people had died, and asked a woman to leave. Lots of women picked up their children and left at that point. I then asked some Christians elders present at the spot to shift women and children from other houses as well as to deeper locations.

Satisfied that the evacuation would go on smoothly, I went back to the battle ground, and the crowd had increased about 2000 people. 14:26 hours: I called the Commissioner Faisalabad again, he said he was on his way with Sardar Dost Muhammad Khosa, Minister for Local Government, and the RPO Faisalabad too was arriving with reinforcements from Districts Jhnag, and Faisalabad. Now the crowd from both sides was pelting heavily. The street along the food godown, and into the Christians colony was blocked with some burning furniture and was littered with stones and broken glass. Standing on the mouth of the street, I waved towards the enraged Christians on the rooftops to get down. They also were chanting slogans against us and seemed really offensive.

The DPO then ordered the use of tear gas, and few rounds were shot. He then rushed towards the mob in a file and pushed them away towards the railway line. One thing, I noted that apart from a few police constables around the DPO majority of the force would not respond and just stand deaf or hide behind anything they could see. At that point, I also observed that the three DSPs who were present earlier were nowhere to be seen.

14:27 hours: Additional Secretary (Internal Security) from the Home Department, called to ask about the situation. I told him that he should help in arranging more force, as the situation was dire and the police were not following the DPOs orders. I also told him that all the DSPs had vanished from the scene. All this while, heavy stone shelling, and occasional aerial firing continued.

The DPO was all sweat, and one could see him affected by the tear gas. He asked me that I should contact any politician for help. I told him that I had called Christians politicians, but they could not come. Meanwhile, DDO Gojra, District Officer (Information) gathered around me. I asked the DDO, and TMO to start calling the politicians. They told me that local MP Mr. Hamza, was inaccessible, while Pir Israr-ul-Shah was on the way to Gojra, but just then they got me through Haji Ishaq, the Revenue Minister. I told Haji Ishaq about the situation and urged him to come to pacify the Muslim mob. He said he was in Lahore and could not come. I urged him to send someone influential, he said, he would, but none arrived.

The DPO had by then exhausted himself and came back, sat under a tree to drink water. He said I should try again to talk to the mob. I proceeded ahead with the Deputy District Officer (DDO) Gojra, and within minutes, an angry mob was around me. They were cursing me, the police and the Christians. I tried to separate more vocal from them to speak for us and succeeded in winning the support of the most vocal of them. My new supporter now started talking to the mob, and I assured the mob that if they would withdraw behind the platform, we would go in and get hold of the Christians who fired at them. Constant aerial firing continued from both sides in between. Just when I thought that I had got some support, some boys pulled a boy towards me, who was bleeding from his wrist. The mob instantly charged that the boy had been shot by the police, and within no time, someone from the mob started throwing stones on me. My gunman and DDO pulled me back from the mob, and that time the mob got enraged again.

It was at that time that I could see a certain face covered men, at least 2, with pistols. A man in white shalwar qameez (white dressing), fired two shots in the air. A boy with a red bandana, with 'Sunni Tehrik' written over it, ran close to the street going to Christians colony and fired straight at someone within. I called the Commissioner again, and he said he was close and approaching. I asked the DPO regarding reinforcement from Jhang and Faisalabad Districts were on the way, but he was almost out of tear gas. There was a lot of firing taking place at that time, and the DPO told me that heavy fire was coming from the Christians Colony.

14:40 hours: Nadeem Qasim Khan, Usamma, politicians from Pakistan Muslim League (N), arrived at the scene. I decided to take them to the mob for negotiations. The DPO followed us, but I told him to go back as half of the anger was directed towards police uniform. Nadeem Qasim Khan tried to talk to the mob for ten minutes. He pushed a larger part towards the platform and spoke while standing on the platform, but just then shots were fired, and the mob ran towards the food godown. I and Nadeem Qasim got down and again approached the mob from the food godown, and stood under the railway overhead bridge, as stone shelling was intense. We managed to engage the mob for a while. I promised them that if they withdrew now and gave us 30 minutes, we would get hold of the Christians firing from inside. The mob subsided a little at that point.

14:50 hours: I called the Commissioner Faisalabad, one more time to plead about reinforcements. He told me that he was about to enter the city.

15:05 hours: The mob started rushing away from the Christians Colony, and towards the railway station. I was pleasantly surprised at this divine intervention. I, DDO, TMO, and DO (Information), followed the crowd only to see a cavalcade stopping in the front of the railway station. I saw the Commissioner Faisalabad, and approached him, meanwhile, saw Sardar Dost Muhammad Khosa Provincial Minister, surrounded by the mob. Exactly, at that time, I saw Mr. Kamran Michael getting off from a white car. I told the Commissioner that he must not get out as the mob was enraged. The Commissioner waved to him, and he was whisked away in the same car.

The mob started walking behind the Minister, and he leads a large chunk of the mob in a nearby street. He stopped in front of a shop and stood on a bench and tried to talk, but none listened. RPO also joined us by then. Minister pulled away from the most vocal spectator and convinced him to speak for peace. He tried speaking for a while, but a part behind the crowd disapproved everything said and constantly waved to go towards the Christians Colony.

15:20 hours: It seemed that none listened to the politicians, so someone proposed that we should all go to the TMA Gojra Office, some 700 meters away. We all started walking at Rallee Bazar behind the Commissioner. The crowd stopped again in the main bazar, and Mr. Dost Muhammad Khosa tried to talk again, but again, none listened.

15:30 hours: I received a call from the DPO, he said that the situation was very tense at the scene and the mob was on the verge of entering the Christians Colony. He added that a miscreant had been firing directly at him, injured his gunman. I rushed to the Minister and told him of the situation. He turned back and started walking, but just then someone said something to him that he turned back again and started walking towards the TMA. At that point, few religious persons were presented by the crowd. They were told by the RPO, to go towards the mob and pacify them, but they left instantly. At the TMA Office, I briefed Dost Muhammad Khosa, the Commissioner and RPO about the situation.

16:10 hours: I called the EDO (Health) about the situation, and he said that 15 injured had been brought to the hospital. All were Muslims. In the meanwhile, the DPO came in, and he also briefed about the situation from his perspective and was told that additional reinforcement had arrived.

16:15 hours: I and the DPO left the building to organize reinforcement and further negotiation. I was told that DPO Jhang and SSP Operations Faisalabad, had also arrived. Exactly, outside the TMA building, I found the four Muslims who were sent in for negotiations earlier. They said that the mob was very angry and there might be elements in the mob who would want to target them, for being from a different school of thought.

At the same time, I called the Commissioner Faisalabad and told him that I was going inside the Christians Colony along with the police. We proceeded, and stopped at a petrol station along the railway track, some 300 meters away from the battle site, as vehicles could not go directly. We scaled down the wall and started walking towards the Christians Colony. In the distance, we could see smoke. Once we reached the colony, I, my officers, Nadeem Qasim, and Religious leaders, went inside the colony first. There, I saw massive looting taking place, with young boys smashing TV sets and washing machine in the streets; some of them taking away small electronics items. We pushed the boys back with the Religious leaders reciting Quran loudly. The crowd withdrew, and looting stopped for a while. Just then someone pushed a child dead body on a cart. It was then; I realized that the area had not been completely evacuated and there might be casualties.

16:56 hours: I called the DPO to rush in with all the force as there might be more casualties. Within minutes the street was clear, and the mob had gathered inside the food godown. I saw another body of a girl being pulled out. There were burning marks, but no torn clothes. Further, I saw houses burning, so I asked the TMO to rush in Fire Brigade from both sides.

17:10 hours: At that time, I called the Commissioner and Minister about the situation. Minister Dost Muhammad Khosa, advised me to get the food godown, cleared from the mob as they might burn down the food godown too. Upon finding police busy in relief work, I along with Nadeem Qasim, and some policemen went inside the food godown, and the mob which was trying to burn some furniture in the compound ran away. I chased them till the inside wall of the godown, while Nadeem Qasim followed them all the way to the Railway platform. A huge crowd had gathered at the railway platform watching the events, but unfortunately, none came forward to help.

I inspected the fire brigade and was pleased that the fire brigade was highly effective and they had contained the fire from spreading in such a thickly populated area.

17:24 hours: I also called at the Town Headquarter Hospital (THQ), and enquired about casualties. I was told that seven casualties and 18 (3 Christians and 15 Muslims) injured were present, and three of them had already been operated upon, while none was serious. The Christians

injured had burn marks, while all the Muslims had received gunshot wounds.

17:27 hours: I conveyed the information regarding casualties and injured to the Commissioner Faisalabad.

I, DDO Gjra, and TMO Gojra drew a rough map of the area and started going by the door to door, inspecting fully and partially damaged houses. We counted 57 houses in total. I then choose a Girls Primary School, in the colony as a relief camp and asked the TMO to get it opened, fix tents, and arrange food and water for the night.

17:44 hours: I received a call from THQ Hospital Gojra that he needed police presence at the premises. I asked my gunman to talk SHO Gojra city, to send in some constables, which he did accordingly.

18:01 hours: I received a call from the Chief Minister Secretariat Lahore, that Mr. Rana Sana Ullah, Minister for Law was coming, and I should arrange for a helipad.

18:09 hours: Once done with the area, I went straight on to the THQ Hospital Gojra. There I met the Muslims injured first, and then later met the Christians injured, kept in another ward. There was a good air-conditioned facility at the hospital, so I did not feel the need to shift any of the injured to Faisalabad. I again informed the Commissioner Faisalabad

about the situation. Meanwhile, I was told that another dead body of 75 years, man has also arrived, who had been shot in the head. I inspected the dead bodies, and I was told that all seven of the dead were from the same Christian family. The elder was shot in the head and rest of the family remained inside sitting beside the corpse., thus could not evacuate earlier in the day.

18:17 hours: I reached back at the TMA Office, where the IGP and the Home Secretary had already arrived. Minister Khosa and other officials had decided to inspect the site. So, we left in a cavalcade and took a longer route inside the Christians colony. I showed some of the burnt houses and briefed them about the battle that took place earlier that morning in those streets.

19:50 hours: I received a call from Col Shahbaz of Rangers in Bahawalpur District, and he told me that a force of 120 men and 6 officers would be reaching in the night, and we had to arrange worthy accommodation and food for all.

20:40 hours: At the TMA office, I met with Mr. Rana Sana Ullah, Minister for law, and told him about the conduct of Punjab Constabulary in the morning and about the efforts we did in trying to contact all important stakeholders. Meanwhile, Christians MPs namely Kamran Michael, Amer Jan Sahotra and Khalil Tahir Sindhu arrived, and they blamed me and the

DPO in front of all, saying that 9 people had died, because of our negligence.

22:14 hours: I was not very much concerned about their allegations and was more concerned about the accommodation and food for affectees that night. The TMO told me that the affectees were sitting in the Samundari road Church, so I sent there DDO, but later he told that there were no affectees and had all been accommodated by their community. I asked him to arrange tents for the Sunday morning and memorial services. I arranged for dinner for the whole Christians colony and went to the THQ hospital to oversee post mortem activities.”

Annex E

Mr. Mushtaq Hussain, Sub-Inspector of Police (Witness no. 548), has stated that on the day of the incident, he was performing his duty as acting Station House Officer (SHO). He deputed the police personnel in accordance with the security plan, issued by DPO. But at 05:30 a.m. on 01/07/2009, Mr. Anayat Ali Sub-Inspector telephonically informed him that Punjab Constabulary (PC) personnel had left their duty points. After that, he contacted Mr. Khalid Mahmood Inspector (Witness no. 574), in-charge Punjab Constabulary (PC), who told that according to their placement order, they were to leave at 10:00 a.m. He Has stated that he brought the said situation into the knowledge of Rana Abid Karim, Deputy Superintendent of Police (DSP) Headquarter (Witness no. 553), and managed contact of Khalid Mahmood, Inspector Punjab Constabulary with the said DSP. He has deposed that he himself requested to the said Inspector and other PC personnel to resume their duty, but they did not do so. Therefore, he had to depute the personnel who had come from the police line on the points mentioned in the security plan.

It is added that the public meeting held at Gojra city was attended by 200/300 people, where the speakers delivered the provoking speeches, and the same ended at 11:00 a.m. However, at the end of the meeting, religious leaders announced the peaceful end of the meeting, and the people left for their houses. After 20/25 minutes, he got information that firing was being made near food godown adjacent to the Christians colony. Whereupon, he immediately reached there and saw that the Christians were making firing from the roofs of their houses

at the mob of the Muslims, who were about 200 in number. Mr. Mukhtar Ahmad Sub-Inspector, who had been deputed there, told that all shells of tear gas had been fired. He has added that he as well as Mukhtar Ahmad Sub-Inspector tried to stop the protesters, but they resorted to pelting stones on them.

The said situation was brought into the notice of Rana Abdi Khan, DSP Headquarters (Witness no. 553), Ch. Ahmed Javed, DSP (Witness no. 562), and Raja Ghulam Abbas, Gojra (Witness no. 560). Meanwhile, the number of protesters reached about 5000. He has maintained that all the officers kept on making efforts to get stopped the firing and to control the situation. DPO and DCO Toba Tek Singh as well as DDO, Gojra, and the personnel of Town Municipal Administration (TMA), also reached there. Till that time, the number of protesters had further increased up to 10000. He has averred that police tried their best to control the situation, and during the said process, some policemen also stood injured.

Annex F

Mr. Raja Ghulam Abbas, Deputy Superintendent of Police (DSP), Gojra (Witness no. 560), has put forward a stance that according to the security plan No. 17442-56/S, dated 31/07/2009, DPO Toba Take Singh (Witness no. 512), had deputed him to perform duty at Chak no. 95/JB, and he was also scheduled to go on patrolling in the night, but DPO, directed him to remain present at Izaafi Abadi, Chak no. 95/JB, instead of going on patrolling. Therefore, he reached the said place at 08:00 a.m. on 01/08/2009.

However, at about 10:00 a.m., he received a telephone of DSP Headquarters, whereby, it was disclosed that the crowd had blocked Gojra main road. Therefore, he should come there along with two Reserves of Police and an Elite vehicle. He has added that under the instructions of DSP Headquarters, he also checked the duties of personnel at the Churches situated at Samundri road Gojra, and found 200/250 stick-wielding boys in front of Gojra Church. Khalid Mahmood, the Inspector, was also present there.

At about 11:15 a.m., another information stood received that the people had blocked another main road. Therefore, he reached there and cleared the road. Meanwhile, he came to know, through wireless that a procession had reached Christians colony, and firing was going on there. Whereupon, he went to DSP, Sadar, took him along and reached the overhead bridge in front of the Christians colony. He has added that he with the help of other police officials, negotiated with the protesters.

The Christians boys were on the roofs of their houses, and they were making indecent gestures and firing in response to the slogans being raised by the protesters; as a result, one Muslim boy stood injured. Meanwhile, DCO and DPO reached and got transported the injured boy to the hospital. Some rumour spread that four Muslim had been killed by the Christians, which infuriated the protesters. He further submitted that he entered the Christians colony to arrest the boys who were indulged in making indecent gestures and firing from the roofs of the houses, but they disappeared in the colony. He also stated that some miscreants cut a gas pipeline at the corner of the street and broke fire. After that, DSP (Witness no. 552), got closed the valve of the pipeline and caused the disappearance of those boys.

In the meanwhile, 150/200 protesters tried to enter the street who were stopped by DSP, as a result of which he stood injured during the said process. The police also made aerial firing and used tear gas. He has added that stone-pelting he sustained the injuries and his gunman also got injured.

He went on disclosing that some persons with muffled faces, armed with latest weapons, joined the protesters and made targeted firing at the Christians colony. As a result, one Christian named Hameed Masih was murdered, and a constable standing near DPO sustained a bullet injury at his neck. He added that all the other inhabitants of the Christians colony were safely taken out. However, the family members of Hameed Masih (deceased) who were in the house sitting around the dead body stood burnt and died of the same.