

P R E S E N T A T I O N  
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TERRORIST CASES, VIENNA 25-27<sup>TH</sup>  
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Terrorism is not a new Phenomenon to this world. It has its origin when this world has seen oppressor against oppressed with the mind set of violence as a means to an end, use of force and power to create fear led to the terrorism in its present shape, which if not countered by stringent legislation peace and normalcy to life cannot be achieved in its real sense.

Legislation on Terrorism and related offences in Pakistan has emerged with the passage of time in view of Pakistan's geographical situation in the region, facing terrorism and combating with Terrorism as an ally of the Global War on Terrorism. Pakistan's demography, ethnic composition, linguistic profile, literacy ratio, socio-economic conditions, contribute to the affliction of terrorism in presence of cross currents and conflicting strategic vested interests. Pakistan has given biggest toll of the lives of its citizens and Government Functionaries, who became target of terrorism and vanished with the advanced Technology Remote Control Devices, Suicide Attacks, Planted Bombings, Land Mines as well as sniper firing and Target killings. Pakistan has witnessed, in the year 2007, on 18<sup>th</sup> October, brutal terrorism on the convoy of Former Prime Minister of Pakistan, Mohtarma Benazir Bhutto, at Karachi, wherein more than 150 innocent persons sacrificed their lives. On 27<sup>th</sup> December, 2007 Mohtarma Benazir Bhuto Shaheed was assassinated in a brutal terrorist attack while coming out from a public meeting at Liaquat Bagh, Rawalpindi. In the year 2008, Pakistan faced repeated terrorism by Suicide Bombers and Land Mines in Pakistan especially in N. W. F. P. & Baluchistan Provinces. This wave

of terrorism is required to be deterred with stringent laws and deterrent punishments for the terrorists.

To combat the menace of Terrorism and related offences an overview of the Pakistan's legislation with which these heinous offences were dealt with in the yester years and until its transition to the present stage of Anti-Terrorism Laws are:

1. Pakistan Penal Code, 1860.
2. Criminal Procedure Code, 1898
3. Explosives Act, 1884.
4. The Telegraph Act, 1885
5. Railways Act, 1890.
6. The Explosive Substance Act, 1908.
7. The Arms Act, 1858.
8. The Defence of Pakistan Ordinance (XXIII) of 1965
9. Defence of Pakistan Rules, 1965
10. Pakistan Arms Ordinance, 1965.
11. Defence of Pakistan Ordinance (XXX), 1971.
12. Defence of Pakistan Rules, 1971.

These laws according to the requirements of the time had been used with enactments of the Security of Pakistan Act, 1952, The Criminal Law Amendment Act, 1908 and Maintenance of Public Order Ordinance, 1960, however, the need for Legislation of a Substantive Law on the Terrorist Activities has arisen in Pakistan when Terrorist Activities had started surging in Pakistan in early Seventies; whereupon in 1974 an Anti-National Activities Act, 1974 and Suppression of Terrorist Activities (Special Courts) Ordinance, 1974, were promulgated. The Special Courts under Suppression of Terrorist Activities (Special Courts) Act 1975 were established having the specific objective of suppressing acts of sabotage, subversion and Terrorism and to provide speedy trial of offences, in its schedule some of the above cited Laws were incorporated as offences.

This Statute of 1975 remained in field with other Special Courts created under subsequent enactments until promulgation of Anti-Terrorism Act 1997 and dealt with the offences of Terrorist Activities throughout the

judicious dispensation of justice in view of its procedure of Trial Under Section 5 and Laying of Burden of Proof on the accused Under Section 8 according to which "Accused shall be presumed to have committed the offence".

Pakistan's legislation history on Terrorism and related offences can rightly be demarcated from the birth of S. T. A. Courts in 1974/75, however at the same time it was also viewed by Jurists as a deviation from the normal Judicial System, although these Special Courts were necessitated in the public interest in order to address the violence and ensure safe justice. Thereafter, in the year 1987, Special Courts for Speedy Trial through an act of Parliament were promulgated to meet with offences of the nature of gruesome, brutal and sensational character and their speedy trial. The flow of legislation to combat increasing terrorism in furtherance to above laws brought Terrorist Affected Area Ordinance, 1990 and more legislation was made in this regard for the recovery of arms through Surrender of Illicit Arms Act 1991. The Terrorist Affected Area (Special Courts) Ordinance was covered under succeeding Act X of 1992. The laws for combating with terrorist activities stretching over more than two decades had to pass through Judicial scanning of Superior Courts of Pakistan.

A general view can be taken from the reading of dictum of Hon'ble Supreme Court reported in Pakistan Legal Decisions 1995 SC-1.

"While trying a criminal case, it is the duty of the Court to appraise evidence strictly according to the legal requirements described by law without being swayed away emotionally for any other extraneous reasons, which fall outside the pale of legal jurisdiction of appraisal of evidence. In the criminal jurisprudence which is followed, it is invariably the duty of the

prosecution to prove the case against accused beyond doubt and the accused is presumed to be innocent until the case is fully proved against him and in that process not only if there is room for doubt, benefit thereof is to go to the accused but if any legal provision, which is to be relied upon in the appraisal of evidence and is open to two interpretations, one beneficial to the accused is to be adopted. The Court is to administer the laws as are operative in the country and if such laws fail to achieve the desired results, then it is the duty of the legislature to amend them suitably to make them effective. Court is not permitted to deviate from the principles and guidelines laid in the law for appraisal of evidence. To bring home guilt to the accused, legal evidence is required to be of incriminating nature to connect accused with the commission of crime beyond the shadow of reasonable doubt."(P-10)

The incessant growth of Terrorism and violence came as conscious concern for the legislature to combat the same by bringing a law with "Strict liability offence" being elaborate and meaningful to punish the terrorists and able to meet with Terrorism and related Offences; hence Anti-Terrorism Act of 1997 covering all aspects of Terrorism was promulgated in the wake of growing Terrorism in the country. This statute embodies in it Substantive and Procedural law with its schedule of offences covering the entire spectrum from the laws discussed herein above having the offences of Terrorism, Sectarian Violence, Use of Explosives including Bomb Blasts, Hi-jacking, Kidnapping for Ransom etc. Under this law, Lawful Steps against Proscribed Organizations, such as Al-Qaida Network has been taken which has been declared as Proscribed Organization. This piece of legislation on

Terrorism has passed through the appraisal of the Superior Courts of Pakistan in relation to its procedure, dispensation and administration of Justice in accordance with the guaranteed Rights of the Citizens as enshrined under the Constitution of Islamic Republic of Pakistan 1973.

The Judicial Pronouncement on Terrorism can be viewed in P. Cr. L. J. 2002 Karachi at Page-1317:

"The commission of every offence is irksome, painful, distressing and abhorrent. So long it remains confined to the victim or victims or their near and dear ones, it does not amount to terrorism as defined in section 6(1)(b) of the A.T.A., but when any such offence is committed, which by its very nature or because of the manner and method of the commission evokes excited painful emotion of danger, alarm or apprehension terrifying any section of public, public at large, community or a sect, it results in creation of sense of fear and insecurity in the society at large and thereby enters into the realm of terrorism." (P-1359)

In PLD 2005 Karachi at Page-244 reliance was placed on PLD 2000 Karachi Page-89 as follows:

"An act of terrorism is a preplanned and organized system of intimidation. Its requisites and attributes are that such act and its effects are made known to the people and widely circulated with exaggeration. It is neither hidden nor disguised. It means an act, which is committed with the sole object to terrorize the people and to feel them insecure" (P-354).

On this Statute of Anti-Terrorism the leading Judgment which covers the future course of action under the Anti-Terrorism Act of 1997 and which brought the Act in consonance with the letter and spirit of the Constitution of Islamic Republic of Pakistan 1973 has been delivered by the Hon'ble Supreme Court of Pakistan in Maharam Ali Case reported in Pakistan Legal Decisions (PLD) 1998 Supreme Court Page 1445, wherein it was held that :

"The right of "access to justice to all" is a fundamental right, which right cannot be exercised in the absence of an independent judiciary providing impartial, fair and just adjudicatory framework i.e. judicial hierarchy. The Courts/Tribunals which are manned and run by executive authorities without being under the control and supervision of the High Court in terms of Article 203 of the Constitution, can hardly meet the mandatory requirement of the Constitution. (P-1477)

Indeed different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standing and persons accused of heinous crimes. However, this does not mean that a parallel judicial system can be created in violation of Article 175, 202 and 203 of the Constitution. There can be Special Courts trying heinous crimes expeditiously, but the same should be within the framework of the Constitution. (P-1479)

That equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed.

That in order to make a classification reasonable, it should be based—(a) on an intelligible differentia which

distinguishes persons or things that are grouped together from those who have been left out ; (b) That the differentia must have rational nexus to the object sought to be achieved by such classification. (P-1478)

In this Judgment it was also observed:

"The law and order situation has been considerably deteriorated and new types of terrorism have emerged due to tremendous progress made in the field of technology. The approach of the Court while considering criminal matters should be dynamic and it should take into consideration the surrounding situation obtaining in the country and should not lightly set aside a conviction on technical grounds if the Court's conscience is satisfied that factually the convict was guilty of the offence".(P-1486)

By this Judgment various provisions of Anti-Terrorism Act, 1997 were declared to be ultra vires to the Constitution.

The Criminal Procedure Code and Law of Evidence i.e. Qanoon-e-Shahadat Order 1984 have been explicitly made applicable to the trial of offence under Anti-Terrorism Act through this Judgment.

"The provision of the Code of Criminal Procedure, 1898 which is a self-contained Code for the holding of criminal trials, has been made applicable to the proceedings before a Special Court and for the purpose of the said provisions of the Code, a Special Court shall be deemed to be a Court of Session by virtue of section 32 of the Anti-Terrorism Act. By virtue of Article 1 (2) of the Qanun-e-Shahadat, 1984, its operation extends to the whole of Pakistan and applies to all judicial proceedings in or



other authority exercising judicial or quasi-judicial powers of jurisdiction." (P-1500)

This landmark Judgment has brought new facet to Anti-Terrorism Act, 1997 and became guiding source for Amendments in this statute and such Amendments were brought Under the Ordinance XXXIX of 2001.

Another illustrative Judgment of Hon'ble Supreme Court of Pakistan reported in the year 1999 in Supreme Court Monthly Review (SCMR) at Page 569 (Shaikh Liaqat Hussain Versus Federation of Pakistan) has further crystallized the Anti-Terrorism Act 1997 on the vires of Pakistan Armed Forces (acting in aid of the Civil Power) Ordinance, 1998, and has framed guidelines in exercise of its Constitutional Jurisdiction under Article 184 sub-clause (3) of the Constitution of Islamic Republic of Pakistan 1973 to achieve the required objectives and held inter-alia that

"(i) Cases relating to terrorism be entrusted to the Special Courts already established or which may be established under the Anti-Terrorism Act, 1997 (hereinafter referred to as A.T.A) or under any law in terms of the judgment of this Court in the case of Mehram Ali and others Vs. Federation of Pakistan (PLD 1998 SC 1445). "

It was also observed in this Judgment: "However, we are not oblivious of the facts that terrorism in Karachi and in other parts of Pakistan has not only taken toll of thousands innocent lives but has also affected the economy of the entire Country and it is a matter of paramount importance that this menace is eliminated effectively in the shortest possible time, for which a solution be found within the framework of the Constitution.".(P-571)

It would not be out of place to mention here that at this juncture of Legislative developments and Judicial Pronouncements on Anti-Terrorism. Laws the Courts in Pakistan established under the Anti-Terrorism Act, 1997 are functioning with the legislative intent and in accordance with the Constitution of Pakistan and are subject to the Judicial Supervision of the Superior Courts having Administrative Judge at High Courts Level.

The Supreme Court of Pakistan in its Judgment reported in NLR 2005 Page 561 (Mirza Shafqat Baig V/s. Shahid & others) has fortified the Legislative intent on Terrorism by holding the offences under Anti-Terrorism Act 1997 as Strict Liability Offence; viz:

"The provision as contained in Section 6 of the Act is penal/criminal in nature like all other penal provisions which can be divided into "actus reas" i.e. the Act in question and "mens rea" i.e. the requisite mental element. It is not essential for a penal provision to contain both such ingredients as the provisions which omit the mens rea are called strict liability offence." (P-585)

In pursuance of legislation and Judicial pronouncement to combat terrorism, Pakistan has ratified the Universal Convention and Protocol against Terrorism which are inline with the essence of Anti-Terrorism Act 1997 and are being adhered to in the letter and spirit such as :

- i) United Nations Convention for Suppression of Financing of Terrorism, 1999.
- ii) International Convention for Suppression of Terrorist Bombing, adopted by the General Assembly of the UN on 15-12-1997.

- iii) UN Security Council Resolution No.1372, 1373, 1390 & 1455.
- iv) Financial Action Task Force (FATF)'s 09 Special recommendations on Terrorist Financing.

Pakistan has promulgated Anti-money Laundering Ordinance, 2007 to conduct Financial Investigation under this Ordinance to trace suspicious transaction reports and currency transactions from Financial Institutions and from Non Financial Business and Professions to accomplish the object.

The legislation on combating with terrorism in Pakistan in its present form safeguards Fundamental Rights guaranteed under the Constitution of Islamic Republic of Pakistan 1973 and also the Human Rights guaranteed under the Universal Declaration of Human Rights and the covenants of U.N.O.

It is high time that exchange of views in this Workshop on International Cooperation in Terrorist Cases may bring forth more avenues to strengthen the Legislation against Terrorism.