



# TERRORISM PROSECUTION IN PAKISTAN

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## ABOUT THE REPORT

This report analyzes the capacity of the Pakistani police and prosecution to successfully try terrorism cases in the country's anti-terrorism courts (ATCs). Based on a study of 235 ATC judgments and group discussions with experts and stakeholders, the report highlights issues and recommendations related to the overall criminal justice system, implementation of the Anti-Terrorism Act, court administration and case management, police investigation, and standards of evidence.

## ABOUT THE AUTHOR

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Cover photo: Karachi, Pakistan—March 1: Pakistani police guard a man identified as Zulfiqar Ali (C), who is accused of the shooting in front of the U.S. consulate, after coming from an antiterrorist court March 1, 2003, in Karachi, Pakistan. Ali was arrested for the killing of two policemen and injuring seven during a shooting on February 28, 2003. A senior police official said Ali told interrogators he wanted to punish the protectors of 'infidels'. (Photo by Syed Zargham)

The views expressed in this report are those of the author alone. They do not necessarily reflect the views of the United States Institute of Peace.

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[Despite passage of the Anti-Terrorism Act in 1997 and, subsequently, the creation of fifty-four anti-terrorism courts, conviction rates in Pakistan continue to be extremely low.]



## Summary

- Despite passage of the Anti-Terrorism Act (ATA) in 1997 and, subsequently, the creation of fifty-four anti-terrorism courts (ATCs), conviction rates in Pakistan continue to be extremely low.
- Numerous amendments to the law have increased the severity of penalties for terrorism crimes, but little attention has been paid to court administration and case management.
- The current definition of terrorism includes many offenses that are also captured under other Pakistani criminal laws. Thus, ATCs are overloaded with cases both related to and unrelated to terrorism, contributing to major backlogs.
- In addition to long delays, procedural errors and antiquated practices plague the investigation and prosecution of terrorism cases; and exacerbating the problem is that numerous special provisions of the ATA are not being applied.
- The courts rely heavily on witness testimony—in nearly total exclusion to other types of evidence, including forensic evidence.
- In many cases, witnesses who have purportedly seen the terrorist act are actually the only people who prosecutors can compel to depose, usually police officers.
- Often, witnesses fail to come forward because of fear, since witness protection is only paid lip service in Pakistan.
- The practice of presenting stock witnesses or fabricating stories about the crime leads to multiple discrepancies and frequently results in acquittal.
- Any reforms or new laws aimed at reducing terrorism must account for current implementation issues, especially related to the broad definition of terrorism, absent defense counsels and witnesses, lack of precise forensic evidence, poor investigative capacity, and lack of coordination between the police and prosecution.



## Introduction

Given the rise in terrorist attacks in Pakistan over the last decade, law enforcement's failure to successfully prosecute the accused has become a major concern. The processes to produce evidence in these cases are slow and flawed, resulting in a high dismissal rate when the cases are finally brought to court. The majority of "hardcore terrorist" cases are acquitted and rarely reach the higher courts.

Holding the police responsible for the failure would be easy, but two other pillars of Pakistan's criminal justice system—the prosecution and judiciary—are also responsible. The police are in charge of presenting cases in court—through submitting *challans* (chargesheets)—and provide case files documenting all the aspects of an investigation. However, there are often gaps in their investigation, and although the police acknowledge them, they tend to blame factors beyond their control, such as lack of resources and an overburdened police force. They also blame prosecution and judiciary agents for not considering these real constraints in their decisions. The judiciary, however, rarely accept these explanations, and while prosecutors serve as the link between the police and judiciary by deciding which police cases move forward to the courts, they often take a *laissez-faire* approach, letting many flawed cases proceed to trial. As a result, the police, prosecution, and judiciary engage in a mutual blame game. Lack of institutional coordination among these three pillars exacerbates the situation—each entity largely operating in a "silo," despite having common goals. Ideally, they should be leveraging support mechanisms that complement each other.

A legal maxim holds that the certainty of law has a greater deterrent effect on criminal behavior than its severity;<sup>1</sup> but it seems this principle has little traction in Pakistan's approach to counterterrorism prosecution. Even though Pakistan's laws have become more severe in response to spikes in terrorism, few efforts are made to ensure the laws are effective in practice. Further, new structures and laws are often created to compensate for those that are not working, but little energy, resources, and foresight are devoted to ensuring that these actually work. New structures and laws gradually come to resemble older, inefficient ones, and subsequently, another set of new structures are brought in to replace them. In the absence of viable case management systems and standardization of legal education, the proliferation of laws, many of which are not implemented, leaves the police, lawyers, and judges ill-equipped to cope with rapidly evolving forms of terrorism. Absent serious reform, the foreseeable outcome will be several unworkable criminal justice systems and various laws vying with each other in jurisdictional conflict.

This study offers an analysis of the capacity gaps and flaws of the judicial system relating to terrorist prosecution in Pakistan, with particular focus on how terrorist cases are presented and prosecuted in the anti-terrorism courts (ATCs) created under the 1997 Anti-Terrorism Act (ATA). The ATCs determine the scope of all future legal activity by setting the legal parameters of a case, which may be contested later in the appeals process. Burdened by frequent adjournments, reticent witnesses, absent defense counsels, and poorly trained investigators, these courts sit in judgment on thousands of cases. Although the prosecution on rare occasions appeals acquittals to higher courts, in practice, most terrorist prosecution begins and ends at the level of the ATCs. Therefore, system reform is most urgently needed at this level.

The analysis, focused primarily on the police and prosecution, involved examining 235 ATC judgments from across Pakistan and conducting small group discussions with experts and stakeholders involved in terrorist prosecution.<sup>2</sup> Reference is made to appellate court rulings, the high courts, and Supreme Court, where necessary.<sup>3</sup> More ATC judgments from Khyber Pakhtunkhwa

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and Punjab were analyzed, with some cases from Sindh and Balochistan. The aim was to gain a holistic view of the entire prosecution process, supported by analysis and data.

## **Structure of the Court System**

### *Pakistan's Counterterrorism Legal Regime*

**Parallel systems.** In many criminal justice systems, ordinary courts try terrorism cases, although there may be specialized processes or people involved. In Pakistan, trials are conducted in special-jurisdiction courts. As of January 2016, Pakistan has fifty-four ATCs dedicated to prosecuting terrorists. In addition to these courts, which operate in parallel to the broader civil and criminal court system, there are also special courts created under the Protection of Pakistan Act (POPA) of 2014 and military courts formed after the passage of the twenty-first amendment to the Pakistani constitution in January 2015. All these courts are mandated to try terrorists and people “waging war” against Pakistan. Annex 1 outlines most of the significant developments in Pakistani counterterrorism policy and legislation.

**ATCs.** The ATCs were created because the ordinary criminal jurisdiction courts (known as “session courts” in Pakistan) were not considered suitable for terrorist trials; the courts were suffering from major backlogs, leading to trial delays lasting in some cases for years, and they did not offer stringent enough punishments for crimes defined as terrorism under the 1997 ATA. This is despite that most, if not all, terrorism-related crimes already existed in the conventional and commonly used criminal laws in Pakistan—primarily the Code of Criminal Procedure of 1898 and the Pakistan Penal Code. Partially because of this overlap, numerous cases unrelated to terrorism are being taken to the ATCs, and after nearly two decades of functioning, many of these special courts now also have trials running for several years.

In addition to the time lag issue, the conviction rate for terrorist cases in ATCs has been extremely low. In part, this is symptomatic of the prosecution’s failure to meet the evidentiary thresholds required by the ATCs.

**Special courts.** To circumvent these problems, new special courts were authorized under the POPA of 2014. The courts were further justified by the need to protect against threats to Pakistan’s security and to enable the speedy trial of related offenses. But, most, if not all, of the crimes covered under the POPA—even waging war against Pakistan—already exist in Pakistani law. POPA also overlaps with a 2013 amendment to the ATA, with both providing enhanced powers of preventive detention and enabling the forfeiture of the property of terror suspects and interception of communications between suspects.<sup>4</sup> Essentially, the passage of POPA served to create two parallel, specialized acts that deal with similar terrorism offenses, albeit in slightly different language.

While some POPA courts have been formed, as of this writing, no cases have actually been tried under the law. Generally, prosecutors and judges working under the ATA are now also working under the POPA, as the government lacks sufficient logistical and human resources to create an entirely new set of courts and personnel. This actually triples the workload in some cases; an ATC judge may also serve as a POPA judge as well as a magistrate designated under POPA to issue preventive detention orders for suspects.

**Military courts.** These courts try terrorism cases referred to them by provincial governments. Since their work is conducted behind closed doors, little comment can be made on how they prosecute terrorist cases—which in itself is problematic in terms of access to a fair trial. However, it seems that military courts primarily take on the most challenging cases—ones

that the provinces have been unable to prosecute because of time delays in the ATCs. There could be many reasons for such delays, such as the absence of defense counsels or a lack of adequate witness protection. Regardless, the military courts seem capable of quickly handling these problematic cases, casting a shadow on the performance of the ATCs in comparison.

Even a cursory glance at the plethora of laws and policies, present and past, is enough to suggest that Pakistan does not suffer from a lack of legislation on counterterrorism. The ATA alone now has an extremely stringent code of laws against terrorism. But despite so many amendments over the years, the ATA has failed to secure a reasonable conviction rate for terrorists, who continue to slip through the cracks.

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### *Scope of Terrorism*

**A broadening definition.** There is no international consensus on the definition of terrorism and there may never be. Sovereign states continuously coin their own definitions to guide the prosecution of terrorism cases, and Pakistan has done the same under the ATA.

As of 2014, there had been eighteen amendments to the ATA. Each one has incrementally addressed the escalation of terrorism in Pakistan by making punishments more stringent, increasing the number of offenses tried under the ATA, and expanding the definition of terrorism within the law's ambit.

These amendments—especially the “third schedule” annexed to the ATA in 1999—have drastically broadened the definition of terrorism to include many more offenses.<sup>5</sup> In current form, the definition (Section 6 of the ATA) encompasses a wide range of activities, including

### **Kidnappings for Ransom Under the ATA**

Kidnapping for ransom accounts for a huge majority of the tangential caseload in ATCs. Although kidnapping for ransom is also a crime under regular penal laws in Pakistan, all kidnapping cases are sent to ATCs regardless of the circumstances.<sup>a</sup> Most cases are not perpetrated by politically or religiously oriented terrorists, but by ordinary criminals and gangs.<sup>b</sup> Kidnapping for ransom cases are also sometimes fabricated during long-standing civil or criminal litigation, in order to escalate the charges against one party.<sup>c</sup> Despite this being the reality, in many cases, no evaluation is done during trial to ascertain whether the kidnapping was militant-driven.<sup>d</sup>

Technically, all terrorism cases are equal in stature, but ordinary criminal kidnappings have higher conviction rates than terrorism-related kidnappings, according to reviewed ATC cases.<sup>e</sup> When high-profile terrorists are actually involved, kidnapping crimes often end in acquittals. Evidentiary standards are stringently applied to militant-driven kidnappings for ransom, and even if they were not, threats against complainants and witnesses frequently capsize these cases.<sup>f</sup> Presumably, lawmakers wanted to ensure a faster conviction for terrorists, but, ironically, most terrorism-related cases slip through the cracks, while ordinary crimes, even if convicted, plug up the system and cause lengthy delays in the ATCs.

- a. Case number 180, dated 29-6-2010, Rawalpindi ATC 3.
- b. Written interview with Justice Allah Baksh Ranjha, retired judge of the ATC, Punjab, June 10, 2015; written interview with Khawaja Khalid Farooq, ex-head of National Counter Terrorism Authority Pakistan and retired Inspector General of Police, June 4, 2015; written interview with Justice Faqeer Muhammad Khokhar, retired judge of the Supreme Court of Pakistan, and ex-secretary of the Ministry of Law, Justice and Human Rights, Government of Pakistan, June 4, 2015.
- c. Case number 473, dated 8-7-2006, Faisalabad ATC 1.
- d. For instance, in case number 55, dated 12-02-2010, Peshawar ATC 3.
- e. Case number 326, dated 11-8-2009, Multan ATC 1.
- f. Case number 74, dated 24-2-2009, Rawalpindi ATC 2.

brutal murders; aerial firing that creates terror in the public; damaging an electrical transformer; forced sexual intercourse with a minor; breaking windows of vehicles during political rallies; and cases of cannibalism. The sole criteria for the offense is that it creates terror among the public. Some cases, especially politically fueled ones, are also classified as terrorism, and the causing of fear and insecurity among people is construed even more liberally. Although these cases involve extremely serious crimes, they are often motivated by personal enmity or monetary gain and not politics. Litigants contesting protracted disputes may also try to resolve them by incriminating rivals that are ineligible for bail and are accused of much more serious crimes under the ATA. With no clear definition, the whole system revolves around discretionary assessments of how serious (or “heinous”) the offense purportedly was.

Even though widely applied, there is also no standard definition of “fear” in the Pakistani system, much less an objective test to assess this fear; the interpretation of what “terror in the public” entails is determined by the police.

While the ATA and POPA require cooperation between the police and prosecution, there is little coordination on the ground. Charging people with terrorism is generally done without any institutional framework to allow for joint decision making or even second opinions from the prosecution. Registering terrorism cases has become the norm when the state is required to be “seen to be doing something” about a particularly sensitive crime (e.g., an attack by a mob on law enforcement or minorities, an honor killing, an acid attack, a gang rape, or another sensational event or crime that gains notoriety). These trials may take longer than similar trials in session courts, be harder to prove, and be more prone to witness intimidation, making the utility of special courts debatable.

Collectively, these tangential cases account for an overwhelming proportion of cases tried in the ATCs and thus take up a correspondingly large proportion of the courts’ time and resources. Unless the definition of terrorism is refined, cases of ordinary criminal violence will continue to be included within the purview of terrorism.<sup>6</sup>

### *Pre-Trial Detention*

**A goal, not just a means to an end.** “Pre-trial detention” refers to the holding of suspected individuals for inquiry or investigation. Hundreds of people are sometimes rounded up in military and paramilitary operations, such as the one in Karachi that has been targeting militant and organized criminal groups since September 2013.<sup>7</sup> The ATA seems to be the preferred avenue for dealing with these suspects, as it allows for their detention while investigations are ongoing. However, acquittals in such cases are often a foregone conclusion; many of the individuals detained are later formally charged, but given that a thorough investigation on such a large scale is infeasible, there is typically a lack of evidence for successful prosecution.

The system is geared more toward detention than long-term sentencing. Many militant and insurgent actors operate in territories outside of Pakistan’s direct control. Police and state security officials recognize that conviction through a court of law is often not possible for those detained during military and paramilitary operations. In this scenario, detention of these people for longer periods is not just the means to an end, but rather a goal itself. Laws like the Action in Aid of Civil Power Regulations 2011, implemented in the Federally Administered Tribal Areas and Provincially Administered Tribal Areas, emphasize frameworks for preventive detention. Amendments to the ATA have also made detention periods longer over the years (now currently ninety days).<sup>8</sup>

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## Terrorism Prosecution in the Courts

### *Court Administration and Case Management*

**Increasing caseloads.** When the ATA was enacted, lawmakers were working hard to manage the crippling caseload of the criminal or session courts. In one of the first trials under the ATA and in the ensuing appeal to the Supreme Court, the apex courts declared the speedy trial to be a fundamental aspect of the ATA:

[The] speedy resolution of civil and criminal cases is an important constitutional goal, as envisaged by the principles of policy enshrined in the constitution. It is therefore, not undesirable to create Special Courts for operation with speed but expeditious disposition of cases of terrorist activities/heinous offenses have to be subject to constitution and law.<sup>9</sup>

In another landmark judgment, *Liaquat Hussain vs. Federation of Pakistan*, issued on February 22, 1999, the courts attempted to instill a “zero inventory” policy for pending cases.<sup>10</sup> One case at a time would be assigned to a particular ATC until the case was decided, and only then would another case be assigned. However, this goal quickly became infeasible following the ATA amendment in 1999 that expanded the already broad definition of terrorism. The amendment included many offenses already punishable under the Pakistan Penal Code and other laws, albeit with more stringent punishments. The change resulted in a significant increase in the ATCs’ workload. It was originally envisaged that an ATC trial would take less than seven working days, but with numerous offenses being tried in the ATCs, the cases can now take months or even years to run their full course. Some ATCs in Karachi have a backlog of more than three hundred cases, though by comparison, other ATCs in the country have far fewer cases pending.

**Long delays.** ATC trials are commonly delayed by frequent adjournments, notably due to absent defense counsels and witnesses. Lawyers are legendary in Pakistan for their ability to hold up the criminal justice system through strikes, street protests, lockdowns, and scuffles with police. Defense counsels can ask for multiple adjournments or just not show up at all, at little cost. There is no punitive or disciplinary action available to the courts to force them to appear.<sup>11</sup> Lawyer bar counsels are usually firmly behind the high-profile defense attorneys that appear against the public prosecutor. An expert practitioner with extensive experience of the system opines: “The ATCs are not overburdened ... case/court management skills need to be adopted.”<sup>12</sup>

Unlike a defense attorney, the prosecutor is a public servant and accountable to the department of public prosecution. Theoretically, such departments should have the state’s full support behind them, but they are in infancy and are poorly equipped to handle “pressure groups,” such as the police. The lack of support essentially leaves public prosecutors in ATCs exposed to face the consequences in the event of a backlash to their actions. Not surprisingly then, many public prosecutors in high-risk ATC postings tend to proceed cautiously and avoid pushing back against any pressure.

Witnesses often fail to appear even though the complainant, prosecution, and police all have a vested interest in their appearance and efforts are made to ensure they do; as a result, adjournments are granted.

It is notable that the factors contributing to delays are all compounded by the high number of cases going through the ATCs.

### *Standards of Evidence*

**Prosecutors’ higher burden of evidence.** Unlike for ordinary criminal cases, terrorism cases in Pakistan require the prosecution to prove its case against the accused “beyond the shadow

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of doubt” rather than just on a “balance of probability.” The evidentiary standards to prove guilt have intentionally been kept high in the ATA, in recognition that terrorism offenses carry maximum punishments, including the death penalty. This evidentiary burden remains the same even when accused persons are absconding and their defense is being pleaded in their absence. Many such cases have been dismissed even when the accused was not present at trial or was missing during parts of it.<sup>13</sup>

The ATA is different than other special laws in Pakistan that require the accused to provide proof of innocence (e.g., Control of Narcotic Substances Act and anti-corruption and accountability acts). Notably, while the POPA originally aligned with the ATA, the burden of proof once again lies with the accused. Under POPA, the accused would presumably have to prove that he/she is not a terrorist. However, as of February 2016, no POPA cases have gone to trial, and the ATA remains the primary law dealing with terrorist crimes.

Confusingly, ATCs sometimes imply that they will settle for less than ideal evidence; some courts have issued judgments that “the procedural defects and sometimes even the illegality committed during the course of investigation, shall not demolish the prosecution case nor vitiate the trial.”<sup>14</sup> In particular, ATC judges in Khyber Pakhtunkhwa have sometimes taken a relatively lenient view toward standards of evidence, citing the menace of terrorism in Pakistan as a mitigating factor:<sup>15</sup>

Everyone is well aware that, at present, the country is facing terrorism since long which is needed to be encountered; therefore, if the accused facing trial is benefitted on mere minor discrepancies due to inefficiency and ignorance of investigation officer, the terrorism will never end and the insecurity, uncertainty, risk to life and property of the people shall be enhanced to an endless limit.<sup>16</sup>

However, such judgments are rare, and most ATCs appear to demand evidence at the standard required by law and will dismiss weak cases with perfunctory orders to acquit the accused.<sup>17</sup> ATCs rely on jurisprudential standards of evidence (the *Qanun-e-Shahadat* law of evidence)—that if the common man would not believe the evidence, then the court would likely not believe it.

### *Eyewitness Accounts*

**Heavy reliance.** Statements, confessions, depositions, and many other forms of evidence are used routinely worldwide. However, what distinguishes Pakistan from many developed criminal justice jurisdictions is an almost exclusive reliance on eyewitness evidence in ATC cases and criminal cases generally.<sup>18</sup> This is problematic not only because eyewitness accounts can generally be unreliable but also because many terrorist acts in Pakistan are carried out as ambushes, targeted killings, suicide bombings, or bombs being covertly detonated in crowded public spaces. It is difficult for eyewitnesses to identify unknown terrorists in such circumstances, but ATCs have traditionally relied on this form of evidence and seem loath to move away from it.

Eyewitness evidence can and does result in convictions, even in Pakistan, albeit usually in ordinary crimes.<sup>19</sup> Unimpeachable and consistent testimony of eyewitnesses, corroborated by medical and other evidence, is valid grounds for conviction.<sup>20</sup> But when expert evidence and eyewitness accounts conflict, the latter is given much greater weight in the Pakistani judicial system. ATC judges may request medical, serological, chemical, or other expert reports, but they rarely bother to read them or have transcripts made.<sup>21</sup> Defense counsels often use these reports to debunk the prosecution’s story, but prosecutors rarely do the same to bolster their cases.<sup>22</sup>

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Even if pertinent eyewitnesses are produced, their testimony needs to be corroborated by all other forms of evidence. Further, even just slight discrepancies between evidence deposed by different witnesses can result in the acquittal of the accused.<sup>23</sup> Therefore, for a terrorist case to be convicted lawfully in ATCs, eyewitness evidence needs to be consistent and reliable and the chain of evidence needs to be unbroken.<sup>24</sup>

**Strong incentive to fabricate.** The heavy reliance on eyewitness accounts has created a strong incentive for the police to “create” witnesses, rather than wait for them to come forward. In cases when suspects are arrested after an attack, witness statements are “constructed” to indicate that they have seen the accused commit the act, even when they have not. This padding of the case is routine, even when many aspects remain ambiguous and attempts to “read” the story of the terrorist act into witness depositions creates numerous discrepancies. For instance, when police forces were ambushed by terrorists during the Swat insurgency, the accused was purportedly identified from a distance of more than a kilometer, and under ambush conditions, which was not considered credible by the judge.<sup>25</sup>

Fantastic stories are sometimes construed to account for the case, especially when eyewitnesses are identified after the event. This can be best illustrated by a witness having overheard terrorists plotting an attack while having lunch at a crowded roadside café. Witness testimony in this same case was recorded a year later after the incident, and six more seemingly irrelevant witnesses were co-opted, presumably to strengthen the case.<sup>26</sup> Eyewitness testimony is sometimes so poorly coordinated that even official witnesses are sometimes unaware that they have been called to give evidence. For instance, in one case, a bomb disposal officer is on record as having recovered explosive material. When this expert appeared before the court, he testified that he had given no such statement regarding the recovery of explosives, and in fact, had tendered a complaint against the investigator for including his name in the witness list without his knowledge.<sup>27</sup>

**Emphasis on quantity versus quality.** Compounding the issue is an emphasis on the number of witnesses rather than the quality of evidence, with police producing relatively more witnesses in high-profile cases. This proclivity can open the case up to discrepancies. Often, when police present multiple witnesses, they have taught a story to fit the commission of crime; however, the police rarely acquaint all the witnesses to all aspects of the story, which can and does result in material discrepancies when challenged by the defense. Witnesses are sometimes listed even when the prosecuting agencies are unable to produce them in court or even establish their identity.<sup>28</sup> There have even been cases in which the accused appeared in court, but the supposed eyewitnesses could not identify them until subsequent hearings. Generating an extensive list of witnesses can also be counterproductive, because it is difficult to produce all of them at the many hearings of a case. According to case records, ATCs have passed down acquittals as a result of even minor witnesses failing to appear.<sup>29</sup>

**Lack of witness protection and fear.** In Pakistani law, compoundable offenses are those that courts can discharge if the complainant forgives the accused. Noncompoundable offenses, notably terrorism crimes, cannot be discharged by courts through any sort of compromise or compensation.<sup>30</sup> In essence, a terrorism crime is deemed to be committed not just against an individual or victim of terrorism, but against the whole of society. If complainants or witnesses recant their initial recorded statements after compromising with the accused, this can unhinge the case. However, despite the law, case records show that ATCs have sometimes dropped a case after receiving a statement that says the parties have reached a compromise and do not wish to pursue the case.<sup>31</sup> Usually in terrorism cases though, a settlement is reached outside the court and off the record;<sup>32</sup> the end result is typically acquittal based on a lack of evidence.<sup>33</sup>

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In many instances, this “compromise” is actually the result of witness or complainant intimidation. Fear of terrorists is difficult to document objectively in terrorist prosecution processes, despite its high prevalence in Pakistan. Prosecuting agencies believe fear is the major reason witnesses change their earlier recorded statements, do not provide them at all, or fail to appear in court. However, such witnesses rarely, if ever, testify to intimidation. Fear is not just present among witnesses but across the whole system. The police face the risk of terrorist reprisal on the frontlines. Judges are also targets, whether retired or serving; even senior judges have been targeted, and some have been killed.<sup>34</sup> Prosecutors may be particularly vulnerable to reprisals, having comparatively less protection than both the police and judiciary.<sup>35</sup> Sometimes, the courts dismiss seemingly obvious cases of conviction, which raises the suspicion of threats being made behind the scenes.<sup>36</sup>

However, unprotected witnesses from the public are most vulnerable to reprisals. Witnesses to terrorist acts are required to testify in court, and therefore, they must come face to face with the accused. There are no effective witness protection programs in place in Pakistan today, and no anonymity is afforded to the witnesses, despite there being special provisions for both in Section 21 of the ATA. These provisions should override common criminal codes of procedure that require the disclosure of witness identities, but defense counsels continue to insist on full disclosure of witnesses, and the prosecuting agencies continue to comply (they are either unaware of the law or unsure of how to use the ATA’s provisions).

Sometimes, not even a single complainant from the public comes forward in cases of mass shootings or bombings.<sup>37</sup> Even eyewitnesses shot at close range tend to exonerate the accused. Complainants and victims may also retract their statements or deny that the crime ever happened.<sup>38</sup> This fear of reprisal is not unfounded; witnesses routinely get murdered in Pakistan in terrorism cases, sometimes before a trial commences.<sup>39</sup> The surviving witnesses promptly “get the message” and become hostile or recant their statements. Even government employees, which the prosecution depends on as official witnesses, tend to become hostile in ATC cases.<sup>40</sup> Recanting witnesses commonly assert that the police concocted their earlier initial statements.<sup>41</sup> Witness testimony is withdrawn more frequently when established terrorist organizations are involved.<sup>42</sup> Even injured victims in terrorist incidents are reluctant to bear witness to the event, which forces the police to produce their own officers in court as witnesses; this is problematic, because ATCs tend to interpret the appearance by police alone as an indication of a weak case.<sup>43</sup>

Even when the police manage to prop up a few witnesses through morale boosting—or even threats—many witnesses get shaky along the way, after realizing the enormity of the threat to them.

In rare instances, penal laws have been invoked against witnesses who withdraw testimony. But such punitive criminal actions are weighted against the risk of losing one’s life. If the state cannot protect its citizens, is forcing them to bear witness through punitive action justified?

**Logistical and cost barriers.** Logistical difficulties may also prevent witnesses from appearing in court; ATCs are usually located centrally within cities and large towns, forcing witnesses to travel from outlying districts or *tehsils* (subdistricts). Moreover, witnesses have no way to recover their related travel and subsistence costs; and with recurring adjournments requiring repeated visits to court, these costs can become prohibitive and cause “litigation fatigue.” When cases drag on for years, compensation is often accepted, even from the accused, in order to get the case discharged.

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## Terrorism Prosecution by the Police

### *Role of the First Information Report*

**The beginning of the investigation.** In Pakistan, policing tends to be reactive, and the police will rarely start investigating a terrorist offense until after it has occurred. The First Information Report (FIR), filed at the time a crime is reported, is the cornerstone of all criminal investigations in Pakistan, including terrorism. FIR registration requires the names of the accused,<sup>44</sup> their salient features,<sup>45</sup> and their roles in the reported crime,<sup>46</sup> which are often unknown. As an experienced practitioner says, “Genuine witnesses don’t come forward to witness, so padding is practiced by police so obviously their evidence is not up to the required standard.”<sup>47</sup> The first thing investigators attempt in a terrorist case is to corroborate accounts initially outlined in the FIR, despite there potentially being no initial witnesses or suspects.<sup>48</sup>

Even though the “FIR is not (strictly legally) considered a substantive piece of evidence,”<sup>49</sup> it has assumed tremendous importance in the system. Investigators in Pakistan generally behave as if nothing has happened until an FIR is registered; even in terrorism cases, most police officers believe the creation of an FIR is the start of an investigation, rather than the crime scene or planning of a terrorist offense.

### *Rounding Up of the Usual Suspects*

**Problems with identification and arrest.** No matter how good the story and no matter how many witnesses are produced to support it, the identification and arrest of the accused generally remains the weakest link in the chain.<sup>50</sup> Many suicide bombers and terrorists are young men with no prior run-ins with the authorities and no criminal records. Often, these reclusive men are dispatched straight from training camps to the targets.<sup>51</sup> Since their young age does not require having a national identity card, they may not even be registered by the National Database and Registration Authority. Consequently, it requires intensive investigative work to uncover leads to these suspects, and even then, there may be no headway in many of these cases.

Sometimes, the police arrest the accused in connection to another case, and during interrogation, link the suspect to another crime.<sup>52</sup> Even though ATCs view this practice with suspicion, the police routinely use it to trace many terrorism crimes to those arrested during routine criminal cases—or in some cases, to accuse suspects already serving jail sentences for other crimes.<sup>53</sup> Even the best of these padded stories are usually ineffective in covering up massive temporal and spatial gaps in evidence,<sup>54</sup> especially when the suspects have been in detention for some time.<sup>55</sup>

When the terrorists involved in an incident cannot be identified, police will traditionally round up *mushtabay*, or suspected persons, and nominate the most likely ones as the culprits.<sup>56</sup> These are typically people with dubious or terrorism-related criminal records, who reside in the area of jurisdiction of a particular police station concerned with investigating a particular terrorist act.<sup>57</sup> Most police stations maintain a list of terrorist suspects under the fourth schedule to the ATA 1997, which covers banned militant, terrorist, and sectarian organizations.<sup>58</sup> As of January 2015, Khyber Pakhtunkhwa reportedly had 2,572 suspects on a consolidated list; Punjab had 1,896; Sindh had 479; Balochistan had 400; Islamabad had 50; and Gilgit-Baltistan had 23.<sup>59</sup> The police stations monitor and report on the movements, banking transactions, and other activities of these suspects and sometimes ask suspects to deposit a security bond or “surety” to guarantee good behavior. Various methods—including periodic inspection, physical surveillance, or technology such as GPS tagging—can be used to monitor the suspects;

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in practice, however, the police lack the resources, time, and training to effectively carry out monitoring as a proactive measure.

However, even if these suspects violated “control orders” limiting their movements and were tried under the ATA, incriminating them would be difficult, given the need for credible witnesses and corroborative evidence. Unfortunately, in many cases, the police just argue that the accused is guilty of perpetrating or facilitating a terrorist act.<sup>60</sup> This is generally done without submitting substantial, supportive evidence, even in high-profile terrorism cases requiring meticulous investigation.<sup>61</sup> This propensity to accuse individuals who are at best suspects, without thorough investigation, tends to be self-defeating in the courts.

**Confessional limitations.** Even when a suspect has been identified, recorded confessions to the police are generally inadmissible as evidence under Section 161 of the Code of Criminal Procedure, as they are presumed to be extracted through torture. While the ATA does allow confessions recorded by a district police officer, the head of a police district,<sup>62</sup> this officer often leaves investigative work to the lower ranks, focusing instead on supervision and management. Investigating officers are commonly assistant sub-inspectors, sub-inspectors, or inspectors, but they have limited training and education.<sup>63</sup> While they sometimes pursue confessions regardless of the law, courts maintain that these confessions are inadmissible. Further complicating matters, confessions are often recorded incorrectly, resulting in inaccurate dates,<sup>64</sup> factual errors,<sup>65</sup> or “improvements” in statements, which the courts regard as dishonest.<sup>66</sup> Confessions before a judicial magistrate sometimes result in convictions if properly recorded and supported by corroborative evidence. However, these confessions are rarely obtained, presumably because the process is cumbersome, and Pakistani police persist in relying on confessions that have no evidentiary value.

Prosecutors are aware that cases lacking sufficient evidence will result in acquittals, but they lack the authority to halt them, thereby allowing hundreds or maybe even thousands of fruitless cases to flood the ATCs every year. Theoretically, prosecutors have the power to reject cases under the four provinces’ respective prosecution acts.<sup>67</sup> Practically, however, prosecutors rarely challenge the police or judiciary’s jurisdiction. Some improvements have been reported in Khyber Pakhtunkhwa, where the prosecution has identified cases with poor evidence and had many of them dismissed by the courts. In other provinces, prosecutors sometimes seek additional evidence from investigating officers, but the requests often go unheeded. When this happens, prosecutors’ only avenue is to recommend that senior police officials hold disciplinary proceedings.

## Information Sharing

**Challenge of anonymity.** Many suspects in terrorism cases are arrested based on *mukhbhari* or “one who gives the information.” In this context, this refers to intelligence sources or other privileged sources of information that the police are not obliged to reveal in court (e.g., the names of informants). In practice, a reliance on *mukhbhari* information may indicate that the accused have been arrested on flimsy evidential grounds or mere suspicion.

**Lack of institutionalized coordination.** Since evidence from Pakistan’s military and civilian intelligence agencies has traditionally been inadmissible in courts, it is the police who arrest the accused and prepare the evidence for presentation. However, institutionalized and routine coordination between the security agencies and the police is limited, and thus, the police and prosecutors struggle to account for what happened between when the accused were detained by the agencies and when they were formally arrested and charged.

At the request of the government, investigating officers sometimes have to coordinate with other entities charged with the investigation of terrorist offenses. Typically, a Joint Investigation Team (JIT), comprising police and other experts, is established for a specific case under investigation. The JIT includes, at a minimum, a police officer at the rank of inspector or above and an officer from at least one investigating agency. The investigation in such cases must be completed within seven working days according to Section 19 of the ATA, which can prove difficult.<sup>68</sup> JITs are often not convened properly or remain in limbo after a few sessions, leaving the investigation in the hands of the original investigating officer, who may lack the resources or training to carry it out and may not have attended any JIT proceedings.

**Underuse of advanced information-gathering methods.** The Fair Trial Act of 2013 allows for the use of covert surveillance, human intelligence, wire tapping, and intercepted communications and, theoretically, should facilitate greater cooperation between the police and intelligence agencies. These methods of information gathering are commonly used worldwide to prevent terrorist attacks. Examples of comparable laws are the Regulation of Investigatory Powers Act 2000 in the United Kingdom and the Foreign Intelligence Surveillance Act of 1978 in the United States. Such legislation is preemptive as it allows for the prevention of terrorism, usually with judicial or executive oversight. However, there have been no discernible attempts to implement the Fair Trial Act. The act authorizes relevant departments to forward warrants to the Minister of Interior, which are then reviewed by a high court judge for approval; but, to date, no reported cases have utilized this law, presumably because prosecutorial entities are either hesitant or not trained to use it.

## Forensics

**Apathy toward forensic evidence.** The long-standing apathy of first responders toward preserving crime scenes for forensic analysis is best captured by the washing away of the crime scene of Benazir Bhutto, the assassinated ex-prime minister of Pakistan.<sup>69</sup> The use of poorly trained experts and dysfunctional laboratories<sup>70</sup> often result in deficient forensic evidence that is seen as the bane of criminal justice in Pakistan. Forensic evidence, when produced, is generally of low quality or perfunctory (e.g., merely confirms the collected blood is human), even in high-profile cases, leaving prosecutors to rely heavily on eyewitness accounts.<sup>71</sup>

Modern evidentiary tools are not completely missing from ATCs, however. When it is expedient, and the case is high profile enough, electronic evidence, including email screenshots, have been used successfully in court. These instances are rare though.<sup>72</sup>

Section 27-B of the amended ATA (2014) states that forensic evidence may be the primary source of evidence for terrorism prosecution:

Notwithstanding anything contained in this Act or Qanun-e-Shahadat [Islamic evidentiary codes], 1984 (P. O. No. 10 of 1984) or any other law for the time being in force, a person accused of an offence under this Act may be convicted on the basis of electronic or forensic evidence or such other evidence that may have become available because of modern devices or techniques referred to in Article 164 of the Qanun-e-Shahadat, (P.O. No. 10 of 1984): Provided that the Court is fully satisfied as to the genuineness of such evidence.<sup>73</sup>

However, this section of the law is not taken seriously; since 2014, of all cases nationwide, only one ATC judgment has explicitly considered forensic evidence to be the primary means of evidence. But, even this case was corroborated by significant witness testimony.

Most terrorism cases in Pakistan present forensic evidence as secondary to eyewitnesses evidence. Blood analysis is typically only done to determine whether the source was human or animal—a carryover from precolonial times, when litigants in rural areas would douse an area

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***The national Pakistan Automated Fingerprints Identification System, established in 2008, has not been updated to process new data and lacks the infrastructure to receive fingerprint reports from the country's many districts.***

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with animal blood to falsely implicate rivals in charges of murder or injury. These “forensic” practices appear to be exercised out of habit, since their utility is debatable. Despite the establishment of a state-of-the-art forensic laboratory in Punjab in 2007—the Punjab Forensic Science Agency (PFSA)—DNA evidence is still rarely favored over eyewitness accounts. The Council of Islamic Ideology, a body of religious scholars, declared in 2013 that DNA evidence could support eyewitness testimony but not replace it, especially in rape cases.<sup>74</sup>

**Lack of adequate infrastructure and capacity.** Since the use of DNA evidence is still in a nascent stage, identifying the remains of suicide bombers remains difficult.<sup>75</sup> No comprehensive database of DNA exists in Pakistan to match samples from terrorism crime scenes with stored evidence. Fingerprint databases are also badly in need of reform; the national Pakistan Automated Fingerprints Identification System, established in 2008, has not been updated to process new data and lacks the infrastructure to receive fingerprint reports from the country's many districts.<sup>76</sup> Failing to fingerprint a suspect in the presence of a judicial magistrate can also result in evidence being thrown out in courts.<sup>77</sup>

With only one functioning DNA lab, evidence takes time to process. Prosecutors are routinely chided in ATCs for not presenting forensic evidence reports in time, and in turn, they blame the overburdened PFSA, which manages cases from all over Pakistan. In more remote districts that lack any forensic capability, reports are often extremely delayed. Although the PFSA maintains high standards of scrutiny, police chains of custody for forensic evidence are typically unsatisfactory,<sup>78</sup> with evidence either not being sealed properly, being kept with police pending dispatch,<sup>79</sup> or being lost.<sup>80</sup> Police are innately skeptical about using modern devices and methods of investigation, particularly given the priority afforded to eyewitness testimony. Unless police and forensic laboratory processes are synchronized, the police may continue to send irrelevant evidence—without regard to maintaining credible evidentiary chains—or not send evidence at all.

The inability to present call data records has also compromised many cases in Pakistan. Currently, this fundamental evidence, which links recovered mobile phones with terrorist suspects, is simply presented in court, without any experts to explain it.<sup>81</sup> With call data records sometimes running pages long and ATCs having little time to decipher them, the prosecution is left struggling to demonstrate the complex networks of the accused. Tracking the locations of suspects through their mobile phones, also known as “geo-fencing,” is seldom done in Pakistan.

### ***Investigation Capacity***

**Perception versus reality.** Police officers often claim being ill-treated by the courts, and some judges do not view police evidence as credible. A veteran police officer said: “Courts ridicule the police. When defense counsels misbehave or put irrelevant or embarrassing questions, the judges don't stop them.”<sup>82</sup> However, in practice, the Supreme Court of Pakistan maintains that police witnesses are good witnesses, unless there is evidence of mala fide otherwise;<sup>83</sup> and records indicate that many cases ending in conviction in ATCs have relied on police testimony.<sup>84</sup> This apparent disconnect between perception and practice requires further exploration and study.

**Learning limitations and procedural errors.** Police officers mainly learn on the job, despite the availability of relevant training institutes. The institutes focus on legal education and physical training, but unfortunately, the knowledge gained quickly becomes outdated in the face of new laws or business practices. ATC judgments are full of observations on the police's failure to respect, acknowledge, or adhere to standard procedures.

The police commit a variety of procedural errors, which are reflected in the evidence prosecution presents in court. These errors can be attributed to either a lack of knowledge of basic court presentation and terminology<sup>85</sup> or a simple failure to follow procedure.<sup>86</sup> ATC judgments indicate that in a single case, documented procedures can be violated by police many times.<sup>87</sup> Investigative forms—including for injury and postmortem reports—are a major issue for the prosecution because they often include errors (even on dates), lack utility, or are missing entirely.<sup>88</sup> For example, the site plan, a staple form of investigation, typically includes crudely drawn sketches of a crime scene or slightly more elaborated “to-scale” maps. Despite photographic equipment having been available for many years now, there is no indication the police are moving away from this antiquated investigative practice. These site plans, which may be incomplete or inaccurate, are tendered as evidence in courts and can result in acquittals if the nature of the crime scene is in doubt.<sup>89</sup> Although superior courts in Pakistan have ruled that the site plan is not a substantive piece of evidence,<sup>90</sup> and is no substitute for cogent evidence,<sup>91</sup> the ATCs continue to routinely acquit cases on defective site plans.<sup>92</sup>

Procedures for handling physical evidence are also a source of problems. Investigators rely on explosives, weapons, vehicles, and other objects as evidence of a terrorist act, but they have trouble directly linking them to the offense.<sup>93</sup> In some cases, spent shells from suspected weapons are found to be different from those tendered in evidence,<sup>94</sup> shells are not recovered at all,<sup>95</sup> or there are discrepancies among eyewitnesses accounts about the type of weapon. Police often register ancillary cases under the Arms Ordinance to recover weapons used in an act of terrorism, but this doubles the evidence needed (for two cases), without guaranteeing conviction on the more serious terrorism charge.

In addition, regarding identification parades, there are lapses in time between the incident and when witnesses are asked to identify the accused.<sup>96</sup> How the witnesses are shown the accused varies,<sup>97</sup> and statutory regulations on where parades can take place are also neglected.<sup>98</sup> While the Supreme Court of Pakistan mandates that identification parades are only corroborative and are “immaterial in the presence of other convincing evidence of identification,”<sup>99</sup> many ATCs not only insist on this procedure but also acquit suspects even when there is other credible evidence.<sup>100</sup>

The collected case file containing all the evidence has to be forwarded to the courts “without undue delay.”<sup>101</sup> While a delay is not grounds for acquittal, it can raise the suspicion of foul play.<sup>102</sup> This then creates pressure for the police to submit reports as soon as possible, despite significant gaps in their cases. Such gross neglect of procedure comes under the ambit of unsatisfactory investigation by the police—for which they can be punished under Section 27 of the ATA. However, ATC judges rarely carry out this punishment.<sup>103</sup>

### ***Prosecution of Conspiracy and Incitement***

The ATA supports proactive policing of terrorism through charges of conspiracy and incitement, and both offenses have severe punishments. Conspiracy under Pakistani law is the agreement of two or more persons to commit a criminal offense, including terrorism. It does not matter whether the act has been committed; agreement is sufficient.

This proactive law is rarely applied, however. When it is put into action, the standard of evidence produced is generally quite low; the evidence does not adequately show how, when, where, and in what manner the conspirators were involved in the terrorist act,<sup>104</sup> even when many witnesses with purported knowledge of the conspiracy are produced.<sup>105</sup> Similar weaknesses are observed in cases of terrorism financing; ATCs often require receipts to prove that

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***In some cases, spent shells from suspected weapons are found to be different from those tendered in evidence, shells are not recovered at all, or there are discrepancies among eyewitnesses accounts about the type of weapon.***

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funds were collected for terrorist organizations in the name of charity, but receipts are rarely available in identifiable forms.<sup>106</sup>

Under the ATA, being a member of a terrorist organization or facilitating its operation is considered conspiracy. There are sixty banned organizations in Pakistan, according to the National Internal Security Policy—most of which are terrorist organizations, terrorist fundraising charities, or organizations such as Hizb-ut-Tahrir, which do not commit violence themselves but can promote extremism. However, convictions in such cases rarely occur because proving membership is extremely difficult.<sup>107</sup> Usually, little evidence can be produced in court to prove the accused belongs to a terrorist organization,<sup>108</sup> and when there are attempts to corroborate the evidence, procedural errors often derail the case.<sup>109</sup> For example, as noted earlier, while confessions may be recorded, those made before the police are inadmissible in court.

Another barrier to prosecution is the frequently changing identities of such organizations. The ATA extended bans on terrorist organizations to those groups operating under new names, but it is an uphill task for investigating officers to keep track of them. Extensive investigative work is usually only observed in high-profile cases of conspiracy, which are rare.<sup>110</sup>

Inciting hatred among different segments of society, or “hate speech,” is also an offense under the ATA. The term is ambiguous, because there is no legal definition of hate speech in Pakistan. The internationally applied definition—which includes hate crime based on sexual preferences, linguistic, or other identity markers—has little currency in Pakistan.<sup>111</sup> Hate speech charges are instead most often applied to sectarian or jihadi messaging that encourages an attack on “nonpracticing” Muslims or minorities. The Punjab government registered 540 cases of hate speech broadcast over public loudspeakers in 2015, while Islamabad police in the federal capital registered 176 cases in the first half of 2015; stakeholders expressed skepticism that such cases were successful in deterring incitement, however.<sup>112</sup>

For some of these offenses, “possession of material” with intent to disseminate is needed to prove the case; ATCs often require a burden of proof beyond mere possession, however.<sup>113</sup> Further, there is little time to meticulously sift through seized material, so it is usually presented into evidence without any elaboration on the content or an expert witness to corroborate it. In cases where provocative speeches are made against other groups of people, cases tend to rely on eyewitness reports.<sup>114</sup> The police often become aware of the speeches after they have aired, so they are rarely ever recorded and presented into evidence.<sup>115</sup>

## Recommendations

Although Pakistan’s criminal justice system is in need of reform, there are “islands of excellence” within the system, such as the Punjab Forensic Science Laboratory. Also, in the aftermath of the December 2014 attack on the Army Public School in Peshawar, there is a renewed national resolve to fight terrorism and unruly elements. And there are undoubtedly hundreds if not thousands of dedicated police officers, judges, prosecutors, and lawyers doing their best to reform the system, albeit in their individual capacity. With concerted efforts from policymakers makers, building on these bright spots can ultimately overcome the more recalcitrant elements in the system.

### *Removing Tangential Litigation from ATCs*

Overcoming the growing backlog of cases requires an ATA amendment that more narrowly defines terrorism and restricts unrelated cases to the normal criminal justice system. The inclusion of crimes that are not terrorism within the third schedule of the act, and the incremental

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expansion of the definition of terrorism in Section 6, have ensured that ATCs are entangled in trying cases that are irrelevant to Pakistan's terrorist landscape.

A starting point would be to assess how much litigation is actually tangential to the ATA, which has not been documented statistically and accurately. Meticulous sifting of cases is required to determine how many kidnappings for ransom, acid attacks, extortions, abductions, aerial firing, assaults on police parties, and so on, are actually related to terrorism and not other criminal offenses. Based on available studies, including this one, an estimated 80 percent (probably more) of cases in ATCs would turn out to be unrelated to terrorism.

Once the tangential cases are delineated, the next step could be to examine what should be done with them. One simple way, not requiring any legislative changes, would be for prosecution departments to tender in writing to the courts that these cases are of ordinary jurisdiction and may be sent to the session courts. Even though the session courts are overburdened, there is talk of an imminent recruitment of hundreds of new session judges, and these cases may land in their courts or be distributed as the judiciary sees fit.<sup>116</sup> Another way would be to amend the ATA to more narrowly define terrorism as crimes committed by terrorists for political or religious ideological reasons. This may be expanded on, but any workable definition needs to stress the organizational and political nature of terrorism as being distinct from ordinary crime. A jurisdictional clause should be inserted to ascertain in preliminary hearings whether the case under trial is a terrorist case.

The biggest problem may be that of perception; the ATA has subsumed so many attributes over the years that many stakeholders in the legislature, judiciary, prosecution, and police will hesitate in supporting such a radical transformation of the law. However, through lobbying efforts, constant training, and consultative seminars, government functionaries and legislators would eventually come to understand that without extracting these cases from the terrorist pool, there is no realistic hope of success in terrorist prosecution. The assessment to delineate the tangential cases will be critical as documented proof that nonterrorism cases have choked up the system.

Additionally, the prosecution needs an integrated archive of ATC decisions, which are not reported and recorded, as is done with higher court rulings. ATCs in Pakistan lack any sort of database retrieval system; judgments are read out by the judges to stenographers and are not kept on record in any formal or archival database, sometimes lying in heaps in poorly organized record rooms gathering dust. Decisions to prosecute or appeal are taken without being able to search for precedents, and there is no overall case management system in the ATCs. A searchable database should be established for all ATC judgments, which can contribute to decision making, training, and research for both prosecutors and police. Once the established precedents in ATCs start becoming coherent, it may then be easier to sift out the tangential litigation in ATCs. This will also significantly streamline the prosecutorial decision-making process.

### ***Strengthening Capacity Gaps in Investigation***

Stakeholders in Pakistan's criminal justice system often blame each other for the flaws. Police are particularly defensive about these flaws, stating that the prosecutors are incompetent and the judiciary are indifferent to the problems the police face. However, the study findings clearly suggest that lack of police investigative capability is a major contributor to system failures—defective investigations become defective cases. A committee should be instituted to further explore the common flaws and recommend standard operating procedures to resolve them. This must be done in consultation with prosecutors, because the police in isolation cannot fully

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understand all matters of the court. Once recommendations are made, the reforms should be rolled out in police training schools, Urdu-language manuals, and orders from provincial police inspector generals.

Punjab has taken the lead in building capacity, whereby 1,182 educated young people have been inducted into the Punjab Counter Terrorism Department as investigators, tactical first responders, and analysts.<sup>117</sup> This process should be replicated throughout the country. This new force has to be nurtured in an atmosphere where they benefit from the experience of veteran terrorism investigators but also have a structured training regimen that exposes them to the latest developments in the law, forensics, and investigation. Routine, antiquated training offered by police training institutes is not sufficient on its own, so perhaps international assistance is needed to support the institutes.

Similarly, ATC judges need to be exposed to modern investigative techniques through training. The decision-making environment of the ATCs will change only with a gradual reshaping of the attitudes of all stakeholders of the criminal justice system, the judiciary among them.

Despite written agreements and established best practices, prosecution departments are not getting the traction they need to streamline the prosecution process. The government needs to provide the departments with real authority and resources, particularly by recruiting an adequate number of highly qualified people. Currently, only one or two prosecutors are required for each ATC, with competent paralegal aid available for support.

The police and prosecution need to improve their coordination by setting up a central consultative committee, including the heads of prosecution services/authorized representatives and their counterparts in the police. This committee should implement steps to foster seamless prosecutor-police cooperation—from sharing FIRs to a mechanism for investigators to regularly consult prosecutors. Subcommittees can then be set up at the court level to include ATC prosecutors and police officers. These subcommittees should meet at least biweekly, report to the central committee, and review case files of ongoing investigations to help rectify or prevent procedural errors, as needed. The committee should have a strict disciplinary mechanism, so investigators take cooperation and mandated procedures seriously.

### *Utilizing Forensic Science*

As mentioned earlier, the ATA now has a forensic clause, Section 27-B, which can be used to incriminate offenders solely or mainly on forensic evidence. And because an ATC judge has already applied this clause, there is also precedence.<sup>118</sup> Further, the Punjab forensic facility is state of the art—although it will need recurring funding for operations and maintenance to adequately meet the country's needs.<sup>119</sup>

The judiciary should take the lead in highlighting the importance of using these existing resources. The respective four provincial high courts should lay out the rules and practices for the subordinate courts regarding the use of forensic science and Section 27-B, which they are empowered to do under Article 202 of the constitution.<sup>120</sup> Once the ATCs start enforcing implementation of these rules in court, the prosecution and police will follow suit. These high court rules will have to be explicit regarding the establishment of the crime scene, integrity of the chain of forensic evidence, and reporting procedures.

The process could be started as a pilot in Punjab. The Lahore High Court should incorporate the perspectives of the Punjab police and prosecution into the process. A consultative body could be created and should have carefully selected practitioners, with established track records of working on the ground in their respective fields. Judicial trainings should also be instituted

through the existing federal and provincial judicial academies to disseminate high court rules and information on Section 27-B of the ATA, again perhaps starting with Punjab.

Proposals are currently underway in Punjab to establish satellite forensic evidence collection centers throughout the province; these centers would then send the evidence to the main laboratory for processing. The system could be replicated, with perhaps one or two large, central forensic facilities in each province to begin with, with associated evidence collection centers scattered throughout the province. These facilities should have mobile evidence collection vans that, through coordination with police, serve as first responders at terrorism crime scenes.

### *Protecting Witnesses, Prosecutors, and Judges*

High court rules can again be used to institutionalize Section 21-B of the ATA, which covers witness, prosecutor, and judicial protection. In this case as well, the law already provides for witness anonymity, usage of screens, live links, and in-camera trials. At least in Sindh, there is also another stand alone law related exclusively to witness protection.<sup>121</sup> However, no reported cases in Sindh have used this law to give protection to witnesses. It is therefore obvious that just making new laws will not solve the problem.<sup>122</sup>

Any new orders that do not account for existing realities on ground will again become redundant. Sporadic attempts have been made in isolated cases to install live links in courts, screenshots of emails have been presented as evidence, and even Skype has been used to get witness testimony.<sup>123</sup> A high-level committee set up by the Supreme Court of Pakistan should be appointed to take stock of all measures already attempted in this regard and examine reasons for their lack of implementation. The Supreme Court may then take charge in directing the high courts to lay down high court rules, spelling out in minute detail what needs to be done to afford protection to witnesses, prosecutors, judges, and even the police officers investigating terrorism.

A basic measure required is witness anonymity. Theoretically, there is no legal bar to the prosecutor applying for special protection orders and witness anonymity under Section 21-B of the ATA. Such practices can be instituted through administrative orders such as high court rules or through reforms to the Code of Criminal Procedure, as is being done in Punjab.<sup>124</sup> Some witnesses may need extended physical security from the state; if tangential litigation is removed from the court system, this could potentially empower the state to consider the allocation of physical security resources for witnesses in a limited number of cases.

Simple engineering modifications to allow separate entrance and exits for witnesses and vulnerable persons in ATCs should also be considered. Expensive facilities for terrorist prisons are being built right now in Pakistan, and court renovations are similarly under consideration.<sup>125</sup> A consultative committee should be set up at the federal government level to consider and incorporate such issues into structural designs for ATCs.

Even though judges and prosecutors generally have some degree of physical security in the form of “gunmen,” standard operating procedures need to be developed to cater for long-term security for judges and prosecutors serving in ATCs, both during and after the conclusion of their service. Providing extended security for prosecutors and judges is achievable for the fifty-four ATCs—hundreds of important Pakistani officials receive armed guards from the state—but it has to be a priority.<sup>126</sup>

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***Pakistan needs to create a balance in power between the center and provinces regarding jurisdiction in terrorism-related cases.***

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## Conclusion

Pakistan is a developing country, with a limited amount of resources as opposed to more developed states; in the context of counterterrorism prosecution, as in many other areas, plans, laws, structures, and documents are instituted, but their practical implementation is far from ideal. Policymakers will talk about eradicating extremism but are unable to delineate exactly how it will be done. The working definition of terrorism presented in Section 6 of the ATA remains broad and poorly defined.

Further, Pakistan's regulatory systems are weak, primarily because regulations are poorly specified, regulatory agencies lack capacity, policies are inconsistent, and there is a lack of transparency. Legislation is sometimes passed, but then not fully rolled out or implemented. A prime example is the ATA itself, which has many unimplemented provisions, particularly those regarding witness protection.

Pakistan needs to create a balance in power between the center and provinces regarding jurisdiction in terrorism-related cases. Ever since the 18<sup>th</sup> Amendment to the Pakistani constitution, law and order has been a provincial rather than federal subject. An example of the hazy boundaries between the center and provinces is the POPA, which largely overlaps with the ATA. If POPA were ever to be fully operationalized, in its current form, it would draw on the resources of the provincially regulated ATCs and replicate many of the ATA provisions.

Any new policy or law that seeks to address the gaps in Pakistan's legal system for prosecuting terrorism must account for current implementation issues.

## Annex 1: Major Counterterrorism Policies And Legislation\*

Title	Description
Public and Representative Offices (Disqualification) Act, 1949	This was an early law used by the government to curb political violence.
Suppression of Terrorist Activities (Special Courts) Act, 1975	In response to a raging separatist insurgency in Balochistan, this law was enacted by then prime minister Zulfiqar Bhutto and was the mainstay of tackling insurgent and terrorist activities in Sindh and Punjab until its repeal in 1997 and in the North West Frontier (NWFP, now renamed Khyber Pakhtunkhwa) and Balochistan until 2001.
Special Courts for Speedy Trials Act, 1987	This law set up a system to speedily try cases deemed important by the government, but it was not implemented extensively.
Terrorist-Affected Areas (Special Courts) Act, 1992	Though this law was largely ineffective, it indicated the state's awareness of the development of unruly areas in the country: "If the Government is of the opinion that offences of the nature specified in the Schedule are being committed in any area on such a scale and in such a manner that it is expedient for the purpose of coping with such offences to have recourse to the provisions of this Act, it may, by notification... declare such area to be a terrorist affected area." Special courts were instituted for trials in such areas.
<b>Anti-Terrorism Act, 1997</b>	The law, which included a broad definition of terrorism, was enacted after a January 1997 bombing by Mehram Ali, a member of the Shia militant organization Tehreek Nifaz Fiqh-i-Jafaria. Sectarian terrorism was the main strain of terrorism faced by Pakistan in the late 1980s until at least the early 2000s and was the main reason for promulgation of the ATA—though the law has since been used in a much broader context of terrorism. Sectarian terrorism has surged again in the past decade.
Pakistan Armed Forces (Acting in Aid of the Civil Power) Ordinance, 1998	This ordinance initially applied to Sindh, in the aftermath of army operations in Karachi where the military stepped in to restore the writ of government against unruly political actors. It granted broad judicial powers to the military but was repealed in April 1999 in the face of a public and civil society outcry about the law being unconstitutional.
<b>Anti-Terrorism (Amendment) Act, 1998</b>	This amendment related to the tenure of the office of ATA judges, repeal of some earlier provisions, and restrictions placed on earlier provisions regarding trial in absentia.
<b>Pakistan Anti-Terrorism (Amendment) Ordinance, 1999</b>	This ordinance authorized special courts as ATCs and extended the schedule of offenses to include additional provisions of Pakistan's criminal code, broadening the ambit of crimes tried as terrorism in the ATCs.
<b>Anti-Terrorism (Second Amendment) Ordinance, 1999</b>	These amendments instituted two new special courts at the Lahore and Karachi high courts, each headed by a high court judge who has the power to transfer, claim, or readmit any case within the province.
<b>Anti-Terrorism (Third Amendment) Ordinance, 1999</b>	
<b>Anti-Terrorism (Amendment) Ordinance, 2000</b>	This amendment delineated some administrative arrangements.
<b>Anti-Terrorism (Amendment) Ordinance, 2001</b>	This amendment expanded the ambit of terrorism by introducing provisions to enable the government to proscribe an organization, when there was "reason to believe that the organization is concerned with terrorism."

## Annex 1: Major Counterterrorism Policies And Legislation\*

Title	Description
Model Deeni (religious) Madaris and Madrassah Board Ordinance, 2001	This ordinance attempted to regulate madrassahs, long perceived to be breeding grounds for sectarianism and militancy. This effort was attempted through curriculum reform and teacher training, but it was ineffectively implemented.
<b>Anti-Terrorism (Amendment) Ordinance, 2002</b>	This controversial amendment transformed the single-person bench of the ATC to a three-member bench, including (1) the originally envisaged high court, session court, or additional sessions court judge, (2) a judicial magistrate of the first class, (3) an officer of the Pakistan Army not below the rank of Lt. Colonel. However, the latter two members never sat on the bench in the face of public outcry and opposition by the judicial community.
<b>Anti-Terrorism (Second Amendment) Ordinance, 2002</b>	This amendment gave powers to the police to detain anyone listed on the government's "terrorism list" (e.g., activists, office bearers of proscribed groups) for up to one year without filing specific criminal charges. The amendment also prohibited such suspected terrorists from visiting public places.
<b>Anti-Terrorism (Amendment) Act, 2004</b>	Under this amendment, the maximum jail term for supporters of militancy was increased from fourteen years to life imprisonment. The object was to ostensibly hit at the support network of terrorism and discourage those providing fiscal, logistics, and infrastructure support to the terrorists.
<b>Anti-Terrorism (Second Amendment) Act, 2004</b>	This amendment made the penal clauses and sentencing for terrorist offenses even more stringent, and importantly, mandated that an ATC could not give more than two successive adjournments in a terrorist case.
Societies Registration (Amendment) Ordinance, 2005	An amended form of the Societies Registration Act 1860, its purpose was the registration of madrassahs to counter the phenomenon of "ghost" (unregistered and therefore unknown) madrassahs, perceived as being potentially subversive. The act stipulated that every madrassah must give an annual report of its activities to the state, as well as a report of the annual budget and receipts of its revenue and expenditures. They were also prohibited from teaching or publishing any literature or material that promoted terrorism, sectarianism, or religious hatred. However, the phenomenon of ghost madrassahs continues today, and religious right wing entities continue to oppose madrassah reforms.
<b>Anti-Terrorism (Second Amendment) Act, 2005</b>	Besides some administrative arrangements, this amendment enhanced the minimum and maximum punishment for acts of terrorism. The act allowed the transfer of cases of terrorism from one province to another and also enhanced the jurisdiction of the courts to offenses of abduction and kidnapping for ransom and possession and use of explosives in places of worship and court proceedings.
Provisional Constitution Order No. 1 of 2007	Even though this order primarily related to giving almost absolute powers to then president Pervez Musharraf, this piece of legislation theoretically also gave him the power to tackle terrorism and instability with an iron hand. However, Musharraf's period also saw an incremental rise in incidents of terrorism in Pakistan, especially after the Lal Masjid incident.
Prevention of Electronic Crimes Ordinance, 2007	Pakistan introduced severe penalties through this law to curb cyberterrorism in order to deter people worldwide from accessing or harming any data or network with illegitimate designs. Implementation concerns have arisen regarding civil liberties and the norms of international best practice.

## Annex 1: Major Counterterrorism Policies And Legislation\*

Title	Description
<i>Premier Yousuf Raza Gillani's 3D Policy of Dialogue, Deterrence and Development</i>	This unanimous resolution passed on October 22, 2008, by the Parliament of Pakistan outlined fourteen guidelines for the National Counter Terrorism Policy. The Parliamentary Committee on National Security also stressed the need for a comprehensive counterterrorism strategy, a focal institution to integrate counterterrorism and counterextremism efforts, and the formation of the National Counter Terrorism Authority (NACTA) to "coordinate and unify" national counterterrorism efforts. However, Premier Gillani's 3D policy could not be operationalized, and coordinating bodies like NACTA remain ineffective today.
<b>Anti-Terrorism (Amendment) Ordinance, 2009</b>	The definition of an act of terrorism was expanded even further by including attacks on government premises, official installations, schools, hospitals, and other public property. Responding to insurgency in the Swat district, any group or organization (not recognized by law) who took the law in its own hands, awarded punishments to terrorize public, resisted armed troops, and used its own preaching ideas through FM stations without government approval were also included in Section 6 of ATA as acts of terror.
<b>Anti-Terrorism (Amendment) Ordinance, 2010</b>	Under this amendment, the punishments for terrorism became more severe and the definition of terrorism expanded again. Notably, attacks on or the extortion of the business community were included, presumably in response to the frequency of such incidents in Karachi. Also noteworthy is the provision that if members of a proscribed organization formed another entity under a different name with similar purposes, the new entity would also be deemed a proscribed organization by default.
Anti-Money Laundering Act, 2010	Even though this is widely considered to be a law combating the financing of terrorism, the primary focus of this law remains anti-money laundering. Any crime in which it is demonstrable that the illicit funds were intended to be connected with terrorism is to be tried under the ATA. However, while the connection between money laundering and terrorism remains important, how successful this law has been is debatable.
Actions (in Aid of Civil Power) Regulation, 2011	Utilizing the "action in aid of civil power" clause under Article 245 of the constitution, this law permitted military operations against "miscreants," broadly defined to include person/s that intended to or had committed a terrorist act. The law encapsulated individuals, nonstate actors, and people (individually or in groups) who had infiltrated Pakistan from abroad to wage war against Pakistan by raising unlawful armies. It gave wide-ranging powers of detention to military authorities through internment authorities and internment centers created for the investigation of offenders. Even though a board was created for oversight, the law has remained problematic regarding constitutional and human rights, as well as right to a fair trial.
Investigation for Fair Trial Act, 2013	This law was enacted to regulate advanced and modern investigative techniques, such as covert surveillance and human intelligence, property interference, wire-tapping, and communication interception. The law essentially made such intelligence-generated evidence admissible in court through a system of warrants to be applied by authorized bodies. However, no cases using such evidence have been publicly reported to date.

## Annex 1: Major Counterterrorism Policies And Legislation\*

Title	Description
<b>Anti-Terrorism (Amendment) Act, 2013</b>	These amendments introduced sweeping changes, including an increase in preventative detention periods for suspects to up to ninety days, an expansion of witness protection measures, and the inclusion of some intercept evidence as being admissible in court.
<b>Anti-Terrorism (Second Amendment) Act, 2013</b>	
National Counter Terrorism Authority Act, 2013	This act gave NACTA official legal status. The authority's main mandate was to receive and collate data or intelligence for analysis and dissemination to relevant stakeholders.
Protection of Pakistan Ordinance, 2013	As a result of extensive counterterrorism operations, thousands of individuals were being detained for prosecution, especially in Karachi and tribal areas. Since the ATA was not deemed effective, this ordinance was enacted to protect Pakistan against the "waging of war" and to ensure the speedy prosecution of offenses falling within the schedule of the ordinance. The law was controversial in that it reversed the burden of proof on terrorism suspects and extended detention periods without due recourse to any judicial body (e.g., in the context of "enemy aliens" and retrospective applications).
Protection of Pakistan Act, 2014	This law essentially cemented the provisions of the ordinance above. Some cases have been launched under both laws but have yet to reach fruition in the ATCs.
<i>National Internal Security Policy (NISP), 2014</i>	This policy was enacted to counter terrorism and extremism in Pakistan and was hailed in government circles as a major step forward in Pakistan's quest for internal security. The NISP encompasses a Comprehensive Response Plan that focuses on shaping national narrative, development, dialogue, reintegration, and related legal reforms; and a Combined Deterrence Plan that focuses on joint intelligence sharing through NACTA. However, the policy remains largely unimplemented as of November 2015.
<i>National Action Plan (NAP), 2015</i>	This plan was promulgated to supplement ongoing antiterrorist offensives following a deadly Peshawar school attack. It focuses on establishing, for two years, special military-run courts to quickly try terrorist suspects; operationalizing NACTA; countering hate speech, extremist material, and terrorist financing; establishing and deploying a dedicated counterterrorism force; registering and regulating madrassahs; and revamping and reforming the criminal justice system to strengthen counterterrorism departments, including granting powers to the provincial criminal investigation divisions to intercept terrorist communications. However, most NAP provisions already exist in the NISP, and the NISP, in turn, includes many objectives that already exist under the ATA but have not been achieved.
Constitution (21st Amendment) Act (Act 1 of 2015)	After the Peshawar school attack, the government passed these amendments to allow the establishment of special Army courts to try terrorists expeditiously. These courts are currently operational, but case records are not being released to the public.
The Pakistan Army (Amendment) Act (Act II of 2015)	

\* The ATA and its amendments are highlighted in bold; government policies are highlighted in italics.





## Notes

1. See, for example, Valerie Wright, “Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment” (Washington, DC: The Sentencing Project, 2010), [www.sentencingproject.org/doc/Deterrence\\_Briefing.pdf](http://www.sentencingproject.org/doc/Deterrence_Briefing.pdf).
2. The group discussions were labeled D1, D2, and so on. Group D1, comprising investigating officers, was held May 11, 2015. Group D2, comprising midcareer police officers, was held May 26, 2015. Group D3, comprising Khawaja Khalid Farooq, ex-head of the National Counter Terrorism Authority, Pakistan, and Justice Faqeer Muhammad Khokhar, ex-chief justice and judge of the Supreme Court of Pakistan, was held on June 4, 2015. Group D4, comprising Justice (retd.) Allah Baksh Ranjha, ex-judge of the session courts and ATCs and two prosecutors, was held June 10, 2015. Group D5, comprising prosecutors, was held June 11, 2015. Group D6, comprising midcareer police officers who had investigated ATA offenses, was held on June 15, 2015. Group D7, comprising court paralegal and assistance staff, was held June 16, 2015. Group D8, comprising a retired ATC judge, a prosecutor, and police inspector, was held June 17, 2015. These discussions were held under Chatham House Rules, and findings from these groups are interspersed throughout the study. However, the study makes no assumptions, and all findings, even from these perception-based discussion groups, are corroborated by ATC judgments. The study drew on quotations from ATC judgments and cross referencing with actual cases.
3. These are referenced as legal citations, which have a specific terminology according to legal digest in which findings of these courts are published. These are then cited and made available to the legal community in the form of law books, reports, and digests, which constitute the main body of Pakistani jurisprudence on specific or general law. Wherever cited in references, these are termed as “Superior Court Ruling/s.”
4. Second Amendment Act 2013, ACT XX of 2013, to the ATA, 1997.
5. Anti-Terrorism (Amendment) Ordinance, 2001 (August 14, 2001), to the ATA, 1997.
6. Case number 261, dated 2006, Lahore ATC 2.
7. Pakistan Press Foundation, “As Killings Go Down, Extrajudicial Murders Rise,” Human Rights, November 10, 2013, [www.pakistanpressfoundation.org/2013/11/as-killings-go-down-extrajudicial-murders-rise/](http://www.pakistanpressfoundation.org/2013/11/as-killings-go-down-extrajudicial-murders-rise/), accessed June 17, 2015.
8. 11-EEEE of the ATA currently grants the preventive detention of suspects for up to three months, under conditions laid out in law.
9. *Mehram Ali versus Federation of Pakistan*, 1,497–98.
10. Ibid.
11. Written interview with Khawaja Khalid Farooq, June 2015.
12. Written interview with Justice Faqeer Muhammad Khokhar, June 2015.
13. Case number 187, dated 16-8-2004, Shahid Benazirabad ATC; case number 32, dated 22-6-2009, Bannu ATC.
14. Case number 645, dated 4-9-2007, Rawalpindi ATC 3.
15. Case number 645, dated 4-9-2007, Rawalpindi ATC 3; case number 13, dated 16-9-2004, Dera Ghazi Khan ATC.
16. Case number 22, dated 8-3-2012, Abbotabad ATC.
17. Case dated 26-9-2011, Peshawar ATC 2.
18. Written interview with Justice Allah Baksh Ranjha, retired judge of the ATC, Punjab, June 10, 2015. Also discussion group D4, see *Supra* Note 3.
19. See, for example, case number 86, dated 23-5-2008, Rawalpindi ATC 1.
20. Ibid; case number 100, dated 4-2-2010, Rawalpindi ATC 3; case number 332, dated 7-6-2008, Multan ATC 1; case number 224, dated 16-8-2009, Dera Ghazi Khan ATC.
21. Case number 51, dated 23-3-2009, Malakand, Swat ATC.
22. Written interview with Khawaja Khalid Farooq, June 2015.
23. Case number 25, dated 21-4-1999, Malakand, Swat ATC.
24. Case number 556, dated 21-8-2008, Rawalpindi ATC 2.
25. Case number 51, dated 23-3-2009, Malakand, Swat ATC.
26. Case number 75, dated 4-2-2008, Rawalpindi ATC 2.
27. Case number 150, dated 16-12-2010, Rawalpindi ATC 1.
28. Case number 78, dated 23-3-2009, Rawalpindi ATC 1; case number 90, 4-4-2009, Rawalpindi ATC 1.
29. Case number 369, dated 20-10-2010, Mardan ATC.
30. Superior Court rulings: 2010 PLD 938 SUPREME-COURT, 2011 YLR 1833. Offenses under the ATA are not compoundable, as held by Superior Court ruling 2005 SCMR 1162. In Pakistan, there is no consolidated list of noncompoundable offenses; any offense not mentioned in Section 345 of the Code of Criminal Procedure is deemed to be noncompoundable. In cases when the complainant and offender settle, the

- complainant usually receives some form of compensation (*diyat*) and agrees not to prosecute the accused. A lawful agreement may be effected without the exchange of *diyat*, but there must be some arrangements between the parties to settle their differences.
31. Case number 66, dated 15-3-2010, Malakand, Swat ATC.
  32. Case number 26, dated 1-2-2010, Malakand, Swat ATC.
  33. Case number 66, dated 15-3-2010, Malakand, Swat ATC. Also see Superior Court rulings: 2009 YLR 1526, 2008 YLR 1233, 2007 PLD 12, 2007 YLR 279.
  34. Zahir Shah Sherazi, "Judge, 10 Others Killed in Islamabad Blasts, Firing," *Dawn*, March 4, 2014, [www.dawn.com/news/1090737](http://www.dawn.com/news/1090737), accessed May 29, 2015.
  35. "BB Murder Case Prosecutor Shot Dead in Islamabad," *Dawn*, May 3, 2013, [www.dawn.com/news/795313/bb-murder-case-prosecutor-shot-dead-in-islamabad](http://www.dawn.com/news/795313/bb-murder-case-prosecutor-shot-dead-in-islamabad), accessed June 25, 2015.
  36. Case number 827, dated 2007, Rawalpindi ATC; case number 25, dated 21-4-199, Malakand, Swat ATC; case number 101, dated 13-9-2009, Malakand, Swat ATC; case number 95, dated 11-3-2010, Malakand, Swat ATC; case number 130, dated 28-09-2009, Rawalpindi ATC 2; case number 207, dated 1-8-2008, Bannu ATC.
  37. Ibid; case number 146, dated 28-08-2009, Malakand, Swat ATC.
  38. Case number 63, dated 2011, Bbadin ATC; case number 519, dated 2008, Lahore ATC 4.
  39. Case number 39, dated 2001; Karachi ATC 3.
  40. Case number 813, dated 4-10-2006, Rawalpindi ATC.
  41. Case number 46, dated 2010, Badin ATC.
  42. Case number 62, dated 2011, Dera Ghazi Khan ATC.
  43. Superior Court ruling: 2011 YLR 62, 2011 YLR 2072, 2011 P.C.r.L.J 1133. Also see *Supra* Notes 6, 10, and 32.
  44. Case number 199, dated 6-10-2003, Rawalpindi ATC 2.
  45. Case number 100, dated 4-2-2010, Rawalpindi ATC 3.
  46. Case number 253, dated 4-9-2003, Rawalpindi ATC 2. Also Superior Court rulings: PLD 2005 Supreme Court 40, PLD 1999 LAH 487.
  47. Written interview with Khawaja Khalid Farooq, June 2015.
  48. Written interview with Justice Allah Baksh Ranjha, June 2015.
  49. Written interview with Justice Faqeer Muhammad Khokhar, June 2015.
  50. Written interview with Justice Allah Baksh Ranjha, June 2015.
  51. Dawood Azami, "How the Taliban Groom Child Suicide Bombers," BBC World Service, Asia, December 15, 2014, [www.bbc.com/news/world-asia-27250144](http://www.bbc.com/news/world-asia-27250144), accessed May 28, 2015. Also see "Child Suicide Bombers 'Victims of the Most Brutal Exploitation,'" IRIN Humanitarian News & Analysis, February 12, 2008, [www.irinnews.org/report/76701/pakistan-child-suicide-bombers-victims-of-the-most-brutal-exploitation](http://www.irinnews.org/report/76701/pakistan-child-suicide-bombers-victims-of-the-most-brutal-exploitation), accessed June 2, 2015.
  52. Case number 827, dated 2007, Rawalpindi ATC.
  53. Case number 235, dated 26-3-2009, Peshawar ATC 1.
  54. Case number 29, dated 17-3-2008, Malakand, Swat ATC.
  55. Case number 384, dated 1-7-2008, Rawalpindi ATC 2.
  56. Written interview with Justice Allah Baksh Ranjha, June 2015.
  57. Ibid.; Case number 435, dated 8-12-2010, Gujranwala ATC 1.
  58. Section 11 (EE) of ATA 1997.
  59. Zahid Gishkori, "New Terror Watch List Catalogues 5,400 Militants," *The Express Tribune*, January 17, 2015, <http://tribune.com.pk/story/823183/new-terror-watch-list-catalogues-5400-militants/>, accessed on June 19, 2015).
  60. Case number 497, dated 2-8-2009, Peshawar ATC; case number 266, dated 23-4-2009, Peshawar ATC.
  61. Case number 90, dated 4-4-2009, Rawalpindi ATC 1.
  62. 21-H of ATA 1997. The section mentions an officer not below the rank of superintendent of police as a recording officer, subject to conditions laid out. However, a district police officer is implied in the section.
  63. *Supra* Notes 6, 10, and 32.
  64. For instance, case number 90, dated 4-4-2009, Rawalpindi ATC 1.
  65. Case number 78, dated 23-3-2009, Rawalpindi ATC 1.
  66. Case number 364, dated 26-11-2008, Peshawar ATC 3.
  67. For instance, Punjab has the Punjab Criminal Prosecution Service (Constitution, Functions, and Powers) Act 2006 (Act III of 2006). Read the full act at <http://punjablaws.gov.pk/laws/483.html>, accessed June 18, 2015.

68. Case number 78, dated 23-3-2009, Rawalpindi ATC 1; case number 90, dated 4-4-2009, Rawalpindi ATC 1; case number 260, dated 2-6-2008, Rawalpindi ATC 1.
69. Case number 813, dated 4-10-2006, Rawalpindi ATC.
70. Case number 11, dated 2009, Quetta ATC 2.
71. Case number 25, dated 21-4-1999, Malakand, Swat, ATC; case number 109, dated 8-4-2009, Faisalabad ATC; case number 384, dated 1-7-2008, Rawalpindi ATC 2.
72. Case number 694, dated 9-12-2009, Sargodha ATC.
73. 27-B ATA 1997.
74. "CII Rules Out DNA as Primary Evidence in Rape Cases," *Dawn*, September 23, 2013, [www.dawn.com/news/1044879](http://www.dawn.com/news/1044879), accessed June 26, 2015.
75. Case number 78, dated 23-3-2009, Rawalpindi ATC 1.
76. Muhammad Faisal Ali, "Set-Up to Identify Fingerprints Inoperative for a Year," *Dawn*, February 12, 2014, [www.dawn.com/news/1086434](http://www.dawn.com/news/1086434), accessed June 10, 2015.
77. Case number 813, dated 4-10-2006, Rawalpindi ATC.
78. Case number 413, dated 25-01-2010, Dera Ghazi Khan ATC.
79. Case number 813, dated 4-10-2006, Rawalpindi ATC.
80. Case number 552, dated 8-9-2008, Peshawar ATC 1.
81. Case number 588, dated 11-12-2009, Gujranwala ATC 1.
82. Written interview with Khawaja Khalid Farooq, June 2015.
83. For instance, see Superior Court ruling: 2008 SCMR 825.
84. Case number 588, dated 11-12-2009, Gujranwala ATC 1. Also see Superior Court rulings: 1992 SC(Cri) SC(PAK) 725, PLD 2001 Supreme Court 222.
85. Case number 75, dated 4-2-2008, Rawalpindi ATC 2.
86. Case number 257, dated 2009, Badin ATC.
87. Case number 127, dated 15-02-2006, Malakand, Swat ATC; case number 552, dated 8-9-2008, Peshawar ATC 1.
88. Case number 25, dated 21-4-1999, Malakand, Swat ATC; Case number 3, dated 2004, Dera Ghazi Khan ATC. Also Superior Court ruling: PLD 1996 FSC 1; Case number 75, dated 4-2-2008, Rawalpindi ATC 2.
89. Case number 146, dated 28-08-2009, Malakand, Swat ATC.
90. Superior Court ruling: PCr LJ 2006 Peshawar 5.
91. Superior Court rulings: PCr LJ 2006 Peshawar 5, 2003 SCMR 522.
92. Case number 146, dated 28-08-2009, Malakand, Swat ATC; case number 364, dated 26-11-2008, Peshawar ATC 3.
93. Case number 813, dated 4-10-2006, Rawalpindi ATC; case number 150, dated 4-5-2010, Dera Ghazi Khan ATC.
94. Case number 51, dated 23-3-2009, Malakand, Swat ATC. Also Superior Court ruling: 2007 YLR 1090.
95. Case number 413, dated 25-01-2010, Dera Ghazi Khan ATC.
96. Case number 222, dated 17-7-2007, Rawalpindi ATC 1; case number 25, dated 21-4-1999, Malakand, Swat ATC; case number 146, dated 28-08-2009, Malakand, Swat ATC; case number 18, dated 9-1-2009, Malakand, Swat ATC; case number 78, dated 23-3-2009, Rawalpindi ATC 1; case number 12, dated 2007, Rawalpindi ATC; case number 199, dated 6-10-2003, Rawalpindi ATC 2; case number 150, dated 4-5-2010, Dera Ghazi Khan ATC. Also, PLJ 2002 SC 1023.
97. Case number 30, dated 7-02-2009, Sargodha ATC.
98. Case number 260, dated 2-6-2008, Rawalpindi ATC 1. Also Superior Court ruling: 2000 YLR 600.
99. Superior Court ruling: 2011 SCMR 877 SC.
100. Case number 25, dated 21-4-1999, Malakand, Swat ATC.
101. Case number 12, dated 13-9-2004, Dera Ghazi Khan ATC.
102. Superior Court rulings: 2004 YLR 2479, ref PLD 2002 SC 590.
103. Case number 239, dated 25-09-2010, Mardan ATC; case number 207, dated 6-11-2012, Jacobabad ATC.
104. Case number 813, dated 4-10-2006, Rawalpindi ATC; case number 645, dated 4-9-2007, Rawalpindi ATC 3.
105. Case number 35, dated 08-2-2010, Rawalpindi ATC 2.
106. Written interview with Justice Allah Baksh Ranjha, June 2015.
107. Case number 497, dated 2-8-2009, Peshawar ATC.
108. Case number 146, dated 28-08-2009, Malakand, Swat ATC.
109. Case number 29, dated 17-3-2008, Malakand, Swat ATC.

110. Case number 12, dated 13-9-2004, Dera Ghazi Khan ATC; case number 645, dated 4-9-2007, Rawalpindi ATC 3.
111. Jahanzaib Haque, *Hate Speech; A Study of Pakistan's Cyberspace* (Islamabad: Bytes for All, 2014), [http://content.bytesforall.pk/sites/default/files/Pakistan\\_Hate\\_Speech\\_Report\\_2014.pdf](http://content.bytesforall.pk/sites/default/files/Pakistan_Hate_Speech_Report_2014.pdf).
112. Gishkori, "New Terror Watch List Catalogues 5,400 Militants."
113. Case number 473, dated 25-12-2009, Multan ATC 1.
114. Case number 56, dated 2010, Badin ATC.
115. Written interview with Khawaja Khalid Farooq, June 2015.
116. Positions are advertised in the media and posted on job-related websites. For example, see the Pakistan Jobs website: [www.pakistanjobsbank.com/Jobs/35574/Lahore-High-Court-Jobs-2014-September-Additional-District-and-Session-Judges-Apply-Online/](http://www.pakistanjobsbank.com/Jobs/35574/Lahore-High-Court-Jobs-2014-September-Additional-District-and-Session-Judges-Apply-Online/), accessed August 24, 2015.
117. Ashraf Javed, "Punjab Takes Lead in Raising Counter-Terror Corporals," *The Nation*, February 2, 2015, <http://nation.com.pk/lahore/02-Feb-2015/punjab-takes-lead-in-raising-counter-terror-corporals>, accessed July 3, 2015.
118. Case number 62, dated 28-11-2014, Karachi ATC 4.
119. For details about this facility, see <http://pfsa.gop.pk/>, accessed August 4, 2015.
120. See an illustrative volume of high court rules at <http://lhc.gov.pk/system/files/volume5.pdf>, accessed September 4, 2015.
121. The Sindh Witness Protection Act 2013, [www.pas.gov.pk/index.php/acts/details/en/31/238](http://www.pas.gov.pk/index.php/acts/details/en/31/238), accessed August 17, 2015.
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Conviction rates in Pakistan's anti-terrorism courts are extremely low; and given the rise in attacks over the last decade, addressing the contributing factors has become a major concern. Despite special provisions in the Anti-Terrorism Act (ATA) and the availability of more modern investigative methods and forensics, implementation issues continue to plague the criminal justice system. They include, among others, lack of an effective case management system; procedural errors and low adherence to standards of evidence; poor investigative capacity; a heavy reliance on witness testimony at the exclusion of other evidence, including forensic evidence; and lack of coordination between the police and prosecution. However, due to a renewed national resolve to fight terrorism, potential support for reform is high; this report provides recommendations for addressing some of the more central issues, including the ATA's overly broad definition of terrorism.

## Other USIP Publications

- *An Appraisal of Pakistan's Anti-Terrorism Act* by Parvez Tariq and Mehwish Rani (Special Report, August 2015)
- *Charting Pakistan's Internal Security Policy* by Raza Rumi (Special Report, May 2015)
- *A Counterterrorism Role for Pakistan's Police Stations* by Robert Perito and Tariq Parvez (Special Report, August 2014)
- *Mapping Conflict Trends in Pakistan* by Saira Yamin and Salma Malik (Peaceworks, February 2014)
- *Empowering the Pakistan Police* by Robert M. Perito and Tariq Parvez (Special Report, April 2013)

