
TERROR ON DEATH ROW

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

A report by Justice Project Pakistan and Reprieve
December 2014

OVER 800 PRISONERS ON DEATH ROW IN
PAKISTAN WERE TRIED AS 'TERRORISTS'

THIS REPRESENTS MORE THAN ONE IN TEN
OF PAKISTAN'S DEATH ROW

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

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

THERE ARE CURRENTLY OVER 17,000
PENDING 'TERRORISM' CASES IN PAKISTAN

CONTENTS

GLOSSARY OF KEY TERMS	1
EXECUTIVE SUMMARY	2
DATA AND METHODOLOGY	4
INTRODUCTION - CONCERNS ABOUT THE LEGISLATION.....	5
PAKISTAN'S DEATH ROW - IN FIGURES	12
STATISTICAL CASE STUDY - SINDH	15
CASE STUDIES	16
SHAFQAT HUSSAIN	16
ZAFAR IQBAL	17
MUHAMMAD AKHTAR	18
MUHAMMAD AMIN	19
CONCLUSION AND RECOMMENDATIONS	20
ANNEX 1: STATISTICAL ANALYSIS OF DATA (TO DECEMBER 2012)	21
ANNEX 2: STATISTICAL ANALYSIS OF DATA - SINDH (TO OCTOBER 2014).....	25

GLOSSARY OF KEY TERMS

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

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

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

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

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

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

EXECUTIVE SUMMARY

Reducing the threat from terrorism against the civilian population of Pakistan is a problem that has plagued and polarised Pakistan's society for many years. Over the course of 2014 alone, we have seen numerous terrorist attacks on civilian targets. In response, we have seen a hardening of the legislative frameworks used to combat acts of terrorism, together with a widening of the definition of 'terrorist'.

Whilst it is clear that measures must be taken, it is becoming increasingly obvious that the current strategies are not working effectively. As this report will set out, the imposition of progressively arbitrary and draconian legislation does disproportionate harm to certain sectors of society, whilst failing to deter or reduce real terrorist activity.

The Anti-Terrorism Act of 1997 is one such piece of legislation. Under the Act (**analysed in more detail on pages 5-11 below**), trials are rushed through, often denying lawyers acting for the accused time to present a full defence. There is also an increased likelihood of police torture, and fundamental rights of defendants are explicitly suspended. In short, the result of the overuse and abuse of this Act is that whole swathes of defendants whose crimes bear no relation to terrorism have been sentenced to death following extremely unfair trials - whilst terrorist attacks continue unabated.

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

It is particularly concerning to note that the data we have obtained suggests that over 10% of all those on death row in Pakistan were tried as 'terrorists'. In the province of Sindh, the proportion of defendants tried as 'terrorists' rises to a full 40% of all death penalty cases. The sheer numbers suggest that the anti-terrorism laws are being overused, and studies of the individual cases further illustrate the problem.

Investigation conducted by JPP and Reprieve into individual cases of those sentenced to death by anti-terrorism courts over the past two decades likewise shows that instead of being reserved for the most

serious cases of recognisable acts of terror, the anti-terror legislation is in fact being used to try ordinary criminal cases, either in a deliberate attempt to evade the procedural safeguards guaranteed by ordinary courts or due to the vague and overly broad definitions of 'terrorism' in the legislation.

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

DATA AND METHODOLOGY

JPP and Reprieve were able to compile this report after obtaining death row prisoner data from 38 prisons across Pakistan's four provinces (Balochistan, Khyber Pakhtunkhwa (KPK), Punjab and Sindh). The data is accurate up to December 2012.

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

In addition to this, we were recently able to obtain further data on the death row population of the province of Sindh. Dated October 2014, the data provides a very clear insight into the current composition of Sindh's death row and has allowed us to analyse developments in the use of terrorism legislation in the province over the last two years.

It should be noted that the total figure of 6,872 death-sentenced prisoners represents those prisoners for whom we were able to obtain individual data. We believe that the total number of prisoners on death row in the country is even higher, and is likely in excess of 8,000 individuals.¹

PART I

INTRODUCTION: CONCERNS ABOUT THE LEGISLATION

Through the statistical analysis and individual case studies considered in this report, JPP and Reprieve have identified five key, interrelated concerns about Pakistan's current and forthcoming anti-terror laws:

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

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

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

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

- (a) The action falls with the meaning of sub-section (2) and
- (b) The use or threat is designed to **coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society**; or

(c) The use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause, or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians, including damaging property by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies, provided that nothing herein contained shall apply to a democratic and religious rally or a peaceful demonstration in accordance with law.

As a result of the highly vague wording of sub-sections (b) and (c), the requirements for a case to be deemed an 'act of terror' have often been met in circumstances which, on objective analysis, were far removed from terrorism as properly understood. In the view of the judge in Zafar Iqbal's case (see Case Study on page 17), for instance, *"the cold blooded murder of father by his son" was "itself sufficient to create the sense of insecurity and terror in the people of the locality"*.

"TERRORISM IS HARDLY THE ONLY ENTERPRISE INVOLVING VIOLENCE AND THE THREAT OF VIOLENCE. SO DOES WAR, COERCIVE DIPLOMACY, AND BAR ROOM BRAWLS." Walter Laqueur, *The New Terrorism: Fanaticism and the Arms of Mass Destruction*, 1999²

Whilst there is no doubt that a killing might well have an effect on those living in the locality, to deem that any such 'fear' or 'insecurity' is in itself sufficient to classify that defendant as a 'terrorist' - and cause him to lose a number of his fundamental rights and face almost certain conviction and death sentence in an anti-terrorism court - cannot be justified.

Section 6(2) of the ATA lists a full 16 categories of action which can be considered to fall within the meaning of 'terrorism' as set out above. Whilst some of these are actions which would immediately be understood as 'terrorist acts', the list also includes the actions of extorting money (Section 6(2)(k)); disseminating ideas on FM stations without government approval (Section 6(2)(p)); inciting hatred and contempt (Section 6(2)(f)); and causing grievous damage to property (Section 6(2)(c)).

Adding yet further uncertainty, the Government may add to this list at any time, without recourse to Parliament.³

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

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

CONCERN NO. 2: THE GROSS OVERUSE OF THE ANTI-TERRORISM ACT

“THERE ARE CURRENTLY MORE THAN 17,000 CASES PENDING UNDER THE ATA.” *Al Jazeera* article, July 2014⁴

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

As revealed in our statistical analysis below, there is evidence that defendants charged with ‘ordinary’ crimes such as robbery or kidnap are being tried as terrorists without justification for this. As a result, not only do these defendants face infringement of their rights and arbitrarily harsh punishment, but it also undermines any claim that the Pakistani justice system is targeting and prosecuting terrorism cases in a way that is having a meaningful deterrent effect.

One such individual is Shafqat Hussain (see **Case Study on page 16**). Far from being a terrorist responsible for instilling fear across Pakistan – the profile of prisoner whose executions the Government had announced it was prioritising – he had been just 14 years old when he was arrested and brutally tortured by police until he confessed to a crime he insists (and the evidence indicates) he did not commit. Even discounting the evidence of Shafqat’s juvenility and torture, on the analysis of the Sindh High Court itself, Shafqat was guilty of a botched kidnapping in which he accidentally caused the death of his victim. Whilst we do not dispute the seriousness of such crimes, it is very clear that they are far from being ‘terrorism’ as this term is usually understood.

From investigations conducted by JPP and Reprieve it is clear that Shafqat's case is far from unique. When his and the other case studies in this report are taken in conjunction with the sheer number of death penalty cases tried in the anti-terrorism courts (see pages 12-15 below) they suggest a systemic and potentially fatal overuse of the ATA.

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

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

In order to achieve this, however, the anti-terrorism courts explicitly impose multiple curtailments on a defendant's right to a fair trial, many of which represent a major departure from standard judicial procedure. They include, amongst others:⁵

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

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

Judges likewise face pressure to conclude trials within seven working days

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

Trials may be held without the defendant being present

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

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

As a result, a defendant improperly tried as a 'terrorist' does not merely face wrongful categorisation as this type of offender. He or she instead faces a wholesale curtailment of many of the most fundamental rights of fair trial and due process, in a trial for which he and his lawyer have not even had sufficient time to prepare. Even for those whose crimes may more legitimately be characterised as 'terrorist acts', the scale of the curtailment of fundamental rights imposed by the Anti-Terrorism Act is unjustifiable.

"THIS IS A RECIPE FOR TURNING AN INNOCENT PERSON INTO A SUSPECT, AND A SUSPECT INTO A CULPRIT - EVEN A DEAD CULPRIT. THE LAW ALMOST ASSUMES GUILT. IT MAKES THINGS AS DIFFICULT FOR THE ACCUSED AS POSSIBLE BEHIND THE FIG LEAF OF DUE PROCESS." Human Rights Commission of Pakistan, August 1997⁶

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

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

In ordinary criminal cases, the use of confessions given to police officers or security forces - as opposed to those given to magistrates - is prohibited by the *Qanun-e-Shahadat* Order of 1984 (the Evidence Act). This prohibition provides a crucial safeguard against the use of torture by police during their investigations to extract a 'confession' from a defendant, which are then used to convict that defendant at trial.

"POLICE TORTURED ME TO TRY AND MAKE ME CONFESS. I WAS HUNG BY MY HANDS, BEATEN REPEATEDLY WITH BATONS, PUNCHED, SLAPPED AND KICKED. THEY HELD A GUN TO MY HEAD AND SAID THEY WOULD KILL ME IF I DID NOT CONFESS. I WAS 17 YEARS OLD AT THE TIME." Death row prisoner Muhammad Amin (see Case Study on page 19 below)

Torture by police, as a report produced by JPP earlier this year made clear,⁷ is a widespread and systemic problem in Pakistan; it represents one of the most

fundamental challenges faced by the country's criminal justice system. As such, the fact that a key safeguard against the use of evidence obtained through torture - and, it is hoped, against recourse to torture by police in the first place - is entirely removed in terrorism cases is a cause for grave concern.

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

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

“[THE] OVERBURDENING OF THE SYSTEM HAS DEBILITATING EFFECTS FOR REAL TERRORISM CASES.”
Zulfiqar Hameed, *Anti-Terrorism Law*, July 2012⁸

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

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

“DENYING PAKISTANIS THEIR UNIVERSAL RIGHTS AND FREEDOMS ISN'T A SMART OR EFFECTIVE TOOL FOR BATTLING TERRORISM.” Human Rights Watch,
Pakistan's Dangerous Anti-Terrorism Law, July 2014⁹

This includes the use of vague and overly broad language, as well as the PPO's adoption from the ATA of the explicit suspension of key fundamental rights, as discussed above. Without action, the use of this legislation in future will perpetuate, and perhaps even exacerbate, the serious concerns highlighted in this report.

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

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

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

PART II

PAKISTAN'S DEATH ROW - IN FIGURES

JPP and Reprieve have obtained data, dating up to December 2012, on the prisoners held on death row in Pakistan's four provinces: Balochistan, Khyber Pakhtunkhwa ('KPK'), Punjab and Sindh.¹⁰ Together, these regions comprise approximately 94% of Pakistan's population.

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

It should be noted that the figure of 6,872 represents those prisoners for whom we were able to obtain individual data. We believe that the total number of prisoners on death row in the country is even higher, and is likely in excess of 8,000.¹¹

FIGURE 1: NUMBER OF PRISONERS ON DEATH ROW IN PAKISTAN

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

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

THE PROVINCE OF PUNJAB ACCOUNTS FOR MORE THAN 90% OF
PAKISTAN'S DEATH ROW POPULATION

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

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

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

OVER ONE IN TEN OF THE PRISONERS ON DEATH ROW IN PAKISTAN WERE TRIED AS TERRORISTS

IN THE PROVINCE OF SINDH, NEARLY 40% OF THE PRISONERS ON DEATH ROW WERE TRIED AS TERRORISTS - THIS IS OVER THREE TIMES THE NATIONAL AVERAGE

FIGURE 3: OFFENCES FOR WHICH DEATH ROW PRISONERS IN PAKISTAN WERE SENTENCED TO DEATH

The table below provides a breakdown of offences for which those on death row in Pakistan were sentenced to death and lists whether the prisoner was also charged with any terrorist offence under the Anti-Terrorism Act 1997, or its predecessors.

Offence	Prisoners tried as terrorists (% of total prisoners)	Prisoners tried in ordinary courts (% of total prisoners)
Lethal offences No terrorism charge	215 (3.13%)	5,857 (85.23%)
Lethal offences With terrorism charge	485 (7.06%)	N/A
Kidnap No terrorism charge	22 (0.32%)	16 (0.23%)
Kidnap With terrorism charge	77 (1.12%)	N/A
Rape/ <i>zina</i> No terrorism charge	9 (0.13%)	40 (0.58%)
Robbery No terrorism charge	0	1 (0.01%)
Narcotics offences No terrorism charge	1 (0.01%)	63 (0.91%)
Blasphemy No terrorism charge	1 (0.01%)	11 (0.16%)
Military offences No terrorism charge	1 (0.01%)	16 (0.23%)
<i>Data not available</i>	5 (0.07%)	42 (0.61%)
OTHER	2 ¹² (0.03%)	5 ¹³ + 3 ¹⁴ (0.12%)
TOTAL	818 (11.90%)	6,054 (88.10%)

MORE THAN A QUARTER OF THOSE TRIED AS TERRORISTS ARE, ON THE DATA HELD BY THE PRISON, **NOT LISTED AS HAVING BEEN CHARGED WITH ANY TERRORIST OFFENCE UNDER THE ANTI-TERRORISM ACT**

PART III

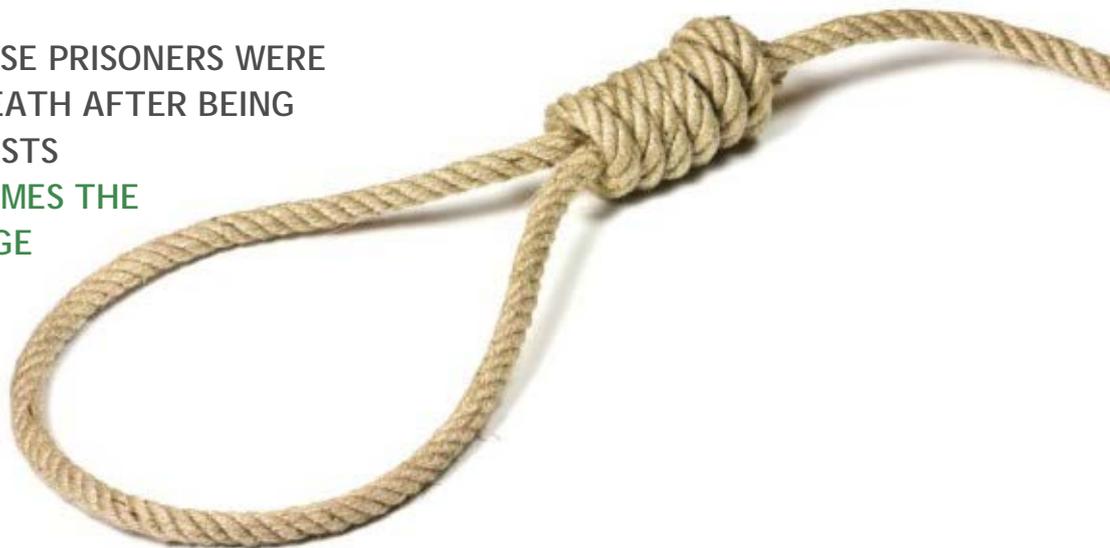
STATISTICAL CASE STUDY - SINDH

JPP and Reprieve have recently obtained further data from Sindh province, which dates up to October 2014 (see Annex 2). This comprehensive and up-to-date data has allowed us to do a detailed analysis of the developments in the use of terrorism legislation in this province over the last two years.

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

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

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



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

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

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

PART IV CASE STUDIES

SHAFQAT HUSSAIN

THE 'TERRORIST': A 14 YEAR OLD BOY WITH NO PRIOR CONVICTIONS

SENTENCED TO DEATH: NOVEMBER 2004 (10 YEARS SERVED ON DEATH ROW)

HELD IN: CENTRAL PRISON KARACHI, SINDH

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

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

**"NO-ONE LEAVES THE ANTI-TERRORISM
COURTS WITHOUT A DEATH SENTENCE."**
Shafqat's defence lawyer, prior to his trial

Recognising that the case against Shafqat could not stand, the High Court threw out his murder conviction on appeal. Yet the Court failed to strike down Shafqat's associated 'terrorism' charge, which had been tenuously justified on the basis that the original crime *"created a sense of terror in the wider community"*.

For this charge alone Shafqat has been left to await execution in an overcrowded 'death cell'. Last year, he was informed that he would be executed on 25 August 2013. Letters were sent to his family giving them notice that they would need to say their final goodbyes. Shafqat received notice of the stay of his execution only a few days before he was due to be hanged.

ZAFAR IQBAL

THE 'TERRORIST': A SON WHO SHOT HIS FATHER DURING A HEATED ARGUMENT

SENTENCED TO DEATH: MAY 2003 (11 YEARS SERVED ON DEATH ROW)

HELD IN: CENTRAL JAIL MIANWALI, PUNJAB

Zafar allegedly shot his father in a fit of rage during a long-running dispute about Zafar's inheritance. Such a case is clearly a world away from the 'terrorism' envisaged by the ATA. Yet Zafar was tried as a terrorist on the basis that *"the cold blooded murder of father by his son is itself sufficient to create the sense of insecurity and terror in the people of the locality"*.

All of the evidence presented at trial against Zafar was, on the trial judge's own assessment, deeply flawed in some way. The judge acknowledged that the prosecution had not convincingly proved motive; he excluded the ballistics evidence as the police had failed to have it forensically examined; and he deemed large swathes of the eyewitness testimony *"not confidence inspiring"*.

Despite these myriad weaknesses in the prosecution's case, Zafar was found guilty and received two death sentences. All of this happened in less than three weeks; it is little wonder that Zafar's defence lawyer gave no sign of having prepared his client's case properly.

"THE COLD BLOODED MURDER OF FATHER BY HIS SON IS ITSELF SUFFICIENT TO CREATE THE SENSE OF INSECURITY AND TERROR IN THE PEOPLE OF THE LOCALITY." The Anti-Terrorism Court judge at Zafar's trial

In 2008, shortly before Zafar was due to be executed, he was granted a pardon by his brother and other family members. Yet he remains under threat of execution on the basis of his - entirely unjustified - sentence under the Anti-Terrorism Act.

MUHAMMAD AKHTAR

THE 'TERRORIST': A MAN ACQUITTED OF HIS CRIMES, YET STILL ON DEATH ROW

SENTENCED TO DEATH: DECEMBER 2000 (14 YEARS SERVED ON DEATH ROW)

HELD IN: CENTRAL JAIL FAISALABAD, PUNJAB

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

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

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

"THE VICTIM'S RIGHT ARM AND LEG ARE TIED TO A BED (MANJI) AND HIS LEFT ARM AND LEG TO A SECOND PARALLEL BED, LEAVING HIS BODY SUSPENDED IN THE MIDDLE. THE TWO BEDS ARE PULLED APART, STRETCHING THE VICTIM'S BODY AND FORCING HIS JOINTS TO SUSTAIN THE ENTIRE WEIGHT OF HIS BODY." Definition of torture by *manji*¹⁵

The evidence used at trial to convict Muhammad was likewise extremely flawed. On appeal, the courts found that the eyewitness testimony about the alleged incident was "*utterly unreliable*" and Muhammad was acquitted of all charges of rape after the Supreme Court found that neither forensic nor medical testing had indicated a single sign of this. Despite these clear holes in the prosecution case, however, the Supreme Court upheld Muhammad's death sentence.

Some years ago, Muhammad received a pardon from the victim's family, acquitting him of the murder charge. He has therefore been acquitted of both crimes on which his death sentence for terrorism was based - yet he remains on death row, now 35 years old and steadily losing his eyesight.

MUHAMMAD AMIN

THE 'TERRORIST': A TEENAGE BYSTANDER CAUGHT IN ANOTHER FAMILY'S DISPUTE

SENTENCED TO DEATH: JANUARY 2000 (14 YEARS SERVED ON DEATH ROW)

HELD IN: CENTRAL JAIL RAWALPINDI, PUNJAB

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

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

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

"THE TENDERING OF DOCUMENTS LIKE HIS SCHOOL LEAVING CERTIFICATE [INDICATING THAT MUHAMMAD WAS A JUVENILE AT THE TIME OF HIS ARREST] AT THIS STAGE SHOULD ALSO BE OF NO AVAIL SO BELATEDLY." The Supreme Court judge in Muhammad's case

In 2004, Muhammad was pardoned for the murder conviction by the victim's family. However, he continues to face execution under the Anti-Terrorism Act. Muhammad has now spent over 14 years on death row and, during this time, has developed severe memory loss.

CONCLUSION AND RECOMMENDATIONS

CONCLUSION

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

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

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

RECOMMENDATIONS TO THE GOVERNMENT OF PAKISTAN

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

ANNEX 1 - STATISTICAL ANALYSIS OF DATA (TO DECEMBER 2012) BALOCHISTAN

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

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

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

Offence	Prisoners tried as terrorists (% of total prisoners)	Prisoners tried in ordinary courts (% of total prisoners)
Lethal offences No terrorism charge	5 (5.62%)	60 (67.42 %)
Lethal offences With terrorism charge	21 (23.60%)	N/A
Kidnap No terrorism charge	0	0
Kidnap With terrorism charge	0	N/A
Rape/ <i>zina</i> No terrorism charge	0	3 (3.37%)
Hijacking No terrorism charge	0	0
Robbery No terrorism charge	0	0
Narcotics offences No terrorism charge	0	0
Blasphemy No terrorism charge	0	0
Military offences No terrorism charge	0	0
<i>Data not available</i>	0	0
TOTAL	26 (29.21%)	63 (70.79%)

ANNEX 1 - STATISTICAL ANALYSIS OF DATA (TO DECEMBER 2012) KPK

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

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

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

Offence	Prisoners tried as terrorists (% of total prisoners tried as terrorists in KPK)	Prisoners tried in ordinary courts (% of total prisoners tried in ordinary courts in KPK)
Lethal offences No terrorism charge	6 (3.28%)	139 (75.96%)
Lethal offences With terrorism charge	14 (7.65%)	N/A
Kidnap No terrorism charge	0	1 (0.55%)
Kidnap With terrorism charge	0	N/A
Rape/ <i>zina</i> No terrorism charge	0	3 (1.64%)
Hijacking No terrorism charge	0	0
Robbery No terrorism charge	0	1 (0.55%)
Narcotics offences No terrorism charge	0	6 (3.28%)
Blasphemy No terrorism charge	0	0
Military offences No terrorism charge	0	1 (0.55%)
<i>Data not available</i>	0	12 (6.56%)
TOTAL	20 (10.93%)	163 (89.07%)

ANNEX 1 - STATISTICAL ANALYSIS OF DATA (TO DECEMBER 2012) PUNJAB

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

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

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

Offence	Prisoners tried as terrorists (% of total prisoners tried as terrorists in Punjab)	Prisoners tried in ordinary courts (% of total prisoners tried in ordinary courts in Punjab)
Lethal offences No terrorism charge	180 (2.87%)	5,479 (87.40%)
Lethal offences With terrorism charge	368 (5.87%)	N/A
Kidnap No terrorism charge	17 (0.27%)	14 (0.22%)
Kidnap With terrorism charge	62 (0.99%)	N/A
Rape/ <i>zina</i> No terrorism charge	8 (0.13%)	30 (0.48%)
Hijacking No terrorism charge	0	0
Robbery No terrorism charge	0	0
Narcotics offences No terrorism charge	1 (0.02%)	57 (0.91%)
Blasphemy No terrorism charge	1 (0.02%)	11 (0.18%)
Military offences No terrorism charge	1 (0.02%)	15 (0.24%)
<i>Data not available</i>	1 (0.02%)	14 (0.22%)
OTHER	2 ¹⁶ (0.03%)	5 ¹⁷ + 3 ¹⁸ (0.13%)
TOTAL	641 (10.22%)	5,628 (89.78%)

ANNEX 1 - STATISTICAL ANALYSIS OF DATA (TO DECEMBER 2012) SINDH

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

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

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

Offence	Prisoners tried as terrorists (% of total prisoners tried as terrorists in Sindh)	Prisoners tried in ordinary courts (% of total prisoners tried in ordinary courts in Sindh)
Lethal offences No terrorism charge	24 (7.25%)	179 (54.08%)
Lethal offences With terrorism charge	82 (24.77%)	N/A
Kidnap No terrorism charge	5 (1.51%)	1 (0.30%)
Kidnap With terrorism charge	15 (4.53%)	N/A
Rape/ <i>zina</i> No terrorism charge	1 (0.30%)	4 (1.21%)
Hijacking No terrorism charge	0	0
Robbery No terrorism charge	0	0
Narcotics offences No terrorism charge	0	0
Blasphemy No terrorism charge	0	0
Military offences No terrorism charge	0	0
<i>Data not available</i>	4 (1.21%)	16 (4.83%)
TOTAL	131 (39.58%)	200 (60.42%)

ANNEX 2 - STATISTICAL ANALYSIS OF SINDH DATA (TO OCTOBER 2014)

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

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

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

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

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

ANNEX 2 - STATISTICAL ANALYSIS OF SINDH DATA (TO OCTOBER 2014)

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

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

ANNEX 2 - STATISTICAL ANALYSIS OF SINDH DATA (TO OCTOBER 2014)

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

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

Time between FIR and death sentence	Prisoners tried as terrorists (% of total Sindh prisoners)	Prisoners tried in ordinary courts (% of total Sindh prisoners)
0-6 months	10 (2.22%)	0
7-9 months	8 (1.77%)	1 (0.22%)
10-12 months	10 (2.22%)	1 (0.22%)
1+ years	55 (12.19%)	12 (2.66%)
2+ years	47 (10.42%)	26 (5.76%)
3+ years	5 (1.11%)	32 (7.10%)
4+ years	10 (2.22%)	38 (8.43%)
5+ years	6 (1.33%)	37 (8.20%)
6+ years	2 (0.44%)	33 (7.32%)
7+ years	1 (0.22%)	24 (5.32%)
8+ years	8 (1.77%)	17 (3.77%)
9+ years	6 (1.33%)	15 (3.33%)
10+ years	0	3 (0.67%)
11+ years	0	2 (0.44%)
12+ years	0	12 (2.66%)
13+ years	2 (0.44%)	7 (1.55%)

14+ years	0	1 (0.22%)
Data not available	5 (1.11%)	15 (3.33%)
TOTAL	175 (38.80%)	276 (61.20%)

¹ This figure is agreed upon by both the non-governmental Human Rights Commission of Pakistan (see <https://www.fidh.org/International-Federation-for-Human-Rights/asia/pakistan/open-letter-to-the-pakistani-authorities-on-death-penalty-14009> - last accessed 9/12/2014) and Amnesty International (see <http://www.amnesty.org/en/news/pakistan-death-penalty-2013-07-03> - last accessed 9/12/2014)

² Walter Laqueur, *The New Terrorism: Fanaticism and the Arms of Mass Destruction*, New York: Oxford University Press, 1999, p. 6

³ Human Rights Watch, 'Destroying Legality: Pakistan's crackdown on judges and lawyers', December 2007, p. 6; available at: <http://www.hrw.org/node/10527/section/6> (last accessed 9/12/2014)

⁴ *Al Jazeera*, 'Pakistan activists upset by new security law', 13 July 2014; available at: <http://www.aljazeera.com/indepth/features/2014/07/pakistan-activists-upset-new-security-law-201471316625972647.html> (last accessed 9/12/2014)

⁵ For a full analysis, see Amnesty International, 'PAKISTAN Legalizing the impermissible: The new antiterrorism law', September 1997; available at: <http://www.amnesty.org/en/library/asset/ASA33/034/1997/en/d5abe31b-e99a-11dd-b3a1-f9ff1fdfb4a5/asa330341997en.pdf> (last accessed 9/12/2014)

⁶ Aziz Siddiqui, Human Rights Commission of Pakistan, 17 August 1997, cited in Amnesty International, 'PAKISTAN Legalizing the impermissible: The new antiterrorism law', September 1997; available at: <http://www.amnesty.org/en/library/asset/ASA33/034/1997/en/d5abe31b-e99a-11dd-b3a1-f9ff1fdfb4a5/asa330341997en.pdf> (last accessed 9/12/2014)

⁷ Justice Project Pakistan and Allard K. Lowenstein International Human Rights Clinic, Yale Law School, 'Policing as torture: A report on systematic brutality and torture by the police in Faisalabad, Pakistan', March 2014; available at: http://www.law.yale.edu/documents/pdf/JPP_Launch_Report_050514.pdf (last accessed 9/12/2014)

⁸ Zulfiqar Hameed, 'Anti-terrorism Law', published in *Stabilizing Pakistan through Police Reform: A report by the Asia Society Independent Commission on Pakistan Police Reform*, ed. Hassan Abas, July 2012, p. 51

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

¹⁰ This does not include data for the administrative territories of Federally Administered Tribal Areas ('FATA'), Azad Kashmir or Gilgit-Baltistan.

¹¹ See no. 1 *supra*.

¹² The charges for two of the death row prisoners tried as terrorists in Punjab are listed as s. 324 Pakistan Penal Code ('PPC') (*attempt to commit murder*), s. 34 PPC (*acts done by several persons in furtherance of common intention*) and s. 7(c) ATA (*acts of terrorism causing grievous bodily harm or injury to any person*). None of these offences is eligible for punishment with the death penalty and so it is unclear how these men are held on death row.

¹³ Likewise, five of the death row prisoners tried in ordinary courts in Punjab are listed as having been sentenced to death under s. 324 PPC (*attempt to commit murder*), despite this not being a death eligible offence.

¹⁴ Finally, a further three death row prisoners tried in ordinary courts in Punjab are listed as having been sentenced to death under s. 201 PPC (*causing disappearance of evidence of offence, or giving false information to screen offender*). This likewise is not eligible for punishment with death.

¹⁵ Justice Project Pakistan and Allard K. Lowenstein International Human Rights Clinic, Yale Law School, 'Policing as torture: A report on systematic brutality and torture by the police in Faisalabad, Pakistan', March 2014, p. ii; available at: http://www.law.yale.edu/documents/pdf/JPP_Launch_Report_050514.pdf (last accessed 9/12/2014)

¹⁶ See no. 12 *supra*.

¹⁷ See no. 13 *supra*.

¹⁸ See no. 14 *supra*.

ABOUT THE AUTHORS

Justice Project Pakistan ('JPP')

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

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

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

Reprieve

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

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

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

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