Strengthening Pakistan's Anti-extremism Laws: Policy and Practice

NATIONAL INITIATIVE
AGAINST ORGANIZED CRIME
PAKISTAN

Contents

Executive Summary

This research study has attempted to unravel the gaps in the laws against extremism across multiple dimensions. The research process, however, has broadened the focus, by examining the historical trajectory of extremism, the state's response to deal with it by using legislative and policy instruments and the quantum of success that these instruments have achieved. Towards the end, the research findings have been translated into recommendations and conclusions and a proposed way forward .

The introduction of this research provides an overview, the scope and methodology of the research. A mixed methods approach has been used, by triangulating quantitative data of registered cases and disposal under all sections of laws against extremism, Key Informant Interviews and Case Studies derived from case law. This is followed by the goal of the research. The themes and analytical framework have also been made part of the introduction .

The first chapter records and analyzes the historical trajectory of extremism in Pakistan. The genesis of extremism can be traced back to post-1857, reformist movements in Sunni Islam in Indian Sub-continent, when it splintered in to different sects, laying the basis of extremism in later years. The chapter also traces the sectarian schism which culminated in sectarian violence in 1990s. The government responded by enacting Anti-Terrorism Act in 1997. It has also been recorded that how the rise of extremism has given rise to extremist violence leading to terrorism in the country often targeting sectarian and religious minorities.

The second chapter forms the core of this research project. It is reported that there are 12 Laws and 45 sections in these laws which deal with extremism. It may be pointed out that there are no exclusive laws in Pakistan to deal with extremism, but the offences pertaining to extremism have been dealt with, in specific provisions in different laws like the Pakistan Penal Code, Anti-Terrorism Act, Prevention of Electronic Crimes Act etc. The question of definition of extremism has been addressed and it is observed that there is a definitional ambiguity of extremism in the statutory books. There is a structural reason for this ambiguity, because extremism until it remains Mens Rea cannot be criminalized until it results in Actus Reas. After settling the

question of definition, the research arrives at examining the gaps in existing laws, using quantitative approach. In order to address the questions raised in the project proposal, an effort was made to collect relevant data about the invoking of these laws by the police, from all the four provinces, as well as the Federal Investigation Agency, which has the exclusive domain of investigating cases under the PECA. Within the short time of the project, it was disconcerting to note that the provincial police forces and the FIA do not collect and collate the desired data in a standardized format, except the province of the Punjab. Consequently, to get an idea of the implementation of these laws on a provincial basis, as a representative specimen, the data of the cases of extremism registered by the police in the four provincial capitals, from 2014 to 2020 was solicited, obtained and analyzed to capture the provincial perspectives. Therefore, this chapter has been divided into five sections. The first section analyzes the comprehensive data from Punjab, while the later sections analyze data of provincial capitals and FIA. The analytical framework analyzes the data across three dependent variables of law: prohibitive deterrence, in terms of sentences, the usage of laws determining their frequency and infrequency and their efficacy in terms of conviction and disposal rates. The sections have been arranged with the first section analyzing data of cases registered and disposed under Substantive Law (PPC). The second section analyzes data of cases registered under Special Law (ATA). The third section examines the provincial variations both under substantive law and special law. The fourth section analyzes data of online extremism cases and the fifth section analyzes the subordinate legislation/rules developed to deal with extremism. There is also a horizontal configuration inserted in the analysis of all sections where legal provisions dealing with hate speech, incitement to violence and mob violence have been examined separately. The research also addresses the gap in terms of absence of laws, the case of forced conversions. The reported data on forced conversion is also captured and articulated, although no empirical research on forced conversions was available .

The third chapter adds the dimension of examining the case law for identifying any gaps in application of laws. The case law has been analyzed as a set of case studies. The horizontal categories of hate speech, blasphemy, mob violence and hate material were also methodologically applied in this chapter across the spectrum of case studies. It also captures the

high-profile cases where extremism resulted in lethal and even fatal violence, like the Mashal Khan case and Kot Radha Kishan case. The case law analysis revealed many issues in the adjudication process in cases of extremism .

The fourth chapter is devoted to the policy domain of Pakistan against extremism. It shows that in terms of number of policies envisaged by the government to deal with extremism, the government of Pakistan are appreciative of the threat, however, the policy intent has not translated into concrete actions thus far. The policies that were examined covered the period from 2014 onwards, starting from National Internal Security Policy, National Action Plan, National Counter Terrorism and Extremism Strategy, Paigham-e-Pakistan, National Counter Extremism Policy Guidelines, National Internal Security Policy (2018-23) and the proposed National Counter Extremism Commission. The policy evolution reflects that government focus is now steadily shifting to a balance between CT and CE .

The fifth chapter has two parts. The first part focuses on showcasing a national good practice of CTD Punjab. The data from CTD Punjab reveals that by adopting some organizational improvements, it was able to deal with extremist cases much more effectively than regular police units. These procedural improvements in the organization increased the conviction rate, bringing it to more than 50%. The second part of this chapter is devoted to map the international good practices. United Nations' Secretary General announced a comprehensive plan of action which urges countries to adopt a 360-degree approach to deal with extremism. Similarly, Norwegian example to deal with extremism is also captured, which has two components and covers the extremism in prison system. The last but not the least example that has been showcased is the 'Prevent' strategy of UK, which again advocates a whole of the society approach to handle extremism in UK .

The sixth chapter is of key significance as it encapsulates the major findings of the CE Study. It is organized section-wise and lists the findings accordingly. The overarching findings of the research on legal gaps are a) that almost all legal provisions against extremism do not have lower sentencing limits, which gives the trial court judges a wide discretion. There have been examples of sentences as low as 14 days in extremism cases. The dissuasive deterrence of the legal

provisions is hence compromised, encouraging impunity, b) the case registration trend in all legal provisions against extremism spikes in 2015, after NAP was announced. This shows that a resolute approach of the government can actually make good use of existing provisions of law against extremism, c) the study also reveals that there is a major gap in the legal infrastructure in terms of absence of law against forced conversions. Besides these overarching findings some specific findings are also listed, like cases of extremism are not separately captured and recorded at Police Station level. The organizational apathy (across the criminal justice system) of the deep linkage between extremism affects the outcome of the cases. It was also observed that Section 11-W of ATA is the most elaborate and comprehensive legal provision to deal with extremism cases, it can be invoked even against online hate. However, its usage has been infrequent. The biggest issue that emerged was that beside Punjab, there was no data available from other provinces on cases of extremism. While examining the case law the research points out key gaps like a) overreliance of criminal justice system on FIR, which clouds the entire investigation and prosecution process, as FIR is only meant to record the time, type and place of incidence, but it has now mutated in to a descriptive narrative, b) the Evidence law (Qanun-e-Shahadat Order 1984) accords primacy to ocular evidence/testimony, which distorts the entire process of criminal justice system, c) the research also reveals that the legal provisions against extremism are vague with imprecise wordings, d) there is also the issue of unfettered judicial discretion, and there are no sentencing guidelines e) there are also no guidelines for police to apply sections of the laws against extremism and it is also a discretionary practice, f) there are also no legal systems in place for performing preventive functions. The key findings then move on to policy analysis. The first policy focusing on extremism was National Internal Security Policy (NISP). NISP was more focused on terrorism and extremism featured as a lesser threat. The policy was a response to the high incidence of terrorism in the country at that time. Post Army Public School terrorist incidence, Government of Pakistan issued a list of measures that it intended to adopt against terrorism and extremism, it was called National Action Plan (NAP). NAP does realize the threat that extremism poses and how easily it can mutate into terrorism, hence provisions to combat extremism were made part of it. Implementation of NAP has also been reviewed in this chapter. The next policy which has been analyzed is National Counter Terrorism and Extremism

Strategy (NACTES). NACTES flows out of NISP and NAP and provides a framework for combatting terrorism and extremism. Piagham-e-Pakistan is an attempt to build a religious and theological counter narrative against extremism. Religious scholars from all schools were involved in its development. Moving forward from NACTES, National Counter Terrorism Authority has developed comprehensive National Counter Extremism Policy Guidelines (NCEPG). These guidelines propose to adopt a holistic 360-degree approach and adopts a society as a whole approach. The latest policy that has been formulated by Government of Pakistan is National Internal Security Policy 2018-23. This is a recalibration of the previous NISP and is an improvement, devoting more attention to the threat of extremism. More recently government has proposed a National Commission on Countering Extremism. This policy intent has yet to take shape and it is believed that such a commission will develop a coordination and implementation structure to counter extremism .

The last chapter proffers a set of recommendations derived from the study findings. The recommendations also follow the logic of the report and are grouped as policy recommendations, suggested legal improvements to plug the gaps in the laws, proposals to improve organizations that are dealing with extremism. In order to translate these recommendations an advocacy plan is also provided. The advocacy plan identifies actions, target audience and responsible organizations through a matrix of implantation framework .

According to the former Chief Justice of Pakistan, Asif Saeed Khan Khosa, the deterrence effect of laws has been compromised over the years. The 'impunity factor' to commit crime has been accentuated, especially in the case of crimes related to extremism. The laws over time were rendered inadequate because extremism with an innate denial of Pakistan's legal system grew bigger than the law itself. Extremism was glorified and occupied social space above and beyond law. Hence, it is not the absence of laws to deal with extremism, it is the appropriation of extra-legal legitimacy by extremist ideologies, in the process delegitimizing the rule of law of the state, which is the real problem .

Introduction: Scope and Methodology

In recent years, Pakistan has succeeded in considerably reducing the number of terrorist attacks in the country. This has been made possible by certain suitable measures taken over the years, to combat terrorism. We witnessed strong collaboration among law enforcement agencies too – both military and civilian. The steps taken were, however, predominantly kinetic. To sustain this consistent reduction in the incidence of terrorist attacks in the country, there is a need to have a paradigm shift in our approach, in terms of greater attention to targeting the breeding process of militancy. Thus, tackling extremism, which spawns violence is likely to be the biggest challenge to Pakistan`s internal security, in the future.

Countering extremism, however, requires a holistic approach that effectively addresses all aspects of the complex challenge. The legal framework around countering extremism and the role of the Criminal Justice System are the central planks in any effort to counter extremism. It also requires effective responses from law enforcement and security agencies.

Pakistan has made some progress in strengthening its anti-terrorism legal regime since 2015. Following the Army Public School (APS) attack in December 2014, along with establishing military courts, two amendments were made to country's principal anti-terrorism law, the Anti-terrorism Act, 1997. Similarly, the National Counterterrorism Authority (NACTA) Act 2013 has since been amended twice, and two separate laws, the Investigation for Fair Trial Act and the Protection of Pakistan Act, were also enacted, respectively. Under the Anti-Terrorism Act, Pakistan has established special courts known as anti-terrorism courts (ATCs). More than a dozen new laws have also been recently enacted to curb terrorist financing and to check the reemergence and operations of banned terrorist groups .

While the changes in the legal regime clearly define terrorist activity and identify such crimes, there are multiple gaps in Pakistan's legal and judicial milieus in the context of addressing or countering an 'extremist' act or activity. Indeed, "extremism" has not been defined as a separate crime, and is thus linked to related criminal, including terrorist, offenses. Such provisions can be

found in the Anti-terrorism Act 1997, and in Pakistan's Penal Code.[1] For instance, Section 8 of the Anti-terrorism Act 1997, criminalizes "sectarian hatred" expressed verbally and through print. Similarly, Pakistan Penal Code's (PPC) Section 295 and linked clauses make blasphemy and insulting religion a serious offence. The Prevention of Electronic Crimes Act 2016 Section 10 A, a more recent law, uses the term "hate speech" and criminalizes it. It also uses the term "race" besides religion and sect as subjects of hate speech. Unless rigorous safeguards are in place, these laws have the potential of encroaching on constitutionally protected fundamental freedoms. Controversial legislation, such as the Tahaffuz Bunyad-e-Islam Bill was passed last year by the Punjab Provincial Assembly, but it still needs the Governor's assent. It had the potential of fanning sectarianism and creating unnecessary sectarian divide .

Despite existing laws that criminalize various "expressions" of extremism, there still exists an ambiguity about the definition of extremism in the statutory books. Pakistan's 2015 Counterterrorism National Action Plan (NAP), launched after the APS attack, relies on the anti-terrorism legal regime to counter extremism, including sectarian violence. NAP articulates the intent of the state not only to fight terrorism but also recognizes the threat posed by extremist ideologies, attitudes and behaviors. However, the policy intent here too remains more focused on providing legal cover to 'kinetic' actions, which are deemed necessary to fight terrorism.

Aside from existing legal gaps and persisting definitional ambiguity with regards to the counter-extremism legal regime, there are also challenges in the context of practice and implementation. While many weaknesses are linked to prosecution, concerns have also been raised about the misuse of such laws and the capacity and performance of the judicial system to counter extremism. There is therefore a pressing need to understand and evaluate the current baseline of the country's counter-extremism laws, to assess ongoing challenges in implementation, and to suggest ways to fill the gaps in counter-extremism legislation .

[1] Library of Congress, "Legal provisions of fighting extremism: Pakistan," September 2015, https://www.loc.gov/law/help/fighting-extremism/pakistan.php

Primary Goal of CE Study

This study has the primary goal of exploring options and ways of strengthening Pakistan's anti-extremism legal regime, both in the context of laws and practice. The linked objectives of the study are listed below:

- Identify gaps in the content and use of Pakistan's CE-relevant laws, also considering provincial variation .
- Assess weaknesses and gaps in investigation, prosecution and trial of offenders.
- Suggest feasible legislative and policy remedies to address those gaps based on best international practice; and identify the need for new legislation .
- Map a strategy to take forward the study's recommendations to policymakers, including the executive and legislative branches.

Research Themes and Analytical Framework :

The analytical framework of the proposed research has had both diagnostic and prescriptive approaches. The following table illustrates the analytical framework :

Research Questions	Diagnostic Research Variables	Prescriptive-Recommendations
• To explore laws and regulations pertaining to extremism, Pakistan's definitions of extremism and violent extremism, and their application. Surely, there is an international debate over the definition of extremism. In 2019, the Chief Justice of Pakistan ruled that terrorism be defined by its motive, not consequence. Should that also apply to extremism? • To explore the implications of Pakistan's definition of	Definitional Ambiguity: Extremism in Pakistan has not been accorded a legal definition. The definitional issue has been examined according to the parameters listed below: • Is it deliberate legal denial or a legal neglect? And the reasons thereof • The paradox of defining extremism and its clash with freedom of	The study proposes balanced and practical legal remedies to address the issue of countering extremism.

Research Questions	Diagnostic Research Variables	Prescriptive-Recommendations
extremism on the spread of extremist ideology or extremist violence in Pakistan.	expression as a fundamental right.The delicate balance of defining where freedom of speech ends, and harmful extremism begins (impact factor will be one of the important criterions)	
• Which statutes/legal/administrative structures have direct bearing on CE? • Which laws are invoked to counter extremism? • Which laws are invoked to curb hate speech? • How are those laws implemented by law-enforcement and the courts? • CE: To what extent are laws effective in countering CE? What are their gaps? • CT: To what extent are CT laws effective in dealing with CE? • CE: How does the application of CE vary between provinces?	Laws: Mapping of all CE related legal provisions. All legal provisions on the statutory books having a bearing on CE have been examined through the following lens: • Their prohibitive value of a law depends on two factors i.e., certainty of punishment and its severity. This was ascertained by two factors a) the penalty b) the rate of convictions and incarcerations since 2015 • Their usage. How many times were the legal provisions of CE invoked in the four provinces and ICT (capturing the provincial variations-incidence and cognizance) • The issue of	Legislative Recommendations: A list of legislative recommendation clause-wise has been proposed focusing on the legal impact in terms of incarceration and conviction. The study concludes that a new law is not needed that focuses solely on extremism.

Research Questions	Diagnostic Research Variables	Prescriptive-Recommendations
	cognizable offences and other legal lacunae was also examined (For instance, only the Federal Investigation Agency (FIA) can take cognizance under PECA for online offenses and cybercrime. Police or Counter Terrorism Departments (CTDs) cannot take cognizance of online extremism	
• To what extent do legal structures/definitions align with global standards? • Does Pakistan's CE legal regime comply with human rights standards? • What are the best practices of laws countering extremism? Gaps and Misuse • What are the most problematic gaps that exist in those laws? • How do these gaps work to the advantage of extremists? • How and where does the misuse of these laws play into the hands of extremists? • Do these laws have the potential of countering extremism? If so, in what manner? • How are the laws/codes	Usage: The usage of the legal provisions was examined according to following parameters: • At the stage of registration of case which legal provisions were used in FIRs • At investigation stage what investigative tools and methods were used • At the prosecution level (arguments, witness cross-examination, evidence presented) • At the award of sentence stage-convictions and acquittals and reasons thereof	The procedural lapses at all stages of criminal justice system were identified and recommendations made.

Research Questions	Diagnostic Research Variables	Prescriptive-Recommendations
interpreted? • Is hate speech properly defined? Can it be criminalized? • What is the link between extremism and online spaces? • How do extremist trends relate to gaps in the laws? • Are laws used in the way they were intended or are definitions broadly interpreted within provinces?	• At the appellate stage (maintenance of trial court sentence-reduction- acquittal and reasons thereof)	
	Influence of Extra-Systemic factors: The role of social and cultural influences in legal decision-making process were also examined as external factors	Separate policy recommendations have been prepared for wider handling of CE and as an addendum to the major research.
• What policy recommendations can be made to plug existing legal gaps? • What strategy/lobbying or advocacy plan can be undertaken to pursue those recommendations?	The Way Forward: The final report outlines an advocacy strategy for taking forward the proposed recommendations that emerge out of the study.	The advocacy strategy targets all stakeholders, including the legislature, and within the executive, relevant government ministries/departments, as well as civil society stakeholders and the media.

Research Methodology and Design

A mixed methods approach was adopted for this research project, using both primary and secondary sources for data collection .

NIOC undertook a study design of two parallel, connected streams related with research and advocacy. The first consisted of engagement and consultations with former judges of the trial and appellate courts, legislators, lawyers and bar associations, law-enforcement professionals, security analysts, and members of civil society. This engagement aimed to explore the questions

and issues identified above through the lens of the experts, practitioners, and active community members. The second parallel stream focused on case studies, based on crime data (provincially disaggregated), case files, and court judgments .

For a critical appraisal, NIOC took the research outcome to a select group of experts and discussed the key findings through a consultative process. To undertaking advocacy and sensitizing the stakeholders, NIOC also engaged the wider segments from diverse but relevant fields such as judiciary, legislature, security, think tanks, academia, and members of civil society working in areas of counter-extremism .

The final report combines the literature review, case studies and stakeholders' consultations with recommendations flowing from that entire process.

- Research Process
  - The following diagram illustrates the research process that NIOC used :
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- Research limitations and duty of care :

  The proposed research had certain limitations which are listed below :
  - The request for anonymity by the respondents of KII was respected, due to the sensitive nature of the subject and duty of care responsibility .
  - The details of case files were not included in the research report; only analysis and numbers were reflected in the report .
  - Due to COVID-19 pandemic, most KIIs were conducted online .

Organizational Stakeholders for KII:

The KIIs were conducted with representatives/officers/officials of following organizations :

- National Counter Terrorism Authority
- Provincial CTDs
- Federal Investigation Agency
- National Police Bureau
- Crimes Branches of the Provinces
- Home Departments
- Police Departments
- Federal Judicial Academy
- Law and Justice Commission of Pakistan
- Ministry of Interior
- Ministry of Religious Affairs
- National Security Division

FGDs reviewed the research strands and developed recommendations:

An expert group of about 10 members reviewed the research and discussed the key findings in a series of consultation meetings. This consultation explored in greater detail the lacunae in CE legal frameworks and their vulnerabilities to abuse and offered informed recommendations to bridge the gaps in the legislation and reduce the risks of misuse.

Provincial-level open discussions with stakeholders:

These consultations entailed the wider stakeholders from diverse but relevant fields such as judiciary, legislature, security, think tanks, academia, and members of civil society working in areas of counter-extremism .

Triangulation:

NIOC conducted a triangulation of all secondary and primary sources, which consisted of interpretation, synthesis, and integration of data coming from desk review, KIIs, and FGDs. Based on these sources of data and triangulation, recommendations have been formulated .

The Team: The research was conducted by a team of highly qualified professionals. The names and roles are listed below .

1. Tariq Parvez-Team Leader: Former National Coordinator NACTA and DG FIA
2. Tariq Khosa-Deputy Team Leader: Former IG Police and DG FIA
3. Kashif Noon: Lead Researcher/Rapporteur
4. Amir Rana: Director PIPS: Chief Coordinator
5. Barrister Saroop Ijaz: Legal expert on CE legislation
6. Anam Fatima, Researcher from PIPS
7. Muhammad Ali Nekokara PSP: Quality Assurance Expert
8. Ammar Jaffri: Former ADG FIA: Community Outreach Expert
9. Hassan Sardar: Manager Operations

Research associates:

1. Syed Ejaz Hussain, former DG National Police Bureau
2. Shahzada Sultan, PSP: DIG Punjab Police
3. Kamran Adil PSP: DIG ICT Police
4. Fatima Saif: Research Assistant

NIOC Team had the unique honour of working on this study under the strategic guidance of Justice Asif Saeed Khan Khosa, former Chief Justice of Pakistan.

Value for Money (VfM):

The research followed the 3E approach;[2] economy, efficiency, effectiveness. The following measures were undertaken to ensure the 3E approach :

1. The KIIs were mostly remotely done which is an economized method. Similarly, the travel, boarding and lodging costs were saved .
2. The efficiency was ensured by interviewing the most relevant professionals with demonstrated knowledge on the subject .
3. The debate on counter-extremism has been an under-discussed area in Pakistan. This research will be an invaluable addition to the body of knowledge through both qualitative and quantitative study. The product is aimed at informing the government's CE policy and parliament's enactment of CE legislation .

[2]https://beamexchange.org/guidance/monitoring-overview/assessing-value-money/4e-approach-vfm/

Chapter 1

Analyzing the Historical Trajectory of Extremism in Pakistan

Religious radicalism has a big impact on the societal behaviors in South Asia and the Middle East. It insists on tradition and resists change. The attitude triggers variant varieties of extremism including the violent. Religious radicalism also shapes the worldview, which is not only less tolerant towards the West and secular values, but it also has less appetite for the nation-state and democratic governance system. In South Asia, the issue of religious identity further complicates the situation and religion's political use creates divisions among the communities. The political use of religion has empowered the religious communities in South Asia and their political influence has increased gradually. This phenomenon has given birth to a new segment amongst the power elites, which was the religious clergy. The religious elite has exploited religion to build its influence on policy discourse in the country and encourage the government to introduce legislation to regulate the faith in Pakistan and resist legislative reforms against such laws .

Blasphemy Laws in British India

1. Section 295 IPC: protect places of worship and sacred objects from defilement
2. Section 296 IPC; Protect religious assemblies from disturbance.
3. Section 297; Protect funeral remains and burial sites from malicious trespass.
4. Section 298 IPC: Protect religious feelings of any person from deliberate insult

Source: https://forbinfull.org/2019/09/18/long-read-the-forgotten-faces-and-hidden-history-of-pakistans-blasphemy-laws/

The challenge of radicalism is deeply complex. The problem with the religious support base is that it can be mobilized only through using religious sloganeering and blending it with existing political contexts. The religious parties have comparatively better organizational structures and institutions, which help them mobilize their support bases at any time. They have street power

and a religious cause as well, which increases their bargain power with the state institutions. The religious parties have used its influence most effectively in 1974, when Anti-Ahmadiyya riots had prompted the Government to debate the issue in the Parliament and as a result 2nd Amendment to the Constitution of Islamic Republic of Pakistan was promulgated, declaring Ahmadis as non-Muslims. The incidents of mass scale violence reduced in scale and frequency but the issue of Khatam-e-Nabuwat (Finality of Prophet-hood) remained as the rallying cry for Sunni extremism, alongside the extremism against Ahmadis. This resulted in yet another legal pacification attempt by the Government of General Zia-ul-Haq. It was also a legitimizing attempt by the Military Dictator .

In 1980, the blasphemy laws, already on the statutory books since British time, were expanded to criminalize making derogatory remarks against Islamic personages. In 1982, Section 295-B was added, criminalizing the desecration of the Qur'an. Section 295-C was added in 1986, which made derogatory remarks against the Prophet Muhammad (peace be upon him) a criminal offence punishable by death or life imprisonment. The original British legal intent to manage the Indian religious and sectarian diversity through "protective law" were transformed by extremists into a coercive instrument as the Blasphemy clauses were weaponized[3]. The following table provides a list of Blasphemy cases registered under the new provisions from 1987 to 2018 :

Religion/Sect	Number of Cases
Muslims	776
Ahmadis	505
Christians	229
Hindus	30

Source: National Commission for Justice and Peace Pakistan

The table represents only the registered cases. The number of violent lynching events and murders under the cause of Blasphemy are not counted in this table.

[3]https://forbinfull.org/2019/09/18/long-read-the-forgotten-faces-and-hidden-history-of-pakistans-blasphemy-laws/

General Zia had introduced a few other legislations, which had widened the sectarian rift in society. In June 1980, Zia promulgated Zakat and Ushr Ordinance, and in July Shias led by Mufti Jafar Hussain held the hitherto biggest rally in Islamabad, seeking reversal of the ordinance or its amendment according to the Shia theology[4]. General Zia relented and exempted the Shia sect from the ambit of the ordinance. This spurred the formation of Tehreek-e-Nifaz-e-Fiqa Jafria (TNFJ). The organization's name gave the impression that Shias wanted to 'impose' their brand of Islam in Pakistan, a Sunni majority country. The perception was hardened in the next few years. Prominent Shia entities in Pakistan, led by TNFJ and Imamia Students Organization (ISO), developed an undeclared alliance with Iran's government and promoted Iranian agenda in their political activities .

On the other hand, the Sunni Deobandi adherents also gained power, weapons, money and influence from Afghan war. Saudi funding for Afghan Jihad was not limited to the war but the funds were also transmitted to seminaries, to counter-balance Iranian influence. Anti-Shia, Sipah-e-Sihaba Pakistan was formed in 1985 by Maulana Haq Nawaz Jhangvi, to counter Shia activism .

> *"Tariq Khosa, the former director-general of the Federal Investigation Agency, said that he had arrested Jhangvi as he was giving an anti-Shi'a speech during Muharram in 1981. His superiors in the Jhang police force informed him that they had received a call from Zia, who ordered Jhangvi's immediate release", quoted by Arif Rafiq (2014)*

Apart from the organized form of the violence by the terrorist groups, faith-based persecution originating from religious extremism in the country is a pervasive phenomenon, which is not restricted to any one class or group. Those who aggrieve of persecution include Shias, especially from Hazara ethnic group, Christians, Hindus, and Ahmadis .

[4]Hassan Abbas, "Pakistan," in *Militancy and Political Violence in Shiism: Trends and Patterns*, ed. Assaf Moghadam (New York: Routledge, 2012), 166.

Minority communities, Muslims as well as non-Muslims feel more insecure because of the misuse of the religion related laws, mainly the blasphemy laws. A study by Pak Institute for Peace Studies shows that the reason Christians is mostly charged for blaspheming Islam is that some of their tenets and lexicon are similar to those of Islam. In arguing on certain issues that are discussed at length in the precepts of both such as the prophet-hood, a non-Muslim runs the risk of provoking a Muslim listener into charging the former with blaspheming Islam. It is pertinent to mention about the blasphemy law that of the 3 sub-clauses of the blasphemy clause, inserted as 295 in Pakistan Penal Code, it is the third one that has often been invoked. This third clause, or 295-C, warns against passing any derogatory remark against the Prophet of Islam. Some say the clause is vague, which leaves it open to be used subjectively. Geographically stating, around 70% to 80% of such cases take place in Punjab. It is because of the presence of religious outfits, which are on the forefront to file blasphemy cases. The crux is that religious minorities are facing the major consequences of the rise of extremism in the country .

Militancy Concerns: A Perspective

- *'This time there will be no mistake." These are the chilling words that led Twitter to ban an account reportedly belonging to Ehsanullah Ehsan, a leader and spokesperson for the TTP. The clampdown came after he threatened Malala Yousafzai, and she responded with a tweet asking how Ehsan escaped from state custody and was now at liberty to make such remarks...This is a nightmarish back to the future scenario. Nine years on, same perpetrator, same target, same fumbling state response. Ehsanullah's threat is the latest of many warning signs that Pakistan's battle with violent extremism is far from over.*

- *An uptick in violent extremism seems likely because of the environment. Our privileging, for example, of religio-nationalism and an Arabization of Pakistan's national identity, as reflected in the passage of Senate bill to make*

Arabic a compulsory language in Islamabad's schools[5]*. Or the attacks on religious minorities, with delayed justice or impunity for perpetrators. Violent extremists are also no doubt emboldened by the acquittal of Omar Saeed Sheikh in connection with journalist Daniel Pearl's murder.*

- *These developments are juxtaposed against the crackdown on civil society, including suppression of the media and rights groups. As the space for counter-narratives shrinks, violent extremist perspectives have more room to flourish and gain legitimacy .*

- *Even after the launch of Operation Zarb-i-Azb against the TTP, we deferred a national reckoning on matters of identity, security, and the path to prosperity. To eradicate violent extremism, we need to re-conceptualize many of our national narratives. We also need robust democratic politics, a revived civil society, and a culture - instilled through liberal education, free media, and independent courts - that allows for dissent and debate. The warning signs are there. Who will heed them?*

Source: Huma Yusuf; Militancy concerns; Dawn, Feb 22, 2021.

[5]Compulsory Teaching of Arabic Language Bill 2020, https://www.dawn.com/news/1604917

Chapter-2

State's Response: Anti-Extremist Statutory Laws and Gaps

In order to deal with emerging problems, states and governments enact laws, craft policies, allocate resources and implement them through the organizations created to deal with such problems. The policy realization of the harm caused by extremism has been a constant concern for all governments since 1950s .

As stated in the preceding section, this study has identified that currently there are 12 Laws and 45 sections in these laws which deal with extremism. It may be pointed out that there are no exclusive laws in Pakistan to deal with extremism, but the offences pertaining to extremism have been dealt with, in specific provisions in different laws like the Pakistan Penal Code, Anti-Terrorism Act, Prevention of Electronic Crimes Act etc .

To address the questions raised in the project proposal, an effort was made to collect relevant data about the invoking of these laws by the police, from all the four provinces, as well as the Federal Investigation Agency, which has the exclusive domain of investigating cases under the PECA. Within the short time of the project, it was disconcerting to note that the provincial police forces and the FIA do not collect and collate the desired data in a standardized format, except the province of the Punjab. Consequently, it was decided that to get an idea of the implementation of these laws on a provincial basis, as a representative specimen, the data of the cases of extremism registered by the police in the four provincial capitals, from 2014 to 2020 was solicited and obtained, and it has been utilized here to form an idea of the implementation and efficacy of the counter extremism laws, in different parts of the country. So, essentially, this chapter contains 4 analytical components, which are listed below :

1. Analysis of Sections against extremism in substantive and procedural laws
2. Analysis of Sections against extremism in Special Laws
3. Analysis of Sections against extremism in administrative laws

4. Analysis of non-existence of laws against extremism

Analysis of counter extremism laws and their application in the Punjab Province

As far as the data about Punjab is concerned, it transpired that during the period 2014-2020, the laws most invoked against extremism by the Police in Punjab were two i.e. Pakistan Penal Code (68.5% of cases registered against extremists) and ATA (31% of cases registered against extremists). A moot point may be to analyze as to why the provisions of ATA, the premier law to counter terrorism, are not invoked by the police in Punjab and why they invoke the general criminal law of PPC. Also, within these laws, the specific sections applied by Punjab Police in registering cases against extremism are 295 A PPC (699 cases), 153 A PPC (161 cases) and298 A PPC (151 cases). Similarly, 11EE ATA (384 cases) 11 W ATA (165 cases) are most used sections.

The following table gives a snapshot of these laws and a detailed section-wise description:

Sr. No.	Substantive, Procedural, Special, Local Laws and Sub-Ordinate Legislation (SL)	Type	No. of Sections relating to Extremism
1	Pakistan Penal Code (PPC)	Substantive Law	6
2	Criminal Procedure Code (CrPC)	Procedural Law	1
3	Punjab Maintenance of Public Order Ordinance 1960	Hybrid Law[6]	4
4	Anti-Terrorism Act 1997 (amended from time to time)	Special Law	19
5	Prevention of Electronic Crimes Act 2016	Special Law	4

[6] This is termed as hybrid law because it has elements of procedure, punishment and detention. It relates to extremism because sometime in cases of extremism related public protests, this law is used.

Sr. No.	Substantive, Procedural, Special, Local Laws and Sub-Ordinate Legislation (SL)	Type	No. of Sections relating to Extremism
6	Prevention of Anti-Women Practices Act 2011	Special law	1
7	Regulation and Control of Loudspeakers and Sound Amplifiers Ordinance 1965	Special law	4
8	Pakistan Electronic Media Regulatory Authority Act 2002	Administrative Law	2
9	National Counter Terrorism Authority Act 2013	Administrative Law	NA
10	Federal Investigation Act 1974	Administrative Law	NA
11	Citizens' Protection Against Online Harm Rules 2020	Sub-ordinate legislation	2
12	Removal and Blocking of Unlawful Online Content (Procedures, Oversight and Safeguard) Rules 2020	Sub-ordinate legislation	2

The above table presents a paradox; there are adequate number of laws to deal with extremism and yet the legal regime is also fragmented. All the above laws albeit criminalizing expression of extremism, fall short of clearly defining 'extremism .'

Definitional Ambiguity of Extremism: Extremism is a human behavior and is difficult to define in legal terms unless it leads to harm. It is even more difficult to define extremism legally, so that it can be adjudicated in a court of law. "The quality or state of being extreme" is the simplest dictionary definition[7]. Different jurisdictions have defined 'extremism' according to their own political systems, culture, values and ethnocentrisms. Extremism is laden with subjectivity of many and any shades[8]. Even the UK definition emphasizes the terms "vocal and active", which indicates actions which are driven by extremist beliefs. International law does not define extremism and while several jurisdictions have definitions of extremism, most of them are contained in policy documents and are not intended to have legal precision and consequence. One common theme across various definitions of extremism is belief in and support for ideas

[7]https://www.merriam-webster.com/dictionary/extremism
[8]Andrej Sotlar (2004), Some Problems with a Definition and Perception of Extremism within a Society

that are in opposition to what most people consider correct or reasonable or holding certain beliefs and ideas which are more rigid and less tolerable of beliefs held by majority .

> *"The vocal or active opposition to our fundamental values, including democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs", Kings College London*

Regarding definition of 'Extremism', it is to be understood that a generic definition of 'extremism' is hard to develop. A legally laden argument is that holding extreme opinions of either shade is a mental process and any form of legal definition cannot criminalize 'a thought', unless it is expressed in an action causing harm to person or property. "Mens rea has to be followed by Actus reus" to establish criminality. Similarly, human emotions like 'hate' cannot be proved in a court of law unless some hate related actions are committed by the individual. It is also argued that any thought or expression unless it can be linked to harm comes under the Fundamental Right of 'Freedom of Expression' enshrined in the Constitution of Islamic Republic of Pakistan[9].

Pakistan in definitional terms has criminalized 'hate speech', 'hate literature' and violent actions' which are product of holding extremist convictions. Therefore, legal regime has adequate definitional content, albeit scattered across many laws, which holds extremist related criminal actions as culpable crimes .

Legal Landscape against Extremism: This study has identified that currently there are 12 Laws and 45 Sections[10] in these laws which deal with extremism as criminal offences and create implementation organizations to deal with extremism. A typology of these laws has been articulated, and is as follows:

[9] Key Informant Interview with Former Chief Justice of Pakistan, Justice Asif Saeed Khan Khosa.
[10] Case Law is a unique category but is applicable in case of extremism and is perhaps the strongest deterrent legal instrument

1. Criminal/Penal Laws (Substantive Laws): Laws which allocate criminal liability to offences of extremism and define the penal terms including imprisonment and fine
2. Procedural Laws: Laws which define the procedures to implement the substantive law
3. Special Laws: These laws are enacted to deal with special issues, which emerge and contain both the penal terms as well as the associated procedures .
4. Administrative laws: These are a set of laws enacted to define the organizational infrastructures for taking cognizance, investigation and prosecution of criminal offences of extremism.
5. Sub-ordinate Legislation: Following the Common Law tradition, most statutory Acts have provision for developing regulations and rules under the umbrella Acts, for smooth implementation and to address emerging problems .
6. Case Law: Pakistan is a common Law country and judgment of the higher courts, acquire the status of substantive and procedural law, setting legal precedence and carry interpretative legal value equivalent to statutory law. Case laws are often used in the courts .

Framework for Analyzing the Gaps in Laws: The laws are social constructs. There are three primary purposes of penal law in literature on Jurisprudence .

1. Punishment as Retribution ,
2. Utility value of Punishment as Deterrence
3. The Rehabilitative Value of Punishment[11]

The laws are designed to exact retribution and to act as deterrence for recurrence of crimes. Based on this deduction an analytical framework is developed to assess all the laws dealing with extremism in Pakistan. The analytical framework is based on three variables :

1. Prohibitive Punishment of the law

[11]Matthew A. Pauley, The Jurisprudence of Crime and Punishment from Plato to Hegel, *The American Journal of Jurisprudence*, Volume 39, Issue 1, 1994, Pages 97–152, https://doi.org/10.1093/ajj/39.1.97

2. Usage of the laws (How often the laws have been invoked by LEAs. This will reveal two dimensions; the recorded crimes and time series trends of using the relevant law to create deterrence).

3. The efficacy of the law (to be determined through conviction rates of each law. This will reveal further two dimensions, the gaps in investigation and prosecution and the deterrence value) .

In order to articulate a coherent argument, the laws listed above are grouped according to the categories of extremism defined in the first chapter, which are reproduced as follows:

1. Sections in different laws dealing with Hate Speech and hate literature generating incitement to violence

2. Sections in different laws dealing with mob violence

3. Sections in different laws dealing with individual acts of violence as a result of extremism

4. Sections in different laws dealing with propagating online hate and extremist content .

Section I-Legal Provisions in Substantive and Procedural Law against Extremism

Laws and Sections against Hate Speech and Expression of Extremism in Substantive and Procedural Law-Pakistan Penal Code and Criminal Procedure Code

Hate Speech

Pakistan Penal Code Section 153 A

Section 153-A of PPC makes promoting enmity between different groups based on religion, race, language, caste, or community an offence punishable with imprisonment, which may extend up to five years and fine. Section 153-A casts a very wide net dealing with hate speech and incitement to violence. The primary intent of this law can be gathered from its language of "maintenance of harmony" and "public tranquility." The courts have interpreted it as a provision,

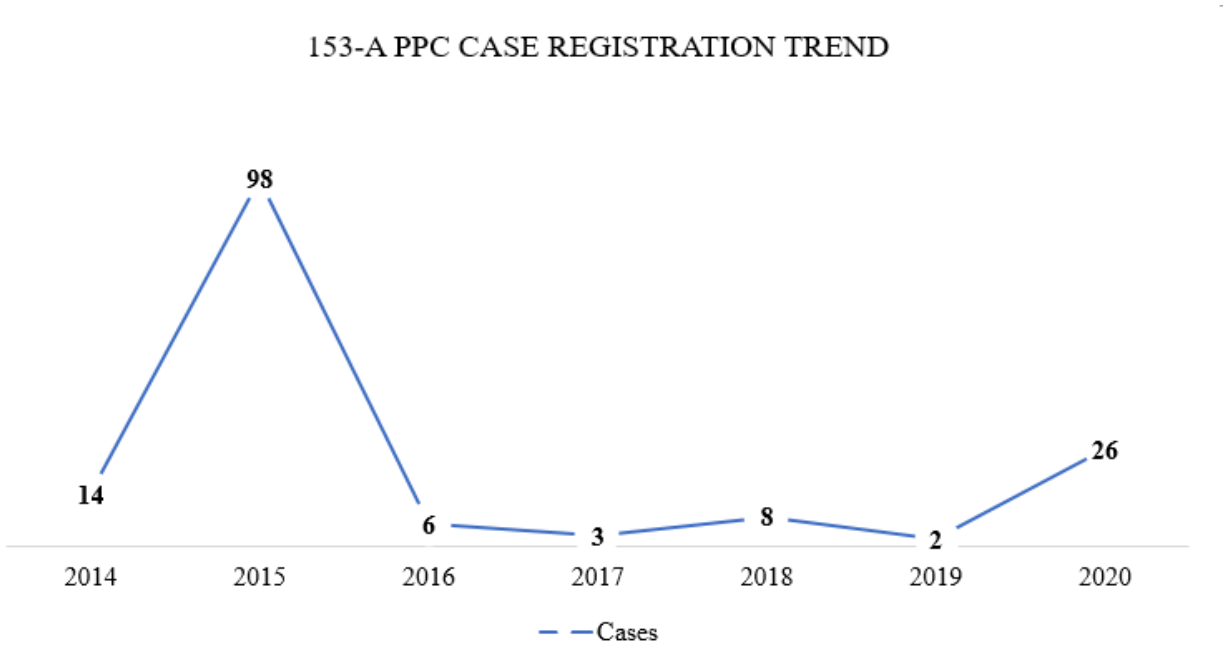
"for the purpose of preserving order and amity between various classes of subjects." While Section 153-A can be used to tackle extremism, particularly extremist speech, the broad nature of the provision has resulted it in the provision often being used for political speech. Additionally, defining extremist speech only in terms of "promoting enmity" is vague and imprecise given the challenges of religious extremism that Pakistan has faced in recent years.

a) *Prohibitive Punishment:* This section of the law deals with extremism in its basic sense. It criminalizes incitement, hate speech, creation of disharmony, inter-alia on basis of caste, creed and religion. It has 3 sub-sections (a), (b) and (c), which further define and encompass the entire spectrum of extremist behavior, which has the probability to lead to criminal acts. It carries a punishment of imprisonment which may exceed till 5 years. In terms of capturing the entire spectrum of extremist behavior the section is adequately comprehensive. However, the imprisonment term is only 5 years and counting day and night it is 2.5 years, which is the maximum sentence. Judges in Pakistan have traditionally been awarding lesser sentences, due to, inter alia, overcrowded prisons and judicial restraint. The section also does not have a provision of minimum sentence, which makes the punishment not prohibitive enough to cause deterrence and create a disincentive for repeat offenders .

b) *Usage of the Law:* Section 153 A is an often-used law. During the period of 2014-2020, Punjab police registered 152 cases, where 449 persons were charged. To date (till the collection of data) i.e., 2020, out of 152 cases registered, police cancelled 12, sent to court 123, while remaining 17 cases are untraced or under investigation. Court adjudicated 23 cases, acquitting 105 & convicting 9 persons. Presently 100 cases are under Trial[12].

The following Table depicts the year wise trend of the cases registered u/s 153 A in Punjab .

[12] KII with Shahzada Sultan DIG Punjab Police

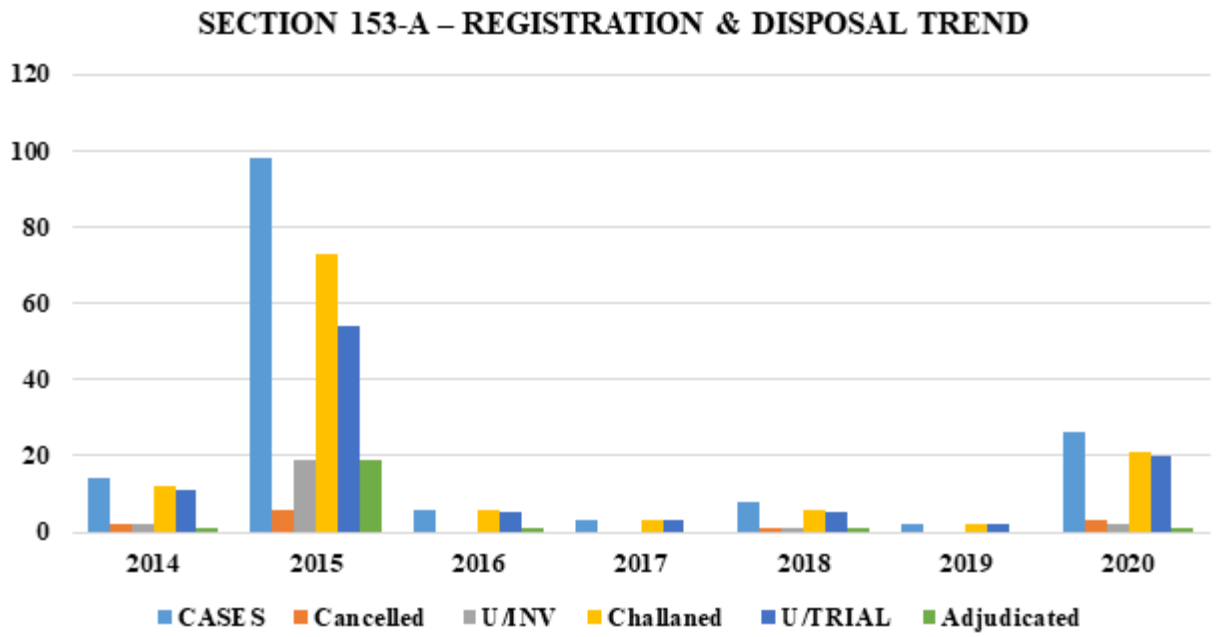


Source: Punjab Police

There is peculiar trend in the registration of cases u/s 153 A PPC. There is a visible spike in 2015 in Punjab. It reflects the reaction against an incident, which shook the soul of the nation, the APS attack. The more tangible reason explaining this spike in 2015, is announcement of National Action Plan (NAP), representing government's resolve to root out terrorism and extremism which breeds it. It is also considered that high use of this clause is its wide ambit. In case of extremist related hate speech etc. this law is evoked. It is a controlling law. The law also has provisions for caste and tribe-based incitement to violence. The Police Ranges of Gujranwala and Sheikhupura show trend of high incidence rate; 46 and 57 total cases were registered under this section. This can partially be attributed and correlated with high murder and attempted murder rates in these two districts, which indicates among other things a tendency of violence. In a recent study it was revealed that Sunni recruits from these districts fought alongside ISIS in Syria[13]. Whilst applying the sections of PPC related to murder, the incitement as a crime is also used frequently by the Police. In case of Rawalpindi a spike came in 2020 only, which can be attributed to TLP sit-in .

[13] KII with Mr. Tariq Parvez Team Leader

c) Efficacy: The efficacy of law can be judged on two parameters; the number of cases going to trial and conviction rates. The following table shows the efficacy pattern of Section 153-A :



Source: Punjab Police

The deterrence value of Section 153-A is compromised at the trial stage. The police in Punjab brought 123 cases for trial under Section 153-A in the 2014-20 period under review. The trial courts only disposed of 23 cases during said period, which amounts to 18% of the total. It is also pertinent to note that out of 114 persons tried under Section 153-A, only nine were convicted, bringing the conviction rate to a mere 7.8%. As many as 100 cases were pending in the courts when the data was collected in 2020. Many factors can be attributed to the erosion of the deterrence value of Section 153-A :

There are many factors which can be attributed to the erosion of the deterrence value of Section 153 A :

- The case overload in the trial courts. The trial courts give precedence to the primary criminal sections (like 302 etc.) and associated sections like 153 A (if not stand alone) are

low in priority in court procedures, as every section in the charge sheet must be debated separately[14].

- There is a general tendency in the trial court judges behavior to treat stand-alone extremism cases registered under 153 A as of lesser significance, the social influence plays a part in the judicial behavior at the trial court level[15].
- Investigation and prosecution of 'incitement' is exceedingly difficult to prove beyond a reasonable doubt in the court. The trials are carried on ocular evidence as per the Evidence Law QSO 1984, and forensic evidence like cell phone videos and CCTV footage has only recently emerged as an evidence to be considered by the court. An example in this regard is the Sialkot Lynching case, where cell phone footage was used as evidence .

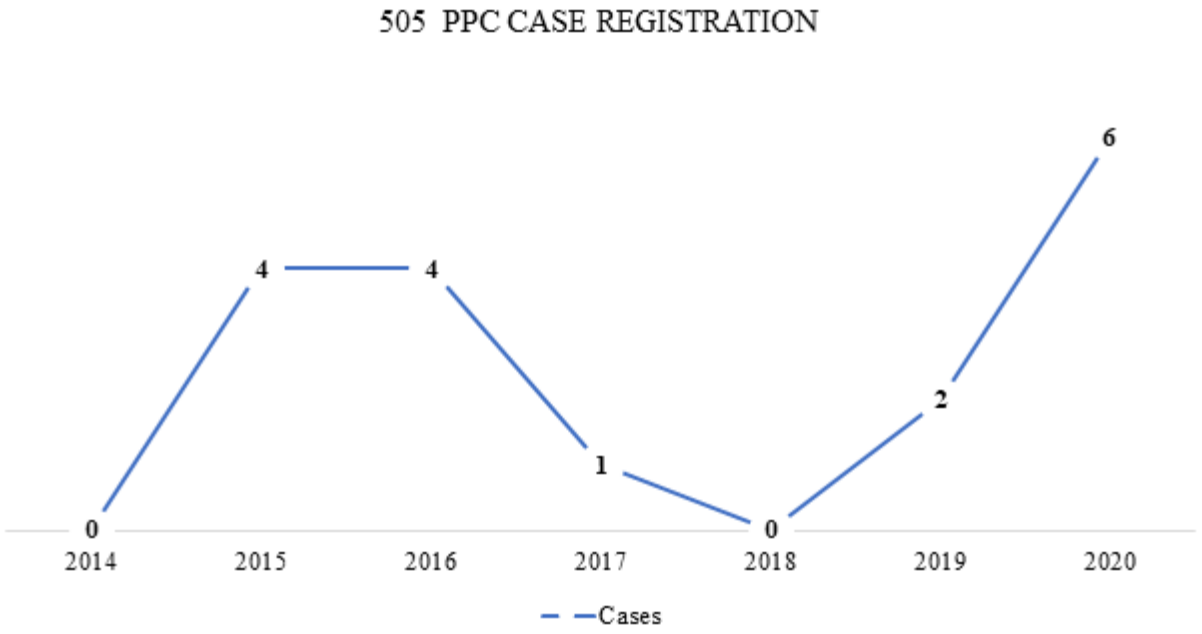
Section 505 PPC (1-a, b, c and 2): This Section of the law deals with "Public Mischief" and deals with Hate Speech also. The first sub-section deals with publication including libel. The second sub section deals with defamation of armed forces and the third sub-section deals with incitement against any class or community. The second section of the same legal provision criminalizes the promotion of hate against, race, religion, domicile etc. It is interesting to note that "racial discrimination' is also criminalized besides other variants of identity. During the period of 2014-2020, Punjab police registered 17 cases, where 11 persons were accused. To date (till the collection of data) i.e., 2020, out of 17 cases, police, sent 13 to court, while remaining 04 cases are untraced or under investigation. Court adjudicated 4 cases, acquitting 02 & convicting 02 person. Presently 09 cases are under Trial .

a) Prohibitive Punishment: The offence carries a maximum sentence of 7 years imprisonment with fine. The punishment is adequate, but its dissuasive value cannot be determined only by the length of punishment. The judicial restraint often tends to award

[14] KII with CTDs where all representatives agreed that extremism is not taken seriously by both prosecutors and lawyers
[15] KII with Rai Tahir Additional IG CTD Punjab.

lesser sentences in cases, which are not considered 'grave' enough. There is no lower sentencing limit .

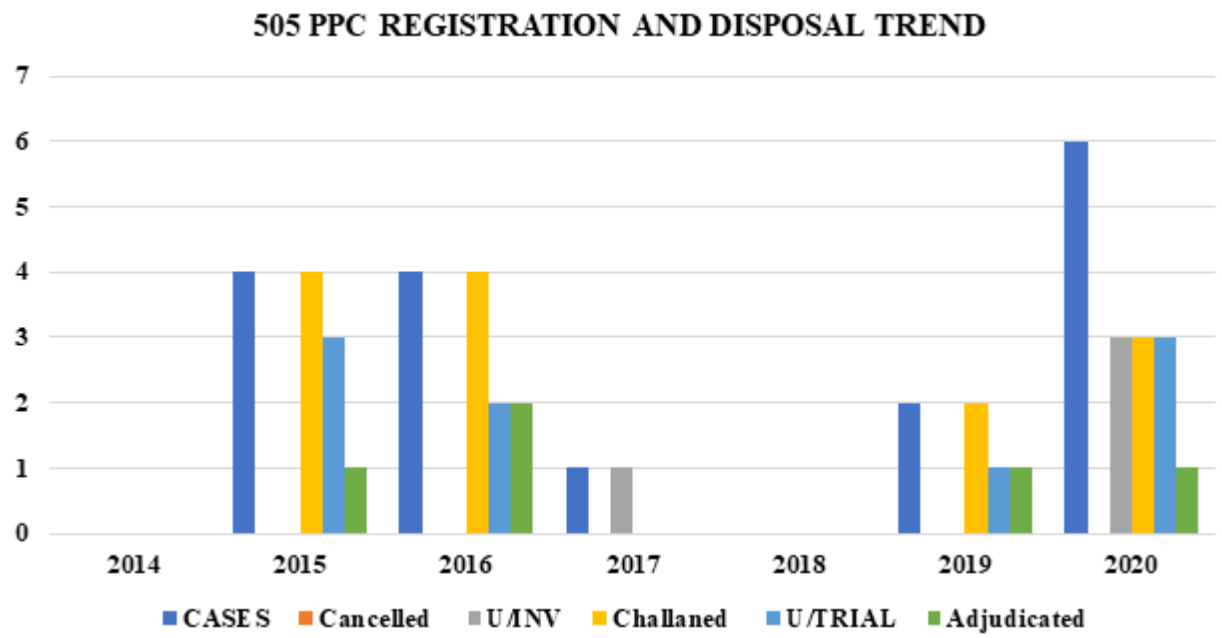
b) Usage: Only 17 cases were registered under this section of the law in 6 years, which indicates an extremely low usage rate. Amongst the 17 cases, 7 were registered in Gujranwala. The rest of the sections of the law are vague and allocate criminal liability to such things as racial discrimination, which do not have a high incidence. The following diagram represents the pattern of registration of cases under this section :



Source: Punjab Police

c) Efficacy: In the 17 registered cases in during the period under review, only two persons were convicted.

d) Inverse Deterrence/Criminal Impunity: The law with low sentence, low usage and lower conviction can be argued to contribute to criminal impunity .



Source: Punjab Police

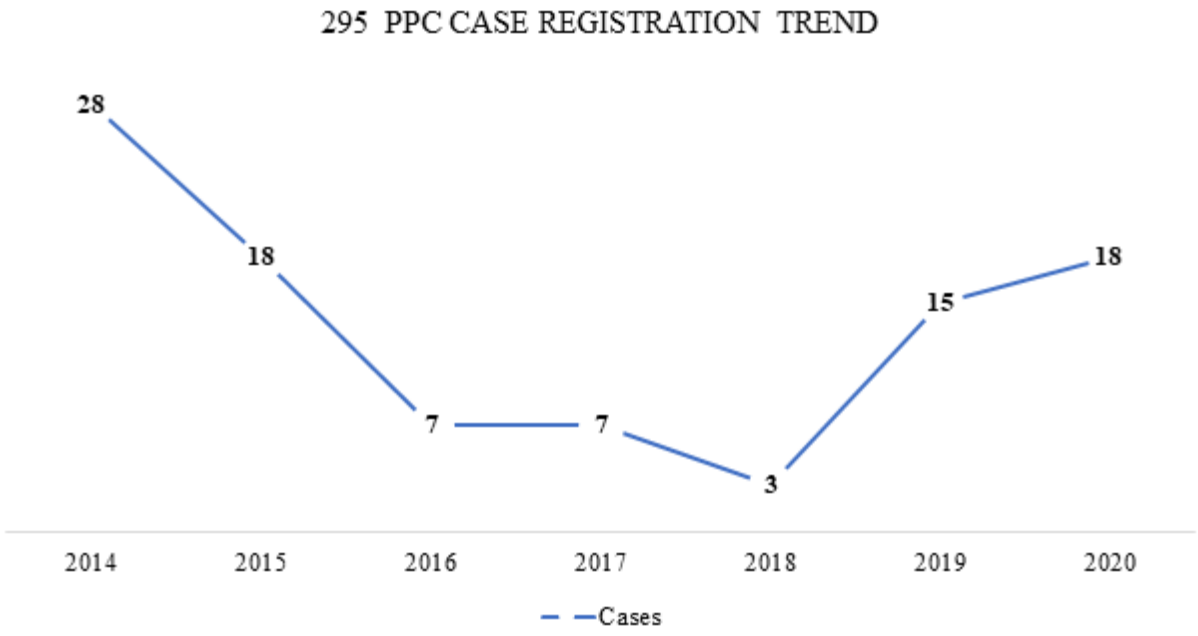
PPC sections dealing with Blasphemy and Desecration, Derogatory Remarks against Religion, Religious Places, and Religious Personage

Blasphemy

Sections 295 to 298 often called as the blasphemy laws, also address extremism and makes injuring or defiling a place of worship with intent to insult any religion an offence punishable with imprisonment which may extend to two years and fine. Similarly, section 295-A pertains to deliberate and malicious acts with intent to outrage religious feelings of any class by insulting its religion or religious beliefs. Punishment of offence under section 295-A is imprisonment of up to 10 years. Uttering words with deliberate intent to hurt religious feelings is also an offence under section 298 of PPC. These provisions deal with only a small subset of extremist speech and action i.e., only when it is expressed in terms of insult/outrage to religious feelings and beliefs. There have been serious questions raised on the fair and impartial applicability of these

provisions, particularly, in the treatment of religious minorities. The inadequacy of these provisions in curbing extremist speech and action is especially limited in the cases where the threat emanates from majority religious groups and leaders. In certain cases, the handling of these cases by the police and judiciary has led to inadvertently enabling more religious extremism and impunity. Each section will be dealt separately as follows .

PPC Section 295: This legal provision pertains to preserving the sanctity of religious places. The act of defiling the places of religious significance of any religion is punishable with a prison term of two years and fine. The graveyards and burial places of all religions are included in this description. During the period of 2014-2020, Punjab police registered 96 cases, where 231 persons were accused to date. Out of 96 cases, police, sent 72 to court, cancelled 07, while remaining 17 cases are untraced. Court adjudicated 15 cases, acquitting 13 & convicting 03 persons. Presently 57 cases are under Trial .



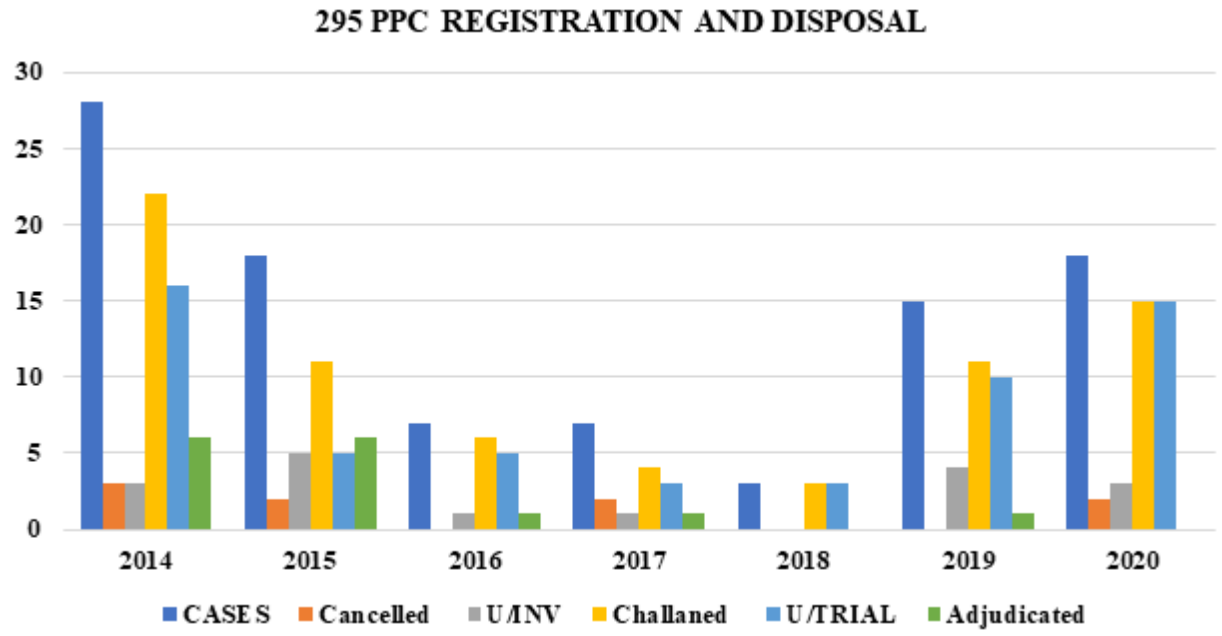
Source: Punjab Police

a) Prohibitive Punishment: The law carries a maximum sentence of two years and fine or both. The desecration of religious places is usually a mob act, like the burning of a Hindu Temple in Karak recently. Similarly, there were high incidence of Hindu temple burnings

in the aftermath of Babri Mosque incident in India. Considering the historical and traditional 'judicial restraints', the punishments if awarded tend to be on the lower side of the term. It is also considered that in cases of mob violence, prosecution is difficult, as eyewitness accounts are rare. Therefore, the punishment is not enough, to dissuade mobs to gather and attack religious places. The penal term needs review and revision to make it prohibitive for the mob formation in the first place .

b) Usage: The law has been evoked 96 time is Punjab in a period of 5 years. Its usage therefore is not high frequency. The following diagram presents case registered YoY :

There has been a spike in 2014, with 8 cases registered in Sargodha District and 5 cases registered in Rawalpindi. Rawalpindi has an overall highest rate of cases registered which is 28 in 7 years, followed by Sargodha with a total of 16 cases registered .



Source: Punjab Police

c) Efficacy: Of 96 registered cases 57 are under trial whereas 17 cases are still under investigation[16]. These numbers present a very low conviction rate and a very slow trial process. The following diagram shows the YoY snapshot :

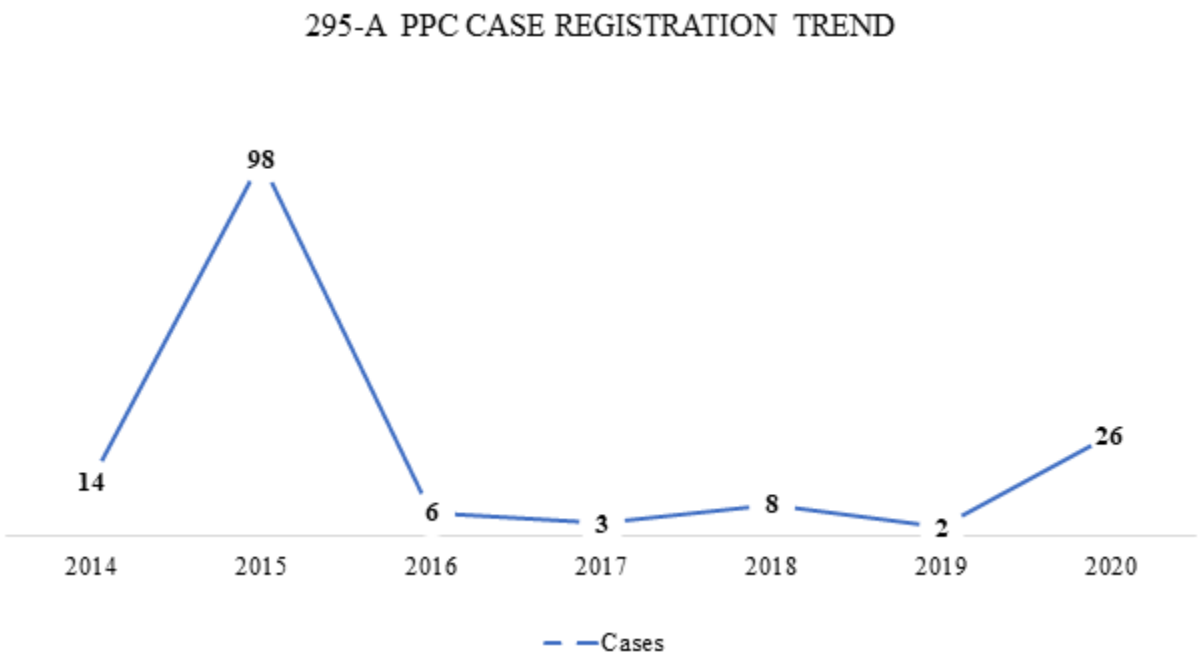
There is a high rate of Under Trail accused under this law, which signifies, weak investigation and weaker prosecution. The convictions obtained until 2020, were of the cases registered in 2014-15. There have been no convictions since 2015, and no person has been convicted for 5 years since then .

Section 295 A: This section of the law is specific to extremism and its expression in any form. "Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs"[17]. It is a clear provision and reflects the Fundamental Right of freedom of religion enshrined in the Constitution. This was the most highly invoked section of law in the Punjab against extremism. During the period of 2014-2020, Punjab police registered 699 cases, where 1040 person were accused. To date (till the collection of data) i.e., 2020, out of 699 cases, police, sent 529 to court, cancelled 66, while remaining 104 cases are untraced. Court adjudicated 90 cases, acquitting 168 & convicting 09 persons. Presently 439 cases are under trial .

a) Prohibitive Punishment: The offence carries a maximum prison term of 10 years and fine or both. This is a severe sentence and carries adequate penalty. It penalizes the expression of 'extremism' against any religion and is not specific to Islam only. Even if judicial restraint is considered as a factor, the punishment term cannot be reduced significantly. On the other hand, it is however important to note that there is no provision of minimum years penalty in the law, giving a carte blanche to the judiciary .

b) Usage: It is a frequently used law, indicating a high prevalence of extremism in all areas of Punjab, especially central Punjab. The Districts of Gujranwala and Faisalabad have a high incidence rate of 139 and 113 cases respectively registered from 2014 to 2020. There is a spike in 2015, when 98 cases were registered. The following diagram shows YoY incidence of cases registered .

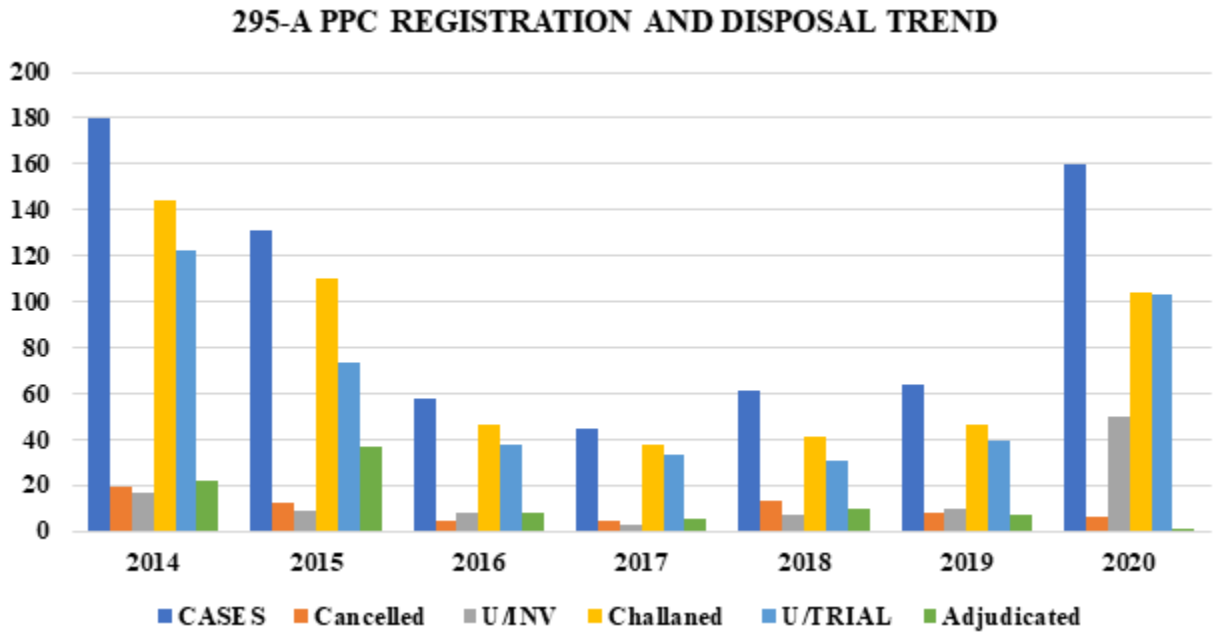
[16] Punjab Police
[17] Pakistan Penal Code



Source: Punjab Police

c) Efficacy: In the 699 cases registered, 168 persons were acquitted and only 9 persons were convicted. 439 persons are still under trial and 104 cases are under investigation. This shows weakness in three areas: investigation, prosecution and conviction. The entire criminal justice chain has been found faulting as per the data set under analysis. The following diagram depicts this :

Section 295 B: This section of the law is Islam specific and is invoked for desecration of Holy Quran. It is also to be noted that the law is applicable to both Muslims and Non-Muslims. There are many cases where Muslims have been charged under this law. During the period of 2014-2020, Punjab police registered 105 cases, where 98 persons were accused. To date, out of 105 cases, police, sent 82 to court, cancelled 04, while remaining 19 cases are untraced or under investigation. Court adjudicated 17 cases, acquitting 16 & convicting 02 persons. Presently 65 cases are under Trial .

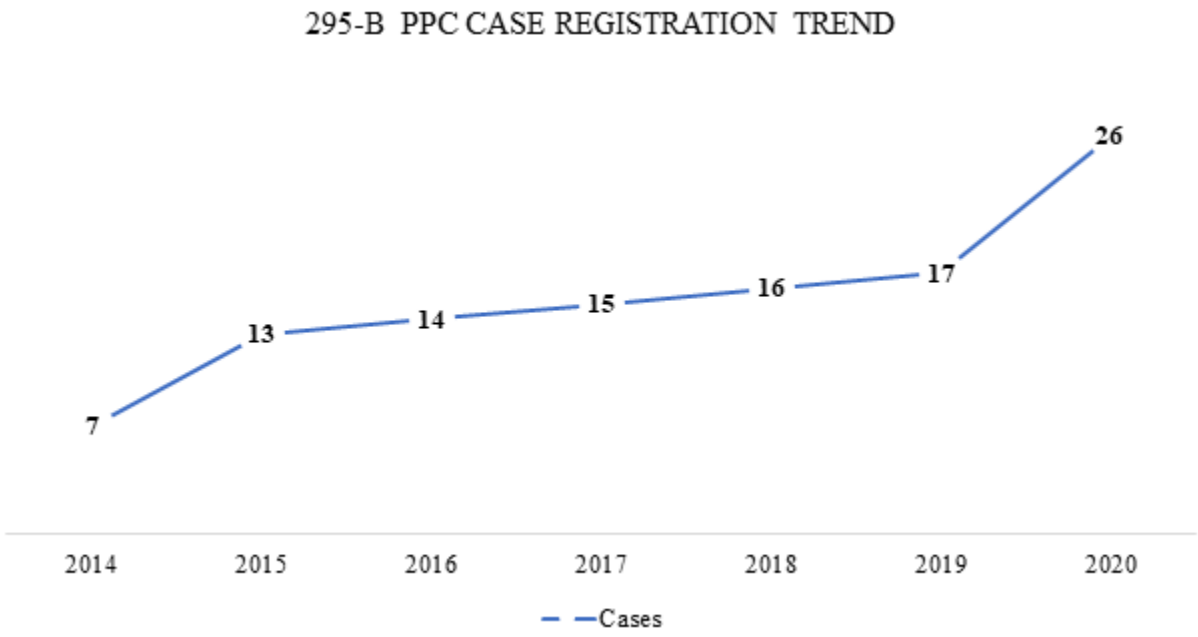


Source: Punjab Police

a) Prohibitive Punishment: The violation of this section carries life imprisonment. Which is the second most punitive penalty in Pakistan's penal system. There have been attempts to control the misapplication of this law with severe punishment. Mutahida Ulema Board (MUB) was created in 1990s to check the veracity of the allegations before an FIR was registered. However, there is potential of misuse of this law. There have been many cases where this law was misused (The Chapter on Case Law, will provide detailed accounts of some of these cases.)

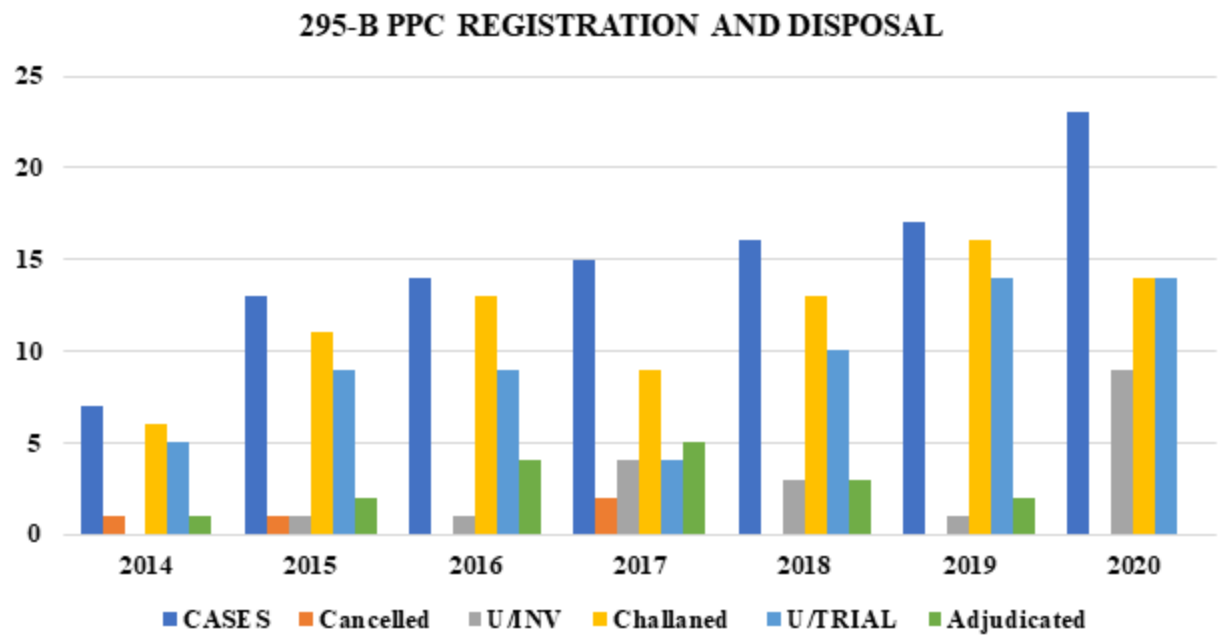
b) Usage: More cases are registered under this law in two major urban centers of Punjab; Lahore and Multan from 2014-20. 38 cases in Lahore and 27 in Multan. These two cities have not figured high in case registration under sections 295 and 295 A. This law has been moderately used in terms of frequency. It also does not factors-in the issue of mental instability and treats all accused as of sound mental health. Often it has been reported that this offence has been committed by mentally unstable persons. There is spike in case registration under this law in 2020 and an increasing trend can also be observed from 7

cases registered in 2014 to 23 in 2020, the increase in cases is steady. The following diagram depicts the YoY trends :



Source: Punjab Police

c) Efficacy: To measure the efficacy of this law is difficult. It must be considered first that is this law designed to curb extremism or to encourage it? There has been an ongoing debate about all Blasphemy laws on the statutory books of Pakistan. They have been more a source of triggering extremist behaviors, rather than curbing them. Any attempt to repeal these laws is likely to result in extremist backlash. Therefore, it is a catch 22 law. Although only 2 persons were convicted under this law, but 105 cases were registered under it. 16 Persons were acquitted by courts; however, they remain in mortal danger and could be targeted by any extremist person or group. Despite the merits and demerits of the law the criminal justice system has acted similarly as in the case of other laws; it has failed. The following diagram describes the status of implementation of this law :



Source: Punjab Police

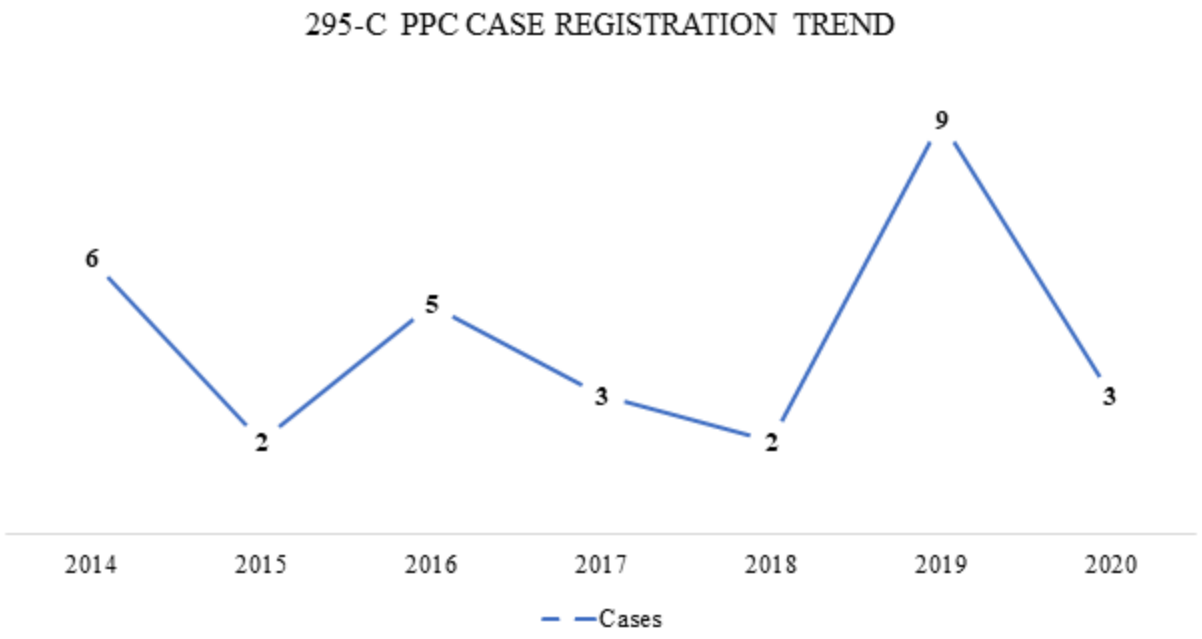
Section 295 C: This section of PPC is the most controversial, most sensitive and most featured. It concerns the "Use of derogatory remarks, etc., in respect of the Holy Prophet (May peace be upon him)" and it carries highest possible sentence, death penalty, life imprisonment and fine. During the period of 2014-2020, Punjab police registered 30 cases, where 29 persons were accused. To date, out of 30 cases, police, sent 24 to court, cancelled 03, while remaining 03 cases are untraced or under investigation. Court adjudicated 06 cases, acquitting 05 & convicting 01 person. Presently 18 cases are under Trial. Many atrocities have been committed due to the presence of this section. The personage of Holy Prophet (PBUH) is revered by all Muslims. It is even more sensitive issue than the discretion of Holy Quran and insult of other holy personalities[18]. At times, the law itself is not evoked but innocent people are accused of the offence and are murdered or lynched. It is unique and ironic that many lynching incidents, wrongful accusations and murders have been committed despite a law in place which awards death penalty, if the offence is committed at all. The presence of the law on the statutory books

[18] KII with Mr. Nazar Mahar former Team Leader EDACE Program of DFID

has not prevented extra-judicial incidents of individual and mass violence and in a grotesque manner encourages extremism .

a) Prohibitive Punishment: The violation of the law carries maximum sentence in Pakistani penal system. Yet it is also true that even if acquitted a person faces fear of extra-judicial killing by extremists .

b) Usage: Relatively few cases have been registered under this law and the subsequent chapter on case law and case studies examines some of the cases in greater detail. However, under an executive order MUB has been placed as a 'filter' to check veracity of the accusation before registration of FIR. In the recent past MUB examined 104 cases of Blasphemy and only recommended 4 cases for registration, finding out that most cases were frivolous and were based on personal issues[19]. The following diagram represents the cases registered in Punjab from 2014-20 :

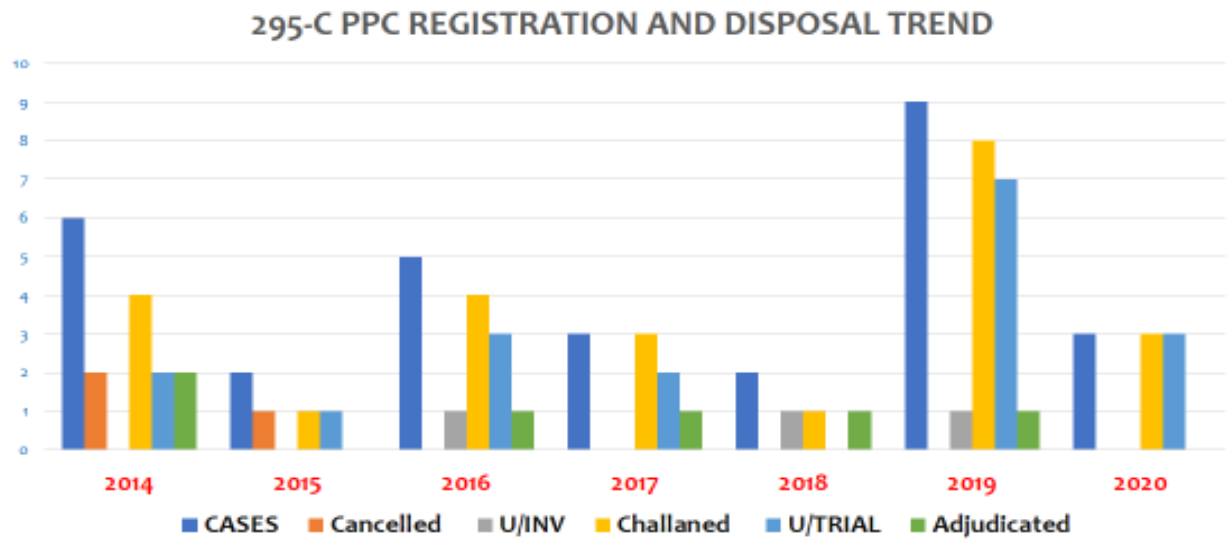


Source: Punjab Police

[19] KII with Maulana Tahir Ashrafi, Chairman of MUB and Special Assistant to Prime Minister on inter-faith harmony

This however is the tip of the iceberg. Despite the law being there, people have chosen to resort to mass violence and murder on the issue of Blasphemy. The killing of Mashal Khan an innocent student and a mentally unstable person in court premises in Peshawar are telling tales of the law itself being ineffective to curb extremism. The case of burning down of Shantinagar village in Khanewal District in 1997 and 2009 Gojra District riots are recurring phenomenon .

c) Efficacy: This section of the law must be examined for efficacy using an inverse approach. The law carries maximum punishment. It should be 'reassuring' for the Muslims that Blasphemy if committed will not go unpunished. Following the previous pattern, the illustration below represents the fate of registered cases :



Source: Punjab Police

It is also pertinent to note that only 1 person has been convicted so far, this indicates that actual act of Blasphemy has extremely low incidence rate. Convictions in Blasphemy cases at the trial court level are also questioned by many as the judges are under a lot of social pressure. The Judge who convicted Mumtaz Qadri had to live in Saudi Arabia for many years for fear of reprisals[20].

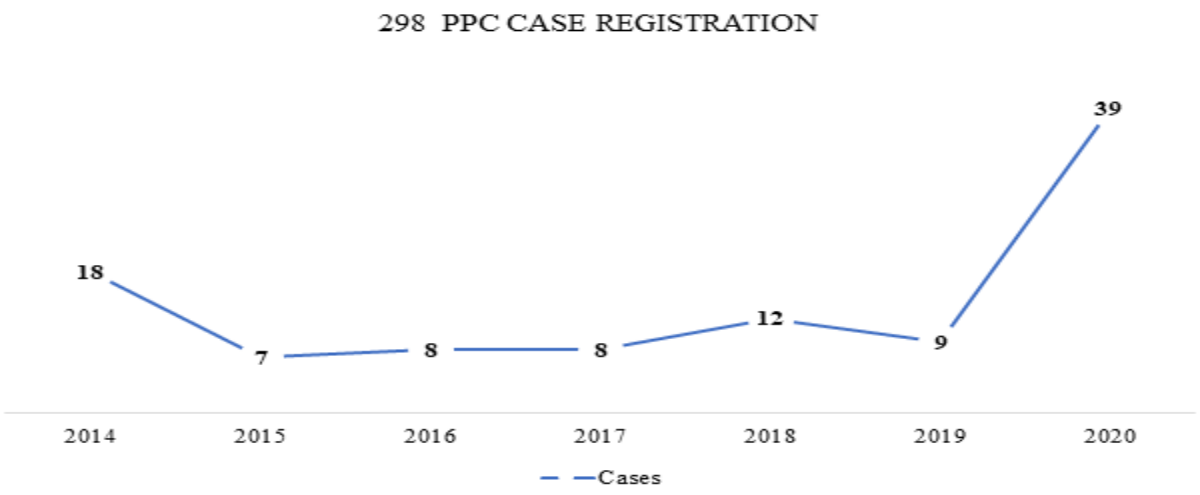
[20]https://www.bbc.com/news/world-south-asia-15445317

Section 298: This section of PPC deals with 'Hate Speech', it criminalizes the "Uttering words, etc., with deliberate intent to wound religious feelings". It carries a sentence of 1 year and fine. During the period of 2014-2020, Punjab police registered 101 cases, where 133 persons were accused of the crime. To date (till the collection of data) i.e., 2020, out of 101 cases, police, sent 83 to court, cancelled 03, while remaining 15 cases are untraced or under investigation. Court adjudicated 10 cases, acquitting 13 & convicting 02 persons. Presently 73 cases are under Trial. High number of under trial cases represent that courts accord lesser priority to cases registered under this section. Similarly, hate speech uttered and tried over a long time can dilute the value of witness testimonies, required for conviction. The law is also vague in terms of 'delivery' of hate speech. It does not specify the media that is used to deliver hate speech .

a) Prohibitive Punishment: The punishment is much less than the damage, which hate speech can cause. It was a 'hate speech' by Shia cleric[21], in a private gathering in Islamabad, which prompted the recent spate of mob violence in Karachi. The danger of hate speech and its potential to trigger more heinous crime is not reflected by the punishment of one year and fine. There is also no legal provision to investigate a backward linkage to words uttered which caused subsequent criminal acts of bigger proportions. In case of Mumtaz Qadri, in his confessional statement, he related that it was a cleric who incited everyone in the congregation to murder Governor Salman Taseer, but the cleric was never approached by law enforcement and no action was taken against him[22]. This underscores the fact that timely response on part of community and enforcement have a definite role to play in prevention of such tragic and shameful incidents .

b) Usage: It is a moderately used section of the law. In 6 years only 101 cases were registered under this section. The following illustration represents YoY incidence rate :

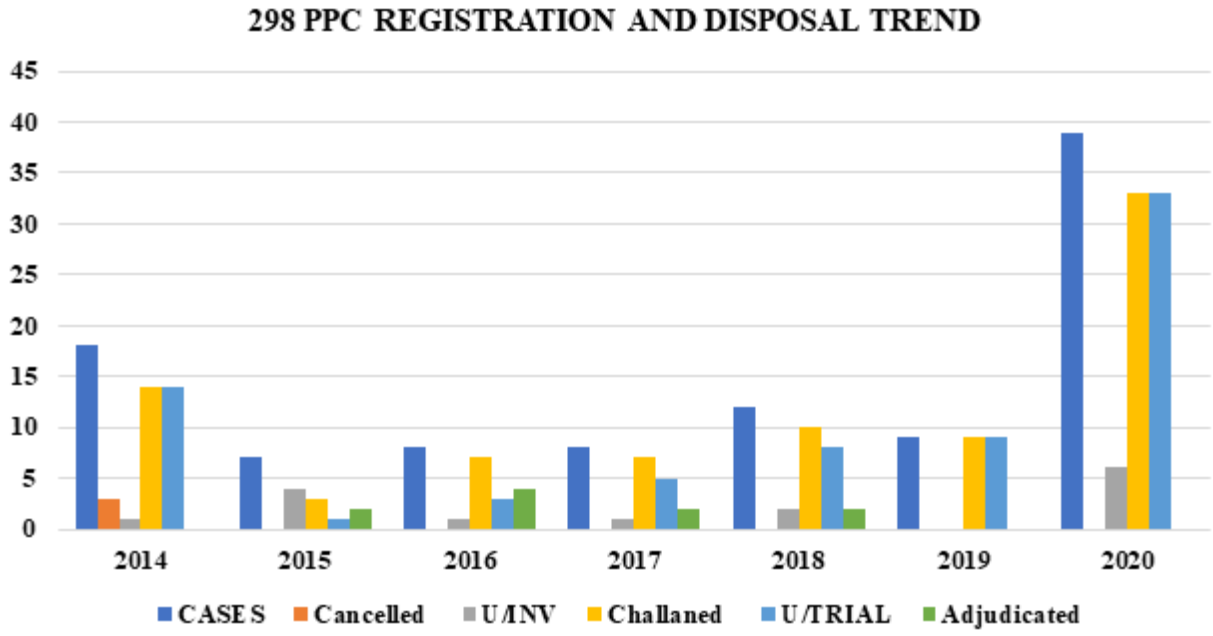
[21]https://www.arabnews.com/node/1732981/world
[22] KII with Justice Asif Saeed Khan Khosa former Chief Justice of Pakistan



Source: Punjab Police

A spike can be noticed in 2020, in District Sargodha, where 27 cases were registered. Sargodha District has been traditionally a hotbed of sectarian strife .

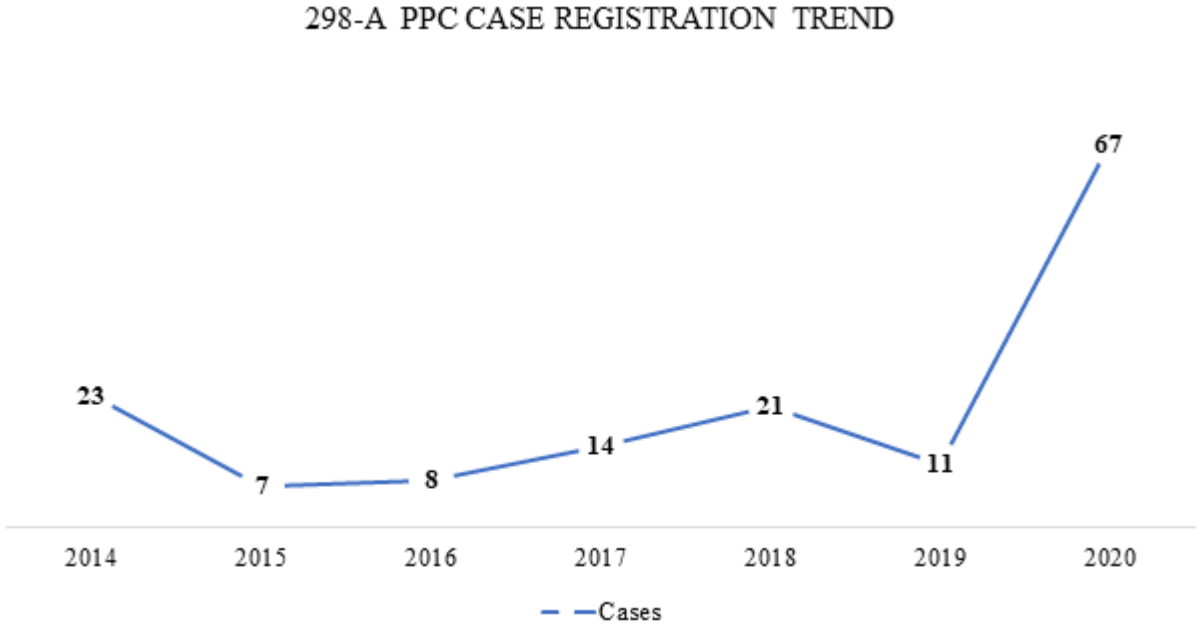
c) Efficacy: In 6 years 101 cases were registered and only 2 persons were convicted. This is an abysmally low conviction rate. 73 people are also still under trial. This indicates slow and sub-optimal prosecution and high case pendency in the trial courts .



Source: Punjab Police

Section 298 A: This section is a legislative attempt to arrive at a balance by criminalizing the utterance of derogatory words against holy personages of both Shia and Sunni sects. The content of the law is clear and awards a punishment of up to 3 years and fine. During the period of 2014-2020, Punjab police registered 151 cases, where 142 persons were accused. To date, out of 151 cases, police sent 105 to court, cancelled 06, while remaining 40 cases are untraced or under investigation. Court adjudicated 12 cases, acquitting 16 & convicting 01 person. Presently 93 cases are under trial .

a) Prohibitive Punishment: The term is three years and fine or both. The inter-sectarian extremism is fueled by such derogatory remarks and it can potentially trigger mass violence. This dangerous potential is not commensurate with the sentence. Hence the punishment is not prohibitive enough .

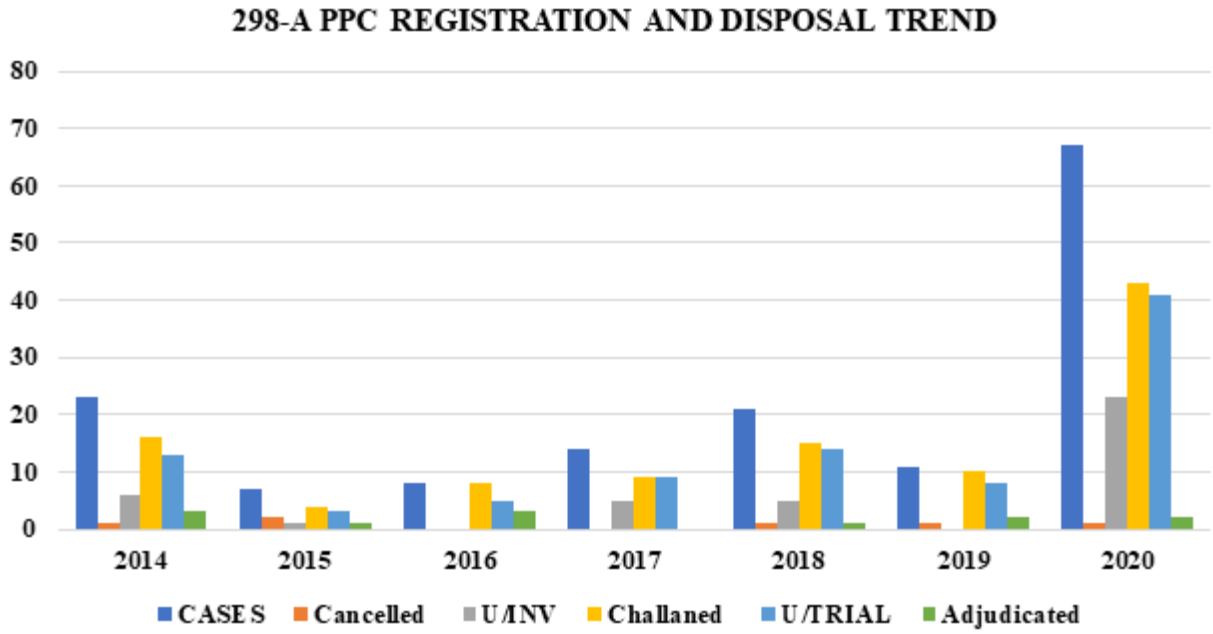


Source: Punjab Police

b) Usage: It is moderately used law. In 6 years, 151 cases were registered with a spike in 2020, when 67 cases were registered under this section of the law. This also reflects the Shia-Sunni conflagration, resulting in country-wide protests by Sunnis on remarks of the Shia cleric. The highest registered cases were in Sargodha 32, followed by Gujranwala 20

and Sheikhupura 15. The Central Punjab is emerging as a hot bed of extremism. The following illustration represents the case registration YoY .

c) Efficacy: Of the 151 registered cases, 93 are still under trial. There is only 1 conviction and 16 acquittals in six years. The following diagram represents the efficacy of the law :



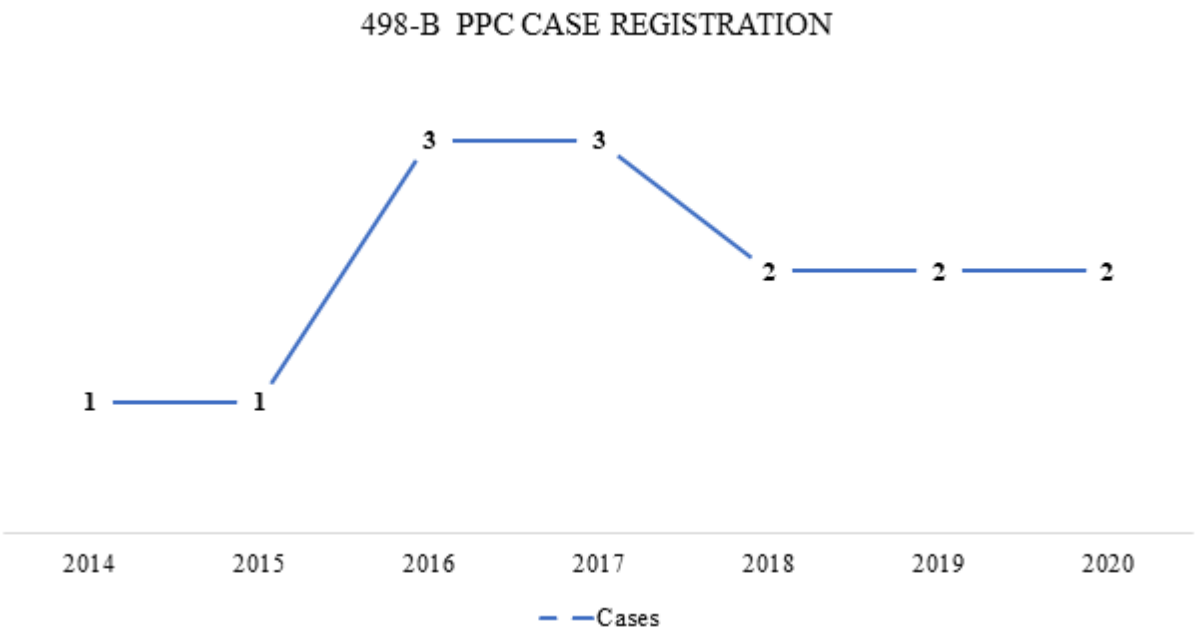
Source: Punjab Police

Legal Provision against Forced Marriages

Section 498 B PPC: This section deals with the issue of prohibition of forced marriage. This section of PPC is clear and specific in terms of its sentence as it provides for lower limit of the prison term as well as the amount of fine that is to be imposed. The maximum limit for using coercion for marriage is 7 years and minimum is 3 years with a fine of 500,000 PKR. It is also to be noted that it is an affirmative law, which disallows forced marriage of women. During the period of 2014-2020, Punjab police registered 14 cases, where 55 persons were accused. To date, out of 14 cases, police, sent 10 to court, cancelled 04 cases. Court adjudicated 04 cases, acquitting 17 & convicting 03 person. Presently 06 cases are under Trial .

a) Prohibitive Punishment: The punishment is prohibitive as it limits the judicial constraint problem by providing a lower limit of sentence as well as the amount of fine to be imposed. The application of coercion on women draws its jurisprudence from Islamic law, where it is forbidden .

b) Usage: The usage of this law is however limited. Only 14 cases were registered under this law in 6 years. This does not reflect the frequency and trend of forced marriages[23]. In Pakistan's traditional society the parental consent is the only social sanction required for marriage. The will of the woman is inconsequential. At the time of signing of marriage contract there is a requirement to obtain the consent of the bride, but it is usually not done, especially in the rural areas. The following diagram illustrates the trend of use of this law :

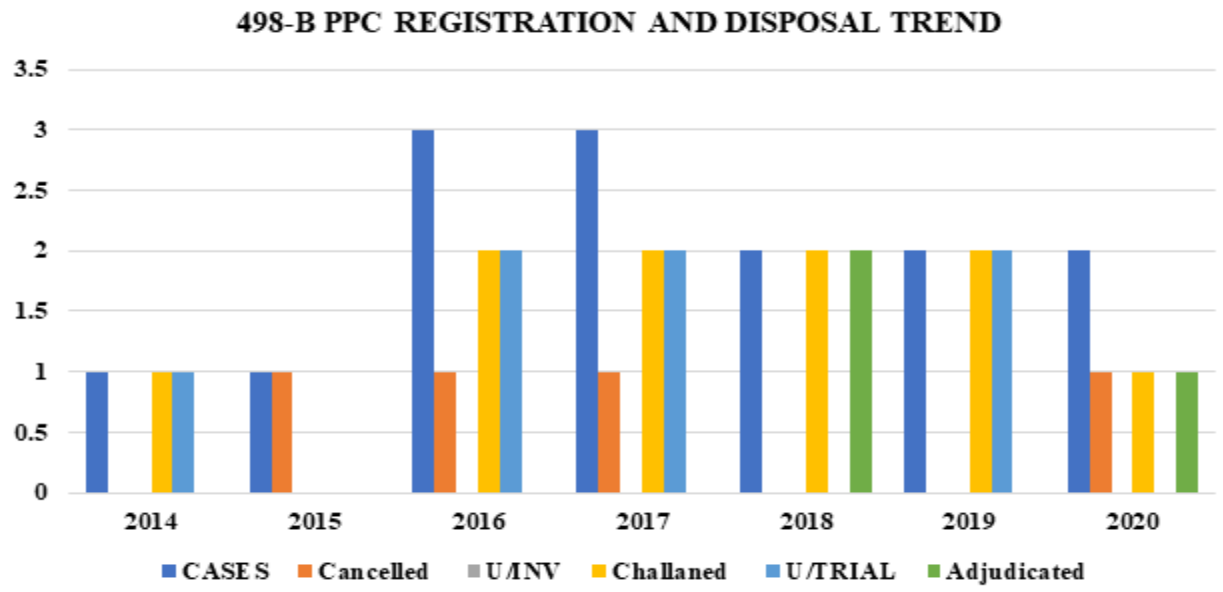


Source: Punjab Police

c) Efficacy: There is a high acquittal rate and low conviction rate under this section. In the 14 registered cases (involving more than one individual as the Nikah Khwan is also

[23]https://www.girlsnotbrides.org/child-marriage/pakistan/

booked), 17 persons were acquitted and only 3 have been convicted. The cases registered under this offence usually end up in out of court settlement and social arbitration. Therefore, it is rare that a case is registered under this section at all. The following diagram describes the trend:



Source: Punjab Police

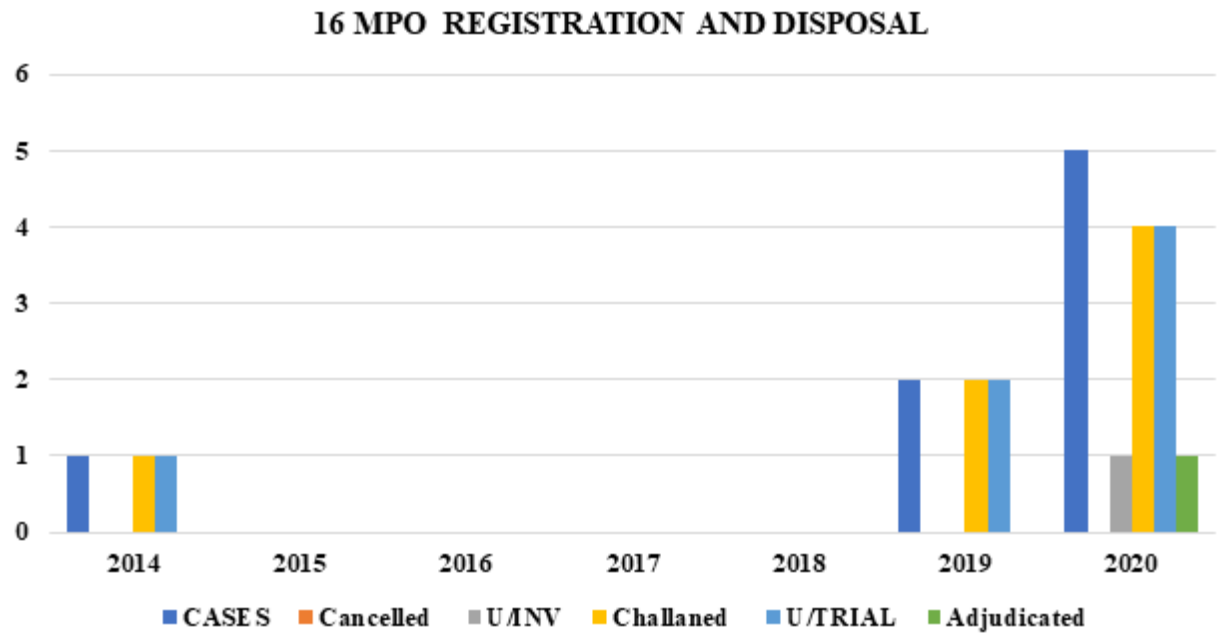
16Punjab Maintenance of Public order Ordinance-1960: The provincial maintenance of public order ordinances empowers the government to detain personnel who are suspected of acting in a manner prejudicial to public safety. Like public order provisions discussed earlier, the focus is not to curb extremist thought but in restricted cases to prevent public mischief. Such a kinetic approach while necessary as a public order imperative does not address extremism at any fundamental level. The broad nature of these provisions often results in them being used for suppressing political activity. It is a maintenance of public order law. The statement of law is generic in defining public order and gives broad definitional space to criminalize any spoken or written word which can jeopardize "public order". This law has been brought into the ambit of research because besides being used for political purposes, there are incidents, where it has been

used against extremism and extremist hate speech. During the period of 2014-2020, Punjab police registered 08 cases, where 23 persons were accused. To date (till the collection of data) i.e., 2020, out of 08 cases, police, sent 07 to court, while remaining 01 cases are untraced or under investigation. Presently 07 cases are under trial .

a) Prohibitive Punishment: The law carries a maximum sentence of 3 years and fine or both. This is the standard lower punishment bracket in Pakistan's Penal system, allowing for bail and use of judicial restraint .

b) Usage: It is very infrequently used law and is specific to Punjab Province. In 6 years only 8 cases were registered under this law. All these cases were registered in Sahiwal Range. The law is used to quell protests and other forms of public demonstrations. The following figure reflects its usage :

c) Efficacy: There have been no convictions under 16 MPO in Punjab in 6 years. Amongst the 08 registered cases only 7 were challaned and all 7 are under trial. The following diagram illustrates the trends



Source: Punjab Police

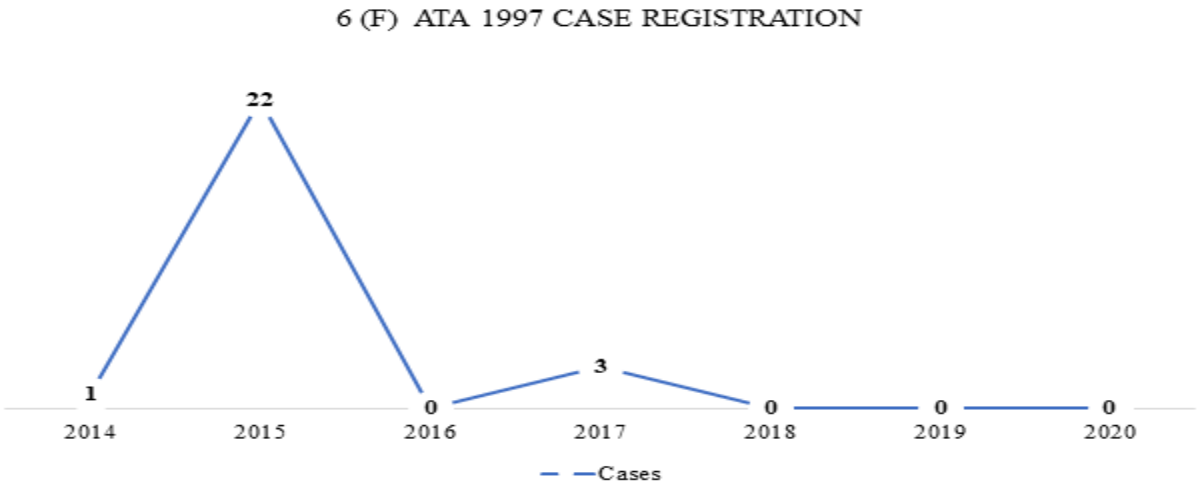
Section II- Legal Provisions in Special Laws against Extremism

Anti-Terrorism Act 1997

Sectarian Hate Speech and Incitement to Commit Violence

Section 6 (F) Anti-Terrorism Act 1997 (read with 7 B): This section of ATA deals with incitement of hatred, based on religious, sectarian or ethnic basis, which may lead to violence. There is definitional ambiguity as the incitement is also called terrorism. Except for the sectarian part the definition in this clause is generic and can be used for any form of incitement to violence. During the period of 2014-2020, Punjab police registered 26 cases, where 18 persons were accused. To date (till the collection of data) i.e., 2020, out of 26 cases, police, sent 16 to court and 10 cases are under investigation. Court adjudicated 09 cases, acquitting 08 & convicting 03 person. Presently 07 cases are under Trial. It is a 'definitional clause; it also carries a punishment from 10 years which could be extended to life in prison .

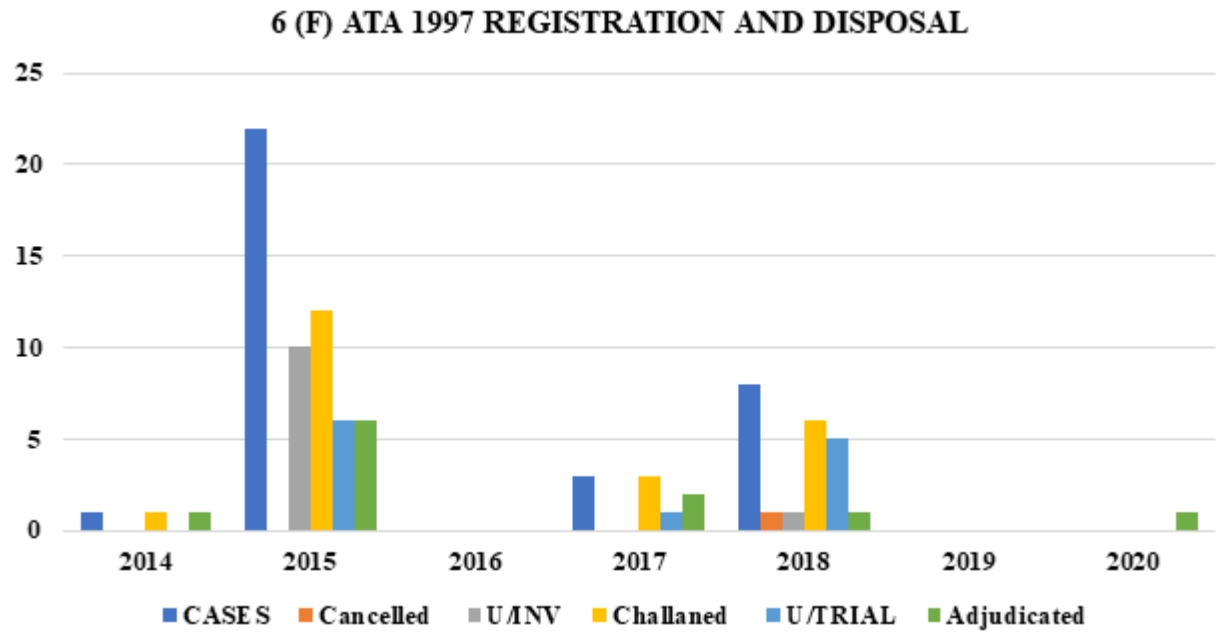
a) Prohibitive Punishment: The minimum 10 years to maximum life imprisonment is proposed under this clause of ATA. This carries prohibitive sanctions in terms of severity. ATA as a special law has both procedural as well as substantive law elements, including definitional aspects. The punishment can be described as prohibitive .



Source CTD Punjab

b) Usage: This section of ATA is infrequently used. The spike in usage was in 2015 and that too in only one district of DG Khan, where 22 cases were registered under this section of the law. This can be related to an incident of bomb blast at the political office of Amjad Farooq Khosa, which claimed 7 lives. This blast came in succession to the killing of Shujah Khanzada in a bomb blast in Attock. The pattern of usage is represented as follows :

c) Efficacy: A total of 26 cases have been registered in 6 years under this section. The Anti-Terrorism Courts try ATA offences, and the law mandates a quick disposal of cases. However, on examination of data it transpires that in those 26 cases registered, 8 persons were acquitted and only 3 were convicted. It may also be noted that 15 cases are still under trial. The trend diagram is presented below :



Source: CTD Punjab

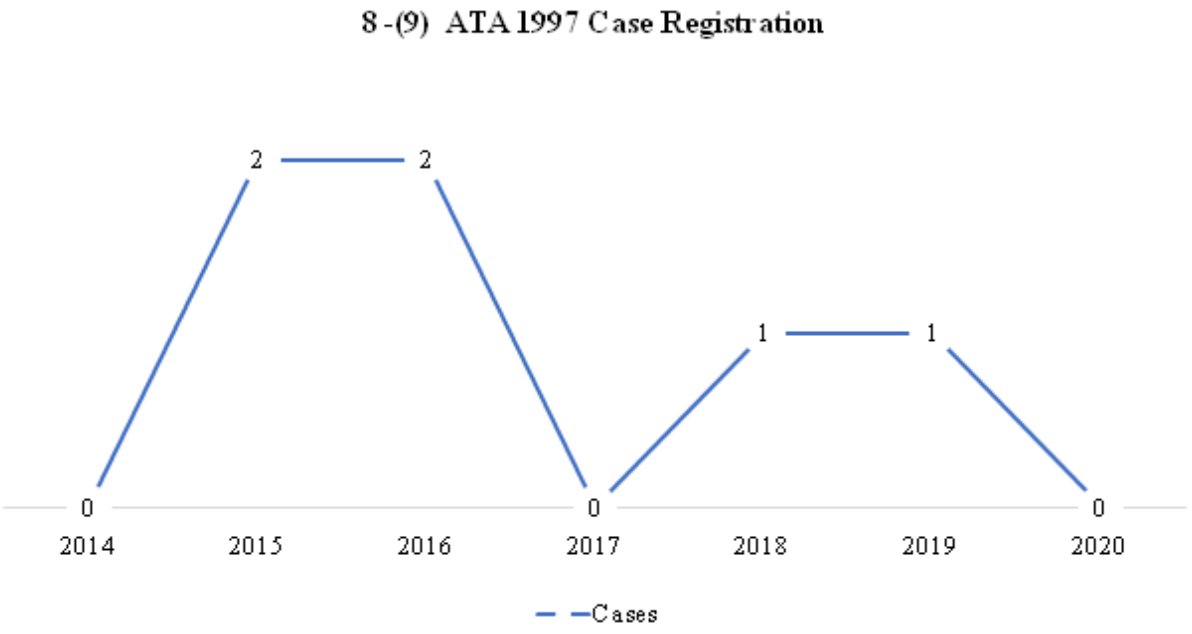
8 (9) ATA 1997: This section of the law deals with sectarian hate speech, possession of sectarian hate material with intention of dissemination to stir up sectarian violence. During the period of 2014-2020, Punjab police registered 06 cases, where 09 person were accused. To date (till the

collection of data) i.e., 2020, out of 06 cases, police, sent 05 to court and 01 case is under investigation. Court adjudicated 03 cases, acquitting 06 & convicting 01 person. Presently 02 cases are under trial .

a) Prohibitive Punishment: The offence carries a punishment from minimum 5 years to maximum 9 years with fine .

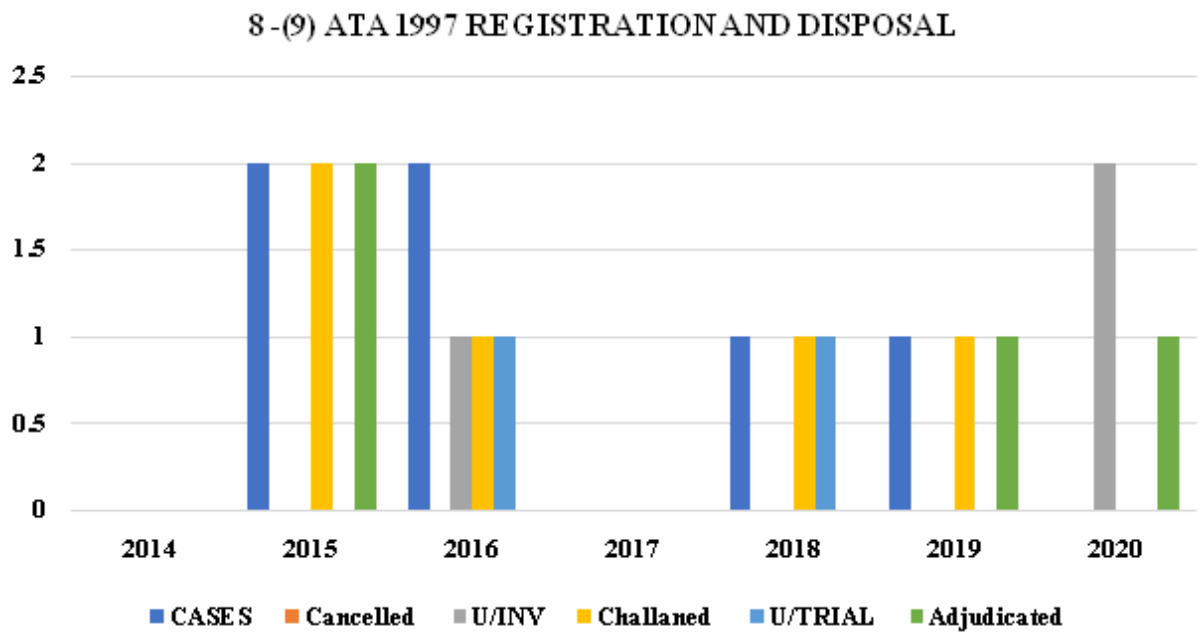
b) Usage: The law has been used rarely in recent years. There were only 6 cases registered under this law in 6 years. This indicates three trends: a) The Sectarian groups have been controlled through kinetic measures or, b) they have found sanctuaries in Afghanistan or,

c) they are using more online medium to spread their message. The following trend diagram represents a small quantum of use of this law :



Source: CTD Punjab

c) Efficacy: The law has been rarely used. In the 6 registered cases, 6 persons have been acquitted and only 1 has been convicted, showing a low conviction rate. The following diagram represents the fate of these small number of cases :

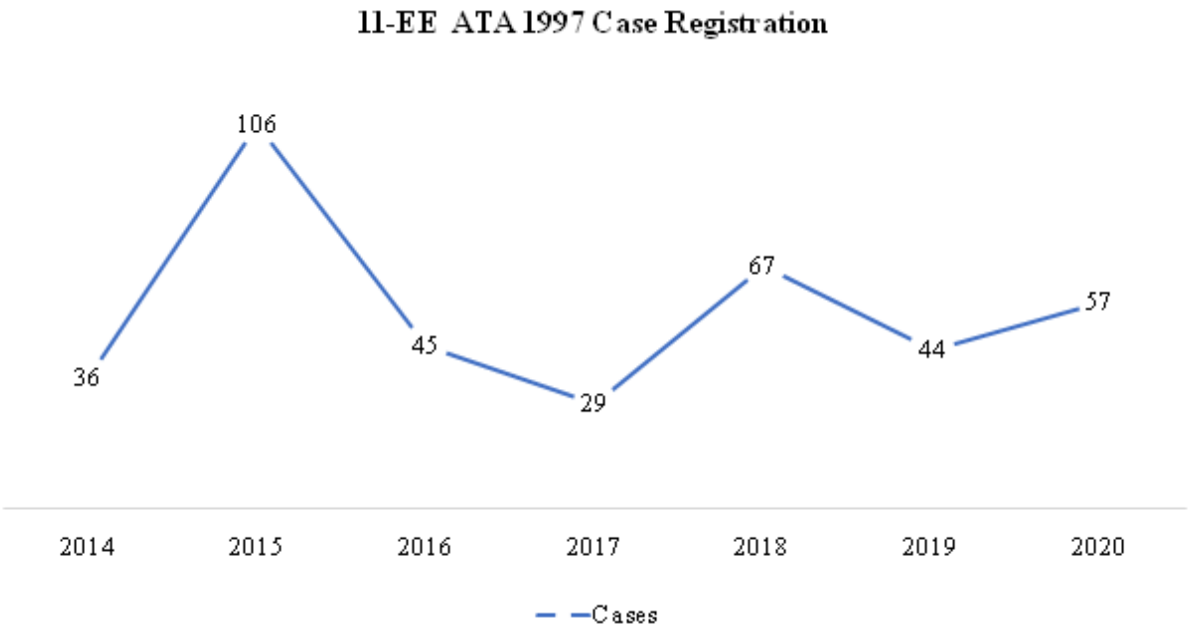


Source: CTD Punjab

11-EE Anti-Terrorism Act 1997: This is a recent amendment in ATA, dealing with Proscription of a person, involved with any sectarian or terrorist organization. This section criminalizes 'association'. The decision to proscribe is ex-parte and violation is punishable by a term of 3 years. The proscription however is not conviction, because it can be done under information obtained from "credible" sources. The violation of proscription is also not defined clearly. The underlying assumption is that proscribed persons are by default extremists. This amendment in ATA is a response to FATF regime and was recommended in the MER report. During the period of 2014-2020, Punjab police registered 384 cases, where 407 persons were accused. To date (till the collection of data) i.e., 2020, out of 384 cases, police, sent 327 to court, cancelled 28, & 29 cases are under investigation. Court adjudicated 205 cases, acquitting 117 & convicting 86 persons. Presently 122 cases are under Trial .

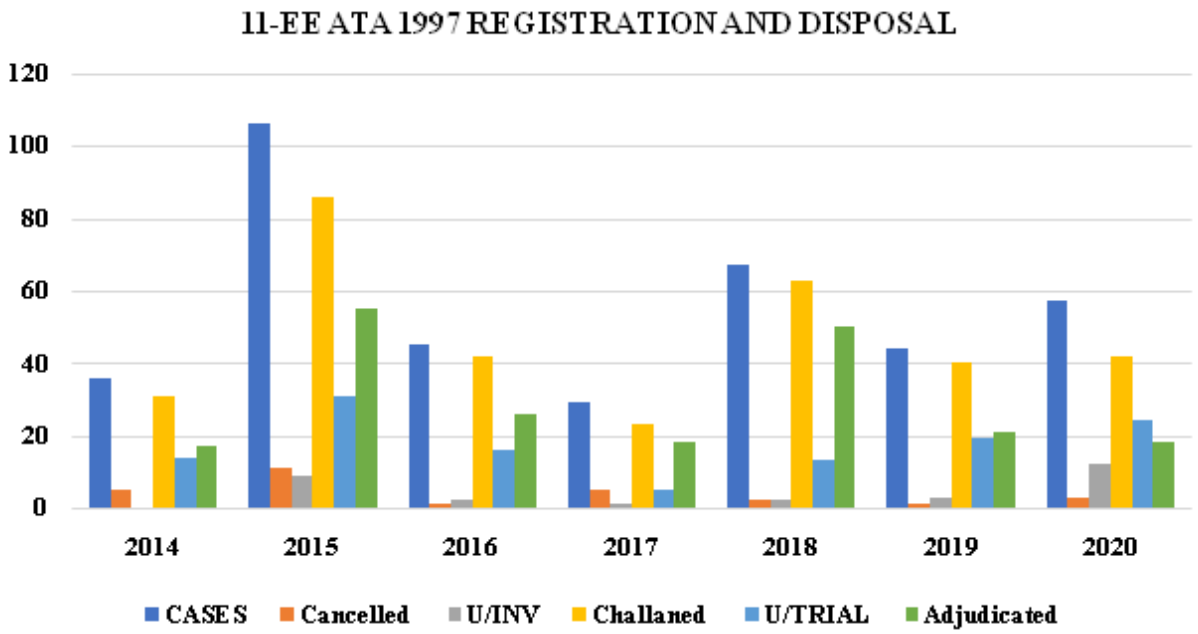
a) Prohibitive Punishment: The punishment of 'violation' of proscription carries a term of 3 years and fine. It cannot be termed prohibitive as the violation itself is not clearly defined. Whether it means an attempt to open a Bank Account or any such ordinary act .

b) Usage: It is the usage of this law which has created a deterrence factor. In 6 years, 384 cases were registered, which outnumbers any other law discussed previously. The highest number of cases registered under this section were in District Bahawalpur; home to the leader of Jaish-e-Mohammad, Maulana Masood Azhar and Hafiz Abdurrahman Makki a leader of Lashkar-e-Taiba. These two organizations have been under microscopic scrutiny of the international counter-terrorist regime. DG Khan District also has the second highest number in terms of cases registered; 69. Faisalabad and Gujranwala feature next in terms of numbers of registered cases. The spike in 2015 can be attributed to NAP Implementation .



Source: CTD Punjab

c) Efficacy: 384 cases were registered under this section; 117 persons were acquitted whereas 86 were convicted. This high conviction rate indicates the resolve of the government to be FATF compliant regime. This law is also an easy tool to demonstrate Pakistan's seriousness in dealing with AML and CFT issues. The following trend diagram represents this visually :

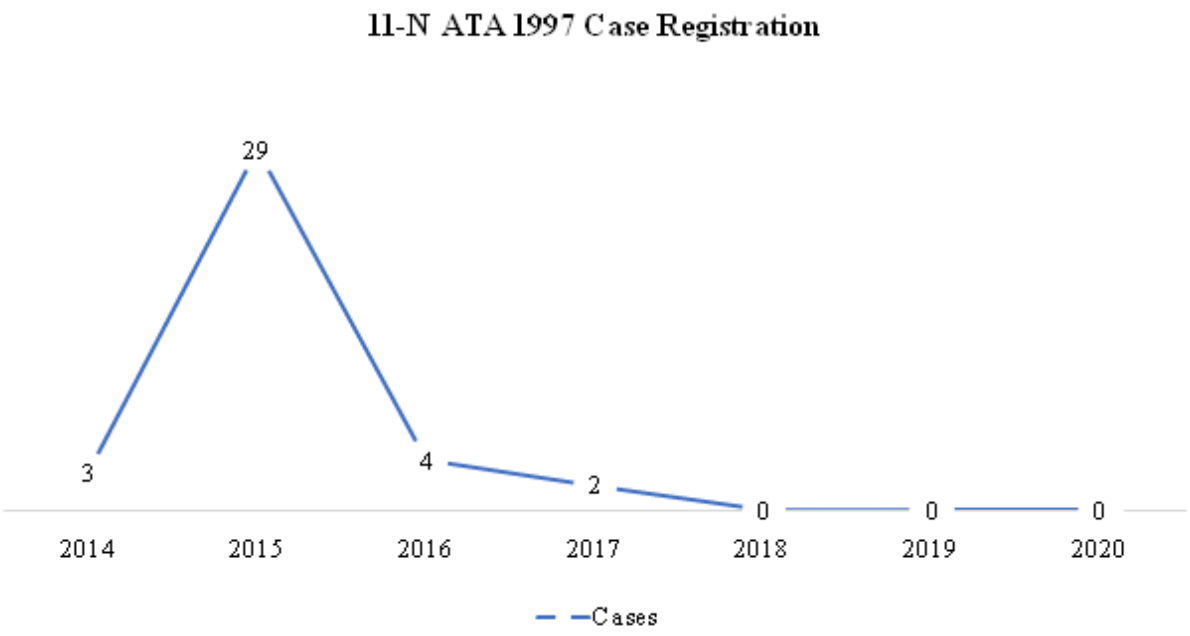


Source: CTD Punjab

11-N Anti-Terrorism Act 1997 (11 H to 11K): These sections deal with the issue of Terror Financing and Money Laundering for the purpose of Terror Financing. This also a recent amendment to ATA. During the period of 2014-2020, Punjab police registered 38 cases, where 65 persons were accused. To date (till the collection of data) i.e., 2020, out of 38 cases, police, sent 36 to court, cancelled 02. Court adjudicated 18 cases, acquitting 25 & convicting 02 persons. Presently 18 cases are under Trial .

a) Prohibitive Punishment: The Punishment is quite clear with lower term of 5 years and higher term of 10 years, with fine. This provides a clear legal mandate and judicial discretion is minimized .

b) Usage: This is relatively less used law because of the complexity of the issue of TF. It was only recently that CTDs were given access to Financial Intelligence through FMU. Prior to the amendment in this law police and CTD could not access Banking information and financial intelligence. There is also a noticeable spike in registration of cases in 2015, which can be attributed to NAP. Sheikhupura once again tops the case registration under this section in Punjab. The trends diagram is as follows :

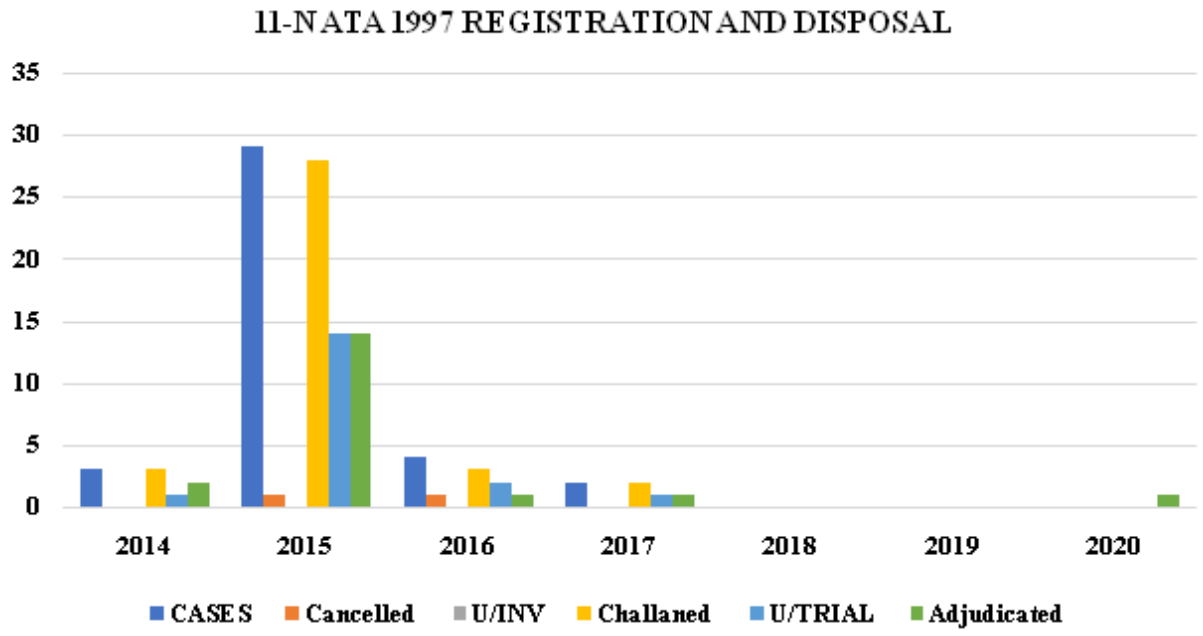


Source: CTD Punjab

c) Efficacy: In 6 years 36 cases were registered. 18 cases were tried with 25 acquittals and only 2 convictions that too in 2015. The complexity of TF cases is yet to be grasped by Criminal Justice System, especially the prosecution. The recruitment pool of DPPs are usually drawn from criminal law practitioners. They hardly have expertise in financial crimes prosecution. Given the number of cases tried the rate is extremely low. The trend diagram is as follows :

11-W Anti-Terrorism Act 1997: This section deals with spread of hate material. This section comprehensively defines the media through which hate material can be disseminated including audio-visual, FM and digital media. It prohibits any form of 'glorification' of terrorism or sectarianism. This law is important also in the sense that it covers religious, sectarian and ethnic hate. The ATA has graduated from defining extremism in terms of sectarianism only to include religious as well, criminalizing other extremist ideologies like TTP and Takfir. Although Takfir is not defined in the law but the implications are broader, increasing the ambit of the law. During the period of 2014-2020, Punjab police registered 165 cases, where 150 persons were accused. To date (till the collection of data) i.e., 2020, out of 165 cases, police, sent 114 to court,

cancelled 25, & 26 cases are untraced or under investigation. Court adjudicated 41 cases, acquitting 31 & convicting 15 persons. Presently 73 cases are under trial .

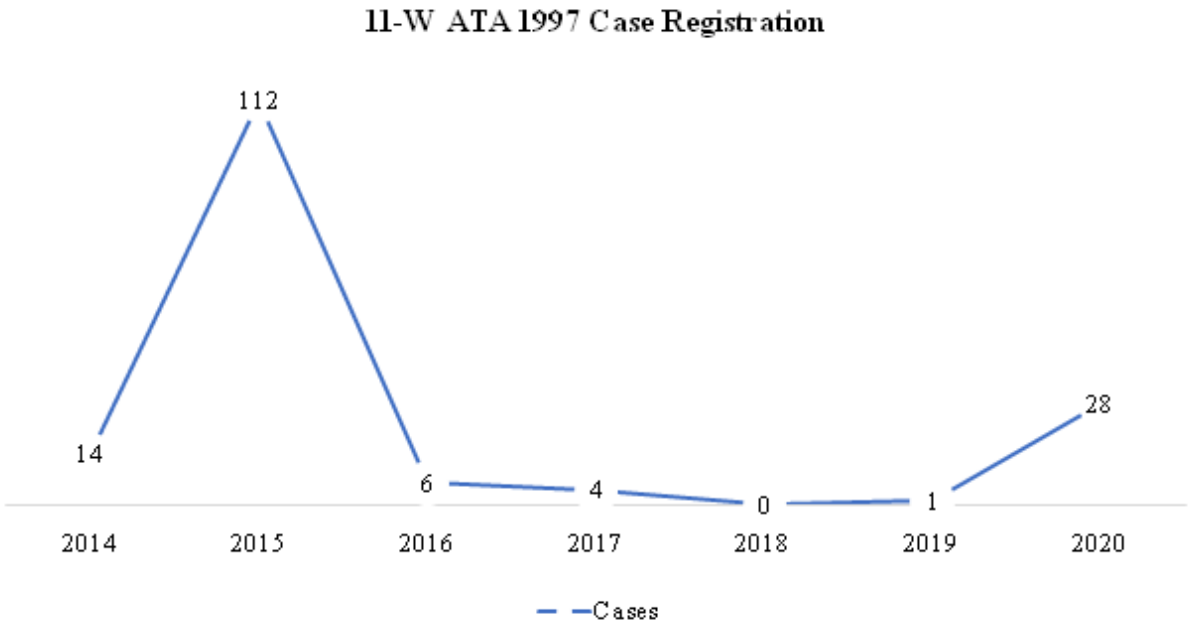


Source: CTD Punjab

a) Prohibitive Punishment: The punishment accorded to violation of this law is stated to extend to five years and fine but lower limit is not specified, which does not make the punishment sufficiently prohibitive. Counting on judicial restraint and other social factors, it can be assumed that punishment if awarded would be a reduced term not the maximum term. One reason could be that publishing and hate material, is viewed as a standalone criminal act, the consequence of its potential of radicalization is subsumed. Similarly, the issue of freedom expression as a fundamental right may also have come in to play while deciding the penal term .

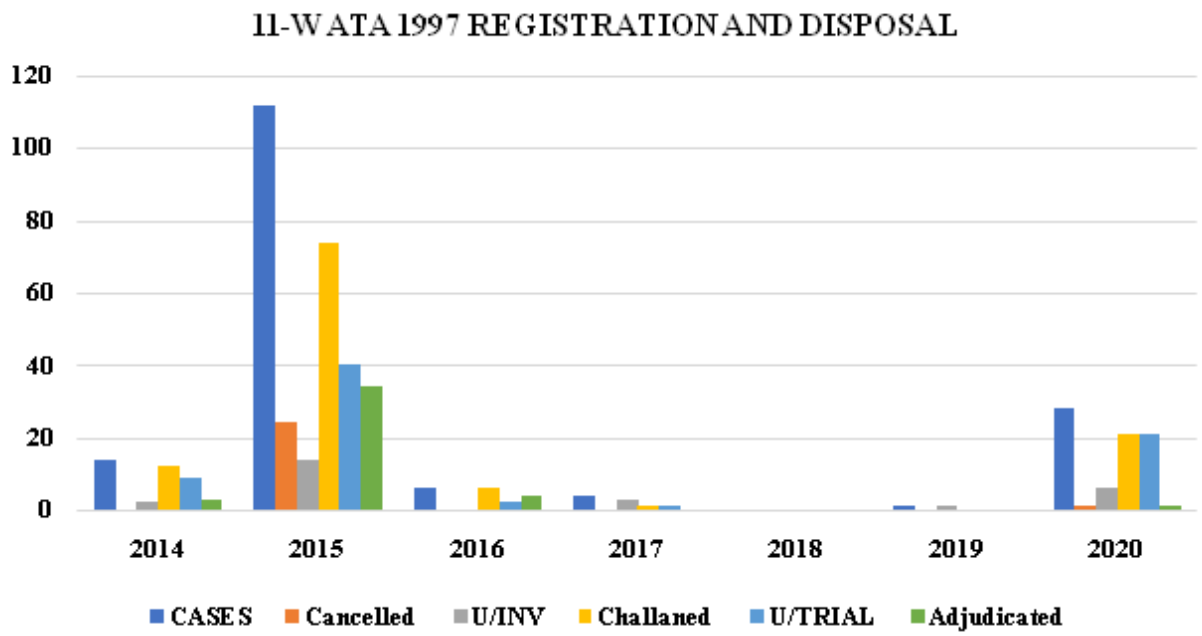
b) Usage: This is medium to high used law in comparative terms and 165 cases were registered in 6 years under its provisions. There is peak in 2015, when 112 cases were registered. This can again be attributed to NAP implementation. Interestingly Lahore has topped the registration of cases list. Where 72 cases were registered. Gujranwala

followed with registration of 34 cases. This could be due to the large printing industry in these two cities, where the mere availability of large number of printing press could have been a cause of high incidence. Similarly, in terms of other media, like websites etc. the IT qualifications and ability to work around firewalls is more developed in Lahore, therefore this could be the reason for high number of cases in Lahore .



Source: CTD Punjab

c) Efficacy: From the 165 registered cases, 41 cases were adjudicated, resulting in 31 acquittals and 15 convictions. The trend diagram is presented below :



Source: CTD Punjab

Mob Violence/Lynching

11-W W Anti-Terrorism Act 1997: This section deals with mob lynching, another form of expression of intolerance and momentary extremism fanned by collective hate. The law is dissuasive against vigilante justice, but there is an increasing trend in the society, where citizens acting as a mob decide to punish a criminal. During the period of 2014-2020, Punjab police registered 02 cases, where 01 person was accused. To date (till the collection of data) i.e., 2020, out of 02 cases, police, sent 01 to court & 01 case is under investigation or untraced. Presently 01 cases are under Trial. This miniscule number of registered cases is not reflective of the incidents of mob violence, resulting in lynching. In the infamous Sialkot lynching case of two brothers by a mob the FIR registered was under sections 148, 302, 149, 297, 109 of PPC and 7 (a), 21(I) of ATA[24]. The accused of lynching were awarded death penalty by ATA but the SC commuted to sentence to 10 years. 11 WW was not invoked .

[24] FIR No. 449/2010 Sialkot Police

a) Prohibitive Punishment: The punishment for violation is maximum 3 years but another punishment can be added. This implies that to be part of the mob carries a sentence, but if the individual commits further crime and evidence is available for it then the punishment can be added, as was the case in Sialkot case. The law prohibits becoming part of the mob and subsequent crimes. Hence the punishment to the extent of becoming part of the mob is adequate until far serious crimes are committed .

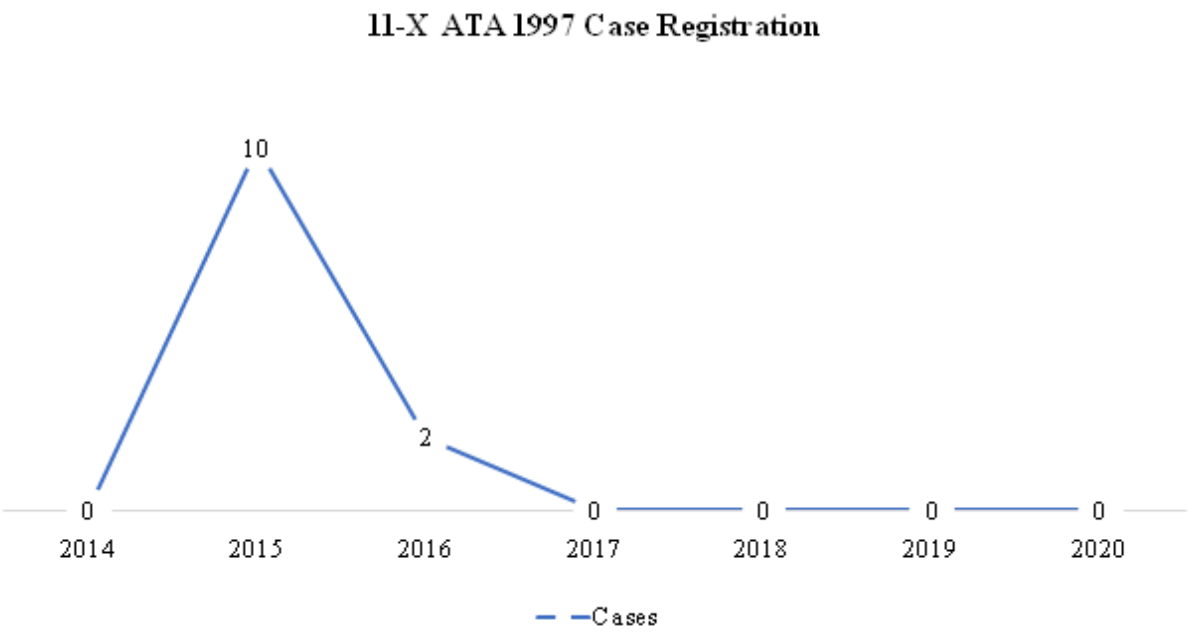
b) Usage: The usage is apparently negligible as only 2 cases are recorded in 6 years. The media coverage of Sialkot lynching did leave an imprint and perhaps was more dissuasive than the law itself .

c) Efficacy: The data for efficacy may not be enough for this section but, the law does discourage being part of the mob and commit further criminal acts .

11X Anti-Terrorism Act: This provision of law deals with causing civil commotion. This law brings rioting within the ambit of ATA. The three parts of the law deal with incitement for closing businesses and punishment for it and incitement of violence of religious sectarian or ethnic nature. This is also an anti-hate speech and anti-hate expression law. During the period of 2014-2020, Punjab police registered 12 cases, where 15 persons were accused. To date (till the collection of data) i.e., 2020, out of 12 cases, police, sent 12 to court. Court adjudicated 10 cases, acquitting 13 persons. Presently 02 cases are under trial .

a) Prohibitive Punishment: The law does not carry high penalty, with term extending from 6 months to 5 years accompanied with fine from the person or from the establishment. This gap is however too broad. The law brings shutdowns and strikes under the ambit of terrorism, stretching the definition a bit too much. The added clause of religious, sectarian and ethnic clauses without a specific sentence attached, seem to be a justifying clause .

b) Usage: It is not a much-used law and only 12 cases were registered in 6 years. There was a spike in 2015, ostensibly due to the political turmoil, during that year. The illustration is as follows :



Source: CTD Punjab

c) Efficacy: The law was applied 12 times and all accused were acquitted by the trial courts; hence its efficacy is sub-optimal as preventive law for containing disorder .

Acquittal Analysis in ATA Cases

According to a study carried out by Syed Ejaz Hussain, PSP, former DG National Police Bureau, from 1990 to 2009, out of 311 cases decided in the Anti-Terrorism Courts (ATC) in Punjab, 231 (74%) cases resulted in acquittals. This analysis presents a review of 178 judgments of acquittal cases, which is 77% of the total acquittal cases. Almost all areas of the Punjab are represented with the cases come from 25 districts. The analysis discusses 18 most important reasons of acquittal. As many judgments mention multiple reasons, the aggregate of percentages sometimes comes to be greater than 100 .

Gaps at Case Registration Stage

- *Accused persons are not nominated in the FIR. This is even though accused persons in terrorism cases are generally unknown at the time of occurrence. This reason for acquittal was provided in 65 (36%) judgments .*
- *Lack of eyewitnesses for the occurrence or other forms of involvement. In 19 (11%) judgments courts have cited lack of eyewitnesses as one of the reasons for acquittal .*
- *No description of the accused is provided in the FIR. The courts have acquitted accused in 18 (10%) cases that while writing FIRs, features of the unknown accused were not described .*
- *Role of the accused persons is not specified in the FIR. In 13 (7%) cases, courts observed that role of the accused was not specified in FIR .*
- *Absence of material evidence. This category covers the situation when material evidence was not recorded in FIR, or not available, or not collected, or was insufficient. Courts mentioned this fact in 8 (4%) judgments to acquit the accused.*
- *Delay in the registration of FIR. In 5 (3%) cases, the courts found the cases to be doubtful on the ground that FIRs were registered with an inordinate delay .*

Gaps at Investigation Stage

- *Defects in identification parade. Defects in identification parade were the leading reason for acquittal in 62 (35%) judgments. Usually, High Court Rules are ignored while conducting identification test parade, or sometimes, it is not conducted at all .*
- *Doubtful recovery: In 47 (26%) of judgments, the courts have mentioned doubtful recovery as one of the reasons for acquitting accused. Sometimes, the weapon of offence did not match with the report of Forensic Science Laboratory about the empties recovered. Issues of chain of custody also fall under this gap .*

- *Defects in confessional statement: In 25 (14%) judgments, above noted defects in confessional statement were noted as one of the reasons for acquittal. These defects included: accused not present while the confession was recorded; confession was recorded by a DSP; statement was not considered reliable and independent .*
- *Late submission of challan: In total, accused in 23 (13%) judgments were given benefit of doubt because challans were submitted in court after long unexplained delay.*
- *Defective statements u/s 161 Cr. P. C.: In 13 (7%) cases, statements of witnesses' u/s 161 Cr.P.C. were not recorded by police in a timely manner, or not recorded at all, or the accused not mentioned in them .*
- *Defective medicolegal reports and material Evidence: In 12 (7%) cases, either medical evidence was not available, or the statement given by the medical officer was not correct or there was difference between medical and the ocular statements of draftsman who prepared site plan .*

***Gaps at Prosecution/Trial Stage** :*

- *Witnesses becoming hostile: In 86 (48%) cases, this has been given as a reason for failure of the case. This reason tops the list of causes of failure of terrorism cases in court.*
- *Witnesses do not appear for evidence: In 48 (27%) judgments, this fact has been used as a justification for acquittal .*
- *Witnesses resile or compromise: In equal number (48) of judgments, the accused were acquitted because witnesses resiled or a compromise was affected between the parties.*
- *Contradictions in witnesses' statements: In 45 cases that comes to be about 25% of the total, this was the reason for acquittal .*
- *Witnesses change statements: In 23 judgments, the courts have mentioned that witnesses had changed their statements .*

- *Contradictions in medicolegal and ocular evidence: In 23 cases contradiction between medicolegal and ocular evidence led to the acquittal.*

Section III- Provincial CE Perspective: Data analysis of Capital Cities of all Provinces:

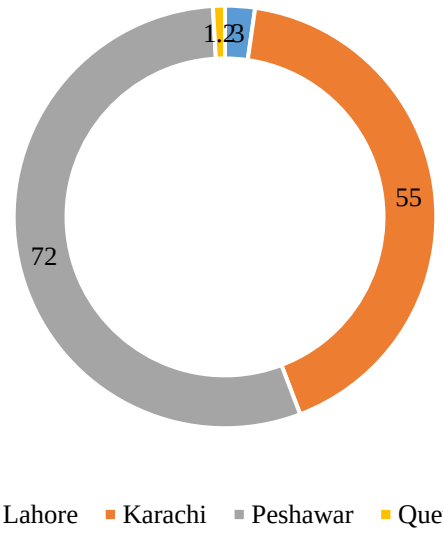
Case Registration and Disposal Trends

The data asked from the four provincial capitals was targeted to respond to two basic queries i.e., which are the laws being invoked by the police to register and investigate the cases against extremism and what was the efficacy of these laws in terms of the disposal of these cases by the police as well as the courts .`

The aggregate provincial level data was not available on extremism related crime, although all police departments have crime statistics on their websites, related to heinous crimes. The data collection and disclosure miss the crime data on extremism offences. In order to navigate the data availability problem, extremist crime data of four provincial capitals was obtained and analyzed to capture the provincial flavor. The following charts and diagrams present the case registration and disposal of extremism related offences under each section on the same pattern as Punjab from 2014–2020-time horizon .

Section 153 A

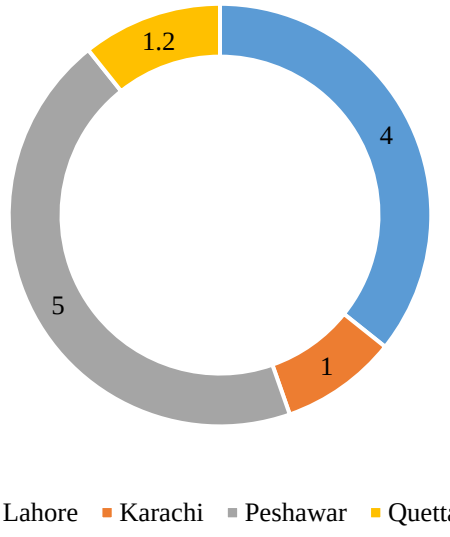
Registered cases



Lahore has the lowest registered cases, which is only 3 while Peshawar marks highest registration u/s 153-A. In total there is only 01 Conviction in Peshawar. 60 Persons have been acquitted in total with highest acquittals in Karachi, where 34 persons were acquitted.

Section 295

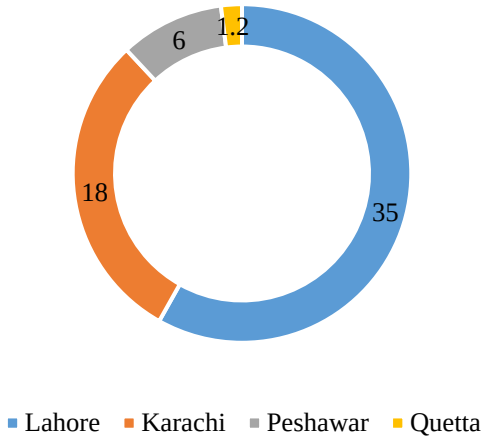
Registered cases u/s 295 PPC



Lahore registered the highest cases under this section and Quetta did not register any case under this section. There has been no conviction under this section and 7 cases are under trial.

Section 295-A

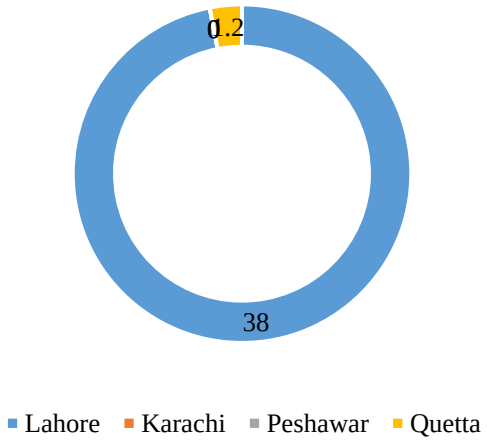
Cases registered u/s 295 A



The cases registered u/s 295-A have highest incident in Lahore with 35 registered cases, followed by Karachi. No one has been convicted under this section thus far, whilst 21 persons were acquitted, and 41 cases are under trial.

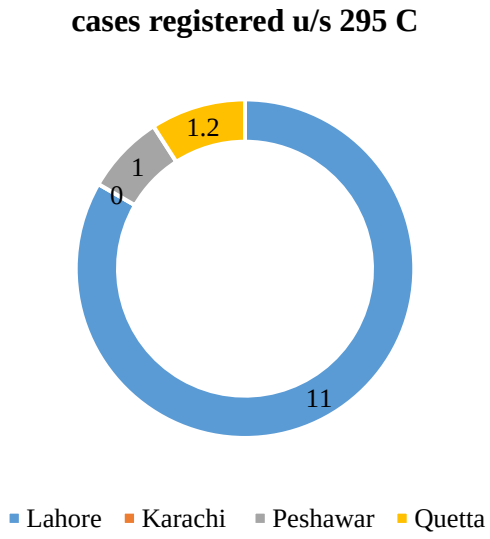
Section 295-B

Cases registered u/s 295 B



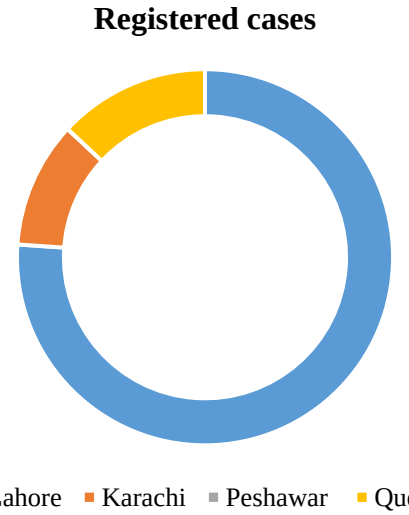
There were 38 cases registered in Lahore while none were registered in Karachi and Peshawar. Quetta registered 7 cases under this section. 6 Person have been convicted and 3 persons have been acquitted while 32 cases are under trial.

Section 295-C



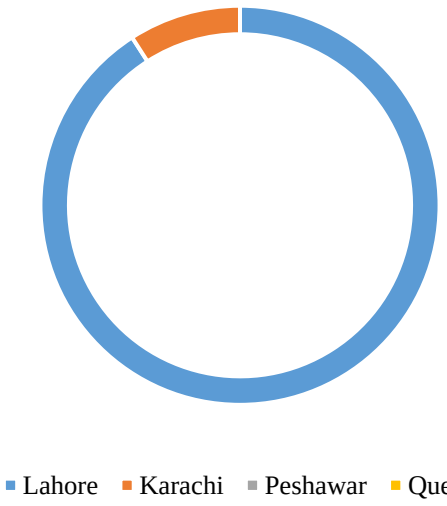
11 cases have been registered in Lahore and 1 case is registered in Peshawar. There have been no cases registered under this section in the remaining 2 capitals. 1 person has been convicted in Lahore, while no one has been acquitted. 8 cases are under trial.

Section 298



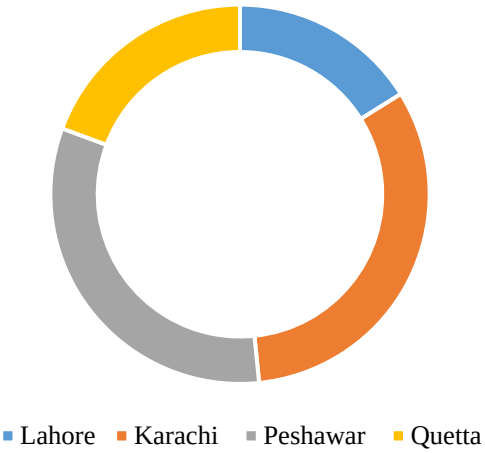
There have been few cases registered under this section. 7 cases were registered in Lahore, while 1 case each was registered in Karachi and Quetta. There have been no conviction and 1 person was acquitted. The lone case in Karachi was acquitted.

Section 298 A



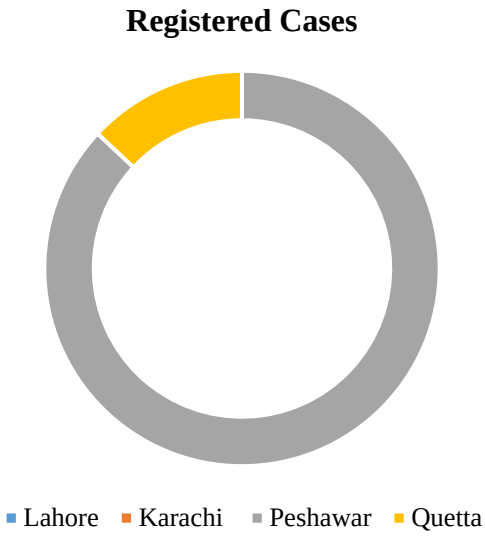
There has been a very low registration of cases under this section, that too in Lahore, where 10 cases were registered, while 1 case was registered in Karachi. The other two capital cities did not register a single case under this section. There have been no convictions or acquittals and 7 cases are under trial.

Section 505 PPC



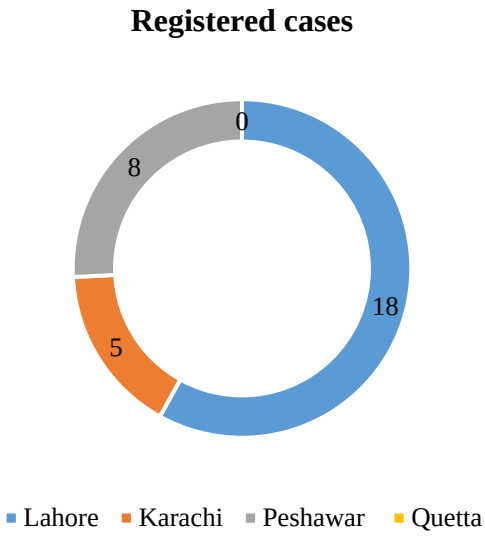
This section has been rarely used in 7 years. No one has been convicted or acquitted and only 3 cases are under trial.

Section 498-B



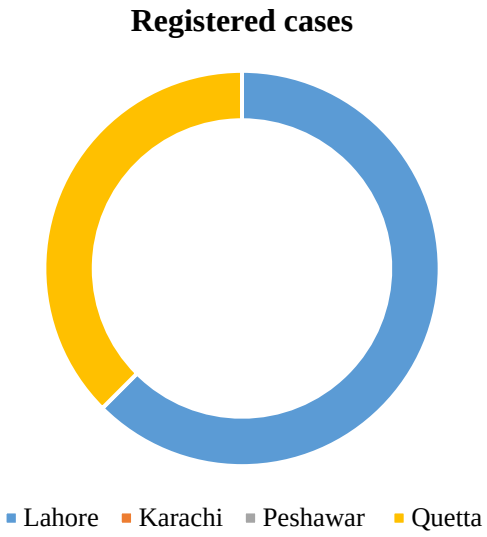
This section has only been invoked in Peshawar with 8 registered cases and overall, 48 accused have been booked under this section. 8 persons have been acquitted while 7 cases are under trial.

Section 11-EE ATA



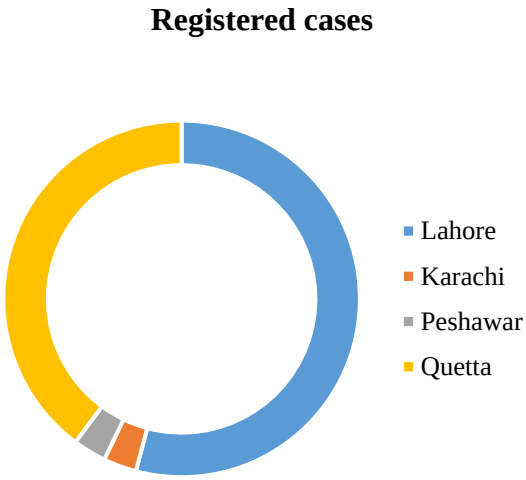
There have been 18 cases registered in Lahore, followed by Peshawar (8) and Karachi (5). There have been no convictions and 3 persons have been acquitted.

Section 11-N ATA



Only 2 cases have been registered that too in Lahore only. Both accused have been acquitted.

Section 11-W ATA



This is comparatively frequently used section of ATA. The highest number of registered cases have been in Lahore; 72 followed by Quetta 53. The other capitals have only registered 4 cases

each. The conviction rate is also surprisingly high as from 154 accused 30 have been convicted. The acquittals are comparatively low where 12 persons were acquitted. 42 cases are under trial. This may be an indicator of trends of sectarianism in different provinces.

Section 11-WW ATA

Only one case under this section has been registered under this section in Lahore, hence a graphic presentation is not warranted. The one registered case in 2020 is still under investigation.

Section 11-X ATA

Only one case has been registered under this section in Quetta. The case was registered in 2016 and is still under trial.

Trends Analysis

A comparative study of the above-mentioned data, leads to the following conclusions:

- Extent of invoking of CE laws
    - There were in all 479 cases registered for violation of CE laws in the four provincial capitals i.e., Karachi, Lahore, Peshawar and Quetta from the years 2014 to 2020.
    - Highest number of cases were registered in Lahore (207), followed by Peshawar (107), Karachi (89) and the lowest were in Quetta (76).
    - In terms of number of these cases per million population, the highest number was in Quetta (76 cases per million) followed by Peshawar (25 cases per million), Lahore (19 cases per million) and the lowest were in Karachi (6 cases per million)
- Laws with high application
    - Out of the laws relevant to counter extremism, only two were more frequently used i.e., Pakistan Penal Code (PPC) and Anti-Terrorism Act (ATA) by the police of the four capitals. Out of the total of 479 cases registered in the four capitals,

63% of the cases were registered under PPC, 35% under ATA and less than 2 % under other laws.

- One law having provisions which can be invoked for preventive action against those involved in extremism i.e., Maintenance of Public Order (MPO), was not used at all by any capital police force. This indicates a gap in the use of preventive laws to deal with extremism
- Provincial police forces did not have any data for cases registered under Prevention of Electronic Crimes Act (PECA), a law dealing with online extremism that falls within the purview of only the Federal Investigation Agency (FIA). This indicates a gap in that online extremism cannot be taken cognizance of by the local police.
- A comparison of the use of these two main laws by the provincial capital police revealed that there was a difference in the invocation of these two laws. While Lahore police used these laws almost equally (PPC 55% and ATA 45%), Karachi was predominantly in favour of PPC (PPC 90% and ATA 10%) and so was Peshawar (PPC 81% and ATA 11%). Quetta was different in that it relied more on ATA (PPC 29% and ATA 71%). The reasons for finding out the reason of this difference in the use of laws in countering extremism, would require a more detailed data analysis, which is not possible within the time frame of this project.
- Within the broad framework of the two main laws i.e., PPC and ATA used by the provincial capital police, a comparative study of the specific legal provisions invoked by the different capitals gave an interesting insight. The entire police effort against extremism in the four provincial capitals was based on 4 specific provisions of PPC (sections 295,295A,295 B,153 A) and three provisions of the ATA (sections 11W,11EE,11X). Lahore registered the highest number of cases under section 11W (34.7% of all cases for CE), Karachi under 153 A (61% of all cases for CE), Peshawar under sec 153 A (67.2% of all cases for CE) and Quetta

under 11W (69.7% of all cases for CE). So, while two capital police forces registered the highest number of cases against extremism under section 11 W of ATA (Lahore and Quetta), remaining two under 153 A PPC (Karachi, Peshawar)

Disposal of cases against extremism by the police.

- As stated earlier, in all the four provincial capitals, 479 cases were registered from 2014 to 2020 against violation of counter extremism laws. Out of these,332 were challaned to the court i.e., 69.3%. While it is a figure that indicates that most of the cases against extremism were sent by the police to the courts after completion of the investigation, it also points to the fact that 31% of the cases against extremism did not make it to the courts, either because these were cancelled or still pending investigation. This is a high percentage and constitutes a gap, because the greater the percentage of cases against extremism not making it to the courts, lesser the deterrence value of the CJS for the extremists.
- The highest disposal of cases against extremism by the police was that of Quetta police (84% of cases against extremism challaned to the court), followed by Peshawar police (78% of cases against extremism challaned to the courts) and Lahore and Karachi police are at par in terms of disposal of such cases, with both having a disposal rate of 60%.

Disposal of extremism cases by the courts.

- The final test of the efficacy of any law, are the results in terms of convictions.
- In this case, the best formulation can be the number of accused persons challaned by the police in cases of CE and how many of these accused persons were convicted. The higher the rate of conviction, the greater the deterrence. The data provided by the respective capital police forces did not contain the number of accused persons challaned in these cases, nor was the quantum of punishment awarded by the courts given. Thus, it was considered appropriate, working within

the existing data constraints, to compare the disposal of courts in terms of cases decided only.

- In all the four capitals, 319 cases of violations of CE laws were challaned by the police from 2014 to 2020. Out of these, only 86 cases (27%) were decided by the time the data was collected in 2020, while 73% of the cases submitted to courts were pending trial. Such a sorry situation cannot be expected to create much deterrence for the extremists, who would know that there was only a one-in-three chance of any case registered against them by the police being decided, let alone that decision ending in their conviction.
- This deterrence value further goes down, when we keep in mind, the facts that most of the accused challaned in these cases, get acquitted by the courts like in most of the criminal cases. So, we have, a disposal rate by the courts of 27% of the cases against extremists, this statistic goes further down for how many of these cases get convicted.
- Looking at the provincial capital variations of disposal of the courts of cases of extremism it emerges that the highest disposal rate of such cases was in Quetta (57.8%), followed by Karachi (33.3%) and Peshawar (20.2%). The lowest disposal rate was of the cases of Lahore (13.4%).

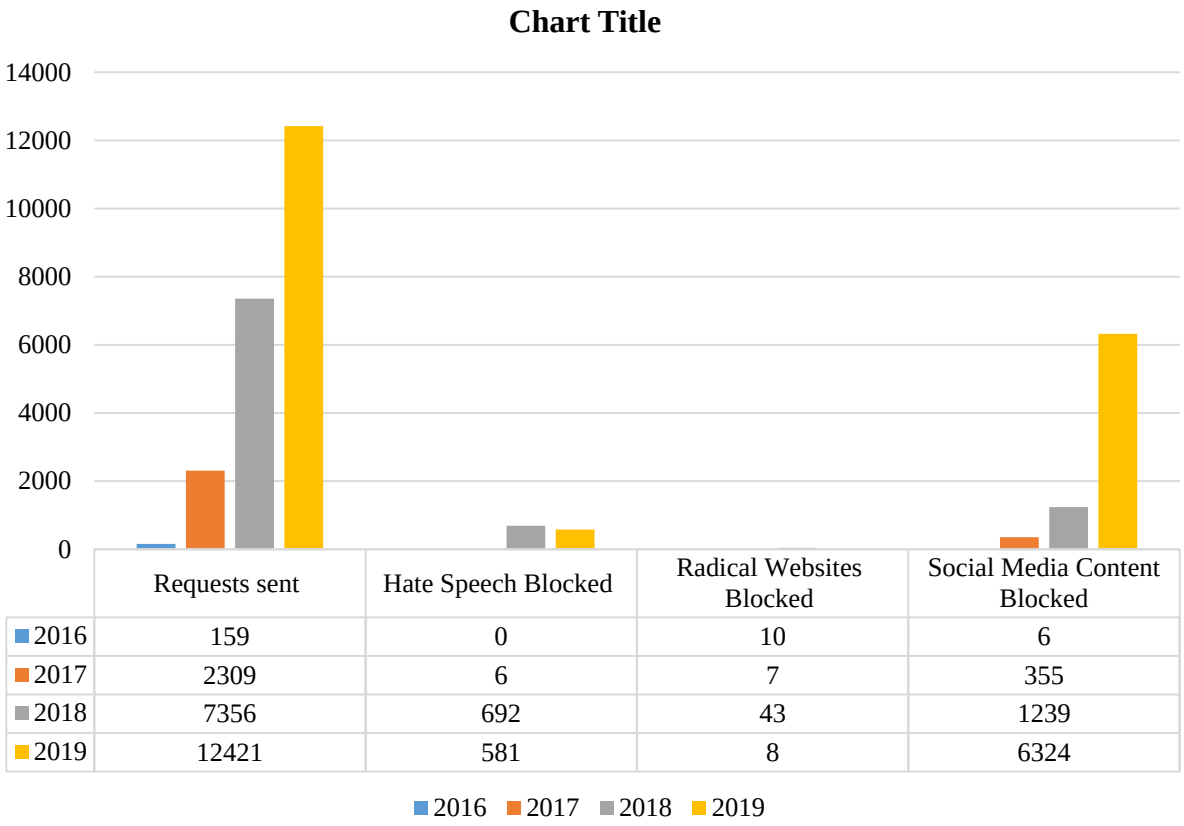
Section IV: Legal Provisions against Online Extremism

Pakistan Electronic Crimes Act 2016**:** In 2016, Pakistan enacted Pakistan Electronic Crimes Act (PECA) with the ostensible objective of regulating harmful speech and actions in the digital space. Some provisions of PECA also dealt with hate speech, cyber-terrorism, and offenses against the modesty of a natural person. Hate speech and cyber-terrorism were defined as acts done in the cyberspace to "advance interfaith, sectarian or ethnic hatred." The act provides for establishment or designation of an investigation agency for offences falling in its ambit. In case of PECA, Federal Investigation Agency (FIA) has the jurisdiction to investigate offences under

this Act. The act also provides for extending international cooperation to foreign governments. Designated courts are empowered to try cases under PECA.

The exclusive jurisdiction of FIA creates an ambiguity in cases where the jurisdiction might overlap with CTDs. The primary objective of PECA in combating extremism is to regulate the airing and dissemination of harmful speech, a power which is also available under ATA, hence creating duplication. In practice, PECA has not been used primarily to curb extremism but often on issues involving political speech and defamation.The lack of focus of PECA makes its usefulness on combating extremism questionable. An additional principal question arises based on creating a separate law and mechanism of dealing with extremism and terrorism based on medium (digital/cyber-space) as opposed to the substance of the speech and acts under review. The ATA does allow for cognizance of speech and acts falling within its ambit. While the ATA provisions need to be clarified and amended to deal with digital space more comprehensively, replicating the function with a separate law and agency might result in the confusion which for example has been witnessed between ATC and Sessions Courts.

Pakistan Electronic Media Regulatory Authority Ordinance 2002**:** The Pakistan Electronic Media Regulatory Authority Ordinance, 2002 (PEMRA Ordinance, 2002) is another legislation, which allows government to regulate content aired on media. Under section 20 of PEMRA Ordinance, 2002 airing programs containing or encouraging violence, terrorism, racial, ethnic, or religious discrimination, sectarianism, extremism, military hatred, pornography, obscenity, vulgarity or other material offensive to commonly accepted standards of decency is not allowed. The following diagram illustrates the actions taken by PEMRA:



	Requests sent	Hate Speech Blocked	Radical Websites Blocked	Social Media Content Blocked
2016	159	0	10	6
2017	2309	6	7	355
2018	7356	692	43	1239
2019	12421	581	8	6324

Source: PEMRA

Section V; Subordinate Legislation against Online Extremism

Citizens Protection (against Online Harms) Rules, 2020**:** In January 2020, the Federal government of Pakistan notified Citizens Protection (against Online Harms) Rules, 2020 under PECA 2016 and Pakistan Telecommunication (Re-organization) Act, 1996. The rules have led to concerns of privacy and free speech on the digital space. The rules deal with creating obligations on social media companies, online platforms and procedure for blocking and removal of online content. Section 4 (4) of the rules states, "A Social Media Company shall deploy proactive mechanisms to ensure prevention of live streaming through Online Systems in Pakistan of any content in violation of any law, rule, regulation for the time being in force or instruction of the National Coordinator particularly regarding online content related to terrorism, extremism, hate speech, defamation, fake news, incitement to violence and national security." For the purposes of

this study, this is significant, as extremism is treated as a separate category from terrorism and hate speech. The preamble of the rules defines extremism as, "the violent, vocal or active opposition to fundamental values of the state of Pakistan including the security, integrity or defense of Pakistan, public order, decency or morality, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs;" This remains the clearest articulation of extremism as a category in Pakistani legal framework. Rules cannot create offenses, confer or take away rights not provided in parent legislation and however this definition does have the potential of providing a template for a holistic definition of extremism to be adopted in Pakistani law.

Social media rules called the Citizens Protection (Against Online Harm) Rules in January 2020 followed by the Removal and Blocking of Unlawful online Content (Procedure, Oversight and Safeguards) Rules notified in October 2020 were challenged in Islamabad High Court which termed them as prime facie a violation of Articles 19 and 19-A of the Constitution that pertain to the right to freedom of speech and right to information. However, IHC has given more time to the government to make suitable amendments which is a welcome development.

The main issue is about the rules that seek protection under Section 37 of PECA 2016 dealing with "unlawful online content". The language of this section is by default anti-rights: it is made up entirely of the language of the provisos of Article 19 of the Constitution that protects the right to freedom of speech and press freedom. The provisos are supposed to be interpreted with restraint, only "reasonable restrictions" are to be imposed by law, and these are only supposed to be interpreted by the higher judiciary.[25]

Section-VI: Issue of Forced MarriagesandConversions

Religious extremism in Pakistan manifests itself in many forms. Forced conversions from other religions to Islam is one of the emerging formats of extremism. 'Forced conversion" is relatively recent phenomenon as reported by media. It is perhaps a majoritarian assertion or conversion is a way to jettison the burden of being a minority, a rational choice. The jury is still out for it.

[25]Usama Khilji; *Rights-restricting actions;* Dawn, 31 January 2021.

However, this problem is more complex and has arisen as a cliché argument. Pakistan has a law which prohibits forced marriages under Section 498 of PPC. Pakistan also has no law on forced conversions. Conversion to any religion has not been a legal issue. It although has been a Shariah Law issue.

Before going into the issues pertaining to forced conversions, it would be pertinent to point out the basic tenet of the holy Quran on this issue which prohibits forced conversions i.e.,*" there is no compulsion in religion" (**Quran** 2:256)*

As to the extent and the nature of the issue of forced conversions in Pakistan, there are only a few sources of information. According to Minority rights organization Center for Social Justice (CSJ), a private think tank, about 162 questionable conversions has been recorded by the media from year 2013 till 2020 i.e., an annual average of 20 forced or questionable conversions. Whereas, in 2014 a study conducted by the Movement for Solidarity and Peace in Pakistan estimated that every year almost 1000 girls and women from minorities became the victim of forced conversion, forced marriages, abduction, killing rape and assault that is against the Minority Rights enshrined in the constitution of 1973.

The issue of forced conversions needs to be analyzed from three different perspectives i.e., a province wide break-up i.e., which province has the highest rate. A gender wise break up to understand whether it is correct that most of the forcibly converted persons are girls? And finally, what are the laws to deal with forced conversions and how effective were these in protecting the minorities from forcible conversions

Data on Forced Conversions and Marriages

Provincial Variation. As far as the provincial variation in forced conversions is concerned, according to minority rights organization Center for Social Justice data,52% of cases of forcible conversions were recorded in Punjab,44% in Sindh, 1.62% in KP and .062% in Baluchistan.

Gender wise statistics. The data shows that Hindu community girls and women victimized the most with 54.3percent, 44.44percent of Christian community and 0.62 percent from the Sikh and Kalash communities. Whereas over 46.3 percent were minor girls and 16.67 percent were above

their legal age. The cases like Maria Shahbaz in which the abductor changed her age from 14 years to 19 years also highlights loopholes in state record system

Conversion is not the only problem Hindu, Christian and Sikh minorities are facing, it is also coupled with discriminatory laws and societal prejudices. Majority of the victim girls are minors whereas number of girls are even younger than 12 years old that are abducted and forcibly married to older-age males. According to the Sindh Child Marriage Restraint Act, enacted in 2014, it is illegal to marry boy or a girl under the age of 18, due to which more cases were brought in Punjab.

Laws against forced conversions.

> *Though, there is no such special law to stop forced conversions, however, forced conversions and marriages of underage girls can be stopped through effective implementation of the Sindh Marriage Restraint Act. But due to lack of capacity of the police and justice sector and overall non-friendly attitude towards the religious minorities this problem is still pertinent.*
>
> *2. Besides, there is need of strengthening institutional mechanisms and enhancing the capacity of police and justice sectors and raising their awareness about pro-minorities and pro-women laws for effective implementation of laws that deal it. (Kapil Dev a Minority Rights Activist)*

Under the Article-25, the Constitution of Pakistan provides fundamental rights to minorities, protecting them from forced conversions.

The basic law that deals with forced conversions is section 498-B of Penal code of Pakistan which prohibits every action that violates the human rights towards women and states:

Whoever coerces or in any manner whatsoever compels a woman to enter marriage shall be punished with imprisonment of either description for a term, which may extend to seven years or

for a term which shall not be less than three years and shall also be liable to fine of five hundred thousand rupees.

Gaps in laws.

Lack of definition of forced conversions. The state has asked the clergy to help in defining the 'forced conversion', which has caused a relevant bigger problem to this issue.

In 2014, due to the increased number of cases Sindh Assembly passed a bill, placing an age limit of 18 years for conversion to another religion. This bill was unanimously passed in 2016 but faced a backlash by the religious parties over the age limit for conversion and marriage, under such threats the bill was refused to be signed by the governor to be entered as a law. A revised version was introduced in year 2019, which was followed by protests of religious parties again.

The legal age limit for marriage has also been rejected by The Council of Islamic Ideology, which gives legal advice to Pakistan Government under Islamic law, stating it as un-Islamic. In 2019, on 212th meeting of Council reached a conclusion stating:

"Legislation against child marriage and setting an age limit will lead to many complications" and that a "better way" to tackle child marriage would be to start a public awareness campaign instead of passing legislation.

SC judgment on rights of minorities: Suo Moto Case No 1 of 2014

> *37. and direct: - (i) (ii) For what has been discussed above, we hold, declare the Federal Government should constitute a taskforce tasked with developing a strategy of religious tolerance;*
> *appropriate curricula be developed at school and college levels to promote a culture of religious and social tolerance. In 1981 in one of its seminal declarations, the United Nations resolved that "the child shall be protected from any form of discrimination on the grounds of religion or belief. He shall be brought up in the spirit of understanding, tolerance, friendship among*

peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men." (UN Declaration on the Elimination on All Forms of Intolerance and of Discrimination Based on Religion or Belief)

the Federal Government should take appropriate steps to ensure that hate speeches in social media are discouraged and the delinquents are brought to justice under the law;

(iii) No. 1/2014 etc. 31

(iv) a National Council for minorities' rights be constituted. The function of the said Council should inter alia be to monitor the practical realization of the rights and safeguards provided to the minorities under the Constitution and law. The Council should also be mandated to frame policy recommendations for safeguarding and protecting minorities' rights by the Provincial and Federal Government;

(v) A Special Police Force be established with professional training to protect the places of worship of minorities.

(vi) In view of the statement made by learned Attorney General for Pakistan and learned Additional Advocate Generals of Punjab, KPK and Balochistan regarding reservation of quota for minorities in the federal and provincial services, it is directed that the Federal Government and all Provincial Governments shall ensure the enforcement of the relevant policy directives regarding reservation of quota for minorities in all services.

(vii) in all cases of violation of any of the rights guaranteed under the law or desecration of the places of worship of minorities, the concerned Law Enforcing Agencies should promptly take action including the registration of criminal cases against the delinquents.

(viii) The office shall open a separate file to be placed before a three Members

Bench to ensure that this judgment
SMC No. 1/2014 etc. 32
is given effect to in letter and spirit and the said Bench may also entertain complaints / petitions relatable to violation of Fundamental Rights of minorities in the country.

Testimonial by Tariq Parvez: Team Leader, Former DG FIA and Head of NACTA

Gaps in laws against extremism in Pakistan; personal experience of a law enforcement officer

Have dealt with counter terrorism and extremism since 1993, both indirectly as a field commander (from 1993 to 1997, as Regional Police Chief of Gujranwala, Bahawalpur and Lahore Divisions , after the wave of sectarian terrorism had started in 1990 in Punjab), and directly as Head of Counter Terrorism Department, Punjab (1997 to 2005, when Punjab was passing through the worst years of sectarian violence, 1997, being the worst year ever in terms of sectarian attacks and persons killed and maimed. By 2000, the number of sectarian killings had gone down to almost zero). Then again, at the Federal level, as Director General, Federal Investigation Agency (2005 to 2008) had the opportunity to see counter terrorism and counter extremism efforts at the national level, and then as National Coordinator, National Counter Terrorism Authority (2009 to 2010), was acquainted with policy formulation on countering terrorism and extremism at the national level.

As Deputy Inspector General of Divisions in Punjab Province (1993 to 97);

A sustained campaign of sectarian violence started in Punjab, in 1990. It was the beginning of the `terrorist experience` in Punjab, and the focus of the

police was on tracing out the terrorist attacks, while extremism was not given a priority, because nobody realized the simple fact, that unless you stop the breeding process of extremism, no matter how many terrorists you arrested, new volunteers would keep on joining and you would be, in fact, fighting a losing battle. Sectarian hatred was being spread by extremists amongst the Sunnis and the Shias, from loudspeakers in the mosques, printed material and public gatherings. Action against, hate material being disseminated through the loudspeakers in the mosques, was normally ignored unless, there was a threat of eruption of a law-and-order situation. Even then, the emphasis was on the maintenance of law-and-order perspective, rather in dealing with extremism. Similarly, action against hate material in print was not of primary concern, either of the govt or the police

The following gaps were noted during posting in CTD Punjab (1997 to 2004).

Lack of national and provincial guidelines about strict enforcement of laws relating to spreading of extremism. The focus continued to be on enforcement of laws relevant to terrorism, particularly, ATA which was promulgated in 1997. This led to sporadic and casual law enforcement of laws relating to extremism. No data of the cases registered for violation of counter extremism laws, was maintained or monitored. Even the cases which were registered were not followed to their logical conclusion i.e., conviction. Thus, there was nominal deterrence value of the laws against extremism.

This is true not only for Punjab but also other provinces. In Swat district of KP, Mulla Fazalullah commonly known as Mulla Radio, was spewing hatred against the government and the Shias in the district through his mobile radio on a motor bike. He continued doing it for three to four years starting in 2003/4, without any effective action against him.[26] *Finally, because of his*

[26]https://www.bbc.com/news/world-asia-24847165

sermons on the radio, he radicalized a great segment of Swat population, with women contributing their jewelry to his cause. His terrorist organization the TTP, took over control of Swat District in 2007, and had to be thrown out through a military operation in 2009. This indicates the gap both in terms of understanding the importance of dealing with extremism but also in terms of lack of will to enforce the ATA.

ATA lays down a provision that those who had links with terrorist organizations or were involved in spreading the ideology, they could be enlisted in 4th schedule and not only had to submit bond of good behavior but also were subjected to close police monitoring of their activities and movements. This provision was not being used in Punjab. It was started in 1998 and when it was completed with the help of local police collecting information about the extremists at the village level, it had a restrictive effect on the dissemination of extremism in Pakistan. The names of those to be placed on the 4th schedule of ATA, were finalized by the local police, and the intelligence agencies collectively. This turned out to be a best practice.

Also, the implementation of the ATA and the Amplifier Ordinance, was partial i.e., only the persons violating the law on the spot were proceeded against, and the leaders who made them do that, were not touched. These leaders would come to the aid of those arrested, and the firebrands used to be back at their loudspeakers soon.

Even in those days, the joint factor of low registration of cases for violation of counter extremism laws and almost nonexistent convictions by the courts, made the laws ineffective.

In the FIA (2005-2008), a specially trained wing called the Special Investigation Group, was set up to deal with issues pertaining to terrorism in the country. As DG FIA, I realized that there was no national data base of

persons involved in terrorism and extremism. The only data available was with the respective provinces, which they were wary to share with the Federal organizations. Again, the whole focus was on tracing terrorist attacks and not on countering extremism. Extremist organizations in the country operate on a nationwide basis and unless you have a national level data on them, you cannot counter them effectively. Also, there was no national policy against terrorism or extremism in the country and there was no organization at the federal level, which could serve as the focal institution to guide, orchestrate or coordinate the counter terrorism and counter extremism efforts of the provinces, law and order being a provincial subject, under the constitution.

It was with this in view, that the setting up of NACTA was recommended by me in Dec 2008, and the govt approved its establishment in Jan 2009. NACTA was supposed to have a complete wing dedicated to counter extremism, which was not only to formulate a policy on CE but also monitor implementation of this policy This was not done. This gap of lack of research and inadequate expertise in counter extremism in NACTA, continue to this day.

I realized that to prescribe what needs to be done, to counter extremism, we need to have a complete diagnosis of different aspects of extremism, based on solid research, instead of anecdotes and perceptions. This research should guide the laws. It wasn't done then; it hasn't been done even now. It is a big gap in suggesting what laws are needed and how can these be effective in dealing with extremism.

Chapter-3

CE Laws Gaps: Through the Lens of Court Verdicts

Section 1: Overview of Case Law on Extremism

The previous chapter analysed the gaps in legal provisions dealing with extremism and how these lacunae adversely impact the investigation and prosecution of cases involving extremist thought and action. The culmination of the criminal justice system, including in cases involving extremism is in the courts. The gaps and ambiguities of the investigation and prosecution stages constrain the judiciary in its decision making. The wide judicial discretion and the absence of sentencing guidelines coupled with definitional ambiguities in legal provisions results in lack of predictability in outcomes in cases with similar circumstances which in turn reduces the prohibitive value, usage, efficacy and ultimately deterrence.

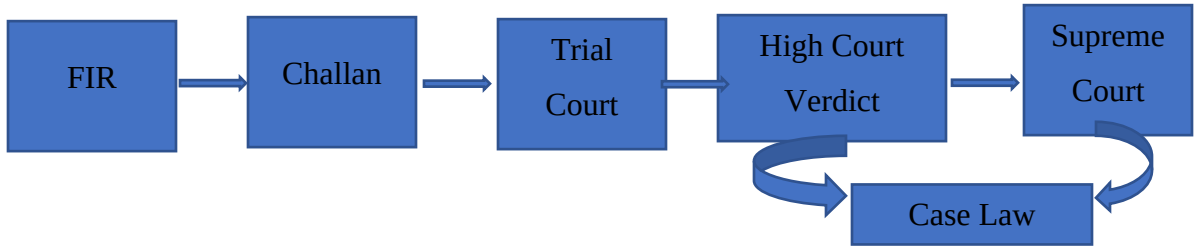
This chapter also includes representative examples of courts handling of cases involving extremism. Given the sheer magnitude of cases involving extremism as indicated by the statistics in the previous chapter, the cases have been selected through an analytic, qualitative method based on three criteria which is as follows:

a) Their impact on jurisprudence

b) Their capturing of public imagination through media attention

c) Their unique facts and the legal reasoning applied in the judgements.

However, before the case laws are analysed. It would be pertinent to understand the fundamental issues of the criminal justice system, which are more part of the procedure then the body and contents of the statutory law. The case law can be termed as resultant laws, whence the statutory law goes through the process and results in court judgements. The following diagram represents the evolution of statutory law into case law, which in turn becomes law unto itself.



The First Stage: FIR and Eyewitness Testimony

The criminal justice system in Pakistan, including in cases involving extremism, is formally triggered by a First Information Report (FIR). Former Chief Justice, His Lordship Asif Saeed Khosa in his interview with the NIOC pointed out the exaggerated influence that the FIR has acquired in the Pakistani criminal justice system and how that has had a detrimental impact on the investigation, prosecution, and adjudication of cases. The FIR as a matter of contemporary practice is not merely basic information of the criminal occurrence but also includes names of accused, their specific roles in the alleged crimes and the names of the witnesses and a story. While the Pakistani courts have held that the FIR is not a substantive piece of evidence, yet often the courts display great reliance on the FIR. "He explained that the legal intent in CrPC about FIR was a simple recording of a criminal act; three things the event itself, time and place. The 'practice' of writing down the whole story in FIR was a key systemic fallacy, which has evolved over the last 50 years. A story is only a 'perspective' and carries all the biases of a perspective. Whilst recording FIRs the entire story is recorded, and names are named, which conditions the investigation to either prove the story 'right' or prove it 'wrong'. This fundamentally weakens the process of 'investigation' and the Investigation Officer (IO) does not have the space to investigate the crime itself from multiple angels and with an open mind. This 'practice' in turns weakens the prosecution and negatively impacts the criminal justice process. He gave the example of Sughra Bibi case[27], in which the FIR had 'conditioned the entire process of investigation, prosecution, trial and judgement', until the appeal to SC"[28].

[27] Criminal Appeal no. 547 of 2017, Muhammad Hanif vs the state, in the court of Mr. Justice Asif Saeed Khan Khosa, Mr. Justice Maqbool Baqir and Mr. Justice Syed Mansoor Ali Shah.
[28] KII with Justice Asif Saeed Khan Khosa

Two fundamental problems arise out of excessive dependence on the FIR, particularly in extremism cases. Firstly, it creates a pressure and an incentive for the investigating agency to insert or fabricate information, which was not available at the time of occurrence, particularly, in terrorism cases, where the perpetrators are unknown. Second, the FIR being treated as the first step of the criminal justice system makes counter terrorism and counter extremism policing reactive and get into motion only after the occurrence has taken place, ignoring the preparation, incubation, and incitement to the crime.

Despite some technological advancements in fields of criminal and forensic investigations, Pakistan remains an ocular (eyewitness) testimony based criminal justice system. Eyewitness accounts and confessions of accused remain the cornerstone of the investigation and adjudication. In terrorism cases, the absence of witness protection, the commission of offenses by unknown perpetrators and other factors make the convictions unsustainable. Additionally, the courts sometime reward and incentivize the quantity of evidence over relevant, quality evidence, which results in many witnesses being presented, many of whom are not necessary, contributing not only to the overload on the system and delays but also exposing prosecution evidence to greater loopholes.

Vague and imprecise legal provisions

The overall record of Pakistani courts in dealing with extremism has not been confidence inspiring, shining exceptions notwithstanding. The reasons for the failure of the judicial branch in robustly countering extremism are linked to the overall structure of the legal regime governing countering extremism including the vagueness of the legal provisions.

The Supreme Court of Pakistan while deciding on the legality of the Anti-Terrorism Act, 1997, observed that "every citizen has an inalienable right under the Constitution to know what is prohibited by law and what the law does not require him to do."[29] The Court interpreted in that case elaborated it to mean:

…" the language of the statute, and a statute creating an offence, must

[29](PLD 2000 Supreme Court 111)

be precise, definite and sufficiently objective to guard against an arbitrary and capricious action on part of the State functionaries[30].".

Unfettered Judicial Discretion

The vagueness in the phrasing and the language of the law (discussed in chapter 2 of the report) does not only adversely impact the rights of the accused but also brings unpredictability to the system granting wide discretion to judges at the trial level to subjectively interpret the law and reaching widely disparate decisions. This coupled with the absence of sentencing guidelines and unfettered discretion in awarding sentences (within the upper and lower boundaries of prescribed punishment) leads to confusion, inequity and inefficiency.

The confusion and arbitrariness are particularly acute in cases involving offences against religion, where the offenses lack precise statutory definition but often have not evolved judicial definitions and guidelines.

An example of this wide discretion in practice is a comparison of two cases of the same offense (blasphemy) before the same court (Lahore High Court) and diametrically opposed reasoning and outcomes. In PLD 2002, Lahore 587, the Lahore High Court acquitted a Muslim man accused of pasting posters containing allegedly derogatory remarks about the Prophet Muhammad (PBUH) on the gate of a mosque, relying on traditions of the Prophet (PBUH) that taught mercy and forgiveness. The Court also prayed for Allah's mercy on him "so that he is pardoned of any sin which he may have committed." In 2005 YLR 1985, the Lahore High Court relied on a fundamentally different interpretation in a similar case. In that case, the trial court had convicted a Muslim man for uttering "derogatory remarks" against Prophet Muhammad (PBUH). The Court dismissed the appeal and upheld the trial court's death sentence, reasoning that the Quran prohibited "even the slightest cause of annoyance" to Prophet Muhammad (PBUH), and traditions of the Prophet (PBUH) demonstrated that the only punishment for insulting him was death.

[30]Ibid

Mob Violence and the larger scale extremism

In cases involving extremist thought and actions, the responsibility on the judiciary is amplified to not only adjudicate on the issue on hand but also to consider the larger context of the occurrence. One example of this is the Sawan Masih case. Following an accusation of blasphemy on Sawan Masih, a resident of Joseph colony in Lahore in March 2013, a mob of around 3,000 people burned down about 200 houses, at least 12 shops, and two churches that made up the largely Christian neighbourhood of Joseph Colony in Lahore's Badami Bagh area. Two legal issues arose from the episode, first issue was of a constitutional petition filed regarding the mob attack and the second of the blasphemy accusation. The Supreme Court's observation in the case of the mob attack on Joseph Colony highlight how deep the challenge of extremism runs in Pakistan. On finding that the police officers had to take refuge from the mob, the court observed:

"In a situation like this where the police officers themselves had taken shelter in a godown [warehouse], no one else could protect the life and property of the inhabitants of the Joseph Colony and their failure to do so is sufficient to prima facie hold that the Fundamental Rights of the citizens of Joseph Colony were not protected as enshrined under Articles 9 and 14 of the Constitution."

Failure of preventive function

One area of weakness in dealing with cases of extremism is the failure to hold aider, abettors and conspirators accountable. Apprehending, prosecuting, and convicting conspirators is particularly important, even in cases, where the act of crime has not been committed as this forms the bedrock of protective responsibility of the criminal justice system. However, the prosecution and courts often display an attitude of treating conspiracies, enabling and incitement with less seriousness and convictions are rare. This becomes relevant in cases of terrorist financing, hate speech and of dissemination of material containing incitement to violence. The focus of the Anti-Terrorism legal regime is on violent acts, and even in that group on violent acts which have already been committed, hence the preventive and protective role that the ATA envisages is absent.

Judicial Bias

In certain cases, court decisions, remarks and observations have condoned extremist and vigilante actions. In 1993, in a seminal case, Zaheerudin vs the State, the Court said

"It is the cardinal faith of every Muslim to believe in every Prophet and praise him.Therefore, if anything is said against the Prophet, it will injure the feelings of a Muslim and may even incite him to the breach of peace, depending on the intensity of the attack… Can then anyone blame a Muslim if he loses control of himself on hearing, reading or seeing such blasphemous material as has been produced by Mirza Sahib?"

In another example, a Christian man accused of blaspheming against the Prophet Muhammad (PBUH), testified that he had great love and respect for the Prophet (PBUH) and would never say anything against him, the trial judge remarked that if the defendant had so much love and respect for the Prophet (PBUH) why did he not convert to Islam? and rejected the credibility of the defendant's testimony as "not believable" and the judgement while convicting the accused said that if the defendant believed "in the honour of the Holy Prophet PBUH…why (has) he up till now (not) embraced Islam?"

CE Case Laws as Case Studies

The argument has now moved to the substantive part of this chapter, where Court verdicts as Case laws will be examined under the categories of laws as grouped in Chapter 2. This is to retain the coherence of the narrative and to augment the findings supported by data. Thus, this is step forward from quantitative to qualitative analysis. The case studies have been extracted from judgements and verdicts and follow a pattern with following sequence:

1. Facts and Analysis of the case
2. Laws applied and
3. Judgements

Section-2: CE-related Case Studies

Case study no.1: Tahir Ahmed Naseem V State (Citation: 2019 Y L R 721)-Hate Speech

Facts and Analysis: The complainant was someone who had become friends with the petitioner and on one occasion, where they met, the petitioner declared himself to be the 15thMaseel(Imam) next in line and had therefore committed an act which violated Section 153-A, 295C and several others.

The complainant provided documentary data, USB and laptop data which clearly was already viral on the internet and was spreading inter faith enmity and religious outrage. All the data was sent to Forensic science laboratory and they affirmed the complainant's claim. Therefore, the petitioner was criminally prosecuted on these grounds and in the present case, he had indulged the courts for a bail. The bail, however, even though is a right, but the matter at hand was a heinous one as it defiled the reputation of the prophet. The court also cited several verses from the Quran and hadith as well. Therefore, as a result, the bail petition was not allowed. At bail stage only tentative assessment is to be made. The Courts proceed with caution in such cases. Arguably, granting bail could even be putting accused in danger. The case was unique because

- Hate Speech causing unrest between different groups.
- Use of modern devices such as USB and laptop data as evidence.
- Tentative assessment at bail stage.

Case Study No.2 Atta Muhammad Deshani V District Police Officer Haripur (Citation: 2019 P Cr. L J 275)-Hate Speech

Facts and Analysis: Brief facts of the case are that the petitioner is a religious scholar and Provincial President of Ahl-e-Sunnat-Wal-Jamat. On 13.4.2014, he was invited as Chief Guest in Jamia Masjid Bilal, GulloBandi, Hattar to address the Sunni Workers Convention and as per report of the Security Branch the petitioner deliberately and maliciously in his speech called the

Ahl-e-Tashee as "Non-Muslims" and outraged religious feelings and promoted sectarian enmity between two sects. On such report of the Security Branch the above referred FIR was registered.The FIR was registered under Section 153-A/295A/298 of the Pakistan Penal Code. The appellant has filed an Article 199 Petition to quash the FIR on the ground that the FIR registered was in violation of Section 196 of the Pakistan Penal Code.

Section 196 States: "Prosecution for offences against the State:

No Court shall take cognizance of any offence punishable under Chapter VI or IXA of the Pakistan Penal Code (except section 127), or punishable under section 108A, or section 153A, or section 294A, or section 295A or section 505 of the same Code, unless upon complaint made by order of, or under authority from, the Central Government, or the Provincial Government concerned, or some officer empowered in this behalf by either of the two Governments. "On examining the case law and section 196, Cr.P.C., it follows that the police have to perform the functions specifically assigned to them without any outside interference under Chapter XIV, Part V of the Criminal Procedure Code. The functions of the Court would commence only when a complete Challan is sent to it for trial of the accused. Under section 196, Cr.P.C., it is only after submission of Challan that the Court takes cognizance of the case. in the instant case the SHO concerned submitted Challan under section 173, Cr.P.C. **in routine without submitting it in the shape of complaint or seeking sanction of the Central Government, Provincial Government or any officer authorized by it thus**, the proceedings were quashed as defective challan was submitted in the instant case. Petition was therefore allowed.

In sectarian cases like this the Courts also must be cognizant of public order and harmony imperatives. The procedural safeguard of seeking sanction from government is an important measure to stop misuse of these provisions.

- Petition for quashment of FIR registered against a religious cleric for hate speech.
- Proper Legal Procedure not adopted.
- Allowing the Cleric to get away as FIR was quashed.

Case Study No.3 Naheed Khan V State (Citation: 2012 P Cr. L J 396)-Hate Speech

Facts and Analysis: The story of the prosecution against the petitioners, in brief, is that on account of case against Sufi Muhammad Ishaque, they distributed pamphlets containing language which wounded religious feelings of the inhabitants of the area with intent to create enmity between Deobandi and Barelvi sects.Therefore, an FIR under Section 153-A and 298 of the Pakistan Penal Code was registered. The appellant in the current case has filed an application for bail.In the present case, before lodging the case, no permission from competent authority was sought and when provisions of section 153-A, P.P.C., are read together with section 196, Cr.P.C., it is crystal clear that violation of mandatory provisions has been committed.Furthermore, the case relied on the case law: Bashir Ahmed v The State (2000 PCR.LJ 902), where mandatory condition for the exercise of jurisdiction is not fulfilled, and then the entire proceedings that followed would become coram non judice.As far as, Section 298 PPC is concerned, the sentence for offence under section 298, P.P.C., is one year and the petitioners were behind the bars since then and were no longer required for further investigation, bail was allowed.Strict compliance of legal and procedural safeguards is mandatory in order to prevent misuse of such legal provisions.

- Cleric accused of hate speech leading to sectarian unrest.
- FIR quashed as prescribed legal procedure not followed.
- If process initiated without following due process, then all subsequent proceedings are without jurisdiction.

Case Study No. 1 Asia Bibi V State (Citation: P L D 2019 Supreme Court 64)-Blasphemy

Facts and Analysis: The facts of the case are that on 14 June 2009, Asia Bibi allegedly uttered derogatory remarks against the Holy Prophet Muhammad (Peace Be Upon Him) and the Holy Qur'an, while she was plucking falsa (purple berries) along with other Muslim ladies in the fields of one Muhammad Idrees in village Ittanwali, District Nankana, the Province of Punjab. Two

Muslim ladies, namely, Mafia Bibi and Asma Bibi, narrated this incidence to the complainant, Qari Muhammad Salaam. On 19 June 2009, he called the accused to a public gathering, where she allegedly confessed her guilt, and on the same day a First Information Report ('FIR') was registered against Asia Bibi under section 295-C of the PPC at the Police Station Sadar, District Nankana.

The prosecution's case was essentially premised on the statements of the eyewitnesses and the alleged extra-judicial confession. Asia Bibi, however, denied the allegations. In the statement under section 342 of the Code of Criminal Procedure 1898 ('CrPC'), she stated, "…I have great respect and honor to the Holy Prophet (PBUH) as well as Holy Quran and since police have conspired with the complainant, so, the police have falsely booked me in this case…."

The trial court convicted Asia Bibi under section 295-C of the PPC vide judgment dated 8 November 2010 and sentenced her to death with a fine of Rs.1,00,000. In default of the payment thereof she was liable to undergo simple imprisonment for a period of six months. Asia Bibi appealed against her conviction before the LHC, which dismissed this appeal, vide judgment dated 16 October 2014. In appeal against this judgment, the SC reappraised the evidence on the record and acquitted Asia Bibi after finding her innocent because the prosecution failed to prove the guilt beyond a reasonable doubt.

The Supreme Court acquitted the accused terming the extra-judicial confession as a fragile piece of evidence and a concoction in this case. The sensitive nature of cases under 295-C puts the investigating officers, prosecutors and judges under immense pressure which was evident from conviction of accused by trial Court as well as the Lahore High Court. The whole circumstances of the case as well as reliance on extra-judicial confession were not probable resulting in acquittal of accused from the apex court. The trial Court as well as the Lahore High Court did not appreciate the pressure exerted on the accused as well as the likelihood of falsehood in the public gathering in which the alleged public confession was made.

- Extra Judicial Confession is weak evidence.
- Likelihood of falsehood as narrated in the FIR.

- Abuse of law as allegations of blasphemy are made to settle personal scores.

Case Study No. 2 Sawan Masih alias Bodi Vs State (Joseph Colony Case)-Blasphemy

Facts and Analysis: Sawan Masih alias Bodi was sentenced to death by the Sessions Court at Lahore for committing blasphemy under section 295-C PPC. FIR was registered on complaint of one Shahid Imran who stated that on 07.03.2013 after Fajar prayers he came out of his house for a walk when near the warehouse of Bao Saeed, he met his neighbours Muhammad Shafique and Iftikhar Khan when appellant in a rickshaw suddenly started making derogatory remarks against the Holy Prophet (PBUH). The police submitted the challan and charge was framed. The accused Sawan Masih pleaded not guilty and refuted allegation in his statement under 342 CRPC. He stated that he was falsely implicated in the case as the warehouse owners wanted to purchase land of joseph colony against the wishes of the residents. He also stated that about 200 houses were burnt down in joseph colony. The trial court found the accused guilt and sentenced him to death.

The accused filed appeal before the Lahore High Court wherein the Divisional Bench relying upon several Judgments of Supreme Court namely Aasia Bibi vs State and Mumtaz Qadri vs State, acquitted the accused. The court also observed that blasphemy law was being misused as was done in recent case of Mashal Khan.

The High Court observed number of lacunas in the prosecution's case including delay in lodging of FIR. The court observed that joseph Colony was set on fire on 08.03.2013 and complainant along with PWs Muhammad Shafique (given up PW) and Iftikhar Khan (PW-3) was nominated accused in that FIR. The blasphemy FIR was registered as a defence to the assault already committed. The FIR as well as the application for its registration did not disclose any detail of the alleged blasphemy. It was later after the Supreme Court took Suo moto notice of the Joseph Colony attack that the details of alleged blasphemy committed were incorporated through a subsequent application. The name of the person who drafted the complaint with complainant's consultation remained a mystery even after conclusion of the trial. The High Court also observed

material contradictions in statements of PWs regarding time of occurrence and persons present at the time. It was also observed that it was also not probable for a Christian to commit the alleged blasphemy in presence of Muslims without any reason when no questions were raised regarding his sanity. The court observed that alleged blasphemous remarks were disclosed by the complainant after eight days of the alleged occurrence that is six days after registration of FIR. The delay was unexplained and made the whole occurrence seem like an afterthought. In this case, the court took a holistic approach in analysing the socio-economic factors which often contribute or cause instances of mob violence and blasphemy accusations.

- False allegation of blasphemy to further personal agenda
- Details of alleged blasphemous material added through a subsequent application.
- Court held that no man in his sane mind would commit such an act.

The fundamental problem in blasphemy cases is that a mere allegation results in pronouncement of sentence and its execution often without following the course of law. A climate of fear and prejudice clouds the criminal justice system in all three stages, investigation, prosecution, and adjudication. Often independent witnesses refuse to come and testify for reasons of safety. The security threats are real not only for accused but for witnesses, lawyers and even judges, making a fair trial exceedingly difficult. Why was Asia Bibi convicted by the trial court? Why was her appeal dismissed by the Lahore High Court? Why did both the courts rely on alleged extra judicial confession?

Similarly, why did Lahore High Court set aside Mumtaz Qadri's conviction under 7ATA? Why has the Peshawar High Court converted sentence of Principal accused in Mashal Khan murder to life imprisonment? These and several other questions highlight the fear and pressure faced by Judges, prosecutors, witnesses and all other involved. The trial courts, as opposed to the higher courts, face the most pressure in such cases because of their proximity and accessibility. The place of trial is usually the relevant ATC or Sessions Court and hundreds of religious clerics appear on every date creating an atmosphere of fear.

Case Study No. 3 Amjad Alias Billa V State (Citation: 2020 P Cr. L J 991)-Blasphemy

Facts and Analysis: The story of the prosecution was that Amjad, a resident of Hafizabad, had raided a mehfil e milad and had hurled abuses against the Naatkhawan, defiled the religious assembly and therefore defiled the Prophet's (P.B.U.H.) name and was hence charged under 295C of PPC. Amjad was charge sheeted and the lower trial court convicted him to death. Meanwhile his capital sentence reference was sent to High Court for confirmation, Amjad filed a criminal appeal. The Appellate court decided in favour of Amjad and acquitted him of all charges on the following grounds:The occurrence took place a day before until it was reported to the police.The offence of 295c was added two months and 22 days after the FIR was filed.Upon purview of Section 156A of CRPC, only an investigating officer not below the rank of Superintendent was qualified to investigate a 295C case. While in the present situation an SI completed the investigation. Upon revisiting the 161 statements of the witnesses presented by the prosecution, the name of the naatkhawan was not mentioned which took away the credence of the originally filed case by the appellants. In the case of Ayub Masih v. The State (PLD 2002 Supreme Court 1048), it was held as under:-"----S. 295-C---Allegation of use of derogatory remarks etc. in respect of the Holy Prophet (p.b.u.h.)---Burden of proof--Defiling words highlighted in the FIR certainly constituted the offence under S. 295-C, P.P.C. but the prosecution had failed to prove its case against the accused beyond any reasonable doubt---Prosecution being obligated to prove its case against the accused beyond any reasonable doubt and if it failed to do so the accused was entitled to benefit of doubt as of right---Rule of benefit of doubt was essentially a rule of prudence which could not be ignored while dispensing justice in accordance with law."

- The Court observed that provision of 295-C was added subsequently, which shows that it was added as an afterthought. The Court also observed the procedural irregularities in investigation. The Court observed that allegations of blasphemy can be used to further ulterior motives.
- Offence not proved beyond reasonable doubt.

- Benefit of doubt must go to the accused.

Case Study No. 4 Wajeeh ul Hassan V State (Citation: 2019 S C M R 1994)- Blasphemy

Facts and Analysis: The story of the prosecution was that the appellant had sent 5 letters containing blasphemous content. Based on these letters an FIR was filed and the lower court convicted the man under 295c for the following reasons:

1. The letter contained grievously blasphemous content.
2. Based on a handwriting expert report, the appellant's writing style had similar characteristics of writing as that of the letters.
3. The absconsion of the appellant was treated as independent corroboration of his crime
4. The appellant had given an extrajudicial confession of writing the letter to two witnesses that had appeared before the court.

Later on, the High court upheld the lower court's decision which was later appealed at the Supreme Court. The Supreme court upon setting aside the lower court judgments, acquitted the appellant of all charges based on the following reasons:

- The extrajudicial confession was a weak piece of evidence and the present case at hand had to be proved beyond reasonable doubt for conviction.
- The hand writer's report and the absconsion of the appellant were not strong enough evidence for independent corroboration. The court reasoned that most citizens of Pakistan fear 295C and other tenets of law and the fact they have absconded cannot be seen as an independent corroboration of the facts. Security of accused is a reality in cases where blasphemy is alleged.
- Penalty of death was irreversible and warranted caution in the highest degree.

The Court again rightly regarded the extra-judicial confession as a weak piece of evidence and could not be made basis for capital punishment.

Case Study no. 1 Nasira vs Judicial Magistrate PLD 2020 489 Lahore-Forced Conversions

Facts and Analysis: Petitioner was a Christian and her 14-year-old Christian daughter was working as a domestic servant in respondents' house. When petitioner went to meet her daughter, she was deprived to meet her and take her along. She was told that her daughter had converted to Islam and did not want to live with her. The Court held that petitioner's contention that her daughter was forced to convert her religion was not tenable as concepts of valid, void and voidable could not be applied to religious rights. The Court observed that change of religion did not ipso facto deprived a parent of her child's custody and being mother petitioner was entitled to custody of her minor daughter. The Court abstained from giving any verdict on validity of conversion since conversion of religion was a matter of conscience.While the court refrained from commenting on validity of alleged conversion of faith but rightly held that faith of a child whatsoever did not deprive the parents of its custody.

- Religion of a minor did not deprive a parent custody of his child.
- Court abstained from giving verdict on whether conversion was valid.

Offences under the Anti-Terrorism Act (Mob Violence)

Mashal Khan Case

Facts and Analysis: Mashal Khan, a 23 -years old student at Abdul Wali Khan University was lynched to death by a mob of students on allegations of committing blasphemy. The accusation was made by fellow students and employees of the University and was later found by a joint investigation team as false. The Anti-terrorism court convicted 31 of the 57 accused who initially faced the trial. The main accused Imran Ali who was attributed the firearm injury was sentenced to death whereas five others namely Bilal Baksh, Fazal-i-Raziq, Mujeebullah, Ishfaq Khan and Mudassir Bashir were sentenced to life imprisonment. Another 25 were sentenced to 3 years imprisonment. Arif Khan and Asad Zia who initially absconded were later arrested and sentenced to life imprisonment by the ATC.Multiple appeals were filed before the Peshawar High Court against the ATC's judgment. Appeals against acquittal were filed by father of

deceased. He also filed petitions for enhancement of sentences for those who were sentenced to life imprisonment as well as of those who were sentenced to three years imprisonment. Appeals filed against convictions were also rejected, the court however converted the death penalty awarded to prime accused Imran Ali into Life imprisonment. The Honourable High Court observed that on that day accused Imran had not come to the University with the premeditated intention of murdering Mashal Khan and was completely overpowered by 'his passions and emotions' because of the prevailing atmosphere in the university which prompted him into taking an extreme step. The court also relied on video recordings in reaching its judgment. Under Article 164 of the Qanun-e-Shahdat order evidence through modern devices is admissible in evidence.

- The allegation of blasphemy led to attack by a charged mob resulting in brutal murder of Mashal. The University administration took no steps to stop the violence or save Mashal.
- The conversion of death sentence of prime accused to life imprisonment highlights how the court exercised leniency. The Court converting death sentence of the accused who shot Mashal in front of whole university emphasizes the possible misuse of discretion in cases of extremism generally and particularly in cases involving blasphemy related mob violence.
- Failure of witnesses to come forward and to record their testimony benefitted the accused.

Kot Radha Kishan Lynching Case

Facts and Analysis: A Christian couple was burned alive by a mob of around 400-1000 people for alleged desecration of Holy Quran in Kot Radha Kishan in November 2014. The ATC indicted 106 persons for their alleged role after police registered case against 660 villagers. In November 2016 five persons were sentenced to death whereas another eight were sentenced to two years imprisonment. The couple was burnt alive in the brick kiln after frenzied mob was incited by announcements made in the local mosques.The frenzied mob burnt the Christian couple alive knowing fully well the consequences. The announcements in local mosques

infuriated the mob who were aware of the consequences of their acts. Similar to the Mashal Khan case, the violence was incited and encouraged for considerable time without any adequate prevention and protection measures undertaken by the police. The legal framework needs to be robust enough to deal with inciters and enablers as direct abettors.

- The attackers were aware of the consequences of their acts when they pushed the Christian couple in brick kiln.
- Those who incited violence were able to get away.

Mumtaz Qadri Case

Facts and Analysis: On the 4th of January 2011, the Governor of Punjab, Salman Taseer was shot by his official guard, Malik Mumtaz Qadri, in Islamabad. The attack left Mr. Taseer gravely injured, and he died soon afterwards. Immediately after firing upon the Governor, Mr. Qadri laid down his weapon and surrendered himself to the other guards deputed to Mr. Taseer's security. Upon the completion of the investigation against Mumtaz Qadri, a challan was submitted before the Anti-Terrorism Court II, Rawalpindi Division, which framed charges against the accused under Section 7 (a) of the Anti-Terrorism Act ('ATA') 1997, read with section 302 and 109 of the Pakistan Penal Code ('PPC') 1860.

In the trial court, Mumtaz Qadri did not deny that he had fired the shots that killed Salman Taseer. However, he stated that he was not guilty because he had committed the murder of an apostate. Qadri argued that the victim had exposed himself as a sympathizer of a condemned prisoner, Aasia Bibi, a woman who had been charged and convicted of blasphemy. Furthermore, he presented news clippings and interviews of the deceased Taseer in which he had criticized the current blasphemy law; actions that Qadri alleged were a violation of Section 295-C of the PPC, itself a capital offense. Thus, Qadri argued that his actions were justified in light of these circumstances.

In its judgment dated 1 October 2011, the Anti-Terrorism Court found Qadri guilty of an offense under section 302 (b) of the PPC and sentenced him to death and to pay a sum of Rs. 1, 00,000 to the heirs of the deceased as compensation. Through the same judgment, the trial court also

convicted the accused of an offence under section 7(a) of the Anti-Terrorism Act, 1997 and sentenced him to death and to pay a fine of Rs. 1, 00,000.

Qadri challenged his convictions and sentences before the Islamabad High Court. The court dismissed the appeal to the extent of his conviction and sentence under section 302 (b), but partially allowed the appeal to the extent of the conviction under section 7 (a) of the ATA, and his conviction and sentence on that count was set aside.

The case made its way to the Supreme Court when Mumtaz Qadri filed an appeal, challenging the upholding of his conviction under Section 302 (b) by the Islamabad High Court, while the State sought leave to appeal against the same judgment, challenging the acquittals of the accused from the charge under section 7 (a) of the ATA.

As far as the case in hand is concerned, the actions of Mumtaz Qadri involved firing at Mr. Salman Taseer and thereby causing his death and, thus, his actus reus fell within the ambit of section 6(2)(a) of the Anti-Terrorism Act, 1997

- Regarding the appellant's mens rea, the court ruled that he had himself said in his statement recorded by the trial court that the murder of Mr. Salman Taseer committed by him was 'a lesson for all the apostates, as finally they have to meet the same fate." That statement of the appellant clearly established that not only he wanted to punish Mr. Salman Taseer privately for the perceived or imagined blasphemy committed by him, but he also wanted to send a message of fear to all others in the society. The matter of murdering Mr. Salman Taseer was, 'surely designed to intimidate or overawe the public or a section of the public or to create a sense of fear or insecurity in the society so as to attract the requisite mens rea contemplated by section 6(1)(b) of the Anti-Terrorism Act, 1997'.

In light of these considerations, the Supreme Court upheld Mumtaz Qadri's conviction and overturned the Islamabad High Court's decision to acquit him under Section 7 (a) of the Anti-Terrorism Act.

- The Islamabad High Court erred in not convicting the accused under section 7 of the ATA. The Apex Court however overturned Islamabad High Court's judgment and convicted Qadri to death under section 7 of the ATA. Section 7 of ATA is not a compoundable offence (where parties can enter into a compromise) whereas section 302 of PPC is a compoundable offence. In absence of acquittal under section 7 of ATA, immense pressure would have been applied on the family of the deceased to reach a compromise/forgive the murderer.

Church Attack Case

Facts and Analysis: The Supreme Court initiated Suo motto proceedings under Article 184(3) of the constitution after receiving a letter from Justice Helpline an NGO after a church attack in Peshawar left 81 dead. FIR no. 728 dated 22-09-2013 was registered in this regard under sections 302/324/427 of PPC, 3/4 of Explosive substance act along with section 7 of ATA. Complaints from adherents of Hindu faith were also received regarding attacks on their places of worship as well as regarding forced conversion of Hindu girls. The court also took notice of a news published in Dawn regarding forced conversion of Kalashi tribe and Ismailies in Chitral to another sect of Islam. The court considered all such incidents to be in violation of the fundamental rights as enshrined in the Constitution of Pakistan. The court issued notices to the Attorney General as well as Advocate Generals of the four provinces. The Court also called on representatives of Christian, Hindu and Sikh minorities to assist the court. The Court observed that Article 20 of the Constitution drew no distinction between majority and minority. The court observed that right to religious conscience conferred on each citizen three distinct rights i.e. right to profess, right to practice and right to propagate. The Court clarified that Article 20 does not merely confer a private right to profess but conferred a right to privately and publicly practice, profess and propagate his religion. And that propagation of religion was not limited to majority Muslims. Forced Conversion or imposing beliefs on any citizen was not acceptable.

The Court rightly observed that Constitution guaranteed fundamental rights to all citizens regardless of their religion.

- Article 20 of the Constitution provided minorities with equal rights to profess and practice their religion.
- Forced conversion and imposing one's beliefs on another was not acceptable.

Islamabad Dharna Case

Facts and Analysis[31]: This judgment was delivered over a sit-in arranged on the streets of Islamabad by political religious party which had locked down the major connecting roads of Islamabad. This sit in had blocked Islamabad from other major cities and given that our apex courts, governmental organizations are in Islamabad, Pakistan was brought to a stand- still.

The reason behind the sit in was that under the election act, nominations forms had changed a statement regarding believing the Prophet as the Last Prophet of Allah. However, this changed was reversed but the sit in continued.

This case was taken up as under Article 184(3) of the Constitution because, the sit in had affected various fundamental rights of the citizens of Pakistan on a massive scale. These rights included restriction of movement (Art 15), restriction of access to hospitals (Art 9), students could not go to schools (Art 25A) damaging public property and blocking roads ultimately created an unsafe space. Hence, since the issue affected public at large and was an issue of public importance, the Suo Motu case fell under the Supreme Court original jurisdiction.

The Supreme Court used the word extremism in this judgment in consonance to incitement to violence, hate speech in the capital. However, the Supreme Court began its analysis on the right of peaceful assembly (Art 16, 17) and that all individuals were entitled to it, however the long march arranged by the religious party violated the law on the following counts:

- Conducting long marches required permission which this party had not taken.
- Peaceful assembly is allowed until it violates the fundamental rights of other citizens.

[31]Suo motu case No.7 of 2017 (Citation: P L D 2019 Supreme Court 318)

- Under no circumstances, can peaceful assembly incite violence, extremism and hate in the general public.
- All parties had to account for the finances and the religious party had not accounted for the funds it utilized for arranging a long march.
- Sec 124 ATA, all edicts or fatwa's that incite extremism, hate speech are liable to be criminally prosecuted.
- Usage of social media to spread extremism, hate speech and violence is also unlawful.
- The final judgment was delivered by Justice Qazi Faez Isa and the following conclusion drawn (reproduced verbatim):

  "(1)Subject to reasonable restrictions imposed by law, citizens have the right to form and to be members of political parties.

  (2)Every citizen and political party has the right to assemble and protest provided such assembly and protest is peaceful and complies with the law imposing reasonable restrictions in the interest of public order. The right to assemble and protest is circumscribed only to the extent that it infringes on the fundamental rights of others, including their right to free movement and to hold and enjoy property.

  (3)Protestors who obstruct people's right to use roads and damage or destroy property must be proceeded against in accordance with the law and held accountable.

  (4)The Constitution earmarks the responsibilities of the Election Commission which it must fulfill. If a political party does not comply with the law governing political parties then the Election Commission must proceed against it in accordance with the law. The law is most certainly not cosmetic as contended on behalf of the Election Commission.

  (5)All political parties have to account for the source of their funds in accordance with the law.

  (6)The State must always act impartially and fairly. The law is applicable to all, including those who are in government and institutions must act independently of those in government.

(7)When the State failed to prosecute those at the highest echelons of government who were responsible for the murder and attempted murder of peaceful citizens on the streets of Karachi on 12th May 2007 it set a bad precedent and encouraged others to resort to violence to achieve their agendas.

(8)A person issuing an edict or fatwa, which harms another or puts another in harm's way, must be criminally prosecuted under the Pakistan Penal Code, the Anti-Terrorism Act, 1997 and/or the Prevention of Electronic Crimes Act, 2016.

(9)Broadcasters who broadcast messages advocating or inciting the commission of an offence violate the PEMRA Ordinance and the terms of their licences and must be proceeded against by PEMRA in accordance with the law.

(10)Cable operators who stopped or interrupted the broadcast of licenced broadcasters must be proceeded against by PEMRA in accordance with the PEMRA Ordinance, and if this was done on the behest of others then PEMRA should report those so directing the cable operators to the concerned authorities.

(11)Those spreading messages through electronic means which advocate or incite the commission of an offence are liable to be prosecuted under the Prevention of Electronic Crimes Act, 2016.

(12)All intelligence agencies (including ISI, IB and MI) and the ISPR must not exceed their respective mandates. They cannot curtail the freedom of speech and expression and do not have the authority to interfere with broadcasts and publications, in the management of broadcasters/ publishers and in the distribution of newspapers.

(13)Intelligence agencies should monitor activities of all those who threaten the territorial integrity of the country and all those who undermine the security of the people and the State by resorting to or inciting violence.

(14)To best ensure transparency and the rule of law it would be appropriate to enact laws which clearly stipulate the respective mandates of the intelligence agencies.

(15)The Constitution emphatically prohibits members of the Armed Forces from engaging in any kind of political activity, which includes supporting a political party, faction or individual. The Government of Pakistan through the Ministry of Defence and

the respective Chiefs of the Army, the Navy and the Air Force are directed to initiate action against the personnel under their command who are found to have violated their oath.

(16)The police and other law enforcement agencies are directed to develop standard plans and procedure with regard to how best to handle rallies, protests and dharnas, and ensure that such plans/ procedures are flexible enough to attend to different situations. It is clarified that though the making of such plans/ procedures is not within the jurisdiction of this Court however we expect that in the maintenance of law and order every effort will be taken to avoid causing injury and loss of life.

(17)We direct the Federal and provincial governments to monitor those advocating hate, extremism and terrorism and prosecute the perpetrators in accordance with the law."

Idaar-e-Tuloo Islam V Government of Sindh (Citation: 2006 Y L R 3082)- Objectionable Literature and freedom of Speech

Facts and Analysis: In the present case, the petitioner has filed an application under section 99-B, Code of Criminal Procedure to set aside the notification dated 8-1-2002 by which the Provincial Government have forfeited the booklet titled "FIRQAY KESAY MIT SAKTAY HAIN" written by Ghulam Ahmed Pervaiz, on the ground that it carries contents which are blasphemous, subversive and likely to hurt the sentiments of Muslims.

The notification is verbatim reproduced as follows:

"No. XII (01) SOJ/2002. ---Whereas the Government of Sindh is satisfied that the booklet titled "FirqayKesayMitSaktay Hein" written by Ghulam Ahmed Pervaiz, carries contents which are blasphemous, subversive and likely to hurt the sentiments of Muslims.

And whereas, the above-mentioned booklet is liable to forfeiture or containing objectionable material under section 99-A of Cr.P.C. 1898.

Now therefore, in exercise of the powers conferred by section 99-A of the Code of Criminal Procedure, 1898, the Government of Sindh is pleased to impose ban upon further circulation of

the aforesaid book in the Province of Sindh and declare that all copies of the same if found in circulation be forfeited for Government of Sindh with immediate effect."

Upon inquiry from the Court, it came to surface that the said notification did not point out any specific parts which were objectionable, based on which, such booklet was forfeited.

The learned A.A.-G. conceded the above position and has further added that he is not an expert in the field, therefore, an expert may be appointed to take out the objectionable material from the booklet. Thus, it is an admitted position and as clear from the notification itself that the objectionable portions of the booklet are not mentioned in it. The booklet contains 25 pages. The bare reading of section 99-A clearly shows that where it appears to the Provincial Government that any newspaper or document contains any treasonable or seditious matter or any matter which is prejudicial to national integration or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of the citizens of Pakistan or which is deliberately and maliciously intended to outrage the religious feelings of such class by insulting the religion or the religious beliefs of that class or any matter of publication of which is punishable under section 123-A or section 124-A or section 154-A or sections 295-A, 298-A, B and C of the Pakistan Penal Code, the Provincial Government may by notification in the official Gazette, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter and every copy of such book or other document to be forfeited to Government.

The court declared the notification a nullity in law on the following grounds: The competent authority is required to mention the objectionable material in the booklet or newspaper. The notification should show the grounds of opinion declaring the issue or newspaper or document containing such material to be objectionable and then document can be forfeited.

Chapter-4

Policy Analytics: A Review of Policies and Strategies against Extremism

Extremism must be addressed through policies that include strategies and action plans, clarity on CVE laws, and national consensus on narratives. Pakistan's CVE policy is not contained in any one document. Technically speaking, Pakistan does not have a national CVE policy or a coherent strategy, or even an action plan at the national or provincial levels. Therefore, this study is constrained to second guess this policy spectrum by examining various policy documents, action plans, guidelines and laws. What follows is a list of documents identified as purporting to present us with some policy direction, coupled with an analysis of the direction contained in these on the issue of CVE. Laws bearing on CVE issues or dealing with various forms of the offence of extremism do not form part of this analysis as those have been dealt with in another chapter of this report. The documents which were examined are:

a) National Internal Security Policy of Pakistan 2014-2018, Ministry of Interior, Islamabad.

b) CT National Action Plan (2015), Ministry of Interior, Islamabad.

c) National Counter Terrorism and Extremism Strategy, 2015, Institute of Policy Reform, Lahore.

d) Paigham-e-Pakistan; National Narrative against Extremism (2018), Council of Islamic Ideology, Islamabad.

e) National Counter Extremism Policy Guidelines, 2018, National Counter Terrorism Authority (NACTA), Islamabad.

f) National Internal Security Policy of Pakistan 2018-2023, Ministry of Interior, Islamabad.

National Internal Security Policy (2014-18)

This was the first formal diagnosis carried out and made public by the Government of Pakistan. It pretty much said everything that ailed us but on the sensitive issue of extremism it did not

delve deep. Under the Comprehensive Response Plan (CRP) it placed and proposed what is called a *National Narrative*.

"Constructing a robust national narrative on extremism, sectarianism, terrorism and militancy is the corner stone of an ideological response to non-traditional threats. Such a narrative is essential for coming up with common ideological denominators in a diverse society. Religious scholars, intelligentsia, educational institutions and media are the key stakeholders for constructing and disseminating the National Narrative. NACTA will facilitate a dialogue with all stakeholders to strengthen democratic values of tolerance respecting diversity of the society."[32]

In addition, while outlining the broad contours of the National Internal Security Policy (hereinafter NISP-I), a de-radicalization programme for the victims of terrorism and integration of mosque and madrassa into mainstream educational grid was also envisioned. So, without analyzing the problem in a threadbare manner, the NISP-I, based on commonly held assumption suggested a way forward in the form of a national narrative to counter extremism and integration of madrassas which it assumed as the threat or source of extremism. NISP-I did not go beyond these recommendations on the issue of extremism. But, in actual practice mainstreaming of Madaris and development and dissemination of a comprehensive national narrative as an ideological response to extremism could not be achieved. The efforts were largely focused on the issue of terrorism and how to deal with it effectively through the National Internal Security Apparatus. It is, however, observed that the NISP-I pointed towards the right direction, but the need for kinetic response was more acute than the social change at that point in time, when incidents of terrorism were a daily affair.

National Action Plan (NAP), 2015

NAP may be regarded as the operative counter terrorism strategy of Pakistan. It is not a proper strategy paper, but rather a list of recommendations, but it alluded liberally to the issue of extremism, showing that the issue was not lost on the state, reflecting a policy realization after APS attack. As it is just one page of twenty (20) points, critics humorously call it a wish-list.

[32] National Internal Security Policy of Pakistan (NISP, 2014-2018), 2014, Ministry of Interior, Islamabad.

NAP proposed some actual steps through NAP points 5, 9, 10, 11, 13, and 14 to rein in extremism. These steps were suggested under an enforcement paradigm but not under a social change model of countering extremism. NAP, very much like NISP-I was focused on CT and that too through enforcement. Treatment of deep-rooted narratives was not part of NAP's vision. So, it fell seriously short of any CVE policy. Hence, nothing concrete and effective emerged by way of a CVE programme as a result of NAP.

Gaps in NAP 2015**:** The 20 points of NAP included numerous hard and soft approaches to counter violent extremism and terrorism by addressing VE at the grassroots level and targeting militant-extremist networks. Although NAP is still in place, its effectiveness leaves a big question mark due to the spread of extremism at the grassroots level of society owing to lack of implementation of an effective counter-extremist strategy.[33]Below is NAP point-wise review of gaps in implementation and legal framework related with CE Strategy.

Spread of Terrorism and Extremism through Print, Electronic and Social Media

'It was realized by the authors of the NAP that in addition to military operations, it was important to discourage the spread of hatred against various factions, religious groups, sects, ethnicities and races and misuse of print, social and electronic media for terrorism and violent extremism. It was in this backdrop that NAP points 5, 11 and 14 which deal with the monitoring and regulation of print, electronic and social media in the country were included in the action plan.[34]

NAP point 5 relates to "strict action against the literature, newspapers, and magazines promoting hatred, **extremism,** sectarianism and intolerance". Point 11 bans glorification of terrorism on social media and point 14 calls for "measures against abuse of internet and social media for terrorism."[35]

[33]SairaBano Orakzai: Pakistan's Approach to Countering Violent Extremism (CVE): Reframing the Policy Framework for Peacebuilding and Development Strategies. (2017)
[34] NAP Policy Review, 2019, NACTA, Islamabad.
[35]Ibid

NAP point 5 calls for strict action against literature, newspapers, magazines or any other form of print material which tends to promote hatred, extremism, sectarianism and intolerance in the country. According to Press Information Department, the number of Newspapers and Periodicals in 2018 was 2758 as follows:

Type of Publication	Number
Dailies	819
Weeklies	308
Bi weeklies	01
Fortnightlies	503
Monthlies	307
Bi monthlies	313
Quarterlies	507
Total	2758

Source: NACTA

The print media and the publishing houses are regulated by the "Press, Newspapers, News Agencies and Books Registration Ordinance 2002". However, Punjab does not categorically define printing of hate material as an offence, neither does it provide for any punitive measures. Similarly, 'The Press Council of Pakistan Ordinance' was promulgated in 2002. It provides for an Ethical Code of Practice and established a Press Council to implement the Code. The Code does not criminalize hate material as an offence. However, clause 7 of the Code says: "[t]he press shall avoid originating, printing, publishing and disseminating any material, which encourages or incites discrimination or hatred on grounds of race, religion, caste, sect, nationality, ethnicity, gender, disability, illness, or age, of an individual or group".

In practice, penal action on such hate material is taken either under PPC or ATA. Section 505 (2) of PPC reads: "Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or

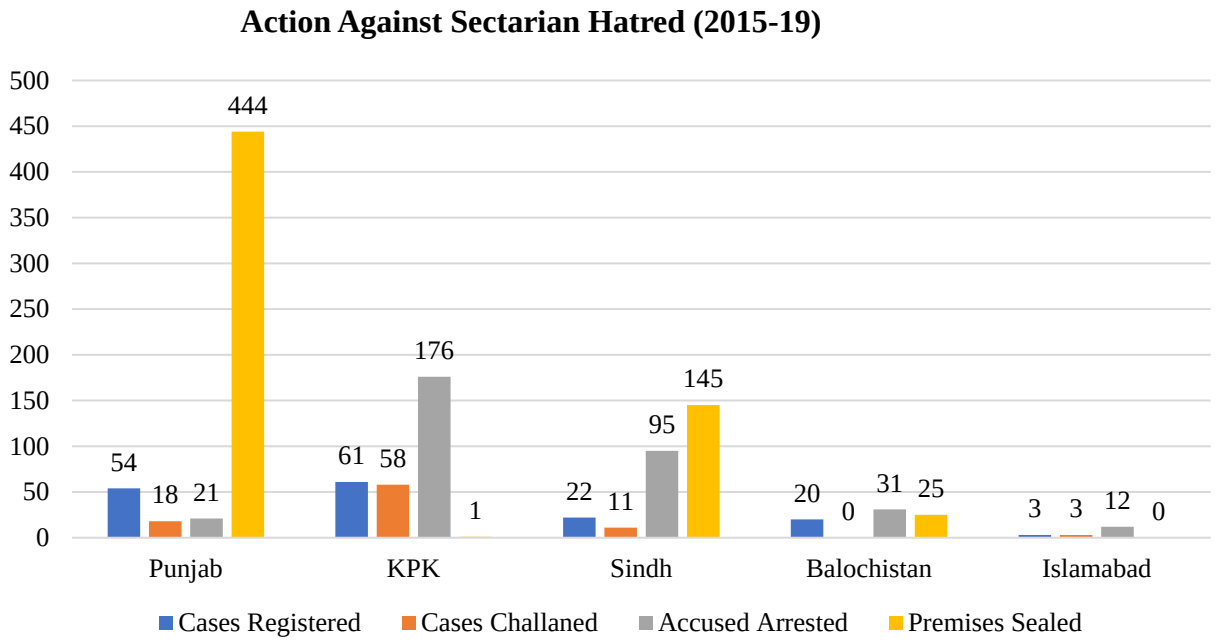
any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment for a term which may extend to seven years and with fine."

The ATA 1997 also specifically prohibits publishing of any material which may disrupt public order by inciting sectarian hatred. Section 8 of ATA reads: "A person who (a) uses threatening, abusive or insulting words or behaviours; 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; (d) has in his possession written material or a recording or visual image or sounds which are threatening, abusive or insulting, with a 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." The punishment for violation of this section is imprisonment for a term which may extend to five years and with fine. Section 11 of PECA 2016 also invokes similar provisions and deterrent punishments for online spread of sectarian hatred.

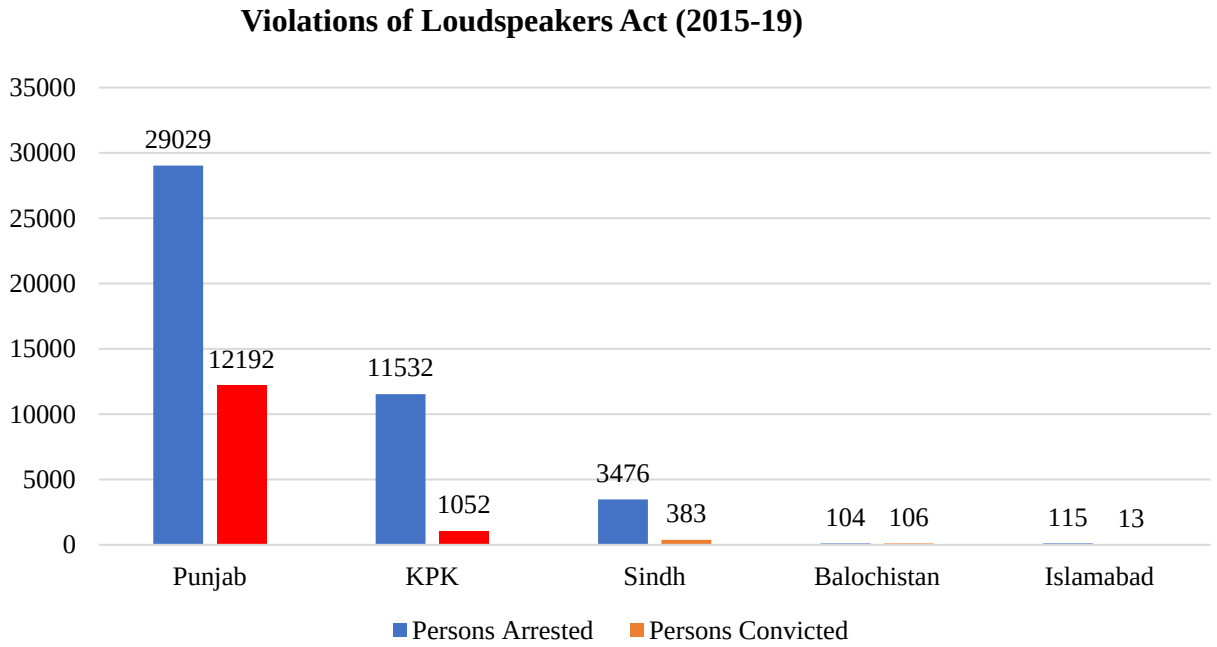
Here is a summary of cases registered and legal actions taken under above laws from 2015 to 2019.

An examination of the data shows that there is a wide margin of difference in practical application of laws across various provinces. While in Punjab, the number of sealed premises is 444, only one premises was sealed in KPK, and no premises were sealed in Islamabad during this period. Similarly, in Balochistan, none of the twenty (20) cases registered was sent to court for trial. The data shows varying degrees of focus and priority, application and practice when it comes to the laws on sectarian hatred.

Use of loudspeaker was also regulated under NAP through a Loudspeaker Act, as it is a primary source of fanning hatred, and fomenting unrest. The number of persons arrested and convicted for violation of the law are provided in the table below. A comprehensive analysis of data of offences under PPC and ATA 1997, and outcome of their trials has been provided in Chapter-II of the present study.



Source: NACTA



Source: NACTA

NAP Point 11 places **ban on glorification of terrorism** through print and electronic media. According to the Planning Commission of Pakistan, total TV viewership in the country stands at 135 million. With a large viewership both locally and abroad, the influence of electronic media cannot be overemphasized. Here is the summary of electronic media landscape.[36]

- Satellite TV Channels: 91
- Cable Operators: 4,983
- Foreign TV Channels: 34
- FM Radio Stations: 210
- Cable Subscribers: 13.9 million
- Total TV Viewership: 135 million

Electronic media is governed by Print and Electronic Media Regulatory Authority (PEMRA), established through an Ordinance in 2002 and amended vide PEMRA Act, 2007. Power to monitor content glorifying terrorism is given in Section 20-C of the PEMRA Act. It covers violence, terrorism, racial, ethnic or religious discrimination, sectarianism, extremism, militancy, hatred etc. In addition, Section 9 of PECA 2016 also prohibits glorification of acts of terror on media. Section 11-W of ATA specifically prohibits glorification of terrorism with a punishment up to 5 years. Punjab added Section 6-A to the Maintenance of Public Order Ordinance in 2015 that criminalizes expressions of support, sympathy and glorification of terrorism. Punishment is up to 3 years.

The following data shows actions taken by PEMRA on various violations from 2015 to 2019.

- Number of Circulars issued to TV channels on violation of code of conduct related to both terrorism and extremism: 166
- Number of Advice issued: 11

[36] Ministry of Planning Development and Special Initiatives

- Number of Directives issued: 5
- Number of SCNs issued: 25
- Number of Warnings issued: 2
- Number of Bans imposed: 4
- Number of Cases under PEMRA Act: 4
- Number of Public Service Messages/Advisories: 5

NAP Point 14 mandates **regulation of Internet and Social Media** in the context of terrorism. According to Pakistan Software House Association (PASHA), the number of internet users in Pakistan is about 35 million. Here are some relevant details:

- Cell phone subscribers: 163 million
- Broadband subscribers: 75 million
- Internet users: 35 million
- 3G and 4G subscribers: 73 million
- Facebook users: 11.5 million
- Twitter users: 2 million
- LinkedIn users: 1.5 million

The available law is PECA, 2016. Section 10 of PECA criminalizes cyber terrorism and proposes 14 years in imprisonment. Section 24 covers cyber stalking, providing for 3 years of imprisonment. Federal Investigation Agency (FIA) has the primary responsibility for investigating crimes committed under PECA. It has set up a dedicated Cyber Investigation Unit and Computer Forensics Lab in its CT Wing for this purpose.

PTA also monitors and regulates social media. PTA has taken the following administrative actions in this regard upon the request of various agencies and departments:

Sr	Action	Year				
		2016	2017	2018	2019	Total
1	Number of requests sent to Social Media Companies for blocking content	159	2309	7356	12421	22245
2	Number of hate speech/sectarian links received by PTA	0	19	787	779	1585
3	Number of Links blocked by PTA	0	6	692	581	1279
4	Number of Websites/URLs blocked for hosting radical/terrorist content	10	7	43	8	68
5	Number of Social Media Pages/ Content blocked: Facebook	06	355	1,239	6,324	7,924

As a result of kinetic measures, the sectarian militancy and sectarian killings have come down drastically, but so far, no effective ideological or social intervention has been designed to stem the constantly rising tide of extremism in general. Studies and surveys have shown that the level of religious extremism in Pakistani society is far higher and more widespread than is generally assumed.[37] NAP as a strategy has achieved successes in countering terrorism and 2bringing down sectarian killings in some parts of the country, but sectarian hatred continues to simmer and outbursts of gruesome incidents of sectarian killings now and then in Balochistan evidence a deeper problem.

NAP has been a failure on account of a few of its key avowals: it failed in Balochistan reconciliation, it failed to regulate and mainstream Madaris, it failed to address deep-rooted malaise afflicting the criminal justice system, and it failed in eliminating the causes of sectarian, ethnic and other forms of hatred and extremism. These failures do have a common denominator: the lack of will on the part of the state and government.

To cite an example of this lack of political will is the case of Madaris. It has been more than six (6) years now since the state resolved to mainstream religious seminaries but has not done it yet. It is a good case study of state's failure.

[37]Refer to Madiha Afzal's findings

Mainstreaming Religious Seminaries: A Case Study in Failure to Implement Policy

There are some 30,000 Madaris or religious seminaries in the country. Despite government's desire to regulate them, only 295 have applied for registration which is the first step towards any regulation.[38] Madrassa reforms were initiated in 2003 to streamline the affairs of seminaries, including their sources of funding and list of students.[39] But, no progress was made. NAP (2015) Point 10 also aimed at registration and regulation of Madaris but failed to achieve it.

Now, as part of FATF requirements and after several months of deliberations, the Waqf Properties Act became a law on 24 September 2020. Protests broke out on 26 January 2021 against the enactment of Islamabad Capital Territory Waqf Properties Act, 2020. The clerics set up a group under the name of Tehreek-i-Tahafuzz-i-Masajid-o-Madaris Islamabad, led by Mufti MuneeburRehman. Their view is that the Waqf Act was un-Islamic and was aimed at changing the ideological status of the country.

The top leadership of the five mainstream seminary boards held a meeting on 25 January 2021 under the banner of Ittehad-i-TanzeematMadaris Pakistan (ITMP) to submit their own suggestions on the registration of seminaries. Led by Mufti Muneebur Rehman, the ITMP is a collective body of five seminary boards. They represent the four mainstream schools of thought – Barelvi, Shia, Deobandi and Ahle Hadith – while the fifth affiliates with seminaries of Jamaat-i-Islami. The idea to register madrassas goes back to Gen Ayub Khan's era of 1960s when the Auqaf departments were formed, but the clerics established these five boards and claimed that all seminaries should be managed by them. Next initiative was taken up by Gen Parvez Musharraf's government in June 2001 with the formal registration process commencing in 2003.

Like in the past, religious segments have succeeded in applying brakes to the process of streamlining seminaries and entangling the incumbent government in legal and bureaucratic lacunas.[40]

[38] Streamlining of seminaries hits snags, again; *Dawn;* 27 January 2021
[39]Ibid
[40]Ibid

While madrassahs have always been part of this society, the radicalization of some seminaries as part of the Afghan 'jihad' created problems that are still alive. Long after the end of the Cold War, jihadi madrassahs continue to contribute to extremism and sectarianism in society. This is not to say all seminaries are involved in violence. However, it is true that most graduates of these institutions face major problems entering the job market, as society can only absorb a limited number of preachers. Also, many parents from low-income households send their children to madrassahs because of the free lodging and food that they offer. Therefore, madrassah reforms must focus on two major areas: ensuring the curriculum is free of hate material and sectarian content, and providing seminaries the life skills, along with religious subjects, that will enable their graduates to find gainful employment.[41]

Considering the stand-off between the government and opposition which has the support of some influential religious parties, going ahead with madrassah reform initiatives will be an uphill task for the state. However, the state cannot afford to abandon this key reform initiative. While there may be foreign obligations to meet, such as FATF requirements, it is very much in Pakistan's interest to bring seminaries into the mainstream. The government must keep channels open with the clerics, while remaining committed to the reform agenda. Moreover, in the long run, fixing the dilapidated public education system can provide a viable alternative to poor parents.[42]This is a state obligation under the Constitution.[43]

National Counter Terrorism and Extremism Strategy (NACTES), 2015

Following the launch of the NAP, which was not a strategy document but a list of recommendations, Pakistan's leading CT expert, and the former NC[44], NACTA, Mr. Tariq Parvez published a comprehensive strategy to counter terrorism and extremism in Pakistan, but this strategy was never formally adopted by the government. It served the professional CT

[41] Streamlining madrassahs; *Dawn editorial;* 28 January 2021.
[42] Former CJP Asif Saeed Khan Khosa; *Interview;* 24 October 2020.
[43]Ibid
[44]National Coordinator, who is the head of the authority.

experts and practitioners as a guide for CT strategic planning and contributed to the body of literature on the subject. Based on his extensive experience and profound understanding of the phenomenon of terrorism and its deep and direct linkages with religious extremism and religious militancy, the author also covered sufficiently the challenge of extremism. The strategy made the following important recommendations to deal with extremism.

a) Mustering up of political will to implement laws and rules of countering extremism.

b) A diagnosis of the nature and extent of extremism essential to frame required laws to deal with the threat.

c) A legal audit of all laws dealing with extremism because extremists take advantage of the missing provisions and loopholes in the legal system.

d) Establishing national data base on offenses under CVE related laws.

e) An organization dedicated to deal with CE like a center of excellence.

f) Unity of effort

g) Measures to counter militants' ideology include inter alia effective legal actions against those who spread extremism.

h) Strict enforcement of existing laws against extremism.

i) Human Resources Development of experts in CVE.

j) Choking funds. Laws related to choking of funds of extremists be updated.

k) Strengthening of NR3 in FIA, and IT wings of CTDs to counter online extremism.

Paigham-e-Pakistan (May 2017)

As a counter measure to the weapon of suicide bombing and the holy war waged by the terrorists against the state, a fatwa (religious decree/edict) was formulated and endorsed by 1829 religious scholars of all schools of thought, and launched on May 26, 2017. This was a denunciation of suicide bombing and private armed struggle in the name of religion. This is our so-called counter-narrative. So far, this has proved largely ineffective because it is seen as a brainchild of

establishment. Its dissemination has also been restricted so far. This, by no means, can be interpreted as a national CVE policy, or even a counter narrative. It is just a decree. Decrees are not counter narratives. Critical thinking that questions decrees can provide a counter narrative.

However, Paigham-e-Pakistan can be the basis of a national narrative against religious extremism. Reportedly, the CII is toying with the idea of converting it into law, thus criminalizing any violations of the decree.

National Counter Extremism Policy Guidelines (NCEPG), 2018

NACTA drafted detailed CVE policy guidelines in January 2018 after extensive stakeholder deliberations. These identified the drivers of extremism and covered areas such as the rule of law, service delivery, media engagement, education policy, promotion of culture and the four 'R's: reformation, rehabilitation, reintegration and renunciation strategies. Extremism was broadly defined as "having absolute belief in one's truth with an ingrained sense of self-righteousness". Such a mindset was then "likely to be accompanied with violence" to impose one's belief system.

The Guidelines are the most comprehensive analysis of the causes and remedies of extremism in Pakistan. The National Counter Extremism Policy Guidelines is a strategic framework for minimizing chances for such intolerance and violence in our society wherein provincial governments may form policy responses to eradicate extremism from society.

The Guidelines have been formulated through multidisciplinary and cross functional process stretched over 34 rounds of deliberations involving 305 stakeholders, viz. academics, political leadership, religious scholars and leaders, media representatives, civil and military bureaucracy, NGOs and CSOs. These guidelines have been grouped into six cross-disciplinary themes. i.e. (i) Rule of Law and service delivery (ii) Citizen Engagement (iii) Media engagement (iv) Integrated Education Reforms (v) Reformation, Rehabilitation, Reintegration and Renunciation and (vi) Promotion of Culture.

Key recommendations under each thematic are as given below

(i) ***Rule of Law and Service Delivery***

The Guidelines suggest strengthening the districts, FATA mainstreaming, resource allocation to LEAs as well as strategic and futuristic planning in the fields of opening up of inaccessible areas through road and rail network, development of hydropower, irrigation, agriculture and livestock facilities and provision of basic socio-economic needs to the people. It also suggests putting in place a robust accountability mechanism at district level.

(ii) *Citizen Engagement*

Other than generic discussion on societal ability to withstand and recover from adversities, the theme proposes various models and projects for injecting and reinforcing resilience. Specific role is entrusted to basic administrative units i.e., tehsil level for training of mentors for community education in de-radicalization. Auqaf Department and CSOs are also partnered in the exercise. Establishment of local areas committees for peace and welfare have also been suggested to be formed.

(iii) *Media Engagement*

It is called a "battle of hearts and minds" and contemporary tool to win both is media communication in its various forms. Terrorists consider media a useful tool to get free publicity for their cause, create an atmosphere of fear and suspicion, transmit their messages and garner support, recognition and legitimacy. Media is the battlefield where the militants carry out more than half of their battle. Given the latest development in media and communications technology, terrorists tend to use more innovative tactics to achieve their goals. While media in some instances has acted as an enabler for the militant groups, it has also worked against their efforts. Objective of engaging media is to turn this media battlefield to defeat the militant and extremist aims by denying access to extremists and use it systematically to spread a national counter extremist narrative. Multiple sets of responses are recommended for an effective media strategy.

(iv) *Integrated Education Reforms*

After the 18th Constitutional Amendment, subjects of Primary and Secondary Education have been transferred to provincial governments (except in the Federal Capital Territory). Federal government's mandate is limited to regulation of higher education. General guidelines for

devising and up-grading education policies at provincial level and concerned federal institutions have been incorporated. These encompass training in Civics, Fundamental Human Rights, Principles of Policy etc., while placing special emphasis on an exchange programme between the madrassah and contemporary education system faculties. Both systems will generate awareness and acceptability towards each other. It will mark a gradual shift in thinking as the academic content of both systems will be available to opposite streams. Moreover, strict regulation regime for Madaris including skill development programs in collaboration with government are proposed. Special emphasis is placed on introducing designed teaching models that encourage critical thinking and encourage students to be tolerant toward diversity.

(v) ***Reformation, Rehabilitation, Reintegration and Renunciation***

Rehabilitation of persons previously involved in terror presupposes neutralization of those involved in violent extremism. It also assumes that the erstwhile hostile environment has been cleared and the State is in control of the environment. In addition to providing fora for a law-based polity where rights are guaranteed and basic socio-economic needs are in place, there would be need for rehabilitating those previously involved in extremist activities. Thus, natural corollary of Enabling Environment is an exit strategy for formers or those demotivated or disillusioned etc. The contours of an exit strategy should be defined with specific focus on relevant target groups. Following steps have been recommended:

a) An exit service should be launched with a UAN, psychologists, mentors and religious scholars.

b) Provincial governments should re-organize their Auqaf departments so that mosques controlled by Auqaf are free from all sectarianism inter alia.

c) Urban planning departments of provincial governments and town planners should be informed about the need to approve only those mosque designs which have adequate space and facilities for women worshippers.

d) Legislation should be recommended to the federal government to amend Pakistan Penal Code and declare Takfir (branding other infidels) as a special category of hate speech and punishable to the same degree as that prescribed for conspiracy to commit murder.

(vi) ***Promotion of Culture***

Despite 18th Amendment, it is of monumental significance that all the provincial governments and federal government are on same page for promotion of a unified and harmonious cultural policy with a shared message of unity and peace. Federation of Pakistan is a composite of autonomous cultural entities yet linked with each other. Just as denial of this diversity deteriorated the sense of integration and unity, the respect, appreciation and valuing this diversity will bring people and the entities closer together, thus, forging a distinct and enriched integrated national cultural identity. Following framework has been discussed for injecting a new life into the magnificent culture in slumber:

i. Promotion of theatre
ii. Promotion of music & other performing arts
iii. Folklore and traditional culture
iv. Archeological sites and preservation of the tangible culture
v. Inculcating cultural principles and priorities into the younger generation
vi. Intangible culture and its documentation and promotion
vii. Film, Radio & Television a mode of promoting diversity of culture
viii. Protecting the culture of neglected and minority communities
ix. Endangered cultures, cultural sites, crafts and languages
x. Promoting the pluralistic face of Pakistan internationally

The Guidelines also delineate an elaborate implementation and review framework including all provincial and federal stakeholders. The CVE guidelines should have been adopted to reduce intolerance and violence in our society. Despite a comprehensive policy paper prepared through

a highly engaged consultative process, the Guidelines are gathering dust because there seems little appetite for their implementation on the part of the government.

National Internal Security Policy (NISP 2018-23)

NISP 2018-23 (hereinafter, "NISP-II") was a major leap forward from NISP-I when it came to focusing issues of extremism and drivers of alienation and insecurity. It shifted the focus away from CT to CVE. It took stock of the situation by addressing the underlying issues, ranging from religious intolerance to poor governance and maldistribution of resources. Among its 6Rs, four (4) focused on CVE, as is seen below.

- ***Reorient:*** *The reorientation of security apparatus will be carried out to make it 'people centric' by enhancing capacity and modernizing infrastructure.*
- ***Reimagine:*** *Reimagining the society as a tolerant and pluralistic society with democratic values*
- ***Redistribute:*** *Redistributive measures focused on provision of social safety nets and social and economic uplift of the marginalized groups will be prioritized. Furthermore, efforts will be made to reduce regional inequality.*
- ***Reconcile:*** *Incentives will be offered to encourage militants shun violence and join the mainstream i.e., de-radicalization and re-habilitation programs.*
- ***Recognise:*** *Recognizing the threats and challenges emanating from extremism and political violence and to address the issues*
- ***Regional Approach:*** *Bringing along friendly countries aboard and collaboration*

It also recognized extremism as one of its key challenges. It gave a good analysis of the sources of extremism and violence, and recommended a shared vision, social justice, tolerance, good governance, and inclusiveness as the remedies. We see in the NISP 2018-23 an evolution of the CVE policy of Pakistan. This policy was formulated by the outgoing government but not formally adopted by the present government.

NISP-II was an improved version adopted after extensive consultation with all political parties, and contained an effective institutional mechanism designed in consultation with all provinces. What is the use of making policies if they are not to be implemented? Intriguingly, we still do not have a comprehensive national security policy despite having established a national security division a few years ago. A military doctrine has limited scope. An all-encompassing security policy must prioritize socioeconomic and human development, supported by all elements of national power.

The Proposed National Commission on CE

The government's decision to establish a commission "for implementation of national narrative and development of structures against violent extremism and radicalization" is a significant move towards countering violent extremism (CVE) and terrorism (CT) in the long term. In a recent meeting, the cabinet approved the proposal submitted by the interior ministry and the draft legal framework is currently under consideration by its sub-committee on legislation headed by the law minister. This initiative requires debate and ownership by state and society.[45]

The primary objectives of the proposed commission include: (i) providing a legal mechanism to curb violent extremism; (ii) enforcing national narratives and policies in line with the National Action Plan (NAP); (iii) establishing a policy review board under the commission to coordinate with ministries, government departments and academia; (iv) establishing a centre of excellence to conduct degree and diploma courses in CVE and CT; (v) establishing a national facility to design and implement strategies in deradicalization, rehabilitation, and psychological and religious counselling of prisoners and detainees involved in terrorism; (vi) prohibiting offences related to VE and sectarianism; (vii) preparing deradicalization modules, strategies and vocational training programmes for suspected terrorists and extremists; and (viii) promoting awareness through print and electronic media, publications, seminars, conferences, etc.

Pakistan has all along been aware of the problem of extremism and a need for countering it but has stopped short of articulating a public policy on this key issue and has taken little and

[45]Tariq Khosa, *Countering Extremism*, Dawn (20 Dec 2020). Accessed on 28 Jan 2021. https://www.dawn.com/news/1596792.

ineffective action to fight it out through a comprehensive national programme. The state has placed greater reliance on kinetic operations and military might to eradicate terrorism, but the deeper roots need to be addressed. This requires a social change, and a shift in the governance paradigm. National security will remain a pipe dream if we do not accord topmost priority to the provision of fundamental rights to citizens, including life security and self-esteem. The objectives of establishing peace and security can only be achieved if the state promotes a culture rooted in constitutionalism, human rights, democracy and the rule of law.[46] That needs a very articulate, transparent and unequivocal policy statement from the state that sends a clear message to all the citizens and those engaged in inciting hatred, and spinning extremist narratives, that enough is enough, and that the universal human rights are truly universal and not in conflict with the fundamental mores and principles of religion.

[46] Dr Syed Akhtar Ali Shah, *Dynamics of religious militancy*, The Express Tribune (13 January 2021).

Chapter-5

Good Practices in CVE: National and International Experiences

This part of the report provides a good practices perspective both in national and international settings in CVE. In Pakistan, Counter Terrorism Department (CTD) Punjab has been, relatively, the most successful law enforcement agency in prosecuting CVE. The CTD Punjab has largely successfully navigated the bottlenecks of the criminal justice system and has been able to demonstrate that with a combination of will, skills and ability, even an otherwise unresponsive system can be made more responsive.

Section-1: National Good Practice: CTD Punjab

CTD Punjab takes cognizance of the criminal acts relating to terrorism and violent extremism. The precursor organization of CTD was the Criminal Investigation Department (CID) which was formed in 1995. It started off as a small unit and later expanded to having regional offices across the province. The CID was renamed as (CTD) in July 2010.

As the incidents of terrorism escalated CTD was restructured in 2015, providing it with a new vision and mandate. There are separate CTD Police Stations in all districts, where terrorism-related cases are registered and investigated. A new Counter Terrorism Force (CTF) was also created in 2015 with a highly educated intake of 1200 personnel. The CTF has been trained in modern techniques by the armed forces and international partner agencies and has been equipped with the appropriate modern tools and scientific equipment to deal with the cases of terrorism. The number of 'Corporals' in CTF is 1200[47].

This unit has been effective in countering terrorism, but it has also demonstrated substantive success in cases of CVE. This report examines the data set of CTD, for CVE which shows a relatively high level of success when compared to other law enforcement entities. The following data set and illustrations support the above narrative. However, the data should be viewed with

[47]https://punjabpolice.gov.pk/ctd

some caution as there are no incident or crime recording standards or auditing of recording practices. This aspect is subject to more detailed comment in another part of the report.

Two sections of ATA related to extremism form the content of this data set and illustrations.

Sr. NO.	Section		No of Cases.
1	8 ATA	Inciting sectarian hatred	31
2	11 W ATA	Spread of Hate Material	228
	TOTAL		277

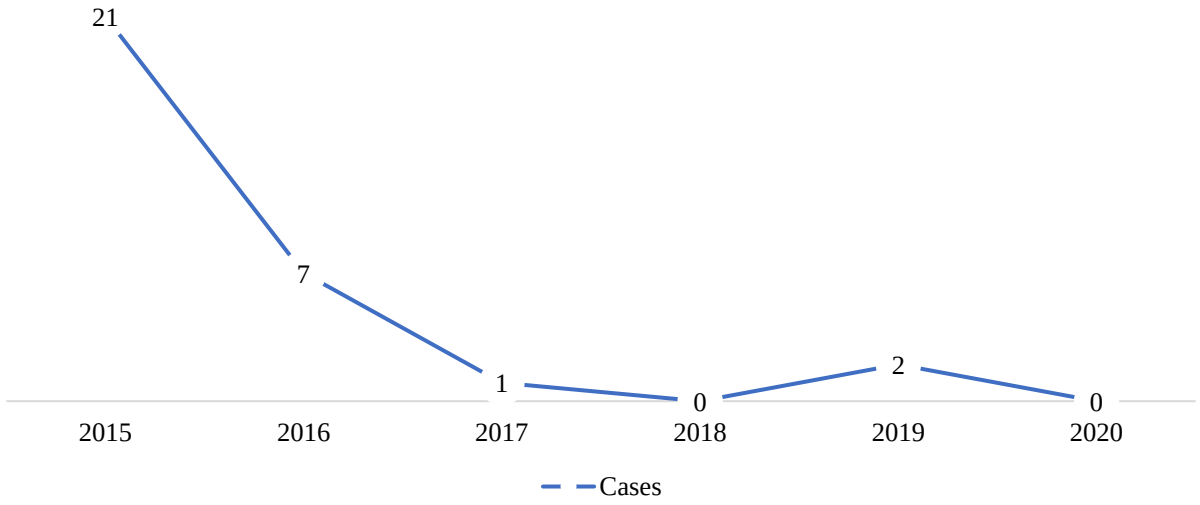
Source: CTD Punjab

In Punjab CTD has registered 277 cases of extremism under 2 sections of Anti-Terrorism Act (ATA) 1997. The registered cases have been examined across the variable of success rate in comparatively high convictions as compared to other police departments.

Section.8 ATA 1997

The section deals with inciting sectarian hatred and mainly pertains to Shia and Deobandi sectarian divide. Under this section a total of 31 cases were registered in 5 years in CTD Police Stations.

S.8 (9) ATA 1997 Case Registration Trend

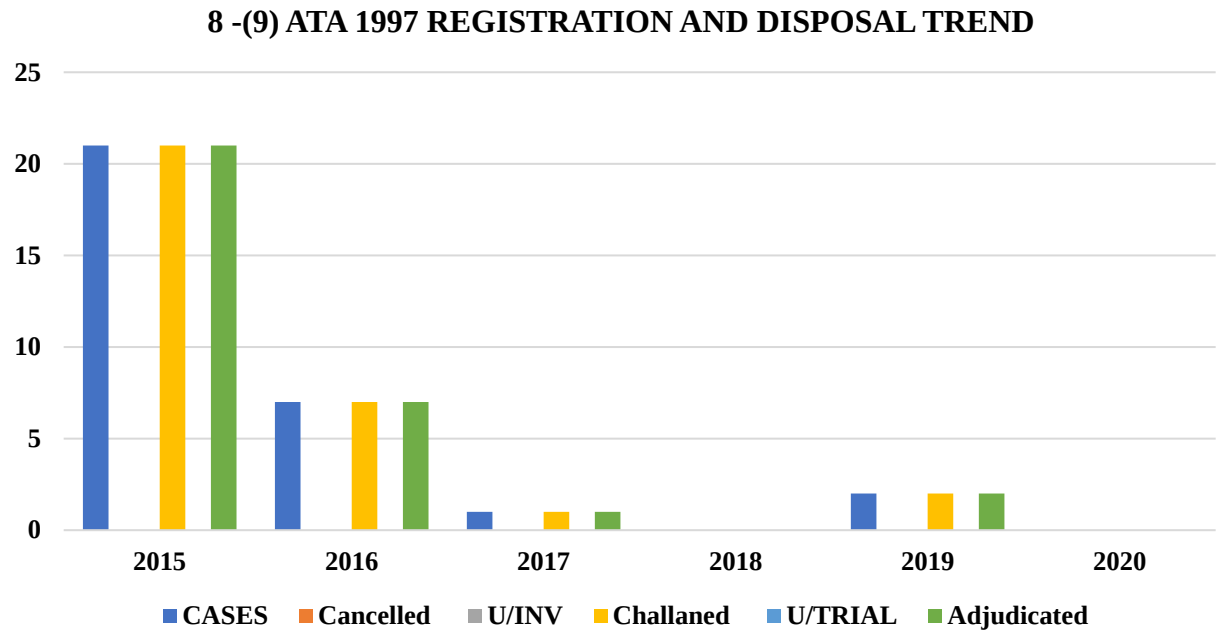


Source: CTD Punjab

There is a noticeable spike in 2015. This can be attributed to CT NAP. The decline in the registered cases onwards is due to the decrease of sectarian violence in Punjab and relocation of Sectarian outfits to other provinces, mainly Baluchistan. This also reflects the 'crackdown' on sectarian outfit LJ, when Malik Ishaq and his two sons along with his 11 companions were killed in an alleged 'encounter' in Muzafargarh District in 2015[48]. Therefore, in the aftermath of killing of LJ leader more cases were registered. Another event also played a role in this spike of registration of cases, which was the murder of Home Minister of Punjab Shujah Khanzada in Attock District in the same year. LJ claimed responsibility for the attack. Following the killing of the Home Minister the crackdown by law enforcement on extremists is another reason for the spike in registration of cases

The following graph shows the number of cases registered and their disposal.

[48]https://www.bbc.com/news/world-asia-33699133



Source: CTD Punjab

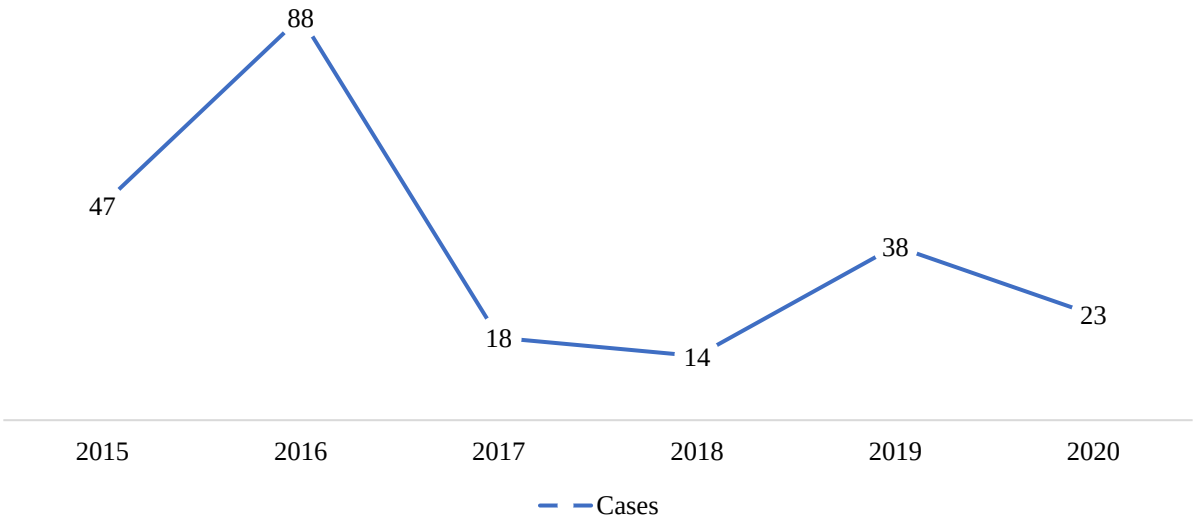
Of the 21 registered cases, in 2015, all of them had a positive disposal with a total of 25 persons challaned, all of whom were adjudicated. Of the total 14 persons were acquitted and 11 convicted. In total until 2020, 31 cases were registered under this section; all of them have been adjudicated upon, with a total of 39 accused. Of the total, 22 accused were acquitted and 17 convicted. This rate of conviction is relatively high in a criminal justice system which otherwise has an extremely low conviction rate.

Section11-W ATA 1997

S.11 W ATA deals with hate material. There is a comparatively high number of cases registered under this section by CTD Punjab. There were 228 cases registered for the period 2015-2020.

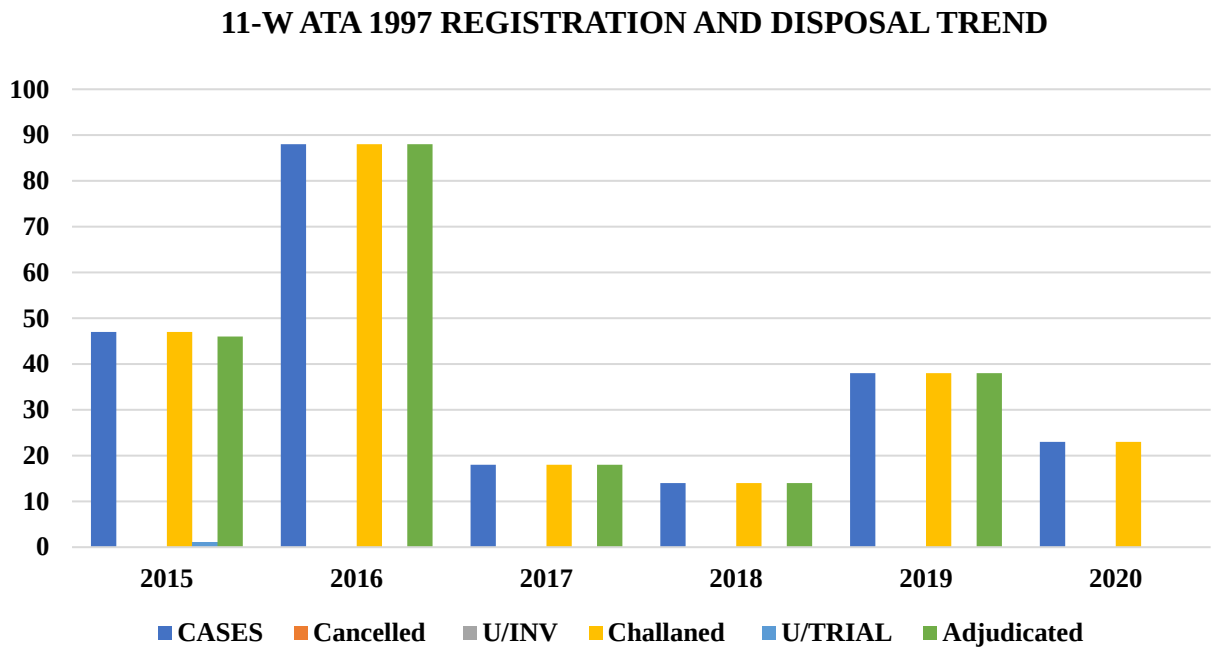
The following graph shows the number of cases registered in each year

11- w ATA 1997 Case Registration Trend



This is a high registration trend, with a spike in 2016. This can also be attributed to the implementation of CT NAP. The difference of time frame between registration of S.8 ATA and S.11 ATA, reflects the different nature of the crimes. S.8 ATA deals exclusively with sectarian hatred, while S.11 ATA deals with all forms of hate material which can be sectarian as well as against other religious groups and minorities. Therefore, the higher number of cases reflects the wider scope of the offence under S.11 ATA

The following graph shows the number of cases registered and their disposal:



Source: CTD Punjab

All the 228 cases registered were challenged. All but one of the cases have been adjudicated. In total there were 292 accused of which 123 have been acquitted. This conviction rate represents CTD's better investigation, better prosecution and better adjudication levels as all but one case has been decided.

This comparatively better performance of CTD Punjab can be ascribed to the following factors that exist in CTD but no other police departments.

Effectiveness of CTD Punjab; Doing Things Differently: CTD Punjab has performed better than its counterparts and regular police departments, due to undertaking intra-departmental reforms. The business processes at CTD Punjab were re-engineered to achieve these efficiency gains. The measures that CTD Punjab undertook were as follows:

a) **Ensuring Tenure Security**: One of the major impediments in service delivery is the prevalence of tenure insecurity. There are frequent, abrupt and irrational if not downright whimsical transfers of police officers and officials. Despite the Supreme Court of Pakistan's notable judgement in the Anita Turab Case awarding legal sanctity to tenure

security and the Sindh High Court using the case law also reiterated the sanctity of tenure security (Amanullah Memon vs Government of Sindh) tenure security is not observed across the civil services in Pakistan. However, the CTD Punjab has adopted the practice of ensuring tenure security of all its Investigation Officers (IOs). This simple 'practice' has borne fruit and the IOs have performed in delivering robust investigations.

b) **Training of IOs**: The CTD recruits suitably qualified and educated IOs who have been well trained. The training spectrum includes a wide range of investigation skills, from using scientific evidence collection methods to intelligence gathering. CTD Punjab is one of the few agencies which makes use of the data available from the Financial Monitoring Unit (FMU) for investigating terror financing cases.

c) **Use of Technical/Forensic Evidence**: CTD Punjab has made a paradigm shift in its investigation methods by using forensic and technical evidence for prosecution. The traditional methods of investigation using torture etc. to extract confessions has been significantly replaced by building their cases based on forensic evidence, like geo-fencing, fingerprints, CCTV footage etc.

d) **Collaboration with Prosecution**: Against all good practice the usual practice in regular police is to avoid involvement of prosecution in the investigation process. CTD Punjab has recognized the value of working closely with the prosecution in the investigation process, so that a strong case can be made in the court. This is now paying dividends.

e) **Manageable Case Load**: Due to exclusive jurisdiction and the recent downturn in terrorism incidents in the country CTD Punjab has a comparatively low case load compared to the regular police department. They are not overwhelmed by the cases that regular police must deal with on a daily basis. Just as important is the narrow but critical focus of the CTD when compared to the regular police who must deal with other police duties of VIP protection, watch and ward and policing demonstrations.

f) **Resource Allocation for Investigation**: In regular police the average budget per case for investigation is extremely low at 650 PKR on average[49] in Punjab. The reported allocation for murder investigations is, on average, 20,000 PKR. On the other hand, the investigation budget for CTD cases is substantially more. This relatively free flow of financial resources makes the investigation process more robust and better, resulting in better case building. There is no upper limit set for cost of investigation.

g) **Mock Trials**: CTD Punjab has adopted the practice of conducting mock trials in order to train their personnel in giving evidence and understanding the trial process. This practice helps to ensure that officers recognize the potential pitfalls and shortfalls in live trials thereby preparing them for actual trials. These mock trials are done with the support of prosecution department and demonstrates partnership working which is otherwise absent between police and prosecution.

h) **Building Incentive Structures**: CTD Punjab has also adopted another unique approach, which is rewarding the investigation team on a successful conviction. These incentives are in the form of cash awards and recognition by the management. The value of incentives has been appreciated by the CTD Management and has been used for eliciting optimal efforts from the IOs.

i) **Post-Trial Analytics**: CTD Punjab also conducts post-trial analysis. The follow up actions are otherwise absent in regular police departments. The post-trial discussions help the CTD to learn lessons and avoid making similar mistakes in the future.

These simple and yet significant changes in doing business have resulted in organizational efficiency and effectiveness. Therefore, it is showcased as a good practice which should be considered for implementation in other law enforcement organizations[50].

[49] NIOC National Strategy against Organized Crime (2021) to be published.
[50] KII with Rai Tahir Inspector General of Police Baluchistan (former DIG of CTD Punjab) and Shehzada Sultan DIG Staff Officer to Inspector General of Police Punjab.

Section-2: International Good Practices

UN Plan of Action: There is a global realization that extremism breeds terrorism and there is an urgent need to address the issue of violent extremism, to stem the flow people going towards terrorism. This global realization has been reflected in the United Nations Plan of Action to Prevent Violent Extremism. The UN Secretary General committed the UN to the concept of CVE by issuing his Plan of Action to Prevent Violent Extremism in December 2015. The Government of Switzerland co-hosted the Geneva Conference on Preventing Violent Extremism in April 2016. This was aimed at providing an opportunity for the international community to share experiences and good practices in addressing the drivers of violent extremism and to build support for the Plan of Action[51]. The following diagram illustrates the UN plan of Action:

ADDRESSING Drivers of extremism	**SETTING** The policy framework	**TAKING ACTION** 7 Priority Areas
Conditions Conducive and Structural Context Lack of Socio economic opportunities -Marginalization and discrimination –Poor governance, violation of HR and Rule of law-unresolved conflict-radicalization in prisons	**Global Framework** UN Charter-UDHR-Global Counter Terrorism Strategy-General Assembly Resolutions-Security Council Resolutions	1. Dialogue and Conflict Prevention 2. Strengthening Good Governance, Human Rights and Rule of Law 3. Engaging Communities 4. Empowering youth 5. Gender Equality and women empowerment 6. Education, skills and employment 7. Strategic Communications, internet and social media
Process of Radicalization Individual Backgrounds and Motivations-Collective grievances and victimization-Distortion and misuse of beliefs, political ideologies and & ethnic and cultural differences-Leadership and social networks	National PVE Plans of Actions National Ownership-All of Government-All of Society	
	Coherent UN Support All of UN	

The UN plan of Action for Preventing Violent Extremism presents the global resolve, intent and a roadmap to be adopted by all member countries. It starts with articulating the drivers of extremism and resultant radicalization. It recognizes that it is prevalence of conducive conditions

[51] NRC Position Paper (2017), *Countering Violent Extremism and Humanitarian Action*.

which drive the process of radicalization. The plan also presents the globally accepted framework to counter the threat of extremism and consequent radicalization. It urges national governments to formulate their own PVE strategies and action plans. The plan finally provides a 7-point priority areas guideline for PVE, which goes beyond the kinetic use of force. The 7-point priority areas adopt a holistic approach and include a broad spectrum of activities advocating government as a whole and society as a whole approach.

Norwegian Example: Norway's second (and latest) 'Action Plan against Radicalization and Violent Extremism' was formulated in 2014. In it, violent extremism is defined as the "activities of persons and groups that are willing to use violence in order to achieve their political, ideological or religious goals", while radicalization is defined as "a process whereby a person increasingly accepts the use of violence to achieve political, ideological or religious goals"[52]. The Norwegian action plan for PVE is a derivative of its Crime Prevention Approach (CP). It uses the same basic principles which are being used for CP for PVE. The valuable principles which are emphasized in CP approach are the knowledge-based approach, cooperation among different sectors of society and early efforts prompted by the ability to identify problems and follow them up with adequate measures[53].

The actions include cooperative models between communities, local governments, municipalities and police. The cooperative design appreciates the value of whole of society approach as advocated by the UN's PVE framework. A police council is formed consisting of municipalities and police for CP, similar method is adopted for PVE. This forum envelopes all sorts of crimes including extremism. It is an 'upstream' prevention method, where early warning signs are recorded, and the possible drivers of extremism are addressed[54].

Furthermore, the action plan recognizes prisons as the platform where organized crime meets violent extremism. The risk is mitigated by developing schemes for mentoring of inmates,

[52]Norwegian Ministry of Justice and Public Security, *Action plan against Radicalization and Violent Extremism* (Norwegian Ministry of Justice and Public Security: Oslo, 2014), p. 7.
[53] Ibid
[54] Ibid

considered vulnerable to violent extremism, which will be piloted. In addition to that an interfaith harmony team in Norwegian Correction Services is also established[55].

The Norwegian action plan recognizes extremism as an 'extreme form of hate crime', therefore most of its measures are also centered on prevention of hate rhetoric as and when expressed. It is taken as a sign of concern and due attention is devoted to monitor the growth of the hate rhetoric into criminal acts[56].

The key takeaways of the Norwegian action plan are as follows:

- The overlap between violent extremism and organized crime is recognized and appreciated
- The Crime Prevention (CP) approaches have been extended to include Extremism as well
- Coordination between municipalities, communities and police is the corner stone of the action plan
- Prisons are recognized as the connector between radicalization and organized crime and suitable measures are put in place to prevent.

Hate Crime & Extremism in the UK

In any society citizens need to have, and feel, a sense of belonging. This partly comes from having a stake in society and being treated fairly. However, humans and society are imperfect, and prejudice and discrimination take place in different ways. In the UK, the Equality Act 2010 protects people from discrimination, harassment and victimization based on the following nine protected characteristics:

- age.
- disability.
- gender reassignment.

[55] Ibid
[56] Ibid

- marriage and civil partnership.
- pregnancy and maternity.
- race.
- religion or belief.
- Sex

When people feel discriminated against, whether that be in the areas of employment, education, housing, health, financial services etc. they have recourse to the civil law.

Where those prejudices lead to behaviors and actions which amount to a criminal offence then recourse is available through the criminal justice system. These types of crimes are referred to as 'hate crime'. Where any such incidents occur, it is the responsibility of the police to record and investigate those incidents. Where sufficient evidence is available a prosecution is considered by the Crown Prosecution Service (CPS) who apply the Code for Crown Prosecutors to determine whether a person should be charged and if so with what offence.

Hate crime can be used to describe a range of criminal behavior where the perpetrator is motivated by hostility or demonstrates hostility towards the victim based on one or more of the protected characteristics. A hate crime can include verbal abuse, intimidation, threats, harassment, assault and bullying, as well as damage to property. The National Police Chiefs Council (NPCC) and the CPS use the following agreed definition of hate crime:

'any criminal offence which is perceived by the victim or any other person, to be motivated by a hostility or prejudice based on a person's race or perceived race; religion or perceived religion; sexual orientation or perceived sexual orientation; disability or perceived disability and any crime motivated by a hostility or prejudice against a person who is transgender or perceived to be transgender'.

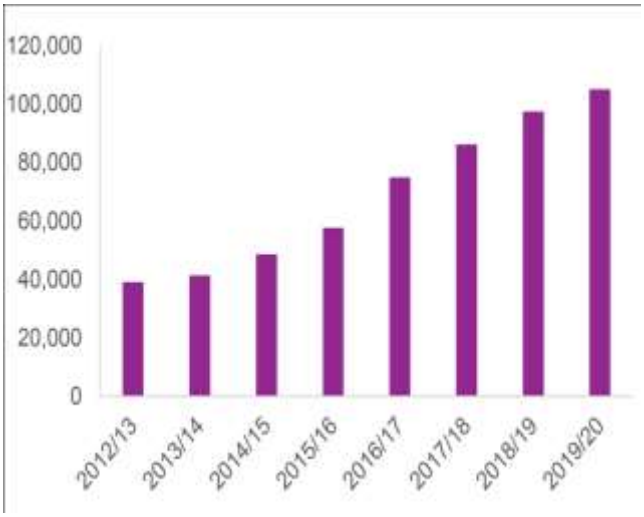
Consequently, evidence of 'hate' is sought during investigations and included in the case file. The police and CPS have systems to identify and flag cases which are hate crime. Consequently, they are monitored and dealt with by suitably experienced and senior prosecutors.

Once a case is flagged both police and CPS adopt a proactive approach to gathering information/evidence to building a case. ***It should be noted that the fact a case is one of 'hate crime' does not mean that the standard of evidence required is any lower for a prosecution BUT that once the evidential test is passed a prosecution is more likely, in the public interest, because it is a hate crime. If convicted the 'hate' is an aggravating factor and evidence is presented to the court, so the sentence reflects this aggravating factor (s145 Criminal Justice Act 2003) in relation to race and religious hatred***

The 'hate crime' flagging is continued throughout the court process with special measures being available in appropriate cases.

In order to understand the scale and complexity of a crime issue standardized, detailed and timely data is important. This is not just needed for operational responses but also to inform and engage the public and formulate strategic and policy responses. An example of the type of data available for the latter is the Home Office official statistics on hate crime for 2019-2020 published on 28 October 2020 which show the following:

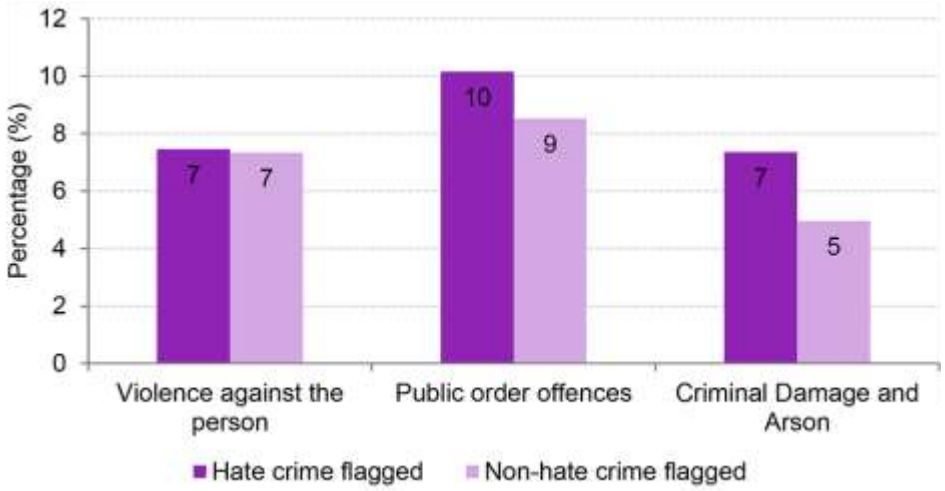
- in year ending March 2020, there were 105,090 hate crimes recorded by the police in England and Wales, excluding Greater Manchester police (unable to supply data due to implementation of a new IT system in 2019), an increase of 8 per cent compared withyear ending March 2019 (97,446 offences)



- increases in police recorded hate crime in recent years have been driven by improvements in crime recording and a better identification of what constitutes a hate crime
- in contrast, the Crime Survey for England and Wales (CSEW) which is not affected by changes in crime recording, shows a long-term decline in hate crime, with a 38% fall in these incidents between the combined year ending March 2008 and year ending March 2009 and the combined year ending March 2018, year ending March 2019 and year ending March 2020 surveys.[57]

There is voluminous data and analysis available in the Home Office publication. An example of the outcomes of the recorded crime is shown below.

Percentage of selected offences dealt with by a charge/summons, offences recorded in year ending March 2020-31 forces



Where an offence is motivated by race or religion the legislation provides for increased sentencing as the offence is classed as an aggravated offence.

[57]This data come from home office statistical bulletin.

Counterterrorism in the UK

The national effort against terrorism is led by the Metropolitan Police Service (MPS) in conjunction with the county and other metropolitan forces. The Counter Terrorism Command (CTC) of the MPS works with the regionally based Counter Terrorism Units (CTUs), managed on a lead Force model basis, and the CPS's Special Crime and Counter Terrorism Division (SCCTD)[58] to investigate and prosecute cases of terrorism. The CTC and the CTUs also work closely with MI5 (Security Service) and MI6 (Secret Intelligence Service) who, respectively, deal with domestic and international intelligence functions.

The SCCTD deals with all terrorism, war crimes and crimes against humanity, official secrets and incitement to hatred cases. In the year ended March 2020 there were 261 arrests for terrorist-related activity. The outcomes for these arrests were as follows:

• 92 (35%) persons were either released under bail pending further investigation or released under investigation without bail conditions

• 82 (31%) resulted in a charge, of which 66 were charged with terrorism-related offences • 58 people (22%) were released without charge

• 19 (7%) faced alternative action, for example receiving a caution, being recalled to prison or being transferred to immigration authorities

• 10 cases were awaiting an outcome to be assigned at the time of analysis.

It should be noted that the cases awaiting outcomes will be finalised in due course. This is likely to result in the increase of number of charges. Therefore, care should be taken when comparing charge rates over a period.

The CPS prosecutors work closely with the police to advise on arrests and provide early investigative advice on ongoing operations.

[58]http:// www.cps.gov.uk

Whilst the CPS remain independent, and must do so in their prosecutorial role, the close liaison and effective working relationships with the police is critical to effective and efficient case building.

It should be noted that in appropriate cases offences can be charged as having 'a terrorist connection' even though the actual charge is not under anti-terrorist legislation. This can lead to some confusion about whether the person convicted is deemed a terrorist as they are not charged with an offence under terrorism legislation.

Schedule 2 of Counter-Terrorism Act 2008 contains a list of offences which a judge could conclude as having a 'a terrorist connection'. These include charges such as murder or causing an explosion. For example, the killings of the soldier Lee Rigby in London and Jo Cox MP in Yorkshire were charged as murder, but both amounted to a terrorism offence and those responsible for the 21/7 bombings were charged with conspiracy to cause explosions, which also amounted to terrorism offences. In all these cases those convicted are considered terrorists, because even though they are covered by different legislation than the Terrorism Acts, the crimes committed clearly had terrorist aims.

Section 30 of Counter-Terrorism Act 2008 imposes special custodial sentences for offenders of particular concern who have committed offences under Schedule 2. Certain serious violent and terrorist offenders will not be entitled to automatic release at the halfway point of their sentence and will only be released early if they do not present a risk to the public.

Whilst it's not appropriate to make direct comparisons between the UK and Pakistan it is nevertheless considered that the following can properly be identified as 'good practice', at least some of which could be adopted in Pakistan.

Good practice identified in UK:

- National co-ordination of operational activity.
- Sharing of intelligence, with appropriate protocols and safeguards, between law enforcement and intelligence agencies.
- Specialist investigators and prosecutors who are well trained in their respective roles.

- Close working relationships, including co-locations, to build effective cases so cases can be prosecuted more effectively.
- Standardized, detailed and timely data to manage performance and inform strategy and policy as well as operations.
- National co-ordination at both strategic and operational levels; and
- Appropriate levels of resourcing.

UK Prevent Strategy: TheUnited Kingdom developed the 'Prevent Strategy' in 2011 as one of the four pillars of the counter terrorism strategy 'CONTEST'. It's fair to say that 'Prevent' has been controversial especially in the Muslim community some of whom see it as the authorities' way of spying on the Muslim community. Initially the implementation did seem to be focused on Islamist terrorism, but it was then recognized that extreme right-wing activities also needed to be addressed by this strategy.

The Prevent Strategy was revised in 2014. It focuses on three key objectives:

1. Challenging the ideology that promotes terrorism and those who promote it. The core of this objective is the 'communications' challenge. The strength of extremist narrative is appreciated, and it is countered by a) deriving counter narrative arguments from theology, b) engaging with communities c) disrupting propagandists and d) developing and deploying a communications strategy for de-radicalization.
2. Protecting the Vulnerable People is the second objective. Persons who fall in the extremist trap are recognized as vulnerable. The allocation of vulnerability value changes the strategic approach. If the people, especially the youth, who tend to drift to extremism are not treated as criminals, the approach to handle them also changes. They need help instead of punitive action by the government.
3. The third objective is supporting sectors and institutions where there are risks of radicalization. Following sectors are focused upon:
    - Education at all levels; primary secondary and higher education
    - The internet and social media

- Faith institutions and organizations where there is a high probability of radicalization
- Health, which has the potential of creating vulnerabilities
- Criminal justice system, focusing on prisons and probation, youth offenders and youth justice
- The charitable sector, from where there is a probability of flow of funds
- Overseas sources of radicalization

The delivery of the 'prevent' strategy has focused on government as a whole approach by improvements in governance, accountability, local delivery, prioritization, robust policing, resource allocation and performance monitoring, evaluation and value for money[59].

Views of Ms. Sara Khan, UK's Commissioner for Countering Extremism

In order to obtain a deeper understanding of the counter extremism approach of UK, NIOC organized a virtual conference with Ms. Sara Khan. Ms. Khan highlighted the importance of recognising the potential threat extremism poses to societies and in undermining democracy. She also advocated that the harms of extremism cannot only be viewed in terms of its links and potential drift towards terrorism, but it should also be realized that extremism as a standalone threat which undermines many social stability norms, like the rights of women and other human rights. She also opined that extremism is not confined to a particular group of people, ideology or religion and that it is on the rise across this spectrum e.g. Far Right extremism but is also spreading in many different ethnic groups in the UK; Muslims, Hindus and Sikhs. She further elaborated that a whole of society approach was required to deal with extremism, using both legal means and non-legal means as well as other measures to counter extremism. She emphasized the importance of building resilience at a societal and educational level against extremism, arguing it is one of the most important bulwarks against the spread of all shades of extremism. Ms. Khan also related her experience of how the UK's Commission was dealing with extremism by adopting an inclusive and consultative approach. She related that she had travelled

[59] Her Majesty's Government, Prevent Strategy (2011, revised 2014)

across UK and met communities, opinion formers, religious leaders and had seen the value of religious leaders using theological counter narratives to extremist ideology to wean away communities from extremism. She also highlighted the role of tech companies and social media in spreading extremist thoughts and their responsibility in spotting and stopping such content. Her approach has been to build the argument on positivity rather than starting off with a negative approach, that an inclusive and plural democracy is a positive vision for a society. Extremism threatens this and that is why supporting counter-extremism efforts is vital. She shared her experiences of talking to Imams in UK and discussing the importance of protecting religious freedom (including the rights of Ahmadiyya Muslims to practice their faith) is an antidote to extremism. She explained that at the conceptual level 'hateful extremism' as defined by the UK Commission in their legal report Operating with Impunity was situated between terrorism and hate crime. There were legal provisions against terrorism as well as hate crimes in UK, but the legal regime was not robust enough or adequate for dealing with hateful extremism. In her experience and giving the example of tech companies and regulators, she said that they complained of the lack of legal backing for their actions against hateful extremism. She explained that the Commission had unpacked hateful extremism and defined it in terms of containing three elements a) the systematic targeting of a group of people or 'out-group' by another group of people 'in-group' who were motivated by or intending to advance a political, racial, religious or other supremacist ideology b) where such activity created and nurtured a conducive environment for hate crime, violence or terrorism and, c) it was an activity which erodes and destroys the rights and freedoms protected in a democracy protected under UK legislation including the Human Rights Act 1998. This definition put hateful extremism into perspective. She also shared that the UK Government had created local roles of Counter Extremism Coordinators to tackle extremism in different towns and cities and that she had commissioned academic researchers to understand the phenomenon. On the definition of extremism, she admitted that it was challenging to legally define extremism but not impossible as her legal report showed where she has provided a definition and recommended the UK Government to commit to devising a new legal and operational framework for hateful extremism. Without such legal measures, persistent extremist actors continue to operate with impunity causing serious harm to society and democracy.

Chapter-6

Key Findings and Conclusions

Defining Extremism

A recent development to define extremism deserves attention. In the Citizens' Protection Rules (Against Online Harm) 2020, extremism has been defined as "the violent, vocal or active opposition to fundamental values of the State of Pakistan including the security, integrity or defence of Pakistan, public order, decency or morality, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs". This definition is problematic, ambiguous and likely to promote internal discord. It calls for serious review. It took more than two decades to restrict and rationalise the definitional aspect of terrorism in the Anti-Terrorism Act 1997, when in 2019 a Supreme Court bench restricted its scope by delinking acts of terror from personal enmity or private vendetta. Similarly, defining extremism requires thorough deliberation.

In its report in 2013, the UK's Prime Minister's Task Force on Tackling Radicalisation and Extremism quotes from the 2011 Prevent strategy in which extremism is defined as "vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs". The similarities between the UK's and Pakistan's definitions may be a coincidence, but it is worth noting that the British government has abandoned plans to define extremism in law after being told it would criminalise legitimate political and religious activities.

Lord Anderson, former independent reviewer of UK's terrorism legislation said recently, "The notion [of extremism] is far too broad to be suitable for legislation. Coercive state powers should not be applied to 'extremism', but only to specific types of violent, abusive and anti-social conduct that there is a sufficiently strong reason to prohibit." According to Sara Khan, appointed to head the UK Counter-Extremism commission in 2017, "Government cannot tackle extremism alone. Extremism is complex and new laws may not result in a reduction. Civil society and

communities are vital partners," and "Extremism is a threat to our rich diversity and fundamental freedoms, and it requires a whole society response."[60]

State's Response: Anti-Extremist Statutory Laws and Gaps

The key findings of this section relate to the three dimensions of prohibitive punishments, which carry dissuasive value, the application and usage of these laws, which means that they are used in high frequency considering the extent of extremism and efficacy of these laws in terms of convictions, so that deterrence is created, and extremism offences and prevalence decreases in the society. Each section of these laws has been analysed across these three variables. This spectrum of analysis leads to deduce overarching findings and specific findings, they are presented below:

Overarching Findings:

1. The first overarching finding is derived from Bentham's 'classical' hypothesis that "man avoids criminal behaviour if that behaviour elicits swift, severe and certain punishment."[61]. The laws which have been analysed and they have been found wanting on all three criteria. The Punishments in the laws often have an upper limit "Up to 5-10 years" but almost all laws have no mention of the lower limit. This provides a huge margin of discretion to the trial court judges to act in judicial restraint. There are no **Sentencing Guidelines** for judges to refer to, which provides for an innate discretion to the judiciary. There have been incidents where sentence awarded have been ridiculously low like 14 days, counting day and night it comes to a week in prison[62]. Secondly the conviction rate is extremely low even when cases are registered under these sections of the law. The low conviction rates have created an **impunity factor** in extremist criminal behaviour. In terms of swiftness of trial process, in case of trials held under PPC, the trial process as glimpsed through the data shows a high number of under trial cases

[60]Tariq Khosa; Countering extremism; Dawn, 20 December 2020
[61]J. BENTHAM, Principles of Penal Law, in THE WORKS of JEREMY BENTHAM (J. Browning ed. 1843)
[62] KII with DIG Shahzada Sultan Punjab Police

from amongst the registered cases. Even under ATA cases the trial process is not swift. The extremism related cases take lower precedence in overstretched judicial system. Hence, this research finds out that there is neither the severity of punishment, nor the certainty and lastly no swiftness either.

2. The second overarching finding is informed by Johan Galtung's *Theory of Aggression*. Extremist behaviours are driven by aggression as they are a cause and result of it in a convoluted cyclical process, feeding each other[63]. Extremism, if not curtailed, ossifies in the social fabric and affects all public and social organizations. This finding was reinforced by KIIs with CTDs where the Police Officers informed that the Prosecutors and Trial Court judges display reluctance in firmly dealing with extremism offenders of hate speech, which is unofficially considered a low-level crime or even no crime at all. The extremism is slowly but surely percolating into the entire social fabric affecting organizations responsible for curtailing it. There have also been reports of intimidation of judges and prosecutors especially in cases of sectarianism. The case of Malik Ishaq, the killed LJ terrorist, is an example. Witnesses also resile due to the threat of aggressive retribution by extremists.

3. The case registration trends indicate that there was a spike in 2015, after the announcement of NAP, under all legal provisions dealing with extremism. This indicates that when there is a policy resolve and challenge of extremism is appreciated by the government, the laws are used. The later year's data indicate a steep decline in registration of cases against legal provisions against extremism. This is a sign that the governments' appreciation of danger of extremism has declined. The success of kinetic operations created a sense of apathy and the threat of extremism as the precursor of terrorism is now not on the radar of the governments.

[63]Galtung, Johan. "A Structural Theory of Aggression." *Journal of Peace Research*, vol. 1, no. 2, 1964, pp. 95–119. *JSTOR*, www.jstor.org/stable/423250. Accessed 30 Jan. 2021.

4. The Blasphemy sections in PPC contain severe punishments. They were added to the adopted Indian Penal Code (Pakistan Penal Code) in 1980s. The severe punishment of life imprisonment and death penalty has, in an ironic twist, fuelled extremism. Even though if the act of Blasphemy is committed the law awards maximum penalty, the extremist elements of any shade take the law in to their own hands and deliver 'mob justice'. This trend is on the increase in recent years, especially after the Mumtaz Qadri Case. According to Center for Social Justice (CSJ), 2020 saw spike in Blasphemy cases with more than 200 cases registered in a year. 1,855 people have been reported to be accused of committing blasphemy from 1987 to 2020. Among them 70pc against Muslims, 75pc of them Shias; 20pc against Ahmadis; 3.5pc against Christians and one percent Hindus. Punjab takes the lead in blasphemy cases registered: 76pc followed by Sindh 19pc. The dreaded feature surrounding blasphemy cases is extrajudicial killings: A total of 78 extrajudicial killings (42 Muslims, 23 Christians, and 9 Ahmadis).

5. There is also a severe gap in the form of 'absence of law'. There are no legal provisions in Pakistan's statutory books against forced conversions under the ruse of marriage. This latest form of extremist behaviour has surfaced in Sindh. It is difficult to trace the origins of this phenomenon of extremism. There is dearth of empirical evidence which can substantiate that the conversion cases highlighted by media and Civil Society were forced. However, the element of coercion cannot be ruled out. Whatever the future empirical research may prove or disprove, this issue has added another plank of extremism in Pakistan, which is potentially be a rallying cry for extremist elements. The Protection of Minorities Bill in Sindh could not be enacted because of strong resistance from the extremist elements. The religious extremists were successful in giving a spin to an affirmative legislation about minorities, branding it as a threat to Islam. This demonstrates that state and government is gradually losing the capability to effectively curb extremism as it mutates.

Specific Findings

The specific findings are derived while examining the data gaps. The specific gaps are listed as follows:

1. At present, only data of extremism-related offences such as incitement of sectarian hatred, hate speech and hate material is being regularly maintained and monitored by CTDs. Cases of blasphemy, forced marriages, forced conversions, and other forms of extremism (racial, ethnic, political, etc.) are not focused as such at the level of the police departments, despite the limelight in which some of these cases are flashed every now and then.
2. There is also low level of accountability when it comes to the outcome of these cases. Failed prosecutions are not analyzed specifically in these cases, and special focus on appeals is also missing, unless a case assumes national or international importance.
3. Police data is being maintained on their traditional pattern, into three/four broad categories: 1) Crime against person, 2) Crime against property, 3) Local and special laws, and 4) Miscellaneous offences. This format is driven by the need of a crime meeting. The performance of police commanders and leaders is assessed based on this format. The key performance indicator is successful disposal (*completion of investigation and trials ending in convictions*).
4. After the terrorism offences assumed importance, a similar format for CTDs has also been designed, that helps the supervisors monitor performance of their units. Data in CTDs is being maintained in a very professional manner. There are also monitoring bodies headed by senior judges that monitor the progress of ATA cases, on the direction of the Supreme Court of Pakistan (SCP), so more reason to keep tabs and maintain data on a regular basis, in well-defined forms.
5. However, the offences that relate to extremism (and not directly terrorism) are not getting adequate attention. They are not discussed specifically in crime meetings.

They are not listed separately on police data forms. There is no separate judicial or police body or unit looking at their progress.

6. The difficulty of consolidating data of offences related to extremism is compounded by the fact that these offences are scattered across nine (9) different bodies of law and rules: some of these laws are enforced by the Provinces while in others the jurisdiction is Federal.

7. The gaps in data can be addressed only if this legal fragmentation is ended, and increased focus is placed on monitoring the progress of such cases on a regular basis. Once, these cases become important, their data will be regularly maintained, and updated in consistent patterns.

8. But, before everything else, designating what offences fall under this new umbrella of extremism is also an important exercise that the governments need to undertake.

9. The biggest gap identified was the non-availability of data about registration and investigation of cases of violation of laws against extremism by the police. In fact, in the short time at our disposal, the only province which could provide the required complete data was province of the Punjab. For the other three provinces, this study had to be confined to analysis to the data of the provincial capitals.

10. A comparison of the data on cases against extremism reveals that while all the provincial capital police forces, invoked two laws (PPC and ATA) to deal with extremism, there were wide differences in which law was being invoked. Three provincial capitals i.e., Lahore, Karachi and Peshawar used PPC much more than ATA while Quetta invoked ATA much more than PPC. In most of the cases of extremism, the ingredients of the legal provisions of PPC and ATA, against extremism, overlap. The gap is to devise a standardization in invoking different extremism laws by the police, in the light of their efficacy, in terms of convictions by the trial courts. It might be worthwhile to study the feasibility of using ATA to

address the violations of extremism, because these cases shall be given due importance by the ATCs, as these are not being given by the normal criminal courts, which are inundated by other serious crimes like murder, rape etc. and do not give due attention to cases of counter extremism. This is likely to address the gap of low disposal of extremism cases by the courts as well as, greater conviction rates. NACTA, as per its legal mandate, can perform this role of standardization of invocation of laws against extremism.

11. Another gap identified was the lack of jurisdiction by the provincial CTDs, in cases involving dissemination of extremism via internet, as prescribed in PECA. CTDs should have jurisdiction over PECA offences, and the legal changes need to be carried out to ensure that.

12. There is also low level of accountability when it comes to the outcome of these cases. Failed prosecutions are not analyzed specifically in these cases, and special focus on appeals is also missing, unless a case assumes national or international importance.

13. Widespread incitement is generally being tackled through restraining orders under MPO Ord. 1960. The use of preventive sections against individual disseminators of extremism needs to be increased under well thought out guidelines by NACTA.

14. Section 11 W of ATA is the most elaborate and comprehensive legal provision against extremist behaviors and expressions of hate of any form. This section should be used more often by Police, however there are no guidelines for Police as to which law needs to be applied against the crime.

15. The language and content of Sections 153-A and 505 PPC are too vague and long winded. A clear distinction between individual and group behavior is missing. These sections are invoked in different provinces in a haphazard manner.

CE Laws Gaps: Through the Lens of Court Verdicts

1. Over-reliance of criminal justice system on FIR:The criminal justice system in Pakistan, including in cases involving extremism, is formally triggered by a First Information Report (FIR). Former Chief Justice of Pakistan Asif Saeed Khosa in his interview with the NIOC pointed out the exaggerated influence that the FIR has acquired in the Pakistani criminal justice system and how that has had a detrimental impact on the investigation, prosecution, and adjudication of cases. The FIR as a matter of contemporary practice is not merely basic information of the criminal occurrence but also includes names of accused, their specific roles in the alleged crimes and the names of the witnesses and a story. While the Pakistani courts have held that the FIR is not a substantive piece of evidence, yet often the courts display great reliance on the FIR. He explained that the legal intent in CrPC about FIR was a simple recording of a criminal act; three things the event itself, time and place. The 'practice' of writing down the whole story in FIR was a key systemic fallacy, which has evolved over the last 50 years. A story is only a 'perspective' and carries all the biases of a perspective. Whilst recording FIRs the entire story is recorded, and names are named, which conditions the investigation to either prove the story 'right' or prove it 'wrong'. This fundamentally weakens the process of 'investigation' and the Investigation Officer (IO) does not have the space to investigate the crime itself from multiple angles and with an open mind. This 'practice' in turns weakens the prosecution and negatively impacts the criminal justice process. He gave the example of Sughra Bibi case[64], in which the FIR had 'conditioned the entire process of investigation, prosecution, trial and judgement', until the appeal to SC"[65]. Two fundamental problems arise out of excessive dependence on the FIR, particularly in extremism cases. Firstly, it creates a pressure and an incentive for the investigating agency to insert or

[64] Criminal Appeal no. 547 of 2017, Muhammad Hanif vs the state, in the court of Mr. Justice Asif Saeed Khan Khosa, Mr. Justice Maqbool Baqir and Mr. Justice Syed Mansoor Ali Shah.
[65] KII with Justice Asif Saeed Khan Khosa

fabricate information, which was not available at the time of occurrence, particularly, in terrorism cases, where the perpetrators are unknown. Second, the FIR being treated as the first step of the criminal justice system makes counter terrorism and counter extremism policing reactive and get into motion only after the occurrence has taken place, ignoring the preparation, incubation, and incitement to the crime.

2. Primacy of Ocular Evidence: Despite some technological advancements in fields of criminal and forensic investigations, Pakistan remains an ocular (eyewitness) testimony based criminal justice system. Under Qanun-e-Shahdat Ordinance, eyewitness accounts and confessions of accused remain the cornerstone of the investigation and adjudication. In terrorism cases, the absence of witness protection, the commission of offenses by unknown perpetrators and other factors make the convictions unsustainable. Additionally, the courts sometime reward and incentivize the quantity of evidence over relevant, quality evidence, which results in many witnesses being presented, many of whom are not necessary, contributing not only to the overload on the system and delays but also exposing prosecution evidence to greater loopholes.

3. Vague and imprecise legal provisions: The overall record of Pakistani courts in dealing with extremism has not been confidence inspiring, shining exceptions notwithstanding. The reasons for the failure of the judicial branch in robustly countering extremism are linked to the overall structure of the legal regime governing countering extremism including the vagueness of the legal provisions. The Supreme Court of Pakistan while deciding on the legality of the Anti-Terrorism Act, 1997, observed that "every citizen has an inalienable right under the Constitution to know what is prohibited by law and what the law does not require him to do."[66] The Court interpreted in that case elaborated it to mean:

[66](PLD 2000 Supreme Court 111)

"The language of the statute, and a statute creating an offence, must be precise, definite and sufficiently objective to guard against an arbitrary andcapricious action on part of the State functionaries[67].

4. Unfettered Judicial Discretion: The vagueness in the phrasing and the language of the law (discussed in Chapter 2 of the study) does not only adversely impact the rights of the accused but also brings unpredictability to the system granting wide discretion to judges at the trial level to subjectively interpret the law and reaching widely disparate decisions. This coupled with the absence of sentencing guidelines and unfettered discretion in awarding sentences (within the upper and lower boundaries of prescribed punishment) leads to confusion, inequity and inefficiency.The confusion and arbitrariness are particularly acute in cases involving offences against religion, where the offenses lack precise statutory definition but often have not evolved judicial definitions and guidelines. Examples are given in Chapter-3 of this study.

5. Failure of preventive function: One area of weakness in dealing with cases of extremism is the failure to hold aider, abettors and conspirators accountable. Apprehending, prosecuting, and convicting conspirators is particularly important, even in cases, where the act of crime has not been committed as this forms the bedrock of protective responsibility of the criminal justice system. However, the prosecution and courts often display an attitude of treating conspiracies, enabling and incitement with less seriousness and convictions are rare. This becomes relevant in cases of terrorist financing, hate speech and of dissemination of material containing incitement to violence. The focus of the Anti-Terrorism legal regime is on violent acts, and even in that group on violent acts which have already been committed, hence the preventive and protective role that the ATA envisages is absent.

[67]Ibid

6. Judicial Bias: In certain cases, court decisions, remarks and observations have condoned extremist and vigilante actions. This study illustrates by example of a few cases in Chapter-3.

Policy Gaps: Key Findings:

Following are the key findings of Chapter-4 of this CE Study related with policy gaps:

- Pakistan does not have a coherent public policy on issues of extremism and radicalization.
- Matters on which there is a clear policy, we see a lack of will to implement it, like mainstreaming of Madaris.
- The intent of the state to counter violent extremism is scattered across several laws that have remained largely ineffective to contain extremism.
- The only strategy available to the government to deal with the issue of extremism and radicalization is the criminal law enforcement strategy, which is not enough and cannot comprehensively tackle extremism in all its forms.
- There is no national action plan or programme to counter extremism and radicalization in place.
- Even in the application and enforcement of laws and rules, the government has backed down when faced with organized resistance of religious pressure groups.
- The outcomes of criminal trials are less than desirable. Most trials end in acquittals and/or lower sentences.
- The government has launched no initiatives to start the process of social change, addressing the underlying causes (social, political, economic and religious) of

extremism and radicalization. In many parts of the country, the ethnic and sectarian hatred is mixed with economic factors.[68]

- There is no national narrative that covers every aspect of our life. Paigham-e-Pakistan, at best, is limited in its scope.
- Government has not actively encouraged research on the causes of extremism, nor has it taken any steps to measure its magnitude.
- Government has not owned and learnt from the research and strategic vision offered by independent think-tanks in the country, and the CE policy guidelines formulated and published by NACTA.
- Incidents of extremist violence are still not a priority of government. There is no special department looking at it, nor is there any focus on the gathering and analysis of data.

Pakistan has all along been aware of the problem of extremism and a need for countering it but has stopped short of articulating a public policy on this key issue and has taken little and ineffective action to fight it out through a comprehensive national programme. The state has placed greater reliance on kinetic operations and military might to eradicate terrorism, but the deeper roots need to be addressed. This requires a social change, and a shift in the governance paradigm. National security will remain a pipe dream if we do not accord topmost priority to the provision of fundamental rights to citizens, including life security and self-esteem. The objectives of establishing peace and security can only be achieved if the state promotes a culture rooted in constitutionalism, human rights, democracy and the rule of law.[69] That needs a very articulate, transparent and unequivocal policy statement from the state that sends a clear message to all the citizens and those engaged in inciting hatred, and spinning extremist narratives, that enough is enough, and that the universal human rights are truly universal and not in conflict with the fundamental mores and principles of religion.

[68] KII with Omar Shahid Hamid, DIG, CTD, Sindh dated 21 January 2021
[69] Dr Syed Akhtar Ali Shah, *Dynamics of religious militancy*, The Express Tribune (13 January 2021).

Dr Samina Ahmed, NIOC's Advisory Board Member aptly recommends dealing with the CE conundrum.

First, informing and educating parliamentarians on the importance of countering extremism, including both by filling in gaps in the law but also by addressing those counter-productive laws that impinge on fundamental freedoms but have little or no impact on the spread of extremist ideology (through workshops, seminars, media op-eds etc).

Second, sensitizing the police on cv and CVE issues, for instance in the context of gender (forced conversions being a case in point (police academy lectures, workshops). It also goes without saying that the police often have its hands tied as the result of political pressures and compulsions in enforcing CE-related laws. Hence the overarching importance of autonomy for and de-politicization of the force.

Third, protections for judges, prosecutors, witnesses and of course, the accused in particularly sensitive cases such as blasphemy (witness protection laws, in-camera trials at the lower court level?).

Fourth, reforming the public education system so that it meets the demands of the job market (NGOS such as the Citizens Foundation are great examples of what can be done). Reforming madrasas is not likely to happen in the foreseeable future but from our research we found that parents, even the poorest, often send their children to madrasas in the absence of a good and accessible public education system.

Finally, on the issue of counter-narratives. I might be mistaken but I don't think top-downwards, state-devised and dictated counter-narratives work in shaping public perceptions. What does work are the state's actions and intent: if religious extremists get away with violating the law (hate speech, hate publications, incitement to violence), extremism will continue to grow within society, which brings me back to my first point: enforce the law by allowing the law-enforcement agencies to do their job. The judiciary on its part should protect constitutionally protected fundamental freedoms and should be held accountable if it does not. Easier said than done in Pakistani context.

Chapter-7

Recommendations and Way Forward

Section 1: Recommendations

1. Changes in policy

- Need to shift emphasis on the CT response of Pakistan from a predominantly kinetic one to a more balanced kinetic and non-kinetic approach. That would imply a greater and long-term emphasis on CE.
- Importance of CE may be impressed upon the relevant effective decision-making echelons on national security i.e., political, military, law enforcement, courts and the civil society through a sustained advocacy campaign.
- Research programmes may be funded by the government to diagnose different dimensions of the ever-evolving extent and nature of the threat of extremism in Pakistan. To get a holistic understanding of the threat from extremism, there is a need to pool knowledge from research, intelligence, interrogations and experts. This can be done by NACTA. This diagnosis should serve as the basis of the policy formulation and its implementation in Pakistan.
- CT NAP should be reviewed, and its CE-related provisions may be distinctly expressed with KPIs, vigorously implemented and regularly monitored by NACTA.
- CVE Guidelines issued by NACTA in 2018 need to be converted into concise and implementable National CVE Strategy. Approval of NSC, Cabinet and the Parliament should be obtained.
- Standardized recording of offences and production of regular performance data regarding CE related laws to assess the efficacy of implementation of the CE laws.

2. Amendments in laws/ rules

It is recommended that:

- All CE laws are reviewed to ensure that offences are clearly defined and are not unnecessarily or inappropriately wide in scope to prevent abuse of the laws for political purposes.
- All CE laws are examined to eliminate unnecessary duplication or overlaps.
- All CE related sections in PPC and ATA may be amended to include lower sentencing limits, to ensure that those found guilty of violation of CE laws by the courts, cannot get away with light punishments.
- Sentencing policy guidelines are formulated by the Law and Justice Commission for the High Courts, District Judiciary and the Anti-Terrorism Courts to improve consistency in sentencing by removing the inappropriate use of discretion.
- Necessary amendments in ATA, to include proscription of organizations and individuals, involved in disseminating extremism, may be deliberated by the legislature. ATA prescribes proscribing organizations and individuals involved in terrorist acts but does not specifically mention proscription of those organizations or individuals involved in propagating violent extremism in the country. Similarly, those spreading extremism, may be eligible to be placed in 4th schedule of the ATA, like being done for those who are associated with terrorist organizations or terrorist acts.
- The provision of ATA, which covers hate speech and religious extremism i.e., Section 11 W, ATA be amended to increase its scope about criminalizing extremism. Following amendment (in bold letters) in the language of the provision is proposed:

"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 that which incites [**or is likely to incite**] religious, sectarian or ethnic hatred or

gives projection to any **[event],** person convicted for a terrorist act, or any person or organization concerned in terrorism or proscribed organization or an organization placed under observations, shall be punishable on conviction with imprisonment which may extend to five years and with fine".

The suggested addition of 'or is likely to incite' as none of the consequences may have happened but are likely to considering all the circumstances. To that extent it can be deemed as somewhat of a preventative measure. Of course, it has the potential to impact on freedom of speech so will be key for each case to be taken on its own merits. The suggested addition of 'event' will assist in dealing with situations which arguably not covered by the current wording.

Blasphemy Cases

- All blasphemy cases should be categorized as Special Report Cases under Police Rules 24.12-15 of 1934. Verification by Sub-Divisional Police Officer (SDPO) and SP Investigation should be mandatory before arresting the accused cited in FIR or during subsequent investigation.

Protection of Minorities

- The Sindh Criminal Law (Protection of Minorities) Bill 2015, approved by the Provincial Assembly in 2016, and denied assent so far, may be enacted, which criminalizes forced conversions of minors, especially girls from the minorities.
- A Bill for the Protection of Minorities was presented in the National Assembly in 2016 against forced conversions. It needs to be taken up by the Minorities Commission and enacted after due deliberations on the issue.
- The Sindh Hindu Marriage Act, 2016 was designed to provide a formal process for Hindus, Sikhs and Zoroastrians to register their marriages. It specified that the bride and groom must both be over 18 and the free and active consent of both parties is required. However, it allows for the termination of marriage by conversion thus failing to protect against the menace of forced conversion. This

provision may be reviewed by the government in consultation with the minority commission.

- Police departments should implement directions given by the Supreme Court mandated One-Man Commission to create dedicated investigative units in cases of forced conversions and marriages.
- Initiative taken by Sindh Police to create District-level complaints cells for minorities need to be replicated in all the provinces.

Proposed Amendments in PECA 2016

- It is proposed that offences under PECA sections 6 to 14, 14-A, 14-B, 16, 16-A, 17, 18, 20, should also be made cognizable, non-bailable and non-compoundable.

1. Punishments in following sections need to be revisited:
    a. In section 3 one year.
    b. In section 4 two years.
    c. In section 5 three years.
    d. In section 6 and 7 Seven years each.
    e. In section 13, 14 and 17, five years each.
2. New sections to be added in PECA-16, are as follow:
    a. Offence related to Virtual currency/Crypto currency (14-A)
    b. Illegal Termination/Transmission of Voice Traffic/data (16-A)
3. Insertion of 44-A: Court proceedings under section 10 (Cyber Terrorism), 11 (Hate speech), 21 (offence against modesty of a natural person or minor), 22 (Child pornography) may be held in camera, or under restricted entry of member of the public, where necessary for the protection of judges, prosecutors, 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

3. Implementation of laws

It is recommended that:

- That there be a comprehensive national review of the implementation of CE laws by examining the end-to-end process of cases from registration of the FIR to eventual disposal by the courts to improve the rate of positive disposals and reduce the timeframe for finalization of cases.
- The Government should establish a body, in law, of experts and stakeholders that is responsible for producing a set of clear and robust guidelines for all courts to consider when determining the sentence to be imposed after conviction under any extremism laws.
    - In determining the sentence, the Judges will be cognizant of the purpose of a sentence which is fivefold: a) To punish the offender – this can include going to prison, paying a fine or any other punishment permitted by law b) To reduce crime – by preventing the offender from committing more crime and putting others off from committing similar offences, c) To reform and rehabilitate offenders – changing an offender's behavior to prevent future crime d) To protect the public – from the offender and from the risk of more crimes being committed by them. This could be by putting them in prison or restricting their activities, e) To make the offender give something back – for example, by the payment of compensation.
    - The factors considered will vary depending on the facts of each individual case but, because the Judges will be following the sentencing guidelines, they will take a consistent approach. The kind of factors the Judge will consider will include seriousness of the offence, harm caused to the

victim(s), the offender's level of blame, their criminal record, their personal circumstances and whether they have pleaded guilty.

- Whilst the courts will continue to have discretion, as part of an independent judiciary, it is nevertheless important that that discretion is not totally unfettered as there must be consistency in sentencing in fairness to individual offenders and as a principle of natural justice.

- The Federal Judicial Academy conduct joint training courses for the ATCs, prosecutors and the police on effective prosecution of cases under the counter extremism laws.
- Police departments give higher priority to investigation of cases of extremism and improve supervision and monitoring of the quality and disposal of such cases by senior police leadership.
- National standardized guidelines be issued to the police about invoking of specific CE laws to deal with cases of extremism. Presently, no such guidelines exist, resulting in wide variations in the use of different CE laws by the provincial police departments. Three provincial police forces invoked the general criminal law of PPC to register cases against extremism and police of one province relied heavily on the ATA. The selection of the law invoked by the police for CE impacts on the quality of disposal by the courts. One reason for the poor disposal of CE cases by the normal criminal courts was that cases of extremism were given less importance by these courts, where numerous cases of murders, attempted murders, rape, dacoity etc. were tried. The disposal of the CE cases by the ATCs, was, as indicated by the available limited data, much better. It needs to be studied whether it would be appropriate to guide the provincial police forces to register cases against extremism under the provisions of ATA, where the necessary legal ingredients are met, instead of the PPC.

- In addition to FIA, the PECA 2016 needs to be brought within the purview of the provincial police departments.
- The MPO should be used more proactively by Provincial police departments to prevent cases of violent extremism by sensitizing officers on the use of this law.
- Greater use be made by the police of Section 99 A, Criminal Procedure Code which empowers the police to forfeit any document containing material which has extremist contents like preaching of hatred against others.
- Section 498-B PPC prohibits forced marriages and provides for a maximum of seven years and minimum of three years imprisonment to "whoever coerces or in any manner whatsoever compels a woman to enter into marriage." This provision of law should be implemented in real earnest and invoked in all the provinces across-the-board, to deter the trend of forced marriages.

4. Structures

a. NACTA

- To bring about a paradigm shift in the national CT effort of Pakistan, from predominantly kinetic to a more balanced non kinetic dimension, NACTA must play a lead role. For that, it should have a Counter Extremism Wing (CEW), manned by experts in human rights, education, religion, media, IT, law enforcement and academia. This can be done within the mandate given to the organization under the NACTA Act and within the existing resources.
- A major gap identified is lack of research and data availability on CE related areas. It is recommended that the CEW of NACTA, develop the expertise and have the authority to formulate a national CE strategy within the framework of NAP 2014 for approval of the government. It should also have the capability and authority not only to plan research on CE related areas but also tabulate national data on CE, carry out its analysis

and disseminate its final assessment in the existing and future trends in extremism to the government and the stake holders.

- Without ensuring a meaningful and effective monitoring of the national CE effort, any CE policy shall be, mere paperwork, like has been happening heretofore. To ensure that the CE policy is translated into concrete action on the ground, it is essential that NACTA is made responsible to the PM, as envisioned in the original NACTA Act and now changed in the latest amendment. This is so, for the simple reason that the powerful stakeholders, amongst which it must coordinate and ask for performance indicators shall take it seriously only, if it has the due stature.

b. FIA

- Internet is emerging as the most common method of disseminating extremism propaganda, not only in Pakistan, but also globally. The premier, civilian focal agency, which has the legal role of investigating cases of violation of cybercrime, through a specially trained wing of experts, is FIA. There is a need to have a section on counter extremism within the anti-cybercrime wing in the FIA. This section can formulate SOPs and guidelines for the CTDs to investigate cases of violation of PECA, as far as, extremism is concerned. Not only that, FIA can also coordinate the tabulation of data about investigation of such cases.

c. Provincial CTDs and Crimes/Investigation Branches

- As stated earlier, all provincial CTDs be legally empowered to investigate cases under PECA.
- All provincial CTDs and Crimes/Investigation Branches should have cells to deal with counter extremism, particularly in terms of research, intelligence collection, monitoring and investigation of cases of violation of PECA, ATA and CE-related PPC offences.

- These cells to consist of experts of not only members from the police but also from sectors such as education, media, religion, IT, researchers etc.
- Special short-term courses be organized for guiding police officers in counter extremism laws and the investigation of these laws

d. PEMRA

- To have a small cell, consisting of those having expertise on CE, for examining content for extremism on the media and initiating necessary action as per its legal authority

e. Criminal Courts /ATCs

- The judges trying cases of extremism, to be given special training in terms of relevant laws and the procedures.
- The District Assessment Committees set up under the orders of the Supreme Court, headed by the District Sessions Judge and having the Distt Police Officer and Distt Prosecutor as members, mandated to analyze cases of acquittal in criminal courts, may be directed to place special emphasis on acquittals in cases of CE.

f. Prosecutors

- A high percentage of cases are pending disposal in the courts. As they say, justice delayed is justice denied. It should be for the prosecutors to highlight the reason for this and suggest remedial measures.
- The Provincial Prosecutors General, to have a small cell in each province, to monitor the progress of cases for violation of anti-extremism laws in their respective provinces

g. FMU

- According to the AMLA (Anti Money Laundering Act), the FMU (Financial Monitoring Unit) is responsible for monitoring cases of terrorist financing and money laundering in the country. It is recommended that the FMU may consider, financing of extremist organizations etc. as part of their TF remit.

5. CE Commission and CVE Centre of Excellence

- CE Commission: The Government of Pakistan has taken a decision to set up a CE Commission "for implementation of national narrative and development of structures against violent extremism and radicalization". This is a welcome development. Ministry of Interior should ensure not only setting up of CE Commission but obtaining support of all the provinces under NISP 2018-23.
- CVE Centre of Excellence: Law Minister Punjab undertook to establish a CVE Centre of Excellence in Lahore. This initiative should be followed up.

Section-2: The Way Forward: Advocacy and Programming

- An essential starting point of any effort to formulate an effective counter extremism response in Pakistan is to highlight the importance of countering extremism as a necessary adjunct to the ongoing predominantly kinetic counter terrorism actions. The important stakeholders in internal security as well as the civil society, focus exclusively on kinetic measures for dealing with the threat to internal security and do not seem to be aware of the importance of dealing with the breeding process of militancy i.e., extremism. This calls for a comprehensive, sustained and credible advocacy campaign to spread awareness about the critical role, countering extremism must play if Pakistan wants to sustain its consistent reduction in the number of terrorist attacks since 2015.
- This advocacy campaign must be focused on creating awareness about the threat of extremism, its nature and extent in Pakistan as well as ways and means to address this challenge. Not only that, it should be inclusive in the sense that it

should involve, not only all the important influencers like legislators, media persons, religious leaders, civil society organizations but also the practitioners i.e., the courts, prosecutors, policemen, prison officers, those having regulatory roles etc.

- After emphasizing the importance of countering extremism through a sustained campaign, the next issue shall be to highlight the gaps in the laws dealing with extremism. This should be preceded by a more comprehensive and rigorous exercise than this one, so that there is adequate data to guide and substantiate such a campaign.
- This can be followed up by inclusive sessions with all stakeholders, with special focus on legislators, lawyers, and media persons, to evolve consensual recommendations about what needs to be done to address these gaps. The recommendations being made in this report can serve as a springboard for such discussions. This campaign would not only create awareness on the issue of countering extremism but also come up with more ideas on how to tackle it.
- Methodology of the campaign can be multidimensional. For stakeholders, like legislators, media men etc., the best format would be several webinars. For creating awareness amongst the general public, that can be done through print, electronic and digital media.
- To form the core narrative of the webinars as well as media campaign, a coherent and cogent argument shall have to be prepared.
- NIOC is well placed to forge an alliance of NGOs and CSOs in Countering Extremism and facilitate to harness community resilience in CE.
- This CE Study is a milestone to achieve SGD-16 goal against Organized Crime in Pakistan.
- In the international context, this study is a step toward realizing UN Agenda 2030 for inculcating a culture of lawful behavior and to launch a battle for public good.

Conclusion

This CE Study's conclusion is for the state and society to renegotiate the social contract to uphold constitutionalism, rule of law and good governance. Our national purpose was delineated by the Founding Father Jinnah in address to the Constituent Assembly on 11 August 1947. The narrative against extremism must be built around the vision for Pakistan to be a tolerant, peaceful and progressive nation.

What we must realize is that national security will remain a pipe dream if we do not accord topmost priority to the provision of fundamental rights to citizens, including life security and self-esteem. The objectives of establishing peace and security can only be achieved if the state promotes a culture rooted in constitutionalism, human rights, democracy and the rule of law

[Dr. Syed Akhtar Ali Shah; Dynamics of religious militancy; The Express Tribune, 13 January 2021]

Section 3- Implementation Framework

Sr. No	Actions	Target Audience	Responsible Agencies
1	Stakeholder Analysis and Stakeholder Engagement Strategy & Plan	Adopting society as a whole approach- Legislature, executive, judiciary, CSOs, Religious Scholars and Minorities	In-house
2	Stakeholder Engagement Process	• Parliament • Executive • Judiciary • Legal experts • CSOs	NA& Senate Secretariat, Pakistan Institute of Parliamentary Services, Legislators
			Ministry of Interior, NACTA, Police Departments, FIA, NPB
			National Judicial Policy Making Committee (NJPMC) through LJCP, Judicial Academies & Pakistan Bar Council
			CSOs networks, advocacy

Sr. No	Actions	Target Audience	Responsible Agencies
			groups, HRCP etc.
3	Development of draft legal amendments	Legal Experts and Law Enforcement Experts: Ministry of Law and Justice; Law and Justice Commission and relevant ministries and departments	Organize a series of workshops inviting legal experts and law enforcement experts to develop legal amendments in all laws
4	Developing Sentencing Guidelines	Legal Experts	NJPMC through LJCP and Judicial and Police Academies
5	Developing Police application of law guidelines	LEA experts	National Police Bureau and all Police Departments
6	Developing Prosecution guidelines in extremism cases	Legal experts and LEA experts	Home Departments, Prosecution Departments and Police Services
7	Developing a religious narrative against extremism and its dissemination	Religious scholars and media	Mutahida Ulema Board, Council of Islamic Ideology and media houses
8	Developing guidelines for combating on-line hate content	LEAs and Regulatory Bodies	PEMRA, FIA, CTDs
9	Strengthening Counter Extremism Commission by support in development of research and communications strategies	CE Commission, Government of Pakistan	Ministry of Interior: Nacta-CE Commission Secretariat (as and when established)
10	Technical support in establishing CVE Centre of Excellence in Punjab	Government of Punjab	Punjab Government; Law and Home Departments

NATIONAL INITIATIVE
AGAINST ORGANIZED CRIME
PAKISTAN

About NIOC:

National Initiative against Organized Crime (NIOC) is the first-ever initiative against Organized Crime in Pakistan, which was launched in November 2019. It is led by a group of committed professionals and experts with law enforcement, media and other public service backgrounds. Through developing an empirical evidence-base and conducting hands-on consultations, NIOC aims to build community resilience and influence public policy to combat organized crime including terror financing, drug trafficking, human trafficking and cybercrime. With a complex governance structure having multiple layers of stakeholders, the criminal justice system and law enforcement apparatus require better coordination and capacity building. NIOC tries to identify the gaps and suggest improvements in the Criminal Justice System (CJS).