Critical Approach to Pakistan's Counter-terrorism Legislative Framework

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ABSTRACT

Since the late 1970s, Pakistan has been struggling against terrorist violence. In the pursuit of security against this violence various governments have implemented numerous counterterrorism legislative measures, but terrorism remains a major issue for Pakistan today. Its counterterrorism measures have not been able to effectively and sustainably break free from terrorist violence. This thesis will employ the framework of Critical Terrorism Studies (CTS) to explore the reasons for the ineffectiveness of Pakistan's legislative countering terrorism measures. CTS proposes that security should be interpreted as *human* security and not *national* security and that violence should be understood to include both direct and indirect or structural violence. In doing so, it becomes clear to see how contemporary counterterrorism measures fail to provide security because they tend to circumvent procedural safeguards which then in fact lead to more insecurity and violence. Such strategies remain ineffective in the long-term as they add onto the existing layers of violence. In this thesis, I will demonstrate that Pakistan's current counterterrorism laws are state-centric and overwhelmingly support violent strategies. This approach has helped the political and military elites to retain their power via political suppression. But it has led to implementing counterterrorism security measures that fail to address the underlying causes conducive to terrorism and instead contribute to inequalities and violence. This is why this thesis concludes that Pakistan should reject its violent counterterrorism approach for one that is committed to achieving emancipation from all types of violence (terrorist and counterterrorist), through means that are also non-violent, and are based on compassion, emancipation and empathy.

RÉSUMÉ

Depuis la fin des années 1970, le Pakistan lutte contre la violence terroriste. Dans la poursuite de sécurité contre cette violence, divers gouvernements ont mis en œuvre de nombreuses mesures législatives antiterroristes, mais le terrorisme reste aujourd'hui un problème majeur pour le Pakistan. Ses mesures antiterroristes n'ont pas permis de se libérer efficacement et durablement de la violence terroriste. Cette thèse utilisera le cadre théorique des Critical Terrorism Studies (CTS) pour révéler les raisons de l'inefficacité des mesures législatives anti-terroristes du Pakistan. Le CTS propose que la sécurité soit interprétée comme sécurité humaine et non comme sécurité nationale et que la violence soit comprise comme incluant à la fois la violence directe et indirecte ou structurelle. Ce faisant, il devient clair que les mesures antiterroristes contemporaines ne parviennent pas à assurer la sécurité parce qu'elles tendent à contourner les garanties procédurales, ce qui conduit en fait à plus d'insécurité et de violence. De tells strategies restent inefficaces à long terme car ells ajoutent aux couches de violence existantes. Dans cette thèse, je démontrerai que les lois antiterroristes actuelles du Pakistan sont centrées sur l'État et soutiennent massivement les stratégies violentes. Cette approche a aidé les élites politiques et militaires à conserver son pouvoir par le biais de la répression politique. Mais elle a conduit à la mise en œuvre de mesures de sécurité antiterroristes qui ne s'attaquent pas aux causes sous-jacentes qui favorisent le terrorisme et qui contribuent au contraire plutôt aux inégalités et à la violence. C'est pourquoi cette thèse conclut que le Pakistan devrait rejeter son approche violente dans sa lutte contre le terrorisme pour uni approche qui s'engage à obtenir l'émancipation de tous les types de violence (terroristes et contre-

terroristes), par des moyens qui soient également non-violents, et qui soient basés sur la

compassion, l'émancipation et l'empathie.

ACKNOWLEDGMENTS

LIST OF ABBREVIATIONS

AACPR   Actions (in Aid of Civil Power) Regulations 2011
APS   Army Public School
ATA   Anti-Terrorism Act 1997
ATCs   Anti-Terrorism Courts
Cr.P.C   Code of Criminal Procedure
CTS   Critical Terrorism Studies
FATA   Federally Administered Tribal Areas
GWOT   Global War on Terrorism
ISI   Inter-Services Intelligence
KPK   Khyber Pakhtunkhwa
LEAs   Law enforcement agencies
PATA   Provincially Administered Tribal Areas
SPA   Security of Pakistan Act 1952
STAA   Suppression of Terrorist Activities (Special Courts) Act 1975
TTP   Tehreek-e-Taliban Pakistan

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CHAPTER 1: INTRODUCTION

1.1. RESEARCH QUESTION

In September 2019, Pakistan's Prime Minister, Imran Khan said, "Pakistan, by joining the U.S. after 9/11, committed one of the biggest blunders."[1] He opined that the country should have remained neutral because of the role it had already played during the 1980s by providing support and training to the Afghan mujahedeen (militants) fighting against Soviet forces. But after the 9/11 attacks, Pakistan abandoned the militants and instead waged war against them in conjunction with U.S. forces. This decision turned the militants against the state of Pakistan, which has resulted in numerous deaths and immeasurable damage to Pakistani society. Therefore, Khan urged the U.S. government to begin peace talks with Afghanistan because a military approach was no longer a feasible solution to the problem.

Although there is truth to his statements, he still painted an incomplete picture. His narrative implied that Pakistan's experience of terrorism began post 9/11 but this glosses over decades of political and terrorist violence that Pakistan has confronted since its inception in 1947. Khan also boldly criticized the Pakistan Army for allying with the U.S. in the Global War on Terrorism (GWOT) for personal gain which strengthened the military's influence on Pakistan's security policies. Yet he conveniently ignored how he relied on the support of that same Army in his campaign

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[1] David Brennan, "U.S.-Pakistan Alliance After 9/11 was 'One of the Biggest Blunders' for the Country, Imran Khan says" *Newsweek* (24 September 2019), online:< https://www.newsweek.com/us-pakistan-alliance-after-9-11-was-one-biggest-blunders-country-imran-khan-says-1460946>

to get the previous Prime Minister, Nawaz Sharif, disqualified from office in 2017;[2] a move that also maintained the Army's encroaching presence in the country's politics. Lastly, by urging the U.S. to start peace talks with Afghanistan, Khan removed from Pakistan's shoulders the burden of bringing change for its own people. He advocated that peace is the way to release the region from the talons of violence that has gripped it and yet he has taken no active steps to change the narrative that has shaped Pakistan's counterterrorism strategies. The burden to bring peace to Pakistan does not fall upon the U.S. alone, the onus lies on the State of Pakistan to change its policies which have clearly failed to secure its people from violence identified as terrorism.

Since 1997, Pakistan's primary counterterrorism legislative tool has been the Anti-Terrorist Act 1997 (ATA) which has enhanced police powers of investigation, arrests and detention, and established Anti-Terrorism Courts (ATCs) to conduct speedy trials of terror suspects. Additionally, as a participant in the GWOT, Pakistan has launched several military operations and established military courts to try civilian cases. But this approach has come at the inevitable cost of sacrificing certain constitutional rights and safeguards; which the State claims to be necessary for the effectiveness of the security measures. It may appear that Pakistan has taken all the essential steps for countering terrorism but then why is it that terrorist violence still exists? In fact, in 2019 alone there have been 56 reported fatalities of terrorist violence in Pakistan.[3] This begs the question whether there is something fundamentally flawed about the country's approach that is contributing to its ineffectiveness as a security measure.

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[2] Haseeb Bhatti, "Nawaz Sharif steps down as PM after SC's disqualification verdict" *Dawn* (28 July 2017), online: <https://www.dawn.com/news/1348191>

[3] "Fatalities in Pakistan Region Wise: 2019, (as of June 23 2019)" *South Asian Terrorism Portal* (updated 23 June 2019), online:< https://www.satp.org/satporgtp/countries/pakistan/database/> [*Fatalities in Pakistan Region Wise*]

A body of work referred to as Critical Terrorism Studies (CTS) has developed which posits that contemporary counterterrorism measures have been ineffective because they address the terrorist violence divorced from the context in which it emerges. The measures are not designed to prevent the underlying structural drivers of violence. CTS scholars contend that when terrorist violence is understood in its broader socio-politico-historical context, all the various factors that have curated an environment conducive to the violence maybe revealed— including certain counterterrorism measures. Therefore, a critical attitude can provide the lens through which states can understand the deeper implications of their current counterterrorism approach and then accordingly formulate strategies that are not violent or "hard" but instead are committed to non-violence and to the emancipation of individuals from all kinds of violence.

It is this for this reason that the present thesis shall:

1. Critically examine the historical development of Pakistan's current counterterrorism regime to understand the reasons for its ineffectiveness; and

2. Propose that this current approach be replaced by one that is committed to non-violence, human security and emancipation.

1.2. STRUCTURE OF THESIS

This thesis research is structured as follows.

Chapter 2 will introduce the reader to the CTS framework followed by this thesis. Ontologically, CTS maintains that while there will always be a category of violence

described as terrorism, it will also always be "historically bound, value-laden, and politically implicated."[4] This helps CTS research to *deepen* the understanding of terrorism to reveal the power structures that benefit from traditional narratives of terrorism. Epistemologically, CTS *broadens* the scope of terrorism research to examine how counterterrorist measures and structural inequalities may be conducive to terrorist violence. Lastly, this chapter will explain that a critical approach ought to be the preferred approach because of its commitment to discovering solutions that address the structural issues underlying the violence.

Chapter 3 will explain how counterterrorism measures are blinded to their own impact on the existing levels of violence in society. To understand this we have to expand our understanding of the relationships among security, rights and violence, by placing human beings, and not the state, as the primary referent of security measures. Counterterrorism measures tend to be state-centric and unequally distribute security which imposes hardships on people, causes suffering and leads to more violence. Therefore, states should reorient their approach and formulate steps that aim to not only overcome direct physical violence but also aim to overcome the social and economic inequalities underlying the violence.

Adopting the above CTS arguments, in Chapter 4, we will trace back Pakistan's political and legal history to show how its leaders have deliberately exploited ethnic and religious differences that has resulted in terrorist violence. This has then allowed the state to justify the implementation of security laws that support excessive force and

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[4] Harmonie Toros & Jeroen Gunning, "Exploring a Critical Theory Approach to Terrorism Studies" in Richard Jackson, Marie Breen Smyth & Jeroen Gunning, eds, *Critical Terrorism Studies A New Research Agenda* (New York: Routledge, 2009) 87 at 95 [*Toros & Gunning*]

extra-constitutional measures. The early security laws were merely tools of social control and not agents of social change; they relieved the government from redressing the real causes beneath the violence. Unfortunately, this selfish political attitude and violent structure of security laws became the blueprint upon which subsequent leaders designed Pakistan's current counterterrorism regime.

Then Chapter 5 will proceed to scrutinize Pakistan's current counterterrorism measures which include the Anti-Terrorism Act 1997, military operations and ad hoc military courts. It will highlight how these measures continue the legacy of the previous security laws which is why it is still fraught with similar failings. These measures are not designed to prevent the violence from occurring in the first place. They are only means for the government to circumvent constitutional safeguards in order to secure speedy convictions under the law to project the illusion that the government is reducing the violence. But the reality is that the violence is not being curtailed and people are no more secure than before.

Finally, Chapter 6 will suggest avenues that Pakistan should take in order to redress the terrorist violence. This of course is not an exhaustive list of recommendations because the struggle for emancipation has no definite end. It is a never-ending *process* of consistent discovery and change "that seeks to fight oppression and extend the realms of freedom from oppression."[5]

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[5]Sondre Lindahl, The Theory and Practice of Emancipatory Counter Terrorism (Doctor in Philosophy, University of Otago, 2017) [unpublished] at 93 [*Lindahl 2017*]

1.3. AIM OF THESIS

Research on counterterrorism and terrorism in Pakistan is scant and focuses mainly on recommending cosmetic corrections to the counterterrorism measures without exploring the implications of the counterterrorism regime on the levels of violence.[6] On the other hand, with this thesis I hope to, firstly, use the CTS framework to reflexively explore the reasons for the shortcomings of Pakistan's counterterrorism legislative framework and to understand how the current approach is not only failing to provide sustainable security but is actually adding onto the existing violence.

Secondly, with this thesis I want to highlight that the State of Pakistan should not only *counter* terrorist violence but it should do so by actively resisting perpetuating more violence so that the terrorism is *prevented* from emerging as much as possible. Pakistan needs to develop policies that address the structural issues underlying the violence rather than only employing brute force to kill terrorists.[7]

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[6] Research Society of International Law, ed, *Human Rights and Pakistan's Counter-Terrorism Legislative Landscape*, (Islamabad: Research Society of International Law, 2017)
[7] Tom H. Hastings, *Nonviolent Responses to Terrorism* (London: McFarland & Company Inc., 2004) [*Hastings 2004*]

CHAPTER 2: CRITICAL TERRORISM STUDIES FRAMEWORK

INTRODUCTION

This chapter will introduce the reader to Critical Terrorism Studies (CTS) scholarship which constitutes the analytical framework of this thesis. Firstly, we will briefly trace the emergence of CTS research which focuses on challenging mainstream terrorism literature to expose "its positivism, its statism, and its overwhelming support for violent counterterrorist responses."[8] Then we will discuss how CTS scholars ontologically and epistemologically position their research. Ontologically, CTS tries to *deepen* the traditional understanding of terrorism by maintaining that terrorism is both a material fact and a social construction. This means that terrorism has no intrinsic meaning because any conception of the term is subject to change over different socio-historical epochs. While epistemologically CTS *broadens* the scope of terrorism studies to examine how violent counterterrorism measures might be cultivating an environment conducive to the violence. Lastly, this chapter will explain that CTS scholars think that a critical approach should be preferred to traditional methods because of CTS' commitment to addressing terrorism through strategies that are more holistic and emancipatory in design.

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[8] Harmonie Toros, "Critical Theory and Terrorism Studies: Ethics and Emancipation" in Richard Jackson, ed, *Routledge Handbook of Critical Terrorism Studies*, (New York: Routledge, 2016) 70 at 74 [*Toros 2016*] (The 1972 attack at the Munich Olympic Games sparked global panic and confusion as states tried to decide how to respond adequately. Nations were stirred into setting up government departments and think tanks dedicated to the study of terrorism. In a short time, terrorism became a major subject of numerous publications and conferences.)

2.1. A CRITICAL APPROACH TO TERRORISM AND COUNTERTERRORISM

It should be noted that for the sake of brevity this section will provide a brief overview of the rise of CTS as a response to traditional narratives of terrorism. It is beyond the scope of this thesis to cover all of the developments made in the field of terrorism and critical terrorism studies.

Terrorism as a stand-alone field first developed during the late 1960s and early 1970s, and the work mainly focused to establish *terrorism* as a phenomenon separate from *insurgency*, which had until then been the primary lens through which all political violence was understood.[9] In the case of insurgents *terror* was considered a tool used by "rational actors with coherent goals,"[10] however, *the terrorist* became a category of identity rather than "a technique of violence."[11] This shift in the intellectual framing of terrorism became the building blocks upon which terrorism studies incrementally developed over the years. It was not until the 9/11 attacks, that this *terrorist identity* was again rearticulated as more morally corrupt, ruthless and dangerous than any previous iteration of the term.[12] This new kind of terrorist was portrayed in popular

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[9] Lisa Stampnitzky, "The Emergence of Terrorism Studies as a Field" in Richard Jackson, ed, *Routledge Handbook of Critical Terrorism Studies*, (New York: Routledge, 2016) 17 at 19, 20 [*Stampnitzky 2016*] (The 1972 Munich Olympic Games hostage attack sparked global panic as states tried to decide how to respond adequately. Amongst the uncertainty, Nixon's America rallied into action and specialised think tanks and government departments dedicated to the study of terrorism were set up across the country. Consequently, in a short time, terrorism became the subject of numerous publications and conferences).

[10] Stampnitzky 2016, *supra* note 9 at 21

[11] Conor Gearty, "Terrorism and Morality" (2002) 147:5 RUSI J 34 at 36 [*Gearty 2002*]

[12] David Tucker, "Whats New About the New Terrorism and How Dangerous Is It?" (2001) 13:3 Terrorism & Political Violence 1 (tandfonline), online: < https://doi.org/10.1080/09546550109609688> [*Tucker 2001*]; Andrew Silke, "Contemporary Terrorism Studies: Issues in Research" in Richard Jackson, Marie Breen Smyth & Jeroen Gunning, eds, *Critical Terrorism Studies: A New Research Agenda*, (Abingdon, Oxon: Routledge, 2009) 34 at 47 (Focus was mainly on Al-Qaeda, Muslim extremism and the threat of weapons of mass destruction.); Alexander Spencer, "New Versus Old Terrorism" in Richard Jackson, ed, *Routledge Handbook of Critical Terrorism Studies*, (New York: Routledge, 2016) 124 (The "new" terrorist were more lethal, unforgiving, and were organized in loose networked structures facilitated by advanced communication technology.) [*Spencer 2016*]; Walter Lacquer, *The New Terrorism: Fanaticism and the Arms of Mass Destruction* (New York: Oxford

discourse as being "deeply evil" and not interested in any kind of negotiation; leaving states with no alternative but to eliminate the threat through violent and intrusive counterterrorism strategies.[13]

On the other hand, critical-thinking authors, since the Cold War period, argued that such narratives over-simplified terrorism, and ignored the contextual issues that lead to the violence in the first place.[14] The body of work referred to as Critical Terrorism Studies (CTS) evolved from these critical works and now offers an alternative lens through which terrorism can be understood and problematized.[15][16]

CTS scholars noted that while the dominant literature on terrorism established core concepts for the field, it lacked necessary critical analysis. The main issues identified were the ahistoric conception of "terrorism," lack of empirical fieldwork, policy-driven research, and problem-solving agendas.[17] Toros and Ranstorp observed that the work

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University Press, 1999) 81 (The new terrorists aimed to destroy the "society and…large sections of the population.")

[13] James Turner Johnson, "Just War Theory: Responding Morally to Global Terrorism" in Charles W. Kegley, ed, *The New Global Terrorism: Characteristics, Causes, Controls*, (New Jersey: Prentice Hall, 2003) 223 at 225; Spencer 2016, *supra* note 11 at 132

[14] Lindahl, *supra* note 5 at 71; See Joseba Zulaika & William Douglass, *Terror and Taboo: The Fables, Follies, and Faces of Terrorism*, (London: Routledge, 1996) [*Zulaika & Douglass*] (This is one of the first seminal critical works in the field).

[15] The critical movement gained real momentum during the 2000s when Richard Jackson took up the critical project with his 2005 book *Writing the War on Terrorism* and went on to establish the academic journal *Critical Studies on Terrorism* and a working group of the same name within the British International Studies Association (BISA).

[16] Richard Jackson, Marie Breen Smyth & Jeroen Gunning, "Critical Terrorism Studies Framing a New Research Agenda" in Richard Jackson, Marie Breen Smyth & Jeroen Gunning, eds, *Critical Terrorism Studies A New Research Agenda* (New York: Routledge, 2009) 216 at 227 [*Jackson, Smyth & Gunning*] ("CTS has a particular approach and orientation that marks it out from much of the orthodox terrorism studies literature in terms of its ontological position, its epistemology, its methodological orientation, its research ethics and praxis, its normative commitment, particularly in regards to emancipation, its reflexivity, and its expanded research foci and priorities.")

[17] Lee Jarvis, "Critical Terrorism Studies After 9/11" in Richard Jackson, ed, *Routledge Handbook of Critical Terrorism Studies*, (New York: Routledge, 2016) 28 [*Jarvis 2016*]; Marie Breen Smyth, "A Critical Research Agenda for the Study of Political Terror" (2007) 6:3 European Political Science 260 (SpringerLink), online: < https://link.springer.com/article/10.1057/palgrave.eps.2210138> (Post- 9/11

being produced was speculative because the "experts" in the field were not engaging with the subjects of their research (the terrorists) out of fear of being labelled sympathizers.[18] Moreover, most of the mainstream literature was produced by a small closed group of people who were usually funded by their respective governments.[19] This close link between policymakers and scholars raised concerns that the state was monopolizing the production and dissemination of knowledge on terrorism, consequently, silencing alternative voices. Even the knowledge produced remained in a constant "reinforcing feedback loop" where the government provided the data which the experts used to substantiate their claims which was then given back to the governments for them to formulate policies.[20]

The concerns above encouraged CTS scholars to engage in the critical deconstruction of mainstream literature on terrorism and counterterrorism to explore the voices that had been marginalized and excluded.[21] Mainly following the Frankfurt School of Critical

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literature focuses primarily on al Qaeda making it seem as if 9/11 was the starting point of all terrorism and this discounts the historical experiences that different nations already have with terrorist violence).

[18] Magnus Ranstorp, "Mapping Terrorism Studies after 9/11: An Academic Field of Old Problems and New Prospects" in Richard Jackson, Marie Breen Smyth & Jeroen Gunning, eds, *Critical Terrorism Studies: A New Research Agenda* (Abingdon, Oxon: Routledge, 2009) 13 at 19, 22 & 25 [*Ranstorp 2009*]; See Zulaika & Douglass, *supra* note 14 (This concern of fear is what the writers refer to as the "unspoken "taboo.""); See also Stampnitzky 2016, *supra* note 9

[19] Edna F. Eeid & Hsinchun Chen, "Mapping the Contemporary Terrorism Research Domain" (2007) 65 Intl J Human-Computer Studies 42-56 (ScienceDirect), online: < https://doi.org/10.1016/j.ijhcs.2006.08.006> (During 1965-2003, there were only 42 core researchers who worked around the works of 8 American and 2 British academics).

[20] Richard Jackson, "The Core Commitments of Critical Terrorism Studies" (2007) 6:3 European Political Science 244 at 245 (Springer Link), online: < https://link.springer.com/article/10.1057/palgrave.eps.2210141> [*Jackson 2007*]; Jeroen Gunning, "Babies and Bathwaters: Reflecting on the Pitfalls of Critical Terrorism Studies" (2007) 6:3 European Political Science 236 at 240 (Springer Link), online: < https://link.springer.com/article/10.1057/palgrave.eps.2210144> [*Gunning 2007*]; Reetta Toivanen, "Counterterrorism and Expert Regimes: Some Human Rights Concerns" (2010) 3:2 Critical Studies on Terrorism, 277 (tandfonline), online: < https://www.tandfonline.com/doi/full/10.1080/17539153.2010.491341>;

[21] See Laura J. Shepherd, "Veiled References: Constructions of Gender in the Bush Administration Discourse on the Attacks on Afghanistan Post-9/11" (2006) 8:1 Intl Feminist J of Politics 19 (tandfonline), online: < https://www.tandfonline.com/doi/full/10.1080/14616740500415425>

Theory, CTS committed itself to producing critically reflexive knowledge by employing pluralist and ethical methods in its research.[22] It not only scrutinizes terrorism but also the impact of counterterrorism praxis on human rights and security. CTS scholars suggest that counterterrorism policies should reflect the complexity of terrorism by understanding and then addressing the causes behind political extremism through strategies that are based on compassion and empathy, while remaining open to constant review.[23] They hope to prevent any ideas or values from becoming too rigid that they stifle out opposing or alternative views from public discourse.

The following sections will elaborate on the theoretical framework of CTS scholarship and why, while formulating counterterrorism policies, a critical attitude may be preferred over to traditional approaches.

(Highlights the importance of gender narratives to the production of a legitimate narrative of war); See also Laura Sjoberg & Caron E. Gentry, *Mothers, Monsters, Whores: Women's Violence in Global Politics* (London: Zed Books, 2007) (Analyzes the stereotypes through which women who engage in political violence are depicted as having no agency.); Also see Jack Holland, "From September 11th, 2001 to 9-11: From Void to Crisis" (2009) 3:3 Intl Political Sociology 275 (Oxford Academic), online: < https://doi.org/10.1111/j.1749-5687.2009.00076.x> (Attempts to "denaturalize" the construction of "9-11 as crisis" to open up space for critical contestation.); See also Kathryn Marie Fisher, "Spatial and Temporal Imaginaries in the Securitisation of Terrorism" in Lee Jarvis & Michael Lister, eds, *Critical Perspectives on Counter-Terrorism*, 1st ed (London: Routledge, 2014) 56; See also Lee Jarvis, *Times of Terror: Discourse, Temporality and the War on Terror* (Basingstoke: Palgrave, 2009) (Takes a critical look at how the Bush administration created and justified the War on Terror through the use of language and other discursive practices.)

[22] Jarvis 2016, *supra* note 17 at 28

[23] David Cortright & George A. Lopez, "Strategies and Policy Challenges for Winning the Fight Against Terrorism" in David Cortright & George A. Lopez, eds, *Uniting Against Terror: Cooperative Nonmilitary Responses to the Global Terrorist Threat* (London: The MIT Press, 2007) 237-74; Hastings 2004, *supra* note 6

2.2. ONTOLOGICAL POSITION OF CTS

Ontology is the theory of 'being.' Generally speaking there are two ontological camps: *foundationalism* (realism) and *anti-foundationalism* (constructivism).[24] The former posits that there exist objective and unconditional truths. It takes life as it is without challenging existing frameworks and orders.[25] On the other hand, anti-foundationalism is skeptical of absolute truths; instead, it argues that there is no "real social world" independent of the meaning which human agents attach to it.[26] Traditional terrorism literature is an example of realism because it understands terrorism as an ontologically stable fact, one which can be isolated from its social, economic, political and historical context. Contrarily, critical theory is anti-foundationalist or constructivist because it is concerned with how individuals socially construct the world around them.[27] CTS research finds a middle ground between foundationalism and anti-foundationalism and employs a minimal foundationalist approach. It does not deny objective facts but still rejects the notion of timeless categories and laws and instead recognizes concepts within specific social and historical periods.[28]

Following minimal foundationalist ontology CTS scholarship maintains that "terrorism" is a material fact and a social construct based on a set of assumptions that are not

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[24] David Marsh & Paul Furlong, "A Skin, not a Sweater: Ontology and Epistemology in Political Science," in David Marsh & Gerry Stoker, eds, *Theory and Methods in Political Science*, (Palgrave Macmillan, 2002) 17 [*Marsh & Furlong 2002*]

[25] Robert Cox, "Social Forces, States and World Orders: Beyond International Relations Theory" (1981) 10:2 Millennium: Journal of International Studies, 126 at 128 (SAGE Journals), online: < https://journals.sagepub.com/doi/pdf/10.1177/03058298810100020501> [*Cox 1981*] (Cox has referred this as a problem-solving theory, whereby, it limits its scope to a particular problem as its starting point and only focuses on finding solutions to that particular problem.)

[26] Lindahl 2017, *supra* note 5 at 78

[27] Lindahl 2017, *supra* note 5 at 78

[28] Charlotte Heath-Kelly, "Critical Approaches to the Study of Terrorism" in Erica Chenoweth, Richard English, Andreas Gofas & Stathis N. Kalyvas, eds, *The Oxford Handbook of Terrorism* (Oxford University Press, 2018) 224 at 227 [*Heath-Kelly 2018*]; Toros & Gunning, *supra* note 4 at 92-3

universal but are particular to a given time and place.[29] This means that while there will always be a category of political violence that can be described as terrorism but the elements of that category will evolve as the time and context surrounding it changes; terrorism is ontologically unstable. There is no intrinsic objective definition of terrorism itself (which is perhaps why there is no settled legal definition for the term).The makeup of terrorism depends on human agreement and perception. Therefore, the researcher must *deepen* her understanding of terrorism by examining the violent act within its broader social and historical context.[30] Moreover, this will entail unpacking the dominant discourse on terrorism to identify which power structures and actors benefit from the propagation of a particular understanding of terrorism as *the* only legitimate reality, as well as opening the space for alternative discourses.[31]

In this thesis, a minimal foundationalist approach will allow me to explore the role of power elites in the construction of the legal category of violence called terrorism by tracing the trajectory of political violence within Pakistan. We will see in Chapters 4 and 5, how certain power elites have controlled and manipulated the narrative around the threats to national security in order to implement expansive counterterrorism strategies and maintain their own legitimacy.

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[29] Doug Stokes, "Ideas and Avocados: Ontologising Critical Terrorism Studies" (2009) 23:1 International Relations, 85 at 87 (Sage), online: < https://doi.org/10.1177/0047117808100613 > [*Stokes 2009*]

[30] Toros & Gunning, *supra* note 4 at 96; Heath-Kelly 2018, *supra* note 28 at 228; Lindahl 2017, *supra* note 5 at 81

[31] See Michel Foucault, *The Politics of Truth*, ed. Sylvere Lotringer (Los Angeles: Semiotext(e), 1997); See also Antonio Gramsci, *Prison Notebooks Volume 1*, translated by Joseph A. Buttigieg & Antonio Callari (New York: Columbia University Press, 2011)

2.3. EPISTEMOLOGICAL POSITION OF CTS

Epistemology is a theory of knowledge: how can we know what we know? CTS scholars employ hermeneutic or interpretist approaches in their research to *broaden* the notion of "what can be considered 'terrorist'" and terrorist violence.[32] Interpretist approaches posit that since no knowledge is objective, we can only understand the world through the interpretations of actors and behaviour.[33] So to reflect the complexity of the social world we have to acknowledge that every theory is presenting a particular point of view of the world that will be true at a particular point in history for a particular purpose. Hence, it is paramount to remain reflexive and critical while exploring the social world because no one interpretation will be universally true for all times.[34]

In the context of this thesis, this epistemological position of CTS means that the researcher should avoid essentializing specific groups and actors as terrorists, and instead acknowledge that *terrorism* involves the use of tactics that may be employed by various types of social and political actors (non-state and state actors).[35] Consequently, the primary referent of security measures can no longer be the state but instead is the individual human being. Moreover, contemporary terrorism needs to be studied with greater interdisciplinarity. In the case of Pakistan, this entails understanding the emergence of terrorism and its counterterrorism regime in light of its British colonial

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[32] Toros & Gunning, *supra* note 4 at 95
[33] Marsh & Furlong 2002, *supra* note 24 at 20
[34] Cox 1981, *supra* note 25 at 126, 133 (All theory is "*for* someone and *for* some purpose."); Ken Booth, *The Theory of World Security* (Cambridge: Cambridge University Press, 2007) at 150 (All theory is "*from* somewhere.")[*Booth 2007*]; Lindahl 2017, *supra* note 5 at 83 (This is known as the "double hermeneutic.")
[35] Toros 2016, *supra* note 8 at 77; Toros & Gunning, *supra* note 4 at 95-8; See Heath-Kelly 2018, *supra* note 28

history as well as several years of military rule. These factors have had a lasting impact on its politics, laws, economics, and society.

Following the above ontological and epistemological positions, the critical project urges researchers to remain self-reflexive when formulating recommendations or policies for the *emancipation* of humans from all kinds of violence.[36]

2.4. AIM OF CTS: EMANCIPATION FROM ALL VIOLENCE

2.4.1. WHAT IS EMANCIPATION?

Max Horkheimer argued that the goal of critical theory is to bring social change and transform society into the "right kind of society" with emancipation as its guiding principle.[37] Similarly, Richard Wyn Jones said that emancipation is what gives "critical theory coherence and, indeed, purpose" and allows it to challenge the status quo existing in traditional terrorism literature.[38] The definition of emancipation followed by this thesis is the one penned by Ken Booth:

> … [E]mancipation seeks the securing of people from those oppressions
> that would stop them from carrying out what they would freely choose to
> do, compatible with the freedom of others. It provides a three-fold
> framework for politics: a philosophical anchorage for knowledge, a theory
> of progress for society, and a practice of resistance against oppression.

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[36] Toros & Gunning, *supra* note 4 at 92-3; Richard Jackson et al, *Terrorism: A Critical Introduction* (New York: Palgrave Macmillan, 2011) at 116 [*Jackson 2011*]; Karl Marx, "Theses on Feuerbach" in David McLellan, ed., *Selected Writings,* 2nd ed. (Oxford: Oxford University Press, 2000) 171 at 173 (The aim of critical theory is not to merely theorize and reinterpret the world but instead, "the point…is to change it.")

[37] Max Horkheimer, *Critical Theory Selected Essays,* translated by Matthew J. O'Connell et al. (New York: Continuum, 2002) at 218 [*Horkheimer 2002*]

[38] Richard Wyn Jones, *Security, Strategy and Critical Theory* (Boulder: Lynne Rienner, 1999) at 56, 75-6 [*Wyn Jones 1999*]; Toros and Gunning, *supra* note 4 at 100

Emancipation is the philosophy, theory, and politics of inventing humanity.[39]

According to Booth *progress* is critical to emancipation because we cannot transform the world if we are unable to change. Every society has the ability to progress even if at different paces. It is through 'reflexivity' that we can monitor our behaviours and learn from our mistakes for a better future.[40] The point is to strive for continuous growth. Therefore, an emancipatory framework can aid in ending oppression more sustainably because it is a never-ending and evolving "(strategic) process of freeing up" and not a "condition of being freed."[41] Therefore, emancipation is not the end-goal but rather a continuous process of and commitment to reflect, and change the policies formulated to redress the ills of society.

2.4.2. WHY SHOULD EMANCIPATION BE PREFERRED?

Heath-Kelly said that even though critiquing mainstream literature is useful to reveal its biased nature, that alone does not justify sustaining an emancipatory agenda. This is why it is important for CTS research to justify *why* a critical approach should be preferred over traditional/problem-solving theory for terrorism research.[42]

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[39] Booth 2007, *supra* note 34 at 112

[40] Booth 2007, *supra* note 34 at 112; Bill McSweeny, *Secuirty, Identity and Interests: A Sociology of International Relations* (Cambridge: Cambridge University Press, 1999) 140-142, 206-219

[41] Booth 2007, *supra* note 34 at 112; Matt McDonald, "Emancipation and Critical Terrorism Studies" in Richard Jackson, Marie Breen Smyth & Jeroen Gunning, eds, *Critical Terrorism Studies A New Research Agenda* (New York: Routledge, 2009) 109 at 120 [*McDonald 2009*]

[42] Charlotte Heath-Kelly, "Critical Terrorism Studies, Critical Theory and the 'Naturalistic Fallacy'" (2010) 41:3 Security Dialogue 237 at 244 (Sage journals), online: <https://doi.org/10.1177/0967010610370227> (She said that the fact that traditional problem-solving theory *is* biased in nature does not automatically mean that a "counter-hegemonic theory *ought*" to replace it.) [*Heath-Kelly 2010*]; See Torsten Michel & Anthony Richards, "False Dawns or New Horizons? Further Issues and Challenges for Critical Terrorism Studies" (2009) 2:3 Critical Studies on Terrorism 399 at 410 (tandfonline), online: < https://doi.org/10.1080/17539150903306097> [*Michel & Richards*]

She said that for CTS to maintain emancipation as its normative agenda it should do the following three things: (1) describe the existence of contemporary human suffering and evoke emotive force; (2) explain why such suffering is bad and warrants counter action; and (3) legitimate itself by exposing the bias of traditional theory, and root the legitimacy of the emancipatory project by conceptualising it as a solution to the suffering.[43]

In the present context this means that when we deepen and broaden our scope of terrorism study, we begin by focusing on human beings as the primary referents of security measures and not states. In doing so we will see that contemporary violent counterterrorism measures are not only failing to secure us but are also harming us (human suffering). This is bad because we cannot enjoy security if it comes at the cost of security and dignity.[44] On the other hand, an emancipatory framework aims to prevent this human suffering because it urges to first understand the underlying structural issues in society that lead to violence. Moreover, it focuses to formulate policies that not only counter terrorist violence but also holistically redress structural social and economic issues to prevent violence from occurring in the first place.

Having an emancipatory framework as a guideline can avoid the problems identified in mainstream terrorism discourses because the analysis is neither limited in its scope nor is it looking for a one-time fit-all solution. Instead the framework aims to be self-

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[43] Heath-Kelly 2010, *supra* note 42 at 252

[44] Sondre Lindahl, *A Critical Theory of Counterterrorism: Ontology, Epistemology and Normativity* (Abingdon, Oxon: Routledge, 2018) at 61-3 (He argued for a Weberian understanding of emancipation as a value-axiom (value-judgment) connected with ideal-types of knowledge. He said that researchers should acknowledge that emancipation is that value-judgment in their research which cannot be proven to be universally true but can still describe human suffering as a result of contemporary counterterrorism.) [*Lindahl 2018*]; Sondre Lindahl, "The End of Emancipation? CTS and Normativity" (2019) Critical Studies on Terrorism 7 at 12 (tandfonline), online: < https://doi.org/10.1080/17539153.2019.1658408> [*Lindahl 2019*]

reflexive and to provide a continuous process of discovering means to overcome embedded oppressions.

CONCLUSION

This chapter explained the framework offered by CTS literature. Ontologically, it maintains that while there will always be a category of violence described as terrorism, it will also always be "historically bound, value-laden, and politically implicated."[45] It does not understand terrorism as a static identity but as a tactic which can be employed by any actor (state and non-state). It deepens the understanding of terrorism to reveal the power structures that benefit from traditional narratives of terrorism. Epistemologically, it broadens the scope of terrorism research to include counterterrorist violence and structural inequalities, by replacing the state with individual human beings as the primary object to be secured from the terrorist violence. Lastly, CTS research commits itself to emancipation which is a never-ending process of interpretation and discovery of alternative responses to the embedded reasons conducive to terrorist violence. It makes this commitment because contemporary counterterrorism measures and approaches are causing human suffering. Consequently, it urges states to reorient their counterterrorist approach to one which employs emancipatory (non-violent and human-centered) means to achieve their goal of overcoming terrorist violence in a more holistic and sustainable way. All the while it is crucial for critical researchers to remain reflexive in order to avoid imposing a

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[45] Toros & Gunning, *supra* note 4 at 95

"totalising global project" and to engage with all relevant agents who are responsible for implementing policies of change.[46]

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[46] Lindahl 2019, *supra* note 44 at 7

CHAPTER 3: REJECTING VIOLENT COUNTER TERRORISM MEASURES

INTRODUCTION

This chapter will elaborate on why the CTS scholars urge for the rejection of violent contemporary counterterrorism measures and instead advocate the adoption of non-violent or emancipatory and human-centered approaches for countering and preventing terrorist violence.

CTS scholars note that traditional terrorism literature perceives terrorism as a static identity; consequently, states implement counterterrorism measures that focus on eliminating the *evil* terrorist but ignore the underlying reasons for the terrorist violence. The measures have been expansive, aggressive and more often than not disproportionately targeted at certain groups of society. Moreover, in pursuit of national security these measures sacrifice public rights and liberties. This is why CTS posits that once we shift the referent of security to individual human beings we will see that humans, as social beings, require safety from physical and non- physical harm which cannot come at the expense of their own or another's security and liberty. An unequal distribution of security imposes hardships and obstacles on people's modes of living, causing human suffering and contributes to violence. Therefore, violent counterterrorism strategies will not be able to sustainably prevent terrorist violence, without adding onto existing layers of violence. This is why states should try to recognize a harmony of means and ends, which means that to achieve freedom from

violence the steps taken, should also be free from violence. Counterterrorism measures should complement human development agendas to improve living conditions and address the underlying issues contributing to terrorism.

3.1. Contemporary Counterterrorism Approaches

Counterterrorism can be generally understood as a coherent plan adopted by states to "neutralise terrorists, their organizations, and their networks," to cease them from using violence to pursue their goals and to secure the public from the violence.[47] Even though counterterrorism measures have been classified under different headings for our purposes we will succinctly explain one of the more common categorizations of counterterrorism approaches: the criminal justice model, the war model, and the hybrid model.[48]

The criminal justice model treats terrorism as an ordinary crime that should be dealt through a state's ordinary criminal law and be subjected to "constant judiciary regulation."[49] The police and courts have the primary duties of arresting and trying the suspects, respectively, while upholding the democratic values of the rule of law and due

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[47] Dan E. Stigall, Chris Miller & Lauren Donatucci, "The 2018 U.S. National Strategy for Counterterrorism: A Synoptic Overview" (2019) Am. U. Nat'l Sec. L Brief 6 (SSRN), online: < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3466967>

[48] See Gus Martin, *Understanding Terrorism: Challenges, Perspectives, and Issues* (London: SAGE Publications Ltd., 2003) [*Martin 2003*] (Other classifications include "hard-line" or "soft-line" approaches. The former emphasizes the use of force against terrorists while the latter focuses on social reform and diplomacy.); See also Veronique Dudouet, *Mediating Peace with Proscribed Armed Groups* (US Institute of Peace, 2010) at 3 (jstor), online: www.jstor.org/stable/resrep12354; See also Jackson 2011, *supra* note 57 at 225-9 (He classified them into: the use of force; intelligence and policing; homeland security; and conciliation and dialogue.); See also Ronald Crelinsten, *Counterterrorism* (Cambridge: Polity Press, 2009) [*Crelinsten 2009*] (Coercive approaches; proactive approaches (intelligence); persuasive approaches (communication); defensive approaches (prevention and mitigation); long-term approaches (human security, environment and gender).)

[49] Ami Pedahzur & Magnus Ranstorp, "A Tertiary Model for Countering Terrorism in Liberal Democracies: The Case of Israel" (2001) 13:2 Terrorism & Political Violence 1 at 5 (tandfonline), online: https://doi.org/10.1080/09546550109609678 [*Pedahzur & Ranstorp*]

process. This approach is considered to provide a sense of security, to act as a deterrent by posing the "threat of criminal sanctions,"[50] and to provide the tools for "deviance and social control."[51]

On the other hand, the war model regards terrorism as an act of war or "revolutionary warfare,"[52] consequently, giving rise to the use of military force to apprehend and eliminate all terrorist threats and actions. Advocates for this approach argue that it allows states to take unilateral action against terrorist suspects or militants and it is deemed a legitimate strategy under the "inherent right of self-defense" in international law.[53] Moreover, it deters the enemy from further engagement because it raises the cost of carrying out terrorism, and it shakes the enemy's confidence and ability to strike.[54] Even though the war model has "freer rein than that of law"[55] states are still confined to the limits prescribed by international humanitarian laws, the Geneva Conventions, and the "just war theory" that entitles detainees and enemy soldiers to certain legal protections.[56]

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[50] Cerlinsten 2009, *supra* note 48 at 56

[51] Mathieu Deflem, *The Policing of Terrorism: Organizational and Global Perspectives* (Abingdon: Routledge, 2010) at 16 [*Deflem 2010*]

[52] Pedahzur & Ranstorp, *supra* note 49 at 3

[53] Stephanie Carvin, "A Viable and Vital Policy Option" in Richard Jackson & Samuel Justin Sinclair, eds, *Contemporary Debates on Terrorism*, (Abingdon: Routledge, 2012) at 172

[54] Michael Rubin, "More Creative Military Strategies are Needed" in Stuart Gottlieb, ed, *Debating Terrorism and Counterterrorism: Conflicting Perspectives on Causes, Contexts, and Responses*, 1st ed, (Washington, D.C.: CQ Press, 2010) at 225 [*Rubin 2010*]; Paul Wilkinson, *Terrorism Versus Democracy*, 2nd ed, (Abingdon: Routledge, 2006) at 91 [*Wilkinson 2006*] (It serves as a "psychologically damaging blow" to the enemy.)

[55] David Luban, *Torture, Power, and Law*, (Cambridge: Cambridge University Press, 2014) at 9 [*Luban 2014*] (It permits collateral damage; war has weaker evidentiary requirements so soldiers can act merely on "plausible intelligence" and can legitimately target actors who "*might* harm us, not those who *have* harmed us" during combat.)

[56] Geneva Convention (III) Relative to the Treatment of Prisoners of War, 6 U.S.T. 3318, signed on Aug 12, 1949, at Geneva, Article 17 (Prisoners of war have to tell their captors their name, rank, and serial number. Refusal do so does not warrant subjecting them to threats or mistreatment of any kind.); Jean Bethke Elshtain, *Just War Against Terror* (New York: Basic Books, 2003) at 57-8 (A "just war"

We mentioned in Chapter 2 that over the years the term "terrorism" has been reconceptualised. Now it is neither an act of war nor is it a standard felonious crime. It is no longer a tactic at all but instead it is considered to be a specific act carried out by a specific actor: the terrorist. This terrorist is neither morally nor politically innocent because s/he is presumed to have set off to achieve terrorism.[57] Consequently, the terrorist is neither an ordinary criminal nor an enemy soldier. In fact, s/he embodies the worst characteristics of both soldiers and criminals, thus is no longer eligible to the full protection of the law. This new kind of enemy has warranted the construction of a new approach because the other two models were deemed to be ineffective on their own. While the war model took a state entirely away from any liberal democratic standards, the criminal justice model restricted the state to lesser counterterrorism measures because of democratic norms. Therefore, the new approach comprises elements of both of the models and has been referred to as a "hybrid model" or the "expanded criminal justice model" (ECJM).[58]

Under the hybrid model states can now employ more "effective" counterterrorism measures by expanding their "constitutional boundaries," adopting special laws, and allowing courts (civilian and military) to treat terrorists differently from other criminals.[59] The police is still the primary responding agent, but with broader powers

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justifies the use of violence against terrorists as being instrumental to protecting citizens and providing justice. For a war to be just it must be: openly declared by a legitimate authority; be a response to a specific instance of unjust aggression; must begin with the right intentions; must be a last resort.); Boaz Ganor, "The Use of Force to Combat Terrorism" in Richard Jackson & Samuel Justin Sinclair, eds, *Contemporary Debates on Terrorism*, (Abingdon: Routledge, 2012) at 142-43

[57] Luban 2014, *supra* note 55 at 14

[58] Luban 2014, *supra* note 55 at 13 (Luban termed it a hybrid war-law model.); See Pedahzur & Ranstorp, *supra* note at 49

[59] Pedahzur & Ranstorp, *supra* note 49 at 5; See Deflem 2010, *supra* note 71 (The term "enemy combatants" was adopted to deprive captured and detained terrorist suspects of prisoners of war status while still subjecting them to trial and punishment by military tribunals.)

and aided by the armed forces, secret service or special anti-terrorism forces. The law enforcement agencies (LEAs) are authorized to carry out several offensive actions against terrorist suspects and detainees, including, military censorship of publication, preventive indefinite detention, rendition, target killings, specialized courts, military courts, surveillance, and intelligence gathering, etc.

Most governments claim that these measures have been successful in pre-empting attacks and eliminating the actors responsible for terrorist attacks. However, this alleged success comes at a significant cost to the public. States argue that people must be willing to forego or "trade-off" some of their rights and liberties if they wish for the state to do its job properly and effectively implement security laws and policies.[60]

While no one can argue that a perpetrator of a crime should not be tried and punished for breaking the law, but a hybrid approach to counterterrorism has allowed governments to bypass core human rights principles and create "new sites of 'security.'"[61] The success of such expansive measures is debatable especially when they might be fostering an environment that is conducive to violence in the first place. Zulaika noted that counterterrorism can become a "self-fulfilling prophecy because its discourse creates and perpetuates the very thing it seeks to control."[62]

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[60] See Jeremy Waldron, *Torture, Terror, and Trade-Offs: Philosophy for the White House*, (Oxford, Oxford University Press, 2010) [*Waldron 2010*]

[61] Ipek Demirsu, *Counter-Terrorism and the Prospects of Human Rights: Securitizing Difference and Dissent*, (Switzerland: Springer International Publishing AG, 2017) 20 [*Demirsu 2017*]

[62] Joseba Zulaika, *Terrorism. The Self-Fulfilling Prophecy*, (Chicago: The University of Chicago Press, 2009)

3.2. CONTEMPORARY COUNTERTERRORISM NEEDS TO CHANGE

Contemporary counterterrorism approach limits its scope to a particular problem as its starting point and focuses only to find solutions for the physical manifestation of the issue i.e. the violence. It assumes that terrorism is an objective fact that can be isolated from its socio-historic and political context. The model does not try to explore and address the antecedent and subsequent events around the particular incident. Moreover, it is not designed to evaluate its own impact on violence.

The terrorist is the *evil* plaguing the society; it is not seen as a symptom of an already dysfunctional society. In opposition to this evil, the state assumes the role of the *saviour* or *good guy* and the primary referent that needs to be secured and who can provide security. Hence, when the state speaks of counterterrorism as a security measure, it is referring to "national security," an idea related to the "*integrity and power of the state itself* as an institutional apparatus"[63] (original emphasis). This is why counterterrorism measures are "skewed towards the state" and take the shape of *hard* measures that showcase the power and might of a state to defend itself.[64] Prioritizing national security over human security is also what allows states to maintain an inverse relationship between security and rights, allowing the necessary sacrifice or trade-off of rights for more national security.

But CTS scholars challenge these arguments because they fail to holistically and effectively address and prevent the reasons behind terrorist violence. CTS research replaces the state with individual human beings as the primary referent to be secured.

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[63] Waldron 2010, *supra* note 60 at 115
[64] Lindahl 2017, *supra* note 5 at 97

The shifting of the referent of security complicates the relationships between security, rights and violence, challenging the otherwise simplified counterterrorism and terrorism narrative traditionally advanced by states. As Lindahl and Heath-Kelley argued, this shift reveals that prevalent counterterrorism approaches are discriminately providing security which is causing human suffering and adding to the extant violence. This is why CTS calls for a change in the approach taken to address terrorism.

3.2.1. BROADENING SECURITY: FROM NATIONAL SECURITY TO HUMAN SECURITY

When we speak of shifting from national security to human security we mean a shift from territorial security to the security of people.[65] Human security is much more than just physical safety and survival because people have aspirations for their lives for which they require security from both physical and non-physical harm (economic, social, political and legal).[66] In 2012 the UN General Assembly adopted a common understanding of human security to mean the right of people to be free from fear and from want, and the right to live with dignity.[67] Human security requires a holistic and preventative approach so that individuals are able to enjoy their health, possessions and rights, and fully realize their human potential.

It is pertinent to mention here that in the context of human security, the concept of individual is not in opposition to the broader community of which they are a part. We do not mean that individuals are solitary, self-interested entities; rather they are social

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[65] Oscar A Gomez & Des Gasper, *Human Security Guidance Note: A Thematic Guidance Note for Regional and National Human Development Report Teams,* UNDP, at 2, online (pdf): https://www.hdr.undp.org/en/content/human-security-guidance-note [*Gomez UNDP*]

[66] Waldron 2010, *supra* note 60 at 117 (Waldron finds this "pure safety concept" an inadequate conceptualization of security.); Gomez UNDP, *supra* note 65 at 2 (The 1994 UN Human Development Report listed seven essential dimensions of human security: economic; health; food; environmental; personal; community; political)

[67] *Follow-up to paragraph 143 on human security of the 2005 World Summit Outcome*, GA Res 66/290, UNGA, 66th Sess, A/RES/66/290, (2012) [*UNGA Res 66/290*]

beings who interact with one another and are interconnected and interdependent in a variety of manners.[68] So for our lives to progress and continue to make sense, an individual's mode of living will be fully secured only if that security is equally available to *all* members of their society.[69]

However, what we see is that since contemporary counterterrorism measures are focused on national security and not human security, states expand their powers at the expense of human rights and protections. States justify this by arguing that legal protections and rights are inversely related to security and will *have* to be traded-off to increase security and combat terrorist violence. But critical scholars argue that when human security is considered a part of our repertoire of democratic rights and values then the entire idea of a sacrifice or trade-off is undermined.[70] Consequently, any rash legal changes which reduce those protections and rights will actually lead to more insecurity and disrupt the very mode of life we want to protect.[71]

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[68] Toros & Gunning, *supra* note 4 at 93-8 (Human beings are to be understood as a "part of and shaped by social contexts and collectivities such as class, gender, states, ethnic, and/or cultural groups.")

[69] Waldron 2010, *supra* note 60 at 155 (Many of our "social actions makes sense when we play roles in narratives that assign roles also to others—whether as co-workers, customers, neighbours, babysitters, teachers, team-members, and so on."); See, Michael Onyebuchi Eze, *Intellectual History in Contemporary South Africa,* (Palgrave Macmillan, 2010) (Eze engages with the emergence of "ubuntu" (the belief in a universal bond of sharing that connects all humanity) in South Africa as a new national imaginary through its inclusive consciousness, in which, diverse histories are accommodated.)

[70] Waldron 2010, *supra* note 60 at 162

[71] Waldron 2010, *supra* note 60 at 157; Thomas F. Powers, "Can We Be Secure and Free?" (2003) The Public Interest (National Affairs) 21, online: < https://www.nationalaffairs.com/storage/app/uploads/public/58e/1a5/013/58e1a5013a441169700224.pdf > (John Locke emphasized that security is the essential precondition of liberty. He identified "provid[ing] for their own Safety and Security" as being "the end for which they are in society." Similarly Montesquieu said that "political liberty consists in security…This security is never more attacked than by public or private accusations. Therefore the citizen's liberty depends principally on the goodness of the criminal laws.")

Even though governments do not typically operate in bad faith, but it would be naïve of us to ignore the fact that they are prone to error and inefficiency.[72] There is no guarantee that a government will not misuse its enhanced powers under a hybrid counterterrorism model. As Donohue described it, the model can have a spiraling effect when LEAs become reluctant to give up their extended powers.[73] The goal becomes to maximize national security in aggregate terms for which procedural and substantive safeguards (e.g. due process, fair trial, right to privacy etc.) are diminished. LEAs fail to distinguish between individuals, and innocent people become targets of counterterrorism measures if they possess features—geographic, ethnic, or otherwise—that are close to the profile of terrorist suspects. They may be arrested or killed by mistake, or on purpose.

States usually argue that in the fight against terrorism, it is better to have ten innocent people imprisoned than have one terrorist escape, especially a terrorist armed with CBRNE weapons.[74] It is too costly to use procedures to get it right every time which is why "over-inclusive arrests or killings" become a "necessary evil."[75] But this is concerning when innocents are suspected based on prejudicial profiling, which only becomes possible once those protections are removed or reduced. In such circumstances the reckless convictions of innocent people for the sake of the "greater good" points to deeper issues of "moral corruption of the system as a whole."[76] Even otherwise, if the suspects are innocent, then detaining or killing them will not affect the overall level of

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[72] Luban 2014, *supra* note 55 at 30
[73] Laura K. Donohue, *The Cost of Counterterrorism: Power, Politics, and Liberty,* (Cambridge: Cambridge University Press, 2008) 15-6 [*Donohue 2008*]
[74] Chemical, Biological, Radiological, Nuclear and high yield Explosives
[75] Luban 2014, *supra* note 55 at 35
[76] Waldron 2010, *supra* note 60 at 38-9

security. Hence, security will not increase by diminishing rights, in contrast, it will decrease further because security is a part of those bundle of rights that the public is asked to sacrifice.

Moreover, Waldron and Luban argued that the logic behind the trade-off is "treacherous" because it implicitly operates on the idea of "[D]o unto the rights of others whatever it takes to make me feel more secure."[77] Instead of balancing everyone's rights against everyone's security, it ends up sacrificing the rights of a few for the protection of the rest of the society. But when we conceptualize security to be a part of our rights then we cannot ignore that the distributive structure of rights is "egalitarian, not maximizing."[78] Our mode of living is not secured if everyone is not secured. For instance, if there are people who are unwilling to participate in society out of fear of being unfairly prosecuted by the state, this will negatively impact the life of everyone else as well, because people do not exist in isolation of each other. We cannot be secured at the expense of another.

Even if security is not considered as part of our repertoire of rights, but as a precondition for the enjoyment of other rights, Waldron said, it is not unreasonable to argue for the equitable distribution of this prerequisite.[79] Equitable distribution of security for individuals then conceptualizes it as a means "to reduce life-determining

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[77] Waldron 2010, *supra* note 60 at 12 (He said it conceals between intra-personal trade-off and inter-personal trade-off. The former is when the persons who gain security are also the ones who give up their liberty and rights. The latter is when the persons who gain security are not always the one who sacrifice their rights.); Luban 2014, *supra* note 55 at 27-8 (Luban called this the Mel Brooks Fallacy after the following quote by the comedian "tragedy is when I break a fingernail, and comedy is when you fall down a manhole and die.")
[78] Waldron 2010, *supra* note 60 at 136
[79] Waldron 2010, *supra* note 60 at 136

insecurity for people and their communities" and as a space to make choices.[80] Security becomes something more than mere survival:

> "Security is something we provide for each other by enjoying together the social order of activity and interaction that defines our way of life and by acting in solidarity with one another to ensure that the benefit of this system is available to all."[81]

A government should not be able to prioritize the safety and rights of *some* people over others because it must protect *all* members of its society. Counterterrorism measures should not be discriminating and targeting only certain groups of people. Isolating people from the greater community and depriving them of their rights will not lead to a more prosperous and safe society. On the contrary, such measures increase inequalities and divisions within society which is harmful for people and is conducive to a violent and insecure environment.[82]

3.2.2. COUNTERTERRORIST MEASURES ARE VIOLENT

Deploying military and special anti-terror armed forces to combat terrorist groups and suspects are clearly violent measures. But counterterrorism measures that may not appear to be violent (e.g. surveillance, expedited trial procedures) can still subject

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[80] Lindahl 2017, *supra* note 5 at 109; Booth 2007, *supra* note 34 at 102-5 (Booth called this "survival-plus.")

[81] Waldron 2010, *supra* note 60 at 158 (Waldron further said: ...we should be open to the possibility that the notion of security also needs to be understood as something we provide together...we also act together to secure the way of life and the patterns of interaction in which our security partly consists... Some goods are communal in a sense that their enjoyment by any one person depends on their enjoyment in common with him by others.)

[82] See Ismail Yilmaz, "Terrorist Profiling: Characteristics and Motivations by Arrest Rate" in Siddik Ekici et al., eds, *Building Terrorism Resistant Communities: Together Against Terrorism*, (Amsterdam: IOS Press, 2009) 34 at 47 (Relative deprivation theory posits that people feel deprived "when they perceive that they are treated unjustly compared to some standards or reference groups" and this may lead them to take part in violence.) [*Yilmaz 2009*]

people to violence. Galtung defined *violence* as the "cause of the difference between the potential and the actual, between what could have been and what is."[83] There are two types of violence: direct and indirect violence. Direct or *personal* violence is where there is an actor that commits violence on the object and destroys the object's means of self-realization. Whereas indirect or *structural* violence is when there is no such actor, but the violence is "built into the structure and shows up as unequal power and consequently as unequal life chances."[84]

Simply put structural violence is inequality, especially in the distribution of power. Galtung explained that different actors organize and interact with one another in different social systems. An actor can have a high ranking in one system while low ranking in another system; or they may have consistent high or consistent low ranks. Actors exchange value within and between the systems through their interactions. Often times this value is unequally distributed.[85] The high-ranking actors ("topdogs") keep the lower-ranking actors from reaching their potential through disintegration, marginalization, and the illusion of authority.[86] This inequality of power and value is what Gatlung called structural violence.

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[83] Johan Galtung, "Violence, Peace, and Peace Research" (1969) 6:3 J of Peace Research 167 at 168-9 (Sage Journals), online: <https://journals.sagepub.com/doi/10.1177/002234336900600301> [*Galtung 1969*]

[84] Galtung 1969, *supra* note 83 at 171

[85] Galtung 1969, *supra* note 83 at 176 (He identifies six factors of the inegalitarian distributions that serve as mechanisms of structural violence: (1) Linear ranking value : the ranking is complete, leaving no doubt as to who is higher in any pair of actors; (2) Acyclical interaction pattern : all actors are connected, but only one way – there is only one 'correct' path of interaction; (3) Correlation between rank and centrality : the higher the rank of the actor in the system, the more central his position in the interaction network; (4) Congruence between the systems: the interaction networks are structurally similar; (5) Concordance between the ranks: if an actor is high in one system then he also tends to be high in another system where he participates and; (6) High rank coupling between levels: so that the actor at level n-1 are represented at level n through the highest ranking actor at level n-1.)

[86] Galtung 1969, *supra* note 83 at 177 ("They [lowest-ranking actors] are deprived because the structure deprives them of chances to organize and bring their power to bear against the top-dogs, as voting

When a social structure is threatened, whoever benefits from it is likely to try to preserve its integrity and the status quo. The actors with the most vested interests are less likely to engage in violence personally but instead "push their mercenaries" in front in defence of the structure.[87] For example, the police and armed forces are rallied into action to quieten or eliminate any threat to the state. Their actions are a clear example of direct violence. But since these mercenaries are called to act through a repressive structure, there is no personal intention guiding their actions. They are following orders and are therefore kept from developing "an intervening variable of intention".[88] They become a part of the violent structure—while simultaneously being victimized by it—and carry out coercive methods that do not respect the dignity of others, further subjecting others to both direct and indirect violence.

The measures that LEAs proceed to apply to counter terrorism, such as preventive detention, surveillance, expedited trial processes etc., subject the public to the same structural and direct violence that they perpetuate and are subordinated to. When these measures are applied to society they impose hardships and obstacles on people's modes of living. Suspect communities are marginalized and targeted disproportionately and deprived of their safety and equal life chances. The inequality is structural violence and everybody is negatively impacted by it. Those who are direct targets of such measures are hindered from living out their lives without the fear of unfair prosecutions and may become unwilling to fully participate in society. Their withdrawal will affect even those who are not the targets of counterterrorism measures because their enjoyment of other's

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power, bargaining power, striking power, violent power – partly because they are atomized and disintegrated, partly because they are overawed by all the authority the topdogs present.")
[87] Galtung 1969, *supra* note 83 at 179-180
[88] Ibid

contribution depends on others being "undistracted by terror and anxiety about their personal safety."[89] Hence, everyone will begin to feel unsafe, when counterterrorism measures are discriminately implemented everyone's security can be jeopardized.

3.2.3. VIOLENCE BEGETS VIOLENCE

All types of violence—direct and structural—are equally harmful and destructive because violence destroys the ability of people to organize and make positive and meaningful changes.[90] According to Hannah Arendt the human ability to get together and act in concert is at the core of the political, not violence.[91] Violence destroys this ability, hence, it can never to lead change and development; instead it will keep people trapped in a cycle of violence.[92]

Many authors argue that the war on terrorism and contemporary counterterrorism measures have largely failed to eliminate or even reduce terrorism, because violence is not an isolated single act; instead, it is a phenomenon with a history.[93] No act of violence is isolated from another; one leads to another, and so on, resulting in layers of

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[89] Waldron 2010, *supra* note 60 at 153

[90] Galtung 1969, *supra* note 83 at 173-4 (Usually direct violence is considered as more harmful because its impact is more visible and overt. But there is no reason to suggest that structural is any less harmful. As Galtung said, "[T]he 'tranquil waters' of structural violence may contain much more violence.")

[91] Hannah Arendt, *On Violence,* (New York: Houghton Mifflin Harcourt Publishing Company, 1970) 40 [*Arendt 1970*] (She called this ability power, it "springs up whenever people get together and act in concert" and it derives its legitimacy from the people coming together, not from any following action. On the other hand violence is always instrumental and will always require justification.)

[92] Lindahl 2018, *supra* note 44 at 75

[93] Lindahl 2017, *supra* note 5 at 117; See Laurie Calhoun, *We Kill Because We Can: From Soldiering to Assassination in the Drone Age*, (London: Zed Books, 2016) (She argued that drone killings have not reduced terrorism); See Darius M Rejali, *Torture and Democracy*, (Princeton: Princeton University Press, 2009) (Traces how modern democracies have set the international pace for torture and question its effectiveness); See Javier Argomaniz & Alberto Vidal-Diez, "Examining Deterrence and Balcklash Effects in Counter-Terrorism: the Case of ETA" (2015) 27:1 Terrorism & Political Violence (tandfonline), online:< https://www.tandfonline.com/doi/abs/10.1080/09546553.2014.975648> (Violent counter-terrorism has been ineffective)

violence accumulating over time.[94] Even the worst of terrorist attacks have been in response to or influenced by previous acts of violence. To illustrate this point, Lindahl quoted the example of Osama bin Laden who once in a speech said that "watching on television the towers of Lebanon burn during the Siege of Beirut in 1982" inspired the 9/11 New York attacks.[95]

If violence operated in a vacuum, then perhaps it may be considered a compelling and legitimate counterterrorism measure. Of course, violence can help states achieve immediate goals like crushing one group of terrorists. But in the long-run violent counterterrorism measures fail to address the underlying causes conducive to terrorism; instead, they "reinforce the discourses and psychological mechanisms that encourage future resorts to violence."[96][97] This is why nations need to replace their counterterrorism measures that are obtrusively violent with policies that have a deeper, more fair and lasting impact on society.

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[94] Robert Young, "The Violent State", *Naked Punch Supplement* 2 (21 September 2010) at 3, online: < http://www.nakedpunch.com/articles/38> [*Young 2010*] (Violence is a double-act between human subjects who get trapped in its repetitive state and cannot break free.)

[95] Lindahl 2017, *supra* note 5 at 119; See "McVeigh Shows No Remorse" *abcnews* (7 January 2006), online: < https://abcnews.go.com/US/story?id=93724&page=1> (The Oklahoma City Bomber, Timothy McVeigh, maintained that the motivation behind his attack was his dissatisfaction over the disastrous raids at Ruby Ridge and Waco, Texas by the U.S federal government.)

[96] Richard Jackson, "Revising the Field of Terrorism" in Erica Chenoweth, Richard English, Andreas Gofas & Stathis N. Kalyvas, eds, *The Oxford Handbook of Terrorism*, (Oxford University Press, 2019) at 216 online: < https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780198732914.001.0001/oxfordhb-9780198732914-e-43> [*Jackson 2019*]; Lindahl 2018, *supra* note 44 at 84

[97] Arendt 1970, *supra* note 91 at 79 (Arendt argued that violence is instrumental by nature. It is a means to an end and therefore needs to be justified. Whatever needs justification by something else can never be the essence of anything. Violence can only be justified for meeting immediate ends (e.g. in self-defense). But since we are rarely certain of the full consequences of our actions in advance violence will only be rational for short-term goals. When the intended end of a violent action is further into the future, its efficacy becomes more unpredictable and its employment less legitimate.); See M.S. Wallace, *Security Without Weapons: Rethinking Violence, Nonviolent Action, and Civilian Protection*, (Abingdon, Oxon: Routledge, 2016) at 70 [*Wallace 2016*] (The burden is upon to "choose the form of action that does not depend upon (the successful attainment of) its end to be legitimate.")

CONCLUSION: NON-VIOLENCE AND EMANCIPATION

As mentioned in Chapter 2, emancipation aims to secure people "from those oppressions that would stop them from carrying out what they would freely choose to do, compatible with the freedom of others."[98] In light of our discussion so far then we can say that emancipation seeks to secure people from all kinds of violence and improve human security. But states will never be able to break free from the cycle of violence if they continue to follow the logic of "my security versus the rest of the human race,"[99] and make rash decisions in response to terrorist attacks. Force may be used for a defensive purpose but not as a mass-organized concerted effort to eliminate terrorism because it will only lead to more violence. Non-emancipatory means (violent counterterrorism) cannot be used to achieve an emancipatory end (freedom from terrorist violence). This is why Booth argued that to realize emancipation from violence, states should "pursue practices which recognize the harmony of the means and ends" otherwise they will remain enslaved by oppression and violence.[100]

Non-violent measures to counter terrorism are often dismissed for being idealistic, passive and thereby, somehow condoning terrorist violence. But that is not true; non-violence does not imply non-action. Jackson said that a non-violent approach is not intended to be a passive one, rather it entails:

> "a *negative* refusal to participate in organized political violence or to offer
>
> it legitimacy, and a *positive* determination to actively build more peaceful

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[98] Booth 2007, *supra* note 34 at 112

[99] Lindahl 2017, *supra* note 5 at 115; Booth 2007, *supra* note 34 at 77

[100] Ken Booth, "The Human Faces of Terror: Reflections in a Cracked Looking-Glass" (2008) 1:1 Critical Studies on Terrorism 65 at 77 (tandfonline), online: < https://www.tandfonline.com/doi/abs/10.1080/17539150701879816> [*Booth 2008*]; Toros 2016, *supra* note 8 at 76

and cooperative forms of political life and find ways of resolving contemporary threats and challenges employing alternative, realistic non-violent means."[101]

Moreover, according to Lindahl the main priority of a counterterrorism approach based on CTS should be to *prevent* terrorist violence and to focus on how policies and practices can counter terrorism by enhancing human security and emancipatory space.[102] Lindahl suggested that governments should *dare* to commit to reflexively explore all relevant knowledge and assumptions about terrorism. This may require a genuine engagement with "the different and possibly alien standpoint taken by the "other"" to understand why and how such violence emerged, why it continues to exist, and how emancipation may be achieved.[103] Counterterrorism should not only focus on countering a specific threat but should work in conjunction with broader social development policies. The aim should be to achieve social justice and change by overcoming the overt use of violence as well as inequalities embedded within structures and institutions.[104]

Furthermore, a commitment to actively resisting organized political violence for a more peaceful and inclusive political life entails respecting the dignity of everyone and allowing everyone an equal opportunity to participate in the decision-making process.

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[101] Jackson 2019, *supra* note 96 at 216

[102] Lindahl 2018, *supra* note 44 at 93 (His counterterrorism model is based on CTS and emancipation, and aims to serve as a basic comparative unit for assessing a country's counterterrorism policies. He set out five principles to consider while formulating counterterrorism measures: (1) Dare to know; (2) Emancipation; (3) Means/end relationship; (4) Non-violence; (5) Holism.)

[103] Andrew Linklater, "The Achievements of Critical Theory" in Stephen Murray Smith et al, eds., *International Theory: Positivism and Beyond* (Cambridge: Cambridge University Press, 1996) 291

[104] Galtung 1967, *supra* note 83 at 183 (He called social justice or positive peace the "egalitarian distribution of power and resources."); Jon Barnett, "Peace and Development: Towards a New Synthesis" (2008) 45:1 J of Peace Research 75 at 79 (jstor), online: https://www.jstor.org/stable/27640625 [*Barnett 2008*]

Avenues for emancipatory action and all relevant actors should be found within existing institutions and frameworks through inclusive engagement and communication between non-state and state agents without silencing any voices.[105]

Lastly, it is important to remember that an emancipatory framework will take different forms in different societies, and it should be always be open to review and revisions. The appropriation of emancipation in CTS research has been criticized for being a part of the "hegemonic project" of the Enlightenment period and is thus "deeply Eurocentric."[106] If critical researchers do not employ the concept cautiously, they risk propagating Western values as universal standards, effectively defeating the entire purpose of a critical project.[107] Therefore, researchers, legislatures and policymakers should remain vigilant and self-reflexive to avoid the trappings of traditional thinking but to also remain steadfast in the never-ending struggle for change. Lasting social change and human security will be realized when everyone is included in the process of

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[105] Harmonie Toros, "Dialogue, Praxis and The State: A Response to Richard Jackson" (2016) 9:1, Critical Studies on Terrorism, 126, online: <https://doi.org/10.1080/17539153.2016.1147775> [*Toros Dialogue*]; Toros & Gunning, *supra* note 3 at 100 (Avenues of emancipation should not be sought in "an extraneous utopia."); Booth 2007, *supra* note 34 at 20 ("There are many committed individuals in global civil society who work hard to bring about progressive change…At some level the human species is as collectively mad as it is brilliantly innovative."); Lindahl 2018, *supra* note 44 at 56-8 (The critical method of *immanent critique* holds that there is unfulfilled potential for emancipatory possibilities within the existing society.); Toros & Gunning, *supra* note 4 at 75, 100 (Supporting non-violent responses can include, "negotiations between the parties, nonviolent engagement with the root causes of conflict, and supporting nonviolent factions within both the state and opposition movements."); McDonald 2009, *supra* note 41 at 110, 114; See Daron Acemoglu & James A. Robinson, *Why Nations Fail: The Origins of Power, Prosperity, and Poverty* (New York: Crown Business, 2012) (Countries with inclusive economic institutions are more wealthy because they provide opportunities of investment and innovation in a democratic setting with little state interference. But the state maintains monopoly on violence. On the other hand, extractive economic institutions, that do not respect democratic values, can generate wealth for the short-term but in the long-run the country will face poverty.)

[106] Lindahl 2017, *supra* note 5 at 90; See Wyn Jones 1999, *supra* note 38 at 127; Toros & Gunning, *supra* note 4 at 103

[107] Lindahl 2017, *supra* note 5 at 90

discovering resolutions and later in Chapter 6 we will explore some ways to achieve this.

CHAPTER 4: PAKISTAN'S INITIAL SECURITY REGIME

INTRODUCTION

Internationally, Pakistan became central to the GWOT after the 2001 New York attacks, but domestically she has been struggling against terrorist violence since the late 1970s. In the pursuit of security against this violence the government has implemented numerous counterterrorism measures but has been unsuccessful in its efforts. In 2019 alone there were 56 reported fatalities because of incidents identified as terrorism.[108] Moreover, in the first two months of 2020 there were two major incidents of suicide bombings in the city of Quetta.[109] These examples are indicative of the fact that terrorism remains a major issue for Pakistan today. Its counterterrorism measures have not been able to effectively and sustainably break free from terrorist violence. Perhaps the reason for its ineffectiveness is that Pakistan's approach to countering terrorism is fundamentally flawed and needs to be critically examined and changed. Hence, in this chapter we will apply our CTS framework and arguments from Chapter 3 to widen our understanding of terrorism and counterterrorism in Pakistan, as we travel through its political history surveying the legal developments in its security laws that have gradually morphed into its current counterterrorism regime.

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[108] Fatalities in Pakistan Region Wise, *supra* note 2; "Global Terrorism Index 2019: Measuring the Impact of Terrorism" (Sydney: Institute for Economics & Peace, November 2019), online (pdf): *Vision of Humanity* < http://visionofhumanity.org/app/uploads/2019/11/GTI-2019web.pdf> (Pakistan was ranked 5 on the Global Terrorism Index 2019, measuring the 10 countries most impacted by terrorism). [*Global Terrorism Index 2019*]

[109] Syed Ali Shah, "2 Killed, Over a dozen injured as blast targets FC vehicle in Quetta" *Dawn* (7 January 2020), online: <https://www.dawn.com/news/1526828/>; "Quetta bomb blast claims eight lives, injures 23" *The News* (18 February 2020), online:< https://www.thenews.com.pk/print/615555-quetta-bomb-blast-claims-eight-lives-injures-23> (The attack came the same day UN Secretary, General Antonio Gueterres,—who is on a visit to Pakistan—praised the nation's improved security situation.)

In doing so we will uncover that Pakistan's political and military elite have always exploited ethnic and religious differences for their political gain and pursued policies which supported the use of excessive force and extra-constitutional measures that helped them to retain their power while suppressing political opposition. This pattern continues to be followed by the country's leaders and has become a blueprint upon which security measures are designed. Consequently, the promulgated laws have been merely tools of social control and not agents of social change, which is why Pakistan needs to seriously reevaluate its approach to counterterrorism if she genuinely wants to release itself from the tight grips of terrorist violence.

4.1. SECURITY OF PAKISTAN ACT 1952 (SPA)

On 14th August 1947 Pakistan gained independence from the British Empire and separated from the Indian sub-continent. To justify the existence and legitimacy of a separate nation for Muslims, the Muslim political party (the Muslim League) propagated the idea of the "Indian Muslim" as a territorial nationality which was existentially threatened by the Indian Hindu (the other).[110] They enlisted the help of the traditional power centers—the landed class (*zamindars*), tribes or clans (*biraderi*), and the religious elite (*pirs*)—to garner the support of the Muslim population. These community leaders would previously be instrumental in resolving any Hindu-Muslims disputes. But with the pressing need to *create* a distinct identity for political survival the leaders stopped interfering and the disputes were "allowed to inflame popular

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[110] Aparna Pande, "Escaping India: Pakistan's Search for Identity" in Aparna Pande, ed, *Routledge Handbook of Contemporary Pakistan*, (Abingdon, Oxon: Routledge, 2018) 15 at 18 [*Pande 2018*]

passions."[111] These sentiments created a citizenry with inherent feelings of distrust and suspicion which could easily be exploited and manipulated by the elite.

The nascent State was institutionally and economically weak because it did not inherit any of the former colony's state machinery or financial assets. Moreover, the Muslim League was marred by internal factions and motivated more by its own survival and self-interest rather than a commitment to nation-building. From the earliest days, the Muslim League seized opportunities to divert public criticism of its poor performance by covertly supporting pockets of social conflicts in the country. An early example is the persecution of the Ahmadiyya Muslim community.[112] The Ahmadiyyas were a close-knit, educated and prosperous community, but other Muslim sects and political parties (particularly the Deobandi sect) were vexed about their economic success and began a campaign condemning the Ahmadiyyas as blasphemes. The Muslim League implicitly supported the rallying cry against the Ahmadiyyas by not stopping the attacks made against them. But when the violence proved too much for the civilian authorities to handle, the army was sent in to stop the rioters.[113]

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[111] Ibid

[112] Eamon Murphy, *The Making of Terrorism in Pakistan: Historical and Social Roots of Extremism*, (Abingdon, Oxon: Routledge, 2013) (Rakuten Kobo Books) Chapter 3 (This has been earmarked as the opening of "the explosive Pandora's Box of sectarian violence.") [*Murphy 2013*]

[113] Murphy 2013, *supra* note 112 at Chapter 3 ; "Report of the Court of Inquiry constituted under Punjab Act II of 1954 to enquire into the Punjab Disturbances of 1953", (Lahore: Superintendent, Government Printing, Punjab, 1954), online:< https://archive.org/details/The1954JusticeMunirCommissionReportOnTheAntiAhmadiRiotsOfPunjabIn1 953> [*The Munir Report*] (In 1953 the government refused to give into the demand of a coalition of religious political leaders to dismiss the country's first foreign minister, a prominent Ahmadiyya, Chaudhry Zafarullah Khan. In retaliation the religious leaders threatened to take direct action upon which they were arrested and this resulted in country wide riots).

In the midst of this upheaval Pakistan passed its first significant security law, the Security of Pakistan Act 1952 (SPA).[114] It provided special measures to deal with persons who may be "acting in any manner prejudicial to the defense or the external affairs or the security of Pakistan."[115] The government was granted wide powers to preventively detain suspects for long periods of time and censor information it deemed detrimental to the security of Pakistan.[116] But there was no clarity on how the government could decide what is "prejudicial" to the defense of the country. Moreover, the SPA barred any court from allowing any suit or challenge made against any action or direction taken by the government under the law.[117]

Instead of owning up to its own shortcomings and addressing the grievances of its citizenry, the government used ethnic and sectarian conflicts to its own advantage. But when the situation exasperated it resorted to aggressive military force to reassert its dominance and reestablish control. The security legal framework implemented normalized the use of a strong military defense in everyday matters of law and order. This strengthened the "authority, status and legitimacy" of the Pakistan armed forces as *the* indispensable defender of the nation against all threats (internal and external).[118] More importantly, it allowed the State to avoid addressing the actual social problems in the country, leaving them to fester beneath the surface and grow deeper roots. Since this

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[114] *The Security of Pakistan Act 1952*, (Pakistan) No. XXXV of 1952 [*SPA 1952*]; "LHC told 1952 Security Act Still in Force" *Dawn* (15 February 2003), online: < https://www.dawn.com/news/82189>

[115] SPA 1952, *supra* note 114 at s 3(1) Restrictions on the movements of suspected persons and their detention.

[116] SPA 1952, *supra* note 114 at s 11

[117] SPA 1952, *supra* note 114 at s 17 (Bar of jurisdiction of Courts. Except as provided in this Act, no order made, direction issued, or proceeding taken under this Act, [or purpose to have been so made, issued or taken, as the case may be,] shall be called in question in any Court, and no suit, prosecution, or other legal proceedings shall lie against any person for anything done in good faith intended to be done under this Act, or for any loss damage caused to or in respect of any property whereof possession has been taken under this Act.)

[118] Murphy 2013, *supra* note 112 at Chapter 3

resort maintained power in the hands of the political and military elite it became a preferred way of governance for subsequent leaders.

4.2. EMERGENCY ORDINANCES

During the reign of the military ruler General Ayub Khan (1958-1969), the main beneficiaries of most economic and social policies was the military who controlled the nation's resources in every major industry and became the "largest business conglomerate."[119] Even though he tried to introduce land reforms to break the power of his biggest rival—the landed class—he was unable to maintain the land ceilings. So the masses were not economically better off than before. He was also unsuccessful in breaking another concentration of power, that of the religious elite. In fact, to avoid any major clashes with the clergy, Ayub deliberately embraced Islam in the state policy to motivate young officers to cross into India-held Kashmir and incite a Muslim uprising leading to a war between India and Pakistan in 1965.[120] Accordingly, he declared an emergency and passed the Defense of Pakistan Ordinance and Rules 1965 (DPO and Rules (1965)) to protect all government actions from any type of challenge or judicial review.[121] The DPO and Rules (1965) worked in conjunction with the existing Maintenance of Public Order Ordinances 1960 (MPOO). Ayub had passed the MPOO to

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[119] Ayesha Siddiqa, *Military Inc.: Inside Pakistan's Military Economy*, (Ann Arbor, MI: Pluto Press, 2007)

[120] Farzana Shaikh, *Making Sense of Pakistan*, (New Delhi: Foundation Books, 2009) 148 (Ayub began a "process of official myth-creation" to motivate young officers to fight their enemies.); See Shuja Nawaz, *Crossed Swords: Pakistan, Its Army and the Wars Within*, (Karachi: OUP, 2008) 206–10; See also, Arif Jamal, *Shadow War: The Untold Story of Jihad in Kashmir*, (New Delhi: Vij Books, 2009) 71–3

[121] *The Defense of Pakistan Ordinance 1965,* (Pakistan) Ordinance No. XXIII of 1965, [*DPO and Rules (1965)*] s 17 ((1) No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rules made thereunder ot any order made under any such rules. (2) …no suit or other legal proceeding shall lie against Government for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Ordinance or any riles made thereunder or any order made under any such rule.)

increase the government's control over people and the press and to severely punish any dissenters. The law was deliberately vague so that the courts would apply it expansively to punish any political behaviour deemed to be threatening the establishment.[122]

In 1971, Ayub's successor, General Yahya Khan (1969-1971), in response to the protests in East Pakistan, declared another emergency and once again enacted the DPO. At the time Pakistan was divided in two wings: East and West Pakistan, with the entirety of India situated between them. The power centers seated in West Pakistan dismissed East Pakistan's demands for more provincial autonomy and equal economic opportunities.[123] To quell the protests Yahya Khan sent in the Army to carry out Operation Searchlight, which was a "campaign of state terrorism utilizing mass rape, arson and the brutal murder of innocents," forcing many to flee from East Pakistan into India.[124] By December 1971, Indian army stepped across the border to help East Pakistan and quickly outnumbered West Pakistan's troops who surrendered on 16th December 1971, leading to the secession of East Pakistan to become Bangladesh.[125]

The DPO and Rules were said to "ensure the security, the public safety and interest and the defence of Pakistan."[126] But the focus was on the *defense* of the State apparatus and

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[122] *The West Pakistan Maintenance of Public Order Ordinance 1960*, (Pakistan) W.P. Ordinance No. XXXI of 1960 [*MPOO*]; Murphy 2013, *supra* note 112 at Chapter 4 (Ayub believed that the survival of the country lied in a "well-trained, well-equipped, and well-led Army."); Syed Sami Raza, *The Security State in Pakistan: Legal Foundations*, (New York: Routledge, 2019) 43 [*Raza 2019*]

[123] Pande 2018, *supra* note 110 at 30 (At the time East Pakistan was the largest province by population but all the power was retained by the oligarchy in West Pakistan, more specifically in Punjab. Even economically, West Pakistan was better off, even though the country's main export, jute, was produced in the East wing. Moreover, the elites of the West Pakistan held racists attitudes towards the Bengali-speaking East population.)

[124] Murphy 2013, *supra* note 112 at Chapter 4

[125] Farahnaz Ispahani, "Pakistan's Descent into Religious Intolerance" in Aparna Pande, ed, *Routledge Handbook of Contemporary Pakistan*, (Abingdon, Oxon: Routledge, 2018) 336 at 342 [*Ispahani 2018*]

[126] *The Defense of Pakistan Ordinance 1971*, (Pakistan) Ordinance No. XXX of 1971, Gazette of Pakistan, Extraordinary, 23 November 1971, Preamble [*DPO and Rules (1971)*]

hence the provisions were designed to just provide armed forces protection against any threat. The expansive powers allowed for arbitrary arrest and detention; regulation of telecommunication and transportation; regulation of the economy; censorship of the press; prohibition of assemblies and demonstrations; carrying out searches without warrants.[127] Moreover, special tribunals were set up for closed speedy trials where the judges could take cognizance of an offence without the accused being committed to it for trial or they could hear a case in the absence of the accused.[128] The tribunals were not even required to hear the entire evidence before passing their decision, for which they did not need to provide any reasons, except when awarding a death sentence.[129]

These emergency laws were obviously enacted to prioritize the interests of the military leadership over interests and wellbeing of the public. The military rulers resorted to these suppressive means to eliminate the threats that were created by their own political decisions. These laws quickly silenced dissenting voices so not to expose the fact that the wars fought were also another means to maintain the Army as the true defenders of the nation against India who was portrayed to be relentlessly plotting Pakistan's downfall. But this narrative became so widely accepted that even later civilian rulers have availed it to justify their otherwise questionable decisions and policies.

4.3. SUPPRESSION OF TERRORIST ACTIVITIES (SPECIAL COURTS) ACT 1975

The emergence of sectarian and terrorist violence in Pakistan is often associated with the reign of the despotic General Zia-ul-Haq (1977-1988), when, in fact, it was his

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[127]DPO and Rules (1971), *supra* note 126 s 3 (Power to make rules)

[128] DPO and Rules (1971), *supra* note 126 s 10 (1) (A Special Tribunal may take cognizance of offences without the accused being committed to it for trial.)

[129] DPO and Rules (1971), *supra* note 126 s 10 (2) (…it shall not be necessary in any trial for a Special Tribunal to take down the evidence at length in writing); s 10 (3) (A Special Tribunal shall not be bound to adjourn any trial for any purpose unless...necessary in the interest of justice.)

predecessor, the democratically elected Zulfiqar Ali Bhutto (1971-1977), whose policies begun the process of sectarian militancy in Pakistan.

The loss of East Pakistan led Bhutto to turn to Saudi Arabia to finance Pakistan's nuclear project; a request that came with a hefty price for the nation.[130] To appease the Saudi King as well as Pakistan's religious political parties Bhutto declared Islam as the state religion in the 1973 Constitution and allowed the Parliament to constitutionally declare Ahmadiyyas as non-Muslims.[131] With the loss of the non-Muslim community in East Pakistan and the declaration of Ahmadiyyas as non-Muslims, the minorities significantly lost their political voice and were more vulnerable to attacks as the religious and ethnic divisions deepened.[132]

Moreover, with the help of the Shah of Iran, Bhutto secretly approved plans to recruit pro-Islamic militant groups to subdue a Pashtun nationalist uprising within Pakistan as well as support Islamic militants in Afghanistan.[133] Bhutto had hoped that this would

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[130] Ehteshan Ahmad & Azizali Mohammed, "Pakistan, the United States and the Breton Woods Institutions: a Continuing Great Game?" in Aparna Pande, ed, *Routledge Handbook of Contemporary Pakistan*, (Abingdon, Oxon: Routledge, 2018) 228 at 230 [*Ahmad & Mohammed*] (Bhutto felt that "conventional parity with India was not feasible" and so thought that nuclear weaponry was necessary. And the US did not support this decision.)

[131] *Constitution of the Islamic Republic of Pakistan 1973* (Pakistan), Article 2 (Islam shall be the State religion of Pakistan.) [*1973 Constitution*]; Muhammad Ismail Khan, "Religion, Ethnicity and Violence in Pakistan" in Aparna Pande, ed, *Routledge Handbook of Contemporary Pakistan*, (Abingdon, Oxon: Routledge, 2018) 55 at 57 (He also banned alcohol and declared Friday a weekly holiday) [*Khan 2018*]; Madiha Afzal, "Dissimilar Histories: History Curricula in Government and Elite Pakistan Schools" in Aparna Pande, ed, *Routledge Handbook of Contemporary Pakistan*, (Abingdon, Oxon: Routledge, 2018) 265 at 272 [*Afzal 2018*]; *Constitution (Second Amendment) Act 1974*, (Pakistan) Gazette of Pakistan, Extraordinary, Part I, 21 September 1974; 1973 Constitution, *supra* note at Article 106 (3) (b) ("[N]on-Muslim" means a person who is not a Muslim and includes a person belonging to the Christian, Hindu, Sikh, Buddhist, or Parsi community, a person of the Quadiani Group or the Lahori Group who call themselves 'Ahmadis' or by any other name or a Bahai, and a person belonging to any of the Scheduled Castes.")

[132] Christine Fair, "Explaining Support for Sectarian Terrorism in Pakistan: Piety, Maslak and Sharia" in Aparna Pande, ed, *Routledge Handbook of Contemporary Pakistan*, (Abingdon, Oxon: Routledge, 2018) 309 at 343 [*Fair 2018*]

[133] Daveed Gartenstein-Ross & Tara Vassefi, "Violent Non-State Actors in the Afghanistan-Pakistan Relationship: Historical Context and Future Prospects" in Aparna Pande, ed, *Routledge Handbook of*

force Afghanistan to seek Pakistan out for help to clamp down on the perpetrators, effectively improving Pak-Afghan relations. On the contrary, all it did was fortify links between the Pakistan military intelligence and Islamic militants.[134]

Bhutto tried to improve the distribution of income by nationalizing industries, education and banks. The economic impact of his nationalization is debatable but it did serve a hefty punch to the prominent industrialists and shook up the gas and oil industry of Pakistan.[135] But even his land reforms were unable to break down the vast landholdings in Punjab and Sindh, because influential landowners managed to retain their properties through simple fictitious land transfers.[136] Since Bhutto's administration was overwhelmingly comprised of the landed class these decisions were making him unpopular and there was significant civil unrest in major cities of Lahore, Karachi and Hyderabad. To reestablish his authority he amended the 1973 Constitution to authorize the detention of a person up to three months (previously it was one) under any preventive detention law. He also removed the ceiling on the period of an emergency—which was six months—and said that it could run indefinitely until a resolution of a majority of the total membership of both Houses of Parliament called for its end.

Contemporary Pakistan, (Abingdon, Oxon: Routledge, 2018) 396 at 399-400 [*Gartenstein-Ross & Vassefi 2018*]; Alex Vatanka, "Iran and Pakistan: a Case of Keeping a Distance" in Aparna Pande, ed, *Routledge Handbook of Contemporary Pakistan*, (Abingdon, Oxon: Routledge, 2018) 457 at 460 [*Vatanka 2018*]

[134] Ibid

[135] Imtiaz Gul, "Pakistan's Elite Capture and the State of Insecurity" in Aparna Pande, ed, *Routledge Handbook of Contemporary Pakistan*, (Abingdon, Oxon: Routledge, 2018) 189 at 190 [*Gul 2018*]; Atta Ali Malik, "From Chaos to Building a Secure, Sustainable Energy Future" in Aparna Pande, ed, *Routledge Handbook of Contemporary Pakistan*, (Abingdon, Oxon: Routledge, 2018) 206 at 209 [*Malik 2018*]

[136] Murphy 2013, *supra* note 112 at Chapter 4

Moreover, he reduced the higher courts' powers of judicial review.[137] These changes helped Bhutto to suppress the political opposition he was facing, with the least amount of judicial interference.

Still dissatisfied with the results of his efforts he proceeded to pass the Suppression of Terrorist Activities (Special Courts) Act 1975 (STAA).[138] The STAA aimed to suppress acts of "sabotage, subversion and terrorism" but none of these three terms were defined in the law. Terrorism was to be understood "in the context of any offence of serious and grave nature."[139] So the law established special courts for speedy trials with exclusive jurisdiction over a number of existing enumerated scheduled offences.[140] Similar to the DPO and Rules, the special courts could take direct cognizance of cases even if they weren't sent to the courts and they could hold trials in absentia.[141] Moreover, the STAA reversed the burden of proof onto the accused to prove their innocence.[142]

With the STAA, a shift took place in the stated objectives of the security laws. Previously, the aim was to provide defense and security, but the STAA for the first time

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[137] Raza 2019, *supra* note 122 at 54; These powers were further reduced through the Constitution (Fifth Amendment) Act 1976, *Constitution (Fifth Amendment) Act 1976*, (Pakistan) Gazette of Pakistan, Extraordinary, Part I, 16 September 1976

[138] *Suppression of Terrorist Activities (Special Courts) Act 1975*, (Pakistan) No. XV of 1975 [*STAA 1975*] The act repealed the *Suppression of Terrorist Activities (Special Courts) Ordinance 1974,* (Pakistan) Ordinance No. XVIII of 1974

[139] *Basharat Ali v Special Judge, Anti-Terrorism Court-II, Gujranwala*, [2004] 2004 PLD Lahore High Court 199 (Pakistan) para 9 [*Basharat Ali*]

[140] Raza 2019, *supra* note 122 at 55 (These included the Pakistan Penal Code 1860, the Explosive Substances Act 1908, the Arms Act 1878, the West Pakistan Arms Ordinance 1965, the Pakistan Arms Ordinance 1960, rule 43 of the Defense of Pakistan Rules 1971, the Railway Act 1890, the Telegraph Act 1885, the Aircraft Rules 1937, and the Prevention of Anti-National Activities Act 1974.)

[141] STAA 1975, *supra* note 138 s 5-A (4)

[142] STAA 1975, *supra* note 138 s 8 (Where any person accused of having committed a scheduled offence is found to be in possession of, or to have under his control, any article or thing which is capable of being used for, or in connections with, the commission of such offence, or is apprehended, in circumstances which lead to raise a reasonable suspicion that he has committed such offence, he shall be presumed to have committed the offence unless he can prove that he had not in fact committed the offence.)

added the prevention of terrorism in the law as its stated objective.[143] The placement of terrorism next to sabotage and subversion, created the perception that terrorism was a discernible act committed against the State by non-state actors. It elevated its status to an offense that directly threatened the existence of the State and must therefore be immediately quashed and its perpetrators deserved no protection of the rule of law. Without even actually defining the term terrorism (even the courts never demanded of the government to define it) the law was used to serve Bhutto's interest.[144] He utilized the STAA to circumvent constitutional safeguards to silence his political opposition as quickly as possible. This freed him from having to confront and accept the role his administration was playing in the perpetuation and creation of the violence engulfing the country because of his bad governance and zealous policies.

4.3.1. SECTARIAN MILITANCY TAKES FLIGHT (1977-1988)

Bhutto had set the stage for General Zia-ul-Haq's discriminatory policies to crystallize in the fabric of the state machinery. Zia's regime was a continuation of the tradition of manipulating ethnic and religious divides for political gain and power retention.[145] He also got lucky that two international events—the Iranian Revolution and the Soviet-Afghan war—coincided with his tenure and together further propelled the violence in Pakistan.

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[143] Raza 2019, *supra* note 122 at 62
[144] Raza 2019, *supra* note 122 at 55
[145] Abbas Rashid, "The Politics and Dynamics of Violent Sectarianism" (1 December 1996), online: *TNI* < https://www.tni.org/en/article/the-politics-and-dynamics-of-violent-sectarianism>; In 1977 Zia staged a military coup and seized the administration from Bhutto. Bhutto was charged and convicted with conspiracy to murder a political opponent and hung to death on 4th April 1979; a judicial decision which to date remains a major embarrassment for the nation's judicial and political history (*State v Zulfiqar Ali Bhutto*, [1978] PLJ 1978 Cr.c Lahore 1 (Pakistan))

Zia integrated narrow Deobandi religious beliefs into the state machinery and the legal system, excluding all other schools of thought. This created fissures between not only Muslims and non-Muslims, but also between Sunnis and Shias, and within different Sunni sects as well.[146] He introduced a litany of discriminatory and draconian laws, including the Hudood Ordinances which severely curtailed women's rights and introduced severe punishments in the criminal system. Moreover, he made it a crime for Ahmadis to call themself a Muslim or to use any Islamic epithets, descriptions, or titles, and banned them from holding religious ceremonies.[147]

He continued accepting money from both Saudi Arabia and Iran to fund Deobandi and Shiite educational institutions, respectively, which made the youth of Pakistan politically active and divided along sectarian lines.[148] Since usual political avenues of protest were banned, both groups resorted to violent attacks on each other's places of worship.[149] Eventually, with more foreign and local funding, these groups became organized and militant in their operations, which coincided with the Afghan *jihad* movement against the Soviets.

When the USSR troops entered Afghanistan to save its communist legacy against the orthodox Afghani Islamic clergy the US seized the opportunity to strike against the Soviets. Together with the covert help of Zia and Saudi Arabia they began providing

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[146] Murphy 2013, supra note 112 at Chapter 5

[147] *Pakistan Penal Code 1860*, (Pakistan) No. XLV of 1860, s 298B (Misuse of epithets, descriptions and titles, etc., reserved for certain holy personages or places) and 298C (Person of Quadiani group, *etc.*, calling himself a Muslim or preaching or propagating his faith) [*PPC 1860*]; See, *Mujibur Rehman v Federal Government of Punjab,* [1985] 1985 PLD Federal Shariat Court 8 (Pakistan); See also, *Zaheeruddin v The State*, [1994] 1994 PLJ Supreme Court 1 (Pakistan)

[148] This included formal institutions such as the Saudi funded International Islamic University in Islamabad, as well as informal madrassas across the country.

[149] Ajay Darshan Behera, "A Weberian Perspective on the Nature of the State in Pakistan" in Aparna Pande, ed, *Routledge Handbook of Contemporary Pakistan*, (Abingdon, Oxon: Routledge, 2018) 126 at 138 [*Behera 2018*]

support to the Afghan jihadists, in the form of money, intelligence and weaponry. The Central Intelligence Agency (CIA) and Pakistan's Inter-Services Intelligence (ISI) trained and equipped the soldiers in madrassas (religious schools) that were set up along the Pak-Afghan border. The ISI forced young Afghan refugees into training and joining the *mujahedeen* movement.

By 1989 the Soviets had completely withdrawn their troops from Afghanistan. Having secured victory, the US also walked away, leaving Afghanistan with no direction for the future. The country descended into chaos and a civil war erupted. From the carnage arose a group of young men—the Taliban—who were among those refugees recruited to fight during the war and they tried to restore order in the country. The Taliban's religious inclinations made them natural allies for Pakistan against India.

But the war had left Pakistan's already poor economy in a worse position, so local private militias and cottage arms industries (backed by the ISI) took this opportunity to grow and provide illegal arms and drugs to the existing sectarian groups, creating what is referred to as the "Kalashnikov culture."[150] Another outcome of the war was that in addition to the military the ISI, a previously irrelevant institution, had solidified its power over matters of internal and external security.[151] Its role in supporting the "spread" of Islam strengthened the impression that the military and intelligence agencies were the real defenders of Islam and the nation. The ISI has continued to steer public discourse to serve its interests and to find ways to make the institution appear indispensible for the State's survival.

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[150] Behera 2018, *supra* note 149 at 128; Murphy 2013, *supra* note 112 at Chapter 6 (The ISI was involved in the arms and drugs trade as well as it used the commodities to fund the jihadists).

[151] Pande 2018, *supra* note 110 at 34 (The ISI, a previously useless institution, developed through the war a "virtual veto power" in decision making.)

The STAA remained in force throughout this time but, additionally, Zia amended the 1973 Constitution to establish military courts all over the country with the exclusive jurisdiction over any activity prejudicial to martial law and all other courts were barred from reviewing their decisions.[152] As the military had unlimited powers of arrest, detention, and prosecuting any dissenters, countless people were wrongly imprisoned and chastised for just participating in normal political activity.[153] None of these legal actions actually curtailed any of the violence and the nation was still divided into various factions. There was a Sunni-Shia divide in the provinces of Punjab and KPK; a Sindhi-Muhajir divide in Sindh; streams of nationalism in Balochistan; and anti-Indian jihadists fighting in Indian-held Kashmir. Zia's policies did not create these sectarian and ethnic divisions but they certainly did continue to provide the opportunity to militarize and weaponize the conflicting groups. Resultantly, the levels of violence kept increasing across the country.

CONCLUSION: SETTING A PRECEDENT FOR THE FUTURE

The purpose of our discussion so far has been to show that since independence, Pakistan's political and military elite (who have frequently overlapped) propagated a very particular narrative which was the idea that the armed forces were the only defenders of the nation against threats to the vulnerable Muslim population. But this "Muslim" identity was a very specific and narrow one—Sunni Deobandi—which

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[152] *Constitution (Second Amendment) Order 1979*, (Pakistan), President's Order No. 21 of 1979, s 2 (Article 212A was added to establish military courts or tribunals to try offences punishable under the Martial Law Regulations or Martial Law Orders. This provision was subsequently, omitted by the Revival of Constitution of 1973 Order, 1985).; Hamid Khan, *Constitutional and Political History of Pakistan*, (Oxford: OUP 2001) 636 [*H Khan 2001*]; Rafia Zakaria, "Military Courts and Terrorists Heroes", *Aljazeera* (29 December 2014), online: <https://www.aljazeera.com/indepth/opinion/2014/12/military-courts-pakistan-2014122983812353350.html> [*Zakaria 2014*]; Raza 2019, *supra* note 122 at 58

[153] H Khan 2001, *supra* note 152 at 636; Zakaria 2014, *supra* note 152

excluded and alienated all other religious, sectarian and ethnic denominations. By controlling this narrative, the military elite were able to fortify the indispensability of the armed forces for the survival of the nation. They promulgated emergency and security laws (SPA, MPOO, STAA) to actually suppress any political opposition by allowing the executive to exercise "unbridled powers" of arrest, detention, extra-judicial killing, and not be subject to any check or judicial review.[154] But to the public these laws were presented as necessary for the interest of *national security* or *state defense*. These laws were used to normalize the concept that certain offences can be so dangerous and heinous that they can only be handled by extraordinary legal frameworks which inevitably require limiting constitutional rights. Ergo, to maintain *national* security the provisions by-passed constitutional rights of fair trial, due process, life and liberty.

But as we discussed in Chapter 3, when we broaden the conception of security to include *human* security we can see why Pakistan's laws faltered to secure its people. Rights and security are not inversely related and so when the government curtailed basic political rights—while also ignoring economic and social rights—it was not only depriving the polity of the resources needed to reach its full potential but also, contrarily, increasing insecurity.

Unfortunately, these concepts and attitudes became the foundation of Pakistan's security legislative framework which has, over the years, morphed into its current counterterrorism legislative regime. Since this basic structure already existed, Pakistan

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[154] Waseem Ahmad Shah, "View from the Courtroom: Invoking of Article 245 Generates Legal Debate" *Dawn* (29 July 2014), online: <https://www.dawn.com/news/1122262>

was able to seamlessly implement harsher measures in pursuance to its commitment to the Global War on Terror. However, as we will discuss in the next chapter, Pakistan's current counterterrorism approach remains ineffective because of its overwhelming support for violence as the only viable solution.

CHAPTER 5: PAKISTAN'S CURRENT COUNTERTERRORISM REGIME

INTRODUCTION

In this chapter we will examine Pakistan's current counterterrorism regime which began with the promulgation of the Anti-Terrorism Act 1997 (ATA), which remains the country's primary anti-terrorism legislation. It granted the law enforcement authorities wide powers of search, arrest, and detention and it authorized the setting up of Anti-Terrorism Courts (ATCs) across the country to try cases of terrorism through an expedited trial procedure. After the 9/11 attacks, Pakistan joined the GWOT and was expected to strengthen its counterterrorism strategies. In compliance with that Pakistan for the first time added a legal definition to "terrorism" under the ATA. This definition was very broad to begin with and over the years has been amended numerous times to expand the list of offences actionable under the ATA as terrorism. The expansion of the definition has only resulted in the police applying the law incorrectly in order to circumvent procedural safeguards during investigations. In addition to "strengthening" the ATA, Pakistan also launched various military operations against militants and terrorists and continues to do so. It has also revived military courts to try civilian cases of terrorism and set up internment camps for indefinitely detaining captured militants or suspects. While these measures may have made Pakistan good at killing terrorists it has still not manage to properly overcome terrorist violence.

5.1. THE ANTI-TERRORISM ACT 1997

Zia's death in 1988 was followed by a period of democratic rule for almost a decade (1988-1999). However, the democratic governments were no better equipped to effectively handle the law and order situation.[155] The LEAs could still resort to police brutality and extra-judicial killings, while the regular judicial system was inefficient, weak and slow at handling the cases.[156] Moreover, towards the end of this decade the country's unemployment rate was at an all-time high, there was a decline in foreign trade and investment, and the country was under mountains of debt.[157] Unsurprisingly, the violence kept mounting to higher peaks so Nawaz Sharif's government (1997-1999) decided to renew its anti-terrorism legislation and enacted the Anti-Terrorism Act in August 1997.

The ATA appeared to be more comprehensive than any of the previous security laws. It repealed the STAA but retained many of its provisions and similarly enhanced the police powers of investigation, arrest, and detention, and established separate ATCs for speedy trials. Since its promulgation the ATA has become Pakistan's primary counterterrorism legislation and even though it has been amended numerous times it still remains fraught with problems which will be discussed below.

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[155] From 1988 to 1999, the country's administration ping-ponged between two dynastic political parties: Pakistan's People Party (PPP) led by Benazir Bhutto and Pakistan Muslim League (N) (PML-N) headed by Nawaz Sharif. In this party each party had two tenures: Benazir from 1988-1990 and 1993-1996, and Sharif from 1990-1993 and then 1997-1999).

[156] H Khan 2001, *supra* note 152 at 797

[157] The overall deficit in 1990-1991 was Rs. 89.2 billion and in 1997-1998 it was Rs.148 billion. See Muhammad Ishfaq & M. A. Chaudhary, "Fiscal Deficits and Debt Dimensions of Pakistan" (1999) 38:4 The Pakistan Development Review 1067 (jstor), online:< https://www.jstor.org/stable/pdf/41260222.pdf?casa_token=k6NnFGxdLr8AAAAA:pIf9F6BFZi2cd9naPdM_Wt9DZoOKep79n2NgsZr09JMe_3AUyZ6Z_QINGsP99IDwVXBNsYJxC-yrkEQGhLXMnXH-ese8jhIcO5FwXixJLADeSnzIz_mfug>

5.1.1. POWERS OF SEARCH, ARREST AND DETENTION

The ATA grants the LEAs broad powers of arrest, detention and the use of force. Since there is no monitoring mechanism the LEAs end up misusing and abusing these already wide discretionary powers.

Firstly, Section 5 (1) of the ATA allows the police and armed forces to use "necessary force to prevent the commission of terrorist acts."[158] Officers have immense discretion and subjectivity over the exercise of this power. There is no guideline or standard of what is necessary and appropriate force. The police have often reported fake encounters with suspects (called "blind" police reports) to cover up excessive injuries sustained by a suspect during an encounter or to cover-up when suspects are killed during a cross-fire.[159]

Secondly, Section 5 (2) (ii) and (iii) empower the LEAs to arrest without warrant and to enter and search a premises without warrant, respectively.[160] These arrests are to be made against whom there is a "reasonable suspicion" that they have committed or are about to commit an offence under the ATA. The term "reasonable suspicion" means a "bona fide belief on the part of the police," that is founded on some "definitive

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[158] *Anti-Terrorist Act 1997,* (Pakistan) No. XXVII of 1997, s 5(1) (Before using force the officer must give "sufficient warning") [*ATA 1997*]; ATA 1997, s 5(2); ATA 1997, s 5 Proviso 2 (The order of open fire can only be given by a police officer not below the rank of BS17 or equivalent rank in the case of armed forces.)

[159] Research Society of International Law, *Counter-Terrorism and Human Rights: A Review of Anti-Terrorism Court Trial Procedure in Pakistan*, (Islamabad: Research Society of International Law, 2018) at 24, 32 (The police often resort to inflicting fake injuries on themselves to prove the authenticity of their stories and to prove that an altercation actually occurred). [*Counter-Terrorism and Human Rights*]

[160] ATA 1997, *supra* note 158 at s 5(2)(ii)

averments/allegations which create the basis for suspicion of the involvement in the offence of the person to be arrested."[161]

Article 10 (2) of the 1973 Constitution provides that every person arrested has to be presented before a Magistrate within twenty-four hours of the arrest and Article 9 protects persons from being arbitrarily deprived of their life and liberty.[162] However, in practice the authorities often do not produce the suspect before a Magistrate and instead keep the suspect in custody for more than the stipulated time. They will detain the suspect until they are able to gather the evidence they need to link the suspect with the offence in blatant violation of the Constitutional safeguards.[163]

Additionally, the police have to maintain daily case diaries documenting the details of arrests[164] but they are often inconsistent and irregular in maintaining the diaries or they leave out crucial information usually because they have failed to obtain it. Often times

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[161] *Manthar Ali v S.H.O.*, [2013] 2013 PCrLJ Karachi 553 (Pakistan)

[162] 1973 Constitution, *supra* 131 note at Art 10 (2) (Every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest…and no such person shall be detained in custody beyond the said period without the authority of a magistrate.); Article 9 (No person shall be deprived of life or liberty save in accordance with law); See *Ms. Benazir Bhutto v Federation of Pakistan and another*, [1988] 1988 PLD Supreme Court 416 (Pakistan) (Right to life includes freedom from wants, poverty and arbitrary restraint from authority.)

[163] 1973 Constitution, *supra* note 131 at Article 10 (2) (Every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the nearest magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate); *The Code of Criminal Procedure 1898*, (Pakistan) No. V of 1898, s 60 (Person arrested to be taken before Magistrate or officer incharge of police-station) [*Cr.P.C*]; Cr.P.C, s 61 (Persons arrested not to be detained more than twenty-four hours); Cr.P.C, s 167 (Procedure when investigation cannot be completed in twenty-four hours)

[164] *The Police Act 1861,* (Pakistan) Act V of 1861 s 44 (Every officer in charge of a police station has to keep a general diary that records the particulars of every arrest and complaint made); *The Police Rules 1934,* (Pakistan) Rule 22.48 (The Daily Diary has to be maintained regularly recording every matter as soon as possible with accurate time stamps and pagination.)

they log their activities at later stages and usually fabricate elaborate accounts of arrest when in fact the accused is already in custody.[165]

Furthermore, a common practice is to "cast the net wide" over likely suspects which means that the police arbitrarily add names to the list of suspects to increase the odds of securing convictions.[166] But this practice imposes unjustified hardships on innocent people and unfairly targets certain communities creating rifts and distrust between the public and authorities.[167]

Thirdly, under Section 21-E police must have the court's permission to physically remand a suspect beyond the initial twenty-four hours. Courts can grant this if they are satisfied that physical custody is necessary for the investigation and accordingly the period of remand is to be fixed.[168] The remand can be for a minimum of fifteen days but no more than thirty days at a time (a total of ninety days).[169] The purpose of physical remand is to utilize the time to obtain evidence from the suspect. But a remand period of between fifteen to thirty days is excessive and provides ample opportunity for "custodial torture and unlawful use of force by the investigating agencies and the

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[165]Counter-Terrorism and Human Rights, *supra* note 159 at 31; See *Inspector Syed Rahim v State,* [2019] 2019 PCrLJ 640 Peshawar (Pakistan) (The authorities had falsified facts regarding the arrest and collection of evidence.)

[166] *Zulqarnain v The State*, [2016] 2016 YLRN 183 Lahore (Pakistan) (The eye-witness nominated only five persons but the police arrested nine people without even adducing separate evidence against the other four.); Counter-Terrorism and Human Rights, *supra* note, 23

[167] David Cole, *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security*, (New York: The New Press, 2006) 222 [*Cole 2006*]

[168] *Rashid v The State,* [1970] 1970 PLD Lahore 389 (Pakistan)

[169] ATA 1997, *supra* note 158, s 21-E (1), (2); *Raja Waheed Mehfooz v Special Judge, Anti-Terrorism Court II, Rawalpindi,* [2016] 2016 PCrLJ Lahore 1773 (Pakistan) (Any remand order passed without reasons would be a legally null order.)

police."[170] Especially, since the police often extend the remand period without the court's permission.

If the ATC finds that physical remand is unnecessary, it can grant judicial remand (maximum of fifteen days) if there are grounds for believing that the accusation or information against the suspect is well-founded.[171] Any further detention can be granted if there is some evidence to raise sufficient suspicion of the guilt of the accused and further evidence is expected to be collected.[172] However, the ATCs have at times granted judicial remand in the absence of the accused. For example, in the *Sobia Ilyas* case the accused was denied the right to be produced before the ATC and yet his judicial remand was authorized by the court.[173] The High Court ruled that while this did not amount to an illegal detention, judges should ensure that an accused is produced before them before deciding remand matters.

Fourthly, Section 11 EEE of the ATA, the government may arrest and detain a proscribed individual for a period of twelve months, if the government is "satisfied"

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[170] Muhammad Oves Anwar, "Human Rights and the Anti-Terrorism Act 1997" in Research Society of International Law, ed, *Human Rights and Pakistan's Counter-Terrorism Legislative Landscape*, (Islamabad: Research Society of International Law, 2017) 66 [*Anwar 2017*]; Counter-Terrorism and Human Rights, *supra* note 159 at 43

[171] Cr.P.C, *supra* note 163 at s 167 (1)

[172] Cr.P.C., *supra* note 163 at s 344; *Dr. Aijaz Hassan Qureshi v Government of the Punjab through Secretary Home Department Government of Punjab, Lahore and another*, [1977] 1977 PLD Lahore 1304 (Pakistan); ATA 1997, *supra* note 158 at s 19 (5) (Where, in a case triable by [an Antiterrorism Court] an accused has been released from police custody, [or custody of any other investigating agency joined in an investigation] under section 169 of the Code, or has been remanded to judicial custody, the [Antiterrorism Court] may, on good grounds being shown by a public Prosecutor or a Law officer of the Government, for reasons to be recorded in writing, make an order for placing him in police custody [custody of any other investigating agency joined in investigation] for the purpose of further investigation in the case.)

[173] *Sobia Ilyas v The State,* [2009] 2009 PCrLJ Islamabad 910 (Pakistan); *Raja Waheed Mehfooz v Special Judge, Anti Terrorism Court II, Rawalpindi,* [2016] 2016 PCrLJ 1773 (Pakistan) (The ATC judge had granted 15-days physical remand without any reasons. The Lahore High Court set aside the order because the ATC was required to record its reason for granting such remand. Remand could not be granted "mechanically without application of mind, rather it was to be granted only in case of real necessity.")

that it is necessary to do so.[174] However, this section does not provide any clear criterion for the government to follow while assessing whether or not a person should be detained. The words "Government if satisfied" grants wide discretion to the authorities to arbitrarily apply the law and deprive someone of their liberty for twelve months. The provision also does not clarify what is the person prevented from doing.[175] Even though Article 10 (4) of the Constitution requires the Supreme Court's Review Board to review cases of detention every three months that means that someone can still be wrongfully detained for the three months till the review takes place.[176]

Lastly, Section 11EEEE allows the armed or civil armed forces to preventively detain a person who has been involved in an offence under the Act, or against whom there is a "reasonable complaint…or credible information" is received or a "reasonable suspicion exists" of the person's concern with an offence.[177] This preventive detention can be granted for a period up to three months. This provision is often utilized in addition to the aforementioned remand provisions to extend a suspect's period of detention indefinitely, violating the Constitutional limits on preventive detention (three months).[178] There are multiple cases of enforced disappearances, creating panic and insecurity in the country and this clearly infringes Article 10 (1) of the Constitution

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[174] ATA 1997, *supra* note 158 at s 11EEE; See ATA 1997, *supra* note 158 at s 11EE (1) The Federal Government, may, by order…list a person as a proscribed person in the fourth Schedule on an *ex-parte* basis, if there are reasonable grounds to believe that such person is (a) concerned in terrorism; (b) a member of or associated with an organization under observation; and (c)in any way concerned or suspected to be concerned with such organization or any organization suspected to be involved in terrorism or sectarianism.
[175] Anwar 2017, *supra* note 170 at 68
[176] 1973 Constitution, *supra* note 131 at Art 10 (4)
[177] ATA 1997, *supra* note 158 at s 11EEEE
[178] 1973 Constitution, *supra* note 131 at Art 10 (4)

which provides that detainees have the right to be represented, their family compensated, and they have a right to a fair trial.[179]

The accountability mechanism under the ATA is weak and the investigation process remains shrouded in secrecy and police officials are protected from facing liability. Section 27 empowers the ATC or a High Court to penalize investigating officers for defective investigations and if an innocent person is wrongly implicated in a crime by an officer, such officer can be liable to imprisonment for a term of up to two years or with fine or with both.[180] But the frequency of defective investigations makes it impractical to penalize every defective officer.[181] Also since the irregularities are embedded within the institution it becomes difficult to pinpoint the exact officer responsible for a defect. Moreover, the High Courts award "symbolic punishment" which is usually a nominal amount of fine.[182] This is easily paid off and does not actually correct or change the behavior and practices of the officers.

Low accountability, lack of access to justice, arbitrary use of force and power are endemic features of the criminal justice system of Pakistan but they are exacerbated in under the ATA regime as it offers the LEAs wide and unmonitored discretion. The poor and encroaching practices of the police have increased the mistrust between the

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[179] Malik Asad, "Enforced disappearance may attract provisions defined under ATA: IHC", *Dawn* (12 July 2018), online: < https://www.dawn.com/news/1419433>; "No end in sight: enforced disappearances in Pakistan" *ICJ* (6 March 2014), online: < https://www.icj.org/no-end-in-sight-enforced-disappearances-in-pakistan/> ; 1973 Constitution, *supra* note 131 at Art 10 (1) (No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult and be defended by a legal practitioner of his choice and every person).

[180] ATA 1997, *supra* note 158 at s 27-AA (Punishment for false implication)

[181] ATA 1997, *supra* note 158 at s 27 (Punishment for defective investigation is imprisonment for up to two years or with fine or with both)

[182] *Waqar Ahmad v State,* [2016] 2016 PLD 21 Peshawar (Pakistan) (The officer was fined Rs. 4000 for defective and improper investigation);

community and the authorities. People feel less secure knowing that the authorities can arbitrarily violate rights but face no real consequences for it. Moreover, with bad policing practices, like casting a wide net, the targeted suspect communities feel that they are being treated unjustly compared to others and this may actually encourage them to join violent terrorist groups as a means of retaliation or self-protection.[183]

5.1.2. SPEEDY TRIALS

One of the first main problems of the trial process under the ATA is the fact that it set up special Anti-Terrorism Courts to try the prescribed offences through an expedited trial process. The law stipulates that a case sent to the ATCs must be heard and decided in seven days and the court can grant only two adjournments.[184] Not only has this provision never been realized—there is a considerable backlog of cases and constant adjournments are allowed that can stretch trials over periods of four to five years.[185] But in the interest of speedy trials the ATCs end up applying inconsistent evidentiary standards to cases as they have wide discretion over what evidence is acceptable.[186] The investigations suffer from the aforementioned errors as well as others such as evidence

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[183] Yilmaz 2009, *supra* note 81 at 47 (The greater the feeling of isolation and deprivation, the higher the involvement in terrorists groups.)

[184] ATA 1997, *supra* note 158 at s 13 (1) (For the purpose of providing for the speedy trial of the cases under this Act and of scheduled offences, the Federal Government… may establish by notification one or more Anti-terrorism Courts in relation to each territorial area as specified by the High Court concerned.); ATA 1997, *supra* note 158 at s 19(7) (The Court shall, on taking cognizance of a case, proceed with the trial from day-to-day and shall decide the case within seven days, failing which the matter shall be brought to the notice of the Chief Justice of the High Court concerned for appropriate directions, keeping in view the facts and circumstances of the case.); ATA 1997, *supra* note 158 at s 19(8) (An Antiterrorism Court shall not give more than two adjournments during the trial of the case and that also imposition of exemplary costs.)

[185] Counter-Terrorism and Human Rights, *supra* note 159 at 98

[186] Counter-Terrorism and Human Rights, *supra* note 159 at 89; Qanun-e-Shahdat Order *1984*, (Pakistan) President's Order No. 10 of 1984, art 131 (Judge to decide as to admissibility of evidence. (1) When either party proposes to given evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant, and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant and not otherwise.) [*QSO 1984*]

tampering and broken chain of custody. Witness statements are not accurately noted and subsequently altered to corroborate with other circumstantial evidence.[187] Yet the ATCs still accept such dubious evidence. The ATCs have an unspoken rule that "the procedural defects and sometimes even the illegality committed during the course of investigation shall not demolish the prosecution case nor vitiate the trial."[188] The varying treatment of evidentiary standards across the country has led to inconsistency and uncertainty in the law while violating fair trial rights.

Additionally, Section 21H of the ATA states that a confession made before a police officer is admissible evidence, provided that it was not coerced.[189] This deviates from the regular criminal procedure under the Code of Criminal Procedure (Cr.P.C) where any confessions must be made before a Magistrate to be admissible evidence.[190] As there is no mechanism to ensure that a confession is not coerced it is possible that under Section 21H false confessions are accepted as admissible evidence, resulting in false verdicts of guilt.

Lastly, in 2015, Nawaz Sharif's government lifted the moratorium on the death penalty (placed in 2008) so that it could be awarded in ATA cases. Section 7 makes the death penalty available for "acts of terrorism", including, terrorism causing death, kidnapping for ransom or hostage-taking, and hijacking.[191] Punishments should be proportionate to the gravity of the crime. This principle is clearly not followed under the ATA where

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[187] Counter-Terrorism and Human Rights, *supra* note 159 at 54-5
[188] Syed Manzar Abbas Zaidi, "Terrorism Prosecution in Pakistan: A Critical Appraisal" (Platform: 2016) [*Zaidi 2016*]
[189] ATA 1997, *supra* note 158 at s 21H
[190] Cr.P.C, *supra* note 163 at s 164
[191] ATA 1997, *supra* note 158 at s 7 (1)(a), (e), (f)

there seems to be no "cogent thinking in terms of the aims of sentencing" behind the punishments.[192]

The "speedy" ATC trial process infringes on many of the elements of the right to fair trial enshrined under Article 10A of the Constitution.[193] These include the right to equality before a competent, impartial, legal and independent court; right to presumption of innocence and right against self-incrimination; right to be informed of charges and have adequate time to prepare one's defense; right to be tried without undue delay; right to an appeal; the right to access to justice.[194] The infringement of this fundamental right is concerning under any circumstance but it is even more dangerous under the ATA because the stakes are higher, especially since the ban on the death penalty was lifted. Allowing capital punishment in a criminal system that is marred with procedural deficiencies and inefficiencies is severely problematic because of the higher chances of miscarriages of justice. This is why it becomes even more important to ensure that any conviction under the ATA was secured safely, by respecting the rule of law, especially since the ATA broadly defines terrorism which can extend the jurisdiction of the ATCs far beyond the ambit of the law.

5.1.3. DEFINING AND INTERPRETING TERRORISM

Similar to the STAA, when the ATA was first promulgated it did not define the term "terrorism" because the law was not necessarily designed to establish a separate crime

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[192] Anwar 2017, *supra* note 170 at 31

[193] 1973 Constitution, *supra* note 131 at Art 10A (For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process)

[194] *Government of Balochistan through Additional Chief Secretary v. Azizullah Memon*, [1993] 1993 PLD Supreme Court 341 (Pakistan); See also, *Saiyyid Abul A'la Maudoodi and others v The Government of West Pakistan and another,* [1964] 1964 PLD Supreme Court 673 (Pakistan)

of terrorism but instead to implement an expedited investigation and trial procedure to try suspects of crimes that already existed under the Pakistan Penal Code 1860 (PPC).[195] However, initially the ATA used the phrase "terrorist act" and defined it as:

> Whoever, to strike terror in the people, or an any section of people, or to alienate any section of the people or to adversely affect harmony among different sections of the people, does any act or thing by using bombs, dynamite or other explosive or inflammable substance, or firearms, or other lethal weapons or poisons or noxious gases or chemical or other substances of a hazardous nature in such a manner as to cause the death of, or injury to, any person or persons, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community or display firearms, or threaten with the use of force public servants in order to prevent them from discharging their lawful duties commits a terrorist act.[196]

While deciding cases under this definition the ATC judges would still follow the mindset of the previous military courts and special courts under the STAA and apply a "premature, speculative and presumptive test."[197] They decided cases based on whether the act under question *could have* caused insecurity and not whether the intention behind the action was to *actually cause* insecurity or terror.[198] The focus was on the impact made on the population rather than on any motivation behind the act. But determining cases based on the possibility of insecurity led to an inconsistent

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[195] Raza 2019, *supra* note 122 at 69
[196] *Anti-Terrorist Act 1997,* (Pakistan) No. XXVII of 1997, s 6 **as it appeared on 13 August 1997**
[197] *Basharat* Ali, *supra* note 139 at para 14
[198] *Basharat* Ali, *supra* note 139 at para 16

application of the law across the country and brought many regular offences under the ambit of the ATA because fear or terror *could* be the possible by-product of any crime.[199]

After the 9/11 attacks, in compliance of the GWOT, Pakistan was expected to toughen its domestic counterterrorism regime. One of the steps taken in this direction was to add a coherent definition of terrorism to the ATA.[200] So in 2001 the ATA finally provided a definition for terrorism that read:

> (6) In this Act, "terrorism" means the use or threat of action where:
>
> (a) the action falls within the meaning of subsection (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 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.[201]

It should be noted that no original thought was put into drafting this definition; it was borrowed from the United Kingdom's Terrorism Act 2000.[202] But Pakistani courts viewed this as an indication that Pakistan was in "perfect accord with the global

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[199] Shujaat Ali Khan, "Bill to Turn Pakistan into Police State: Lawyers" *Dawn* (16 August 1997), online: < https://asianstudies.github.io/area-studies/SouthAsia/SAserials/Dawn/1997/16Aug97.html#parl>

[200] *Anti-Terrorism (Amendment) Ordinance 2001,* (Pakistan) Ordinance No. XXXIX of 2001, Gazette of Pakistan, Part I, 14th August 2001 [*ATA 2001 Amendment*]

[201] ATA 2001 Amendment, *supra* note 200 at s 5

[202] *The Terrorism Act 2000*, (UK) Chapter 11, s 1

perceptions about the true nature of terrorism." [203] However, as the government readily accepted those "global perceptions" of terrorists and terrorism it yet again dismissed and ignored Pakistan's historical context in which the violence emerged which was years before the 9/11 attacks.

But what this new definition did provide was a guide to assess the *mens rea* and *actus reus* behind the act and courts would no longer have to make decisions based on speculation.[204] The Supreme Court in *Basharat Ali* case emphasized that terrorism was to be differentiated from ordinary crimes by determining whether or not the "creation of fear and insecurity in the society at large" was the *mens rea* (design and purpose) behind the act and not the consequential effect created by the act:[205]

> Now creating fear or insecurity in the society is not by itself terrorism unless the motive itself is to create fear or insecurity in the society… terrorism as an 'ism' is a totally different concept which denotes commission of a crime with the object and purpose of destabilizing the society or government with a view to achieve objectives which are political in the extended sense of the word.[206]

The motivation behind the act could not be personal or private. It had to be political and designed to destabilize the society at large. But this judgment was overruled by *Mirza Shaukat* case, in which the Supreme Court said that in Section 6 "designed to" did not

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[203] Basharat Ali, *supra* note 139 at 19

[204] *Basharat* Ali, *supra* note 139 at para 16 (A range of "actions" were delineated under s 6(2)(a) to (n) of the ATA 2001 Amendment, from causing death to hijacking to stoning to burning vehicles etc. This list has subsequently expanded over the years, currently totaling to 17 subsections (Ss 6(2)(a)-(p)).)

[205] Basharat Ali, *supra* note 139 at para 4

[206] Basharat Ali, *supra* note 139 at para 14

refer to an intention or forethought; instead it meant that the result of the action would determine the intention of the offender.[207] It said that the "striking of terror is sine qua non" of Section 6 but that can only be determined by examining the "impact of the alleged offence and manner" of its commission.[208] Following this decision, the courts reverted to considering the actions' "tendency to create" public fear, insecurity or to "destabilize the public at large."[209]

Since *Mirza Shaukat* decision, the courts have treated the offense of terrorism as a type of strict liability offense, whereby an accused can be charged, tried and convicted of terrorism by merely proving the gravity of the action. The ATCs were able to try any crime under the ATA, rendering the regular courts redundant and subjecting the accused to disproportionately harsh punishments.[210] This has become even more concerning as Section 6 has been amended and expanded twenty times from an initial two-paragraphed definition of terrorism to one which now "contains 28 subsections and paragraphs,

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[207] *Mirza Shaukat Baig v Shahid Jamil*, [2005] 2005 PLD Supreme Court 530 (Pakistan) [*Mirza Shaukat*]

[208] Ibid

[209] *Nazeer Ahmed and other v Noorudin and others*, [2012] 2012 SCMR 517 (Pakistan) [*Nazeer Ahmed*] (Overruled *Bashir Ahmad v Muhammad Siddique*, [2009 PLD Supreme Court 11] which had upheld following the *mens rea* approach.); *Michroo v State*, [2015] 2015 YLR 2617 Karachi (Pakistan); *Jahangir v State*, [2011] 2011 YLR 2330 Lahore (Pakistan); *Soorat Khan v Anti-Terrorism Court, Sibi and 7 others*, [2010] 2010 PLD Quetta 52 (Pakistan); *Sarfaraz v Special Judge Anti-Terrorism Court Bahawalpur and 3 others*, [2005] 2005 MLD 1096 Lahore (Pakistan); *Shahid Zafar and 3 others v the State*, [2014] 2014 PLD Supreme Court 809 (Pakistan); *Kashif Ali v the Judge, Anti-Terrorism Court No.11 Lahore,* [2016] 2016 PLD Supreme Court 591 (Pakistan) ([T]here could be no second opinion that where the action of an accused results in striking terror, or creating fear, panic sensation, helplessness and sense of insecurity among the people in a particular vicinity it amounts to terror and such an action squarely falls within the ambit of Section 6 of the Act).

[210] *Ghulam Hussain and others v the State,* [2020] 2020 PLD Supreme Court 61 (Pakistan) [*Ghulam Hussain*]

much of this being redundant language adding little of substance."[211] Currently, Section 6 defines terrorism as:

> 6 (1) In this Act, "terrorism" means the use or threat of action where:-
>
> (a) the action falls within the meaning of subsection (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 organization 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 terrorizing the public, social sectors, 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.[212]
>
> (2) An "action" shall fall within the meaning of sub-section (1), if it…
>
> **(The full list of "actions" has been reproduced in Appendix A of this document)**

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[211] Anwar 2017, *supra* note 170 at 51; ATA 1997, *supra* note 158 at s 6; See, LAWGIC, "Definition of Terrorism in Pakistan" (4 July 2018), online (video): *RSILPak* <https://www.youtube.com/watch?v=gxjXM8f8g5Y>
[212] ATA 1997, *supra* note 158 at s 6 (1)

(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) (c) 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.[213]

The expansive and verbose list of offenses included in the definition (refer to **Appendix A**) is unnecessary and has expanded the writ of the law over crimes that have no real connection with the definition of terrorism in the ATA. Recently, in *Ghulam Hussain* judgment, the Supreme Court highlighted this concern that the definition was too broad and "includes so many actions, designs and purposes which have no nexus" with terrorism and called on the Parliament to make the definition more succinct.[214] Doing so will lessen the unnecessary burden on courts and reduce the delay in trial of actual cases of terrorism. But until the definition is changed, the Court clarified that an action will fall under the definition of Section 6 only if it was committed with the design or

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[213] ATA 1997, *supra* note 158 at s 6 (2), (3) and (5)
[214] Ghulam Hussain, *supra* note 210 at para 17

purpose mentioned in clauses (b) or (c) of Section 6 (1).[215] If any action is taken in furtherance of a personal enmity it should not be considered as terrorism. So an act is terrorism when either the act or threat of that action was *designed* to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect, etc. or if such action was designed to create a sense of fear or insecurity in the society or the use or threat was made for the purpose of advancing a religious, sectarian or ethnic cause, etc. Therefore, the Court has again directed the ATCs to look for the motivation, object, design or purpose behind an act and not the consequential effect created by such act when determining acts of terrorism.

5.2. MILITARY OPERATIONS

Since Pakistan joined the GWOT, in addition to the ATA regime, it has also launched several military operations to root out militants/terrorists in the country. It began with Operation Enduring Freedom (2001-2002) (the United States' GWOT) and while that overthrew the Taliban regime and captured some Al-Qaeda militants, it failed to reduce the number of fighters in the Afghanistan-Pakistan border area. So Pakistan conducted Operation Al-Mizan (2002-2006) and later Operations Kalosha I and II ("search-and-destroy"), targeting the militants in the northern areas, enraging the locals over the damage to their lands. Operation Zalzala (Earthquake) was launched in 2008 to clear South Waziristan of militants, especially those linked to militant Baitullah Mehsud's network (leader of Tehreek-e-Taliban Pakistan (TTP)). The Army withdrew in May, claiming victory; however, militants loyal to Mehsud re-infiltrated many areas and reactivated dismantled training camps. From 2008-2009, Mehsud and his network

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[215] Ghulam Hussain, *supra* note 210 at para 16

escalated violence across the country from their base in South Waziristan, till he was eventually killed in a 2008 airstrike.[216]

In 2014, the Army conducted Operation Zarb-e-Azb ("sharp and cutting strike") in North Waziristan in response to an attack on the Jinnah International Airport in Karachi on 8th June 2014. The operation relied on "massive firepower and aerial bombardments."[217] The TTP responded in kind by carrying out the horrifying attack on the Army Public School (APS) in Peshawar on 16th December 2014. The attack left 141 dead, mostly children of military personnel. It was a devastating attack that left the entire country shocked and outraged.

Operation Zarb-e-Azb was wrapped up in 2017, and the Army claimed success, killing over 3,500 TTP members and reducing terrorist attacks in Pakistan to the lowest they had been since 2008.[218] However, these figures have never been independently verified and, therefore, cannot be accepted as a true measure of success. The "success" of the Operation raises further doubt since, in February 2017, the terrorist group Jamaat-ul-Ahrar conducted several suicide attacks across the nation.[219] Moreover, the vacuum left behind the TTP has been filled by the Islamic State Khorasan (the Pak-Afghan chapter

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[216] Pir Zubair Shah, Sabrina Tavernise &Mark Mazzetti, "Taliban Leader in Pakistan is Reportedly Killed" *The New York Times* (7 August 2009), online: < https://www.nytimes.com/2009/08/08/world/asia/08pstan.html?mtrref=www.google.com&gwh=7F2384 0C8DF93872B003AAA63D114419&gwt=pay&assetType=REGIWALL>

[217] Behera 2018, *supra* note 149 at 142

[218] "490 Pakistan Soldiers, 3,500 Militants Killed in Operation Zarb-e-Azb", *The Economic Times* (15 June 2016), online: < https://economictimes.indiatimes.com/news/defence/490-pakistan-soldiers-3500-militants-killed-in-operation-zarb-e-azb/articleshow/52766005.cms >; "Militant Attacks Declined After Zarb-e-Azb Operation: Report", *The Nation* (17 June 2015), online: < https://nation.com.pk/17-Jun-2015/militant-attacks-declined-after-zarb-e-azb-operation-report>

[219] Sajid Khan Lodhy, "Jamaat-ul-Ahrar Gives Details of its Targets in a Video" *Pakistan Today* (14 February 2017), online: < https://www.pakistantoday.com.pk/2017/02/14/jamaat-ul-ahrar-gives-details-of-its-targets-in-a-video/>

of Islamic State).[220] In response, the Army launched the most recent and on-going Operation Radd-ul-Fasaad (Elimination of Strife) and claims has been successful in thwarting 400 terrorists plots across the country so far.[221]

5.2.1. INTERNMENT CAMPS AND MILITARY COURTS

Any militants or suspects captured during these operations were indefinitely detained and interrogated in internment camps set up along the Pak-Afghan border under the Actions (in Aid of Civil Power) Regulations 2011 (AACPR).[222] The regular High Courts were barred from making internal inquiries into any of these matters.[223] Initially the writ of the AACPR applied to only the northern tribal areas (F.A.T.A and P.A.T.A) but through a recent amendment it was extended to the entire KPK province. [224]

In response to the 2014 APS attack, the Parliament amended the 1973 Constitution (Twenty-first Amendment) and the Pakistan Army Act 1952 to establish military courts to try civilians in terrorism cases. These courts were constitutionally protected from judicial review and the Supreme Court also deemed the military courts to be

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[220] Adnan Aamir, "The uncertain fate of Islamic State in Pakistan" *The Interpreter* (7 November 2019), online: < https://www.lowyinstitute.org/the-interpreter/uncertain-fate-islamic-state-pakistan>

[221] Hammad Sarfraz, "In three years, Operation Radd-ul-Fasaad has cleansed Pakistan" *The Express Tribune* (22 February 2020), online: <https://tribune.com.pk/story/2162284/1-three-years-operation-radd-ul-fasaad-cleansed-pakistan/> [*Sarfraz 2020*]

[222] *Actions (in Aid of Civil Power) Regulations 2011*, (Pakistan) Gazette of Pakistan, Part I, 27th June 2011, (These regulations were issued by invoking Articles 145 and 147 of the 1973 Constitution which allow the government to call upon the armed forces "against external aggression or threat of war, and subject to law, act in aid of civil power" in the northern tribal regions.) [*AACPR*]; Naeem Ahmed, "Pakistan's Counter-terrorism Strategy and its Implications for Domestic, Regional and International Security" (2014) Fondation Maison des Sciences de l'homme Working Paper No. 59 at 11, online: <https://halshs.archives-ouvertes.fr/halshs-00937552/document> (Most of the camps were set up at Landi Kotal.) [*Ahmed 2014*]

[223] Raza 2019, *supra* note 122 at 104

[224] Waseem Ahmad Shah, "Ordinance Extends Actions in Aid of Civil Power to Entire KP", *Dawn* (18 September 2019), online: < https://www.dawn.com/news/1505809>

legitimate.[225] Yet again the military court trials were shrouded in secrecy and did not abide by the rule of law. The petitioners were not afforded independent legal counsel, they could not adduce any evidence in defence, and the orders passed by the courts had no written reasoning.[226] The military courts were due to expire in 2017 but their tenure was further extended for two more years during which the government was supposed to reform the ATA and criminal justice system. However, such reforms were never introduced. Over the four years of their operation (2015-2019), they have convicted 641 of 646 trials conducted, awarded 345 death sentences and 56 imprisonments, executed 56 convicts and acquitted 5 suspects.[227] Even though the government approved of a proposal to extend the courts for a further two years, it did not manage to receive the required votes in the parliament, and as of March 2019, the military courts finally ceased to function.[228]

CONCLUSION: TIME TO CHANGE?

Pakistan's current counterterrorism regime evolved from its previous security regime and follows the hybrid or expanded criminal justice model of counterterrorism. It has expanded its constitutional boundaries by implementing special laws (the Anti-Terrorism Act 1997), establishing special courts (civilian and military) to treat terrorists and terrorism differently from other criminals, and it has launched aggressive military

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[225] *Constitution (Twenty-First Amendment) Act 2015*, (Pakistan), s 1(3) (The provisions of this Amendment Act shall remain in force for a period of two years from the date of its commencement and shall cease to form part of the Constitution and shall stand repealed on the expiration of the said period.); *District Bar Association, Rawalpindi v Federation of Pakistan,* [2015] 2015 PLD Supreme Court 401 (Pakistan) [*Military Courts Decision*]

[226] Babar Sattar, "A Question of Justice" *The News* (23 March 2019), online: <https://www.thenews.com.pk/print/447459-a-question-of-justice>

[227] LAWGIC, "Should Military Courts be Extended?" (16 April 2019), online (video): *RSILPak* <https://www.youtube.com/watch?v=fFdTJbtYrjY>

[228] Amir Wasim, "Military Court Cease to Function Today" *Dawn* (31 March 2019), online: < https://www.dawn.com/news/1472947>

operations to directly combat terrorists. While no one can argue that a perpetrator of a crime should be tried and punished, but this counterterrorism approach has allowed the executive to bypass core human rights principles and create "new sites of 'security.'"[229] The success and effectiveness of these measures is debatable because terrorist violence is still one of the main problems faced by the country today.

In light of the arguments made in Chapter 3, our discussion in this chapter demonstrates that Pakistan's current approach is ahistoric, state-centric and it overwhelmingly supports violent strategies. The legal definition of terrorism adopted in the ATA was borrowed from the United Kingdom's Terrorism Act 2000 which effectively dismissed the socio-historical context in which terrorist violence emerged in Pakistan. Isolating terrorism from its context made it easier for the government to accept "global perceptions" on terrorism[230] and portray terrorists as a foreign *evil* plaguing Pakistan's society, instead of acknowledging it as the outcome of deliberate historical decisions made by the political and military elite.

By controlling this narrative, the State continued to portray the armed forces and LEAs as the defenders of the national security faced with combatting this "unknown enemy."[231] Hence, to facilitate the efforts of the LEAs, a separate criminal regime was established under the ATA which primarily enhanced powers of arrest, detention and investigation, and established Anti-Terrorism Courts (ATCs) for speedy trials.

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[229] Demirsu 2017, *supra* note 61 at 2
[230] Basharat Ali, *supra* note 139 at 19
[231] Sarfraz 2020, *supra* note 221 (Defense Analyst Major-General (retired) Inamul Haq said that military operations have not been easy because "the military had to combat an unknown enemy across the country.")

But as this regime prioritizes national security over human security it presents the sacrifice of constitutionally protected rights of life and liberty, fair trials, and due process, as a necessary condition for effective counterterrorism. But as we discussed in Chapter 3, CTS argues that human security should be the priority of counterterrorism measures. Once this shift is made it becomes clear that the sacrifice of constitutional protections is not a necessary evil but instead "an unmitigated evil."[232] By removing the safeguards the ATA is able to provide legal cover to discriminatory and bad practices such as police brutality, ethnic profiling, arbitrary arrests, indefinite detentions and trials in absentia and so on. These practices do not increase security—especially if the detained are innocents—without making matters worse off.

Moreover, the definition of terrorism under Section 6 also did not provide any protection against these violations. In fact, it only further aided the LEAs in broadly applying the provisions of the ATA, since the definition itself was so broad. As discussed in Section 5.1.3 the legal definition of terrorism definitely needs to be narrowed down and this problem has been highlighted by the Supreme Court in the *Ghulam Hussian* case. But the State will continue to keep the definition as wide as possible in order to serve its interests by expanding its powers and control over as many offences as possible. This is why the definition has been extended several times, adding more and more actions to the list of prescribed offences under the law. The focus remains on finding ways to by-pass constitutional limitations to quickly quash any threat without having to address the reason for why the threat or violence exists in the first place.

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[232] Luban 2014, *supra* note 55 at 35

In addition to the ATA, Pakistan has also carried out military operations, set up internment camps, military courts and trials under the AACPR. All of these measures similar to the practices under the ATA are in blatant violation of the constitutionally protected rights. The violation of the fundamental rights not only adversely impacts the direct targets of the counterterrorism measures but also those around them. Humans are social beings who interact with one another and whose actions make sense by assigning roles to each other in their personal narratives. So, for instance, if a person is wrongfully detained in an undisclosed location, that will violate their rights and security, but also the security of their family, friends, coworkers, neighbors etc. The enjoyment of our rights and security (physical and non-physical) also depends on others being "undistracted by terror and anxiety about their personal safety."[233] But over expansive counterterrorism legislations and aggressive defensive measures can cause a disruption in that enjoyment and impose hardships on people. The hardships and oppressions destroy the ability of people to reach their potential and this is what Galtung recognized as violence.[234] While the military operations are examples of direct or personal violence, the expansive counterterrorism provisions are examples of indirect or structural violence.

All types of violence—direct and structural—are equally harmful and destructive because violence destroys the ability of people to organize and make positive and meaningful changes.[235] Moreover, it cannot bring about positive change because violence is not an isolated single act but it is a phenomenon with a history. This means

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[233] Waldron 2010, *supra* note 60 at 153
[234] Galtung 1969, *supra* note 83 at 168-9
[235] Galtung 1969, *supra* note 83 at 173-4

that no act of violence is isolated from another; one leads to another, and so on, resulting in layers of violence accumulating and "creating the violent debris of history."[236] Our discussions in Chapters 4 and 5 provide numerous illustrations for this argument. Since GWOT, the military operations that have been conducted have always been met with retaliation. There might be a temporary lull after an operation but then shortly after militant bands regroup and attack back, which then prompts the government to launch another operation and the cycle repeats itself. It is evident that the use of aggressive force has not resulted in sustainable periods of peace because violence will only lead to more violence. The results of these policies have been far from satisfactory. At most, these policies have made Pakistan "surgically adept at killing terrorists" but not proficient at addressing the reasons for their existence.[237]

Pakistan still remains one of the most impacted by terrorism countries in the world and ranked number 5 on the 2019 Global Terrorism Index.[238] Over the years governments have failed to balance their investment between national security and human security. Obviously, during the years of military rule, the expenditure on military was very high (the peak was in 1986 at 6.992 percent of the Gross Domestic Product). But subsequently, civilian governments have allotted significant portions of the budget to defense (e.g. 6.037 percent in 1996, 3.424 percent in 2010) and since the GWOT that portion has only increased. In 2018, 4.026 percent of the GDP (12686 million US

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[236] Young 2010, *supra* note 94 at 3
[237] Zeeshan Salahuddin, "Is Pakistan's National Action Plan Actually Working?" *The Diplomat* (24 December 2016), online: < https://thediplomat.com/2016/12/is-pakistans-national-action-plan-actually-working/> [*Salahuddin 2016*]
[238] Global Terrorism Index 2019, *supra* note 108 at 23 and 32

dollars) was spent on military expenditure.[239] Terrorist incidents have further increased government spending on military operations, but it simultaneously, has reduced levels of foreign and domestic investment. This has negatively impacted the country's economy which the governments have failed to address redress.[240] The government has paid lesser attention to non-military sectors. For example, the public expenditure on education was 2.4 percent of the GDP in 2017-2018 and the public expenditure on health was only 0.97 percent of the GDP.[241] These numbers are very low in comparison to how much is spent on defense.

Moreover, unemployment rates have always been high in the country but in the last decade they have significantly spiked. While the lowest rate was recorded in 2007 at 0.398 percent of the total labor force, in 2019 the employment rate was estimated at 4.453 percent of the total labor force.[242] The Heritage Foundation ranked Pakistan's economy to be the 135th freest in the 2020 Index of Economic Freedom, placing it

[239] The World Bank, "Pakistan: Military expenditure (% of GDP)" (visited 22 April 2020), online: *data.worldbank* < https://data.worldbank.org/indicator/MS.MIL.XPND.GD.ZS?locations=PK>; Trading Economics, "Pakistan Government Budget (2010-2018)" (visited 23 April 2020), online: *tradingeconomics* < https://tradingeconomics.com/pakistan/military-expenditure>

[240] See Muhammad Zakaria, Wen Jun & Haseeb Ahmed, "Effect of terrorism on economic growth in Pakistan: an empirical analysis" (2019) 32:1 Economic Research-Eknomoska Istrazivanja 1794-1812 (tandfonline), online: <https://www.tandfonline.com/doi/pdf/10.1080/1331677X.2019.1638290> (Analyzed data from 1972-2014 to show that 1 percent rise in terrorism decreases output growth by 0.002 percent, which has significant ramifications.); Also see Shabir Hyder, Naeem Akram & Ihtsham Ul Haq Padda, "Impact of terrorism on economic development in Pakistan" (2015) 16:4 Pakistan Business Rev 704-722 (researchgate), online: < https://www.researchgate.net/publication/271079363_Impact_of_Terrorism_on_Economic_Development_in_Pakistan>

[241] See S Ejaz Wasti, "Pakistan Economic Survey 2018-2019" (June 2019), online (pdf): <http://www.finance.gov.pk/survey/chapters_19/Economic_Survey_2018_19.pdf>

[242] The World Bank, "Pakistan: Unemployment, total (% of total labor force) (modeled ILO estimate)" (updated 1 March 2020), online: *data.worldbank* < https://data.worldbank.org/indicator/SL.UEM.TOTL.ZS?end=2019&locations=PK&start=1991&view=chart>; International Labor Organization, "Country Profile: Pakistan" (visited 22 April 2020), online: *ilostat.ilo* < https://ilostat.ilo.org/data/country-profiles/>

among the category of countries considered to be "Mostly Free."[243] This index also noted that corruption, weak administration and a politicized judiciary comprise the property rights and the rule of law in the country.[244] Furthermore, in 2018 69 million (31.3% poverty ratio) people of the population were living in poverty and it is projected that by June 2020 this will increase to 87 million.[245] These numbers do not promise a very bright and prosperous future.

Hence, it is time that Pakistan begins to address security issues not only in terms of terrorist threats but more importantly in terms of the socio-economic threats that people face on a regular basis. It needs to formulate a more holistic approach to not only countering terrorism but also ensuring that these measures do not have negative spill-over effects on the society. The response needs to be human-centered and proactive not state-centered and reactive.

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[243] "2020 Index of Economic Freedom, Country Profile: Pakistan" (visited 22 April 2020), online: *theheritagefoundation*: < https://www.heritage.org/index/country/pakistan>

[244] Ibid

[245] Farhat Ali, "Economy on the move" *Business Recorder* (14 December 2019), online: < https://www.brecorder.com/2019/12/14/553194/economy-on-the-move/>

CHAPTER 6: AVENUES FOR EMANCIPATION

This thesis has attempted to demonstrate that Pakistan's current legislative counterterrorism approach has been ineffective in maintaining sustainable peace because it fails to take into consideration the impact it has on the violence in the country. Pakistan's current counterterrorism regime has included the implementation of the Anti-Terrorism Act 1997, the establishment of special courts (civilian and military) to treat terrorists, and engagement in direct combat with terrorists through aggressive military operations. These measures were designed to enhance the powers of the LEAs and armed forces and they circumvent constitutional safeguards against arrest and detention, fair trial rights and the rule of law. Simultaneously, they allowed the State to primarily focus on aggressively tackling terrorism while avoid resolving social and economic inequalities plaguing the nation. While over the years there have been dips in the levels of violence, the lull is short lived and soon more militant/terrorist groups resurface and retaliate with more vigor, continuing the cycle of violence. Therefore, it is crucial for Pakistan to reorient its counterterrorism approach to one that is committed to achieving the security of its people through holistic and emancipatory means.

6.1. EMANCIPATORY MEANS TO PREVENTING TERRORISM

Then what can a counterterrorism approach guided by non-violence and emancipation look like? Non-violent measures to counter terrorism are often dismissed for being idealistic, passive and thereby, somehow condoning terrorist violence. But emancipatory means do not imply non-action. On the contrary, it entails an active

resistance to using and legitimizing violence while finding holistic non-violent alternatives that enhance human security and respect everyone's dignity and equality.

Human security has been understood as the right of people to live in "freedom and dignity, free from poverty and despair."[246] It recognizes that security, peace and human rights are positively interconnected, which is why states should not be able to attain security by trading off fundamental rights. Moreover, it considers not only the protection of political and civil rights but also economic, social and cultural rights. Therefore, policies that are designed to enhance human security need to be comprehensive, people-centered and prevention oriented, and they should apply to all communities equally.[247] It is important to remember that the pursuit of human security and emancipation will take different forms in different contexts and should be found within existing institutions and frameworks through inclusive engagement and communication with non-state and state actors without silencing any voices, and be open to constant review.[248] The following recommendations are just a few avenues for Pakistan to explore and are by no means an exhaustive list of possibilities.

(I) (RE)CRIMINALIZE TERRORISM

Terrorism is only as exceptional as the public discourse surrounding it anoints it to be. There are no actions "too big or catastrophic" that cannot be "captured by conventional

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[246] UNGA Res 66/290, *supra* note 67 at para 3 (a)

[247] UNGA Res 66/290, *supra* note 67 at para 3 (b)

[248] McDonald 2009, *supra* note 41 at 110, 114; Toros & Gunning, *supra* note 4 at 75, 100 (Supporting non-violent responses can include, "negotiations between the parties, nonviolent engagement with the root causes of conflict, and supporting nonviolent factions within both the state and opposition movements.")

offence definitions" and be subjected to ordinary criminal prosecutions.[249] Pakistan has for too long portrayed terrorism as an extraordinary offense to justify the promulgation of special laws and extraordinary powers. It needs to recommit to the rule of law and legality, and re-criminalize and de-exceptionalise terrorism.[250]

The aim should be to secure safe convictions, not the highest number of convictions. Regular police and judicial powers and procedures prioritized. By doing so several preconditions will be established: the presumption of innocence; no indefinite preventive detention; respecting fair trial and due process rights; adherence to rules of evidence; no secretive trials; access to legal consultation; privilege against self-incrimination; right to question witnesses; equal protection of the law etc.[251] Moreover, strict departmental disciplinary proceedings should be initiated against police officials who are involved in any illegal detentions and arrests, as well as any other misconduct.

The period of remand should be reduced from fifteen days at a time because if the arrested are tortured, the wounds may heal by the time person is produced before the Magistrate. Additionally, regular medical checkups must be conducted to monitor the health of the arrested and prevent their mistreatment.[252]

The legislature should narrow down the legal definition of the terrorism in order to limit the scope of the ATA since currently it can be applied to numerous offences, most

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[249] Lucie Zedner, "Terrorizing Criminal Law" (2014) 8:1 Crim L & Philosophy 99 at 109-110 (Springer), online: < https://link.springer.com/article/10.1007/s11572-012-9166-9> [*Zedner 2016*]

[250] Luca Mavelli, "The Governmentality of Terrorism: Uncertainty, Risk Management, and Surveillance" in Richard Jackson, ed, *Routledge Handbook of Critical Terrorism Studies*, (New York: Routledge, 2016) 237 at 245 [*Mavelli 2016*]

[251] Zedner 2016, *supra* note 249 at 110; Clive Walker, "The Legal Definition of "Terrorism" in United Kingdom Laws and Beyond" (2007) Public Law 331 at 352 (SSRN), online: https://ssrn.com/abstract=1087420 [*Walker 2007*]

[252] Counter-terrorism and Human Rights, *supra* note 159 at 44

of which have no real nexus with terrorism. Additionally, the police personnel need to be comprehensively trained about the correct application of the ATA provisions.

Admittedly, for the authorities to preempt violent attacks, they have to make decisions based on some degree of subjectivity. But this is dangerous, and instead of training the police to "spot signs" of radical behavior, they should be given sensitivity training teaching them how to interact with diverse communities. For example, in India specialized trainings were held for lower-level staff and constables on how to interact and engage with common citizens.[253]

(II) COMMUNITY INVOLVEMENT AND HUMAN DEVELOPMENT

The state of Pakistan needs to take certain bold steps such as diverting resources from the military to civil services and halting the use of offensive military counterterrorism measures in order to break the strong hold of the armed forces on national policies and politics. It has to better allocate resources into non-military sectors for improving the human condition and standard of living. Pakistan has been ranked 152 out of the 189 countries on the UNDP's Human Development Index (HDI) with a score of 0.560 in 2018 (on the HDI index a score of 1 is perfect).[254] It needs to invest more in the education and health sectors, and ensure that not only are they accessible to more people but also that the quality of these services are improved.

In terms of countering terrorist violence and conflict, it is important to bridge gaps between different ethnic communities and between the communities and the state

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[253] Sudha Arlikatti, "'Terrorism Watch' or 'Natural Hazard Mitigation' Why the Difference? : Community Policing in the Indian Context" in Siddik Ekici et al., eds, *Building Terrorism Resistant Communities: Together Against Terrorism,* (Amsterdam: IOS Press, 2009) 142 at 147 [*Arlikatti*]
[254] UNDP, "Pakistan, Human Development Indicators" (visited 22 April 2020), online: *hdr.undp* < http://hdr.undp.org/en/countries/profiles/PAK>

agents. Different communities should be educated about each other and taught to develop empathy and tolerance for diversity. This can also create critical minds and "resistance to violence as a means of conflict resolution in society."[255]

Similarly, encouraging open communications with community leaders may overcome biased opinions and suspicions against minorities.[256] The media and arts can be valuable tools for exchanging ideas and narratives among different communities.[257] However, states should remember to employ such tools in a balanced way to give equal representation and not merely to promote its own narrative on terrorism.

Moreover, the state should support civil society organizations involved in peace building and conflict resolutions. A robust and inclusive civil society can play a significant role in eliminating "social cleavages" because it can provide a voice to the marginalized in broader societal platforms.[258] Civil society can manage educational programs to boost tolerance and diversity to create environments of trust between different segments of society as well as between society and the state. There are a number of non-profits and small-scale private research institutes who are dedicated to resolving social conflicts in the country. For example, the Pak Institute for Peace Studies (PIP) conducts research on regional strategic issues of conflict and provides consultancy services. It has also held educational programs for students on building

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[255] Igor Osyka, "Cooperation of Law Enforcement and the Public in Combating Terrorism in Ukraine" in Siddik Ekici et al., eds, *Building Terrorism Resistant Communities: Together Against Terrorism,* (Amsterdam: IOS Press, 2009) 211 at 221 [*Osyka*]

[256] Alain-Michel Ayache, "The Role of 'Cultural Communities' in Preventing Terrorism in the West" in Siddik Ekici et al., eds, *Building Terrorism Resistant Communities: Together Against Terrorism,* (Amsterdam: IOS Press, 2009) 326 at 335[*Ayache*]

[257] Osyka, *supra* note 255 at 222 (Storytelling is tool for overcoming xenophobia).

[258] Vladimir Fedorenko, "Importance of the Participation of Civil Society into Effective Counter-terrorism Policies" in Siddik Ekici et al., eds, *Building Terrorism Resistant Communities: Together Against Terrorism,* (Amsterdam: IOS Press, 2009) 196 at 198, 202 [*Fedorenko*]

peace and tolerance. It can prove to be fruitful if the government supports such initiatives. Furthermore, civil society can provide support and rehabilitation to victims of terrorist attacks, including "medical, psychological, spiritual, emotional," and legal assistance.[259] They can also play a role in providing rehabilitation and support to convicted terrorists and ensure that anti-terrorism laws are not violating their constitutional rights.

(III) EMERGENCY MANAGEMENT MODELS

When an attack occurs, it naturally causes a lot of panic and fear in society. Although they are unpredictable events, Pakistan can still be prepared beforehand to mitigate the terror caused by any attack by developing disaster management models.[260]

The aftermath of a terrorist attack has similar characteristics to that of a natural disaster: dead and injured people, damaged infrastructure, chaos and fear, the need for rescue workers etc.[261] Therefore, even if there is no threat of an attack, first responders and other relevant personnel should be trained and well equipped to follow protocol and carry out effective rescue plans. Such models create resistance and resilience in communities and reduce the need to immediately involve the armed forces because the situation is "handled within the realm of civil society."[262]

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[259] Fedorenko, *supra* note 258 at 206; Camilla Orjuela, "Building peace in Sri Lanka: A Role of Civil Society?" (2003) 40:2 J of Peace Research 195 at 199 (jstor), online:< https://www.jstor.org/stable/3648411?seq=1> (In Sri Lanka, the Movement for Inter-Racial Justice and Equality (MIRJE) tour the country, raising awareness about the ethnic conflict rife in the country and provide legal assistance to Tamils and Singhalese communities.)
[260] Crelinsten 2009, *supra* note 48 at 181
[261] Lindahl 2018, *supra* note 44 at 98
[262] David A. McEntire, "Reconsidering Homeland Security Policy: Recognizing the Role of Emergence Management in Promoting Terrorism Resistance and Resilience" in Siddik Ekici et al., eds, *Building Terrorism Resistant Communities: Together Against Terrorism,* (Amsterdam: IOS Press, 2009) 109 at 112; Lindhal 2018, *supra* note 44 at 98

While Pakistan established the National Disaster Management Authority (NDMA) in 2010 to mitigate the risks of the most vulnerable by formulating effective plans for responding to all types of disaster events.[263] But the NDMA is headed by chairmen from the army and its personnel lack robust expertise in the field.[264] Moreover there is poor coordination and communication among the NDMA and private sectors. NDMA should collaborate with academics and non-government organizations, that have specialized knowledge and training in matters of disaster management, to devise plans of action together, both at the federal and provincial level.

(IV) NEGOTIATIONS

Engaging with terrorists groups is usually seen as providing legitimacy to the terrorists who cannot be trusted to honor agreements and will only incite more violence.[265] However, as critical thinkers committed to emancipation, we must not be too quick to rule them out, for they do hold the potential to counter terrorism peacefully.

Toros said that engaging with terrorists may address one of the main reasons why they resort to violence in the first place: the lack of a political and legal outlet for their voices. Moreover, the nature of negotiations ("compromise, persuasions, positive-sum outcomes") could draw the terrorists into entering "the socialization process toward inclusion" and down a path of transformation and non-violence.[266]

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[263] *National Disaster Management Act 2010*, (Pakistan) No. XXIV of 2010

[264] Abdul Rahman Malik, "Pakistan needs a sustainable disaster management policy" *DailyTimes* (28 October 2018), online: <https://dailytimes.com.pk/314439/pakistan-needs-to-form-a-sustainable-disaster-management-policy/>

[265] Toros 2016, *supra* note 8 at 74

[266] Ira W. Zartman & Tanya Alfredson, "Negotiating with Terrorists and the Tactical Question" in Rafael Reuveny & William R. Thompson, eds, *Coping with Terrorism: Origins, Escalation, Counterstrategies, and Responses,* (Albany: SUNY Press, 2010) 247 at 279; Harmonie Toros, "We Don't Negotiate with Terrorists!: Legitimacy and Complexity in Terrorist Conflicts" (2008) 39:4

Even if the groups operate transnationally, they still have local factions that can be approached by domestic governments. For these local groups their regional agendas are more important because, more often than not, the terrorist violence and conflict exist in society before the emergence of any transnational terrorist organizations. Therefore, domestic terrorist groups should be distinguished from any transnational terrorist organizations they affiliate with, so to ensure that the interaction is sensitive to the specific socio-historic context. Moreover, by engaging in talks does not mean that the state has to accept every demand being made; instead, it just starts the process of understanding and extending humanity. For example, in Northern Ireland, the start of talks—although not the sole reason—played a significant role in the peace process.[267]

But it does require a genuine effort from the state. During some early military operations the Pakistan Army tried to reach peace treaties with the militants, for example, the Shakai Agreement (April 2004) and the Sararogha Peace Agreement (February 2005). But both of these efforts fell through because while the militants agreed to the terms the Army continued to support stringent actions which further infuriate the militants.[268] This is why it is also important that such processes take place within the realm of democratic institutions, and should not be treated as a function of the military.

Security Dialogue 407 at 413 (Sage Journals), online:< https://journals.sagepub.com/doi/10.1177/0967010608094035> [*Toros 2008*]

[267] Toros 2008, *supra* note 266 at 416

[268] Daud Khattak, "Reviewing Pakistan's Peace Deals with the Taliban" (2012) 5:9 CTC Sentinel (ctc.usma), online: <https://ctc.usma.edu/reviewing-pakistans-peace-deals-with-the-taliban/> [*Khattak 2015*]; Imitiaz Gul, *The Most Dangerous Place: Pakistan's Lawless Frontier*, (New York: Penguin Books, 2009) 68; S.K. Saini, "Storming of Lal Masjid in Pakistan: An Analysis" (2009) 33:4 Strategic Analysis 553 at 555 (tandfonline), online: < https://www.tandfonline.com/doi/full/10.1080/09700160902907092?needAccess=true&instName=McGill+University>; Syed Shoaib Hasan, "Profile: Islamabad's Red Mosque" *BBC News* (27 July 2007), online: < http://news.bbc.co.uk/2/hi/south_asia/6503477.stm> ; Ahmed 2014, *supra* note 222 at 8

(V) DIALOGUE, DE-RADICALIZATION AND COUNTER-RADICALIZATION

The rationale behind de-radicalization processes or programs is that if people can adopt belief systems that allow them to accept terrorism as a justified means to their ends, then this process can also be undone.[269] De-radicalization programs are aimed at convicted terrorists while counter-radicalization target individuals and groups who are not yet engaged in violence but are vulnerable and likely to be recruited into committing violence.

Currently, some de-radicalization programs in Pakistan have been conducted by the military, for example, Project Mishal and Project Sparley. Both of them are run in the Swat region. Mishal focuses on adult detainees, while Sparley extends the initiatives to the families of detainees. They aim to reintegrate individuals back into civil society by assisting in finding jobs. The detainees are educated in religious studies, vocational training, and psychological consultation is also provided. The project runners claim a success rate of 99 percent with more than 2500 Taliban fighters "reformed" but these numbers are inconclusive since there is no independent evaluation of these programs.[270] There are some civil society organizations that run interfaith dialogue programs and have established madrassas that promote peace and tolerance to counter their violent counter-parts. The impacts of these efforts have remained limited as there is a lack of funds.

However, since such programs entail categorizing individuals (and society in general) into groups based on the level of risk or threat they pose, they also run the risk of

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[269] Edwin Bakker, *Terrorism and Counterterrorism Studies: Comparing Theory and Practice*, (Leiden University Press, 2015) 151

[270] Selina Adam Khan, "Deradicalization Programming in Pakistan" (2015) 193 USIP Peace Brief (USIP), online: < https://www.usip.org/publications/2015/09/deradicalization-programming-pakistan>

fostering an environment of suspicion in society against only specific groups which can itself lead to clashes, violence, more social divisions and the construction of "suspect communities."[271] Therefore, agencies running such programs should be wary of the "re-categorisation" of individuals into binary identities (threatening and non-threatening).[272]

PARTING THOUGHTS

Our discussion in this thesis has highlighted the dire need of Pakistan to break free from not only terrorist violence but also violent counterterrorism strategies. We worked within the CTS framework to journey through the historical development of its current counterterrorism regime—the Anti-Terrorism Act 1997, special courts to try terror suspects, and direct combat against through aggressive military operations. The design of these measures evolved from its previous security regime, which already supported the use of excessive force and extra-constitutional measures in the face of adversity. This approach had helped the political and military elite to retain their power via political suppression. Moreover, it allowed the State to avoid resolving the social conflicts which the elite would frequently exploit for their personal gain. Unfortunately, this approach became the foundation upon which Pakistan's current counterterrorism regime developed. Hence, the current policies primarily enhance powers of the police and armed forces to search, arrest, detain and try suspects under the ATA which has a very broad ambit because of its expansive legal definition of the term terrorism.

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[271] Tom Pettinger, "CTS and Normativity: the Essentials of Preemptive Counter-terrorism Interventions" (2019) Critical Studies on Terrorism 1 at 2, 13, 19 (tandfonline), online: < https://doi.org/10.1080/17539153.2019.1658412> [*Pettinger 2019*]; See, Paddy Hillyard, *Suspect Community: People's Experience of the Prevention of Terrorism Acts in Britain*, (Cambridge: Pluto Press, 1993)
[272] Pettinger 2019, *supra* note 271 at 20

However, this regime has cultivated discriminatory and bad practices such as police brutality, ethnic profiling, arbitrary arrests, custodial torture, casting wide nets, indefinite detentions and trials in absentia, in clear violation of constitutionally protected rights of fair trial and due process. The regime has been mostly ineffective because it is discriminately and inaccurately applied increasing inequalities and insecurities among the polity. Moreover, the State of Pakistan has paid alarmingly poor attention to other non-military issues of a socio-economic and cultural nature, faced by the people of Pakistan on a regular basis. This is why the current thesis argued that Pakistan needs to replace its current counterterrorism approach with one that is committed to not only overcoming the direct and physical violence in the country but also the structural violence and inequalities plaguing the nation.

Guided by non-violence and emancipation the government needs to devise its counterterrorism plans as part of a bigger project of social and human development. The focus needs to shift from national security to human security. An environment where human security is prioritized people will be freed from not only fear but also want and will get to live in dignity and have equal opportunities to flourish and realize their full potential (political and social). This is no herculean task as there already exist various small-scale and grass root organizations that are work on issues such as gender rights, environment and sustainability, peace-building and conflict resolution etc. In fact, an emancipatory framework advocates using existing potential avenues of change rather than trying to find external solutions because those may not be sensitive to the local context and history. So the government must relinquish its desire to control the

depiction of emergencies exists for its own advantage and start to cultivate meaningful and inclusive partnerships with all relevant agents of change and harmony.

I hope that this thesis has been able to show that despite deeply embedded politics in the creation and understanding of terrorism and counterterrorism, there is still hope for change. A critical approach to counterterrorism can be that change and this thesis was an attempt in that direction by presenting a different way to understanding Pakistan's experience. I hope that other critically-minded students find this thesis useful and further the research by exploring in more depth what emancipation can look like in legal practice for Pakistan.

APPENDIX A

The current definition of "terrorism" under Section 6 of the Anti-Terrorism Act 1997:

6 (1) In this Act, "terrorism" means the use or threat of action where:-

(a) the action falls within the meaning of subsection (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 organization] 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 terrorizing the public, social sectors, 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 any thing that causes death;

(b) involves grievous violence against a person or grievous bodily harm or injury 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 any thing that is likely to cause death or endanger a person's life;

(e) involves kidnapping for ransom, hostage-taking or hijacking;

(ee) involves use of explosive by any device including bomb blast 2[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 or 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 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 to discharge or to refrain from discharging his lawful duties;

(n) involves serious violence against a member of the police 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, teachings and beliefs as per own interpretation on 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 subsection (2) which involves the use of firearms, explosive or any other weapon is terrorism, whether or not subsection (1) (c) is satisfied.

(3A) Notwithstanding anything contained in subsection (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.

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