

The Anti-Terrorism Act, 1997 of office order, 1999

HE ANTI-TERRORISM
ACT, 1997 [ACT NO. XXVII OF 1997]

Gazette of Pakistan, Extraordinary, Part I, 20th August, 1997

An Act to provide for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences and for matters connected therewith and incidental thereto;

It is hereby enacted as follows. —

COMMENTARY

Anti-Terrorism Court constituted under Anti-Terrorism Act (1997) would have no jurisdiction to try offence under S. 10, Zina (Hudood) Ordinance (1979) committed before enactment of Act (1997). Acquittal recorded by Anti-Terrorism Court after holding trial in such case set aside by Federal Shariat Court and case remanded.

Neither party raising objection to trial of case by Special Court under Anti-Terrorism Act on ground that occurrence in question did not fall within purview of terrorism nor any such objection in appeal against acquittal recorded by Special Court. Since no objection in appeal against acquittal recorded by Special Court. Since no objection had ever been raised by any party and High Court is a Court of appeal against judgments not only by Special Courts under Anti-Terrorism Act but also the ones passed by Court of Sessions, High Court not advert to a possible objection to the jurisdiction of Special Court vis-à-vis the trial in question.⁶

Declaration by Supreme Court about ultra vires nature of some provisions of the Act would not affect the trials already conducted and convictions recorded under the Act as it existed before such declaration by Supreme Court.⁷

Irregularities committed by Special Court in conduct of trial. Conviction/sentence recorded by Special Court cannot be challenged before Supreme Court on ground of such irregularities when such irregularities could have been challenged before Trial Court and/or before the Appellate Tribunals. Supreme Court under Art. 185(3) would not interfere with impugned judgment of Special Court on ground of such irregularities.⁸

Comparative analysis of Anti-Terrorism Act before and after its amendment by Ordinance IV of 1999, Ordinance XII of 1999 and Supreme Court judgment in Mehram Ali's case. Chart containing such comparative analysis provided in the judgment.⁹

An informative discussion on British law regarding prevention of terrorism. Prevention of Terrorism Temporary Provisions Act, 1976.¹

Promotion of social justice and eradication of social evils. No objection can be taken to the establishment of Special Court for Speedy Trials and prevention of terrorist acts/heinous offences under the Anti-Terrorism Act, 1997. Such Courts being validly constituted Courts are

subordinate to the High Court and have to perform judicial functions under the Constitution and provisions contained in the Act (except which have been declared ultra vires).²

Establishment and jurisdiction of Courts. Framework. Establishment of Special Courts under Anti-Terrorism Act, 1997 is under an Act of the Parliament and is not founded on a Constitutional provision, and, therefore, if any of the provisions of the Anti-Terrorism Act, 1997 is in conflict with the Constitution provisions, the same cannot be sustained. Such declaration by Supreme Court, however, will not affect the trials already conducted and convictions recorded under the Act and the pending trials may continue subject to this order.³

Vires of the Act. Simpliciter the fact that other foreign countries have also enacted certain Acts to cope with menace of terrorism like TADA in India and Northern Ireland (Emergency Provisions) Act, 1974 in UK, would not warrant enactment of Anti-Terrorism Act in Pakistan, which may be violative of the Constitution of Pakistan.⁴

Special Courts constituted under the Act are to operate/function under control and supervision of High Court concerned in terms of Art. 203 of Constitution.⁵

Act is essentially procedural in nature. Substantive rights of accused persons, by and large, remain unaffected. Provisions of Act, as a whole, are not ex facie violative of Constitution. Mere fact that Act envisages a speedy trial of certain heinous offences with a special procedure cannot be construed as violative of fundamental right or other Constitutional rights of citizens. No exception can be taken to retrospective operation of law which deals with procedure of trial of offences of terrorism, sectarian violence and/or otherwise heinous in nature. Act, although retrospective in operation, cannot be said to have taken away or abridged any vested rights of accused/convicts in absence of a great different kind of punishment for past offences. Retrospectivity of act is unquestionable as there are no Constitutional limitations or constraints upon Parliament to legislate retrospectivity.⁶

Anti-Terrorism Act is not new phenomenon. Such measures were taken in the past in Pakistan and outside.⁷

It is no function of High Court to question wisdom or justification of Legislature in enacting Anti-Terrorism Act on basis of any extrinsic factors. It is not for High Court to substitute its opinion for that of Parliament as to whether a particular category of offences would be triable by Special Courts.⁸

Constitution of Special Courts and Appellate Tribunals for purposes of speedy trial of more serious crimes cannot be invalidate on touchstone of Arts. 4, 25 of Constitution. No exception can be taken to reasonable classification of Special Courts/Appellate Tribunals with reference to a particular category of offences.⁹

Word "terrorism" has its political origins in the French revolution, in the sense of terror carried out by State. With enlightenment, the idea of popular sovereignty was born; it was in its name and in its defence that revolution justified State terror. In Third World, terrorism has been used as a technique for destabilization or as a (supposed) means of eventually seizing power. Yet in every case it has led to rise of extremism with alarming rise in number of victims of terrorism. As such, it has become necessary to take effective legislative measures to counter-act terrorism

which would be in addition to preventive action that can be taken by State administrative side under the law.¹

Act is intra vires the Constitution as it is covered by Item No. 1, Part 1 of Federal Legislative List in Fourth Schedule of Constitution being relatable to defence of Federation. Similarly, the Act is also covered by Items Nos. 1 and 2 of Concurrent Legislative List which provide for criminal law, criminal procedure, evidence and oath.²

1. Short title, extent and commencement. — (1) This Act may be called the Anti-Terrorism Act, 1997.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definitions. — In this Act, unless there is anything repugnant in the subject or context, —

(a) "armed forces" means the Military, Naval and Air Forces of Pakistan and the Reserves of such Forces;

(b) "civil armed forces" means the Frontier Constabulary, Frontier Corps, Pakistan Coast Guards, Pakistan Rangers or any other civil armed force notified by the Federal Government as such;

(c) "Code" means the Code of Criminal Procedure, 1898 (Act V of 1898);

3[(d) "child" means a person who at the time of the commission of the offence has not attained the age of the eighteen years;

(e) "Court" means an Anti-Terrorism Court established under section 13;

(f) "explosives" means any bomb, grenade, dynamite, or explosive substance capable of causing an injury to any person or damage to any property and includes any explosive substances as defined in the Explosives Act, 1884 (IV of 1884);

(g) "fire-arms" means any or all types and gauges of handguns, rifles and shotguns, whether automatic, semi-automatic or bolt action, and shall include all other fire-arms as defined in the Arms Ordinance, 1965 (W.P. Ord. XX of 1965);

(h) "fine" means a pecuniary amount to be determined by the Court having regard to the facts and circumstances of the case;

(i) "Government" means the Federal Government or, as the case may be, the Provincial Government;

(j) "grievous", in relation to bodily injury, means any emasculation, mutilation, incapacitation, disfigurement or severe harm or hurt; and in relation to property, means severe loss; damage or destruction; (k) "High Court" means the High Court having territorial jurisdiction in respect of the area for which an Anti-Terrorism Court has been established;

(l) "hijacking" means any unlawful seizure or exercise of control, or any attempt at unlawful seizure or exercise of control, of an aircraft, by force, violence, threat or any form of obstruction, directly or through any other person, from within or outside the aircraft;

(m) "hostage-taking" means the holding of a person captive with threats made to kill or harm that person if demands are not met;

(n) "kidnapping for ransom" means the action of conveying any person from any place, without his consent, or by force compelling or by any deceitful means inducing him, to go from any place, and unlawfully detaining him and demanding or attempting to demand, money, pecuniary or other benefit from him or from another person, as a condition of his release;

(o) "meeting" means a meeting of two or more persons, whether in public or private;

(p) "organization" means any group, combination or body of persons acting under a distinctive name;

(q) "proscribed organization" means any organization using a name which is listed in the First Schedule under section 11B;

(r) "public servant" shall have the same meaning as in Section 21 of the Pakistan Penal Code, 1860 or in any other law for the time being in force;

(s) "Schedule" means a Schedule to this Act;

(t) "Scheduled offence" means an offence as set out in the Third Schedule;

(u) "sectarian" means pertaining to, devoted to, peculiar to, or one which promotes the interest of a religious sect, or sects, in a bigoted or prejudicial manner;

(v) "sectarian hatred" means hatred against a group of persons defined by reference to religion, religious sect, religious persuasion, or religious belief;

(w) "serious" means dangerous to life or property;

(x) "terrorism" or "act of terrorism" has the meaning as assigned to it in section 6;

(y) "terrorist" has the meaning as assigned to it in section 6(5).

(z) "terrorist investigation" means an investigation of;

(a) the commission, preparation or instigation of acts of terrorism under this Act;

(b) an act which appears to have been done for the purposes of terrorism;

(c) the resources of a proscribed organization;

(d) the commission, preparation or instigation of an offence under this Act; or

(e) any other act for which investigation may be necessary for the purposes of this Act.

(aa) "terrorist property" means:

(i)(a) money or other property which is used or is likely to be used for the purposes of terrorism (including any resources of a proscribed organization);

(b) proceeds of the commission of acts of terrorism;

(c) proceeds of acts carried out for the purposes of terrorism; and

(ii) In sub-section (i) above;

(a) a reference to proceeds of an act, includes reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments of other rewards in connection with the commission);

(b) the reference to an organization's resources includes a reference to any money or other property which is applied or made available, or is to be applied or made available, for use by the organization, and includes assets of any kind, whether tangible or intangible, movable or immovable, and legal documents or instruments in any form, whether written, electronic or digital, and shares, securities, bonds, drafts and letters of credit; and

(c) a reference to money includes a reference to any cash which means any coins, notes in any currency, postal orders, money orders, bank credit, travelers' cheques, bank cheques, bankers' drafts, and such other kinds of monetary instruments as the Federal Government may by order specify;

(bb) "weapon" means any item which can be used to injure or cause bodily harm, and includes any type of fire-arm, explosive, sword, dagger, knuckle-duster, stengun, bomb, grenade, rocket launcher, mortar or any chemical, biological weapon or any other thing which can be used for causing injury, hurt, harm or destruction of person or property, and includes 'illicit arms' as defined in the Surrender of Illicit Arms Act, 1991 (XXI of 1991); and

(cc) all other terms and expressions used but not defined in this Act, shall have the meanings as are assigned to them in the Pakistan Penal Code, 1860, or the Code of Criminal Procedure, 1898.]

COMMENTARY

Words "after the commencement of this Act" in Entry (2)(a)(iii) relate only to case of commission of robbery or dacoity. It has no reference to murder of member of Armed Forces which is exclusively triable by Special Court under Entry No. 2(a)(ii). Such offence under Entry No. 2(A)(ii) relating to murder of member of Armed Forces would be triable by Special Court even though offence was committed prior to enforcement of Act.4

Murder of employee of PAF. Trial by A.T.C. Application for transfer of case to Sessions Court on the ground that offence took place prior to enforcement of Act, 1997. Dismissal of. Writ against. A plain reading of amended provision in Act, 1997, shows that under entry No. 2(a)(ii) of Schedule, case of an alleged murder of a member of Armed Forces is exclusively triable by Special Court. Reference in clause (iii) "after commencement of this Act" relates to case of commission of robbery or dacoity and it has no relevance with clauses (i) and (ii) i.e. murder of a member of armed forces. Petition dismissed in limine.5

Scheduled offence means a terrorist or sectarian related offence as set out in the Act or schedule thereto.6

Murder trial. Cross cases. Transmission of case to Special Judge constituted under Anti-Terrorism Act, 1997. Challenge to. Whether Special Court has powers to try cross-version in which petitioners are charged u/ss. 324, 477, 148 & 149, P.P.C. and S. 302, P.P.C. has been added by S.H.O. in his report u/s. 173, Cr.P.C. Question of. It is well-entrenched mode of trial that cross-case/cross-version are to be recorded separately and trial in such cases is to be conducted side by side by same Judge; that Judge has to decide such cases simultaneously with an object to obviate conflicting judgments. Addition of S. 302, P.P.C. by SHO in his report u/s. 173, Cr.P.C. is, however, of minimal significance but items in schedule abetment of offence u/s. 2(e) of Act, 1997 clearly show that any attempt or conspiracy be made any abetment of offence u/s. 302, P.P.C. is a scheduled offence. S. 324, P.P.C. covers offences such as attempt to commit murder is a scheduled offence under Act of 1997. Petition is wholly without any merit and is accordingly dismissed.7

Child molestation. Offence of. Special Court had no jurisdiction to try a person charged under sections 364-A, 337, PPC and Section 12 of Offence of Zina (Enforcement of Huddod) Ordinance, 1979, because those provisions are not put in the Schedule.8

3. 9[x x x x x x x]

4. Calling in of armed forces and civil armed forces in aid of civil power. — (1) It shall be lawful for the Federal Government to order, and subject to sub-section (2), for the Provincial Government to secure, the presence of armed forces and civil armed forces in any area for the prevention and punishment of terrorist acts and scheduled offences in accordance with the provisions of this Act.

(2) If, in the opinion of the Provincial Government, the presence of armed forces, or civil armed forces, is necessary in order to prevent the commission of terrorist acts or scheduled offences in any area it may request the Federal Government to direct the presence or posting of units or personnel of the armed forces, or civil armed forces, in such numbers as may be deemed necessary for the prevention or control of terrorist acts or scheduled offences.

(3) The Federal Government may decide whether the requirements of the situation call for the deployment of: —

(i) the civil armed forces, or

(ii) the armed forces,

and on so deciding shall, by means of a notification in the official Gazette issued under clause (i) or (ii) or both authorize and direct the posting thereof.

5. Use of armed forces and civil armed forces to prevent terrorism. — (1) Any police officer, or member of the armed forces, or civil armed forces, who is present or deployed in any area may, after giving sufficient warning, use the necessary force to prevent the commission of terrorist acts or scheduled offences, and in so doing shall, in the case of an officer of the armed forces or civil armed forces, exercise all the powers of a police officer under the Code.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), an officer of police, armed forces and civil armed forces may: -

(i) after giving prior warning use such force as may be deemed necessary or appropriate, bearing in mind all the facts and circumstances of the situation, against any person who is committing 10[x x x x x] a terrorist act or a scheduled offence, 1[it shall be lawful for any such officer, or any senior officer, when fired upon] to fire, or order the firing upon any person or persons against whom he is authorized to use force in terms hereof;

(ii) arrest, without warrant, any person who has committed an act of terrorism or a scheduled offence or against whom a reasonable suspicion exists that he has committed, or is about to commit, any such act or offence; and

(iii) enter and search, without warrant any premises to make any arrest or to take possession of any property, fire-arm, weapon or article used, or likely to be used, in the commission of any terrorist act or scheduled offence.

(3) Nothing contained in sub-section (1) or (2) shall affect the provisions of Chapter IX of the Code and the provisions of section 132 of the Code shall apply to any person acting under this section.

COMMENTARY

Anti-Terrorism Court constituted under Anti-Terrorism Act has no power or jurisdiction to issue search warrant under S. 100, Cr.P.C .as power under S. 100 is a quasi-ministerial power which is to be exercised by a Special Judge/Magistrate within ambit of S. 100, Cr.P.C. Order by Anti-Terrorism Court issuing search warrant under S. 100 would be coram non judge, totally without jurisdiction and having no legal sanctity.²

Provisions of S. 5(2)(i) as introduced by Amendment Ordinance XIII of 1999 are violative of Art. 9 of Constitution (1973) as well guidelines provided by Supreme Court in Mehram Ali's case. They are invalid to the extent indicated in the judgment and require to be suitably amended.³

Provisions of S. 5(2)(i) in their present form, if given effect to, would create horrible and far-reaching consequences, inasmuch as the law-enforcing agencies cannot be given a license to kill indiscriminately any person who are allegedly involved in committing terrorist acts. Clearly, such a right is to be exercised as a preventive measure and not made basis for launching attack for retaliation, lest it would tantamount to legalizing alleged police encounters/extra-judicial killings in garb of exercise of power by a Police Officer vesting in him u/s. 5(2)(i).⁴

Use of Armed Forces and Civil Armed Forces to prevent terrorism. Provision of S. 5(2)(i), Anti-Terrorism Act, 1997 is invalid to the extent it authorize the Officer of Police, Armed Forces and Civil Armed Forces charged with the duty of preventing terrorism, to open fire or order for opening of fire against person who, in his opinion, in all probability is likely to commit a terrorist act or any scheduled offence, without being fired upon. Such declaration by Supreme Court, however, will not affect the trials already conducted and convictions recorded under the pending trials may continue subject to this order.⁵

Provision of sub-section (1) providing for use of armed forces and civil armed forces to prevent terrorism is violative of right to life guaranteed as fundamental right by Art. 9 of Constitution (1973), Provision of S. 5(1) in its present form is not sustainable and it may be amended by providing that officer can fire upon accused person if he himself has been fired upon by accused.⁶

Cases which are not case of preventing armed forces or civil armed forces from performing their duties within scope of S. 5 would not be triable by Anti-Terrorism Court under the Act but such cases would be triable by Session Courts. Held: (i) Unless it shown that the act was covered by earlier part of S. 6, the last two lines of S. 6 would not ipso facto bring the alleged act within scope of terrorist act. (ii) Offences in present cases were triable by Sessions Courts as offences in question were neither scheduled offences nor were they offences under Anti-Terrorism Act.⁷

Section 5(2)(i) is held to be invalid to the extent it authorizes Officer of Police, armed forces and civil armed forces charged with duty of preventing terrorism, to open fire order or for opening of fire against person who in his opinion in all probability is likely to commit a terrorist act or any scheduled offence, without being fired upon.⁸

1[6. Terrorism. --- (1) In this Act, "terrorism" means the use or threat of action where:

(a) the action falls within 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.

(2) An "action" shall fall within the meaning of sub-section (1), if it:

(a) involves the doing of anything that causes death;

(b) involves grievous violence against a person or grievous bodily injury or harm to a person;

(c) involves grievous damage to property;

(d) involves the doing of anything that is likely to cause death or endangers a person's life;

(e) involves kidnapping for ransom, hostage-taking or hijacking;

(f) incites hatred and contempt on religious, sectarian or ethnic basis to stir up violence or cause internal disturbance;

(g) involves stoning, brick-bating or any other forms of mischief to spread panic;

(h) involves firing on religious congregations, mosques, imambargahs, churches, temples and all other places of worship, or random firing to spread panic, or involves any forcible takeover of mosques or other places of worship;

(i) creates a serious risk to safety of the public or a section of the public, or is designed to frighten the general public and thereby prevent them from coming out and carrying on their lawful trade and daily business, and disrupts civic, life;

(j) involves the burning of vehicles or any other serious form of arson;

(k) involves extortion of money ("bhatta") or property;

(l) is designed to seriously interfere with or seriously disrupt a communications system or public utility service;

(m) involved serious coercion or intimidation of a public servant in order to force him to discharge or to refrain from discharging his lawful duties; or

(n) involves serious violence against a member of the police force, armed forces, civil armed forces, or a public servant.

(3) The use or threat of use of any action falling within sub-section (2), which involves the use of fire-arms, explosives or any other weapon, is terrorism, whether or not sub-section 1(c) is satisfied.

(4) In this section "action" includes an act or a series of acts.

(5) In this Act, terrorism, includes any act done for the benefit of a proscribed organization.

(6) A person who commits an offence under this section or any other provision of this Act, shall be guilty of an act of terrorism.

(7) In this Act, a "terrorist" means;

(a) a person who has committed an offence of terrorism under this Act, and is or has been concerned in the commission, preparation or instigation of acts of terrorism;

(b) a person who is or has been, whether before or after the coming into force of this Act, concerned in the commission, preparation or instigation of acts of terrorism, shall also be included in the meaning given in clause (a) above."]

5[7. Punishment for acts of terrorism. Whoever commits an act of terrorism under section 6, whereby: ---

(a) death of any person is caused, shall be punishable, on conviction, with death or with imprisonment for life, and with fine; or

(b) he does anything likely to cause death or endangers life, but death or hurt is not caused, shall be punishable, on conviction, with imprisonment of either description for a term which shall be not less than five years but may extend to fourteen years and with fine;

(c) grievous bodily harm or injury is caused to any person, shall be punishable, on conviction, with imprisonment of either description for a term which shall not be less than seven years but may extend to imprisonment for life and shall also be liable to a fine; or

(d) grievous damage to property is caused, shall be punishable on conviction, with imprisonment, of either description for a term not less than ten years and not exceeding fourteen years, and shall also be liable to fine; or

(e) the offence of kidnapping for ransom or hostage-taking has been committed, shall be punishable, on conviction, with death or imprisonment for life and shall also be liable to forfeiture of property; or

(f) the offence of hijacking, has been committed, shall be punishable, on conviction, with death or imprisonment for life, and shall also be liable to forfeiture of property and fine;

(g) the act of terrorism committed falls under section 6(2)(f) and (g), shall be punishable, on conviction, with imprisonment of not less than six months and not more than three years and with fine; or

(h) the act of terrorism committed falls under clause (h) to (n) of sub-section (2) of section 6, shall be punishable, on conviction, to imprisonment of not less than one year and not more than ten years and with fine; and

(i) any other act of terrorism not falling under clauses (a) to (h) above or under any other provision of this Act, shall be punishable, on conviction, to imprisonment of not less than six months and not more than five years or with fine or with both.]

COMMENTARY

Terrorist act committed prior to promulgation of Anti-Terrorism Act, 1997 — Conviction under S.7 of Anti-Terrorism Act, 1997 — Validity — Case could have been tried by Anti-Terrorism Court but the punishment could not have been given under the provisions of new dispensation and in such cases the existing law at the relevant time had to be applied — Conviction under S.7 of Anti-Terrorism Act, 1997 was set aside in circumstances.5a

Prosecution witnesses had the advantage of light emitting from the beams of two cars in which the accused could have been easily identified — Identification parade had been properly held after taking all the necessary precautions and observing due formalities and the same did not suffer from any defect — Prosecution version was supported by the positive reports of the Chemical Examiners, Serologist and Forensic Science Laboratory — Ocular version was also corroborated by circumstantial evidence — High Court after considering all aspects of the case and pleas raised by the defence had convicted the accused — Impugned judgment was well-

reasoned and was based on the principles laid down by Supreme Court for safe administration of criminal justice — Leave to appeal was refused in circumstances.5b

6[7A. x x x x x x x x x x x x x x x]

7[7B. x x x x x x x x x x x x x x x]

8. Prohibition of acts intended or likely to stir up sectarian hatred. — A person who: —

(a) uses threatening, abusive or insulting words or behaviour; or

(b) displays, publishes or distributes any written material which is threatening, abusive or insulting; or

(c) distributes or shows or plays a recording of visual images or sounds which are threatening, abusive or insulting; or

(d) has in his possession written material or a recording or visual images or sounds which are threatening, abusive or insulting with a view to their being displayed or published by himself or another, view to their being displayed or published by himself or another,

shall be guilty of an offence if: —

(i) he intends thereby to stir up sectarian hatred; or

(ii) having regard to all the circumstances, sectarian hatred is likely to be stirred up thereby.

9. Punishment for offence under section 8. — Whoever contravenes any proviso of section 8 shall be punished with 8[x x x] imprisonment for a term which may extend to 9[five] years, 1[and with fine].

10. Power to enter or search. — If any officer of the police, armed forces or civil armed forces is satisfied that there are reasonable grounds for suspecting that a person has possession of written material or a recording in contravention of section 8 he may enter and search the premises where it is suspected the material or recording is situated and take possession of the same:

2[Provided that the concerned officer shall first record in writing his reasons for such belief and serve a copy thereof either on the person or on the premises.]

COMMENTARY

Power to enter or search. Inviolability of dignity of man. Provision of S. 10 of Anti-Terrorism Act, 1997, in its present form being direct in conflict with Art. 14 of the Constitution, is not valid; the same requires to be suitably amended as to provide that before entering upon premises which is suspected to have material or a recording in contravention of S. 8 of the said Act, the concerned Officer of Police, Armed Forces or Civil Armed Forces shall record in writing his reasons for such belief and serve on the person of premises concerned a copy of such reasons before conducting such search. Such declaration by Supreme Court, however, will not

affect the trials already conducted and convictions recorded under the Act and the pending trials may continue subject to this order.³

Power to enter and search given to police, armed forces or civil armed forces by S. 10 is directly in conflict with Art. 14 of Constitution, which confers a fundamental right as to dignity of man by inter alia laying down that dignity of man and, subject to law, privacy of home shall be inviolable.⁴

S. 10 in its present form is not in accordance with law. It should be suitably amended in order to provide that concerned officer of police, armed forces or civil armed forces shall record and serve on person of premises concerned a copy of such reasons before conducting such search.⁵

S. 10 of the Anti-Terrorism Act, 1997, in its present form is not valid; same requires to be suitably amended as to provide that before entering upon premises which is suspected to have material or a recording in contravention of Section 8 of Act, concerned Officer of Police, armed forces or civil armed forces shall record in writing his reasons for such belief and serve on the person of premises concerned a copy of such reasons before conducting such search.⁶

11. Power to order forfeiture. — (1) An 7[Anti-Terrorism Court] by which a person is convicted of an offence under section 9 shall order to be forfeited any material or recording referred to therein.

(2) Where the person who collected the material or recording cannot be found or identified the 8[Anti-Terrorism Court] on the application of the officer seizing the material or recording, shall forfeit the material or recording to the State to be disposed of as directed by it.

1[11-A. Organizations concerned in terrorism. --- For the purposes of this Act, an organization is concerned in terrorism if it: ---

- (a) commits or participates in acts of terrorism;
- (b) prepares for terrorism;
- (c) promotes or encourages terrorism;
- (d) supports and assists any organization concerned with terrorism;
- (e) patronizes and assists in the incitement of hatred and contempt of religious, sectarian or ethnic lines that stir up disorder;
- (f) fails to expel from its ranks or ostracize those who commit acts of terrorism and presents them as heroic persons; or
- (g) is otherwise concerned in terrorism.

11-B. Proscription. --- (1) For the purposes of this Act, an organization is proscribed if: --

- (a) the Federal Government, having reason to believe that an organization is concerned in terrorism, by order, lists it in the First Schedule;

(b) it operates under the same name as an organization listed in the First Schedule or it operates under a different name; or

(c) the First Schedule is amended by the Federal Government in any way to enforce proscription;

(2) The Federal Government may, by order, add or remove an organization from the First Schedule or amend it in any other way.

11C. Right of Review. --- (1) Where any proscribed organization is aggrieved by the order of the Federal Government made under section 11B, it may, within thirty days of such order, file a review application, in writing, before the Federal Government, stating the grounds on which it is made, and the Federal Government shall, after hearing the applicant, decide the matter within ninety days.

(2) An organization whose review application has been refused under sub-section (1) may file an appeal to the High Court within thirty days of the refusal of the review application.

(3) The Federal Government shall appoint a Proscribed Organizations Review Committee to determine all review applications under sub-section (1).

11D. Observation Order. --- Where the Federal Government, has reason to believe that an organization is acting in a manner that it may be concerned in terrorism:

(1) The organization may be kept under observation, if:

(a) the name of the organization is listed in the Second Schedule by order of the Federal Government; or

(b) it operates under the same name as an organization listed in the Second Schedule.

(2) An organization or a person aggrieved by the observation order passed under sub-section (1) may file a review application before the Federal Government, which shall, after hearing the applicant, decide the matter within sixty days.

(3) Where the organization is under observation, the Federal Government may further extend the period of observation, only after giving the organization an opportunity of being heard.

(4) Each observation period shall be for six months, and may be extended by the Federal Government only after giving an opportunity of being heard to the organization concerned.

11E. Measures to be taken against a proscribed organization. --- Where any organization shall be proscribed;

(1) Amongst other measures to be taken by the Federal Government: ---

(a) its offices, if any, shall be sealed;

(b) its accounts, if any, shall be frozen;

(c) all literature, posters, banners, or printed, electronic, digital or other material shall be seized; and

(d) publication, printing or dissemination of any press statements, press conferences or public utterances by or on behalf of or in support of a proscribed organization shall be prohibited.

(2) The Proscribed Organization shall submit all accounts of its income and expenditure for its political and social welfare activities and disclose all funding sources to the competent authority designated by the Federal Government.

11F. Membership, support and meetings relating to a Proscribed Organization. --- (1) A person is guilty of an offence if he belongs or professes to belong to a proscribed organization.

(2) A person guilty of an offence under sub-section (1) shall be liable on conviction to a term not exceeding six months' imprisonment and a fine.

(3) A person commits an offence if he;

(a) solicits or invites support for a proscribed organization, and the support is not, or is not restricted to, the provision of money or other property; or

(b) arranges, manages or assists in managing, or addressing a meeting which he knows is: --

(i) to support a proscribed organization;

(ii) to further the activities of a proscribed organization; or

(iii) to be addressed by a person who belongs or professes to belong to a proscribed organization.

(4) A person commits an offence if he addresses a meeting, or delivers a sermon to a religious gathering, by any means whether verbal, written, electronic, digital or otherwise, and the purpose of his address or sermon, is to encourage support for a proscribed organization or to further its activities.

(5) A person commits an offence if he solicits, collects or raises funds for a proscribed organization.

(6) A person guilty of an offence under sub-section (3), (4) and (5) shall be liable on conviction to a term of imprisonment not less than one year and not more than five years and a fine.

11G. Uniform. --- A person commits an offence if he--

(a) wears, carries or displays any article, symbol, or any flag or banner connected with or associated with any proscribed organization; or

(b) carries, wears or displays any uniform, item of clothing or dress in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a proscribed organization.

(2) A person who commits an offence under sub-section (1) shall be liable by way of summary procedure to simple imprisonment for a term not exceeding three months or to a fine or to both.

11H. Funds raising. --- (1) A person commits an offence if he: --

(a) invites another to provide money or other property, and

(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purpose of terrorism.

(2) A person commits an offence if:

(a) he receives money or other property, and

(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purpose of terrorism.

(3) A person commits an offence if he:

(a) provides money or other property; and

(b) knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.

(4) In this section a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether or not for consideration.

11-I. Use and possession. --- A person commits an offence if: ---

(1) he uses money or other property for the purposes of terrorism; or

(2) he--

(a) possesses money or other property; and

(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

11-J. Funding Arrangements. --- A person commits an offence if he: --

(a) enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another, and

(b) has reasonable cause to suspect that it will or may be used for the purposes of terrorism.
11K. Money-laundering. --- (1) A person commits an offence if he enters into or becomes concerned in any arrangement which facilitates the retention or control, by or on behalf of another person, of terrorist property: --

(a) by concealment.

(b) by removal from the jurisdiction,

(c) by transfer to nominees, or

(d) in any other way.

(2) It is a defence for a person charged with an offence under sub-section (1) to prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

11L. Disclosure of Information. --- (1) where a person: --

(a) believes or suspects that another person has committed an offence under this Act; and

(b) bases his belief or suspicion on information which comes to his attention in the course of a trade, profession, business or employment, he commits an offence if he does not disclose to a police officer as soon as is reasonably practicable his belief or suspicion, and the information on which it is based.

(2) It is a defence for a person charged with an offence under sub-section (1) of this section to prove that he had a reasonable excuse for not making the disclosure:

Provided that this sub-section does not require disclosure by a professional legal advisor of any information which he obtains in privileged circumstances.

(3) A person may disclose to a police officer: --

(i) a suspicion on belief that any money or other property is terrorist property or is derived from terrorist property; or

(ii) any matter on which the suspicion is based.

(4) Sub-section (3) shall have effect notwithstanding any restriction on the disclosure of information imposed by any law for the time being in force.

11M. Cooperation with the Police. --- (1) A person does not commit an offence under sections 11H to 11K, if he is acting with the express consent of a police officer not below the rank of a Deputy Superintendent.

(2) Subject to sub-section (3) and (4) under this section, a person does not commit an offence under sections 11H to 11K by involvement in a transaction or arrangement relating to money or other property if he discloses to a police officer: ---

(a) his suspicion or belief that the money or other property is terrorist property, and

(b) the information on which his suspicion or belief is based,

(3) Sub-section (2) under this section applies only where a person makes a disclosure--

(a) after he becomes concerned in the transaction concerned;

(b) on his own initiative; and

(c) as soon as is reasonably practicable;

(4) Sub-section (2) under this section does not apply to a person if: --

(a) a police officer forbids him to continue his involvement in the transaction or arrangement to which the disclosure relates, and

(b) he continues his involvement.

(5) It is a defence for a person charged with an offence under sections 11H to 11J to prove that:

(a) he intended to make a disclosure, and

(b) there is reasonable excuse for his failure to do so.

11N. Punishment under sections 11H to 11K. --- Any person who commits an offence under sections 11H to 11K, shall be punishable on conviction with imprisonment for a term not less than six months and not exceeding five years and with fine.

11O. Seizure and detention. --- An officer authorized by the Provincial Government in this behalf, hereinafter referred to as the "authorized officer", may seize and detain any cash recovered, if he has reasonable grounds for suspecting that: --

(a) it is intended to be used for the purposes of terrorism.

(b) it forms the whole or part of the resources of a proscribed organization, and includes any cash which is applied or made available, or is to be applied or made available, for use by the organization whether being imported into, or exported from, Pakistan; or

(c) it is terrorist property within the meaning given in Section 2(aa):

Provided that any cash seized under this section shall be released not later than the end of the period of 48 hours beginning with the time when it is seized, unless an application has been

made to the Court under section 11P and an order has been obtained for its detention for a further specified period.

11P. Application by authorized officer to a Court. --- (1) An authorized officer may apply to a Court for an order under this section in relation to any cash seized under section 11-O.

(2) An order under this section:

(a) shall authorize, the further detention, under section 11-O of the cash to which it relates for a period specified in the order, if the continued detention of the cash is justified pending completion of an investigation of its origin or derivation;

(b) shall specify a period which ends not later than the period of three months beginning with the date of the order; and

(c) shall require notice to be given to the person from whom the cash was seized and to any other person who is affected by and specified in the order.

(3) Any cash detained under section 11-O if detained for a further specified under this section shall be held in a profit and loss account and the profit and loss so earned shall be added to it on its release or forfeiture.

11Q. Forfeiture. --- (1) The Court by or before which a person is convicted of an offence under any of the Sections 11H may make a forfeiture order in accordance with the provisions of this section 11 H to 11 M.

(2) Where a person is convicted of an offence under section 11H(1) or (2) or section 11-I, the Court may order the forfeiture of any money or other property;

(a) which, at the time of the offence, he had in his possession or under his control; and

(b) which, at that time, he intended should be used, or had reasonable cause to suspect might be used, for the purposes of terrorism.

(3) Where a person has been convicted under section 11H(3), the Court may order the forfeiture of any money or other property;

(a) which, at the time of the offence, he had in his possession or under his control, and

(b) which, at the time, he knew or had reasonable cause to suspect would or might be used for the purposes of terrorism.

(4) Where a person is convicted of an offence under section 11J, the Court may order the forfeiture of the money or other property;

(a) to which the arrangement in question related; and

(b) which, at the time of the offence, he knew or had reasonable cause to suspect would or might be used for the purposes of terrorism.

(5) Where a person is convicted of an offence under section 11K, the Court may order the forfeiture of the money or other property to which the arrangement in question related.

(6) Where a person is convicted of an offence under any of the sections 11H to 11K, the Court may order forfeiture of any money or other property which wholly or partly, and directly, or indirectly is received by any person as a payment or other reward in connection with the commission of the offence.

11R. Authorized officer may apply to Court for forfeiture. (1) Any authorized officer may apply to the Court for an order forfeiting the cash being detained under sections 11P and 11Q.

(2) The Court may grant an application only if satisfied on the balance of probabilities that the cash is cash of a kind as defined in Section 11Q, and before so doing must give an opportunity to be heard to any person;

(a) who is not a party to the proceedings, and

(b) who claims to be the owner of or otherwise interested in any of the cash which can be forfeited under this section.

(3) An order may be made under this section, whether or not proceedings are brought against any person for an offence with which the cash is connected.

11S. Appeal against forfeiture order under section 11R. --- (1) Any party to the proceedings in which a forfeiture order is made under section 11R, may appeal to the High Court against such an order.

(2) An appeal must be brought before the end of the period of thirty days beginning with the date on which the forfeiture order was made.

11T. Deposit of cash in a fund. --- (1) Any cash to which a forfeiture order under sections 11R and 11S applies, alongwith the profit and loss accrued, shall be deposited into a special fund to be notified by the Federal Government: ---

(a) after the expiry of the limitation period within which an appeal against the forfeiture order may be brought under section 11S(2), or

(b) where an appeal brought under section 11S has been determined and disposed of.

(2) Any fund constituted by the Federal Government under sub-section (1) may also be used to compensate victims of acts of terrorism or in the case of deceased victims, their dependants.

11U. De-proscription. --- (1) After three years of the disposal of the appeal, if any, or where no appeal was filed, from the date of the order of proscription, or from the date of any refusal of an application of de-proscription, the proscribed organization may apply in writing to the Federal Government for the exercise of its power under section 11B(d) to remove the organization from the First Schedule, where the proscribed organization feels that it can prove

to the satisfaction of the Federal Government that the reasons for its proscription have ceased to exist.

(2) The Federal Government shall decide such application within a period of ninety days, after providing a reasonable opportunity of hearing to the applicant.

11V. Directing terrorist activities. --- (1) A person commits an offence if he: ---

(a) directs, at any level, whilst resident in Pakistan or abroad, activities of an organization concerned with the preparation, instigation or commission of acts of terrorism; or

(b) directs, from within the country or abroad, activities connected with the commission, preparation or instigation of an act of terrorism.

(2) A person guilty of an offence under sub-section (1) shall be liable on conviction to imprisonment for a maximum term of seven years and to forfeiture or confiscation of his assets within or outside Pakistan.

11W. Printing, publishing, or disseminating any material to incite hatred or giving projection to any person convicted for a terrorist act or any proscribed organization or an organization placed under observation or anyone concerned in terrorism. --- (1) A person commits an offence if he prints, publishes or disseminates any material, whether by audio or video-cassettes or by written; photographic, electronic, digital, wall-chalking or any other method which incites religious, sectarian or ethnic hatred or gives projection to any person convicted for a terrorist act, or any person or organization concerned in terrorism or proscribed organization or an organization placed under observation:

Provided that a factual news report, made in good faith, shall not be construed to mean "projection" for the purposes of this section.

(2) Any person guilty of an offence under sub-section (1) shall be liable by way of summary procedure, on conviction, to a maximum term of six months imprisonment and a fine.

11X. Responsibility for creating civil commotion. --- (1) A person commits an offence if he makes any call for action or shut-down, imposed through the use of threats or force resulting in damage or destruction of property or injury to person, to intimidate citizens and prevent them from carrying out their lawful trade or business activity.

(2) A person guilty of an offence under sub-section (1) shall on conviction be punishable with imprisonment for a term not less than six months and not more than five years and shall pay compensation as may be determined by the Court, from the funds of the organization to which he belongs or from his own personal resources or assets for the hurt or damage or destruction caused as a result of the commission of the offence under sub-section (1).

(3) A person commits an offence if he addresses a meeting or gathering or delivers a sermon to a religious gathering by any means whether verbal, written, electronic, digital or otherwise to incite religious, sectarian or ethnic hatred and contempt, and shall, on conviction, be punishable with imprisonment not less than six months and not more than three years or fine or with

both.]

12. Jurisdiction of 2[Anti-Terrorism Court]. — (1) Notwithstanding anything contained in the code or in any other law, a scheduled offence committed in an area in a Province shall be triable only by the 3[Anti-Terrorism Court] exercising territorial jurisdiction in relation to such area.

(2) Notwithstanding anything in contained sub-section (1), if, in respect of a case involving a scheduled offence committed in any area, the Government, having regard to the facts and circumstances of the case, is satisfied that in order to ensure a fair trial, or for the protection and safety of witnesses, that such offence should be tried by an 4[Anti-Terrorism Court] established in relation to any other area, the Government may make a declaration to that effect.

Explanation. — Where an 5[Anti-Terrorism Court] is established in relation to two or more areas, such 6[Anti-Terrorism Court] shall be deemed, for the purpose of this sub-section to have been established in relation to such areas.

(3) Where a declaration is made in respect of an offence committed in an area in a province, any prosecution in respect of such offence shall be instituted only in the 7[Anti-Terrorism Court] established in relation to such area, and, if any prosecution in respect of such offence is pending immediately before such declaration in any other Court, the same shall stand transferred to such Anti-Terrorism Court and such 8[Anti-Terrorism Court] shall proceed with such case from the stage at which it was pending at that time without the necessity of recalling any witnesses.

COMMENTARY

Constitutional petition. Special Courts under Anti-Terrorism Act, 1997, jurisdiction of. Prima facie accused guilty of scheduled offence, was to be tried by Special Court. Petitioner alongwith other co-accused, kidnapped, deceased in order to murder him which constituted an offence under S. 364, P.P.C. Such offence being not a scheduled offence tried by Special Court was declared to be without lawful authority and case was sent to the Court of competent jurisdiction for trial in circumstances.⁹

Anti-Terrorism Court constituted u/s. 12 has no jurisdiction to try a person when he is charged for offences u/ss. 364A, 377 of PPC and S. 12, Offence of Zina (Enforcement of Hudood) Ordinance, 1979. Order of Anti-Terrorism Court assuming jurisdiction for offence of child molestation u/s. 364A struck down by High Court as being without jurisdiction and of no legal consequence.¹

Constitutional petition. Jurisdiction of Special Court. Validity. F.I.R. against petitioner was registered for abduction of a married woman. Offence, prima facie, would be punishable by S. 16 of Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979). Vague allegation about employment or show of fire-arm leveled by complainant in the crime report, would hardly make same a terrorist act. Offence committed by petitioner had no nexus with object of Anti-Terrorism Act, 1997 and cognizance of case could not have been taken by Special Court. Jurisdiction of the Special Court, in circumstances, was declared to be without lawful authority.²

Murder, offence of. Transfer of case from Addl. Sessions Judge to Special Court for trial. Challenge to. Provision of Act leave no doubt that once, prima facie, commission of scheduled offence is shown to exist, no other Court except Special Court under said Act can try such offence and that any such case pending in any other Court shall stand transferred to Special Court. For purpose of determining whether or not offence is scheduled offence, question is to be determined on basis of FIR and other material produced by prosecution at time of presentation of challan. Then it is for Special Court to decide on basis of such material whether cognizance is to be taken or not. Term "any other Court" appearing in this section has its particular significance. Word "any" is ordinarily used to enlarge amplitude of term to which it is attached excluding all limitation or qualifications. Case relating to scheduled offence stands transferred to Special Court by operation of provisions of sub-section (3) of section 12 of Act if pending before any Court. Even no formal order is required to be made for this purpose. It was held that offences under said Act are not only ones which can be tried by Special Court extends to all other offences mentioned in schedule of act. Petition without merit, is accordingly dismissed.³

Jurisdiction of Special Court. Special Court constituted under the Anti-Terrorism Act, 1997 can assume jurisdiction only when the weapon used in the offence is of the kind mentioned in the Schedule of the Act and the act has resulted in terrorism. Where any such ingredient is lacking, ordinary Court will have the jurisdiction and not the Special Court.⁴

5[13. Establishment of Anti-Terrorism Court. --- (1) For the purpose of providing for the speedy trial of the cases referred to in sub-sections (2) and (3) of section 39A, and of scheduled offences, the Federal Government, or if so directed by the Government, the Provincial Government may establish by notification one or more Anti-Terrorism Courts in relation to each area (2). Where more Anti-Terrorism Courts than one have been established in any area, the Government, in consultation with the Chief Justice of the High Court shall designate a Judge of any such Court to be an administrative Judge and all cases triable under this Act pertaining to the said area shall be filed before the said Court and such Judge may either (try the cases himself or, assign any case, for trial to any other Anti-Terrorism Court at any time prior to the framing of the charge. The cases shall be assigned to a Court one case at a time;

Provided that in order to ensure that the time of the Court is not wasted if for some reason a given case cannot proceed more than one case can be assigned to it at any time or from time to time.

(3) In respect of a case assigned to a Court under sub-section (2), all orders made or proceedings taken before the assignment shall be deemed to have been made or taken by the Court to which the case has been assigned.]

(4) 6[Notwithstanding anything contained in sub-section (2) and sub-section (3), the Federal Government or if so directed by the Government, the Provincial Government shall in addition to the existing Special Courts or such other Special Courts as may be established in the area, establish one such additional Special Court under this Act at the principal seat of the Lahore High Court and the High Court of Sindh and appoint a Judge of such High Court as a Judge of Special Court in consultation with the Chief Justice of the High Court concerned, and where a Judge of a High Court is appointed as a Judge for any area under this Act he shall be the administrative Judge for that area that such administrative Judge may, in addition to the powers exercisable under this Act, either suo motu or on the application of any party, at any

stage of the proceedings whether before or after the framing of charge, for sufficient cause including as mentioned in sub-section (1) of section 28, transfer, withdraw or recall any case pending before any other Special Court in that area and may either try the case himself or make it over for trial to any other Special Court in that area.

(5) The Special Court to which a case is transferred or recalled for trial under sub-section (4), shall proceed with the case from this stage at which it was pending immediately before such transfer or recall and it shall not be bound to recall or rehear any witness who has given evidence and may act on the evidence already recorded.

COMMENTARY

Administrative Judge, Anti-Terrorism Court is only competent to grant remand of accused. Judge of any other Anti-Terrorism Court would have no jurisdiction to grant remand of accused. By granting remand of accused, Judge of Anti-Terrorism Court, other than administrative Judge, would travel beyond his jurisdiction. Such remand order would be illegal, without jurisdiction and without authority and liable to be set aside by High Court in exercise of its revisional jurisdiction u/ss. 435/439, Cr.P.C.7

14. Composition and appointment of Presiding Officers of 8[Anti-Terrorism Court]. — (1) An 9[Anti-Terrorism Court] shall consist of a Judge, being a person who: –

(i) 1[is a Judge of a High Court, or is] or has been a Sessions Judge or an Additional Sessions Judge; or

(ii) has exercised the powers of a District Magistrate or an Additional District Magistrate and has successfully completed an advance course in Shariah (Islamic Law) conducted by the International Islamic University Islamabad; or

(iii) has for a period of not less than ten years an advocate 2[of a High Court.]

3[(2) Subject to the provisions of sub-section (4), the Federal Government or the Provincial Government, if directed by the Federal Government to establish a Court under this Act, shall, after consultation with the Chief Justice of the High Court, appoint a Judge of each Court.

(3) A Judge shall hold office for a period of two and a half years but may be appointed for such further term or part of term as the Government appointing the Judge may determine.

(4) A Judge may be removed from his office prior to the completion of the period for which he has been appointed after consultation with the Chief Justice of the High Court.]

4[(5) In case a Judge is on leave, or for any other reasons temporarily unable to perform his duties, the Government making appointment of such Judge may, after consultation with the chief Justice of the High Court authorize the Session Judge, having jurisdiction at the principal seat of the Anti-Terrorism Court, to conduct proceeding of urgent nature so long as such Judge is unable to perform his duties.]

Explanation. — The qualification of being an Advocate for a period of not less than ten years may be related in the case of a suitable person who is a graduate from an Islamic University and has studied Islamic Shariah and Fiqah as a major subject.

COMMENTARY

Establishment of Special Courts for trial of heinous offences. Composition and appointment of Presiding Officers of Special Courts. Provision of S. 14 of the Anti-Terrorism Act, 1997 requires to be amended so as to provide security of the tenure of the Judge of the Special Courts in consonance with the concept of independence of judiciary.

Such declaration by Supreme Court, however, will not affect the trial already conducted and convictions recorded under the Act and the pending trials may continue subject to this order.⁵

Provisions of S. 14 are intra vires as they have been suitably amended in consonance with principles laid down in Mehram Ali and Al-Jehad Trust cases.⁶

S.14 of Act, requires to be amended as to provide security of tenure of Judge of Special Courts in consonance with concept of independence of Judiciary.⁷

15. Place of sitting. — (1) Subject to sub-sections (2) and (3), an 8[Anti-Terrorism Court] shall ordinarily sit at such place or places as the Government may, by order, specify in that behalf.

(2) The Government may direct that for the trial of a particular case the Court shall sit at such place including the place of occurrence of an offence as it may specify.

(3) Except in a case where a place of sitting has been specified under sub-section (2), an 9[Anti-Terrorism Court] may, if it considers it expedient or desirable so to do either suo motu or on the application of the public prosecutor sit, for holding the trial of a case at any place including a mosque other than the ordinary place of its sitting.

16. Oath by 1[Anti-Terrorism Court]. — A Judge of an 2[Anti-Terrorism Court] shall, at the commencement of a proceeding under this Act, make oath, in the case of Muslim, on the Holy Qur'an, to the effect that he shall decide the case honestly, faithfully and considering himself accountable to Almighty Allah, and in case of a non-Muslim in accordance with 3[the constitution, law and his conscience].

17. Powers of 4[Anti-Terrorism Court] with respect to other offences. — When trying any scheduled offence, an 5[Anti-Terrorism Court] may also try any offence other than the scheduled offence with which the accused may, under the Code, be charged at the same trial.

18. Public prosecutors. — (1) The Government shall appoint in relation to each 6[Anti-Terrorism Court], 7[a Public Prosecutor and may also appoint one or more Additional Public Prosecutors:

Provided that the Government may also appoint, for any case or class of cases, a Special Public Prosecutor.

(2) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor shall be deemed to be a Public Prosecutor within meaning of section 492 of the Code, and the provisions of the Code shall have effect accordingly.

COMMENTARY

DCP as Public Prosecutor under rule 27.4 of Police Rules (1934) is not competent to prefer an application for remand of accused before Anti-Terrorism Court as u/s. 19, Anti-Terrorism Act (1997) remand application can be preferred only by Public Prosecutor notified u/s. 18.8

19. Procedure and powers of 9[Anti-Terrorism Court]. — (1) The officer-in-charge of a police station shall complete the investigation in respect of a case triable by Anti-Terrorism Court within seven working days and forward directly to the Anti-Terrorism Court a report under section 173 of the Code;

Provided that the 9[Anti-Terrorism Court] may extend the time within which such report is to be forwarded in a case where good reasons are shown for not being able to do so within the time specified in this sub-section.

(2) any default on the part of an officer-in-charge of a police-station, an investigating officer or any other person required by law to perform any functions in connection with the investigation, that results in, or has the effect of, delaying investigation or submission of the report under sub-section (1), shall be deemed to be a willful disobedience of the orders of the 9[Anti-Terrorism Court] and the person committing the default shall be liable to be punished for contempt of Court.

(3) The 9[Anti-Terrorism Court] may directly take cognizance of a case triable by such Court without the case being sent to it under section 190 of the Code.

10[(4) x x x x x x x x x x x x]

(5) Where, in a case triable by an 1[Anti-Terrorism Court], an accused has been released from police custody under section 169 of the Code, or has been remanded to judicial custody, the 1[Anti-Terrorism Court] may, on good grounds being shown by Public Prosecutor or a Law Officer of the Government, for reasons to be recorded in writing, make an order for placing him in police custody for the purpose of further investigation in the case.

(6) An 1[Anti-Terrorism Court] shall be deemed to be a Magistrate for purpose of 2[sub-section] (5).

3[(7) The Court shall, on taking cognizance of a case, proceed with the trial from day to day and shall decide the case within seven days, failing which an application may be made to the Administrative Judge of the High Court concerned for appropriate directions for expeditious disposal of the case to meet the ends of justice].

(8) An 1[Anti-Terrorism Court] shall not adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interest of justice and no adjournment shall, in any case, be granted for more than two working days.

(9) An 1[Anti-Terrorism Court] shall not, merely by reason of a change in its composition or transfer of a case under sub-section (3) of section 12, be bound to recall and re-hear any witness who has given evidence and may act on the evidence already recorded.

4[(10) Any accused person may be tried in his absence if the Anti-Terrorism Court, after such inquiry as it deems fit, is satisfied that such absence is deliberate and brought about with a view of impeding the course of justice;

Provided that the accused person shall not be tried under this sub-section unless a proclamation has been published in respect of him in at least three national daily newspapers out of which one shall be in the Urdu language requiring him to appear at a specified place within seven days failing which action may also be taken against him under section 88 of the Code:

Provided further that the Court shall proceed with the trial after taking the necessary steps to appoint an advocate at the expense of the State to defend the accused person who is not before the Court.

Explanation. --- An accused who is tried in his absence under this sub-section shall be deemed not to have admitted the commission of any offence for which he has been charged.]

(11) The Advocate appointed under the second proviso to sub-section (10) shall be a person selected by the 5[Anti-Terrorism Court] for the purpose and he shall be engaged at the expense of the Government.

6[(11A) Nothing contained in sub-section (10) or sub-section (11) shall be construed to deny the accused the right to consult or be defended by a legal practitioner of his own choice.]

(12) If, within sixty days from the date of his conviction any person tried under sub-section (10) appears voluntarily, or is apprehended and brought before the Anti-Terrorism Court, and proves to its satisfaction that he did not abscond or conceal himself for the purpose of avoiding the proceeding against him, the (Anti-Terrorism Court) shall set aside his conviction and proceed to try him in accordance with Law for the offence with which he is charged.

Provided that the Anti-Terrorism Court may exercise its powers under this sub-section in a case in which a person as aforesaid appears before it after the expiration of the said period and satisfies it that he could not appear within the said period by reason of circumstances beyond his control.

8[x x x x x x x x x x x x]

(14) Subject to the other provisions of this Act, an 9[Anti-Terrorism Court] the purpose of trial of any offence, have all the powers of a Court of Sessions and shall try such offence as if it were a Court of Sessions as far as may be in accordance with the procedure prescribed in the Code for trial before a Court of Sessions.

COMMENTARY

Public Prosecutor alone is competent to move Anti-Terrorism Court for remand of accused. Remand granted by Anti-Terrorism Court on application preferred by DSP, CIA would be illegal and without jurisdiction.¹⁰

Section 19(10)(b) of Act, which provides for trial of an accused in absentia on account of his misbehaviour in Court, in violation of Article 10 of Constitution and, therefore, is declared as invalid.¹

Clause (b) of sub-section (10) of S. 19 authorizing a Special Court to order removal of an accused person from Court if his behaviour in such as to impede course of justice and then to proceed with case in absentia is violative of fundamental right of access to justice. An accused person for his misbehaviour in Court can be convicted for contempt of Court and punished, but on no principle of law, he can be denied the right to be present and to defend himself in a criminal matter.²

Provisions with regard to trial in absentia contained in sub-sections (10) (11), (12) of S. 19 are illegal and of no legal effect.³

Petition for leave to appeal. Contention was that Special Court committed serious irregularities in the trial of the case inasmuch as the charge was wrongly framed and evidence was not recorded in terms of S. 304, P.P.C. and, therefore, conviction and sentence could not be sustained. It was held that such alleged irregularities could not be urged in the petition for leave to appeal before Special Court as same had arisen out of the dismissal of the petitioner's Constitution petition in the High Court. Such irregularities could have been urged before the Trial Court and/or before the Appellate Tribunal. Supreme Court would not interfere with impugned judgments on such technical grounds, if a Court was satisfied about the guilt of the accused person concerned, the technicalities should be overlooked without causing of any miscarriage of justice. Special Court having found the accused guilty and Appellate Tribunal having affirmed such finding. Petition for leave to appeal was disposed of by Special Court accordingly.⁴

Application for remand of accused moved by DSP, CIA would not be in accordance with law. It is only public prosecutor or law officer as envisaged under sub-section (5) of S. 19 who can move application for remand of accused.⁵

Procedure and powers of Special Court. Security of person. Safeguard as to arrest and detention. Provision of S. 19(10)(B). Anti-Terrorism Act, 1997, which provides for trial of an accused in absentia on account of his misbehaviour in the Court, is violative of Art. 10 of the Constitution of Pakistan (1973), and thus invalid. Such declaration by Special Court, however, will not affect the trials already conducted and convictions recorded under the Act and the pending trials may continue subject to this order.⁶

20. 7[x x x x x x x x x x x]

8[21. Protection to Judges, Counsel Public Prosecutor, witnesses and persons concerned with Court proceedings. --- (1) The Court may, subject to the availability of resources, make such necessary orders or take such measures, as it deems fit, within available resources, for the protection of a witness, judge, public prosecutor, counsel and other persons concerned in proceedings for an offence under this Act, which may also include the following measures:

(a) Proceedings may be held in camera, or under restricted entry of members of the public, where necessary for the protection of the Judge, witnesses or a victim's family members or to prevent persons from crowding or storming the Court to intimidate the Judge or to create a threatening atmosphere;

(b) The Names of Judges, counsel, public prosecutor, witnesses and persons concerned with Court proceedings shall not be published; and

(c) During any inquiry, investigation or Court proceedings whenever the matter of the identification of the accused arises, adequate protection shall be provided to a witness identifying any accused, in order to protect the identity of the witness from the accused.

(2) For purposes of protection of the Judges, accused, witnesses, prosecutors and defence counsel and anyone concerned with the Court proceedings, the Government may adopt such other measures as may be appropriate or may be prescribed.

(3) The Government shall extend protection to a Judge, a counsel, public prosecutor and the witnesses during investigation of an offence and proceedings under this Act, and thereafter, as may be considered necessary.]

9[21-A. Cordons for Terrorist Investigation. --- (1) An area is a cordoned area for the purposes of a terrorist investigation under this Act, if it is designated under this section.

(2) A designation may be made only by an officer not below the rank of a DSP, if he considers it expedient for the purposes of a terrorist investigation.

(3) If a designation is made orally, the officer making it shall confirm it in writing, as soon as is reasonably practicable.

(4) The officer making a designation shall arrange for the demarcation of the cordoned area, so far as is reasonably practicable.

(5) An area may be designated a cordoned area for a maximum period of fourteen days, which may be extended in writing from time to time, with each extension specifying the additional period:

Provided that a designation shall have no effect after 28 days beginning with the day on which it was made.

(6) Where a person knows or has reasonable cause to suspect that a terrorist investigation is being conducted or is proposed to be conducted, a person commits an offence if he---

(a) discloses to another, or other, anything which is likely to prejudice an investigation; or

(c) chemical, biological, and other weapons.

(5) A child guilty of an offence under sub-section (4) shall be liable on conviction to imprisonment for a term not less than six months and not exceeding five years.

(6) A person guilty of an offence under sub-sections (1) and (3) shall be liable on conviction to imprisonment for a term not exceeding ten years, or fine or with both.

(7) Training in Terrorism:

(a) A person commits an offence if he provides, generally or specifically, any instruction or training in acts of terrorism.

(b) A person commits an offence if he receives any instruction or training in acts of terrorism or invites another, specifically or generally, to receive such instruction or training.

(c) A person guilty of an offence under sub-section (a) and (b) shall, on conviction, be liable to imprisonment of either description for a term of not less than one year and not more than ten years and fine.

(d) A person is guilty of an offence if he provides, any instruction or training in acts of terrorism to a child, and on conviction, shall be liable on conviction to imprisonment of either description for a term not less than one year and not more than ten years and fine.

(e) A child commits an offence if he provides, generally or specifically, any instruction or training in acts of terrorism, and on conviction, shall be liable to imprisonment for a term not less than six months and not more than five years.

(f) A child commits an offence if he receives, generally or specifically, instructions or training in acts of terrorism, and on conviction, shall be liable to imprisonment for a term not less than six months and not more than five years.

(8) A Court by which a person is convicted of an offence under this section, may order the forfeiture of any thing or property which it considers to have been in the person's possession for purposes connected with the offence, after giving any person, other than the convicted person, who claims to be the owner or is otherwise interested, an opportunity of being heard.

21D. Bail. --- (1) Notwithstanding the provisions of Sections 439, 491, 496, 497, 498, 498A and 561A of the Code, no Court, other than an Anti-Terrorism Court; a High Court or the Supreme Court of Pakistan, shall have the power or jurisdiction to grant bail to or otherwise release an accused person in a case triable by an Anti-Terrorism Court.

(2) All offences under this Act punishable with death or imprisonment not exceeding three years shall be non-bailable;

Provided that if there appear reasonable grounds for believing that any person accused of non-bailable offence has been guilty of an offence punishable with death or imprisonment for life or imprisonment for not less than ten years, such person shall not be released on bail.

(3) Subject to sub-section (2), the Court may admit a person to bail, unless satisfied that there are substantial grounds for believing that the person, if released on bail (whether subject to conditions or not), would:

(a) fail to surrender to custody;

(b) commit an offence while on bail;

(c) interfere with a witness; otherwise obstruct or attempt to obstruct the course of justice, whether in relation to himself or another person; or

(d) fail to comply with the conditions of release (if any).

(4) In exercising its powers in relation to a person seeking bail under this Act, the Court shall have regard to such of the following considerations (as well as to any others which it considers relevant)---

(a) the nature and seriousness of the offence with which the person is charged;

(b) the character, antecedents, associations and community ties of the person;

(c) the time which the person has already spent in custody and the time which he is likely to spend in custody if he is not admitted to bail; and

(d) the strength of the evidence of his having committed the offence.

(5) Without prejudice to any other power to impose conditions on admission to bail, the Court admitting a person to bail under this section may impose such conditions as it considers;

(a) likely to result in the person's appearance at the time and place required, or

(b) necessary in the interests of justice or for the prevention of crime.

(6) It shall be lawful for the person to be held in military or police protective custody in accordance with the conditions of his bail.

(7) The Government or the Court may, under this section, at any time, in respect of a person charged of an offence under this Act, if it considers it necessary, by special or general order, direct special arrangements to be made as to the place at which the person is to be held in order:

(a) to prevent his escape; or

(b) to ensure his safety or the safety of others.

21E. Remand. --- (1) Where a person is detained for investigation, the Investigating Officer, within twenty-four hours of the arrest, excluding the time necessary for the journey from the place of arrest to the Court, shall produce the accused before the Court, and may apply for remand of the accused to police custody, for which the maximum period allowed may be fifteen days:

Provided that, where an accused cannot within twenty-four hours be produced before the Court, a temporary order for police custody not exceeding twenty-four hours may be obtained from the nearest Magistrate for the purpose of producing the accused before the Court within that period.

(3) No extension of the time of the remand of the accused in police custody shall be allowed, unless it can be shown by the Investigating Officer, to the satisfaction of the Court that further evidence may be available and the Court is satisfied that no bodily harm has been or will be caused to the accused:

Provided that the total period of such remand shall not exceed thirty days.

(3) The Court shall be deemed to be a Magistrate for purposes of sub-section (1).

21F. Remissions. --- Notwithstanding anything contained in any law or prison rules for the time being in force, no remission in any sentence shall be allowed to a person, other than a child, who is convicted and sentenced for any offence under this Act, unless granted by the Government.

21G. Trial of offences. --- All offences under this Act shall be tried by the Anti-Terrorism Court established under this Act.

21H. Conditional admissibility of confession. --- Notwithstanding anything contained in the Qanoon-e-Shahadat, 1984 (President's Order No. 10 of 1984) or any other law for the time being in force, where in any Court proceedings held under this Act the evidence (which includes circumstantial and other evidence) produced raises the presumption that there is a reasonable probability that the accused has committed the offence, any confession made by the accused during investigation without being compelled, before a police officer not below the rank of a Superintendent of Police, may be admissible in evidence against him, if the Court so deems fit:

Provided that the Superintendent of Police before recording any such confession, had explained to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and that no Superintendent of Police has recorded such confession unless, upon questioning the person making it, the Superintendent of Police had reason to believe that it was made voluntarily; and that when he recorded the confession, he made a memorandum at the foot of such record to the following effect:

"I have explained to (..name..), that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him."

(Signed)
Superintendent of Police."

21-I. Aid and abetment. --- Whoever aids or abets any offence, under this Act shall be punishable with the maximum term of same imprisonment provided for the offence or the fine provided for such offence or with both.

21J. Harboursing. --- (1) A person commits an offence if he harbours any person who has committed an offence under this Act.

(2) A person guilty of an offence under sub-section (1) shall be liable on conviction to punishment as provided in Sections 216 and 216A of the Pakistan Penal Code (Act XLV of 1860).

21K. Offences triable by way of summary procedure. --- All offences under this Act punishable with imprisonment for a term of not more than six months with or without fine shall be tried by way of summary procedure.

21L. Punishment for an Absconder. --- Whoever being accused of an offence under this Act, absconds and avoids arrest or evades appearance before any inquiry, investigation or Court proceedings or conceals himself, and obstructs the course of justice, shall be liable to imprisonment for a term not less than six months and not more than five years or with fine or with both.

21M. Joint Trial. --- (1) While trying any offence under this Act, a Court may also try any other offence with which an accused may, under the Code of Criminal Procedure, 1898, be charged, at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial under this Act of any offence it is found that the accused person has committed any other offence under this Act or any other law for the time being in force, the Court may convict an accused for such other offence and pass any sentence authorized by this Act or, as the case may be, such other law, for the punishment thereof.]

22. Manner and place of execution of sentence. — The Government may specify the manner, mode and place of execution of any sentence passed under this Act, having regard to the deterrent effect which such execution is likely to have.

23. Power to transfer cases to regular Courts. — Where, after taking cognizance of an offence, an 1[Anti-Terrorism Court] is of opinion that the offence is not a scheduled offence, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any Court having jurisdiction under the Code, and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.

24. 2[x x x x x x x x x x]

25. Appeal. — (1) An appeal against the final judgment of an 3[a High Court].

(2) Copies of the judgment of 4[Anti-Terrorism Court] shall be supplied to the accused and the Public Prosecutor free of cost on the day the judgment is pronounced and the record of the trial shall be transmitted to the 4[High Court] within three days of the decision.

(3) An appeal under sub-section (1) may be preferred by a person sentenced by an 4[Anti-Terrorism Court] to 4[a High Court] within seven days of the passing of the sentence.

(4) The Attorney-General 5[Deputy Attorney General, Standing Counsel] or an Advocate General 6[or an Advocate of the High Court or the Supreme Court of Pakistan appointed as Public Prosecutor, Additional Public Prosecutor or a Special Public Prosecutor] may, on being directed by the Federal or a Provincial Government, file an appeal against an order of acquittal or a sentence passed by 7[Anti-Terrorism Court] within fifteen days of such order.

(5) An appeal under this section shall be heard and decided by an Appellate Tribunal within seven working days.

(6) 1[x x x x x x x x x x x x]

(7) 2[x x x x x x x x x x x x]

(8) Pending the appeal in the [High Court] shall not release the accused on bail.

COMMENTARY

S25(4) Appeal against acquittal — Maintainability — Advocate-General had been authorized and directed by the Provincial Government by necessary Notification and letters to file appeals against acquittal and for enhancement of sentence of accused in accordance with the provisions of S.25(4) of the Anti-Terrorism Act, 1997 — To prosecute or enforce a matter judicially included as of necessity the power or the right to file the required appeals by the person, who had been authorized to pursue the appeals — Any act on the part of the Advocate-General would give the suggestion or lead to the presumption that he had been duly authorized and directed to do so — Letter issued by the Provincial Government, addressed to the Advocate-General conveying necessary sanction to prefer appeal against the impugned judgment, had been legally brought on record in accordance with the procedure — Accused had not been able to establish beyond any reasonable doubt that the requirement of S.25(4) of the Anti-Terrorism Act, 1997 had not been complied with — Petitions seeking the appeals to be dismissed in limine, were dismissed in circumstances. 2a

Appeal. Provision of S. 25 of the Anti-Terrorism Act, 1997 is not valid in its present form as the same militates against the concept of independence of judiciary and Arts. 175 and 203 of the Constitution. Section 25 of the Act needs to be suitably amended so as to vest the appellate power in a High Court instead of Appellate Tribunal and to use the words "High Court" in place of "Appellate Tribunal". Such declaration by Supreme Court, however, will not affect the trials already conducted and convictions recorded under the Act and the pending trials may continue subject to this order.³

Appeal against conviction/acquittal. Distinction. Consideration for appeal against conviction and appeal against acquittal were much different. While dealing with appeal against acquittal impugned judgment has to be looked into to see whether it was perverse and on perusal of evidence no other conclusion could be made except that accused was guilty or there had been complete mis-reading of evidence leading to miscarriage of justice. High Court was slow to set aside judgment of acquittal. Acquittal of accused attaches double presumption of innocence in his favour.⁴

Revisional or inherent jurisdiction of High Court not available to assist an order passed by Special Court. Sections 25, 31 & 32 of the Anti-Terrorism Act, 1997, which are to be read in conjunction with each other, do not permit the order passed by Special Court to be challenged in revision or under inherent jurisdiction of High Court.⁵

Provisions of Section 25 cannot be declared to be void and unconstitutional on ground that it does not cater for persons for filing an appeal if they were convicted for first time by Appellate Tribunal.⁶

26. 7[x x x x x x x x x x]

27. Punishment for defective investigation. — If an 8[Anti-Terrorism Court] or 9[a High Court] comes to the conclusion during the course of or at the conclusion of the trial that the investigating officer, or other concerned officers have failed to carry out the investigation properly or diligently or have failed to pursue the case properly and in breach of their duties, it shall be lawful for such Court or as the case may be, 9[a High Court] to punish the delinquent officers with imprisonment which may extend to two years, or with fine, or with both by resort to summary proceedings.

COMMENTARY

State appeal to High Court against acquittal. High Court noticing a number of lapses on part of SI/SHO and on part of Foot Constable who had carried crime empties and fire-arm weapons to Forensic Science Laboratory. High Court issuing notice to both of them to show cause why they should not be punished u/s. 27 of the Act.¹⁰

Case against accused was that he being Investigating Officer in a criminal case after completion of investigation had failed to mention names of Mashirs of identification parade in charge-sheet with the result that those Mashirs were not examined by Trial Court and case resulted in acquittal of the accused. Evidence on record had shown that Mashirnama of Identification was produced by Sub-Divisional Magistrate in whose presence identification test was held. Names of mashirs with addresses transpired in Mashirnama. If due (sic) bona fide mistake/omission, any irregularity was committed by accused/Investigating Officer that could have been rectified by the Trial Court by summoning Mashirs and entire trial was not to be vitiated due to said irregularity as the same was curable under S. 537, Cr.P.C. Accused, even otherwise, could not be punished as it was not proved beyond shadow of doubt that he intentionally and improperly, without due diligence, had failed to pursue case and that he had acted in breach of his duties. Conviction and sentence of accused were set aside.¹¹

28. Transfer of cases. — (1) Notwithstanding anything contained in this Act, High Court may, if it considers it expedient so to do in the interest of justice, or where the convenience or safety of the witnesses or the safety of the accused so requires, transfer any case form one Anti Terrorism Court to another within or outside the area.

(2) An 12[Anti-Terrorism Court] to which a case is transferred under sub-section (1) shall proceed with the case from the stage at which it was pending immediately before such transfer and it shall not be bound to recall and re-hear any witness who has given evidence and may act on the evidence already recorded.

1[Provided that nothing herein contained shall affect the powers of the presiding officer of the Special Court to call any witness as is available under the law.]

29. Trial before 2[Anti-Terrorism Court]to have precedence. — A trial under this Act of an offence by 2[Anti-Terrorism Court], and the appearance or an accused before it, shall have precedence over the trial of any other case the accused in any other Court, except the High Court on its original side.

30. Modified application of certain provisions of the Code. — (1) Notwithstanding anything contained in the Code or in any other law, every scheduled offence shall be deemed to be a cognizable offence within the meaning of clause (f) of section 4 of the Code and words “cognizable case” as defined in that clause shall be construed accordingly.

(2) Sections 374 to 379 of the Code shall apply in relation to a case involving a scheduled offence subject to the modification that the reference to a “Court of Session” and “High Court”, wherever occurring therein, shall be construed as reference to an 2[Anti-Terrorism Court] and 2[a High Court]

3[(3) and (4) x x x x x x x x x x x x]

COMMENTARY

Modified application of certain provisions of the Criminal Procedure Code, 1898. Provisions of S. 30 of the Anti-Terrorism Act, 1997 is not valid in its present form as they militates against the concept of Independence of Judiciary and Arts. 175 and 203 of the Constitution. Section 30 of the Act needs to be suitably amended so as to vest the appellate power in a High Court instead of Appellate Tribunal and words “High Court” be substituted for “Appellate Tribunal”. Such declaration by Supreme Court, however, will not affect the trials already conducted and convictions recorded under the Act and the pending trials may continue subject to this order.⁴

31. Finality of judgment. — A judgment or order passed, or sentence awarded, by an 2[Anti-Terrorism Court], subject to the result of and appeal under this Act shall be final and shall not be called in question in any Court.

32. Overriding effect of Act. — (1) The provisions of this Act shall have effect notwithstanding anything contained in the Code or any other law but, save as expressly provided in this Act, the provisions of the Code shall, insofar as they are not inconsistent with the provisions of this Act, apply to the proceedings before an 5[Anti-Terrorism Court] and for the purpose of the said provisions of the Code, and 5[Anti-Terrorism Court] shall be deemed to be Court of Sessions.

(2) In particular and without prejudice to the generality of the provisions contained in subsection (1), the provisions of section 350 of the Code shall, as far as may be, apply to the proceedings before 5[Anti-Terrorism Court], and for this purpose and reference in those provisions to a Magistrate shall be construed as a reference certificate to an 5[Anti-Terrorism Court].

COMMENTARY

Special Court shall be deemed to be a Court of Session by virtue of S. 32, Anti-Terrorism Act, 1997. Provisions of Criminal Procedure Code, 1898 and Qanun-e-Shahadat, 1984 are applicable to the proceedings before a Special Court.⁶

33. Delegation. — The Government may, by notification, delegate, subject to such conditions as may be specified therein, all or any of the powers exercisable by it under this Act.

34. Power to amend the 7[First, Second and Third Schedule]. — The Government may, by notification, amend the 7[First, Second and Third Schedules] so as to add any entry thereto or modify or omit any entry therein.

COMMENTARY

Power of Government to amend the Schedule to the Act. Validity. It was held that delegation of such power to the Government by the Legislature is not an unusual phenomenon. Such power is normally delegated to Government in order to implement the object of a statute or to work out certain detail but the offences mentioned in the Schedule should have nexus with the object of the Act. Provision of S. 34, Anti-Terrorism Act, 1997 is not ultra vires.⁸

Delegation of power of Government by S. 34 to amend or add any entry in Schedule of the Act is not an unusual phenomenon as in order to implement object of a statute or work out certain detail, such power is normally delegated. However, offences added to Schedule by Government in exercise of its power under S. 34 should have nexus with object of Act and offences covered by Ss. 6, 7, 8 of the Act. It was held that S. 34 is not ultra vires but offences added to Schedule should have nexus with object of Act and offences mentioned in Ss. 6, 7, 8.⁹

Power given to Government by S. 34 to amend by notification, the Schedule so as to add any entry thereto or modify or omit any entry therein does not suffer from excessive delegation. Government can make amendment to Schedule only where a scheduled offence is shown to have some nexus with object of law for which it was enacted. It cannot be said that no guidelines have been provided by Legislature to be kept in view by Government. It has become common for Legislature to permit Government to operate within parameters of law in order to work out certain details which are considered by Legislature to be unnecessary for legislation by itself.¹

Exercise of delegated power by Government is essential for purpose of carrying out legislative will. It is considered to be one of modes of legislation. It may not be possible for Legislature to hold session frequently to work out necessary details in the context of a given situation. After all it is for the Executive to execute legislative policies. Sometimes, even the power of levy of tax delegated to an outside agency has been upheld by Courts where maximum rate is fixed by Legislature.²

Power given to Government by S. 34 appears to be a case of conditional legislation and not of excessive delegation of powers. There is no taint of invalidity in conferment of this power by S. 34.³

4[35. Power to make rules. --- A High Court may, with approval of the Chief Justice of Pakistan, by notification in the official Gazette make rules for carrying out the purposes of this Act.]

COMMENTS

S. 35 in its present form by which it has conferred rule-making power upon Government militates against concept of independence of Judiciary and is also violative of Arts. 175 and 203. It needs to be amended to substitute words High Court for word Government in S. 35.5

S. 35 in its present form is not valid as it militates against concept of independence of Judiciary and is also violative of Arts. 175 and 203 of Constitution. S. 35 needs to be suitably amended inasmuch as the power to frame rules is to be vested in the High Court to be notified by Government.⁶

36. Savings. — (1) Nothing contained in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any Court or other authority under any laws relating to the Naval, Military or Air Forces or any other armed force of the Government.

(2) For the removal of any doubt, it is hereby declared that, for the purposes of any such law as is referred to in sub-section (1), 7[Anti-Terrorism Court] shall be deemed to be a Court of ordinary criminal jurisdiction.

8[37. Contempt of Court. --- (a) An Anti-Terrorism Court shall have the power to punish with imprisonment for a term which may extend to six months and with fine any person who:

(a) abuses, interferes with or obstructs the process of the Court in any way or disobeys any order or direction of the Court;

(b) scandalizes the Court otherwise does anything which tends to bring the Court or a person constituting the Court into hatred, ridicule or contempt;

(c) does anything which tends to prejudice the determination of a matter pending or most likely to come up before the Court; or

(d) does anything which, by any other law, constitutes contempt of Court.

Explanation. --- In this section, "Court" means Anti-Terrorism Court".]

38. Punishment for terrorist act committed before this Act. — Where a person has committed an offence before the commencement of this Act which if committed after the date on which this Act comes into force would constitute a terrorist act there under he shall be tried under this Act but shall be liable to punishment as authorized by law at the time the offence was committed.

COMMENTARY

Change of forum of trial of certain cases without enhancing punishment for offences made triable by Anti-Terrorism Court does not violate Art. 12 of Constitution (1973). Provisions of S. 38 of Act/1997 which prescribed change of forum is not repugnant to Art. 12 of Constitution (197).⁹

S. 38 takes into consideration salutary provisions of Art. 12 of Constitution thereunder no law can authorize punishment of a person for an offence which was not punishable at the time of its commission. NO law can prescribe a penalty greater than or different from that prescribed by law at time of commission of such an offence. Similarly, by sub-section (3) of S. 12 any prosecution in respect of a scheduled offence pending in any other Court ipso facto stands transferred to Special Court constituted under Act immediately upon declaration by Federal Government for application of provisions of Act in notified area.¹

39. Indemnity. — No suit, prosecution or other legal proceedings shall lie, against any person in respect of anything which is in good faith done or intended to be done under this Act.

1a[39A. xxx]

2[39B. Removal of difficulties. --- If any difficulty arises in giving effect to any provisions of this Act, the Federal Government may make such order, not inconsistent with the provisions of this Act, as may appear to it to be necessary for the purposes of removing the difficulty.

39C. Repeal and Savings. (1) The Suppression of Terrorist Activities (Special Courts) Act, 1975 (XV of 1975) is hereby repealed.

(2) Notwithstanding the repeal of the Suppression of Terrorist Activities (Special Courts) Act, 1975 (XV of 1975) and the amendment of the Anti-Terrorism Act, 1997 (XXVII of 1997), by the Anti-Terrorism (Amendment) Ordinance, 2001: --

(a) every order, decision or judgment passed by any Anti-Terrorism Court constituted under this Act or Special Court constituted under the Suppression of Terrorist Activities (Special Courts) Act, 1975, or any Appellate Court before such repeal or amendment shall remain in force and operative and the repeal or amendment shall not affect the previous operation of the law or anything duly done or suffered or punishment incurred thereunder;

(b) every case, appeal and legal proceedings whatsoever filed or pending before any Court under the Suppression of Terrorist Activities (Special Courts) Act, 1975, including the High Court and the Supreme Court shall continue to be proceeded with in accordance with law before the concerned Court of competent jurisdiction, including the Court established under this Act, and all orders passed, decisions made and judgments delivered whether in the past or which may be made delivered hereafter by such concerned Court whether original, appellate or revisional, shall be deemed to have been validly and competently made."

(c) all convictions made, punishments or sentences awarded by the Anti-Terrorism Court or Special Court or an Appellate Court before such repeal or amendment shall be executed as if the said Acts were in force;

(d) any investigation or inquiry under this Act or the Suppression of Terrorists Activities (Special Courts) Act, 1975 made or instituted before the commencement of the Anti-Terrorism (Amendment) Ordinance, 2001, shall continue to be made and proceeded with in accordance with law;

(e) all cases pending before the Anti-Terrorism Court or Special Court immediately before the commencement of the Anti-Terrorism (Amendment) Ordinance, 2001, if not covered by this Act or clauses (a) and (b) above, shall stand transferred to the respective Courts of Sessions of the area or such other Courts of competent jurisdiction where the cases were registered against the accused and such Courts shall proceed with the cases from the stage at which they were pending, without the necessity of recalling any witnesses, and

(f) the Court of Sessions or, as the case may be, any other Court to which a case has been transferred from the Anti-Terrorism Court or a Special Court under clause (d) shall try it in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), and the law applicable to such case.]

40. Amendment of the Criminal Law Amendment Act, 1908 (XIV of 1908). — In the Criminal Law Amendment Act, 1908 (XIV of 1908), the following amendments shall be made, namely: —

(I) In section 15, in clause (2) in sub-clause (a) for the words "violence or intimidation" the words "terrorism, stirring up sectarianism, violence or intimidation which endanger or threaten public order" shall be substituted.

(II) For section 16, the following shall be substituted, namely: —

"16. Declaration of an association to be unlawful. — (1) If either the Federal Government or the Provincial Government is of the opinion that an association is an unlawful association it may call upon the association to show cause within fourteen days why it should not be declared as unlawful association for the purpose of this Act.

(2) If after hearing the association, the Federal Government or the Provincial Government is of the opinion that the association is an unlawful association it may declare such association to be an unlawful association.

(3) If the Federal Government or the Provincial Government is of the opinion that in the interest of the maintenance of public order or to prevent injury to the people it is just and necessary to take immediate action, it may, pending passing of order under sub-section (2), by an ad interim order, declare an association to be unlawful.

(4) An association aggrieved by an order under sub-section (2) may file an appeal before a Board appointed by the Chief Justice of the High Court of the Province consisting of a Chairman and two other persons each of whom is or has been a Judge of the High Court.

(5) The Board shall decide the appeal within thirty days and may pass such order as it may deem fit."

(III) In section 17: —

(i) in sub-section (1) for the words "six months" the words "five years" shall be substituted; and

(ii) in sub-section (2) for the words "three years" the words "seven years" shall be substituted.

(IV) In sections 17-A, 17-D and 17-E for the words "Provincial Government" wherever occurring the words "Federal Government or the Provincial Government" shall be substituted.

3[THE FIRST SCHEDULE

(List of proscribed Organisations)

[See Section 11B]

THE SECOND SCHEDULE

(List of Organisations under Observation)

[See section 11D(1)(a)]

THE THIRD SCHEDULE

(Scheduled Offences)

[See Section 2(t)]

1. Any act of terrorism within the meaning of this Act including those offences which may be added or amended in accordance with the provisions of section 34 of this Act.
2. Any other offence punishable under this Act.
3. Any attempt to commit, or any aid or abetment of, or any conspiracy to commit, any of the aforesaid offences.]