

Civil Liberties vs Counter-Terror Financing Laws: A Pakistani Legal Analysis

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Abstract

Over the past decades, counter-terror financing (CTF) legislation has become one of the most obtrusive tools of state authority, allowing governments to control, limit and incapacitate financial operations in the guise of national security. In Pakistan, the growth of CTF measures, namely, the Anti-Money Laundering Act 2010 (AMLA), the Anti-Terrorism Act 1997 (ATA), the targeted financial sanctions, and the regulatory AML/CFT frameworks, has substantially changed the dynamics between the security and civil liberties. These statutes bestow powers in the state and financial institutions to freeze assets, track transactions, proscribe organizations and limit economic involvement, frequently at a pre-trial or even pre-investigation phase.

The research article is a comprehensive doctrinal and constitutional examination of the counter-terror financing regime in Pakistan with reference to its implications on fundamental rights as a right to fair trial and due process as found in Article 10A of the Constitution of Pakistan. It contends that even though the CTF framework in Pakistan has become internationally compliant particularly in regard to FATF monitoring, it is constitutionally frail as it is dominated by poor procedural protection, insufficient judicial checks and balances as well as acceptance of preventive financial coercion. The article concludes that counter-terror financing and civil liberties do not necessarily go at cross purposes; nonetheless, a balance between the

two can be achieved by reinstating constitutional values of legality, proportionality, and accountability in the Pakistani AML/CFT enforcement framework.

Keywords:

Counter-terror financing; civil liberties; Anti-Money Laundering Act 2010; Anti-Terrorism Act 1997; FATF compliance; Article 10A; due process; preventive justice; Pakistan constitutional law.

I. Introduction

The character of state power at the twenty first century has gone through complete metamorphosis. In addition to the classical criminal justice systems, which examined, charged, and punished a criminal after the offence was committed, modern governance has focused more on prevention. This change is more apparent nowhere than in laws on counter-terrorism financing. By pursuing money and not militants, states aim at disabling perceived threats before they end up using violence.

This global change is reflected in the counter-terror financing (CTF) regime of Pakistan. In the past 20 years, Pakistan has established a comprehensive legislation to ensure that it does not sponsor the activities of terrorist organizations due to internal security issues and the continuous pressure of the international community to adhere to the global standards of AML/CFT regulations (Financial Action Task Force [FATF], 2022). Nonetheless, such a blistering growth has brought up very serious constitutional issues. The Pakistani Constitution guarantees the basic rights and introduces the rule of law as the foundation of the government. With the insertion of Article 10A under the Eighteenth Amendment, the right to fair trial and due process was spelled out and applied in all determinations concerning civil rights and obligations, not only in criminal trials (Constitution of Pakistan, 1973). The constitutional scrutiny is directly involved in the realization of property rights, livelihood, reputation, and freedom of association due to the financial restrictions under CTF laws. The article discusses the presence or absence of consensus in Pakistan between security needs and civil liberties in the counter-terror financing system or whether the nation has codified some form of financial punishment even without trial.

2. Conceptual Framework: Preventive Justice and Constitutional Boundaries

2.1 Preventive Justice in Modern Counter-Terrorism

Preventive justice is the actions of the state that is aimed at averting future injury instead of punishment of previous behaviour. This is the main reason why CTF laws are usually justified, as the authorities can intervene in the initial stages to disrupt a potential terrorist organization. Constitutional theory however warns against making measures to prevent substitutes to adjudication. In Pakistan, financial freezes and restrictions usually are prolonged and even lead to the fact that people and organizations are deprived of an economic life. The preventive measures should meet the same procedures as the punitive acts when their consequences are indistinguishable (Iqbal, 2018).

2.2 Financial Regulation as a Tool of Coercion

AML/CFT regimes make financial regulation a social control mechanism. Banks and regulators turn into quasi-judicial bodies since they are allowed to deny access to the financial system. The promotion of coercive power to the private institutions poses a grave question on transparency, accountability, and remedies accessibility (State Bank of Pakistan [SBP], n.d.).

The Anti-Money Laundering Act of 2010 and the Anti-Terrorism Act of 1997 limit the civil liberties of individuals by empowering the police to launch preventive measures related to finances and administrative procedures even at the pre-trial level in most cases without advance notice and prior judicial determination. In the AMLA, the individual's liberty is restricted by the freeze of bank assets, seizing of assets, closely monitoring their finances, and reporting provisions against the individual based on suspicion rather than actual guilt. Likewise, the ATA constrains the civil liberties of the suspected terrorists by empowering the executive to ban organizations, freeze assets, and limit the finances of those suspected of having ties to terrorism. Despite the need to implement such provisions to ensure greater security against terrorism and money laundering in the Philippines, their application over time does not seem to impose the burden of proof on the enforcing agency to prove innocence but rather the innocence of the suspected individual, contrary to the due process clause enshrined within Article 10A of the Philippines' Constitution.

3. Theoretical Framework: Security, Constitutionalism, and Financial Power
Contemporary constitutional theory acknowledges the fact that fundamental rights are not absolute. Reasonable limitations can be practiced by the state with the aim of achieving the legitimate goals like national security and tranquillity. Nevertheless, constitutional democracies have a set of four requirements that such restrictions must fulfill:

1. **Legality** – authorized by law
2. **Legitimate Aim**- national security, public safety
3. **Necessity** -no less restraining option there
4. **Proportionality and Due Process** - protects against arbitrariness.

These principles are strengthened in the Pakistani Constitution under Article 10A, which provides fair trial and due process to the determination of civil rights and obligations (Constitution of Pakistan, 1973, Art. 10A). The

Supreme Court has severally ruled that the due process is applicable both to criminal trial as well as administrative and quasi-judicial procedures that involve civil rights. CTF laws hence put constitutionalism to its worst-tested case: financial power in the exercise of which no prior adjudication has been made.

4. Research Methodology

This paper adopts the doctrine approach of law employing the analysis of constitutional stipulations, legislative acts, regulatory tools, and policy texts. The primary sources are Constitution of Pakistan and AMLA 2010, ATA 1997 and other government guidance. Such secondary sources are FATF reports, academic literature, and developments reported in judicial decisions. The analysis is normative, and the extent to which current legal frameworks are in line with constitutional ideas of due process and proportionality.

5. Evolution of Counter-Terror Financing Laws in Pakistan

5.1 Anti-Terrorism Act 1997

Anti-Terrorism Act 1997 is the major counter-terrorism law in Pakistan. The ATA was initially concerned with violent acts and special courts but over time, dangerous aspects were added that pertained to terrorist financing, freezing of assets, and organization proscription (Government of Pakistan, 1997).

Although such provisions have valid security interests, they give wide discretionary authority on the executive. Decisions on proscription and associated financial implications may not have sound procedural protection and this creates issues of arbitrariness and excessive reach.

5.2 Anti-Money Laundering Act 2010

Anti-Money Laundering Act 2010” incorporated AML/CFT framework in Pakistan through introduction of Financial Monitoring Unit and suspicious transaction reporting (Financial Monitoring Unit [FMU], 2020). AMLA permits inquiry; attachment and forfeiture of the property involved in money-laundering and terrorist financing.

While reference is made to judicial procedures, enforcement is often carried out with speed and secrecy. This leads to a conflict with article 10A, especially when accounts are frozen without warning or judicial authorization sought soon.

5.3 Targeted Financial Sanctions and UNSC Regimes

Pakistan has given effect to the United Nations Security Council sanctions in national law, meaning that assets of listed persons and entities are immediately frozen (FMU, 2019). These remedies are obligatory under international law; however domestic constitutional problems arise in case of defective application or lack of effective remedy, especially on the part of potential victims.

SBP guidelines acknowledge the possibility of misidentification, and place a responsibility on financial institutions to direct customers to delisting processes (see SBP, 2020). Nonetheless, these remedies frequently are slow and difficult to obtain, leaving the aggrieved unredressed for extended periods of time.

5.4 Regulatory Expansion and Private Sector Enforcement

The State Bank of Pakistan and Federal Board of Revenue have imposed a rigorous set of obligations on the financial as well as non-financial sectors regarding AML/CFT compliance regulations. An increase is noted in the role of the private sector as the front-line implementers of measures, making the institutions practice risk averse behavior, resulting in overdeterrence.

However, this trend heightens civil liberty concerns in the sense that the liberty to take part in the economy can now be denied without the intervention of the state and the courts.

6. Civil Liberties Affected by Counter-Terror Financing Laws

6.1 Right to Fair Trial and Due Process (Article 10A)

Article 10A is applicable in all matters of civil rights and obligations. The freezing of finances directly impacts property and earning and, as such, falls within the provision of Article 10A (Constitution of Pakistan, 1973).

Judicial observations underscore that the freezing of bank accounts without authorization of the courts for indefinite periods of time is not in line with the principles of due process and legality (Business Recorder, 2024).

6.2 Right to Livelihood and Economic Autonomy

Access to financial systems is inherent in economic survival. CTF measures that disable bank accounts may lead to inability to pay salaries, medical fees, or school tuition fees. Such deprivations demean dignity and justify only with rigorous procedural curbs.

6.3 Privacy and Financial Surveillance

The AML/CFT frameworks are very dependent on monitoring financial transactions. Though necessary from a security perspective, unauthorized collection and dissemination of information could lead to an invasion of privacy and dignity in the absence of legislation on data protection.

6.4 Freedom of Association and Charitable Activity

Non-profit bodies and religious NGOs are also more widely scrutinized with the evolution of AML/CFT legislation. While prevention of misuse can be justified, overly burdensome legislation can deter humanitarian and religious expressions (National Counter Terrorism Authority, 2018).

7. FATF Compliance and Constitutional Tensions

Pakistan being grey-listed by FATF from 2018 to 2022 brought about very effective legislative and regulatory changes (FATF, 2022). Although these changes brought about good amendment in legislative aspects, an augmentation in the grounds of safeguards of rights was hampered.

However, this approach could dangerously see constitutional guarantees overshadowed by international obligations.

8. Key Findings

1. The CTF regime of Pakistan focuses on prevention rather than adjudication.
2. Financial regulations generally come before effective judicial review.
3. Private institutions are major coercive powers on their own, yet little leeway is left for securing their accountability.
4. Article 10A remains under-integrated into AML/CFT enforcement practice.

9. Recommendations

1. Obligatory judicial confirmation of account freezes within tight timeframes.
2. Essential living expenses statutory protection during freeze periods.
3. Sanctions-related grievances independent review procedures.
4. Clear appeal procedures against proscription and designation.
5. Integration of data-protection principles into AML/C
6. Parliamentary review of the law of the CTF on a regular

10. Conclusion

A case study on PK: Counter-terror Financing Legislation and Security and Freedom in a Vulnerable Democracy shows how a country like Pakistan faces a tight rope in trying to ensure security and liberty while addressing issues like terror and terror financing in the country. The terror financing legislation in this country is on the balance point of security and liberty.

Regarding the validity of terror and terror financing in Pakistan, this topic will prove especially relevant to Pakistani society and polity today.

Regarding the progression of this research,

A balanced CTF system, in accordance with Article 10A of the Constitution, proportionality, and judicial oversight, will in no way upset Pakistan's existing security strategy, but will instead enhance the viability and democratization of the same." In the end, any kind of security maintained at the expense of constitutional rights is neither stable nor just.

References (APA 7th Edition)

1. Anti-Terrorism Act, 1997 (Pakistan). Government of Pakistan.
2. Business Recorder. (2024, July 7). *FIA cannot freeze bank accounts without court permission: LHC*.
3. Constitution of the Islamic Republic of Pakistan, 1973 (as amended). Government of Pakistan.
4. Financial Action Task Force. (2022). *Jurisdictions under increased monitoring*. FATF.
5. Financial Monitoring Unit, Government of Pakistan. (2019). *Guidance on implementation of United Nations Security Council resolutions relating to targeted financial sanctions*.
6. Financial Monitoring Unit, Government of Pakistan. (2020). *Anti-Money Laundering Act, 2010 (as amended)*.
7. Government of Pakistan. (1948). *United Nations (Security Council) Act, 1948*.
8. Iqbal, M. (2018). Counterterrorism legislation in Pakistan: A critical appraisal. *Pakistan Journal of Criminology*, 10(2), 1–15.
9. National Counter Terrorism Authority. (2018). *Anti-money laundering and counter financing of terrorism guidelines for non-profit organizations*.
10. State Bank of Pakistan. (2020). *Guidelines on targeted financial sanctions under United Nations Security Council resolutions*.
11. State Bank of Pakistan. (n.d.). *Anti-money laundering, combating the financing of terrorism and countering proliferation financing (AML/CFT/CPF) regulatory framework*.