



Vol. 2 No. 4 (November) (2024)

Anti-Terrorism Laws in Pakistan: Balancing National Security and Fundamental Rights

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ABSTRACT

The legal context of counter-terrorism in Pakistan has been influenced by a consistent threat-based environment and by international requirements of security and financial-compliance, but it acts within a constitutional order that vows basic rights and by a commitment to treaties that demand rule-of-law assurances despite facing extreme violence. Having had the Anti-Terrorism Act, 1997 (ATA) and the subsequent extension of investigative, proscription and special-trial regimes, Pakistan has banked on a model of exceptional criminal justice: widened substantive definitions, expedited procedures, special forums, more surveillance and at one time extension of military jurisdiction to civilians. Such characteristics are regularly justified as needed to interrupt terrorist networks, and to stop mass causal assaults; nonetheless, the identical characteristics continue to cause legal and practical disputes with the constitutional assurances of liberty, due procedure, dignity, fair trial, freedom of expression, limitations on coercive governmental power. These tensions are crystallized in the concluding observations that the Human Rights Committee made about the second periodic report by Pakistan under the International Covenant on Civil and Political Rights (ICCPR) which were adopted on 2 December 2024, with the overbreadth of the ATA, its warrantless powers, the admissibility of custodial confessions, compressed timelines, and the spillover effects of the supremacy clause all being pointed out, as well as the issue of civilian trials in the military courts and a broader governance environment in which intimidation occurs in cases of It is on this basis that the paper contends that the notion of balancing national security and fundamental rights is not to be interpreted as a tradeoff between the rights being progressively denied in the name of achieving security, but rather as a question that should be posed in a legal design: how to construct counter-terrorism legal frameworks that are both adequately precise, reviewable, evidence-based and institutionally accountable, so as to become both effective at the same time as they are legitimate, non-discriminatory and compatible with constitutional and international norms.

Keywords: Anti-Terrorism Act 1997; Pakistan; Counter-Terrorism; Fundamental Rights; Fair Trial; Due Process; Military Courts; Surveillance; Iccpr; Proportionality And Necessity.



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Introduction

Terrorism in Pakistan has neither had a localized, time-bound, or geographic or ideological focus nor has it been limited to any particular tactic but instead has entailed a dynamic combination of sectarian violence, insurgent and militant operations, targeted assassinations, attacks against state infrastructure, and periods of mass violence that create high incentives within the political community to develop the rapid, visible, and punitive use of law.¹ This is a political fact that explains why the anti-terrorism legislation in Pakistan is not just a solitary law but the law ecosystem where ATA serves as the center node connected with the specialized courts, policing authority, intelligence-based investigative resources, and the administrative regulations on organizations and individuals performing as security threats. The post-2014 period is particularly critical at the policy level since Pakistan has on 24 December 2014 adopted a consensus-based National Action Plan (NAP) of 20 points that clearly aims to harden the counter-terrorist posture of the state, disrupt the terrorist financing factor, and prevent the emergence of proscribed groups - the goals that are highly impactful over the priorities of the legislative process, the institutional coordination frameworks, and enforcement patterns.² Meanwhile, the legal system in Pakistan is not a blank slate security-state: the Constitution provides that incompatible laws are unlawful to the degree of incompatibility, provides liberty and process protection in arrest and detention, and acknowledges a justiciable right to a fair trial and due process. On an international level, Pakistan is a State party to the ICCPR (ratified on 23 June 2010; entry into force against Pakistan on 23 September 2010), which stipulates that has a number of obligations, including observing fair trial rights and standards of lawful and non-arbitrary detention, and restrictions on expression and privacy in a manner necessary. But Pakistan is not the exception: resolution 1373 (2001) under Chapter VII of the United Nations Security Council requires States to prevent financing terrorist groups, to criminalize the intentional provision or receipt of funds to carry out terrorist activities and to freeze assets immediately, obligations often served to justify domestic extensions of proscription jurisdictions, methods of financial investigation and the urgency of stopping money laundering.³

The main issue, however, is not whether or not Pakistan can fight terrorism, it undoubtedly can and should, but how the laws against terrorism can be structured and implemented to ensure that security efforts are carried out in accordance with the constitutional and international rules of legality, necessity, proportionality and accountability.⁴ The 2024 concluding observations by the Human Rights Committee are especially authoritative as a diagnostic of how the Pakistani legal ecosystem places a strain on those requirements, raising concerns including definitional overbreadth and shortcuts in procedure under the ATA to the prosecution of the civilians in military courts under the Pakistan Army Act, 1952, and the intimidation of judges and prosecutors in terrorism cases. In this article, the authors deal with that issue by developing a doctrine analysis and policy analysis based on the following research question: to what extent do laws on anti-terrorism in Pakistan, as they exist and as enforced, comply with constitutional guarantees and with Pakistan's duties under the international human rights law, and what would be a more appropriate way of

¹ Raman, B. (2008). *Terrorism: Yesterday, Today and Tomorrow*. Lancer Publishers LLC.

² Makki, M., & Akash, S. A. (2020). From counter-terrorism to counter violent extremism: An analysis of Pakistan's internal security policies. *Pakistan Journal of Terrorism Research*, 2(1).

³ Hinojosa-Mart'nez, L. M. (2014). A Critical Assessment of United Nations Security Council Resolution 1373. In *Research Handbook on International Law and Terrorism* (pp. 626-650). Edward Elgar Publishing.

⁴ Hassan, M. (2023). Military Court Trials of Civilians in Pakistan. *Policy Perspectives*, 20(2), 1-18.



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harmonizing the demands of security and the demands of adherence to the rule of law? The thesis proposed is not abstract but practical: counter-terrorism effectiveness in Pakistan cannot be achieved in the long term without rights-compliant institutions since legitimacy, effective evidence, judicial independence or trust on the part of the public are not soft values, but only facilitating conditions to ensure long-term security.⁵

Literature Review

Literature on both counter-terrorism and fundamental rights in the global and political context, as well as the context of Pakistan, appears to share a common understanding that emergency-based legal architecture in most instances starts as a temporary measure necessitated by an imminent threat, but frequently, started to grow and spread to the normal course of policing and become normalized in a way that distortion of the criminal justice norms to much broader sets of behavior than originally desired. Comparatively, counter-terrorism legal scholars highlight three recurrent risk patterns that include: first, open or excessively elastic conceptualizations of terrorism and thereby permit the selective prosecution; second, procedural exceptionalism (special courts, lowered evidentiary thresholds, preventive detention, secrecy); and third, lack of oversight that permits intelligence agencies and executive actors to act without meaningful judicial control or effective remedies. This school of thought is directly connected with the ICCPR framework in that the Covenant does not forbid security measures but demands that they be legally proclaimed, necessary, and not discriminatory, and tightly restrained to the imperatives of the situation; and the Human Rights Committee has also often mentioned in this tradition that derogation regimes must be legally proclaimed, necessary and must never undermine non derogable standards. A similar focus is observed in UN policy writings, where a rule-of-law-infused counter-terrorism policy that does not view human rights adherence as a PR appendix has been promoted as part of the successful criminal-justice response to the terrorist violence.⁶

The strands of Pakistan-related literature may be divided into four intersecting strands. The former is interpretive commentary about the makeup of the ATA, particularly its definitions section, special courts, and the legal implications of expedited trials; one pivotal shift in this strand is the Supreme Court effort to restrict the term terrorism to ensure that a horrible crime does not automatically transform into anti-terror litigating, which will in turn limit the transfer of common criminality to the anti-terror courts.⁷ The second is domestic and international organization empirical and rights-monitoring work which documents the impact of counter-terrorism powers on the press, activists, ethnic minority, religious minority, and political dissidents; these reports frequently claim that the architecture of exceptionalism generates incentives towards overcharging, coerced confessions, the replacement of speed by reliability. This thread is highly correlated with the findings of the Human Rights Committee in 2024, which is concerned about the disproportionate presence of ATA targeting human rights defenders, representatives of ethnic and religious communities, journalists and dissidents and activists, and about the legal regulations that allow warrantless interventions and custodial confessions. The third strand is institutional analysis, which studies the fractured governance of counter-terrorism in Pakistan- police, intelligence units, paramilitary actors, and coordination

⁵ Baig, K., Abbas, A., Sajjad, M. H., & Zafar, M. H. (2024). The counter-terrorism and human rights: An analysis in the context of Pakistan. *The Critical Review of Social Sciences Studies*, 2(2), 1389-1410.

⁶ Baig, K., Abbas, A., Sajjad, M. H., & Zafar, M. H. (2024). The counter-terrorism and human rights: An analysis in the context of Pakistan. *The Critical Review of Social Sciences Studies*, 2(2), 1389-1410.

⁷ Iqbal, K., & Shah, N. A. (2018). Defining terrorism in Pakistani anti-terrorism law. *Global journal of comparative law*, 7(2), 272-302.



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units where law-making is often limited by capacity issues, politics, and security needs; in this strand, NAP is often seen as a policy anchor that draws legislation towards proscription, financing disruption, and rapid incapacitation instruments.⁸ The fourth is international political economy work on the influence of global compliance pressures (particularly in anti-money laundering and countering financing of terrorism (AML/CFT)) on domestic legal priorities and enforcement indicators; the removal of Pakistan in the FATF greylist in the October 2022 plenary is popularly cited as an example of how international scrutiny can encourage legislative and institutional change in the security area.⁹

What is wanting in much of the writing which is available is the incorporation of legal judgment in which the constitutional rights, the obligations of international treaties, the domestic case-law and the practicalities of the investigation and prosecution are treated as one, and not as isolated argument. The most fruitful analyses, however, are those not posing rights and security as competitors, but posing a design question: what legal protections enhance the validity and correctness of counter-terrorism results without handicapping the state in providing security against violence? Their connection of issues of definition, procedural protections, military jurisdiction, judicial independence, privacy, and freedom of expression in a single document allows the Human Rights Committee to offer a unique framework of such an integrated assessment, and because they do so, they serve in this article as both a secondary source in the literature review and as a reference point to which domestic law and reform options can be assessed.

Methodology

This paper deploys qualitative doctrinal approach, which revolves around the authoritative legal texts and interpretative standards, which is complemented by the policy context and some limited comparative reasoning which explains international requirements. The main sources of law evaluated are the constitutional provisions of Pakistan applicable to the implementation of counter-terrorism, in particular, the principle that the laws contrary to the rights are invalid to the degree of contradiction, the rights to life and liberty, the right to arrest and detention, the right to extract the evidence by torture, and the binding right to a fair trial and a due process. These sources of law are interpreted alongside the baseline standards of fair trial, lawful restrictions and emergency governance of the ICCPR, with interpretive advice being made based on the outputs of the Human Rights Committee, such as the approach of derogations as per the General Comment No. 29 as well as the concluding observations made by the Committee on Pakistan as of 2 December 2024. The analysis includes also binding international security responsibilities that often inform local counter-terrorism legislations, especially Security Council resolution 1373 (2001) due to the fact that financial-suppression tasks and asset-freezing anticipations commonly affect the structure of proscription regimes and investigative capabilities in terrorism trials.

The methodology is followed in three steps operationally. It, first, determines the main peculiarities of the anti-terrorism ecosystem in Pakistan that constitute the risks of substantial overbreadth, shortcuts in procedural terms, special forums, and administrative controls and lays out the interaction among them with constitutional guarantees and

⁸ Adnan, M., Rehman, T. U., & Saeed, A. (2025). Counterterrorism vs. human rights in Pakistan: A critical ICCPR-based evaluation of the anti-terrorism act and its implementation. *AL-JAMEI Research Journal*, 3(1), 323-332.

⁹ Jawad, A. (2022). An evaluation of Anti-Terrorism laws in Pakistan: Lessons from the past and challenges for the future. *Security and Defence Quarterly*, 38(2), 16-30.



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ICCPR responsibilities. Second, it judges such features by a structured test of legality/necessity/proportionality, which is not only warranted domestically (since the Constitution itself envisages reasonable restrictions on particular rights clauses) but also internationally (since ICCPR limitation clauses and emergency standards require precision, necessity and non-arbitrariness). Third, it generalizes conclusions into lines of reform that would result in maintaining authentic counter-terrorist capacity and mitigating rights hazards that, in practice, tend to erode prosecutorial dependability and social trustworthiness. Since the research is legal-analytical and not field-ethnographic, the research is not asserting to have statistically estimated the incidence or effectiveness of terrorism, or to have statistically identified its effect on human rights and freedoms; rather, it will examine whether the legal framework is structured to deliver accurate, reviewable, and rights-respecting results, having the issues and recommendations of the Human Rights Committee as an external account of legality and good practice.

Research Findings

The initial significant discovery is that the definitional breadth is the structural pressure junction of anti-terrorism law in Pakistan as breadth at the level of substantive definition spills over to the area of forum selection, bail practice, investigative vigor, sentencing exposure, and the social significance of the accusation. The Human Rights Committee directly describes the definition of terrorism as provided by the ATA as extremely broad and it states that this remains despite the Supreme Court decision in *Ghulam Hussain v. the State* (named by the Committee as a 2019 one) that sought to narrow the definition of terrorism down. This is important as soon as terrorism becomes a term that can be applied to the types of conduct that do not have the effect of terrorizing a population, do not have the effect of coercing the state, then the ATA can stop acting as a specialized reaction to terror networks and become, instead, a prosecutorial tool that can be applied to a broad range of conflicts, including those in which political protest cases, interpersonal violence cases with public impact, and any other conflict in which the element of fear can be claimed, but in which the element of terrorist intent cannot be strictly demonstrated. A legal regime that was set up to manage exceptional threat at the time begins to redefine common criminality and political anarchy as existential security danger, which enhances the leverage of coercion, but at the cost of amplifying error and selective application risk. This is the very sort of ambiguity that the rule of law is supposed to reduce: when the line between terrorism and ordinary criminal justice is unclear, the courts, police and other executive actors are in effect endowed with a discretionary problem-solving role to determine which cases will be of exceptional treatment and which sit within the normal criminal justice system, and that discretion will predictably follow the political incentives and institutional capacity than principled legal limits.¹⁰

The second significant result is that the procedural model as defined by the Human Rights Committee of the ATA has several characteristics that are hard to balance with the concept of fair trial and due process unless they are limited and highly monitored with well-developed remedies, which the concerns expressed by the Committee indicate are not always met in practice. The Committee emphasizes the fact that the ATA enables police officers to conduct searches and arrest without warrant, to use confessions in police custody as evidence in court, to have limited time investigation and trial deadlines. All such characteristics have their rights footprint, warrantless power increases the risk of

¹⁰ Iqbal, K., & Shah, N. A. (2018). Defining terrorism in Pakistani anti-terrorism law. *Global journal of comparative law*, 7(2), 272-302.



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arbitrary interference, custodial confession increases the risk of coercion and torture, and pressured timelines can weaken defense preparation and judicial review and promote closure by encouraging files collected in coerced confessions instead of investigations with evidence.¹¹ Under the constitutional structure of Pakistan, tension is direct since arrested individuals are now entitled to know reasons why they were arrested, are entitled to have an attorney of their choice and must be brought before a magistrate within twenty-four hours the minimum safeguards eroded where exceptional law permits greater discretion in arrest and search and where proceedings are structurally expedited. Another systemic spillover effect also put into the limelight by the Committee is the ATA having made itself purportedly supreme over other legislation, including that pertaining to juvenile justice, under the presence of section 32 under which anti-terrorism courts are given the authority to assert jurisdiction over juveniles. The given finding is important since it reshapes the ATA not as a specialized law that works parallel to the protection of the vulnerable populations, but as that which may override the protective regimes designed to safeguard the vulnerable populations and thus, increases the compliance stakes under the constitutional due process and ICCPR fair trial standards.¹²

The third significant observation relates to the issue of forum exceptionalism, that is, the survival of a military jurisdiction over civilians in a counter-terrorism-adjacent zone, and how forum choice is used to create or profoundly affect perceived and actual legitimacy. The Human Rights Committee is still concerned about the application of the Pakistan Army Act, 1952 to prosecute civilians under military courts, as they report very high conviction rates and that those convicted under that system received a similar due process guarantee as civilians in the civilian court system have, and cites reports that in most cases tried in military courts since 2015 have received the death penalty. The Committee also cites a Supreme Court decision of October 2023 that military trial of civilians was unconstitutional and violated international human rights, and it is unfortunate that it was stayed thereby creating a legal vacuum where civilians whose cases were not dismissed by a final order could be held in military custody.¹³ Later public reporting states that the legal and policy struggle against civilian military trials in judicial courts went on until 2025, which suggests that the issue is not resolved socially or institutionally even with interim judicial orders that allow it. Balancing-wise, this result is relevant since the more the state is dependent on the parallel justice systems which are viewed as less transparent or less independent, the more they risk compromising the credibility of the terrorism convictions both on the domestic and international level and also the more they become an incentive in terms of the so-called forum shopping, when the most hostile forum is left to prosecute politically timely cases instead of battlefield-related ones.¹⁴

The fourth key observation is that surveillance and information-control measures despite their frequent rationalization as preventive counter-terrorism instruments, have increased to a more general governance form that influences the privacy and expression rights and may affect the anti-terrorist enforcement situation indirectly. It also concerns the Human Rights Committee overly broad authorities to intercept and retain personal data and share

¹¹ Imran, M., & Idrees, R. Q. (2020). Anti-terrorism legal framework in Pakistan and challenges before the criminal justice system. *Pakistan Journal of International Affairs*, 3(2), 236-262.

¹² Nadeem, M., & Ahmad, I. (2016). An Analysis of the International Covenant on Civil and Political Rights Minimum Standards and Pakistan Anti-Terrorism Laws. *JL & Soc'y*, 47, 1.

¹³ <https://www.dawn.com/news/1870905>

¹⁴ Hussain, N., & Bhatti, S. H. (2025). Balancing State Security and Individual Rights: A Critical Analysis of Counter-Terrorism Measures in Pakistan. *Library of Progress-Library Science, Information Technology & Computer*, 45(1).



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it with foreign governments without judicial authorization coupled with an adequate check or monitoring mechanism, and it cites an authority granted to the Inter-Services Intelligence in July 2024 to intercept calls and text messages under section 54(1) of the Pakistan Telecommunication (Re-Organisation) Act, 1996, and a mass surveillance system (Lawful Intercept Management System) that applies to telecommunications companies without regulatory restrictions or judicial approval. These observations are of immediate concern to anti-terrorism law since intelligence-led interception will become a de facto opening gateway into terrorism prosecutions, which can influence who is investigable and how evidence case is compiled; unless interception is strictly authorized and monitored, the system will also result in both rights abuses and fragile evidence cases. According to domestic constitutional terms, the privacy of home and the dignity of the person are proclaimed inviolable owing to the law and in ICCPR terms any intrusion into the privacy must satisfy legality, necessity, and proportionality conditions. The extended impact is also expressive: the Committee has associated the effects of counter-terrorism legislations with the chilling effect on journalists, activists and minorities making counter-terrorism not merely an anti-violence regime but also a vocabulary of governance employed in information control.¹⁵

The fifth significant conclusion is that the counter-terrorism ecosystem of Pakistan involves security laws and arrest policies that do not sit well with the normal criminal justice protection and, according to the opinion of the Human Rights Committee, border on the enforced disappearance issue. The Committee calls on Pakistan to revise the Actions (in Aid of Civil Power) Regulation, 2011 and either repeal it or align it with the international standards and stipulations in order to end secret or incommunicado detention of anyone. The very language of the Regulation explains why it draws such attention: it is based on understanding that there is a gravest and unprecedented threat, that it legalizes to incapacitate persons in the course of operations, and that its definition of miscreant is broad, enough to include a category of operations that can detain persons and categories beyond the usual criteria of criminal suspects. In the case where such regimes are run with non-public registers, no access to judicial redress, and no criminal charges, they create precisely the environment where enforced disappearance and coercive interrogation methods can thrive; the larger issue of the Committee regarding the proliferation of enforced disappearances, as well as the absence of criminalization and prosecution, provides the human rights background that causes detention exceptionalism to be of particular stakes. Balancing terms, this observation is very important since it implies that legal frameworks designed to enable the state as the power force against militants may in under-regulated forms create an equivalent state of detention that harms not only adherence to rights but also the credibility of counter-terrorism operations.¹⁶

The sixth key conclusion is that the priorities of lawmaking and enforcement in Pakistan of the anti-terrorism laws are largely dictated by the dynamics of international financial and security compliance, which unintentionally promotes punitive metrics, i.e., increased proscription, speedier prosecutions, and conviction-oriented strategies, to the detriment of gradual institutional change that enhances the quality of evidence and fairness. The official statement of Pakistan on the withdrawal of the FATF greylist indicates that this decision was made at the FATF Plenary of 2022-21 October and that it is placed in the framework of AML/CFT compliance to highlight that counter-terror financing is a key

¹⁵ Shakeel Qarar, <https://www.dawn.com/news/1844810>

¹⁶ Ahtesham Bashir <https://tribune.com.pk/story/2577321/k-p-cabinet-to-review-repeal-of-action-in-aid-of-civil-power-act>



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factor in the domestic security governance. On its part, UN Security Council resolution 1373 requires states to criminalize and suppress terrorist financing and freeze assets immediately, establishing an international legal framework, where domestic counter-terrorism laws are likely to be financially robust. It is not a risk to financial enforcement as such that compliance regimes, in their eagerness to eliminate violent networks, tend to be underweight to procedural protections, judicial independence and remedy frameworks; rather, the frequent focus of the Human Rights Committee on reviewing sweeping definitions, safeguarding fair trial rights, and curbing abuse of journalists and minorities indicates that the risk of this approach is that compliance is important, but in human rights terms is deeply human rights compliance oriented.¹⁷

Discussions

To achieve a sustainable relationship between national security and basic rights in Pakistan, it is necessary to drop the metaphorical but intuitive approach of a scale in which the addition of security leads to the subtraction of rights. The constitutional and international law disapproves that formulation by developing security needs into the rights regimes by means of controlled limitation regimes: such as in the Constitution of Pakistan, freedom of speech and press is guaranteed but it explicitly permits reasonable restrictions in the interest of integrity, security, or the defence of Pakistan, of public order, or incitement to an offence, i.e. the constitutional structure speculates security-sensitive regulation but requires it to have a legal limit and to be reasonable. The ICCPR also admits that some rights could be curtailed in the law due to valid reasons, and it agrees to derogations in a public emergency that threatened the life of the country under strict circumstances, and it insists that even in emergencies the rule of law did not vanish. The issue with Pakistan is that the counter-terrorist system is not securitizing, but is instead that the law design is flawed because it depends on ambiguity, unwarranted authority, forced confessions, and shadowy adjudicative forums, which do not just fail to meet the test of legality, necessity, proportionality, independent control, and effective remedy, but actually are tests whose failure would render the state actions lawful and therefore socially justified. Legitimacy becomes operationally significant in a polity where real violence is a concern, since it determines cooperation with law enforcement, participation by witnesses, flow of intelligence within the community, and the readiness of courts to accept evidence as reliable.¹⁸

The definitional issue demonstrates how adherence to rights can be used to increase instead of impede counter-terrorism efficacy. The criticism of the ATA by the Human Rights Committee of the definition being very broad and of the attempt by the Supreme Court in *Ghulam Hussain v. the State* to narrow the definition is indicative of a common worry: once the definition is made as a catch-all term, anti-terrorism courts and investigators will be overwhelmed with cases that are in no way related to the terrorist intent or organized terror threats.¹⁹ This has two forms of damage. It undermines the capacity to prosecute complex networked violence in the first place, as investigators, prosecutors, judges, and witness protection resources get diverted to cases that are likely to be serious but not terrorism in the strategic sense, in order to be considered ATA-eligible. Second, it heightens the risk of injustice--the special treatment accorded to

¹⁷ Ndayishimiye, O. C. (2019). *United Nations Security Council Resolution 1373: Anti-terrorist Financing Regulation for the Financial Sector* (Doctoral dissertation, University of Nairobi).

¹⁸ Mbaku, J. M. (2021). Counter-Terrorism Laws and Human Rights in African Countries. *Wash. U. Global Stud. L. Rev.*, 20, 863.

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borderline cases at that time means that the temptation to get the file working is greater, that is, through confession, pressure or a hasty hearing. By refining the law to demand evidence of terrorist intent (or at least a discernible nexus to coercion, intimidation of the people or destabilization above coerced criminality), the system can then use exceptional means against exceptional offenses and leave the rest of the heinous crimes outside of the extraordinary judiciary with the ordinary system of penal law. Such an outcome contributes to accuracy and fairness, and it makes the likelihood of anti-terrorism law being political tools a possibility less likely.²⁰

The balance also is complicated by institutional context. The 2024 observations of the Human Rights Committee refer not only to the text of anti-terrorism legislation but also to the fact that judges and prosecutors in delicate cases, such as terrorism cases, should be subjected to harassment, intimidation, and threats, including by non-state actors. This observation is critical since the right to a fair trial is never ensured by laws but rather by the presence of independent adjudicators and a prosecution service capable of making a decision without being coerced. When a counter-terrorism apparatus depends on expediency and discretion as the justice industry is intimidated, the resulting net impact is an augmented risks of miscarriages of justice and the diminished risks of believable convictions that pass the scrutiny of an appellate court. Other issues related to the proposal of the constitutional changes relating to judicial appointments expressed by the Committee also indicate that the legality of counter-terrorism could not be isolated in the context of larger concerns of judicial independence and judicial institution-building. In this connection, balancing between security and rights would involve not merely reforms in statutes but also reforms in the governance environment in which those statutes are to be implemented, such as protections of judges and prosecutors, open appointment procedures, and civilian controls structures are also part of counter-terrorism capacity and not counter-terrorism constraints.²¹

Military courts pose the most severe challenge in terms of balancing since they are usually rationalized as a measure to counter extraordinary danger and to enable conviction when the civilian institutions are considered to be too slow or too weak. The position of the Human Rights Committee is however quite articulate they ask Pakistan to repeal the military court area of jurisdiction on civilians and conform proceedings in line with ICCPR articles 14 and 15 due to the concern of independence, the principles of due process and the historical trend of very high conviction rates and most common death sentence. Heavy dependence on military trials can be a strategic cost even on the security perspective. It can have rapid effects, but would damage trust in the accuracy of verdicts, reduce transparency, and result in reputational and diplomatic expenses that make it difficult to cooperate.²² Furthermore, when the apparent necessity of military court arises due to intimidated witnesses, ineffective investigation, or insecure courts, the lasting solution will be to address the inadequacies such as the safety of witnesses, forensic ability, and specialized prosecution, or safeguarded court facilities instead of permanently transferring civilian cases to the military. In other words, this policy question is the following: which civilian justice reforms would render military trials unnecessary even in high-threat situations? That framing transforms the sense of balance

²⁰ Raza, H. (2021). Determining the Scope of the Anti-Terrorism Act 1997-Ghulam Hussain v the State. *LUMS LJ*, 8, 170.

²¹ Hussain, N., & Bhatti, S. H. (2025). Balancing State Security and Individual Rights: A Critical Analysis of Counter-Terrorism Measures in Pakistan. *Library of Progress-Library Science, Information Technology & Computer*, 45(1).

²² Tsilonis, V., & Tsanta, A. (2019). *The Jurisdiction of the International Criminal Court*. Cham: Springer International Publishing.



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to an institutional problem-solving, as opposed to rights contraction.²³

Lastly, the digital and surveillance aspect reveals the potential of laws on counter-terrorism to transform the civic space in a manner that indirectly impacts security outcomes. The Human Rights Committee refers to a climate of internet blocking, blocking websites, surveillance, and a chilling effect of using sedition, blasphemy, and counter-terrorism laws in connection with journalists, human rights activists, and minorities. As much as states are allowed to control incitement and actual terrorist propaganda in line with the international law, extensive censorship and uncontrolled blocking can work against them: they diminish our transparency, undermine independent investigation into the actions of security agencies, and even radicalize dissatisfaction through peaceful means. Rights based approach- judicial permission, separate checks, legal boundaries and viable redresses do not eradicate counter-terrorism instruments; they render them less arbitrary and hence more justifiable and enhance the state ability to detach violent cells to the rest of the population.

Recommendations

A new anti-terrorism paradigm should restore national security and basic rights balance in Pakistan by re-tuning the frameworks and areas of precision, oversight, and reliability, instead of default settings of breadth, speed, and exceptionalism. The initial reform agenda must be to reduce and operationalize the definition of the term terrorism and the jurisdiction conditions triggering the process of placing cases in anti-terrorism law-courts, with appeal to the rationale of the attempt by the Supreme Court in Ghulam Hussain v. the State to limit the scope of terrorism indictments to the acts that are truly intended to serve the statutory purpose as opposed to all heinous offenses that have an impact on the masses. The terror label should be amended by legislature to demand articulate evidence of the target terroristic aspect, like intention to instill fear among the population, pressure state actions, or interfere with governance past the general criminal violence, to force the prosecutors to prove more than the extent of harm. Meanwhile, the supremacy relations as stated by the Human Rights Committee ought to be dealt with in a way that the protection of juvenile justice is not defeated easily by just the simply choosing of the charges and that anti-terrorism courts should not automatically acquire jurisdiction over juveniles through an overriding clause; in the event that exceptional trial fora do exist, they ought not to be used to circumvent child protection regimes. This narrowing of definition and jurisdiction is not a compromise with terrorism; rather, it is a policy of resource allocation that permits a limited anti-terror capabilities to concentrate on real terror threats and minimize the possibility that anti-terror laws will be turned against dissidents or political critics.

Secondly, procedural protection ought to be restored in a manner that speed does not supplant fairness and that evidentiary reliability is enhanced instead of being diminished in cases of terrorism. The interests articulated by the Human Rights Committee offer an immediate agenda: restrict or abolish the power of warrantless search-and-arrest without exception other than under tightly defined exigent circumstances requiring immediate judicial review; and limit or put a stranglehold on the use of confessions made in police custody as evidence regardless of the structural risk of coercion and the constitutional bar on torture to obtain the evidence; and overhaul compressed investigation and trial deadlines to allow complex terrorism cases to be professionally investigated without pushing investigators into shortcutting confessions and without putting defense counsel in

²³ Ullah, W., Salim, A., & Baloch, Z. (2019). Analyzing the Counter Terrorism Policies of Pakistan. *Dialogue (Pakistan)*, 14(4).



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underprepared litigation Practically, Pakistan would be more secure by enhancing the quality of the cases, case-scene practices, computerized chain of custody, witnesses protection and prosecutor screening than by procedural compromises that enhance the possibility of reverse on appeal, and decrease the confidence over the conviction. Terrorism should also have access to legal assistance by means of meaningful participation of defense since fair trial is not only an individual right but it is a process that assists a court to weed out untrustworthy evidence at an early stage thereby avoiding wrongful convictions that can generate grievances and compromise counter-terror legitimacy.

Third, the Pakistan government must invest in a civilian-justice system on civilian defendants and withdraw the use of the military courts as counter-terrorism alternative. The suggestion of the Human Rights Committee to rescind the military court jurisdiction over civilians and to harmonize the proceedings with the ICCPR articles 14 and 15 should be seen as a roadmap: the trials of civilians should take place in strong, independent and unbiased procedures and courts that are stipulated by law, with clear procedures and appeal rights that are internationally equal. In case the functional justification of the military courts is fear of witnesses, or insecurity in a court, then the state must invest in special civilian anti-terror benches containing secure facilities, secured identities where legally fitting, resilient witness protection, and professional prosecutorial groups instead of shifting the cases to military jurisdiction. Simultaneously, the institutions of oversight should be empowered: the Committee identifies the lack of empowerment of the National Commission to Human Rights to investigate the complaints against the armed forces and the intelligence agencies, and formalization of that investigative responsibility would result in the increased accountability in the areas where the claims of abuse can results into the delegitimization of counter-terrorist activities. Ensuring that the enhanced parliamentary control over the counter-terror policy, budgets, and detention practice can also limit the mission creep, so that exceptional authority is not silently transformed into common law of political administration.

Fourth, surveillance and digital control capabilities must also be re-established into a tight legality-and-oversight framework that can draw the line between legitimate counter-terrorism intelligence and unacceptable political surveillance or mass interception. The Human Rights Committee wants Pakistan to implement a comprehensive data protection legislation and have interception and access measures authorized by independent, unbiased judicial authority, with an established need and proportionality criteria, reporting obligations, and remedies to abuse, which is what the Committee was concerned about surveillance without supervision and sought a review system independent of law enforcement. The constitutional obligation to dignity and privacy and the privacy provisions of the ICCPR demand that even counter-terrorism surveillance be strictly limited, or the state will run the danger of chilling lawful speech and bringing civic space to a narrow and of undermining social trust that is a prerequisite to effective intelligence-led policing. The high legal bar to internet blockages and platform blockages should also be embraced by Pakistan, which should only take such a step when absolutely necessary and in the shortest time possible since blanket blockages are punitive to the whole population, hamper emergency services, journalism, and introduce a layer of obscurity that may only serve to enable abuses with little to nothing done to curb the highly organized violent organizations.

Fifth, detention exceptionalism should be substituted with open and auditable detention governance particularly in areas which have been influenced by counter-insurgency



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rules. The recommendation by the Human Rights Committee to reconsider the Actions (in Aid of Civil Power) Regulation, 2011 and no secret or incommunicado detention based on the concrete measures: mandatory detainee registers available to the courts, timely habeas hearings, the right to counsel and contact with family, and obvious time limits and even threshold of evidentiary applicability of any preventive arrest. Enforced disappearance also needs to be criminalized in the domestic law of Pakistan and the allegations should be promptly and objectively examined in ordinary courts as enforced disappearance is not only a serious violation of the right, but a form of behavior that builds credibility and confirms the vicious cycle.

Lastly, Pakistan needs to align international compliance with human rights standards such that counter-terror financing enforcement and cooperation in security measures should not be a de facto reward to expediency and brutality as an exclusive. UN Security Council resolution 1373 demands decisive measures on financing and facilitation and the experience of Pakistan under FATF examination reveals that the world does expect reform to be driven and that the next step should involve rights metrics on counter-terror performance (indicators of judicial independence, indicators of torture-prevention enforcement, indicators of transparency in proscription procedures, and indicators of remedies of abuse). This would not undermine the counter-terror posture of Pakistan, on the contrary it would enhance it by providing credible convictions both operationally and legally viable within the domestic institutions.

Conclusion

The anti-terrorism laws were developed in Pakistan by the pure and real need and the pivotal and crucial role of safeguarding life and community security by the state and the counter-terrorist process has to be sustained by the reliability which the framework used to achieve the correct rights-based results which support the trust of people and legal legitimacy of the judicial system. The constitutional framework ensures freedom, honors, protections on arrest and imprisonment, and enforceable right to a fair trial and due process, and the ICCPR obligations of Pakistan reinforce the same essential requirements and limit the extent to which exceptional action can be taken even in times of insecurity. The compliance map presented in the final observations of the Human Rights Committee adopted on 2 December 2024 is unusually detailed: the issue with a broad definition of terrorism, powers without warrants, forced confessions during custody, compressed schedules, the spread of terrorism by the juvenile justice system, trial in a military court, and the chilling effect on journalists and minorities are not single complaints, but reflections of each other. Rebalancing does not mean that Pakistan should go soft on terrorism; it means that the legal process needs to be more accurate, more evidentiary and procedural protection, civic judicial capacity, independent regulation of surveillance and detention, and mechanisms of accountability, which limit the opportunity to abuse it. In case such reforms are sought, Pakistan can transition to a counter-terrorism structure, where investigative quality and legitimacy are enhanced by rights-compliant practice, and legitimate convictions and clear governance advance the capacity of the state to segregate the violent element of society and to deal with terrorism without the constitutional order it aims to defend.

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