

The Protection of Pakistan Ordinance: Limitations and Prospects

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Abstract

The main purpose of this research is to examine the prospects and limitations of the Protection of Pakistan Ordinance (PPO), besides analyzing the existing legal framework and laws in Pakistan to deal with terrorism and similar phenomenon. Pakistan needed a law, which could protect citizens from terrorism and also safeguard and guarantee their fundamental and constitutional freedom. An attempt is made to understand the need, practicality, misuse and effectiveness of the PPO. The social dynamics and socio-political environment of the country, is imperative to understand the prevailing legal system in the country. The dilemma Pakistan is facing comprises complex, multifarious and deep-rooted problems and miscalculations. Unfortunately, the previous legal framework related to terrorism was subjected to politicization and over the years did not prove to be much effective. The paper briefly analyzes the historical background of legal framework and the existing legal framework to deal with similar threats, challenges and shortcomings it faces. It also gives a

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comparative analysis of similar laws implemented in India and USA. The PPO is way less harsher than both the PATRIOT Act and Prevention of Terrorism Act (POTA), which violate basic human and constitutional rights and the abuses still persist after years of enactment of both the laws.

Introduction

The Protection of Pakistan Ordinance 2013 is an extensively discussed subject. While there is serious criticism on some of the provisions, for instance, stripping someone of his citizenship, detaining someone indefinitely and forming a parallel judiciary. There is certainly a strong support to the initiative which defines whom does it target. The supporters emphasize that the Ordinance lays down the rules by defining who is considered as an enemy combatant or an alien combatant. They argue that people, who are not engaged in anti-state activities or violent rebellion against the state, have nothing to worry about.

Some of the existing similar laws in other parts of the world provide enough evidence to draw parallels with US surveillance activities under the PATRIOT Law which ultimately drags ordinary citizens into its fold. But then again, not many Americans have been worried about this except for civil liberty groups. On the other hand, the POTA in India has been highly criticized by the civil society and minority community particularly Muslims as it clearly target them.

It is, however, important to realize that societies do make compromises during testing times. If there is an existential threat from forces that are challenging the writ of the state, support to such measures is a need of the hour to protect the society as a whole. An understanding of the fact that in such challenging times it is not the restriction to the freedom and liberty but ensuring security of the state and people. It is only to empower the security apparatus beyond traditional means to ensure the well-being of law-abiding and innocent civilians.

Unfortunately, the previous legal framework related to terrorism was subjected to politicization. Hence, there is still

ambiguity *vis-a-vis* definition of a 'terrorist' or act of terrorism. Accused were released by the courts in the past because of 'lack of evidence or inadmissible evidence'. Besides, a 'threat culture' is also playing an influential role in the present scenario, where judges, lawyers and security forces personnel face threats which certainly affects the functioning of the institutions.

Historical Analysis of Legal Framework

The Subcontinent was governed by numerous legal and administrative laws for the smooth functioning of the authority. Subsequently, when the two countries came into being, both India and Pakistan were required to manage as per the provisions of the Indian Independence Act. Law making procedure is a reflection of the society. It is an evolutionary process where the laws are made and changed as per the need and context of the society.

The evolutionary process of anti-terrorism laws within Pakistan has proved not much productive in efficiently fighting militancy, political violence and terrorism. Fighting terrorism in Pakistan, the country has failed for years to pen down a comprehensive plan to deal with it. Though, respective authorities and successive governments have come up with some laws, ordinances and acts to curb militancy and terrorism, but every effort is in vain, especially after 9/11.

Anti-terror Mechanism in Pakistan

A legal framework to deal with terrorism, 'The Suppression of Terrorist Activities (Special Courts) Act of 1975, Anti-Terrorism Act (ATA) of 1997 and successive amendments to the act and Pakistan Armed Forces (Acting in Aid of Civil power) Ordinance (PAFO) November 20, 1998 (revoked) are few of the important legislations that were made and used to fight terrorism and militancy in the country¹. The main objective behind these anti-terrorism laws and establishment

¹ Mian Ghulam Hussain, *Manual of Anti-Terrorism Laws in Pakistan* (Lahore: Afsari Printers, 2006).

of different special courts was to give a parallel justice system to what already is present in order to speed up the judicial process.

The Suppression of Terrorist Activities (Special Courts) Act 1975

In early years, 'terrorism' was more of political and local nature that is why before formulating and implementing the 'Suppression of Terrorist Activities Act (1975)' successive regimes in Pakistan used the Criminal Procedure Code, drafted by the British authorities. Section 144 of the Criminal Procedure Code was used to control political activity and suppress anti-state activities.² In the early 1970s, Zulfikar Ali Bhutto government faced violent opposition and upsurge of nationalist movements in the NWFP (now Khyber Pakhtunkhwa) and Balochistan. Soon after the violent episode in these areas, Bhutto government decided to undertake all 'necessary steps' to stop the politics of terrorism and secession.³ 'Special courts' for 'suppression of acts of sabotage, subversion, and terrorism' were formed in October 1974.⁴ Successive governments amended the Act of 1975 according to its needs, requirements and changing circumstances, until the promulgation of a new legislation 'Anti-Terrorism Act, 1997'.

The 1975 law remained in force until replaced by the Anti-Terrorism Act (ATA) of 1997. During this period, the government used various laws including the Special Courts for Speedy Trial Ordinance 1987, the Terrorist-Affected Areas (Special Courts) Ordinance 1990, and the Terrorist-Affected Areas (Special Courts) Act 1992 to control the law and order situation of the country.⁵

2 Saeed Shafqat, *Civil-Military Relations in Pakistan* (Boulder: West View Press, 1997), 38-39.

3 Shafqat, *Civil-Military Relations in Pakistan*, 38-39.

4 *Preamble, Suppression of Terrorist Activities (Special Courts) Ordinance (XVIII)*, 1974.

5 Hussain, *Manual of Anti-Terrorism Laws in Pakistan*.

Anti-Terrorism Act (ATA) of 1997

Anti-Terrorism Act (ATA) of 1997 was “an Act to provide for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences.”⁶ According to this Act, a person is said to commit a terrorist act if:

He strikes terror or create a sense of fear and insecurity in the people, or any section of the people, does any act or thing by using bombs, dynamite or other explosive or inflammable substances, or such fire-arms or other lethal weapons, poisons, noxious gases or chemicals, in such a manner as to cause, or be likely to cause, the death of, or injury to, any person or persons, or damage to, or destruction of, property on a large scale, or a widespread disruption of supplies of services essential to the life of the community, or threatens, with the use of force public servants in order to prevent them from discharging their lawful duties; or commits a scheduled offence, the effect of which will be, or be likely to be, to strike terror, or create a sense of fear and insecurity in the people, or any section of the people, or to adversely affect harmony among different sections of the people; or commits an act of gang rape, child molestation, or robbery coupled with rape as or commits an act of civil commotion...⁷

With few inherent flaws in the structure of ATA 1997, soon it was subjected to modification. The famous Mehram Ali case is often cited as a pretext for the amendment of ATA 1997. On January 18, 1997 Mehram Ali, a member of militant Shia organization called Tehrik-i-Nifaz-e-Fiqah-i-Jaferia (TNFJ), detonated a remote-controlled bomb in the premises of the Lahore courts, where the two leaders of the Sipah-e-Sahaba Pakistan (SSP) were brought for hearing. Twenty-three people, including the two Sunni leaders were killed and more than fifty people were injured. The case was transferred to the anti-terrorist court. Mehram Ali was convicted on twenty-three counts of murder and various other sentences relating to the bombing. He was later sentenced to death. He filed an appeal before Anti-Terror Appellate (ATA) Tribunal, Lahore High Court and to the

6 “The Anti-Terrorism Act, 1997 (XXVII of 1997), August, 1997,” *Mumtaz and Associates*. Accessed June 26, 2014, <http://www.mawlaw.org.pk/pdflaw/THE%20ANTI-TERRORISM%20ACT,%201997.pdf>

7 Sec. (6), ATA, 1997.

Supreme Court of Pakistan (*Mehram Ali versus Federation of Pakistan*). But in all these cases, his conviction was upheld and he was later executed.⁸

After this, the court declared certain sections of the ATA of 1997 'unconstitutional' and addressed the need to amend the draft. Though, there was nothing unconstitutional in establishing special courts for specific and pressing needs of the government, but these newly established anti-terror courts would, however, be subject to the rules and procedures of the existing constitutionally established judicial system.⁹

Anti-Terrorism (Amendment) Ordinance 1998

In view of above discourse, the ATA 1997 was amended on October 24, 1998, the Anti-Terrorism (Amendment) Ordinance.¹⁰ The amendments reduced the power of military and civilian armed forces and curtailed the authority of the special courts over conducting trial in absentia. Besides, a provision granting the right to the accused to file an appeal in the Supreme Court was also drafted. In this ordinance, many safeguards were provided to the accused.

The law and order situation and civil disturbance was continued, especially in Sindh with constant ethnic and targeted killings in the city. On October 17, 1998 Hakim Muhammad Saeed, a very famous philanthropist, a former governor of Sindh and founder of the Hamdard Foundation was murdered. Under these circumstances, emergency was imposed in Sindh province. The military was called in to handle the deteriorating law and order situation. The Pakistan Armed Forces (Acting in Aid of Civil Power) Ordinance (PAFO) was promulgated under the legal shed for sending the military in Sindh to establish peace.

8 Charles H. Kennedy, "The Creation and Development of Pakistan's Anti-Terrorism Regime: 1997-2002," in *Religious Radicalism and Security in South Asia*, ed. Satu P. Limaye, Robert G. Wirsing, Mohan Malik (Honolulu: Asia Pacific Center for Security Studies, 2004), 387-412.

9 Kennedy, "The Creation and Development of Pakistan's Anti-Terrorism Regime," 387-412.

10 "Anti-Terrorism (Amendment) Ordinance 1998," October 24, 1998.

Pakistan Armed Forces (Acting in Aid of Civil Power) Ordinance (PAFO) 1998

According to this ordinance, civilians could be tried in military courts instead of the special courts.¹¹ As per this ordinance, the cases pending before other courts (regular courts and ATCs) could be transferred to such newly established military courts. The courts would have the authority to award sentences, including the death penalty, for specified crimes. A new term 'civil commotion' in the list of crimes was introduced leading up to seven years of rigorous imprisonment.¹² Civil commotion was defined as:

Civil commotion means creation of internal disturbances in violation of law or intended to violate law, commencement or continuation of illegal strikes, go-slows, lock-outs, vehicle snatching or lifting, damage to or destruction of state or private property, random firing to create panic, charging *bhatta* (protection money/extortion), acts of criminals trespass (illegal *qabza*), distribution, publishing or pasting of a handbill or making graffiti, or wall-chalking intended to create unrest or fear or create a threat to the security or law and order.¹³

Due to immense pressure and criticism from various organizations and institutions, On April 27, 1999 PAFO was revoked, but a new term 'civil commotion' was included in the Anti-Terrorism Act 1997 through another ordinance. The court dismissed certain conditions and declared that no civilian could be charged in a military court. During 1999, several amendments were made to the Act, which included an expanded definition of a 'terrorist act'. August 27, 1999 the Nawaz Sharif government made yet another amendment to the ATA 1997 to allow for the creation of anti-terrorism courts in any province of Pakistan.¹⁴

Anti-Terrorism (Amendment) Act 2001

After coming into power in October 1999, General Musharraf suspended parliament and enforced the Provisional

11 Kennedy, "The Creation and Development of Pakistan's Anti-Terrorism Regime," 393.

12 Kennedy, "The Creation and Development of Pakistan's Anti-Terrorism Regime," 393.

13 "Pakistan Armed Forces (Acting in Aid of Civil Power) Ordinance," November 20, 1998. *PLD* 1999 Central Statutes 156, Section 6, 158.

14 Kennedy, "The Creation and Development of Pakistan's Anti-Terrorism Regime," 393.

Constitution Order (PCO) No. 1 of 1999 as well as Order No. 9 of 1999.¹⁵ The Anti-Terrorism (Amendment) Ordinance 2001 was promulgated in this environment. The Anti-Terrorism (Amendment) Act issued on August 15, 2001 expanded purview of the anti-terrorism courts and introduced sections to ban militant sectarian outfits and freeze their financial assets.¹⁶ The Amendment Act empowered the federal government to proscribe an organization:

If it has a reason to believe that organization is concerned in terrorism. 'Concerned in terrorism' is defined as an organization that: (1) commits or participates in the act of terrorism; (2) prepares for terrorism; (3) promotes or encourages terrorism; (4) supports and assists any organization concerned with terrorism; (5) patronizes or assists in the incitement of hatred or contempt on religious, sectarian or ethnic lines that stir up disorder; (6) fails to expel from its ranks or ostracize those who commit acts of terrorism and presents them as heroic persons; or (7) is otherwise concerned with terrorism.¹⁷

Following the enactment of the amended ATA, the government banned two sectarian organizations, namely, Lashkar-i-Jhangvi (LJ) and Sipah-i-Mohammad Pakistan (SMP), both militant off-shoots of the Tehrik-i-Nifaz-i-Fiqah-i-Jafferia and Sipah-i-Sahaba, respectively.¹⁸

Anti-terrorism (Amendment) Ordinance 2002

The Anti-Terrorism (Amendment) Act was issued on August 15, 2001. The 9/11 incident changed the global as well as regional dimensions and scenarios. Due to Pakistan's geo-strategic location and alliance with United States in fighting the 'war against terror', Pakistan's role was crucial, both globally and at home. There were obvious changes and challenges Pakistan had to face. Being a frontline state,

15 Saba Noor, "Evolution of Counter-Terrorism Legislation in Pakistan," *Pak-Institute for Peace Studies* (2008): accessed June 20, 2014, <http://san-pips.com/pdf>.

16 "Anti-Terrorism (Amendment) Ordinance," August 15, 2001.

17 "Section 11 A, Anti-Terrorism (Amendment) Ordinance."

18 Shabana Fayyaz, "Responding to Terrorism: Pakistan's Anti-Terrorism Laws," *Perspectives on Terrorism* 2, no. 6 (2008): accessed June 20, 2014, <http://www.terrorismanalysts.com/pt/index.php/pot/article/view/39/html>.

Pakistan ratified several laws to ban extremist and militant groups that organized or participated in the violent activities both inside and outside the country and expanded the anti-terrorist courts.

In an effort to strengthen the mechanism to fight terrorism and to deal with emerging situation, the anti-terrorism (amendment) Ordinance was promulgated on November 16, 2002. This Act enhanced the powers of the police to deal with terrorism. By inserting Fourth Schedule into the ATA of 1997, clauses were added regarding the 'security of good behaviour' to be fulfilled by the activists of the organization or person whose name was recorded in the Fourth Schedule list. The Act also provided law enforcement agencies to hold a suspect for up to one year without challenge.¹⁹

Anti-Terrorism (Amendment) Ordinance 2004

This Ordinance came in the view of curbing and restraining the network of militant organizations across the country. As per this Ordinance, the government will take all possible measures and actions if the banned militant outfits did not stop their activities. Besides, strict measures were taken in this law, as the offices of the banned outfits were sealed, their accounts were frozen and their literature in both electronic and print media was also seized. This Ordinance also increased the punishments and penalties for persons assisting terrorists in any manner. It enhanced the maximum punishment for those found guilty of such assistance from 14 years to life imprisonment and provided a right of appeal to the accused under Section 25(4).²⁰

19 "Anti-terrorism (Amendment) Ordinance, 2002," *South Asia Terrorism Portal*, accessed June 26, 2014, http://www.satp.org/satporgtp/countries/pakistan/document/actsandordinences/anti_terrorism_ordin_2002.htm.

20 "The Anti-terrorism (Amendment) Act, 2004," *National Assembly of Pakistan*, accessed June 26, 2014, www.na.gov.pk/uploads/documents/1321335020_127.pdf.

Anti-Terrorism (Second Amendment) Act 2005

Through Anti-Terrorism (Second Amendment) Act 2005, the government sought to deter terrorist activities with enhanced penalties. A lot of penalties were revised with higher punishments including the years of punishment and imprisonment. The maximum punishment from 5 years to 10 years (Section 7-B); from 14 years to life imprisonment (Section 7-C), from 7 years to 10 years (Section 7-D), and imprisonment not exceeding 14 years to a prison term not exceeding life imprisonment (Section 7-F).²¹

The Protection of Pakistan Ordinance 2013

The Protection of Pakistan Ordinance was signed by the President Mamnoon Hussain on October 20, 2013. It was presented and approved by the National Assembly. Armed forces (Military, Naval and Air Forces of Pakistan and the Reserves of such Forces) and Civil armed forces (Police, Frontier Constabulary, Frontier Corps, Pakistan Coast Guards, Pakistan Rangers or any other civil armed force notified by the Government as such) have been given powers of a police officer under this ordinance. In the article 3(1) of the ordinance it is mentioned that:

Any police officer, or member of the armed forces, or civil armed forces who is present or deployed in any area may, on reasonable apprehension of commission of a scheduled offence after giving sufficient warning, use the necessary force to prevent the commission of a scheduled offence, and in so doing shall, in the case of an officer of the armed forces or civil armed forces, exercise all the powers of a police officer under the Code.²²

In light of this, armed forces are given powers and a right to interfere in the civilian matters. Though, armed forces are involved in many other operations like flood relief, rehabilitation and reconstruction and sometimes it is even called to maintain law and order.

21 "The Anti-terrorism (Second Amendment) Act, 2004," *National Assembly of Pakistan*, accessed June 26, 2014, www.na.gov.pk/uploads/documents/1321335651_157.pdf.

22 "Article 3(1), Pakistan Protection Ordinance, 2014," accessed June 26, 2014, www.na.gov.pk/uploads/documents/1383819468_951.pdf, www.dhrpk.org/wp-content/uploads/2014/.../PPO-with-amendments.pdf

In article 2(b) and 2(c) of the proposed ordinance:

any police officer, a member of the armed forces or civil armed forces acting in aid of civil authority may arrest, without warrant, any person who has committed a scheduled offence or against whom a reasonable suspicion or credible information exists that he has committed, or is about to commit any such act or offence... Any such officer may enter and search, without warrant any premises to make any arrest or to take possession of any property, fire-arm, weapon or article used, or likely to be used, in the commission of any scheduled offence.²³

The constitutional rights seem to contradict with this article of the law.

In Article 10(1) of the Constitution of Pakistan 1973, it is mentioned that: “No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.”²⁴ In Article 10(2) it is mentioned that:

every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the nearest magistrate, and no such person shall be detained in: custody beyond the said period without the authority of a magistrate.²⁵

Arrests or searches without warrant seem to be illegal, as it may cause abuse of the law.

Human Rights Issues

Many human rights activists, lawyers and members of national assembly called this law as ‘draconian’ because of its stringent laws, punishments and authority given to the law enforcement agencies. Many argued that in its present shape the law gave powers to security agencies to infringe the fundamental rights of the citizens guaranteed under the constitution. The PPO also contradicts with the constitutional

23 Article 2(b) and Article 2(c), Pakistan Protection Ordinance, 2014.

24 Article 10(1) of Constitution of Pakistan, 1973.

25 Article 10(2) of Constitution of Pakistan, 1973.

rights of the citizens as well.²⁶ The very important point to note here is that what are the legal implications and impact on human rights of this ordinance and how far it will help and aid the state to fight terrorism and violence in the country.

Few articles in the ordinance are violating the basic human and constitutional rights such as; under the proposed law ordinance a person can be arrested on the mere suspicion that he might commit a scheduled offence and that too without any warrant, so anyone not able to prove his identity on the spot could be persecuted under the ordinance.

A comparative analysis of the PPO 2013 with the Constitution, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights shows that the ordinance violates basic rights of the citizens. The PPO violated Article 9 and 10 (1) of the Constitution by allowing law enforcement officials to fire even on apprehension of scheduled offences and arrests without warrant on reasonable suspicion. The preventive detention clause of the PPO 2013, which states that the interior secretary can authorize detention for not more than 90 days, is also in violation of the human rights declaration and the rights agreement, both of which have been endorsed by Pakistan. The ordinance gives armed forces and civil armed forces the authority to exercise 'all the powers of a police officer', the armed forces should never interfere in civilian matters. During a session I. A. Rehman, the Secretary General of the Human Rights Commission of Pakistan (HRCP) said that "It is true that other countries such as the US and the UK had come up with anti-terrorist laws but that does not mean that Pakistan should follow suit without contextualizing the issue."²⁷

The then Senator Mian Raza Rabbani said that the Protection of Pakistan Ordinance adopted by the National

26 "Pakistan Protection Ordinance Termed a Draconian Law," *The Dawn*, February 04, 2014, <http://www.dawn.com/news/1084808>.

27 "Pakistan Protection Ordinance: New Law Voted Down by Rights Advocates," *The Express Tribune*, November 29, 2013.

Assembly was not acceptable to his party in its present form. He added that the Awami National Party, the PML-Q and the Balochistan National Party-A also were of the same opinion. Addressing a press conference he said that the parties would oppose the ordinance in the Senate without incorporation of the 12 amendments submitted to the government. The PPP leader said the four parties understood that the ongoing terrorism in the country called for such a law but it should be within the realm of the constitution.²⁸

The proposed amendments referred that the name of the legislation should be changed to the 'Protection of Pakistani Citizens Bill' and its period should be reduced to two from three years, after which its extension should be through a new bill and not through a resolution. It was also proposed that the law should be enforced throughout the country and not in selected areas and the remand period should be reduced from 90 to 45 days. A suspect should be presented for extension of remand and it should not be allowed more than three times. When a search operation is inevitable, a list of items seized should be presented before a local magistrate within 24 hours. Instead of the federal government, the power to appoint judges for special courts under the new law should be exercised by the Chief Justice of Pakistan after consulting the Chief Justices of the respective High Courts. Appeals against decisions of the special courts should be heard by the high courts.²⁹

The criticism on the ordinance also includes a joint petition to the Supreme Court. The two other lawyers Tariq Asad and Inam-ur Rahim had maintained that several provisions of Pakistan Protection (Amendment) Ordinance 2014 were entirely identical with the Rowlatt Act which the British Colonial rulers had enforced in undivided India nearly a century ago³⁰. The unpopular legislation provided for

28 "PPP, Three Other Parties Want PPO Amended: Rabbani," *Dawn*, May 26, 2014.

29 "PPP, Three Other Parties Want PPO Amended," *Dawn*, May 26, 2014.

30 "PPP, Three Other Parties Want PPO Amended," *Dawn*, May 26, 2014.

stricter control of the press, arrests without warrant and indefinite detention without trial. The accused was denied the right to know the accusers and the evidence used in the trial, the petition had said, underlining that several provisions of the PPO were inconsistent with the fundamental rights of the citizens of Pakistan.

Comparative Analysis of Similar Laws: POTA and PATRIOT ACT

After the 9/11 attacks in 2001 on United States, there was a regional as well as a global threat of terrorism that haunted the states. To tackle with the threat of terrorism, states came up with anti-terrorism laws and similar measures to counter the threat effectively. United States passed the PATRIOT Act and besides many other laws, India came up with a new POTA. Though, as asserted, these laws were harsh and were even criticized by a segment of the society. A comparison of existing laws to counter/deter terrorism i.e., United States' PATRIOT Act and India's POTA with the proposed Pakistan Protection Ordinance (PPO) is given below:

POTA in India

Following a terrorist attack on India's parliament building in December 2001, India passed its own anti-terrorism ordinance i.e. POTA. The Act was declared as a necessary weapon to deal with terrorism. If one compares the USA's PATRIOT Act and India's POTA, the later one is harsher than the prior one. The POTA allowed for 180-day detention without charges, presumptions of guilt and trials in absentia and many more such provisions that created a debate and criticism. It also allowed law enforcement agencies to withhold the identities of witnesses and treat a confession made to the police as an admission of guilt. Under regular Indian law, a person can deny such confessions in court, but not under POTA. There were broad definitions of terrorist offences and sweeping powers of arrest and detention under POTA.

The POTA defined terrorism as any violence “with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people...”³¹ Besides, a five year sentence is imposed on “whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.”³² Here the troublesome terms, particularly were ‘advocates’ and ‘incites’, for they implicated issues of free speech and political expression.³³ The POTA specifically mentions and prohibits use of “bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever...”³⁴ Here the use of term ‘or by any other means whatsoever’, undermines any benefits of specificity.

The broad definition of terrorist offences in the POTA seems incoherent and problematic regarding the special features, especially the modified arrest and detention procedures and special terrorism courts. Section 49(2) of the POTA allowed police to detain a suspect for up to 180 days without a formal charge, far exceeding the limit under ordinary Indian criminal law 49(2). Though, in the Indian constitution, it is required from the police to promptly inform a person of the grounds for his/her detention and to provide the ‘earliest opportunity to make a representation’ before a magistrate, and Indian case law identifies a speedy trial as

31 The Prevention of Terrorism ACT, 2002, Act No. 15 of 2002.

32 The Prevention of Terrorism ACT, 2002.

33 Christopher Gagné, “POTA: Lessons Learned from India’s Anti-Terror Act,” *Boston College Third World Law Journal* 25 (2005), accessed June 20, 2014, <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1095&context=twlj>

34 The Prevention of Terrorism ACT, 2002, Act No. 15 of 2002.

“an integral and essential part of the fundamental right to life and liberty enshrined in (the Constitution)”.³⁵ Under this, the POTA undermine these safeguards against the arbitrary and punitive detention of innocents.³⁶ Also, under POTA, states could use the law by detaining individuals away without charge for twice the time period permitted under ordinary criminal laws.³⁷

PATRIOT ACT in the USA

After the 9/11 attacks, President Bush enacted a law, the USA Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act. The main purpose of this law was to curb terrorism, prevent future terrorist acts by expanding the federal government's powers.³⁸ Like, POTA, there are a lot of articles and clauses in the PATRIOT Act which are significantly against the provisions in the constitution. According to some activists and civil society members, the PATRIOT Act violates the privacy of American citizens and also allows unreasonable searches, arrests, and imprisonment, which is totally unjustifiable.

There are provisions in the PATRIOT Act that permit indefinite detention of immigrants. Section 412 of the final version of the anti-terrorism legislation, the uniting and strengthening America by providing H.R. 3162, the PATRIOT Act permits indefinite detention of immigrants and other non-citizens. There is no requirement that those who are detained indefinitely be removable because they are terrorists.³⁹

35 Hussainara Khatoun vs. Home Secretary, State of Bihar, (1980) 1 S.C.C. 81, at 89, *quoted in* South Asia Human Rights Documentation Centre, Prevention of Terrorism Ordinance 2001: Government Decides to Play Judge and Jury 13 (2001) (quoting Union Home Ministry).

36 Gagné, “POTA”.

37 Gagné, “POTA”.

38 Jayanth K. Krishnan, “India's ‘Patriot Act’: POTA and the Impact on Civil Liberties in the World's Largest Democracy,” *Law and Inequality* 22 (2004): 265-300, accessed June 20, 2014, <http://www.repository.law.indiana.edu/facpub/379>

39 “How the Anti-Terrorism Bill Permits Indefinite Detention of Immigrants”, American Civil Liberties Union, Accessed June 25, 2014,

The PATRIOT Act also violates the Fourth Amendment of the U.S. Constitution which states that:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.⁴⁰

This amendment tries to protect two fundamental liberty interests; “the right to privacy and freedom from arbitrary invasions”.⁴¹

There are sections of the Act that violate the Fourth Amendment. The PATRIOT Act increases the government's surveillance powers under Section 213, 214, 215 and Section 218.⁴² Section 215 allows the FBI to order any person or entity to turn over ‘any tangible things’, so long as the FBI ‘specifies’ that the order is “for an authorized investigation . . . to protect against international terrorism or clandestine intelligence activities.”⁴³ In short, Section 215 of the US PATRIOT Act provides expanded powers to FBI to conduct a search without warrant. Any person's records can be checked without notifying the individual whose privacy has been compromised.⁴⁴ So, the PATRIOT Act permits the government to spy on any individual they believe involved in terrorist activities. They can search all the records and data

<https://www.aclu.org/immigrants-rights/how-anti-terrorism-bill-permits-indefinite-detention-immigrants>.

- 40 “US Constitution, Fourth Amendment,” *Search and Seizure*, <http://www.gpo.gov/fdsys/pkg/GPO-CONAN-1992/pdf/GPO-CONAN-1992-10-5.pdf>.
- 41 “Fourth Amendment: An Overview,” *Legal Information Institute*, Cornell University Law School, accessed June 25, 2014, http://www.law.cornell.edu/wex/fourth_amendment.
- 42 “Surveillance under the USA PATRIOT Act,” *American Civil Liberties Union*, accessed June 25, 2014, <https://www.aclu.org/national-security/surveillance-under-usa-patriot-act>.
- 43 “Reform the Patriot Act Section 215,” *American Civil Liberties Union*, accessed June 25, 2014, <https://www.aclu.org/free-speech-national-security-technology-and-liberty/reform-patriot-act-section-215>.
- 44 “Reform the Patriot Act Section 215,” *American Civil Liberties Union*.

without notifying the individual even after the search is over and they can search the places without any warrants. In the PATRIOT Act, Americans can have indefinite detentions without a trial, just like POTA.

The US PATRIOT Act was somehow a major blow to the constitution and the freedom guaranteed to all the Americans. Americans suffered due to this law, especially the Muslims, South Asians and Arab Americans.⁴⁵ According to a recent report from the Justice Department's Inspector General, which looked into allegations made under the provisions of the Act, most complaints were from Muslim Americans and Americans of Arab descent.⁴⁶ The report has numerous claims from "Muslims and Arabs that were beaten or verbally abused while being detained by government officials."⁴⁷ In some cases, the financial institutions have used extreme interpretations of the Act to "justify blacklisting Muslim account holders simply because their names matched those on a master government list."⁴⁸ The cases of abuse and complaints increased after 9/11, and discrimination against Muslims also amplified in the wake of the terrorist attacks. It would be unjust to say that the US PATRIOT Act is not a 'draconian law', as it compromises basic human rights and constitutional provisions to the American citizens.

Both, the PATRIOT Act and the POTA defined terrorist acts in generalized terms that encompassed ordinary cases of murder, robbery, theft and comparable offences. Few

45 "The USA Patriot Act: Impact on the Arab and Muslim American Community, Analysis and Recommendations," *Institute for Social Policy and Understanding*, accessed June 25, 2014, .

46 "Confronting Discrimination in the Post-9/11 Era: Challenges and Opportunities Ten Years Later, Report on the Civil Rights Division's Post-9/11 Civil Rights Summit", *George Washington University Law School*, accessed June 25, 2014, http://www.justice.gov/crt/publications/post911/post911summit_report_2012-04.pdf

47 "The USA Patriot Act: Impact on the Arab and Muslim American Community".

48 "The USA Patriot Act: Impact on the Arab and Muslim American Community".

terms are vague that cause misinterpretation and a permission to abuse the law. Comparing the POTA and the PATRIOT Act with the PPO, one can analyze that both laws are too strict than the PPO, as the detention period is 180 days in the POTA and 90 days in the PPO. Besides, quite a few terminologies and definition of terrorism and terrorist acts are vague in the POTA, that give rise to misunderstandings, which further cause the abuse of the law. Still, powers of the POTA are extensively being misused, especially against the minorities. As in the PPO, powers are not rested in Army like in POTA, rather police is responsible to carry out and execute the procedural requirements of the law. The US PATRIOT Act provides expanded powers to FBI to conduct a search without warrant. Any person's records can be checked without notifying. The government can spy on any individual they believe is involved in terrorist activities. They can search all the records and data without notifying and can search the places without any warrants. In the PATRIOT Act, Americans can have indefinite detentions without a trial, just like the POTA. Due to the vagueness and lack of clarity in both the laws (POTA and PATRIOT Act), they were widely misused and many cases were reported when the authorities abused the people by invoking these laws. Somehow, the Muslim community in both India and America became a target under these laws and several cases of abuse and violence were reported by the minority community. Both the POTA and the PATRIOT Act violate the respective constitutions and basic liberties guaranteed by the state. Few provisions under the PPO also violate basic human rights that should be invoked and amended before passing the law.

Conclusion

Pakistan needs a law, which can protect citizens from terrorism and may also safeguard and guarantee their basic and constitutional freedoms. Pakistan should not follow the footsteps of India and America, as its dimensions and complexities of violence and terrorism are deep-rooted,

complex and multifaceted. There are insurgencies, sectarian militancy, global terrorism, and regional dynamics of conflicts. Pakistan is in need of a law, which can effectively fight all this violence, militancy and terrorism, but not at the cost of human and constitutional rights of the citizens.

The most common problem that gives rise to misunderstanding and abuse is the definition of terrorism, terrorist and a terrorist act. Legislators and the law making bodies must define the terms appropriately and aptly. There should be no detention without charge. There should be accountability at all the levels of the authority and law enforcement mechanism should occasionally be checked. If implemented without suitable amendments the law would deteriorate things instead of bringing any improvement.