

TERRORIST AFFECTED AREAS (SPECIAL COURTS)

ACT, 1992 (X OF 1992)

An Act to provide for the suppression of acts of terrorism, subversion and other heinous offences in the terrorist affected areas.

WHEREAS it is expedient to provide for the suppression of acts of terrorism, subversion and other heinous offences in the terrorist affected areas and for matters connected therewith or incidental thereto; It is hereby enacted as follows :--

1. Short title, extent and commencement.- (1) This Act may be called the Terrorist Affected Areas (Special Courts) Act, 1992.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

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

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

(b) "Government" means the Federal Government;

(c) "Civil armed forces" means the Pakistan Rangers, the Frontiers Crops. Pakistan Coast Guards. Frontier Constabulary or any other force notified by the Government as such;

(d) "Notification" means a notification published in the official Gazette;

(e) " " Public Prosecutor" means a Public Prosecutor" or an Additional Public Prosecutor or a Special Public Prosecutor appointed under section 12;

(f) "Schedule offence" means an offence specified in the Schedule being an offence committed in a terrorist affected area;

(g) "Special Court" means a Special Court established under section 6;

(h) "terrorist affected area" means an area declared as a terrorist affected area under section 3;

(i) "Zone" means a zone constituted under section 3;

(j) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

(2) Any reference in this Act to the code or any provision thereof shall in relation to an area in which the Code or such provision is not in force be construed as a reference to the corresponding law or the relevant provisions of the corresponding law, if any, in force in that area.

3. Declaration of terrorist affected area.-- If the Government is of the opinion that offences of the nature specified in the Schedule are being committed in any area on such a scale and in such a manner that it is expedient for the purpose of coping with such offences to have recourse to the provisions of this Act, it may, by notification.

(a) declare such area to be a terrorist affected area;

(b) constitute such area into a single zone or into as many zones as it may deem fit; and

(c) direct the Provincial Government of the Province in which such zone is situated to appoint a Magistrate for each zone or a number of such zones.

4. Use of Police and Civil Armed Forces, etc.-- (1) if a Magistrate on receiving a police report or other information is of the opinion--

(a) that any person in the zone is harboring criminals, keeping as hostage any person who has been kidnapped or abducted, indulging in violence constituting a cognizable offence or acting in breach of an order for the time being in force prohibiting the assembly of more than five persons or violation of curfew or transporting weapons or firearms, ammunition or explosive substances or carrying weapons or firearms, ammunition or explosive substances on his person. whether openly or concealed, in breach of law or for unlawful purposes;

(b) that it is necessary to destroy any illicit arms dump or prepared or fortified position or shelter from which armed attacks are made or are likely to be made or any structure used a straining camp for armed insurgents or utilized as a hideout by armed gangs of dacoits or anti state elements or absconders wanted for any offence;

(c) that it is necessary to arrest any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence; or

(d) that it is necessary to enter and search without warrant any place to make arrest of any such person or to secure release of any person illegally confined or detained or for recovery of any property reasonably suspected to be crime property or recovery of any arms, ammunition or explosive substances or lethal weapons believed to be unlawfully kept;

may be verbal orders require such person to comply with law desist from indulging in unlawful activity, surrender himself or anything in his control.

(2) If his orders under subsection (1) are not complied with, the Magistrate after such warning as may be sufficient in his opinion and use of force become necessary for the purpose of securing compliance with the said orders may direct the officer or Junior Commissioned

Officer or the police or civil armed forces officers at his disposal to secure such compliance and to use necessary force even to the extent of causing death.--

(a) against any person referred to in clause (a) of the said sub section;

(b) to destroy any illicit arms dumps prepared or fortified position or shelter from which armed attacks are made or are likely to be made or any structure used as training camp for armed insurgents or utilized as a hideout by armed gangs of dacoits or antistate elements or absconders wanted for any offence;

(c) to arrest without warrant any person referred to in clause of the said sub section; or

(d) to enter and search with warrant, any place to make arrest of any such person or to secure release of any person illegally confined or detained or for recovery of any property reasonably suspected to be crime property or any arms ammunition or explosive substances or lethal weapons believed to be unlawfully kept

5. Power of police, civil armed forces, etc.- (1) When the Magistrate cannot be communicated with any police officer not below the rank of Sub-Inspector or an officer of equivalent rank in the civil armed forces or a Naib Subedar may after sufficient warning use necessary force even to the extent of causing death.--

(a) against any person referred to in clauses (a) of sub section (I) of section 4; or

(b) to destroy any illicit arms dump prepared or fortified position or shelter from which armed attacks are made or are likely to be made or any structure used as training camp for armed insurgents or utilized as a hideout by armed gangs of dacoits or antistate elements or absconders wanted for any offence; or

(c) to arrest without warrant any person referred to in clause of sub section (1) of section 4; or

(e) to enter and search without warrant any place to make arrest of any such person to secure release of any person illegally confined or detained or for recovery of any property reasonably suspected to be crime property or any arms, ammunition or explosive substances or lethal weapons believed to be unlawfully kept.

(2) The officer referred to in subsection (1) shall, at the first opportunity as and when it becomes practicable for him to communicate with magistrate, do so and shall hence forward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

6. Establishment of Special Courts- (1) For the purpose of providing for speedy trial of scheduled offences committed in a zone, the Government may establish by notification a Special Court in relation to such zone.--

(a) within such zone; or

(b) if the Government having regard to the exigencies of the situation prevailing in such zone considers it expedient so to do at any place outside such zone but within the province in which such zone is situated.

(2) Notwithstanding anything contained in subsection (1), if having regard to the exigencies of the situation prevailing in a province, the Government is of the opinion that it is expedient to establish in relation to a zone, or in the relation to two or more zones, in the province, a Special Court outside the said zone or zones, for the trial of such scheduled offences committed in the zone or zones the trial whereof within the zone or any of the zones--

(a) is not likely to be fair or impartial or completed with utmost dispatch; or

(b) is not likely to be feasible without occasioning a breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and the person constituting the Special Court, or any of them; or

(c) is not otherwise in the interest of justice, the Government may, by notification, establish in relation to such zone or zones a Special Court at such place outside the said zone or zones as may be specified in the notification.

7. Composition and appointment of Presiding Officers of Special Court.- A Special Court shall consist of a Judge, being a person who is, or has been, or is qualified for appointment as, a Judge of a High Court and is appointed by the Government after consultation with the Chief Justice of the High Court.

8. Place of sitting.- (1) A Special Court shall sit at such place as the Government may by order, specify in that behalf.

(2) Subject to the provisions of subsection (1), A Special Court may, if it considers it expedient or desirable so to do, sit for holding trial of a case at any place other than the ordinary place of its sitting in the province in which it is established;

Provided that, if the Public Prosecutor certifies to the Special Court that it is in his opinion necessary for the protection of the accused or any witness or otherwise expedient in the interests of justice that the whole or any part of the trial should be held at some place other than the ordinary place of its sitting, the Special Court may, after hearing the accused make an order to that effect unless, for reasons to be recorded in writing, the Special Court thinks fit to make any other order.

9. Jurisdiction of Special Court.- (I) Notwithstanding anything contained in the code or in any other law, a scheduled offence committed in a zone in a province, shall be triable only by the Special Court exercising territorial jurisdiction in such zone.

(2) Notwithstanding anything contained in subsection (1), if in respect of a case involving a scheduled offence committed in any zone in a province, the Government having regard to the provisions of such section (2) of section 6 and the facts and circumstances of the case, is of the opinion that it is expedient that such offence should be tried by the Special Court established in relation to such a zone outside the zone the Government may make a declaration to that effect.

Explanation.- Where a Special Court is established in relation to two or more zones such Special Court shall be deemed, for the purpose of this sub section to have been established in relation to each of such zones.

(3) A declaration made under sub section (2) shall not be called in question in any court.

(4) Where any declaration is made in respect of any offence committed in a zone in a province, any prosecution in respect of such offence shall be instituted only in the Special Court established in relation to such zone outside such zone and if any prosecution in respect of such offence is pending immediately before such declaration in any other court, the same shall stand transferred to such Special Court and such Special Court shall proceed with such case from the stage at which it was pending at that time.

10. Transfer of cases.- (1) Notwithstanding anything contained in the Act. The Government may, if it considers it expedient so to do in the interest of justice or were the convenience or safety of the witnesses or the safety of the accused so requires, transfer any case--

(a) from any court to a Special Court; or

(b) from one Special Court to another Special Court within or outside the zone but in the same province.

(2) A Special Court to which case is transferred under sub section (1) shall proceed with the case from the stage at which it was pending

immediately before such transfer and it shall not be bound to recall and rehear any witness who has given evidence and may act on the evidence already recorded.

11. Powers of Special Courts with respect to other offences.- (1) When trying any scheduled offence, a Special Court may also try any offence other than the scheduled offence with which the accused may under the Code, be charged at the same trial.

(2) If in the course of any trial under this Act, it is found that the accused person has committed any other offence, the Special Court may, whether such offence is or is not a scheduled offence, convict such person of such offence and pass any sentence authorized by law for the punishment thereof.

11-A. Admissibility of confession made before Police.- Notwithstanding anything contained in section 38 of the Qanun-e-Shahadat, 1984 (P.O. 10 of 1984), the confession made by a person accused of a scheduled offence before a police-officer not below the rank of Deputy Superintendent of Police maybe proved against such person;

Provided that the Special Court may for admission of confession in evidence, require the police-officer to produce the complete record of such confession, including video-audio tapes and other devices which were used for recording of the confession.

12. Public prosecutors.- (1) For every Special Court, the Government shall appoint a person to be the Public Prosecutor and may appoint one or more person to be Additional Public Prosecutor or Additional Public Prosecutors;

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

(2) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor shall be deemed to be

a Public Prosecutor within the meaning of section 492 of the Code, and the provisions of the Code shall have effect accordingly.

13. Procedure and powers of Special Court.- (1) The officer-in-charge of a police-station shall complete the investigation and forward directly to the Special Court a report under section 173 of the code within fourteen days in respect of a case triable by such court;

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

(2) Any default on the part of an officer-in-charge of a police-station, an investigating officer or any other person required by law to perform any functions in connection with the investigation, that results in or has the effect of delaying the investigation or submission of the report under sub-section (1), shall be deemed to be a willful disobedience of the order of the Special Court and dealt with under the law accordingly.

(3) the Special Court may directly take cognizance of a case triable by such court without the case being sent to it under section 190 of the Code.

(4) In cases triable by a Special Court, orders for detention of an accused in police custody under section 167 of the Code shall be obtained from the Special Court Concerned which shall record reasons for authorising or refusing such detention;

Provided that where an accused cannot within twenty-four hours be produced before the Special Court, a temporary order for police custody no exceeding twenty-four hours maybe obtained from the nearest Magistrate for the purpose of producing the accused before the Special Court within that period.

(5) Where in a case triable by the Special Court, an accused has been released from police custody under section 169 of the Code, or has

been remanded to judicial custody, the Special Court may, on good grounds being shown by a Public Prosecutor or Law Officer of the Government, for reasons to be recorded in writing, make an order for placing him in police custody for a period not exceeding ten days for the purpose of further investigation in the case.

(6) For the purposes of sub Sections (4) and (5), a Special Court shall be deemed to be a Magistrate.

(7) On taking cognizance of a case, the Special Court shall proceed with the trial from day to day and shall decide the case within thirty days.

(8) A Special Court shall not adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interest of justice and no adjournment shall, in any case, be granted for more than two working days.

(9) A Special Court shall not merely by reason of a change in its composition or transfer of a case under sub section (1) of Section 10 be bound to recall and re-hear any witness who has given evidence and may act on the evidence already recorded.

(10) Any accused person may be tried in his absence if the Special Court after such inquiry as it deems fit, is satisfied that---

(a) Such absence is deliberate and brought about with a view impeding the course of justice: or

(b) the behavior of the accused in Court has been such as to impede the course of justice and the Special Court has on that account ordered his removal from the Court:

Provided that in a case referred to in clause (a) the accused person shall not be tried unless a proclamation in accordance with the provisions of Section 87 of the Code has been published in respect of him, which proceedings shall be completed by the Special Court within

seven days and until the proclamation has been published in at least three national daily newspapers out of which one shall be in Urdu language and the Court may also proceed under section 88 of the code; Provided further that the Special Court shall proceed with the trial after taking necessary steps to appoint an advocate to defend the accused person who is not before the Court.

Explanation.- An accused who is tried in his absence under sub Section (10) shall be deemed not to have admitted commission of any offence for which he has been charged.

(11) the advocate appointed under the second proviso to subsection (10) shall be a person selected by the Special Court for the purpose and he shall be engaged at the expense of the government and a notice of his appointment shall be published by the Special court in the newspapers referred to in the first proviso to that sub-section.

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

Provided that the Special Court may exercise its powers under this subsection in a case in which a person as aforesaid appears before it after the expiration of the said period and satisfies it that he was prevented from appearing within the said period by circumstances beyond his control.

(13) Where a scheduled offence is punishable with imprisonment for a term not exceeding three years or with fine or with both, a Special Court may notwithstanding anything contained in subsection (1) of Section 260 or Section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the code ad the

provisions of Sections 263 to 265 of the Code shall, so far as may be apply to such trial.

Provided that in the case of any conviction in a summary trial under this section it shall be lawful for a Special Court to pass a sentence of rigorous imprisonment for a term not exceeding two year.

Provided further that a Special Court shall not try in a summary way any case which was pending in any Court immediately before the commencement of this Act and is transferred to the Special Court under Section 10.

(14) Subject to the other provisions of this Act, A Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Sessions and shall try such offence as if it were a Court of Session as for as may be in accordance with the procedure prescribed in the Code for trial before a Court of Sessions.

14. Protection of witnesses.- (I) All proceedings before a Special Court shall be conducted in open Court.

Provided that where the Public Prosecutor so applies or the Special Court considers it necessary so to do for any reason, any proceedings or part thereof may be held in camera.

(2) A Special Court may, on an application made by a witness in any proceedings before it or by the Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identity and address of the witness secret.

(3) In particular and without prejudice to the generality of the provisions of sub section may include---

(a) the holding of the proceedings at a protected place:

(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any record of the case accessible to public: and

(c) the issuing of any directions for securing the identity and addresses of the witnesses are not disclosed.

(4) Any person who contravenes any direction issued under subsection (2) shall be punishable with rigorous imprisonment for a term of three years and with fine which may extend to ten thousand rupees.

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

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

17. Appeal.- (1) An appeal against the final judgment of the Special Court shall lie to the Supreme appellate Court which shall consist of---

(a) a Chairman, being a Judge of the Supreme Court to be nominated by the government after consultation with the Chief Justice of Pakistan: and

(b) two Judges of the High Courts to be nominated by the Government after consultation with the Chief Justice of the High Court concerned.

(2) The Government may establish as many Supreme Appellate Courts as it may deem necessary.

(3) Copies of the judgment of a Special Court shall be supplied to the accused and the Public Prosecutor free of cost on the day the judgment is pronounced and the record the trial shall be transmitted to the Supreme Appellate Court within three days of the decision.

(4) An appeal under subsection (1) shall be preferred by a person sentenced by the Special Court to the Supreme Appellate Court within seven days of the passing of the sentence.

(5) The Attorney General or Advocate General may or on being directed by the government shall, present to the Supreme Appellate Court an appeal against the order of acquittal or a sentence passed by a Special Court within thirty days of such order.

(6) An appeal under this section shall be heard and decided by the Supreme Appellate Court within thirty days.

(7) A Supreme Appellate Court shall sit at such places, and have jurisdiction within such territorial limits, as may be fixed by the Government.

18. Trial before special Court to have precedence.-The trial under this Act of any offence by a Special Court, and appearance of the accused before it, shall have precedence over the trial of any other case against the accused in any other Court, except the High Court on its original side.

19. Modified application of certain provisions of the Code.- (1) Notwithstanding anything contained in the code or any other law, every scheduled offence shall be deemed to be a cognizable offence within the meaning of clause (f) of Section 4 of the Code and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Sections 374 to 379 of the Code shall apply in relation to a case involving a scheduled offence subject to the modification that the reference to "Court of Sessions" and "High Court", wherever occurring therein, shall be construed as reference to "Special Court" and "Supreme Appellate Court", respectively.

(3) Notwithstanding the provisions of Sections 439, 496, 497, 498, 498A and 561 A of the Code, no Court other than the Special Court

shall have the power or jurisdiction to grant bail to an accused person in a case triable by a Special Court:

Provided that the Special Court shall not release the accused on bail if there are reasonable grounds for believing that he has been guilty of the offence for which he has been charged, nor shall an accused person be so released unless the prosecution has been given notice to show cause why he should not be so released.

20. Overriding effect of Act.- (1) The provisions of this Act shall have effect notwithstanding anything contained in the Code or any other law but, save as expressly provided in this Act, the provisions of the code shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Special Court: and for the purpose of the said provisions of the Code, the Special Court shall be deemed to be a Court of Sessions.

(2) In particular and without prejudice to the generality of the provisions contained in subsection (1), the provisions of Section 350 of the code shall, as far as may be, apply to the proceedings before a Special Court, and for this purpose any reference in those provisions to a magistrate shall be construed as a reference to the Special Court.

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

22. Power to amend the Schedule.- Government may, by notification, amend the Schedule so as to add an entry thereto or modify or omit any entry therein.

23. Power to make rules.- The Government may, by notification, make such rules, if any, as it may deem necessary for carrying out the purposes of this Act.

24. Saving.- (1) Nothing contained in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to any Court or

other authority under any law relating to the Naval, Military or Air Force or any other armed force of the government.

(2) For the removal of doubts, it is hereby declared that, for the purpose of any such law as is referred to in subsection (K), a Special Court shall be deemed to be a Court of ordinary criminal jurisdiction.

(3) Nothing contained in this Act shall affect any proceedings pending in any Special Court constituted under Suppression of the Terrorist Activities (Special Courts) Act. 1975 (XV of 1975), immediately before the commencement of this Act.

25. Presumption as to certain offences.- (1) Where any person accused of having committed a scheduled offence is found to be in possession of, or to have under his control, an article or thing which is capable of being used for, or in connection with, the commission of such offence, or is apprehended, in circumstances which tend to raise a reasonable suspicion that he has committed such offence the shall be presumed to have committed the offence unless he can prove that he had not in fact committed the offence.

(2) Where a person is accused of having committed by scheduled offence specified in subsection (3), in a terrorist affected area and it is shown that such person had been at a place in such area at a time when firearms or explosives were used at or from that place to attack or resist the members of any armed forces or the forces charged with the maintenance of public order acting in the discharge of their duties, it shall be presumed, unless the contrary is shown, that such a person had committed such offence.

(3) The offences referred to in subsection (2) are the following:

(a) Sections 121, 121A, 122, 123, 123A, and 124A of the Pakistan Penal Code(Act XLV of 1860): and

(b) Criminal conspiracy or attempt to commit, or abetment of, any of the aforesaid offences.

26. Contempt of Court.- A Court shall have the power to punish with rigorous imprisonment for a term which may extend to one year and with fine any person who--

- (a) abuses, interferes with or obstructs the process of the Court in any way or disobeys any order or direction of the Court:
- (b) scandalises the Court or otherwise does anything which tends to bring the Court or a person constituting the court into hatred, ridicule or contempt:
- (c) does anything which tends to prejudice the determination of a matter pending or most likely to come up before the court:
- (d) does anything which, by any other law, constitutes contempt of Court.

Explanation.- In this section , "Court" means a Special Court or, as the case may be a Supreme Appellate Court.

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

The schedule

[see Section 2(f)]

1. Offences under the following provisions of the Pakistan Penal Code (Act XI V of 1860).

- (a) Sections 121. 121A. 122, 123, 123A:
- (b) Sections 216 and 216A if committed in relation to any offender who is accused of having committed any of the offences specified in this schedule:
- (c) Sections 253, 295A, 302, 304, 315 363, 364, 364A, 365, 365A, 367, 368, 392, to 402, 436, and 440.

2. Offences under Section 25 of the Telegraph Act, 1885(XIII of 1885).
3. Offences under Sections 126, 127 and 128 of the Railways Act, 1890 (IX of 1890).
4. Offences under the Explosive Substances Act, 1908 (VI of 1908).
5. Offences under the Arms Act, 1878(XV of 1878).
6. Offences under the Pakistan Arms Ordinance, 1965 (W.P. Ordinance No.XX of 1965).
7. Any offence punishable under subsection (I) of Section 13 of the Prevention of Anti National Activities Act, 1974 (VII of 1974), if such offence constitutes antinational activity within the meaning of sub-clause (1) or sub-clause (ii) of clause (a) of section 2 of that Act.
8. Any offence under the Surrender of Illicit Arms Act, 1991 (XXI of 1991): and
9. Any attempt or conspiracy to commit, or any abetment of, any of the aforesaid offences.