

# NACTA Watch

July 2019 to June 2020



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## **DISCLAIMER**

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# **1 THE TYRANNY OF JUSTICE SYSTEM**

SHAHZADA SULTAN

PUBLISHED THE NEWS INTERNATIONAL JUNE 28, 2020

The famous French judge and political thinker, Baron de Montesquieu, wrote in 1748 in *The Spirit of the Laws* that “there is no greater tyranny than that which is perpetrated under the shield of the law and in the name of justice.”

This tyranny seems to be an everyday affair acting itself out on the stage of our criminal justice system, like a Beckettian drama or a Kafkian novel. There is some deep malaise, something rotten in this rickety, ramshackle machine that goes by the name of criminal justice.

What exactly is the problem? Full of genuine pathos and a deep sense of alarm are the observations of the Islamabad High Court while announcing judgment in a case on May 4, 2020. “The Court finds that the criminal justice system has failed the very object and purpose of its existence, that is to prevent and prosecute crime, to punish the guilty and to protect the innocent. The Court painfully observes that the present system “is perpetuating miscarriage of justice and appears to have become a source of grave injustice. In a nutshell, the present state of the criminal justice system is not serving its purpose and appears to be on the brink of collapse. All the branches *i.e.* the executive, the judiciary and the legislature are equally responsible for the prevailing conditions that definitely encourage corruption and perpetuate grave miscarriages of justice.”

These observations are addressed to criminal justice system within the jurisdiction of the IHC, that is the capital territory, but the truth they hold touches all jurisdictions in the country.

But, what is wrong with it after all? What needs to be fixed?

The IHC lists some of its common afflictions in Islamabad where it exercises jurisdiction: the outdated procedures and laws, the poorly trained investigators who are not provided sufficient financial recourses for investigation and fleece the victims, failure to set up an independent and separate investigation branch as envisaged under Police Order, 2002, absence of an independent and resourceful Prosecution Department, trial courts functioning in rented shops in a commercial area where conditions are deplorable and degrading, unwillingness of the witnesses of a crime to testify and, lastly, false and fabricated evidence.

Who is responsible for this state of affairs? The court holds all three branches of government responsible for the decrepit and derelict state of the system that “appears to be on the brink of collapse” and “definitely encourages corruption and perpetuates grave miscarriages of justice”. The court goes further and finds the state as remiss observing that “the State has neglected this most crucial part of the governance system for the past seven decades because it is obvious that the criminal justice system was never a priority.”

Looking at the dystopia that the present system has been reduced to, the court hopes that “it is a duty which every branch of the State... owes to every citizen, to collectively and individually take urgent measures in making the criminal justice system efficient, effective and accountable so that they have trust in its integrity, independence and professionalism.”



## **THE TYRANNY OF JUSTICE SYSTEM**

Is this the first time that a superior court has highlighted these issues or expressed a desire that the things be fixed? No, certainly not. Back in 2015, in *Haider Ali vs DPO Chakwal, SCMR 2015, 1724*, the Supreme Court of Pakistan gave as many as 15 directions. The SC engaged with the issues facing the criminal justice system, appointed Khwaja Haris as an *amicus curia*. He then laboriously drew up a report in four volumes, recommending to the court what was needed to fix the dilapidated machinery of justice.

The report was concise and the directions of the SC quite comprehensive, but we have not moved a single step away from the brink of the abyss. All the issues highlighted by the present judgment of the IHC were addressed in detail by the SC back then, but the recommendations were never fully implemented.

History is likely to repeat itself. No amount of technical reform in police and prosecution will bring a quality change in the system. **The fundamentals of the system need revision: The Criminal Procedure Code, the Qanoon-i-Shahadat, the Police Rules, and the Pakistan Penal Code, need to be re-written.**

There is something fundamentally wrong with a system that survives on fabricated evidence and false witnesses even beyond the means and methods of investigation and the resources the prosecution lacks. We need to ask some professional questions here. Why do we need padding in our cases to satisfy standards of proof during a criminal trial? Why do we need eyewitnesses who are actually not present at the scene of crime? Why do we need graphic details of an incident in an FIR, the amount of detail no real witness can possibly observe when the crime is actually taking place? Why do we not investigate a case, but manufacture pieces of evidence needed to support a false statement during a trial? Why are identification parades conducted by judges are routinely discarded by the appellate courts for technical lacunae?

Do we really need this kind of identification parade in 2020? Why do the appellate courts generally find the voluntariness of a confession made before a judicial magistrate questionable?

Why does the system worry about the rights of the accused but not those of the victim? Why do the witnesses not come forward, or become hostile? Are the current rules and practices governing the admissibility of evidence during a criminal trial the best that we can have?

These are hard but actual questions. To find their answers is to find solutions. This task cannot be left to any one actor of the criminal justice system. We need a candid national debate among all stakeholders. Secondly, the products and processes of this system can be improved only with the full participation of the final arbiters of their quality: the judiciary.

Thirdly, the system needs structural changes and a new strategic direction, and not a change of tactics. A national commission on criminal justice reform that comprises investigators, prosecutors, attorneys, forensic experts, judges, and law-makers set up under the Law and Justice Commission of Pakistan, and directly supervised by the apex court can best identify the issues taking complete stock of every law, rule, procedure, practice and process of the system with a view to fashioning it anew. That will be the first step away from what Montesquieu called tyranny disguised as justice.



## **2 KP POLICE REFORMS**

BY MUHAMMAD ALI BABAKHEL

PUBLISHED IN DAWN ON JUNE 15, 2020

Before the passage of the 25th Constitutional Amendment, Khyber Pakhtunkhwa and the Federally Administered Tribal Areas (Fata) had different administrative, law-enforcement and legal fabrics. After the amendment and the military operations, KP is experiencing another administrative and legal transition.

The successful implementation of a few reform measures led the provincial government to enact the KP Police Ordinance, 2016, which was followed by the enactment of the KP Police Act, 2017. The law was passed with the aim of making the police service apolitical, operationally autonomous and accountable to civilian oversight. It is a pioneer police law in that it entrusts the IG with complete operational autonomy.

Ideally, law-enforcement agencies are assessed on the basis of operational autonomy, public safety, service delivery and accountability. Though the 2017 act provides a framework for all such essentials, their implementation remains selective. Hence, public safety is compromised. Police Order 2002, and Section 13 (3-VI) of Police Act 2017 also provide the ‘internal accountability apparatus’ but under Police Order 2002 this either remained dysfunctional or accountability remained selective.

Section 17(6) of the KP Police Act, 2017, obligates the provincial police officer to draft an annual policing plan but this has yet to happen. Similarly, Section 22(2) of the act obligates the district police officer (DPO) to also draft an annual police plan, to be consistent with the overall provincial plan. But both are nowhere in sight, mainly due to the absence of the provincial public safety commission.

The challenges of policing in KP are unique.

Chapter 5 of the 2017 act provides for the composition and functions of the public safety commissions but inherent flaws in the composition of scrutiny committees stalled the process. To select independent members of the provincial public safety commission, the scrutiny committee has to include the chief justice of the Peshawar High Court and chairmen of the defunct Ehtesab Commission and the Public Service Commission.

However, in 2018 the inclusion of the Peshawar High Court chief justice and district judges was challenged in the Peshawar High Court on the plea that it was in violation of the principle of the separation of the executive and judiciary incorporated in Article 175(3) of the Constitution. Moreover, with the KP Ehtesab Commission later dissolved in December 2018, the position of one member of the scrutiny committee stands nullified while that of another remains sub judice.

Furthermore, improving the quality of investigations neither remained a professional priority nor was it allocated the required resources. Section 26(8) of the 2017 law makes SP Investigation answerable to the DPO. However, such subordination gives birth to duality of command that often compromises the rights and interests of the complainants.

For the first time in Pakistan, a police law provided a framework for overseeing the implementation process. Section 143 of the KP Police Act, 2017, calls for the appointment of an ‘implementation commissioner’. However, the previous implementation commissioner has completed his one-year term, and a new appointment is yet to be made.



## **KP POLICE REFORMS**

Moreover, Section 47 allows for public-police coordination through the formation of public liaison councils. Under the law, 70 per cent of the council members are to be notified from village councils and 30pc from amongst notables. Although these councils have been entrusted with numerous functions, including assistance to the police in crime prevention, the maintenance of public order, sharing of information regarding new tenants, misuse of loudspeakers and reporting of hate speech, capacity constraints have limited their output. The discretion of the DPOs regarding the selection of councils also warrants independent monitoring.

The challenges of policing in KP are unique and the merger of the tribal areas has multiplied them. Besides crime prevention and detection, the police also have to deal with counterterrorism, counter-extremism, issues related to the merger of levies and Khasadar men with the provincial police umbrella, increased public service and the execution of a doable transition plan in Malakand and erstwhile Fata. These are a few major priorities for the ongoing transition to sustain the hard-earned peace in the province.

The present challenges can effectively be dealt with by employing honest officers, adopting long-term planning and additional resource allocation. Cosmetic and mere change of faces may not yield the dividends. Administering the tribal districts via remote-controlled policing will only end up creating a greater administrative void. The only option left is to convert the challenge into an opportunity that is best suited to the state.



### **3 TERRORISM UNDER COVID-19**

MUHAMMAD AMIR RANA

PUBLISHED IN DAWN ON MAY 17, 2020

WHILE the world continues its struggle against the pandemic, nations and organisations are also evaluating its human, economic and socio-psychological costs. The security threat matrix is increasingly being oriented around the perils of the virus, placing less focus on other non-traditional security challenges. Though the threat of terrorism has not shown any visible retreat — in some places it has even enlarged such as in Afghanistan — the world is failing to give it the consideration it did prior to the pandemic.

Experts have indicated that terrorist groups could use the pandemic as an opportunity to increase attacks with a view to adding to the crisis and undermining governments. However, thus far, the intensity and frequency of attacks have not changed much, except with some variations in Afghanistan and parts of Africa. Pronouncing Covid-19 a ‘punishment’ from God, the militant IS group and Al Qaeda have urged their followers to take care of themselves and advised non-Muslims to utilise their time under lockdown to learn about Islam.

Terrorists have time and again proved they are unpredictable. IS has managed many surprise attacks in the last two years, including the Colombo Easter Friday bombings. As long as terrorist networks remain intact, nothing can be predicted of them with certainty.

After the US-Taliban Doha peace deal in February, hopes were high that Afghanistan would experience a significant reduction in violence. Sadly, that did not happen. The attack on a Kabul maternity hospital on May 12 was the most horrific and sickening incident in a recent wave of violence; not even newborns were spared. Human Rights Watch has rightly called it an apparent war crime. The increasing chaos in Afghanistan is alarming, and has eclipsed prospects of

any breakthrough, at least for now. Initiation of direct talks between Kabul and the Taliban may contribute towards restoring confidence in the broader intra-Afghan dialogue and settling other issues including a faster prisoner swap; chaos will hurt regional stability and global security, and continue to feed terrorist networks.

*Experts have indicated that terrorists could use the pandemic as an opportunity to increase attacks.*

Pakistan has also seen a slight surge in terrorist attacks in the last two months, though it cannot be linked to the pandemic as there is no major shift from the pre-virus trends. The merged tribal districts of Khyber Pakhtunkhwa and some parts of Balochistan have been hotspots of insecurity and violence for several months now. There have been concerns about the growing presence and activities of militants in parts of the tribal districts, mainly North and South Waziristan. Most security incidents, including militant attacks, in recent weeks have been reported from areas closer to the Pak-Afghan border, such as Datta Khel. Militants may also be expanding their areas of presence and operation. Reportedly, the TTP and other militants were trying to hit their native towns to reclaim their lost influence. Outfits like Jamaatul Ahrar could also try to regroup in their towns of origin, including Bajaur and Orakzai.



## **TERRORISM UNDER COVID-19**

Questions are also being raised about the possible return of Pakistani Taliban militants sheltering across the border in Afghanistan who may want to relocate to their native towns in the tribal districts. One recent BBC report claimed that some 9,000 of these militants wanted to return to their native towns in KP after seeking forgiveness and promising to quit violence. Local accounts from Waziristan suggest some have returned to areas that in the past were attached to militant groups. Most, however, are living discreetly in bordering areas and avoiding public appearances. According to the report, the government has apparently pardoned some of these militants from Waziristan, but the tribesmen are not willing to accept them back. As vengeance is a strong local tradition, people see the militants' reintegration into society as a difficult task, even if the government develops a pardon and reintegration plan.

Not all the Taliban in these areas, however, were attached to the TTP; nor are they strong enough to challenge the state's writ as they were before Operation Zarb-i-Azb in 2014. Still, the government and local administrations will have to develop a policy on how to deal with the militants, including those operating discretely in tribal districts and those wishing to come back from Afghanistan.

In a positive sign, terrorism in Balochistan has been on the decline for some months. However, last week, BLA militants attacked security forces in Buleda (Kech), claiming the lives of five army officials including a major. Such attacks against security forces, although sporadic and less frequent, indicate that violent separatists still pose a potent threat. To their operational advantage, they have also established networks in areas closer to the Pak-Iran border. Army chief Gen Qamar Bajwa had spoken to the Iranian chief of armed forces Maj Gen Mohammad Bagheri to express his concern over the attack. Both countries are in regular contact to address border security and common terrorist threats, but no conclusive outcome has been seen yet.

The nature of the Baloch insurgency is very different and insurgents take time to perpetrate a major attack. During intervals between relatively large-scale attacks, they continue to engage security forces through low-intensity attacks. Balochistan's security is also crucial to CPEC, and the government will have to expand its options to restore peace there beyond the traditional use of force.

If, as reported, the government can pardon TTP militants and allow them to come back, a similar concession can be offered to Baloch insurgents. Self-exiled Baloch insurgent leaders have almost become irrelevant, and a new leadership is emerging from within their ranks. It is an opportunity for the government to engage them before it is too late. There are spoilers and exploiters all around the region contributing to keeping the insurgency alive. Reconciliation will not only reduce security threats and expenditures but will also create a conducive environment for CPEC and provincial development.

The UN has called for a global ceasefire during the pandemic to save hundreds of thousands of lives in conflict areas, especially children who have become even more vulnerable. However, dialogue and reconciliation can be given an equal chance both in Afghanistan and Pakistan.



## **4 THE PANDEMIC OF EXTREMISM**

FAISAL ALI RAJA

PUBLISHED IN EXPRESS TRIBUNE APRIL 29, 2020

Like terrorism, the definition of extremism is also ambiguous. Where terrorism is predominantly violent in nature, extremism includes violent and non-violent forms. It, therefore, makes it more dangerous and threatening. The basic constituents of violent extremism structure may differ from one society to another however its undercurrents are the same everywhere. Extremists operate on multiple levels whereby they spread extremism through force, show of strength or lord it over state institutions. They utilise the media effectively to reach their audience. There are perhaps three ways through which individuals spread extremism, create social disturbance and produce terror in our society.

First, the extremists strive for leadership at the local, district or regional level on the basis of our peculiar social conditions wherein a lack of education and blind social following play a major role. Here, violent tendencies are strongly related to the social and cultural background of these individuals. Such individuals create their own following and use their social capital as a bargaining chip to serve their violent actions. They create their own social space and do not compromise on their social sphere. While creating their social audience, they may also get assistance from other individuals, political or non-political, or an organisation for certain social or organisational objectives. As their dependency on external actors decreases, they start exercising their own actions to sustain their existence. In fact, their statements create a kind of social disintegration in society which is also exploited by anti-state elements. In the last leg, they start producing their own social franchises to obtain financial and economic benefits as well.

Second, the extremists hold sway over innocent minds which not only develop a particular attitude but also readily embrace violent extremism on account of any personal misfortune. Such radicalised persons become violent quite abruptly and appear as tools of violent extremism. Interestingly, these radicals may not have similar social conditioning and their educational or technical skills vary on a wide spectrum. For example,

many educated youths from prominent educational facilities in Karachi have remained involved in multiple violent extremist activities. Moreover, the recent sit-in in Islamabad in 2019, indicates how easily one can amass the support of thousands of religious students for a particular activity.

Third, whenever these extremists get an opportunity to exploit government policies, shaped and reshaped on account of national, regional and international incidents, they do it with social alacrity and religious control. The extremists dovetail these incidents and create hype on the electronic and social media to disseminate it in a particular manner which creates social friction between segments of the population and the government. The moment the local administration acts in a manner prejudicial to their aspiration, they threaten the institutions with public disorder and lawlessness. If the government department gives them space, they latch on to it to justify their stance with jubilation and distortion.

We must define extremism in clear terms in our legal parlance. The pandemic of extremism is more dangerous than the spread of coronavirus in our society. We need to fight it vigorously on multiple fronts. We should reclaim the space we have lost to different extremist groups by countering their arguments in the physical and non-physical space. Hence, the state must restore its authority and control the pandemic of extremism in the country.



## **5 POLICING COVID-19**

MUHAMMAD ALI BABA KHEL

PUBLISHED IN DAWN APRIL 28, 2020

The coronavirus pandemic has assigned more responsibilities and roles to police. Globally, the police are making changes in operational strategies and reallocating whatever human and financial resources they have at their disposal. However, an effective response requires far more, including: additional funds, enlistment of volunteers, active communication strategies, optimum use of technology, drafting of SOPs, improved institutional coordination, and strengthening of community networks.

The enormity of the crisis has convinced governments to introduce stricter laws and regulations. To enforce lockdown, for instance, France planned deployment of 100,000 policemen and establishment of fixed checkpoints. In Italy, violators of the curfew face a three-month imprisonment or a fine of 206 euros. To monitor social distancing, Italy also approved the use of drones by police.

In Norway, a 20,000 kroner fine or 15-day imprisonment was announced for those breaking self-quarantine rules. Though Pakistan also introduced self-quarantine and isolation measures, Norway adopted all these with legal and administrative backup. Any Norwegian who travelled abroad in recent weeks has to self-isolate for 14 days, and anyone who has been in close contact with a confirmed Covid-19 patient must undergo self-isolation for two weeks. In Denmark, police send text messages to mobile subscribers as a reminder to abide by the instructions.

In the UK, police will be authorised to use force to send people back home to self-isolate during lockdown. The London Metropolitan Police

requested officers who retired within the last five years to rejoin the force, either on a voluntary or paid basis. Those close to retirement have been instructed to delay their departure. In Pakistan, however, the majority of those who retire at the age of 60 face health complications, so it is difficult to replicate such initiatives here.

*The police are in a better position to act as first responders.*

Another concern is how to police the cyberspace. Malaysia and Singapore have clamped down on online misinformation about the coronavirus, and the Malaysian Communications and Multimedia Commission arrested some suspects for spreading misinformation about the outbreak.

The gravity of the situation in Pakistan suggests that, through criminal justice measures, self-isolation instructions need to be clearly specified. Without incorporating crisis management functions into the law, along with updated training modules and exclusive allocation, the police will be reduced to the status of a spectator or reporting agency.

Initially, the health crisis resulted in fewer crimes. However, in parts of Italy, the police warned the public to watch out for impostors knocking on doors and claiming to be Red Cross volunteers. In densely populated countries like India and Pakistan, if the coronavirus spell drags out, it may bring a surge in crimes.



## **POLICING COVID-19**

Because the police has a presence in all areas, it is in a better position to immediately act as first responders. And since police stations are the basic functional apparatus of the state, citizens expect a lot more from them. The rural police stations may also be of great help in these times, but greater coordination between the health department and the police needs to be institutionalised.

Websites, email, helplines and SMS are effective tools to reach the public. All provincial police departments maintain websites, but like the centralised policing model, our websites are also over-centralised. Though a handful of police departments are running pages on social media, effective linkage requires interactive public-friendly police websites. During the ongoing crisis, for the first time, the Punjab Police started optimum use of its official website that will simultaneously improve public and media relations.

While law enforcement and public health is an emerging field, in developing countries, public health and policing are averse to collaboration. Participation of the police in such crisis could improve their image and highlight their humane face.

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While law enforcement and public health is an emerging field, in developing countries, public health and policing are averse to collaboration. Participation of the police in such crisis could improve their image and highlight their humane face.

In Pakistan, there is hardly any effort by police organisations to document relief operations and review flaws in their working. During times of crisis, the police performs multiple functions, like rescue operations, protection of life and property, crowd management, security during relief distribution, security of rescue camps, managing traffic, and coordinating with other agencies. Since the police have regular interaction with the public, they are in the best position to infuse volunteerism among residents.

Numerical strength alone cannot yield dividends. There is a need for more comprehensive legislation, capacity building, training and equipment. The police must be financed and empowered in a manner that, before seeking help of civil armed forces, they should have the capacity to sustain the burden during the initial phase of a major crisis.

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## **6 CLASH OF BELIEFS**

DR NIAZ MURTAZA

PUBLISHED DAWN MARCH 10, 2020

BJP-LED Hindutva has turned secular India into a state openly pushing a Hindu identity and abusing its Muslim minority. Till recently in most cases of egregious interfaith abuse, Muslim states like Sudan or extremist groups like IS were the aggressors against animist, Christian and Yazidi groups. Unfortunately, as a result, not only they but even all Muslims and Islam were painted wrongly by Islamophobic brushes as intolerant of people of other faiths.

Today, the situation is reversed. Egregious abuse by such Muslims entities has largely died out. South Sudan is free while violence by IS and extremist Pakistani groups has reduced. Now, in almost all recent cases of egregious interfaith abuse, it is Muslims who have been victims of huge abuse at the hands of some people from almost every major belief system: in atheist China, Buddhist Myanmar, Hindu India, Jewish Israel and Christian Central African Republic — and earlier Serbia. Yet popular global opinion still views Muslims as mainly aggressors and ignores their new status as arguably the most abused religious group in the world today.

But there is also a misplaced sense of victimhood vis-à-vis a global Western conspiracy against their faith among many Muslims. Abuse against Muslims is widespread globally now, but not due to a grand Western conspiracy. It is almost all driven by local politics. Some aggressor states are even anti-West, eg China and Myanmar. Also, the actions of Muslim extremist groups may have fed fury against Muslims in general among other faiths. Obviously, this is just an explanation of and not a justification for the latter's actions.

Also, while egregious abuse has died down, less intense abuse continues in Pakistan and other Muslim states which over the years still adds up to high levels. The ingredients for reignition of egregious interfaith abuse also still exist in many Muslim states: odious ideology; armed groups; vulnerable minorities; and apathetic, weak and even conniving states. Such ingredients are emerging in many non-Muslim states too.

*Neither Islamophobia nor a sense of victimhood is justified.*

While Muslims or their religion can't be blamed for this, only Muslim extremists captured huge territory. Such groups, despite recent defeats, still exist to some extent in certain Muslim states and retain the ambition and even some power to strike globally. They are also unique in desiring to establish theocratic states and in wrongly presenting their actions against other religions as being required by their faith. Extremists of other faiths are driven largely by a political desire to dominate other religions. Scriptural rhetoric from them is rare. While many Muslim extremist groups have regional or even global spans, except some Christian extremist groups, extremist groups in other faiths are nationally confined.



## **CLASH OF BELIEFS**

Thus, neither Islamophobia nor a sense of victimhood is justified. What is needed instead is a realisation by all about the quick spread of extremism in most faiths which is creating what may be called the ‘age of hate’ revolving around hatred based on race, faith and ethnic differences. This hatred stems from the hold of extreme conservatism. Its most potent dominance tool in the modern era has been capitalism, which helps capitalists accumulate wealth by exploiting workers in workplaces and consumers in markets. This happens more in neoliberal capitalism than social democratic capitalism which still gives fair returns to workers and consumers.

Neoliberal capitalism exploits workers and consumers equally based on social identities. Extreme conservatism supplements the returns from neoliberal capitalism to dominant groups via socio-political discrimination against weaker minorities, thus reducing their ability to participate equally in markets and workplaces. This happens especially after economic crises reduce returns from capitalism. In response to the decreasing returns, extreme conservatism unleashes more social biases to further entrench the hold of dominant groups over weak groups globally.

The spread of extremist groups partially stems from this trend. Some such groups work to extend the hold of powerful groups, eg white and Hindu ones. Others fight the hold of powerful groups via misplaced terrorism, eg Al Qaeda. Some play both roles. So some Pakistani extremists work to extend Muslim hegemony nationally while also being linked to regional and global groups fighting US and Indian hegemony via misguided terrorism. While military action may curb their worst excesses, a root-cause solution for extremism will require defanging the worst excesses of neoliberal capitalism. Until then, interfaith hatred may get fanned further.



## **7 PAKISTANI TALIBAN'S FUTURE**

MUHAMMAD AMIR RANA

PUBLISHED IN DAWN MARCH 07, 2020

AN uncertain yet heartening peace process has started off in Afghanistan after the US and Afghan Taliban [signed a deal](#) last week in Doha. On the other hand, as many had foreseen, Afghan stakeholders have stuck to their positions, showing little flexibility to accommodate each other in the intra-Afghan reconciliation process. This is an ideal situation for the spoilers of peace, including state and non-state actors who will try to create space for themselves.

The US focus has largely remained on extracting guarantees from the Afghan Taliban eg they will not allow foreign militants to operate from their territory. The Taliban face two major challenges: first, to push the level of violence down to a point where they can initiate a dialogue with other Afghan stakeholders, and second, to fulfil their commitment to not harbour Al Qaeda and other foreign militants.

The first challenge has its own complexities and is largely linked to security and political stability inside Afghanistan. But the second challenge is even more critical because it implies direct consequences for global and regional security. In particular, the Afghan Taliban's approach will decide the future of multiple militant groups, mainly the Pakistani Taliban who have remained either associated with the former or under its ideological and political influence.

Some media reports have indicated that the Afghan Taliban have conveyed to Al Qaeda and the Tehreek-i-Taliban Pakistan (TTP) to stop their operations in Pakistan and against foreign forces in Afghanistan. The most interesting bit of news is that the Afghan Taliban successfully convinced the Islamic State (IS) leadership to stay calm at least for the next few months. If true, these media reports could be interpreted in several ways.

*Distancing themselves from TTP groups would be a challenge for the Afghan Taliban.*

First, despite all their tactical and sectarian differences, the Afghan Taliban enjoy supremacy over all shades of militants in Afghanistan and can use this leverage in both the intra-Afghan dialogue and the larger reconciliation process with the international community.

Second, for IS and Al Qaeda, the US exit and dialogue process will bring some relief as both were major targets of the US-led operations and drone strikes. Both groups could use this interval to rethink their strategies and restructure their ranks. The IS, in particular, might try to complete the task of relocating its infrastructure along the borders of Tajikistan and Uzbekistan. These border areas have a large Salafi population that suits IS because of the sectarian affinity. Also, apart from the Afghan and Pakistani members, a number of IS fighters come from Central Asia and China's Xinjiang region. If the group succeeds in its relocation plan, it could hit several targets.

It is not certain what exactly the Afghan Taliban have in mind for Al Qaeda after their deal with the US. They have agreed that they will not allow Al Qaeda to use Afghan soil for recruiting, fundraising, training and launching attacks against the US and its allies. But what would that actually mean? Does that mean that the Arab-origin leaders will be allowed to stay in Afghanistan if they abandon violence? Can the Taliban provide the Al Qaeda leaders a passage to other lands especially after they agreed to put travel restrictions on foreign militants?



## PAKISTANI TALIBAN'S FUTURE

As far as the TTP or other, small Pakistani groups are concerned, they are also jubilant over the deal. Their upbeat mood is understandable because they were under allegiance to Mullah Haibatullah, the Afghan Taliban supreme leader. They may have gotten the impression that they would get some relief when the Afghan Taliban obtain legitimacy and power. So far, the TTP is suffering considerable losses in Afghanistan where many of its commanders have been killed in mysterious ways. There was speculation in the media that it was part of the pre-deal understanding between the US and Pakistan that TTP and Baloch insurgents would not be allowed to have sanctuaries in Afghanistan.

However, distancing themselves from TTP groups would be a challenge for the Afghan Taliban. Though the latter hesitate to talk about the TTP in media interactions, they have always maintained a relationship with them. It is evident that they have been intervening in the TTP's internal affairs whenever the latter faced an internal crisis or disputes over leadership. The TTP militants could also have a better working relationship with the field commanders of the Afghan Taliban, who are allowed to make decisions according to local requirements.

Some in Pakistan's security elite thought that US talks with the Afghan Taliban would completely disassociate the latter from the Pakistani Taliban sheltering in Afghanistan. That meant the TTP's return to Pakistan. Last year, a media delegation was told in Miramshah (North Waziristan) that the state was working on some mechanism to sort out the TTP and its affiliated militant movements. The military spokesperson stated that the militants who wanted to return and live peacefully would be welcomed. It is not certain whether the offer still stands as the TTP is a weaker group compared to last year. However, it will have utility for the Afghan Taliban if internal conflict intensifies in Afghanistan.

Another worrying factor involves the sectarian groups, who are also inclined towards the Afghan Taliban and share an almost similar worldview, besides sectarian tendencies. Few sectarian groups are still active in parts of Balochistan and Sindh and their future strategies also depend on the Afghan Taliban's treatment of them. Recently, the Taliban developed a working relationship with Tehran; obviously, Iran would not want the insurgent group to have a working relationship with anti-Shia groups. If the Taliban discourage sectarian groups, the latter might turn to IS.

In many contexts, the future of anti-Pakistan militant groups depends on the Afghan Taliban's future strategy to deal with them in terms of engagement or disengagement. In any case, the militants will remain a threat to the internal security of Pakistan. The state has to look into the issue seriously.



## **8 DEFINING EXTREMISM**

HUMA YUSUF

**PUBLISHED DAWN FEBRUARY 24, 2020**

THE mass shootings at sheesha bars in Hanau, Germany, and the stabbing of the muezzin of London's Regent's Park mosque have put far-right extremism back in the headlines. For too long extremism was intrinsically linked with violent extremist Islamists, while attacks such as the Hanau tragedy were dismissed as the acts of a crazed loner. That has changed. But the continuing lack of precise definitions continues to muddy public discourse on extremism, with serious implications for policy and law.

The multitude of labels applied to the Hanau gunman demonstrate the difficulty of articulating far-right extremism: neo-Nazi, anti-immigrant, Islamophobe, white supremacist, white nationalist, incel, terrorist, etc. But there is an urgent need to better define far-right extremism because consistent language is the first step towards generating coherent policy responses and proportionate legal outcomes.

Many argue that there is a futility to defining extremisms. After all, 'extremist' is a judgemental term that can be used to describe anyone you don't agree with. There can be no neutral definition of the term because an extreme point of view can only exist in relation to something else. As such, extremism is usually defined in relation to a centrist political position. But attempts to label different types of extremism have merely highlighted the political and ideological inconsistencies that thrive at the centre in most countries.

*Clear definitions help countries identify extremists.*

The difficulty of defining extremism does not, however, detract from the importance of doing so. Clear definitions of extremist categories help countries identify and monitor them. Studies after the New Zealand mosque attacks last year showed that the global media is three times more likely to describe violent Islamist extremists as terrorists than the far right. Consistent use of labels in the media would give the public a more accurate sense of the prevalence of an extremist ideology, and drive effective policy articulation. This is most apparent in the US, where battles over what to call far-right extremists have allowed the administration to obfuscate over — and even align with — the rise of a hateful and violent movement.

The US experience also shows how languages of extremism affect legal outcomes. Islamist extremists in the US are more likely to face terrorism charges than far-right extremists who commit identical crimes but face lesser penalties.

Transparent, consensus definitions of extremism are also needed to prevent the label from being cynically used to criminalise dissent. Politicians and corporates alike enjoy terming their critics extremists as a way of silencing them. Indeed, there is a current outcry in the UK as counterterrorism police are defining environmental activists, particularly those associated with Extinction Rebellion, as extremists.



## **DEFINING EXTREMISM**

More efforts are needed to tackle the selective use or abuse of the term ‘extremist’. In the UK, the Commission for Countering Extremism in 2019 defined a new category of extremist behaviour: hateful extremism. This includes amplifying hate and drawing on hostile beliefs against an ‘out-group’ who are perceived to be a threat to an ‘in-group’. The ‘us versus them’ aspect enshrined in this definition should capture a range of far-right extremisms.

Writing in the *New Statesman*, Quassim Cassam has argued that focusing on the extremist mindset is a more effective way to identify and respond to new extremist categories. Extremists perceive themselves to be victims; they aspire to a utopian society; they are obsessed with ‘purity’ (eg racial or theological); they thrive on conspiracy theories; they are angry. A focus on the extremist mindset (which would also capture non-violent actors) would give rise to more thoughtful and pre-emptive policy responses.

Debates about how to define extremism may seem *ex post facto* in Pakistan, where the language wars have been under way since the early 2000s. But we should not think definitions are irrelevant to us. After all, the failure to appropriately articulate extremist threats has led us to transition from serious concerns about violent extremism and terrorism to ‘liberal fascism’ and sedition. Indeed, the idea that a pro-democracy, pro-human rights positioning is as extreme and threatening as violent or supremacist religious ideologies has been normalised (this is also the case in India, where the ‘urban naxal’ is perceived to be as problematic as the Hindutva ideologue).

The power of this language of extremism is apparent in legal outcomes here as well. As Irfan Husain recently noted on these pages, the treatment of liberals (detention, harassment, sedition charges) is more appropriate to that of extremists, while extremists are rewarded with cash, land, media coverage and prestige. Rethinking how we define extremism — with a focus on mindset, approach and social outcome — may be our only option to course correct now.



## **9 SINDH POLICE LAW**

MOHAMMAD ALI BABAKHEL

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Post 18th Amendment, some quarters have questioned the status and validity of Police Order (PO) 2002 as a strictly provincial subject, which has lacked perspective of ground realities. Historically, federal law-enforcement authorities have remained active in maintaining peace in Karachi, which is why evaluating police law exclusively through the prism of provincial autonomy doesn't seem appropriate. In a country where criminal law, evidence law and the senior police leadership (PSP) primarily belong to the federal structure — owing to internal security challenges and resource constraints faced by the provinces — it is difficult to clearly demarcate federal and provincial domains.

Even prior to the ongoing Rangers-led operation in Karachi, the city depended on federal reinforcements. Likewise, KP and Balochistan sought federal financing for law-enforcement projects such as conversion of 'B' into 'A' areas, raising the Balochistan Constabulary and the integration of forces of former Fata into the KP police.

In May 2019, the Sindh Assembly passed an amended bill; as per Article 116 (2A) it was forwarded to the governor. Following Article 116(2-B), the governor returned the bill for reconsideration to the Assembly. In June 2019, it was reconsidered, passed and forwarded to him. Since the governor did not assent within the 10 days specified in Article 116(3), the bill was deemed as passed.

The new law is known as the Sindh (Repeal of the Police Act, 1861 and Revival of Police Order 2002) Amendment Act 2019, and contains several flaws, eg the adopted law merged the previously exclusive public safety commissions and complaints commissions as a single entity. Meanwhile, Article 4 defines 22 duties of the police, including assistance to victims — but without increasing financial allocation, capacity building, and accountability; such an exhaustive list will remain an ideal.

Then, Article 8 requires police departments to be organised on a functional basis, but the new law dropped the idea of 'police accountability' incorporated in Article 8 (2-E) in the original PO 2002. Naturally, without accountability, policing will face a public trust deficit.

*How will the logical end be achieved without restructuring the police?*

The inherited colonial policing model primarily catered to rural needs, although PO 2002 tried to address issues confronting both rural and urban policing. To meet urban challenges, PO 2002 introduced the concept of Capital City Police (CCP), but the recently adopted law omitted it. For big cities, Sir Oliver Gilbert Grace and Justice Cornelius recommended the Commissionerate system in 1950 and 1962, which ensured functional autonomy of the police chief and improved public safety. The police committee headed by Aslam Hayat in 1985 also advised restructuring policing on the lines of a Commissionerate system; they believed it would improve decision-making, response and accountability within the police. However, the adopted law seems averse to the needs of metropolitan policing.

In pre-independence Kolkata, the Calcutta Police Act, 1866, provided a way for a Commissionerate system. Till independence, the city had 16 police chiefs; and after independence, 26 police commissioners were rotated. Now, Kolkata is the 15th most populated city in the world while Karachi is placed at 11. For Calcutta, the imperialists realised the need for an exclusive Commissionerate system, but owing to an intense romance with the colonial-rural policing model, we seem to be enamoured of the status quo. This is apparent in the newly adopted law which has ignored the specific needs of command, operations, capacity building and public safety.



## **SINDH POLICE LAW**

Although the National Action Plan says that the ongoing operation in Karachi will be taken to its logical end, how will that logical end be achieved without empowering and restructuring the police?

The adopted law amended the composition and selection process for members of the provincial and district public safety commissions, and the police complaints commissions. In the original PO 2002, the district public safety commission had eight to 12 members; half the members are to be district councillors, while the remaining are independent members. In the adopted law, one-third are to be elected members of the national and provincial assemblies; one-third district councillors; and the remaining independent members. Historically, district councils remained under the political influence of the party in power.

The enormity of internal security threats warrant that the law incorporates and address the needs of the CCP and reconnect the Sindh police law with the national public safety commission and National Police Bureau. To make the police true custodians of public safety, their composition needs to be amended in a way so that a balanced approach is attained while the IGP is empowered so that he has the exclusive authority to compose his team.



## **10 DEALING WITH FTFs**

MOHAMMAD ALI BABAKHEL

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The coverage of the Syrian and Iraq wars by the international media has ended up glorifying ‘foreign terrorist fighters’ (FTFs) while also highlighting the legal and societal implications of their return to their home countries.

According to the Global Terrorism Index, 2015, between 25,000 and 30,000 FTFs from over 100 countries arrived in Syria and Iraq since 2011, mainly from south-east Europe.

The evolution of contemporary FTFs may be classified into three phases. In the first phase, Al Qaeda attracted FTFs in Afghanistan from Arab countries. In the second, FTFs were mostly Middle Eastern expats travelling to Western universities but sociocultural discrimination radicalised them. In the third phase, the internet created self-trained and self-financed FTFs who established links with the militant Islamic State group.

In 2014, the UN Security Council passed Resolution 2178, reminding member states to stop those believed to be FTFs from crossing their borders, and be alert to their sources of facilitation and funding. The resolution called for FTFs to be prosecuted, rehabilitated and reintegrated into society upon their return to their countries by either amending existing counterterrorism (CT) laws or enacting new ones to check their movement.

*States can restrict the movement of foreign terrorist fighters.*

The absence of special laws or clauses related to FTF activities in many countries makes it difficult to prosecute them because existing legislation is often not enough. Pakistan, too, lacks special laws pertaining to checking the movement of FTFs (although the ATA 1997 is there). Dealing with this challenge requires a thorough review of CT laws that involves criminalising a full range of behaviours/acts related to FTFs, in addition to building the professional capabilities of border police and immigration staff.

Several countries have put in place laws and restrictions to stop or restrict the movement and activities of FTFs. For example, Australia enacted the Counter-Terrorism (Temporary Exclusion Orders) Bill, 2019, empowering the home affairs ministry to block a citizen over 14 years of age with suspected terrorism links, from returning to Australia for two years. Australia also criminalised travel to areas such as Mosul in Iraq without valid reason. As per Section 119.2 of the Australian Criminal Code Act, 1995, intentional entry in a conflict zone of a foreign country is an offence liable to punishment for up to 10 years.

Similarly, to deal with FTFs returning from Syria, New Zealand recently enacted the Terrorism Suppression (Control Orders) Bill, to empower the police to move the high court to impose control orders on citizens involved in terrorist activities while overseas.

Though it can be difficult to answer why individuals want to become FTFs, states can proactively work towards detecting incitement to commit terrorist acts, and ensure timely and effective intelligence collection and sharing of information — both on an intra- and inter-government level. It is impossible to deal with the problem in isolation and without the cooperation of friendly states.

Lone wolf terrorism and FTFs are interlinked. Lone wolves appear more educated and socially isolated than group-based actors. Their willingness to travel great distances to prepare for and execute attacks makes it difficult for states to maintain due vigilance. Thus, international cooperation and intelligence sharing is necessary.



## **DEALING WITH FTFs**

While enacting laws and making strategies for dealing with FTFs, states can take help from the 52 guiding principles issued by the UN. These strategies may include sharing of advance passenger information, especially from airlines flying to and from conflict zones. Chapter 9 (Part B) of the Convention on International Civil Aviation (Annexure 9) provides SOPs for sharing advance passenger information.

CT departments may employ data protection officers to maintain databases of FTFs without compromising the privacy of individuals. FTFs have been seen to usually use evasive or broken travel patterns to make it difficult to track the actual destination or the motive of their journey. In this regard, officials can be trained to understand the dynamics of broken travel patterns but this is not possible without bilateral and multilateral information sharing.

Research suggests that globally only 11pc of the total returnees pose a threat to their home countries. The blowback rate may appear small, but a number of terrorist incidents in several countries have exhibited the risk of turning a blind eye to FTFs.

No country alone possesses the capability to cope up with the challenge of FTFs. Hence, encouraging mutual legal assistance, intelligence sharing, cooperation in extradition of suspects and their travel information are key to minimising the risks involved.



## **11 A DECADE IN REVIEW: LESS TERROR FATALITIES BRING A RAY OF HOPE IN PAKISTAN**

**WAQAS AHMED**

**PUBLISHED IN EXPRESS TRIBUNE JANUARY 01, 2020**

Pakistan was once known to the world as a terror-ridden country because of the frequent terror attacks that its people had to endure for more than a decade. In the last 10 years, however, incidents related to terrorism significantly decreased year after year.

In the decade following 2010, the Pakistan Army and other state institutions, under a successful strategy, ended the unrest and restored the atmosphere of peace in the country. While efforts were employed to ensure the implementation of the National Security Policy, armed forces and the law enforcement agencies (LEAs) launched several operations against terrorists to rid the country of terrorism.

According to the data available with The Express Tribune, during the last 10 years, a total of 2,353 incidents of terrorism, suicide attacks and targeted killings were reported in which 13,192 Pakistani nationals were martyred and more than 25,000 people were injured. As a result of the successful anti-terrorism operation, more than 19,033 terrorists were killed, while security forces also targeted 1,623 armed fighters and criminals. During the operation, 2,575 officers and security personnel were martyred.

The report also revealed that 1,537 people were martyred in 2010, while the number of people losing their lives in 2011 was 2,392. Likewise, 2,732 and 2,703 people were martyred in terrorist activities including, suicide attacks, in 2012 and 2013, respectively. With the launch of Operation Zarb-e-Azab and its follow-up Operation Radd-ul-Fasaad, the number of terrorist attacks and, consequently the number of targeted Pakistanis, declined with each passing year.

In 2014, terrorists attacked the Army Public School wherein they martyred 148 children and injured 114, while 1,476 Pakistani citizens were martyred in numerous other terrorist attacks. In 2015 and 2016, some 866 and 545 civilians were martyred, respectively. According to statistics, 440 people lost their lives in 2017, 359 in 2018, while in 2019, 142 civilians died in terror-related incidents.

Per statistics, the highest number of fatalities were reported in Sindh in the last ten years, where 4,278 people were martyred and 3,707 people were injured in various acts of terrorism and targeted killings. In Balochistan, extremist outfits martyred 3,209 people, 2,480 in Khyber Pakhtunkhwa (K-P), 841 in Punjab, 52 in Islamabad, 43 in Gilgit-Baltistan (G-B), while two people were martyred in Azad Jammu and Kashmir (AJK).

The report also revealed that the armed forces and the LEAs together targeted a total of 19,033 terrorists in various operations. In the areas of the erstwhile Federally-Administered Tribal Areas (FATA), the Provincially-Administered Tribal Areas (PATA), the highest number of terrorists were targeted by the authorities. Accordingly, 14,427 terrorists were quarantined, while during clashes with the security forces and in different operations, 1,606 terrorists in K-P, 1,335 in Sindh, 1,207 in Balochistan, 17 in G-B, eight in Islamabad, and two terrorists were killed in AJK.



## **A DECADE IN REVIEW**

That apart, the decade following 2010 turned out to be quite grim for Pakistani political parties, journalists, polio workers, doctors, teachers and lawyers. Along with civilians, political leaders have also been victimised in different terrorist attacks and targeted killings. In different terror-related incidents 1,334 political persons were targeted, out of which 346 activists belonged to the Muttahida Qaumi Movement (MQM), 152 supported the Awami National Party (ANP), 149 represented the Balochistan National Party (BNP), 73 were from the Pakistan Peoples Party (PPP), 50 from the Pakistan Muslim League Nawaz (PML-N), 45 from the Pakistan Tehreek-e-Insaf (PTI), 17 from the Pakistan Muslim League Functional (PML-F) and 42 people from other political parties became targets in terrorist incidents.

Per statistics, terrorists attacked 62 doctors, 13 media personnel and journalists, 57 polio guards and 46 polio workers in different unrelated incidents.

Over the past 10 years, the dedication and sacrifices of the armed forces and the law enforcement agencies have undoubtedly lowered terrorist incidents in the country to a significant extent. However, a surge in crime rates was witnessed due to the uncertain economic conditions of the country, together with high rates of unemployment.

According to the National Police Bureau, a total of 5.7 million cases were reported from all the four provinces of Pakistan throughout the decade. Out of the total, 330,703 cases were related to robberies, 166,531 cases were associated with abductions, 102,672 murder cases, 114,881 attempted murder cases, while 5.5 million cases were related to other crimes.



## **12 THE ONGOING CHALLENGE**

MUHAMMAD AMIR RANA

PUBLISHED DAWN DECEMBER 29, 2019

IN 2019, Pakistan witnessed a further decline in the number of terrorist incidents and consequent casualties. Though one might view this as an indication of terrorists' weakening operational capabilities, the war against terrorism is still on. Terrorists have been scattered — but not yet shattered — and persisting extremist tendencies are still a primary source of their human, financial and ideological strengths.

According to data collected by the Pak Institute for Peace Studies, terrorist attacks this year decreased by around 11 per cent as compared to 2018, and the number of people killed in these attacks plummeted by 40pc. Indeed, there has been a gradual decrease in terrorist attacks and casualties since 2009 (with the exception of 2013, when a surge in sectarian violence mainly contributed to a rise in attacks and casualties). Continuous anti-militant operational and surveillance campaigns by security forces and police counterterrorism departments, as well as some counter-extremism actions taken under the National Action Plan, have apparently helped sustain that declining trend 2013 onwards.

The statistics also show that, for the past few years, much of the militant violence has been visibly concentrated in Balochistan and Khyber Pakhtunkhwa, while other regions have been facing less frequent attacks. While the number of terrorist attacks in Balochistan in 2019 declined by 27pc, the number of attacks in KP remained unchanged from the year before. The number of terrorist incidents recorded in these two regions was significant; 125 attacks took place in KP and 84 in Balochistan, which were over 91pc of the total attacks reported from across Pakistan.

*Terrorist attacks in Pakistan continued to decline but the threat is not yet over.*

This year, so-called religiously inspired militant groups such as the Tehreek-i-Taliban Pakistan, its splinter groups Hizbul Ahrar and Jamaatul Ahrar, as well as other militant groups with similar objectives such as local Taliban groups, Lashkar-i-Islam and IS-affiliates perpetrated 158 terrorist attacks and nationalist insurgent groups, mainly Baloch, carried out 57 attacks. Meanwhile, 14 of the reported terrorist attacks in 2019 were sectarian-related.

These trends indicate that the threat is not over yet, but talk of countering militancy and terrorism has almost disappeared from media, public and policy discourses. It seems all are becoming convinced by the narrative that we have already defeated militancy and restored peace, including in KP's merged districts. But in reality, this is only partly true. For one, in 2019, North Waziristan re-emerged as a major flashpoint of insecurity and militant violence where 53 terrorist attacks took place, or over 42pc of the total reported attacks from KP, which killed 57 people and injured 93 others. The government and security forces need to be vigilant enough to prevent militants from regrouping in any part of the country.



## **PAKISTAN AND THE FATF**

The post-Pulwama situation has complicated Pakistan's strategic challenge on its eastern side, which was further fuelled by the controversial revocation of the special status of India-held Kashmir by Prime Minister Narendra Modi's BJP government. The situation has diverted the attention of the state institutions towards its core conventional security threat. The Pakistan-Afghanistan border security situation is also very delicate, but border security issues with Iran are becoming complicated too, as Baloch insurgents are reportedly using Iranian soil to hide.

In such a complicated national security situation, however, credit goes to Pakistan for not allowing any religious or nationalist party, or militant group, to exploit the situation despite the grim human rights violations in India-held Kashmir and politically charged sentiments in the country. This strategy has helped Pakistan draw the international media's and rights-based organisations' attention to the plight of the Kashmiris.

In the case of any militant movement across the Line of Control, the situation would have been entirely different. For one, India could have gained more international support by shouting 'cross-border terrorism', covered up its brutal actions in Kashmir and used it to undermine international moral support for the Kashmiris. Similarly, one can imagine the financial consequences for Pakistan, which is facing the critical challenge of avoiding a blacklisting by the Financial Action Task Force.

While Pakistan's focus has recently been on the situation in IJK and tension along the LoC, Pakistani militants, mainly the banned Tehreek-Taliban Pakistan, could try to exploit the situation along the western border. However, the scattered networks of militants failed to exploit the situation entirely, though they have tried making inroads into KP districts bordering Afghanistan. The patterns and geographical spread of terrorist attacks in KP indicate that most attacks in 2019 concentrated in districts that share a border with Afghanistan, including Dir, Bajaur, Mohmand, and North Waziristan. These attacks were made by Pakistani groups sheltered in Afghanistan as well as by their supporters and affiliates, who are still present in bordering and other regions of KP.

The militant Islamic State group has suffered huge losses across the world in 2019, although it has managed a few high-intensity coordinated attacks, including the Sri Lanka Easter attacks. In 2018, the group managed to perpetrate five major terrorist attacks in Pakistan, and the security departments assessed that the group could sustain this momentum in 2019. However, IS claimed only one sectarian-related suicide attack this year, which targeted the Hazara community in Quetta. While IS also announced its Pakistani chapter, it has not yet appeared to surface. One of IS's top commanders, Hafiz Barohi, was killed in an encounter with law-enforcement agencies in Sindh, which proved fatal to the group.

Pakistan's internal security landscape is complicated due to both internal and external threats. The internal dimension not only includes threats from hardcore radical and sectarian terrorist groups but also from groups that promote religious intolerance. The latter pose a different sort of critical challenge, because such groups can mobilise their support bases to cause more damage to the economy, social cohesion of society and global image of the country. As we enter 2020, the government and law-enforcement agencies still lack the responses and capabilities to deal with them.



## **13 PAKISTAN AND THE FATF**

**KHWAJA KHALID FAROOQ**

**PUBLISHED IN THE NEWS DECEMBER 28, 2019**

The recent pronouncements by the Asia Pacific Group which regulates the FATF regime for Pakistan portray a number of regional money laundering and terrorism financing threats that confront Pakistan.

According to the APG, these threats pertain to the porous borders with Afghanistan, exposing Pakistan to incoming illicit proceeds from drug trafficking and funds to support terrorist groups operating within Pakistan and along its vulnerable borders.

Even though there is some acknowledgment of the fact, it is glossed over to some degree that Pakistan has had huge success in curbing terrorism. All the official and non official figures show a sharp decline in terrorism, with terrorism on its lowest scale in the country when compared against data from previous years. However, this does not seem to translate into significant dividends when it comes to the FATF.

In fact, as with other previous assertions, the APG cites a significant number of UN-listed terrorist organizations operating in these border regions as a risk for outbound funds supporting terrorist activity in neighbouring countries, with the terror threats relating to the border regions with Afghanistan. Also, Pakistan's significant diaspora of citizens working in other high terrorism financing regions in the Middle East and remitting funds creates an additional risk.

While the Punjab government has started taking over all the moveable and immovable assets of the Jamaatut Daawa (JuD) and the Falah-e-Insaniat Foundation (FIF) operating in the province, and amended the Anti-Terrorism Act of 1997 earlier in February 2018, allowing the state to deal with the proscribed organizations on the United Nations list, this does not get much traction at the FATF. Pakistan has also clamped down upon the groups' networks, arrested their top leadership including Hafiz Saeed, and forfeited all their funds and seized their assets. The recent indictment of Hafiz Saeed by courts made headlines in the country; the APG, however, does not seem to have noticed much.

What the FATF does not indicate is the fact that, pragmatically speaking, it's not an easy task to dismantle such long established networks. Kinetic operations have broken the back of terrorist outfits, and there will definitely be some time lag before these deeply entrenched groups in society can be weeded out. But, time is not on Pakistan's side where the FATF is concerned.

This is not the only issue; capital flight associated with illicit proceeds from corruption and other high-risk predicate crimes, including tax evasion, are said to be continuing concerns, with the recovery of illicit funds mentioned as improvement but still not enough. In September 2018 Pakistan and the UK launched a 'UK-Pakistan Partnership on Justice and Accountability' to address money laundering issues and recover stolen assets held in the UK.

However, the FATF does not really recommend pragmatic ways to address the problems of porous borders, recovery of stolen assets, and the movement of funds. What it does not seem to, or want to, recognize is that much of Pakistan's economy is undocumented, which is typical of an agrarian based economy which gets inputs from remittances abroad, sent by many low scale workers who don't want to send money through banking channels because it costs more, and exposes them to higher taxation in the remitting country and increased stringency in Pakistan.

In response, the FMU Unit has brought down many illegal transfers with the coordination of the Federal Investigation Agency and Provincial Counter Terrorism Departments of Police, with 777 cases against Hawala/ Hundi, 1060 arrests made against these cases, and recovery of Rs1320.705 million in this regard.



## PAKISTAN AND THE FATF

Counter-Financial Terrorism investigative units have been established in Police Counter Terrorism Departments, and a Countering Financial Terrorism Directorate established in Nacta for a unified response on the feedback coming from the provinces. This is an evolving regime, and nothing of the kind existed a few years ago. It seems pertinent to point out that such regimes have taken much longer to be established even in much more developed countries.

There is a lot of pressure on Pakistan to implement an effective international cooperation management-framework on mutual legal assistance. Even though Pakistan has a formal extradition law, the FATF cites Pakistan for lacking a formal mutual legal assistive framework, especially for informal cooperation. It seems worthwhile to mention that in extradition cases in the West – such as the famous Pinochet case in the UK – MLA frameworks did not spring up any quicker.

In FATF compliance, Pakistan conducted a national risk assessment exercise in 2015-2017 through its financial monitoring unit, using the World Bank template, which resulted in the document called ‘National Risk Assessment on Money Laundering and Terrorist Financing 2017’. The FATF concluded that Pakistan did not rate its national threats cogently, and did not explain how it categorized both threats from money laundering and terrorism financing as medium level threats.

The FATF noted that Pakistani statements of the current scenario were fuzzy, and there was some confusion regarding corruption, investment by shady persons in real estate and other businesses and from drug and fraud offences. The Counter terrorism Department of the Punjab Police was stated to be better than the FIA in understanding these threats, while NAB ranked higher on the scale of agencies able to respond to threats from their areas of responsibility and understanding of risk with regard to corruption as a predicate offence.

We keep hearing that crime generates money for terrorism in Pakistan, and indeed this has been the subject of much media hype and debate. However, the FATF noted that absence of cogent national crime statistics and tabulation according to the impact of such crime on civil society, or some other justification or

combination thereof, was not explained by officials. The FATF also noted that Pakistan could not identify particular terrorism-crime risks associated with, or having, foreign elements within Pakistan.

Even more tellingly, the FATF opined that there was no clear understanding among officials of the risks associated with terrorism financing crimes., and indeed the linkages of terrorism financing and money laundering in Pakistan were said not be expressed clearly by Pakistan.

What does the FATF want from Pakistan? It wants Pakistan to swiftly complete its full National Action Plan by February 2020, notwithstanding that the NAP was a hastily contrived wish-list of aspirations, some of which seemed impossible to achieve in the short term, but work could be done to curb terrorism by kinetic operations, and then medium to long-term plans could be implemented.

There are clear dichotomies on how Pakistan is treated at forums such as the FATF, with action expected to miraculously occur almost overnight. While there is much truth in what the FATF wants, it does not seem to care that Pakistan – as an evolving counter-terrorism regime which was facing almost a few hundred percent more terrorist incidents than today, only a decade ago – has to grapple with deep structural impediments to achieving full compliance.

On the other hand, Pakistani policymakers would be well advised to remember that when a country hastily draws up wish-lists such as the National Action Plan without much thinking going into it about realistic and achievable goals within stipulated longer term timelines, such documents become the rope with which entities like the FATF can try to strangle the country.



## **14 REDEFINING TERRORISM**

SHAHZADA SULTAN

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SC recommends that the definition of terrorism in ATA 1997 may be reformulated more succinctly.

The court has finally spoken as promised and drawn the confines of the definition of terrorism in Anti-terrorism Act (ATA) 1997, a much-abused and misused law.

Most of the misapplication of the law since its birth has stemmed from its expansive and vague definition that remained open to discretion and myriad interpretations.

Part of the problem lay in a long inventory of offences included under Section 6 that can attract the provisions of this Act. These offences include, inter alia, actions causing or likely to cause death, grievous injury or endanger a person's life, mischief, burning of a vehicle, extortion of money, forcible take-over of mosques or other places of worship, coercion or intimidation of a public servant and serious violence against members of law enforcement agencies.

To turn an offence into an act of terrorism the simple and vague test of creating "a sense of fear or insecurity in society" was enough as provided under Section 6 (1), sub-section (b). This placed a wide margin of discretion into the hands of police, the government and the general public to seek registration of a case under the Anti-Terrorism Act.

As a result, over the years the police applied, under various compulsions and inducements Section 7 ATA liberally in cases of police encounters, murders, rapes, arson, damage to property, personal enmity, and firing in air, unnecessarily exposing the ordinary breaches of law to the provisions and punishments of this special law.

By ably surveying the meaning and evolution of the concept both under the municipal and international law, and analysing the judicial holdings of the superior courts on the issue, the honourable Supreme Court of Pakistan has once and for all defined the crime of terrorism while disposing of Criminal Appeals No 95 and 96 of 2019, Civil Appeal No 10-L of 2017 and Criminal Appeal No 63 of 2013.

While interpreting the existing provisions of the law, the court concluded that an action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, does not qualify to be termed as terrorism if committed in furtherance of a personal enmity or private vendetta, and not with the design to coerce and intimidate or overawe a government, or a community for the purpose of advancing a religious, sectarian or ethnic cause.

Pointing out the internal definitional discord in Section 6 of the Act, the court has defined the elements of the crime of terrorism. These elements are: (a) the actus reus, which is the material element or the physical act perpetrated, and (b) the mens rea, which is the mental element of an intent or design to coerce, intimidate, cause fear or terror, coupled with the purpose of furthering a political, religious, or ideological cause.

The international law is also moving in the same direction. A violent activity against civilians without political, ideological or religious aims is thus just an act of criminal delinquency, a felony, or simply an act of insanity unrelated to terrorism.

What the court has said is not just obiter dicta, or just a declaration of law on a moot point, but a tour de force of legal hermeneutics, delving deep into, and interpreting the language in its current meaning as well as the legislative intent of the framers of the Act. Legal hermeneutics is a powerful tool that enables those interpreting the legal texts, going even beyond the universe as dreamt of by the framers of a particular law. It takes into account the birth and growth of ideas posterior to the law. What sets the October 31 judgment of the honourable court apart from ordinary acts of jurisprudence is the development of a test that determines whether or not a certain act can be termed as an act of terrorism.

## **REDEFINING TERRORISM**

This has placed the present judgment in the category of such landmark decisions as the International Court of Justice (ICJ) judgment in case of *The Republic of Nicaragua vs The United States of America* (ICJ, 1986), and the International Criminal Tribunal for Former Yugoslavia (ICTY) Judgment in *Tadi Case* by the Appeals Chamber (ICTY, 1999).

In the former case, when the ICJ was faced with the difficult question whether the violent acts of the Nicaraguan rebels styled as *contras* could be attributed to the USA for engaging State responsibility for wrongful acts, the court proceeded to develop what became known in the history of public international law as the ‘effective control test’.

While holding the USA responsible for violating the sovereignty and political independence of Nicaragua because of the support it provided to the rebels, the court did not attribute serious violations of international humanitarian law committed by *contras* to the USA for the purposes of state responsibility as the facts did not satisfy the ‘effective control’ test. The test requires the perpetrators to be under the direct command of the state or in a position where they receive and execute specific orders for each specific operation.

Some thirteen years later, the International Criminal Tribunal for former Yugoslavia located just a couple of miles from the ICJ, at the Hague, was grappling with a similar question but this time in a different setting. The tribunal was supposed to determine whether the war crimes and crimes against humanity committed by the accused *Duško Tadi* during the conflict in Bosnia could be attributed to Former Republic of Yugoslavia (FRY).

Undertaking a full-blown survey of the customary international law and *opinio juris*, the tribunal averred that the appropriate test for attributing misconduct of an organised and hierarchically structured group, such as a military unit or, in case of war or civil strife, armed bands of irregulars or rebels, to the controlling state, is the ‘overall control’ test and not the ‘effective control’ test applied earlier by the ICJ. This broke fresh ground in the international law on state responsibility.

In the present judgment, the honourable Supreme Court of Pakistan has propounded the test of ‘design and purpose’ as an essential element of the crime of terrorism, and has gone further to illuminate the very nature of the design and purpose itself. An offence, however terrible, will not be termed or tried as an act of terrorism unless it satisfies the ‘design and purpose’ test, that is the design to coerce, intimidate or compel a government, a community, a sect or a section of society, to achieve a political, ideological or religious purpose.

The court has recommended to the government that the definition of terrorism in ATA 1997 may be reformulated more succinctly focusing on the test as propounded in this judgment, and clearing Section 6 of all other ‘designs and purposes’ listed therein that have little or no relation with the crime of terrorism as understood by the world at large.

The court has recommended two more things: one, to amend the preamble of ATA 1997 so that Anti-Terrorism Courts (ATCs) are not used for speedy trial of heinous crimes, and two, the removal of Schedule 3 from Act which is an inventory of offences to be tried under ATA even when those do not satisfy even the very vague element of creating fear and insecurity. If implemented, these recommendations will put an end to the misapplication of this law, save ordinary offenders from being tried as terrorists, and enhance the efficiency and effectiveness of the ATCs in the country.



## **15 SECURITY MOSAIC**

MOHAMMAD ALI BABAKHEL

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INTERNAL security is an essential element of national security. The Quaid said, a government is responsible for maintaining order and protecting life and property, and religious belief. Provincialism, sectarianism and ethnic divisions have led to different phases of violence but a well-articulated internal security policy couldn't be formulated.

Tribalism, feudalism, weak governance, corruption and poor socioeconomic conditions are threat enablers; sectarianism, sub-nationalism and extremism are threat multipliers. While globalisation encourages innovation and information-sharing, it has also led to the misuse of technology. Violent non-state actors on the internet pose serious security challenges ie encrypted communication, online access to IED-and suicide vest-making techniques.

Pakistan's internal security mosaic needs integrated reforms. Out of the 26 constitutional amendments, four directly pertain to internal security. Without incorporating key players, national security issues cannot be effectively addressed. Implementing Article 140-A will boost local governments, which will help in executing internal security policies. Besides the Anti-Terrorism Act, Anti-Money Laundering Act, Investigation for Fair Trial Act, Nacta, and Prevention of Electronic Crimes Act were formulated after 9/11. Counterterrorism strategies were based on a 'capture and kill' approach until the formulation of the National Internal Security Policy. The National Action Plan rearticulated NISP's goals, but converting such ideals into reality needs improved provincial ownership.

Signing four peace accords with militants between 2004 and 2008 proved to be mere appeasement. Though such accords enabled both sides to buy more time, the ultimate casualty was durable peace. The failure of the policy of appeasement reduced the scope for soft approaches, leading to military operations against militants. However, the results of these operations were not worked out well in advance.

*Internal security cannot be tackled in isolation.*

Internal security threats cannot be neatly separated from external factors. Indian involvement in sabotaging peace in Pakistan is evident from the 240-page Kao Plan. The first part focused on supporting instability in East Pakistan, the remainder concerned KP and Balochistan. Cyberspace facilitated certain elements to wage a hybrid war. Apart from external linkages, such issues are not to be seen exclusively through the prism of security, but also need to be understood through a socioeconomic and political lens.

For more than a decade, the Tehreek-i-Taliban Pakistan was the common voice of militants. Prior to military operations, extremists used broadcasting to poison the ears of their audience. Initially, TTP commanders were united, but power politics led to factions. After TTP chief Mullah Fazlullah's death, Noor Wali tried to reconsolidate matters, but the military made it difficult for TTP to stage a comeback with the same intensity. The Sipah-i-Sahaba, Lashkar Jhangvi and Sipah-i-Mohammad were involved in sectarian proxies, while the Balochistan Liberation Army, Balochistan Republican Army, Lashkar-i-Balochistan, Balochistan Liberation United Front and United Baloch Army were significant insurgent groups that challenged internal security. In Sindh, the TTP, AQIS, LeJ and Sipah-i-Mohammad Pakistan remained active. Burmese, Bengalis and Seraiki elements were also active in LeJ. An innovation of some Karachi University students, Ansar-ul-Sharia, was only recently tackled by LEAs.



## SECURITY MOSAIC

In the past four decades, the Fata region remained a hub for militants who challenged the authority of maliks and political agents. Since 2004, KP has registered 4,359 incidents of terrorism; 2009 was the bloodiest period, with 728 attacks recorded. Since 2017, Balochistan registered 333 incidents of terrorism. Militants changed their strategy from suicide bombing to IEDs and rocket fire. Factionalism continued to dilute the strength of militant groups, and some of them opted for clandestine collusion. Karachi remained a hub of ethnic violence and was an attractive shelter for dormant extremists. Though the Karachi operation resulted in an 89 per cent decline in terrorism, the real challenge is how to retain the dividends of ongoing operations. Unrest in Karachi has always been tackled with an iron fist, but the violence reappears after a brief respite.

Converting Fata's merger into reality, consolidating gains of LEAs and preventing ethno-political fissures need political will, a doable transition plan and financial resources. Integrating Levies and Khasadars with the police and redefining the Frontier Constabulary's mandate need more efforts. Although the Fata merger has changed KP's demographic and administrative dynamics, if issues that emerged after the merger are not addressed, it may affect the peace indexation of the settled districts. Weak institutional responses to the dividends of military operations may result in the return of disorder.



## **16 A DESPERATE IS**

ARSLA JAWAID

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THE recent suicide attack on a wedding in Kabul generated much attention towards the fledgling Afghan peace talks that have gripped the attention of regional players and the imagination of the West. However, the attack itself, both on strategy and optics, reveals much more about the militant Islamic State (IS) group than has gained notice.

According to statistics made available by the UN Assistance Mission in Afghanistan, IS claimed 11 per cent of the 3,812 documented casualties in the first half of 2019. The Taliban, meanwhile, claimed 38pc.

Even though IS was at its peak in 2014, its ‘Khorasan chapter’ in Afghanistan and Pakistan never quite took off. While loyalties remain fluid in militancy, the group failed to gather much traction. What it did succeed in doing was to issue a call to young, radicalised youth in the West to participate in jihad and protect the ‘caliphate’, and, in return, garner international fame. Near 2016, that call for Iraq and Syria too died out as European countries and others bolstered border control measures, revamped advanced passenger information procedures and restructured criminal justice programmes to address the issue of returning fighters. Between 2016-18, IS-inspired lone-wolf attacks increased in Europe and the call to Libya also began dying out. Meanwhile, in South Asia, IS (increasingly desperate to regain strength) claimed numerous attacks including the July 2018 Mastung bombing that killed 149 people — the deadliest terrorist attack in Pakistan since the 2014 APS attack.

*Afghanistan offers an opportunity in waiting.*

Having lost control in Iraq and Syria, unable to establish a stronghold in Libya and a steadily declining cadre of dispensable foreign fighters, IS has returned to a standard form of explicit savagery designed to garner media attention and shock the world — like a suicide attack on a wedding. Forced to adapt to physical and technological attacks, IS maintains a deeply decentralised and non-hierarchical structure, rendering any decapitation tactics to defeat the group useless. While operationally the group may be fluid and flexible, a self-professed caliphate ultimately must have land to gain any modicum of legitimacy. And territory is where the answer lies.

IS exploits political gaps and vulnerable environments to entrench itself and rule through fear or a select few power brokers. Afghanistan offers an opportunity in waiting. Two years ago, I interviewed scores of young men who had fled Mosul soon after IS took over. The narrative was mostly the same — a known militant group that promised security, economics and governance was accepted by the people even if it came at the cost of giving up freedom. A select few, mostly young men, were appointed to run the city’s affairs. There is no denying that unlike Iraqis who may not have been as familiar with IS’s ruthless rule then, Afghans are well aware of the brutality it inspires. However, propensity to violence feeds on vulnerability, exclusion and desperation — and all three appear to be present in bulk in Afghanistan.



## **A DESPERATE IS**

Afghanistan is already a victim of a fragile political structure. Ongoing peace talks may usher in a new era, but not necessarily as peaceful or liberal as the Taliban claim it shall be. An election is likely to further complicate an already perilous situation. In the midst of all of this is a viscous IS on the run, eyeing contested territory, ready to sow chaos and discord on the heels of a vulnerable and embryonic peace agreement.

Many in the Taliban's lower and younger ranks have challenged authority and subsequently broken away. IS will step in to provide a ready and violent alternative; these fresh recruits would breathe new life into a group very much on the verge of demise. A hastily managed American withdrawal and a lack of capacity among Afghan security forces will provide a welcoming environment.

Peace processes as cohesive and inclusive as they initially set out to be can often be hijacked by singular or dual key priorities — especially when two (or multiple) parties are long-time adversaries and almost always when security structures and concerns are on the table. More concessions are granted than needed and collaterals pile up quicker than anticipated. In a drive to achieve 'lasting peace', or so it seems, inadvertent tunnel visions are put in place.

In Afghanistan's case, achieving a workable and accepted peace agreement is difficult but attainable. Ensuring a lasting peace without incapacitating a government or security forces is challenging. Dangerous gaps in an already fragile environment will provide IS with the opening it desperately needs. If nothing else, it could rise as a ruthless opposition to the Taliban. And where the US sees success in roping in an adversary into a political process, it is forgetting what is almost always overlooked as part of 'ushering peace' in fragile contexts without adequate security and governance measures in place:

There is a far greater menace in the waiting.



