

Pakistan Anti-Terrorism (Amendment) Ordinance, 1999

Whereas it is expedient to amend the Anti-terrorism Act, (XXVII of 1997), for the purposes hereinafter appearing;

And whereas the National Assembly is not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to make and promulgate the following Ordinance:-

1. Short title and commencement -- (1) This Ordinance may be called the Anti-terrorism (Amendment) Ordinance, 1999.

(2) It shall come into force at once and shall be deemed to have taken effect on the twenty-fourth day of February, 1999.

2. General Amendments, Act XXVII of 1997 -- In the Anti-terrorism Act, 1997 (XXVII of 1997), hereinafter referred to as the said Act,--

(a) for the words "Special Court", "a Special Court" or "the Special Court" wherever occurring the words "Anti-terrorism Court", "an Anti-terrorism Court" or "the Anti-terrorism Court" shall be substituted respectively; and

(b) for the words "Appellate Tribunal", "an Appellate Tribunal" or "the Appellate Tribunal" wherever occurring the words "High Court," "a High Court" or "the High Court" shall be substituted respectively.

3. Amendment of section 2, Act XXVII of 1997 -- In the said Act, in section 2,--

(a) after clause (d) the following new clause shall be inserted, namely:--

"(d, a)" "High Court" means the High Court having territorial jurisdiction in respect of the area for which an anti-terrorism court has been established; and

(b) for clause (e), the following shall be substituted, namely:-

"(e) "scheduled offence" means a terrorist or sectarian related offence as set out in this Act or the Schedule hereto."

4. Amendment of section 5, Act XXVII of 1997 -- In the said Act, in section 5, in sub-section (2), in clause (i), the comma and words", or in all probability is likely to commit" shall be omitted.

5. Amendment of section 6, Act XXVII of 1997 -- In the said Act, for section 6, the following shall be substituted, namely:--

"6. Terrorist Act -- A person is said to commit a terrorist act if he, (a) in order to, or if the effect of his actions will be to, strike terror or create a sense of fear and insecurity in the people, or any section of the people, does any act or thing by using bombs, dynamite or other explosive or inflammable substances, or such fire-arms or other lethal weapons as may be notified, or poisons or noxious gases or chemicals, in such a manner as to cause, or be likely to cause, the death of, or injury to, any person or persons, or damage to, or destruction of, property on a large scale, or a widespread

disruption of supplies of services essential to the life of the community, or threatens with the use of force public servants in order to prevent them from discharging their lawful duties; or
(b) commits a scheduled offence, the effect of which will be, or be likely to be, to strike terror, or create a sense of fear and insecurity in the people, or any section of the people, or to adversely affect harmony among different sections of the people; or
(c) commits an act of gang rape, child molestation, or robbery coupled with rape as specified in the Schedule to this Act; or
(d) commits an act of civil commotion as specified in section &A."

6. Amendment of section 7, Act XXVII of 1997 -- In the said Act, for section 7, the following shall be substituted, namely:--

"7. Punishment for terrorist act -- Whoever commits a terrorist act,-
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(i) referred to in paragraph (a) of section 6, shall--

(a) if such act has resulted in the death of any person be punished with death; and

(b) in any other case, be punishable with imprisonment for a term which shall not be less than seven years but may extend to life imprisonment, and shall also be liable to fine; and

(ii) referred to in paragraphs (b) and (c) of section 6 be liable to the punishment prescribed under the relevant law."

7. Insertion of sections 7A and 7B, Act XXVII of 1997 -- In the said Act, after section 7, the following new sections shall be inserted, namely:--

"7A. Creation of civil commotion -- "Civil commotion" means creation of internal disturbances in violation of law or intended to violate law, commencement or continuation of illegal strikes, go-slows, lock-outs, vehicles snatching or lifting, damage to or destruction of State or private property, random firing to create panic, charging *bhatta*, acts of criminal trespass (illegal *qabza*), distributing, publishing or pasting of a handbill or making graffiti or wall-chalking intended to create unrest or fear or create a threat to the security of law and order or to incite the commission of an offence punishable under Chapter VI of the Pakistan Penal Code (Act (XLV) of 1860).

7B. Punishment for creating civil commotion -- Whoever commits an act of civil commotion shall be punished with rigorous imprisonment for a term which may extend to seven years, or with fine, or with both."

8. Amendment of section 10, Act XXVII of 1997 -- In the said Act, in section 10, the full stop at the end shall be replaced by a colon and thereafter the following proviso shall be added, namely:--

"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".

9. Amendment of section 13, Act XXVII of 1997 -- In the said Act,

for section 13, the following shall be substituted, namely:--

"13. Establishment of Anti-terrorism Court --

(1) For the purpose of providing for the speedy trial of the cases referred to in sub-section (2) and sub-section (3) of section 39A, as well as 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) Notwithstanding anything contained in sub-section (1), if, having regard to the exigencies of the situation prevailing in a Province, the Government is of the opinion that it is expedient to establish in relation to an area, or in relation to two or more areas, in the Province, an anti-terrorism court outside the said area or areas, for the trial of offences committed in the area, or areas, it may, by notification, establish in relation to such area or areas an anti-terrorism court at such place outside the said area, or areas as may be specified in the notification.

(3) 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, or cases, 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.

(4) In respect of a case assigned to a court under sub-section (3), 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."

10. Amendment of section 14, Act XXVII of 1997. -- In the said Act, in section 14, --

(a) in sub-section (1), in clause (iii) after the word "advocate" at the end the words "of a High Court" shall be added; and

(b) for sub-section (2), the following shall be substituted, namely:-

"(2) A Judge shall be appointed for a period of two and a half years after consultation with the Chief Justice of the High Court:.

Provided that the Judge may be removed from office prior to the expiry of the said period in consultation with the Chief Justice."

11. Amendment of section 16, Act XXVII of 1997. -- In the said Act, in section 16, for the words "his faith to the effect that he will decide the case honestly, faithfully according to his conscience and belief" the words "the Constitution, law and his conscience" shall be substituted.

12. Amendment of section 19, Act XXVII of 1997. -- In the said Act, in section 19, -- (i) for sub-section (10), the following shall be substituted, namely:-

"(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 to 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."; and (ii) after sub-section (11), the following new sub-section shall be inserted, namely:-

"(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."

13. Amendment of section 24, Act XXVII of 1997. -- In the said Act, section 24 shall be omitted.

14. Amendment of section 25, Act XXVII of 1997. -- In the said Act, in section 25, sub-section (6) and (7) shall be omitted.

15. Amendment of section 26, Act XXVII of 1997. -- In the said Act, section 26 shall be omitted.

16. Amendment of section 28, Act XXVII of 1997. -- In the said Act, in section 28, in sub-section (2) the full stop at the end shall be replaced by a colon and thereafter the following proviso shall be added, namely:-

"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."

17. Substitution of section 37, Act XXVII of 1997. -- In the said Act, for section 37, the following shall be substituted, namely;-

"37. Contempt of Court. -- 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 and order or direction of the Court; (b) scandalises 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."

18. Insertion of section 39A, Act XXVII of 1997. -- In the said Act, after section 39, the following new section shall be inserted, namely:-

"39A. Repeal -- (1) The Pakistan Armed Forces (Acting in Aid of the Civil Power) Ordinance 1998 (XII of 1998), as amended by the Pakistan Armed Forces (Acting in aid of the Civil Power) (Amendment) Ordinance, 1998 (XIII of 1998), and the Pakistan Armed Forces (Acting in Aid the Civil Power) Second Amendment) Ordinance, 1998 (XVII of 1997) (hereinafter referred to as the repealed Ordinance), is hereby repealed.

(2) All cases, including cases before a court of appeals, which were pending under the repealed Ordinance shall stand transferred to the anti-terrorism court having jurisdiction under the Act and such court shall, (a) in cases which have been transferred from a trial court, continue the trial from the stage which the cases had reached; and (b) in cases which have been transferred from a court of appeals decide the same other basis of the evidence earlier recorded after hearing the parties.

(3) Any judgement given or sentence passed by a trial court or a court of appeals convened under section 3 of the repealed Ordinance, except cases in which sentence of death was passed and has been executed, shall have no effect and all such cases shall stand transferred to the anti-terrorism court having jurisdiction under the Act for decision after hearing the parties on the basis of the evidence earlier recorded.

(4) In respect of a case transferred to a court by virtue of sub-section (2) or sub-section (3), the court shall not, by reason of the said transfer, be bound to recall and rehear any witness who have given evidence before the transfer and may act on the evidence already recorded by or produced before the court from which the case is so transferred.

(5) Nothing contained in sub-section (4) shall affect the power of the court to recall any witness or rehear any evidence as is available under the law."

19. Amendment of the Schedule Act XXVII of 1997. -- In the said Act, in the Schedule, after entry at serial No. 4, the following new entry shall be added, namely:-

"5. Any offence including an offence punishable under the Pakistan Arms Ordinance, 1965 (W. P. Ord. XX of 1965), committed conjointly with any other offence punishable under this Act."