

Impact on Human Rights of Anti-Terrorism Laws	
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**Impact on Human Rights of Anti-Terrorism Laws in
the United Kingdom and Pakistan**

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Abstract

Societies flourish on the basis of respect for law. Respect for Human Rights provide base for achievement of the said goal. Under International Law all states are bound to protect the rights of people in their domain on one hand, on the other hand states are also required to protect its citizens from menace like terrorism, which is the theme of this paper with regard to the UK and Pakistan.

Key Words: Humans, Terrorism, Illegal, International Law, protect

Introduction

In recent year, the humans are facing terrorism in different forms. The word terrorism, is basically the illegal use of the threat of violence, frequently stimulated by political, religious, or other types of philosophical views, to instill fear and coerce governments or societies in pursuit of goals that are usually political.”¹. It is such a dilemma which rather has different meanings for people living under different circumstances. For some it is a holy duty while a crime for others. Infact there are fourteen legal Instruments and four Amendments but all these fail to give a concrete definition and/or origin of terrorism. On the other hand, above definition reveals three basic elements of terrorism: “violence, fear and intimidation” and every component yields fear in its casualty. History has witnessed

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commission of this heinous crime throughout ages. However, its nature, magnitude and implementation varied during the course of the history owing to religio-cum-political reasons. Earlier Greeks, Romans and Spanish practiced the same in their turn over masses. During the French Revolution², the meaning of this word changed. It used to describe violence against people by the state. Thereafter, this word is being used in different senses and every country is using the same according to their needs and environment. In above lines, terrorism has been described as a duty some and others may call it a crime according to needs of the rulers. As being in use since time immemorial, this word came to light after the incident of 9/11, when USA was attacked by terrorists. It was a clear message to the world that in order to make the world safe, terrorism must be eradicated. On the other hand, terrorists became more confident and organized³ in different ways all over the world. This was a caution to the International Community to become vigilant and stop the menace of terrorism before being too late. In this background, governments started to fight the terrorism. Many states have declared emergencies while others rushed to legislate against the terrorism. The United Kingdom and Pakistan are among those who faced this new phenomenon and to counter it, started to work on it. New enacted anti-terrorism laws have serious impacts on human rights. On one hand, broad powers have been given to law enforcing agencies like to search and detain while on other hand these laws are passed in a rush manner and without adopting standard operating procedures. This has led to by-pass many stakeholders and legislated in a haphazard manner, which has resulted in more demerits of laws than merits. Also, the laws being passed in hurry with perceived threat have increased confusion than clarity. UK has enacted stringent laws to counter terrorism, for example 2001 Act has provided for detention without charge at the hands of Border

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and Security Agency. Many people became its prey as being suspect and remained in detention. This was practiced and also admitted by the Government in reference to Northern Ireland. Presently much broader definition has been incorporated in new anti-terrorism Acts and included violence against property and receiving material (literature/campaign material) from banned organizations. Also new enactments are much stringent than the previous ones. It is harsh reality that little has been done by these strict anti-terrorism laws in the UK and Pakistan. Both countries face same problems but human rights have been curtailed through these enactments to a greater extent. Many human rights organizations have raised voice against these laws as disadvantages are more than advantages. In UK present laws are reminder of laws made about four decades ago, which created parallel system and obscured justice system. Likewise, Pakistan is also considered on the same grounds. As Pakistan is going through difficult time of history in context of terrorism, so Pakistan has also to enact new rigorous laws to counter this menace. As a result, the successive governments have passed new laws, some of which are obviously inconsistent with Fundamental Rights.⁴ It is an effort to examine Anti-Terrorism Regime in both countries (United Kingdom & Pakistan) and to check their compatibility with human rights there. This research has suggested best possible alternatives to enact laws in consonance with human rights in UK and Pakistan.

Modern History of Anti-Terrorist Legislation

In last two decades, terrorism has emerged as an epidemic disease all over the world. All stakeholders are trying to curb this menace because it has disturbed international peace and is a major threat to international security. However, its history is very old. But its new and horrific face came to light very recently. Japanese Red Army commandos target a passenger

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fleet at Lord Airport in Israel. These commandoes were however not state sponsored or owned. This incident attracted the world towards the issue of Palestine and Israel. It also conveyed a message that if anyone is present on the soil of Israel will be considered an ally of them, who can be targeted. This attack has highlighted the international nature of terrorism, which is independent in selecting victims anywhere. In 1974, The "International Association of Chiefs of Police", in a meeting gave a simple description of 'terrorism' as "a purposeful human activity primarily directed toward the creation of a general climate of fear designed to influence, in ways desired by the protagonists, other human beings, and through them some course of events." The Nazis and their acquired territories were engaged in "purposeful human activity" to produce a "general climate of fear" to make the ruled submissive to the rule. However, it cannot be connected with state every time. "Terrorism is the use of criminal violence to force a government to change its course of action", claims an American counter-terrorist expert, whereas another expert says (and they are legion), terrorism is "highly visible violence directed against randomly selected civilians in an effort to generate a pervasive sense of fear and thus affect government policies."

"Prevention of Terrorism (Temporary Provisions) Act 1984-UK", says that "'terrorism' means the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear"; in a more complicated as well as exact form, showing the concerns about true and fictional foes with which nation-states are riddled, this description was to emerge in "Title 22 of the United States Code, Section 2656 f (d)", where terrorism is said to mean "premeditated, politically motivated violence perpetrated against noncombatant targets by sub national or clandestine agents, usually intended to influence an

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audience."⁵Theoretically, laws of anti-terrorism regularly comprise exact alteration permitting the country to circumvent legislation while combating terrorism, on plea of state necessity. Since suspension of usual procedure, critics often claim that anti-terrorism laws put in danger democracy by generating a country of exemption that permit dictatorial style of government. Government frequently claims that there are important provisional methods that will be removed when the threat vanishes.

However, struggle will continue to preserve as long as processes are important to fight this menace. Thus the methods to combat terrorism possibly will also consist of anti-democratic legislation. Pakistan has experienced a lot while developing law for countering-terrorism. One of these laws was the "Suppression of Terrorists Activities Ordinance 1975" passed during Zulfikar Ali Bhutto era, which was enforced only in Sindh & Punjab but it repealed in the year 1997. This law was enforced in North West Frontier province and Baluchistan 2001. Another law was passed which conferred huge powers upon the Pakistan Army to control aggressive activities. "The Armed Forces Acting in Aid of Civil Power Ordinance, 1998", firstly functional to Sindh. This Ordinance was promulgated as a result of the operation led by Pak-Army in Karachi that conferred wide judicial authority to Army. This law also formed the new crime of "civil commotion".

On January 30th, 1999, "Pakistan Armed Forces Ordinance of 1998 was extended to the entire country". This was further altered to allow trial in absentia of absconders by any military court. Numerous constitutional petitions were filed to challenge the legality of the Ordinance. This gave a milestone verdict on February 22nd, 1999 which was Liaquat Hussain Vs Federation of Pakistan. The highest Court acknowledged the law "unconstitutional, without legal authority, and with no legal effect". On August 17th 1997, the Anti-Terrorist Act was

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signed. Nor only special Anti-Terrorism courts (ATCs) came into existence but anti-terrorism appellate tribunal also set up where appeal was heard for the final decision handed down by ATCs. Under the act of 1997 a very broad definition was given which states that “terrorism as murder, malicious insult of religious beliefs, the use of derogatory remarks with respect to holy personages, kidnapping and various statutes relating to robbery and dacoit”. Such a definition of terrorism was evidently giving broad scope to it as result of which will increase burden upon Anti-Terrorism Courts. Most of Sections of the Anti-Terrorism Act were later on declared unconstitutional by the apex court. “The Anti-Terrorism Amendment Ordinance” endeavored to respond to most of the Court’s objections on October 24th 1998. Special Anti-Terrorists Courts were retained whereas the Tribunals were discarded. Limitations were put on provisions like trial in absentia that must be in consonance with normal procedure. On 27th August 1999, alteration to the act allowed anti-terrorists courts throughout the country. Two more amendments were incorporated in December that year. The rule of seven days i.e. investigations and trials must not take more than seven days, vanished. A new amendment on Aug 15th, 2001 further extended domain. As government was now identifying that terrorist associations who were scheming against the country. Government was empowered to declare an organization proscribed for “reason to believe that the organization is concerned with terrorism”. To combat terrorism and its intensity number of anti-terrorism courts were improved in the North West Frontier Province and Baluchistan Anti-terrorists courts were also set up. Another amendment that is “Anti-Terrorism Amendment Ordinance, 2002 was introduced on January 30, 2002” with the purpose to speed up the judicial process. The “Anti-Terrorism Second Amendment Ordinance, 2002” conferred the authority upon police to keep in custody anyone being suspected of on the government ‘s “terrorism list” without filing specific criminal charges up to one year. When the culture of suicide bomb attacks was at peak, another amendment was incorporated in the 1997 Act in Nov 2004. It

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provided for enhancing of punishment for backup militants from 14 years to imprisonment for life. Right of appeal was given to the victims against the acquittal of the accused by ATC. Yet another Amendment incorporated enabled the law enforcing agencies to seize passport of an accused charged under the Act. The “Anti-Terrorism (Second Amendment) Act on Jan 10, 2005 enhanced the minimum and maximum punishment for acts of terrorism. It also enhanced the jurisdiction of the ATCs so that cases of abduction and kidnapping for ransom, the use of explosives in places of worship and court premises could be exclusively tried by them”. As a result of the sad “Lal Masjid” incident, definition of terrorism was further broaden by including assault on “regime premises, official installations, schools, hospitals and other public property through an amendment in 2009”. It was clear from Swat rebellion that “any association, grouping which was not accepted by law and who took the law into their own hands were also acknowledged as perpetrators of acts of terrorism”. In order to further improve the situation, the government decided to ban miscreants outfit. Not only outfits be declared banned but their off springs should be stopped immediately. No new organization can have emerged from the old one with different name and outlook. Besides, accounts are to freeze, stop their badge holders from travelling abroad as well as getting of passport. For further punishment “preventive detention” was incorporated through which the accused could be kept in jail for a period of 90days and this cannot be challenged in court of law. Right of bail was withdrawn to keep the accused in custody. Therefore, the legislative history to counter-terrorism is not long & dark, but still much need to be done. Due to the high rate of acquittal by the anti-terrorists court is another hurdle and gets a bad impression. To correct such lacunae, in 2010 a bill was proposed but it was not passed. The Parliament enacted the Fair Trial Act in 2013 is a positive symptom. To achieve the absolute results more amendments are required in the Anti-terrorism legislation.

UK Government Anti-Terrorism Legislations

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S. No	Law
1.	The Terrorism Act 2000
2.	The Anti-Terrorism, Crime and Security Act 2001
3.	The Criminal Justice Act 2003
4.	The Prevention of Terrorism Act 2005
5.	The Terrorism Act 2006
6.	The Terrorism (United Nations Measures) Order 2006
7.	The Counter-Terrorism Act 2008
8.	The Coroners and Justice Act 2009
9.	The Terrorism (United Nations Measures) Order 2009
10.	The Terrorist Asset-Freezing (Temporary Provisions) Act 2010

Following is the list of legislations for Anti-terrorism United Kingdom regime:

In conclusion, the incident of 9/11 realized the British Government that they are also prone to the threat of terrorism. It was such a threat which has threatened the life and liberty of subjects. Therefore, Government was compelled to pass strict laws to cope with it. In doing so, the Government has used the derogable rights provided in the Human Rights Act 1998. Although this derogation was subjected to criticism by the society and judicially reviewed by the courts. It is pertinent to mention here that terrorism is neither a new phenomenon for

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UK nor emerged only after 9/11. Rather it was there even before 9/11. Therefore, Government had enacted antiterrorism laws even before 9/11. However, the 7/7 bombings had highlighted the lacunas in the existing regime, which resulted in enactment of further stringent anti-terrorism laws. As a result of new, legislation, UK Government was subject to criticism. However, Attorney General⁶ was of the opinion that “things have changed: in scale, in the methods and aspirations of the terrorist and in the way that terrorism is conducted with modern technology and with suicide bombs. These have all changed the landscape of terrorism.” Terrorism has changed its face, intensity, techniques and goals. New threat has to be dealt with in a new way. The new enactments have infringed upon the Human Rights like detention, privacy, etc. Government was of the view that these are necessary to protect prosecution, witness, lawyers and judges so that they can work freely. However, such like measures were declared ultra vires by the judiciary while ensuring respect for human rights.

Anti-Terrorism Legislations in Pakistan

Pre 9/11 Anti-Terrorism Laws:

After Independence, different governments in Pakistan tried to curb the menace of terrorism by taking various initiatives like “The Public and Representative Offices (Disqualification) Act (PRODA) 1949”, “the Selected Forms (Disqualification) order (EBDO) August 1959”,⁷ “Downfall of Terrorist Activities (Special Courts) Ordinance 1975”,⁸ and “the Anti-Terrorism Act (ATA) 1997”-baseline for anti-terrorism legislation in Pakistan.⁹ The problem of “sectarian violence” in the last decade of the Century compelled the then Government to not only introduce new but stern laws to maintain law and order but also to introduce new judicial system with sole aim to “ensure speedy trials”.¹⁰ Therefore, to make sure the prevention of the

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terrorism, religious violence as well as the swift of the trial of heinous offences” was introduced (Anti-Terrorism Act in 1997).¹¹ To ensure fast trials, “Specific Anti-terrorist Courts’ were established under the Act, to be controlled by a session judge/advocate, under the discretion of the administration (Section 13)”. However, this was unreliable with “Major Rights”. Consequently, Supreme Court needed to interfere and declared some of its sections as null and void in “Mehram Ali versus Federation of Pakistan” case.¹² As per Court the “Anti-Terrorism Courts might be subjected to follow the similar rules as followed by the regular courts, containing the basic rules of evidence. Furthermore, the Court also endorsed the right of the petition in contradiction of the judgements of the special courts to the high/Supreme Court”.¹³ Thereafter, the government had to modify the Anti-Terrorism Act 1997. “On 24 October 1998, in the Mehram Ali Case, the government issued ‘Anti-Terrorism (Amendment) Ordinance 1998’, including the modifications ordered by the Supreme Court. Though the ‘Anti-Terrorism (Amendment) Regulation 1998’ disbanded the Special Appellate Tribunals, it put in place the Special ATCs”.¹⁴ But worsening situation in Karachi compelled Government to further amend the Act to cope with existing threat of Terrorism in the Country in general and in Sindh in particular. In order to control situation in Karachi, the Government had to not only declared Emergency but also imposed “Governor’s Rule in Sindh and called Military to establish peace, stability, law and order” there. Government “promulgated ‘the Pakistan Armed Forces (Action in Aid of Civil Power) Ordinance 1998’, on 20 November 1998 to ensure peace in Sindh”. The Ordinance promulgated for Sindh only gave “military judicial powers and established Military Courts to try civilians as well”.¹⁵ It gave, for first time, definition of “Civil Commotion”, “which could be punishable for up to

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seven years of imprisonment”, which was challenged in the “Supreme Court of Pakistan as being unconstitutional and might be declared unconstitutional” The Supreme Court in a landmark judgment (“Liaquat Hussain versus Federation of Pakistan”) on February 22nd, 1999, “repudiated the Ordinance by not only declaring the ‘Pakistan Armed Forces (Acting in Aid of Civil Power) Ordinance 1998’ unconstitutional, but also held that no civilians could be tried in military courts”.¹⁶ Therefore Federation had to repeal said but include the same crime through another Ordinance in August of that year. “Anti-Terrorism Courts were established all over Pakistan through this Ordinance”.¹⁷

But Military after take-over in 1999 had to face the same old regime. The Army under Chief of Army Staff (Pervez Musharraf) to assumed the charge of affairs of State on October 12th, 1999. He introduced drastic amendments in the Act and banned certain organizations as a result. As the Government had taken decision in principle to come hard upon sectarian groups involved in terrorism, the incident of 9/11 provided a golden opportunity to further amend Anti-Terrorism Regime and update the same in consonance with International policies and take stern actions against the disgruntled elements.

Post 9/11 Anti-Terrorism Laws:

After 9/11 Attacks on USA, world had undergone drastic changes in context of Anti-terrorism legislation and Pakistan is not an exception to it. It was required to respect and ensure respect for United Nations’ resolutions passed thereafter and to cooperate with International community to curb terrorism. “The Resolutions called upon states to work together in order to prevent and suppress terrorism and its financing”.¹⁸ Therefore, Pakistan had introduced new amendments and update the

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existing Anti-Terrorism Regime to counter terrorism in letter and spirit from time to time.

However, the ferocious and inhuman terrorist attack on the Army Public School, Peshawar, on 16 December 2014¹⁹ paved the way for the Parliament to take further stringent steps to curb the terrorism. The Parliament on January 6th 2015, unanimously passed two Acts: the 21st Constitutional Amendment Bill and the Pakistan Army Act, 1952 (Amendment) Bill). The major aspect of these Acts is the establishment of the military courts to carry out speedy trials of the terrorists. These Acts would remain in force for two years from the date of their commencement.²⁰

Comparative Analysis

S. No	Human Rights	Violation in UK	Violation in Pakistan
1.	Arbitrary Detention	Detention without charge for 28 days	Detention without charge for 90 days
2.	Assets freezing	2010 Act	ATA 1997
3.	Privacy	RIPA 2000	Fair Trail Act 2013
4.	Freedom of Expression	Section 44 of 2000 Act	ATA 1997
5.	Association	2000 Act	ATA 1997

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6.	Fair Trail	Control Order	Fair Trail Act 2013
7.	Stop and search	Schedule 7 Section 44 of 2000 Act	ATA 1997/CNSA 1997
8.	Torture	In practice	In practice

From the above discussion, it is clear that Anti-Terrorism Laws are violating human rights in both countries. As these Laws are becoming tougher, more the human rights will be violated. Below Table shows some of the violations of human rights in the UK and Pakistan as a result of anti-terrorism laws in both countries:

Recommendations:

- Anti-Terrorism legislations should be properly implemented to eliminate terrorism both in Pakistan and United Kingdom.
- The international community specially the superpowers like America, UK China etc. should help Pakistan on “war on terror” financially, economically, technologically and morally on international level.
- Anti-terrorism laws should be done in Pakistan and UK in compatibility with human rights.
- The Government of Pakistan should take some practical measures and actual executions of the anti-terrorism legislations to curb the menace of terrorism and extremism.
- New funds should be allotted by the United Nations for the developing countries like Pakistan which is involved

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in war on terror for many years to eliminate the terrorism and extremism.

- Both Pakistan and UK should work together in dissemination of information of anti-terrorism laws and its implementation at domestic level.
- Human Rights laws should not be violated in Pakistan and UK and anti-terrorism law should be not against the basic human rights law.
- Sanction should be put on those states that help the terrorists groups financially, equipping them and instigating them both in Pakistan and UK.

Conclusion

Human Rights are important for any society to flourish. Therefore, these are protected and guaranteed under International Law. It is the responsibility of every state to respect and ensure respect for these rights. Owing to this importance, Human Rights are guaranteed in UK and Pakistan. In UK Human Rights Act 1998 provides base for such rights to be protected, whereas, the Constitution of 1973 (Articles 8-28) provides for Fundamental Rights to the people of Pakistan. In both Countries, Judiciary is the custodian and guarantor of these rights. Judicature tries to enforce and protect rights of the people in letter and spirit. However, the current menace of terrorism has disturbed the equilibrium. Although laws are to be in consonance with human rights, but anti-terrorism laws have disturbed this balance.

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¹¹ See Anti-Terrorism Act, 1997.

¹² C.H. Kennedy, op.cit., pp. 388-392.

¹³ Ibid., pp. 391-392.

¹⁴ Ibid., p. 392.

¹⁵ Ibid., p. 393

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¹⁷ 9 Ibid. "p. 396."

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¹⁹ "In the Peshawar carnage, more than 150 people, including 130 children, lost their lives."

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