
TERROR ON DEATH ROW

The abuse and overuse of Pakistan's
anti-terrorism legislation

A report by Justice Project Pakistan and Reprieve
December 2014

OVER 800 PRISONERS ON DEATH ROW IN PAKISTAN WERE TRIED AS 'TERRORISTS' THOUGH IN MANY CASES (AS MANY AS 88%) THERE WAS NO LINK TO ANYTHING REASONABLY DEFINED AS 'TERRORISM'

THESE SO-CALLED 'TERRORISM' CASES REPRESENT MORE THAN ONE IN TEN OF PAKISTAN'S DEATH ROW, A PROPORTION THAT IS RAPIDLY GROWING AND IS ESTIMATED TO NOW BE AS HIGH AS 30%

IN THE PROVINCE OF SINDH, THIS FIGURE RISES TO NEARLY 40%

IN TERRORISM TRIALS, MANY OF THE DEFENDANT'S FUNDAMENTAL DUE PROCESS RIGHTS ARE EXPLICITLY SUSPENDED

VARIOUS OF THE ISLAMIC LAW PROVISIONS OF PAKISTAN LAW ARE SUSPENDED FOR THESE CASES, IN APPARENT VIOLATION OF THE CONSTITUTION

THERE ARE CURRENTLY OVER 17,000 PENDING 'TERRORISM' CASES IN PAKISTAN, MANY OF WHICH HAVE NOTHING TO DO WITH TERRORISM

TO SUGGEST THAT EXECUTING THESE INDIVIDUALS HAS ANYTHING TO DO WITH CURTAILING TERRORISM IS MERE DECEPTION

CONTENTS

GLOSSARY OF KEY TERMS	1
EXECUTIVE SUMMARY	2
DATA AND METHODOLOGY	4
CONCERNS ABOUT THE LEGISLATION	5
PROVINCE CASE STUDY - SINDH	21
CONCLUSION	22
RECOMMENDATIONS TO THE GOVERNMENT OF PAKISTAN	23
APPENDIX 1 - PAKISTAN'S DEATH ROW - IN FIGURES	24
APPENDIX 2 - STATISTICAL ANALYSIS - PROVINCE BY PROVINCE BREAKDOWN	28

GLOSSARY OF KEY TERMS

ANTI-TERRORISM ACT ('ATA') 1997 - explicitly enacted in response to a bomb attack earlier that year, the Act broadened the previous definition of 'terrorism' and created special anti-terrorism courts (see below).

ANTI-TERRORISM COURTS - special courts created by the Anti-Terrorism Act 1997 for the hearing of terrorism cases.

COMPROMISE - a Sharia law principle, as introduced into Pakistani law in 1990. The victim of a crime against the human body, or their legal heirs, may agree to expunge the perpetrator's criminal sentence, either in exchange for monetary compensation (*Diyat* - see below) or without this.

FIRST INFORMATION REPORT ('FIR') - the initial written document prepared by police when they first receive information about the commission of an offence.

QISAS AND DIYAT - two forms of punishment under Islamic (or Sharia) penal law, as introduced into Pakistan's criminal law in 1990, under which crimes against the human body are seen as offences against an individual, not society or the state. *Diyat* ('blood money') allows the legal heirs of a murder victim to agree a compromise (see above) with the perpetrator, either in exchange for monetary compensation or without this. *Qisas* ('retribution') entails the right of the victim or their legal heirs to inflict comparable injuries to the perpetrator as he or she inflicted to the victim, including - in the case of murder - causing his or her death. The permission of a court is required in all cases.

SHARIA LAW - the Islamic legal system, derived from the Quran (as the word of God), the example of the life of the Prophet Muhammad (pbuh), and fatwas (the rulings of Islamic scholars).

TERROR ON DEATH ROW
THE ABUSE AND OVERUSE OF PAKISTAN'S ANTI-TERRORISM LEGISLATION

EXECUTIVE SUMMARY

Reducing the threat from terrorism against the civilian population of Pakistan is a challenge that has plagued and polarised Pakistan's society for many years. Over the course of 2014 alone, we have seen numerous terrorist attacks on civilian targets. Most recently there has been the terrible attack on children at the Army Public School in Peshawar - an event that shocks the conscience of any sensible person.

Unfortunately, populist political responses to these outrages have tended to exacerbate, rather than ameliorate, the problem. For example, the United States responded to the horror of 9/11 by creating a global 'War on Terror' that has made the world a far more dangerous place. This is not a novel issue though it does tend to be one where history repeats itself: in the 1970s, the British response to the Irish Republican Army ('IRA') was to sacrifice the very principles for which British society was renowned - primarily, due process and the rule of law. The consequent inequities resulted in the erosion of the rights of other British citizens. It was not until Britain saw the error in its populist response that some kind of resolution to the 'Irish Problem' began to be achieved.

In Pakistan, we have likewise seen a legislative framework that is intended for use to combat acts of terrorism. This has come with such a wide definition of 'terrorist' as to swallow the entire purpose of the laws. As this report will set out, these laws have not been used to combat terrorism so much as to undermine the essential nature of Pakistani justice.

The Anti-Terrorism Act of 1997 is one such piece of legislation. Under the Act (analysed in more detail below), trials are rushed, often denying lawyers acting for the accused time to present a full defence. There is also an increased likelihood of police torture, and fundamental rights of defendants are explicitly suspended. Critical rights that have been essential to Islamic law for centuries have been dissolved. In short, the overuse and abuse of this Act means that swathes of defendants whose alleged crimes bear no relation to terrorism have been sentenced to death following extremely unfair trials - whilst terrorist attacks continue unabated.

Using statistical analysis and individual case studies, this report explores the use of Pakistan's anti-terrorism legislation over the past two decades, specifically in relation to death penalty cases.

It is particularly concerning to note that the data we have obtained suggests that more than 800 of all those on death row in Pakistan were tried as 'terrorists'. In the province of Sindh, the proportion of defendants tried as 'terrorists' rises to a full 40% of all death penalty cases.

The sheer numbers suggest that the anti-terrorism laws are being overused. Data and projections from individual case studies suggest that as many as 88% of those sentenced under the 'terrorism' laws had nothing to do with terror at all. A study of the individual cases illustrates that the laws are being applied to people with no relationship to terrorism at all - from a 14 year old youth accused of kidnapping to another young man accused of killing his own father in a dispute over inheritance.

Investigation conducted into individual cases of those sentenced to death by anti-terrorism courts over the past two decades likewise shows that instead of being reserved for the most serious cases of recognisable acts of terror, the anti-terror legislation is being used to try to usurp the role of our courts in ordinary criminal cases.

The legislative scheme entails significant violations of human rights and has also failed to serve as a deterrent against acts of terror. A re-examination of existing cases and a review of the current legislation are both urgently required. Furthermore, lessons must be learnt from past mistakes when looking forward to new ways of combatting terrorism in the coming months and years.

DATA AND METHODOLOGY

This report is a result of death row prisoner data from 38 prisons across Pakistan's four provinces (Balochistan, Khyber Pakhtunkhwa ('KPK'), Punjab and Sindh).

This is the first time that such comprehensive data on Pakistan's death row population has been obtained, synthesised and analysed. It has allowed us a ground-breaking insight into the men, women, and sometimes even children, who comprise Pakistan's death row.

For most of Pakistan, the data runs to December 2012, thereby covering all those who are presently subject to execution dates. However, the report reflects further data on the province of Sindh running to October 2014. This permits an analysis of developments in the use of terrorism legislation in the last two years.

The data reflects individual information regarding 6,872 death-sentenced prisoners. This is an extraordinary number: Pakistan has more prisoners on death row than any other country in the world. Indeed, according to reports released this week, the total number of people condemned to death is estimated to be in excess of 8,261 individuals.¹

¹ This is the figure obtained from the Ministry of Interior and the Law and Justice Ministry in December 2014: see <http://tribune.com.pk/story/808727/6261-prisoners-hanging-in-the-balance/> (last accessed 18/12/2014).

PART I

CONCERNS ABOUT THE LEGISLATION

Through the use of statistical analysis and individual case studies, this report identifies five key, interrelated concerns about Pakistan's current and forthcoming anti-terror laws:

1. The definition of 'terrorism' under the current legislation is **vague and overly broad**, bearing little relationship to terrorism as it is commonly understood;
2. Pakistan's anti-terror laws are being **grossly overused**, often in cases that bear no relation to terrorism;
3. By consequence, an alarmingly high number of defendants have been sentenced to death after being rushed through trials in which **many fundamental rights were explicitly suspended**;
4. These defendants faced a **greatly heightened risk of torture by police**, an endemic problem in Pakistan;
5. All the while, the legislation as it currently stands has **failed to create a meaningful deterrent effect** against acts of terrorism; and this **will only be exacerbated** by forthcoming anti-terror legislation.

CONCERN NO. 1: THE VAGUE AND OVERLY BROAD DEFINITION OF 'TERRORISM'

For the past 15 years, the primary piece of legislation governing the arrest, detention, prosecution, and sentencing of terrorism has been the Anti-Terrorism Act 1997 ('ATA'). Section 6(1) of the ATA, as most recently amended in March 2013, defines terrorism as follows:

In this Act "terrorism" means the use or threat of action where:

* * *

(b) The use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or 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.

Obviously, any murder may be deemed to 'intimidate' the public; any common battery may involve 'attacking' civilians - indeed, a democratic and religious rally is about the only public action that clearly lies outside the definition.²

As a result of the vague wording of sub-sections (b) and (c), the requirements for a case to be deemed an 'act of terror' have often been met in circumstances which, on objective analysis, were far removed from terrorism as properly understood. In the view of the judge in Zafar Iqbal's case (see **Case Study below**), for instance, *"the cold blooded murder of father by his son" was "itself sufficient to create the sense of insecurity and terror in the people of the locality"*.

² Indeed, because the drafting was sloppy and used the conjunctive ("and") rather than the disjunctive ("or"), even a rally would have to be both democratic *and* religious to pass muster under the Act.

*"Terrorism is hardly the only enterprise involving violence and the threat of violence. So does war, coercive diplomacy, and bar room brawls." Walter Laqueur, *The New Terrorism: Fanaticism and the Arms of Mass Destruction*, 1999³*

Whilst there is no doubt that a killing might well have an effect on those living in the locality, to deem that any such 'fear' or 'insecurity' is in itself sufficient to classify that defendant as a 'terrorist' - and thereby dissolve various fundamental rights - means that the exceptional case becomes the rule.

Section 6(2) of the ATA lists 18 acts that can fall within the meaning of 'terrorism'. While some of these might well apply to some acts of terrorism, they are generally no more or less than a listing of common crimes (crimes, to be sure, but common crimes):

- (a) Involves the doing or anything that causes death;
- (b) Involves grievous violence against a person or grievous body injury or harm to 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 other means;
- (d) Involves the doing of anything that is likely to cause death or endangers a person's life;
- (e) Involves kidnapping for ransom, hostage-taking or hijacking;
- (f) Incites hatred and contempt on religious, sectarian or ethnic basis to stir 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 congregations, mosques, imambargahs, churches, temples and all other places of worship, or random firing to spread panic, or involves any forcible takeover of mosques or other places of worship;
- (i) Creates a serious risk to safety of 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

³ Walter Laqueur, *The New Terrorism: Fanaticism and the Arms of Mass Destruction*, New York: Oxford University Press, 1999, p. 6

- and daily business, and disrupts civil (civic) life;
- (j) Involves the burning of vehicles or an other serious form of arson;
- (k) Involves extortion of money (bhatta) or property;
- (l) Is designed to seriously interfere with or seriously disrupt a communications system or public utility service;
- (m) Involves serious coercion or intimidation of a public servant in order to force him to discharge or to refrain from discharging his lawful duties;
- (n) Involves serious violence against a member of the 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.

The Government may add to this list at any time, without recourse to Parliament.⁴

Section 7 of the ATA sets out the available punishments. The punishment of 'death or imprisonment for life' is available for three of these actions: causing the death of any person (Section 7(a)); kidnapping for ransom or hostage-taking (Section 7(e)); and hijacking (Section 7(f)). This report focuses on only those cases which resulted in death sentences; there will, of course be numerous further individuals who were tried and convicted under the ATA.

Criticisms of broadness or vagueness can, of course, be levelled at much domestic anti-terror legislation. However, as examined below, in the case of Pakistan this broad definition of the offences, coupled with the failure to introduce clear guidelines or administrative policies to prevent its arbitrary application, has contributed to the overuse, misuse and abuse of this legislation.

⁴ Human Rights Watch, 'Destroying Legality: Pakistan's crackdown on judges and lawyers', December 2007, p. 6; available at: <http://www.hrw.org/node/10527/section/6> (last accessed 9/12/2014)

CASE STUDY: ZAFAR IQBAL

THE 'TERRORIST': a son who is alleged to have shot his father during a heated argument

FACING THE DEATH PENALTY: since 16 April 2003 (11 years, 7 months)

HELD IN: Central Jail Mianwali, Punjab

Zafar is alleged to have shot his father in a fit of rage during a long-running dispute about Zafar's inheritance. Such a case is clearly a world away from the 'terrorism' envisaged by the ATA. Yet Zafar was tried as a terrorist on the basis of the trial judge's view that:

“The cold blooded murder of father by his son is itself sufficient to create the sense of insecurity and terror in the people of the locality.” The Anti-Terrorism Court judge at Zafar's trial

There is, first, the question of innocence. All of the evidence presented at trial against Zafar was, on the trial judge's own assessment, deeply flawed in some way. The judge acknowledged that the prosecution had not convincingly proved motive; he excluded the ballistics evidence, as police had failed to have it forensically examined; and he deemed swathes of the eyewitness testimony to be “*not confidence inspiring*”. Despite these myriad weaknesses in the prosecution's case, Zafar received two death sentences. All of this happened in less than three weeks; it is little wonder that Zafar's defence lawyer gave no sign of having prepared his client's case properly.

In 2008, shortly before Zafar was due to be executed, he was granted a pardon by his brother and other family members. Such a power of mercy is mandated by Sharia law, and therefore by the Constitution of the Islamic Republic of Pakistan.⁵ Yet, because the ATA purports to 'suspend' a mercy provision that is mandated by Islamic law, Zafar remains under threat of execution on the basis of this illegal sentence under the ATA.

⁵ See *Constitution of the Islamic Republic of Pakistan, Preamble* (“the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed; *** the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah...”); *id.* Part IX, §227 (“All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions.”).

CONCERN NO. 2: THE GROSS OVERUSE OF THE ATA

“There are currently more than 17,000 cases pending under the ATA.” *Al Jazeera* article, July 2014⁶

The fact alone that, as of July 2014, there were over 17,000 pending ‘terrorism’ cases - adding to the 800+ ‘terrorists’ already on death row - strongly indicates that the Anti-Terrorism Act is being greatly and inappropriately overused.

The statistical analysis demonstrates what the breadth of the law would suggest: that defendants who may or may not have committed ‘ordinary’ crimes such as robbery or kidnap are being tried as terrorists without justification. As a result, not only do these defendants face infringement of their rights and arbitrarily harsh punishment; it also undermines any claim that the Pakistani justice system is targeting and prosecuting terrorism cases in a way that is having a meaningful deterrent effect.

The raw data only tells us so much about whether there is a genuine link with terrorism. For example, the data demonstrates that 256 of 818 known cases of ‘terrorism’ prosecutions have no pretence of a link with terrorism. In these 256 cases, the prisoners were convicted only of charges under the Pakistan Penal Code; despite the fact the cases were tried in the anti-terrorism court, the link to terrorism was not proved (see Figure 3, page 27 below).

With respect to the other 562, however, it is harder to say. There is a ‘terrorism’ charge, but the question is whether that charge is actually related to anything that might sensibly be considered to be terrorism. To make an assessment of these cases, it is important to gather all relevant documents, as well as interview the client. We were able to investigate a portion of these as part of the data collection and, of these, 80% of the prisoners convicted of ‘terrorist offences’ turned out to have done nothing to do with terrorism; only 20% were genuinely ‘terrorists’ as the word is commonly understood. Thus, extrapolating from the data, we would expect only 112 of the 562 death row prisoners to have a conviction that was actually related to terrorism.

On this calculation, the data suggests that 86.3% of all those sentenced to death by the anti-terrorism courts had nothing to do with terrorism as that term is commonly understood.

⁶ *Al Jazeera*, ‘Pakistan activists upset by new security law’, 13 July 2014; available at: <http://www.aljazeera.com/indepth/features/2014/07/pakistan-activists-upset-new-security-law-201471316625972647.html> (last accessed 9/12/2014)

CASE STUDY: SHAFQAT HUSSAIN

THE 'TERRORIST': a 14 year old boy with no prior convictions

FACING THE DEATH PENALTY: since 21 May 2004 (10 years, 7 months)

HELD IN: Central Prison Karachi, Sindh

14 year old Shafqat Hussain was sentenced to death by an anti-terrorism court in November 2004 for alleged kidnap and murder. He was convicted on the basis of a single piece of evidence: a 'confession' extracted after nine days of savage beating and torture. In Shafqat's own words:

"They could make you say that a deer was an elephant." Shafqat Hussain, on the torture he was subjected to by police

No other evidence exists linking Shafqat to the crime. The victim's father knew Shafqat well, yet did not identify him as the voice he had heard during multiple ransom calls. Despite this, Shafqat's state-appointed defence lawyer told his client that *"no-one leaves the anti-terrorism courts without a death sentence"* and - apparently deeming it pointless - failed to raise evidence that would have prevented Shafqat being convicted or sentenced to death.

"No-one leaves the Anti-Terrorism courts without a death sentence." Shafqat Hussain's defence lawyer, prior to his trial

Recognising that the case against Shafqat could not stand, the Sindh High Court threw out his murder conviction. Based on the evidence before it, the Court held that the most it could show was guilt of a botched kidnapping in which death was accidental. Yet the Court did not strike down the associated 'terrorism' charge of kidnapping, which had been tenuously justified on the basis that the crime *"created a sense of terror in the wider community"*.

For this charge alone Shafqat has been left to await execution in an overcrowded 'death cell'. Last year, he was informed that he would be executed on 25 August. Letters were sent to his family giving them notice that they would need to say their final goodbyes. Shafqat received notice of the stay of his execution only a few days before he was due to be hanged.

Shafqat's case is far from unique. When his and the other case studies in this report are taken in conjunction with the sheer number of death penalty cases tried in the anti-terrorism courts they suggest a systemic and potentially fatal overuse of the ATA.

CONCERN NO. 3: EXPLICIT SUSPENSION OF FUNDAMENTAL RIGHTS IN ANTI-TERRORISM TRIALS

One of the purposes of the ATA was to introduce and govern special anti-terrorism courts for use in terrorism trials. These courts were intended to promote speedy justice and enforce law and order by ensuring that terrorism suspects were tried swiftly and efficiently.

In order to achieve this, however, the anti-terrorism courts explicitly impose multiple curtailments on a defendant's right to a fair trial, many of which represent a major departure from standard judicial procedure. They include, amongst others:⁷

Police do not require a warrant in order to conduct arrests or searches

Police risk punishment for failing to conclude an investigation within seven working days

Judges likewise face pressure to conclude trials within seven working days

Regular safeguards against the use of evidence obtained by torture are discarded

Trials may be held without the defendant being present

There are severe restrictions on the possibility of a defendant being granted bail

The victim's right to *Qisas* and *Diyat* under Sharia law is suspended

'Terrorism' cases are inherently emotional - and can only become more emotional in the wake of the horrors of the Peshawar Army Public School incident. Of course, as in many true terrorism cases, there may be nobody to prosecute from a grotesque murder, because (as in Peshawar) all those directly involved either kill themselves in a suicide bombing or are killed by government forces.

⁷ For a full analysis, see Amnesty International, 'PAKISTAN Legalizing the impermissible: The new antiterrorism law', September 1997; available at: <http://www.amnesty.org/en/library/asset/ASA33/034/1997/en/d5abe31b-e99a-11dd-b3a1-f9ff1fdb4a5/asa330341997en.pdf> (last accessed 9/12/2014)

If there were a trial arising out of such an incident, the protections of due process would be all the more important. One only has to think back to the British experience with the IRA, where notorious prosecutions concerning the Guildford Four or the Birmingham Six resulted in deeply flawed convictions of Irish suspects who (it ultimately transpired) had nothing to do with the bombings. Had Britain employed hanging at the time, there is no doubt that ten innocent people would have been swiftly dispatched to the gallows.

Even for those whose crimes may legitimately be characterised as ‘terrorist acts’, the scale of the curtailment of fundamental rights imposed by the Anti-Terrorism Act is unjustifiable. However, it is doubly wrong to dissolve due process in the trial of someone who actually has no link to terrorism at all. Yet a defendant improperly tried under the ATA does not merely face the erroneous and extremely prejudicial categorisation as a ‘terrorist’; he or she faces a wholesale curtailment of many fundamentals of a fair trial, in a trial for which the lawyer has not had sufficient time to prepare.

“This is a recipe for turning an innocent person into a suspect, and a suspect into a culprit - even a dead culprit. The law almost assumes guilt. It makes things as difficult for the accused as possible behind the fig leaf of due process.” Human Rights Commission of Pakistan, August 1997⁸

The rights that are curtailed or eliminated are profound, and are identified in the Constitution.

As previously noted, for example, the power of mercy is mandated by Sharia law, and therefore by the Constitution of the Islamic Republic of Pakistan.⁹ Yet the ATA forbids this:

Section 21-F: Notwithstanding anything contained in any law or prison rules of the time being in force, no remission in any sentence shall be allowed to any person, other than a child who is convicted and sentenced for any offence under this Act, unless granted by the Government.

⁸ Aziz Siddiqui, Human Rights Commission of Pakistan, 17 August 1997, cited in Amnesty International, ‘PAKISTAN Legalizing the impermissible: The new antiterrorism law’, September 1997; available at: <http://www.amnesty.org/en/library/asset/ASA33/034/1997/en/d5abe31b-e99a-11dd-b3a1-f9ff1fd4a5/asa330341997en.pdf> (last accessed 9/12/2014)

⁹ See no. 5 *supra*.

If there were any doubt as to the meaning of this, in 2008, shortly before Zafar Iqbal was due to be executed, he was granted a pardon by his brother and other family members. Yet he remains on death row today. Thus, the ATA violates both Sharia law and the Constitution, in a manner that is inimical to justice.

The ATA also violates national and international prohibitions against *ex post facto* laws. The Constitution does not merely proscribe retroactive punishment but, rather more significantly, conviction for a crime that was not in force at the time of the original action. Article 12(1)(a) of the Constitution provides that “[n]o law shall authorize the punishment of a person ... for an act or omission that was not punishable by law at the time of the act or omission...” And yet the ATA, in Section 38, allows for an *ex post facto* crime, merely barring *ex post facto* punishment.

Section 21-D of the ATA provides that “[a]ll offences under this Act punishable with death or imprisonment exceeding three years shall be non-bailable.” This radically curtails the prisoner’s right to bail.

There are various other ways in which the rights of the accused are compromised, most obviously in the rush to judgement that is mandated by the law. Combined with some practitioners’ view that all ATA cases will end in a conviction and a harsh sentence, this certainly raises the probability of error in any result.

CASE STUDY: MUHAMMAD AKHTAR

THE 'TERRORIST': a man acquitted of his crimes, yet still on death row

FACING THE DEATH PENALTY: since 23 October 1999 (15 years, 2 months)

HELD IN: Central Jail Faisalabad, Punjab

Muhammad, then an illiterate 21 year old man, received two death sentences in December 2000 for his alleged participation in a murder and rape - he received a third death sentence under the ATA for the "*panic, harassment and sense of insecurity*" these acts supposedly caused in the local community.

There are clear signs of misconduct in the police's investigation of the case. One of the lead officers on the case has since admitted that no fewer than 89 people appeared before him in support of Muhammad, but he refused to take their statements or even to log their presence in his investigation diary. It was not until a full 18 days later that police even investigated the alleged crime scene.

After arresting him, police brutally tortured Muhammad to obtain a 'confession'. He was hung upside-down from a metal bar (*kursi*), which causes excruciating pain to the forearms and legs (the equivalent of the Spanish Inquisition's practice of *strappado*). He was also stretched whilst tied to a bed (*manji* - the equivalent of the Medieval rack).

"The victim's right arm and leg are tied to a bed (*manji*) and his left arm and leg to a second parallel bed, leaving his body suspended in the middle. The two beds are pulled apart, stretching the victim's body and forcing his joints to sustain the entire weight of his body." Definition of torture by *manji*¹⁰

The evidence used at trial to convict Muhammad was likewise extremely flawed. On appeal, the courts found that the eyewitness testimony was "*utterly unreliable*" and Muhammad was acquitted of all charges of rape after the Supreme Court found that neither forensic nor medical testing had

¹⁰ Justice Project Pakistan and Allard K. Lowenstein International Human Rights Clinic, Yale Law School, 'Policing as torture: A report on systematic brutality and torture by the police in Faisalabad, Pakistan', March 2014, p. ii; available at: http://www.law.yale.edu/documents/pdf/JPP_Launch_Report_050514.pdf (last accessed 9/12/2014)

indicated a single sign of this. Despite these clear holes in the prosecution case, however, the Court upheld Muhammad's death sentence.

Some years ago, Muhammad received a pardon from the victim's family, which should have acquitted him of the murder charge. Under the law as it properly stands absent the ATA, he would have been acquitted of both crimes on which his death sentence for terrorism was based - yet he remains on death row, now 35 years old and steadily losing his eyesight.

CONCERN NO. 4: GREATLY HEIGHTENED RISK OF TORTURE BY POLICE

Of the numerous problematic elements in Pakistan's anti-terror regime, one of the most concerning is Section 21-H of the ATA. This is the Section which permits the use at trial of extra-judicial 'confessions' given to police or security forces in terrorism cases.

In ordinary criminal cases, the use of confessions given to police officers or security forces - as opposed to those given to magistrates - is prohibited by the *Qanun-e-Shahadat* Order of 1984 (see Article 164 of the Pakistan Code Crim. Pro.) the Evidence Act).

This provision was enacted in part due to the regrettable frequency of torture by the police, to ensure the fulfilment of the Constitutional proscription (see Article 14(2) of the Constitution, explicitly barring the use of torture to extract statements).

“Police tortured me to try and make me confess. I was hung by my hands, beaten repeatedly with batons, punched, slapped and kicked. They held a gun to my head and said they would kill me if I did not confess. I was 17 years old at the time.”
Death row prisoner Muhammad Amin (see Case Study below)

Torture by police, as a report produced by JPP earlier this year made clear,¹¹ is a widespread and systemic problem in Pakistan; it represents one of the most fundamental challenges faced by the country's criminal justice system. As such, the fact that a key safeguard against the use of evidence obtained through torture - and, it is hoped, against recourse to torture by police in the first place - is entirely removed in terrorism cases is a cause for grave concern.

¹¹ Justice Project Pakistan and Allard K. Lowenstein International Human Rights Clinic, Yale Law School, 'Policing as torture: A report on systematic brutality and torture by the police in Faisalabad, Pakistan', March 2014; available at: http://www.law.yale.edu/documents/pdf/JPP_Launch_Report_050514.pdf (last accessed 9/12/2014)

CASE STUDY: MUHAMMAD AMIN

THE 'TERRORIST': a juvenile bystander caught in another family's dispute

FACING THE DEATH PENALTY: since 7 February 1998 (almost 17 years; more than half his life)

HELD IN: Central Jail Rawalpindi, Punjab

On the trial court's own calculation, Muhammad was just 16 or 17 years old when he was arrested in 1998 for allegedly killing a man during a burglary gone wrong. In fact, Muhammad had accompanied a classmate to the house of the classmate's stepmother and was waiting outside when he heard shots. The classmate came running from the house and fled, leaving Muhammad to be apprehended and severely beaten by police. To this day, Muhammad's body still bears the scars from this assault.

At trial, Muhammad's defence lawyer did not even raise his client's young age. Had he done so, by law Muhammad should have avoided a death sentence. On appeal, his new lawyer tried to submit evidence proving that Muhammad was a juvenile at the time of his arrest, but this was summarily dismissed by the court as being *"of no avail so belatedly"*.

Muhammad received two death sentences at trial, one for murder and a second under the Anti-Terrorism Act because the murder allegedly caused *"terror, sense of fear and insecurity in the people of [the] locality"*.

"The tendering of documents like his school leaving certificate [indicating that Muhammad was a juvenile at the time of his arrest] at this stage should also be of no avail so belatedly." The Supreme Court judge in Muhammad's case.

In 2004, Muhammad was pardoned for the murder conviction by the victim's family. However, he continues to face execution under the Anti-Terrorism Act. Muhammad has now spent almost 17 years facing execution and, during this time, has developed mental problems.

CONCERN NO. 5: THE CURRENT LEGISLATION HAS FAILED TO CREATE A MEANINGFUL DETERRENT EFFECT

Instead of being used in exceptional circumstances to punish those responsible for the very worst acts of terror, Pakistan's anti-terror legislation is being applied in an arbitrary and haphazard manner to cases with no perceivable element of terrorism. This is extremely concerning - both in light of the infringements of fundamental rights suffered by those individuals, but also because it entails the misdirection of resources which should be focused on those truly responsible for perpetrating acts of terror against Pakistani society.

“[The] overburdening of the system has debilitating effects for real terrorism cases.” Zulfiqar Hameed, *Anti-Terrorism Law*, July 2012¹²

The arbitrary use of legislation to prosecute crimes which cannot justifiably be deemed 'acts of terror' does nothing to deter real terrorists in their activities. Instead, it serves only to sow further doubt about the safety and effectiveness of Pakistan's criminal justice system.

The focus of this report is on the Anti-Terrorism Act 1997. As the cases specifically discussed all pre-date the coming into force of the Protection of Pakistan Ordinance ('PPO') of 2013, we have not closely examined this more recent legislation. Nonetheless, we note that many of the serious flaws and issues identified in relation to the ATA are equally relevant to the PPO.

“Denying Pakistanis their universal rights and freedoms isn't a smart or effective tool for battling terrorism.” Human Rights Watch, *Pakistan's Dangerous Anti-Terrorism Law*, July 2014¹³

This includes the use of vague and overly broad language, as well as the PPO's adoption from the ATA of the explicit suspension of key fundamental rights. This legislation in future will perpetuate, and perhaps even exacerbate, the serious concerns highlighted in this report.

¹² Zulfiqar Hameed, 'Anti-terrorism Law', published in *Stabilizing Pakistan through Police Reform: A report by the Asia Society Independent Commission on Pakistan Police Reform*, ed. Hassan Abas, July 2012, p. 51

¹³ Human Rights Watch, 'Pakistan's dangerous anti-terrorism law', July 2014; available at: <http://www.hrw.org/news/2014/07/21/pakistan-s-dangerous-anti-terrorism-law> (last accessed 9/12/2014)

These issues urgently need to be addressed, the cases reviewed, and a new approach taken, if we are to see the criminal justice system being used as a fair and effective tool in the fight against terrorism.

There must be a detailed and high-level review of Pakistan's anti-terror legislative scheme and the functioning of Pakistan's anti-terrorism courts. This will be an essential step towards ensuring a criminal justice system in which the public can have faith, whilst allowing the development of a safe and effective mechanism for combatting terrorism.

It is clear that Pakistan's anti-terror laws as they stand have been overused, misused and abused. With over 800 mostly 'non-terrorists' under sentence of death and more than 17,000 'terrorists' awaiting trial, this is an issue of national concern and one which must be addressed as a matter of priority.

PROVINCE CASE STUDY - SINDH

We have recently obtained further data from Sindh province, which runs through to October 2014. This comprehensive and up-to-date data has allowed us to do a detailed analysis of the developments in the use of terrorism legislation in this province over the last two years. The signs are even more disturbing than the earlier material.

The analysis reveals a significant overuse of terrorism legislation in Sindh. A markedly high number of individuals in the province were tried as 'terrorists', despite the fact that their alleged offences often had nothing to do with 'terrorism' as commonly understood.

IN DECEMBER 2012, THERE WERE 331 PRISONERS ON DEATH ROW; BY OCTOBER 2014, THERE WERE 451
 → A 36% INCREASE IN LESS THAN TWO YEARS

OVER 38% OF THESE PRISONERS WERE SENTENCED TO DEATH AFTER BEING TRIED AS TERRORISTS
 → OVER THREE TIMES THE NATIONAL AVERAGE



FOR CASES OPENED PRIOR TO 1995, 0.44% OF PRISONERS WERE TRIED AS TERRORISTS; BY 2009, THIS FIGURE WAS 12%
 → AN INCREASE OF MORE THAN 27 TIMES

10 PRISONERS TRIED AS TERRORISTS WENT FROM HAVING AN INITIAL COMPLAINT LODGED AGAINST THEM TO BEING SENTENCED TO DEATH IN LESS THAN 6 MONTHS
 → NONE OF THE PRISONERS TRIED IN ORDINARY COURTS WENT FROM COMPLAINT TO CAPITAL CONVICTION IN SUCH A SHORT TIMEFRAME

CONCLUSION

The statistical analysis and individual case studies in this report illustrate only too well the gross overuse of Pakistan's anti-terror legislation in cases which would much more appropriately have been tried in ordinary criminal courts.

This misuse of the ATA has created a dual system whereby safeguards designed to protect the fundamental rights of individual defendants are guaranteed for some, but explicitly removed for others.

Furthermore, the use of ATA in wholly inappropriate cases, on an apparently arbitrary basis, undermines the police and judiciary. It creates a criminal justice system in which there can be no certainty that justice will be guaranteed - and which, crucially, prevents Pakistan's anti-terror legislation from achieving the deterrent effect which was intended to constitute one of its key objectives.

RECOMMENDATIONS TO THE GOVERNMENT OF PAKISTAN

- The convictions and death sentences in the individual case studies examined in this report should be immediately reviewed
- A full review of cases tried under anti-terrorism legislation should be considered, starting with those already held on death row
- The current anti-terrorism legislation should be suspended pending full review; in particular, there should be a detailed review of those provisions curtailing safeguards to fundamental freedoms
- Section 21-H of the ATA (permitting extrajudicial confessions) should be immediately repealed
- The current moratorium on executions should remain in place and the legal position regarding the moratorium should be clarified

APPENDIX 1

PAKISTAN'S DEATH ROW - IN FIGURES

This study is based on data, running up to December 2012, on the prisoners held on death row in Pakistan's four provinces: Balochistan, Khyber Pakhtunkhwa ('KPK'), Punjab and Sindh.¹⁴ Together, these regions comprise approximately 94% of Pakistan's population.

This is the first time that such comprehensive data on Pakistan's death row population has been obtained and analysed. It has allowed a ground-breaking insight into the men, women, and sometimes even children, who comprise Pakistan's death row.

It should be noted that the figure of 6,872 represents those prisoners for whom we were able to obtain individual data. We believe that the total number of prisoners on death row in the country is even higher, and is likely in excess of 8,000.¹⁵

¹⁴ This does not include data for the administrative territories of Federally Administered Tribal Areas ('FATA'), Azad Kashmir or Gilgit-Baltistan.

¹⁵ See no. 1 *supra*.

FIGURE 1: NUMBER OF PRISONERS ON DEATH ROW IN PAKISTAN

The table below shows the total number of prisoners (i.e. both those tried as terrorists and those tried in ordinary courts) on death row in Pakistan.

Province	Total number of prisoners (% of Pakistan total)
Balochistan	89 (1.30%)
KPK	183 (2.66%)
Punjab	6,269 (91.22%)
Sindh	331 (4.82%)
TOTAL	6,872

The province of Punjab accounts for **more than 90%** of Pakistan's death row population, although only just over 50% of Pakistanis live in the province. This, itself, raises questions of whether the law is being applied equally to all citizens. Certainly it would be difficult to argue that Punjab suffers 90% of the death-eligible crimes in Pakistan.

FIGURE 2: TOTAL NUMBER OF PRISONERS TRIED AS TERRORISTS VS. PRISONERS TRIED IN ORDINARY COURTS ON DEATH ROW IN PAKISTAN

This second table compares the number of death row prisoners in each province who were tried as terrorists with the number of death row prisoners in that province who were tried in ordinary courts.

Province	Prisoners tried as terrorists (% of province total)	Prisoners tried in ordinary courts (% of province total)	TOTAL
Balochistan	26 (29.21%)	63 (70.79%)	89
KPK	20 (10.93%)	163 (89.07%)	183
Punjab	641 (10.22%)	5,628 (89.78%)	6,269
Sindh	131 (39.58%)	200 (60.42%)	331
TOTAL	818 (11.90%)	6,054 (88.10%)	6,872

More than one in ten of the prisoners on death row in Pakistan were tried as terrorists.

In the province of Sindh, almost 40% of the prisoners on death row were tried as terrorists - over three times the national average.

The disparity between Sindh and other provinces raises concerns as to whether the right to equality before the law, guaranteed by Article 4 of Pakistan's Constitution, is being respected.

FIGURE 3: ACTUAL CONVICTIONS FOR TERRORIST OFFENCES AMONG THOSE TRIED AS TERRORISTS

The table below shows the individuals tried and sentenced by anti-terrorism courts, broken down into those who were charged and convicted of terrorist offences, as against those who were charged with terrorist offences and tried in anti-terrorism courts (with all the curtailments on their fundamental rights this entails) but not convicted of any terrorist offence.

Province	PRISONERS TRIED IN ANTI-TERRORISM COURTS		
	Sentenced to death for a terrorist offence under the ATA (% of total)	Not convicted of any offence under the ATA - sentenced to death under non-terror provisions (% of total)	Projected percentage who are NOT 'terrorists' as the term is commonly understood
Balochistan	21 (80.77%)	5 (19.23%)	22 (84.62%)
KPK	14 (70.00%)	6 (30.00%)	17 (85.00%)
Punjab	430 (67.08%)	211 (32.92%)	555 (86.58%)
Sindh	97 (74.05%)	34 (25.95%)	112 (85.50%)
TOTAL	562 (68.70%)	256 (31.29%)	706 (86.31%)

More than a quarter of those tried in the anti-terrorism courts were not convicted of a terrorist offence under the ATA.

Yet, in many instances, these death row prisoners remain wrongly marked as 'terrorists' in prison and court records - potentially now placing them at an unjustifiably elevated risk of execution.

Projecting from the study of actual cases, the data would suggest that almost 90% of those sentenced to death as terrorists were not actually guilty of a terrorist offence.

APPENDIX 2

STATISTICAL ANALYSIS - PROVINCE BY PROVINCE BREAKDOWN

FIGURE 4: Total number of prisoners tried as terrorists vs. prisoners tried in ordinary courts on death row in Balochistan

Type of prisoner	Number of prisoners (% of Balochistan total)
Prisoners tried as terrorists	26 (29.21%)
Prisoners tried in ordinary courts	63 (70.79%)
TOTAL	89

FIGURE 5: Offences for which prisoners on death row in Balochistan were sentenced to death

Offence	Prisoners tried as terrorists (% of total)	Projected percentage who are NOT 'terrorists' as the term is commonly understood
Lethal offences No terrorism charge	5 (19.2%)	5 (19.2%)
Lethal offences With terrorism charge	21 (80.8%)	17 (65.4%)
TOTAL	26 (100%)	63 (84.6%)

FIGURE 6: Total number of prisoners tried as terrorists vs. prisoners tried in ordinary courts on death row in KPK

Type of prisoner	Number of prisoners (% of KPK total)
Prisoners tried as terrorists	20 (10.93%)
Prisoners tried in ordinary courts	163 (89.07%)
TOTAL	183

FIGURE 7: Offences for which prisoners on death row in KPK were sentenced to death

Offence	Prisoners tried as terrorists (% of total)	Projected percentage who are NOT 'terrorists' as the term is commonly understood
Lethal offences No terrorism charge	6 (30.0%)	6 (30.0%)
Lethal offences With terrorism charge	14 (70.0%)	11 (55.0%)
TOTAL	20 (100%)	17 (85.0%)

FIGURE 8: Total number of prisoners tried as terrorists vs. prisoners tried in ordinary courts on death row in Punjab

Type of prisoner	Number of prisoners (% of Punjab total)
Prisoners tried as terrorists	641 (10.22%)
Prisoners tried in ordinary courts	5,628 (89.78%)
TOTAL	6,269

FIGURE 9: Offences for which prisoners on death row in Punjab were sentenced to death

Offence	Prisoners tried as terrorists (% of total)	Projected percentage who are NOT 'terrorists' as the term is commonly understood
Lethal offences No terrorism charge	180 (28.1%)	180 (28.1%)
Lethal offences With terrorism charge	368 (57.4%)	294 (45.9%)
Kidnap No terrorism charge	17 (2.7%)	17 (2.7%)
Kidnap With terrorism charge	62 (9.7%)	62 (9.7%)
Rape/ <i>zina</i> No terrorism charge	8 (1.2%)	8 (1.2%)
Hijacking No terrorism charge	0	0
Robbery No terrorism charge	0	0

Narcotics offences No terrorism charge	1 (0.16%)	1 (0.16%)
Blasphemy No terrorism charge	1 (0.16%)	1 (0.16%)
Military offences No terrorism charge	1 (0.16%)	1 (0.16%)
<i>Data not available</i>	1 (0.16%)	1 (0.16%)
OTHER	2 ¹⁶ (0.3%)	2 (0.3%)
TOTAL	641 (100%)	568 (88.6%)

FIGURE 10: Total number of prisoners tried as terrorists vs. prisoners tried in ordinary courts on death row in Sindh

Type of prisoner	Number of prisoners (% of Sindh total)
Prisoners tried as terrorists	131 (39.58%)
Prisoners tried in ordinary courts	200 (60.42%)
TOTAL	331

FIGURE 11: Offences for which prisoners on death row in Sindh were sentenced to death

Offence	Prisoners tried as terrorists (% of total)	Projected percentage who are NOT 'terrorists' as the term is commonly understood
Lethal offences No terrorism charge	24 (18.3%)	24 (18.3%)
Lethal offences With terrorism charge	82 (62.6%)	65 (49.6%)
Kidnap No terrorism charge	5 (3.8%)	5 (3.8%)
Kidnap With terrorism charge	15 (11.4%)	15 (11.4%)
Rape/ <i>zina</i> No terrorism charge	1 (0.8%)	1 (0.8%)
<i>Data not available</i>	4 (3.1%)	4 (3.1%)

¹⁶ See no. 16 *supra*.

TOTAL	131 (39.58%)	114 (87.0%)
--------------	---------------------	--------------------

FIGURE 12: Total number of prisoners on death row in Sindh

Type of prisoner	2012 Number of prisoners (% of total Sindh prisoners)	2014 Number of prisoners (% of total Sindh prisoners)
Prisoners tried as terrorists	131 (39.58%)	175 (38.80%)
Prisoners tried in ordinary courts	200 (60.42%)	276 (61.20%)
TOTAL	331	451

FIGURE 13: Prisoners on death row in Sindh - breakdown by FIR date

An FIR, or First Information Report, is the written document created by Pakistani police when they first receive information about the commission of a criminal offence. As such, the date of the FIR reflects when a crime was first 'registered'.

FIR year	Prisoners tried as terrorists (% of total Sindh prisoners)	Prisoners tried in ordinary courts (% of total Sindh prisoners)
1989-1994	2 (0.44%)	7 (1.55%)
1995-1999	34 (7.54%)	22 (4.88%)
2000-2004	51 (11.31%)	69 (15.30%)
2005-2009	55 (12.20%)	120 (26.61%)
2010-2014	33 (7.32%)	49 (10.86%)
<i>Data not available</i>	0	9 (2.00%)
TOTAL	175 (38.80%)	276 (61.20%)

FIGURE 14: Offences for which death row prisoners in Sindh were sentenced to death

Offence	2012		2014	
	Prisoners tried as terrorists (% of total Sindh prisoners)	Prisoners tried in ordinary courts (% of total Sindh prisoners)	Prisoners tried as terrorists (% of total Sindh prisoners)	Prisoners tried in ordinary courts (% of total Sindh prisoners)
Lethal offences No terrorism charge	24 (7.25%)	179 (54.08%)	26 (5.76%)	264 (58.54%)
Lethal offences With terrorism charge	82 (24.77%)	N/A	112 (24.83%)	N/A
Kidnap No terrorism charge	5 (1.51%)	1 (0.30%)	8 (1.77%)	1 (0.22%)
Kidnap With terrorism charge	15 (4.53%)	N/A	23 (5.10%)	N/A
Rape/ <i>zina</i> No terrorism charge	1 (0.30%)	4 (1.21%)	3 (0.67%)	7 (1.55%)
Hijacking No terrorism charge	0	0	3 (0.67%)	0
Robbery No terrorism charge	0	0	0	0
Narcotics offences No terrorism charge	0	0	0	0
Blasphemy No terrorism charge	0	0	0	0
Military offences No terrorism charge	0	0	0	1 (0.22%)
<i>Data not available</i>	4 (1.21%)	16 (4.83%)	0	3 (0.67%)
Total	131	200	175	276
TOTAL	331		451	

FIGURE 15: Prisoners on death row in Sindh - time between FIR and death sentence

Whilst the data includes the date on which each prisoner was sentenced to death, it only included the year of the FIR. As such, each FIR date has been calculated as 1 January of the relevant year.

Time between FIR and death sentence	Prisoners tried as terrorists (% of total Sindh 'terrorist' prisoners)	Prisoners tried in ordinary courts (% of total Sindh 'non-terrorist' prisoners)
0-6 months	10 (5.7%)	0
7-9 months	8 (4.6%)	1 (0.36%)
10-12 months	10 (5.7%)	1 (0.36%)
UNDER 1 Year	16%	0.7%
1-2 years	55 (31.4%)	12 (4.3%)
UNDER 2 years	47.4%	5%
2-3 years	47 (26.9%)	26 (9.4%)
3-4 years	5 (2.9%)	32 (11.6%)
4-5 years	10 (5.7%)	38 (13.8%)
5+ years	25 (14.3%)	141 (51.1%)
<i>Data not available</i>	5 (2.9%)	15 (5.4%)
TOTAL	175 (38.80% of Sindh)	276 (61.20% of Sindh)

ABOUT THE AUTHORS

Justice Project Pakistan ('JPP')

JPP is a non-profit human rights law firm established in Lahore in December 2009.

JPP provides direct pro bono legal and investigative services to the most vulnerable prisoners in the Pakistani justice system, particularly those facing the death penalty, victims of police torture, mentally ill prisoners and victims of the 'War on Terror'.

JPP also conducts strategic litigation to challenge unjust laws and to create progressive legal precedent. Our litigation aims, among other things, to improve the rights of the mentally ill, restrict the application of the death penalty, bring Freedom of Information to Pakistan, and enforce the fundamental rights of prisoners.

Reprieve

Reprieve is an international human rights NGO with offices in London and New York.

Reprieve promotes the rule of law around the world, and secures each person's right to a fair trial, from death row to Guantánamo Bay. We prioritise the cases of prisoners accused of the most extreme crimes, such as acts of murder or terrorism, as it is in such cases that human rights are most likely to be jettisoned or eroded.

Reprieve focuses on cases involving the world's most powerful governments, especially those that should be upholding the highest standards when it comes to fair trials.

December 2014