THE VIRES OF PRE-CHARGE TERROR DETENTION IN PAKISTAN AND THE UK: A LIBERAL CRITIQUE AND COMPARISON

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ABSTRACT

This research examines the treatment of terror detainees during pre-charge detention in Pakistan and the UK. Pakistan is the principal focus and the UK acts as a comparator thereto. Suspected terrorists are more vulnerable to maltreatment during pre-charge detention. Their vulnerability increases more in a country like Pakistan where more than 60,000 people have died in various terrorist attacks. Arguably, there is no case-study on the topic in Pakistan and the UK has not been used as a comparator. This scholarship, therefore, attempts to fill the gap by evaluating the treatment of terror detainees during pre-charge detention in Pakistan by using relevant human rights law and principles as a yardstick and the UK as a comparator to the main case.

This scholarship uses liberal critique research methodology assessing pre-charge terror detention in the following six themes: the period of pre-charge terror detention; police interrogation and questioning; internal police review mechanisms; police records; the rights of a terror suspect to contact the outside world; and the detention conditions. The relevant anti-terror legislation of the two countries will be used to find the law on the topic. The related provisions in the UDHR, ICCPR and UNCAT will also be used to find out how we ought to treat terror detainees in a criminal justice system.

The results show that the UK fulfils most of its human rights obligations, while Pakistan does not. The UK provides a maximum period of 14 days for pre-charge detention, while Pakistan has 90 days. A terror suspect can be interrogated for up to two hours at a time in the UK, while police interrogation sessions in Pakistan are unlimited. The UK includes internal police review mechanism as a check on the special powers of the police, while there is no such arrangement in Pakistan. The countries also differ in their police records, the rights of a terror suspect to contact the outside world and the detention conditions. Consequently, Pakistan can arguably learn from the UK's experience on the topic.

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ABBREVIATIONS

AACPR:	Actions (in Aid of Civil Power) Regulation 2011
ATA:	Anti-Terrorism Act 1997
CrPC:	Criminal Procedure Code 1898
ECHR:	European Convention for the Protection of Human Rights and Fundamental Freedoms 1953
ECtHR:	The European Court of Human Rights
EPA:	Northern Ireland (Emergency Provisions) Act 1973
FATA:	Federally Administrative Tribal Areas
HRCP:	Human Rights Commission of Pakistan
ICCPR:	International Covenant on Civil and Political Rights 1966
ICESCR:	International Covenant on Economic, Social, and Cultural Rights 1966
IFTA:	Investigation for Fair Trial Act 2013
IRA:	Irish Republican Army
NACTA:	National Counter-terrorism Authority of Pakistan
NISP:	National Internal Security of Pakistan
PACE:	Police and Criminal Evidence Act 1984
POPA:	Protection of Pakistan Act 2014
POPO:	Protection of Pakistan Ordinance 2013
PPA:	Pakistan Prison Act 1894
PPR:	Pakistan Prison Rules 1978
PTA:	Prevention of Terrorism (Temporary Provisions) Act 1974
STAA:	Suppression of Terrorist Activities (Special Courts) Act 1975
STAO:	Suppression of the Terrorist Activities (Special Courts) Ordinance 1974
TTP:	Tehreek-e-Taliban Pakistan
UDHR:	Universal Declaration of Human Rights 1948
UNCAT:	United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment 1984

CHAPTER ONE

INTRODUCTION

1.0 Background

In 1998, Osama Bin Laden issued the following statement demanding war on the United States and its allies: "Kill the Americans...in any country in which it is possible...in order for their armies to move out of all the lands of Islam... We also call on Muslims...to launch the raid on Satan's US troops...so that they may learn a lesson."[1] On September 11, 2001 ('9/11') his group, Al-Qaida, attacked the twin towers of the World Trade Centre in New York and the Pentagon in Washington. Soon after, the United States claimed the right of self-defence against Al-Qaida and its associates before the United Nations Security Council.[2] In October 2001, the United States attacked the Taliban regime in Afghanistan, which allegedly harboured Al-Qaida. The United States termed these attacks on Al-Qaida the 'War on Terror'.

Following its invasion of Afghanistan, the US military imprisoned hundreds of suspects at its Guantanamo Bay Naval Base in Cuba.[3] The US administration pronounced these detainees as "unlawful combatants".[4] They were, therefore, denied the protections guaranteed by the US Constitution and by international humanitarian laws.[5] The US government also refused to treat them in accordance with the liberty and security of person rights in international human rights laws, which have universal applicability—

[1]Baxi, U. (2005) 'The "War on Terror" and the "War of Terror": Nomadic Multitudes, Aggressive Incumbents, and the "New" International Law', *Osgoode Hall Law Journal*, p. 14.
[2] Rehman, J. (2003) International Human Rights Law, London, New York: Pearson Education Limited pp. 911-914; see also, Beard, J. (2001) 'America's New War on Terror: The Case for Self-Defence Under International Law', *Harvard Journal of Law and Public Policy*, Vol 25, pp. 559 – 560.
[3] Malinowski, T. (2008) 'Restoring Moral Authority: Ending Torture, Secret Detention, and the Prison at Guantanamo Bay', *Annals of the American Academy of Political and Social Science,* Vol. 618, p. 149.
[4] Ibid; see also, Macken, C (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and international Human Rights Law, New York: Routledge, pp. 1-4
[5] Ibid.

across the globe and to every one of us. Instead, the administration authorised its own rules for the treatment of these detainees.[6] It sanctioned certain interrogation techniques possibly amounting to ill-treatment against the detainees held there, including waterboarding, truth serums, hooding, forced shaving of hair, deprivation of light and auditory stimuli, removal of clothing and all comfort items, etc.[7]

The US-led 'War on Terror' soon spread to other regions and countries. Iraq was attacked in 2003, alleging that Saddam Hussain, the then Iraqi leader, possessed weapons of mass destruction and that it was highly likely for the weapons to be used against the US if Al-Qaida had acquired them.[8] In 2004, 10 bombs exploded in four trains in Madrid killing 191 people and injuring more than 1800.[9] Similarly, the 'War on Terror' arrived in the UK in 2005 when a series of coordinated terrorist bombs exploded during the morning rush hour, hitting London's public transport system.[10] This attack killed 52 and it injured another 700. It caused severe disruption and affected the nation's telecommunication systems.[11] Al-Qaida was behind these attacks.[12] Several terrorist attacks have since been launched in the UK, including those in Manchester and London in 2017. Since 2005, many terror suspects in the UK have been arrested and prosecuted while hundreds are still under terrorist investigation.[13] Has the UK resorted to harming these detainees? What human rights protections are in place to safeguard terror detainees from possible police abuses and maltreatment during pre-charge detention in the country?

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[6] Nowak, M. (2006) 'What Practices Constitute Torture? US and UN Standards', *Human Rights Quarterly,* Vol. 28, No. 4, pp. 812 – 813.
[7] Ibid.
[8] Encyclopaedia Britannica, Iraq War 2003 available at https://www.britannica.com/event/Iraq-War last accessed 24 October 2017
[9] Ibid, Madrid Train Bombings of 2004, available at https://www.britannica.com/event/Madrid-train-bombings-of-2004 last accessed 24 October 2017
[10]Memon, N., et al. (2008) "Detecting Hidden Hierarchy in Terrorist Networks: Some Case Studies" Intelligence and Security Informatics Lecture Notes in Computer Science 5075.at pp.484–485.
[11] Ibid.
[12] Ibid.
[13] Spillet, R. (14 September 2017) "One terror suspect is arrested EVERY DAY in Britain with dozens being held after the London and Manchester attacks", Daily Mail available at http://www.dailymail.co.uk/news/article-4883290/Almost-400-terror-arrests-Britain-year.html#ixzz4wSojYUJj last accessed 24 October 2017

Can the UK's treatment of terror detainees be used as a model from which to learn? Or should the UK do more to protect the treatment of terror detainees when fighting terrorism?

The 'War on Terror' has also caused havoc in Pakistan. More than 60,000 people have died in the country since 2003.[14] One of the country's ex-Prime Ministers, Benazir Bhutto, has also fallen prey to the war.[15] Owing to this threat, Pakistan has launched many military operations within its territory to fight against terrorism.[16] The country has also made a 'National Action Plan' to combat terrorism.[17] Pakistan has enacted new anti-terror laws and also amended its existing Anti-Terrorism Act 1997 more than 20 times to contain the threat.[18] These laws allow for capital punishments, such as death penalty, life imprisonment and indefinite detention. More than 30,000 terrorists/insurgents have been killed during these operations and hundreds have been executed.[19] Similarly, thousands have been arrested on suspicion of terrorism and are still pending trial.[20]

Pakistan has concurrently adopted the 'war model' of the US and the 'crime' or 'justice' model of the UK in its fight against terrorism. The treatment of terror detainees under the 'war model' is a question for international humanitarian law. This thesis will

[14] South Asia Terrorism Portal (22 October 2017) Pakistan, available at http://www.satp.org/satporgtp/countries/pakistan/database/casualties.htm last accessed 30 October 2017
[15] "Assassination" (2007) *Benazir Bhutto*, available at http://www.benazirbhutto.com/assassinatination.html, last accessed 30 October 2017
[16] Buncombe, A. (16 June 2014) "Pakistan Steps-up Military Operation to Oust Taliban Militants from North Waziristan", available at http://www.independent.co.uk/news/world/asia/pakistan-military-steps-up-operation-to-oust-taliban-militants-9539611.html last accessed 30 October 2017; See also, Yousaf, K. (21 August 2017) "Rajgal Cleansed of Terrorists as Military Concludes Operation Khyber – IV", Tribune International, available at https://tribune.com.pk/story/1487260/army-announces-completion-operation-khyber-4/ last accessed 30 October 2017; See also, Plett, B. (23 May 2009) "Pakistan Army Vows Swat Victory", BBC New, available at http://news.bbc.co.uk/1/hi/world/south_asia/8065320.stm last accessed 30 October 2017
[17] The Nation (12 January 2015) " The National Action Plan", available at http://nation.com.pk/12-Jan-2015/the-national-action-plan last accessed 30 October 2017
[18] The Protection of Pakistan Act 2014; See also, Bokhari, S.W. (2013) "Pakistan's Challenges in Anti-terror Legislation", Centre for Research and Security Studies.
[19] South Asia Terrorism Portal (22 October 2017) Pakistan, available at http://www.satp.org/satporgtp/countries/pakistan/database/casualties.htm ; see also, Cornell Centre on the Death Penalty Worldwide (30 October 2017) Pakistan, available at http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Pakistan
[20] Bokhari, S.W. (2013) "Pakistan's Challenges in Anti-terror Legislation", Centre for Research and Security Studies.

investigate how suspected terrorists are treated under the 'crime' or 'justice' model in Pakistan. Although it may not be mandatory for the 'war model', the 'crime' or 'justice' model demands fair treatment of terror suspects. Does the war model influence the justice model in Pakistan and the country resort to the abuse and maltreatment of terror suspects? Or, are Pakistan's anti-terror laws and actions regulating the treatment of terror suspects under the justice model in compliance to the human rights laws and norms.

The principal focus of this research is Pakistan. It will assess the treatment of terror suspects during pre-charge detention in Pakistan in light of the human rights law and principles and it will also compare and contrast the same with the UK's experience in this regard.

Part I of this chapter explains the 'what' question of this thesis; that is, what is the treatment of terror detainees during pre-charge detention in the research settings of Pakistan and the UK. This part explains the meaning of the phrase 'treatment of terror detainees'. The scholarship embarks upon the legal nature of pre-charge detention which makes terror detainees more vulnerable to be mistreated during the period. It also defines and differentiates pre-charge detention from other forms of detention. It then formulates six categories/themes to elaborate and grasp the meaning of the phrase 'treatment of terror detainees' during pre-charge detention. It also puts forward the main argument of the thesis. This argument will serve as a thread running throughout the thesis. Parts II and III of this chapter focus on the 'why' and 'how' questions, respectively. Part II puts forward the aims and objectives while Part III describes the methods employed to accomplish these objectives. Finally, Part IV of this chapter gives an overview of the thesis structure.

PART I

1.1.0 WHAT? The Main Focus of this Research

This research project relates to the 'Treatment of Terror Detainees'. It is important to understand here the meaning and scope of the phrase 'Treatment of Terror Detainees'. Dickson has well mapped out its scope, which this research will rely on:

> *When judging [what treatment of a terror suspect] is justified in human rights terms, we need to be clear about the exact form of detention we have in mind. We also need to know what the features of the particular form of detention are – not just how long it may last, but also what conditions the detainees will be kept in; what kind of questioning they will face; what kind of evidence will be admissible resulting from that questioning; what right of access to lawyers and visitors such detainees will have; and what opportunities they will be given to have the legality of their detention reviewed.21*

This excerpt implicitly includes the meaning of the phrase 'treatment of terror detainees'. It focuses on several categories: a particular type of detention, police interrogation and review, police records, rights of a detainee to access the outside world and conditions of detention in which a detainee is kept. Walker is seemingly in agreement with this quote.[22] He has analysed and assessed various forms of detention, its features and duration, police interrogation and its review and access of a terror detainee to police record, rights of the detainee to access the outside world, and the conditions in which a terror suspect is kept with reference to the specific provisions of the anti-terror law in the UK.[23]

Similarly, Londras has also used the above categories/themes to analyse and assess the 'preventive detention' in light of the human rights standards and its impact on the domestic courts' decision.[24] Posner, while advocating strict anti-terror laws to cope with the threat from modern terrorism, has also used these categories.[25] In his book,

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[21] Dickson, B. (2009) "The Detention of Suspected Terrorists in Northern Ireland and Great Britain", *University of Richmond Law Review* 43, pp.929-930.
[22] Walker, C. (2009) *Blackstone's Guide to the Anti-Terrorism Legislation* at pp.145–155.
[23] Ibid.
[24] Londras de, F. (2011) Detention in the 'War on Terror': Can Human Rights Fight Back? Cambridge: Cambridge University Press.
[25] Posner, R. (2006) Not a Suicide Pact: The Constitution in a Time of National Emergency, Oxford University Press: Oxford and New York

Posner has allocated a separate chapter to detention and interrogation and in places has shed light on the rest of the categories, such as incommunicado detention, detention conditions, and so on. Sunstein has used these categories while declaring that 'precautionary principles'[26] are ill founded to rely on for the prevention of terrorism.[27] Macken has also used these categories to differentiate between 'preventive' and 'pre-charge' detention and has suggested that preventive detention is being replaced by pre-charge detention in terrorism cases.[28]

This research relies on the meaning of the 'treatment of terror detainees' covering the main six categories, themes, or the Dickson's principles, as follows: the period of pre-charge detention; police interrogation and questioning; internal police review mechanisms; police records; rights of a terror suspect to contact the outside world; and detention conditions. This thesis makes a case-study of the six categories or themes during the period of pre-charge detention in Pakistan to assess the treatment of terror detainees in the country in light of the relevant human rights laws and norms and uses UK as a comparator to the main case – Pakistan.

It is also important to define and differentiate pre-charge detention from other forms of detention to refine our focus of the main case-study on the topic. The term 'detention' is very broad and it can be given in various situations under the anti-terrorism regime. Therefore, it is important to understand and differentiate between all forms of detention and limit ourselves to only one particular type to narrow down our focus. There are five types of detention.[29] The first is called 'indefinite detention', which is defined as confiscating the terror suspect's liberty for an indefinite period. Because the detainee is

[26] Sunstein, C. (2005) Laws of Fear: Beyond the Precautionary Principle, Cambridge: University Press. P. 4 "The Precautionary Principle takes many forms. But in all of them, the animating idea is that regulators should take steps to protect against potential harms, even if casual chains are unclear and even if we do not know that those harms will come to fruition."
[27] Ibid.
[28] Macken, C. (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and International Human Rights Law, New York: Routledge
[29] Dickson, B. (2009) "The Detention of Suspected Terrorists in Northern Ireland and Great Britain", *University of Richmond Law Review*, 43

neither charged nor released soon after arrest, it is also called 'internment' or 'detention without trial'.[30] It is also referred to as 'administrative detention' because the detention order is issued by the executive and not by the judiciary.[31] However, it is most commonly known as 'preventive detention', which is used as measure of precaution to prevent the occurrence of any terrorist attack.[32] The second form is pre-trial detention, which refers to detention pending trial but after the framing of charge.[33] It is also termed as 'post-charge detention'. The third form is detention at seaports or airports. The fourth form of detention refers to cases of 'stop and search', which can happen anywhere in a country.[34]

The last form is called 'pre-charge' detention, which is defined as where the suspect is detained soon after arrest for a fixed term to obtain evidence, information, statement or confession before a charge is framed.[35] The purpose of the detention is either to charge or set the detainee free on insufficient evidence. It is also called 'investigative detention'. This research will focus on the treatment of terror detainees during pre-charge detention particularly in Pakistan. Consequently, all other forms of detention are outside the purview of the research, except, when necessary, some contextual references may also be made to these other forms of detention from time to time. Similarly, arrest (i.e. how a terror suspect is arrested, how much force is allowed to make such arrest, and what are the arrest powers and legal requirements, etc.) also lies outside the scope of this research.

[30] Ibid.
[31] Macken, C. (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and International Human Rights Law, New York: Routledge, pp. 5 -8
[32] Ibid.
[33] Awan, I. (2011) "The Erosion of Civil Liberties: Pre-charge Detention and Counter-terror Laws", The Police Journal, p. 281; see also Dickson, B. (2009) "The Detention of Suspected Terrorists in Northern Ireland and Great Britain", *University of Richmond Law Review*.
[34] Ibid.
[35] Dickson, B. (2009) "The Detention of Suspected Terrorists in Northern Ireland and Great Britain", *University of Richmond Law Review*, 43

1.1.1 The Legal Nature of Pre-charge Detention

Why is pre-charge detention selected as the subject of this scholarship? This question provokes us to understand the legal nature of pre-charge detention and the reasons why terror detainees are particularly vulnerable to be mistreated during that period.

Stigall defines pre-charge detention as "detention of a suspect for the purpose of obtaining evidence for use at a subsequent criminal prosecution."[36] According to Macken:

> *The purpose of pre-charge detention is to give policing and investigative authorities time to gather sufficient evidence for use in a criminal proceeding against the detainee. Pre-charge detention operates to "freeze time" to facilitate the investigation of a specific and concrete criminal offence the detainee is reasonably suspected to be involved in.*[37]

Walker defines pre-charge detention in terrorism cases as

> *The detention allowed subsequent to arrest…to afford the police the widest opportunities for investigations and so departs considerably from [detention in ordinary criminal law]. The detention period may then be extended for further judicially-authorised periods.*[38]

Meanwhile, according to Liberty, "Pre-charge detention refers to the period of time that an individual can be held and questioned by police before being charged with an offence."[39] In addition, Awan argues that

> *Pre-charge detention requires suspects to be held only for the purpose of gathering evidence in respect of criminal offences. This means that they cannot simply be detained for public safety reasons. Once the police have exhausted their questioning of a suspect, the person must either be released or charged.*[40]

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[36] Stigall, D.E. (2009) Counter-terrorism and the Comparative Law of Investigative Detention, Amherst: Cambria Press, p. 6
[37] Macken, C. (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and International Human Rights Law, New York: Routledge, pp. 138 - 139
[38] Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation, 2nd Edition, Oxford: Oxford University Press, p. 137
[39] Liberty, "Extended pre-charge detention", available at https://www.liberty-human-rights.org.uk/human-rights/countering-terrorism/extended-pre-charge-detention last accessed on 27 July 2017
[40] Awan, I. (2011) "The Erosion of Civil Liberties: Pre-charge Detention and Counter-terror Laws", The Police Journal, p. 281

The legal nature of the pre-charge terror detention is evident from the above definitions. Pre-charge detention demands to confiscate the liberty of a person, who is reasonably suspected of terrorism, for a specified period of time for getting more information or evidence, recording their confessions or statements for the two main outcomes: formally charge or set them free. There is no third outcome in pre-charge detention.

Pre-charge terror detention is a waiting period in which police have to determine that the reasonable suspicion upon which the person is arrested and detained is 'concrete' or the arrest was made on a 'mere' suspicion based on a rough guess or indication and was therefore wrong. A reasonable suspicion 'presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence'.[41] So, if the reasonable suspicion corroborates well with the facts of the offence committed, it turns into a concrete suspicion and the person is formally charged with the offence, however, if the suspicion is a mere guess or a rough indication the detainee is set free.

The legal nature of pre-charge terror detention is straightforward providing only two outcomes (charge or set free the detainee) and if there turns out to be any third outcome then it will be reasonable to investigate it. The third outcome is 'mistreatment' of terror detainees during the period especially in the aftermath of the 9/11 attacks. There are various reasons why terror suspects are more vulnerable to be mistreated during that period. Firstly, if the reasonable suspicion of the investigative authorities does not change into a concrete suspicion and the detention is found out to be 'unlawful' the authorities are obliged to pay reparation or the officer who has made the arrest should face any disciplinary actions.[42] To avoid paying off any reparation or facing any disciplinary

[41] Hoffman, D., and Rowe, J. (2003) Human Rights in the UK: An Introduction to the Human Rights Act 1998, 4th edition, Pearson: Harlow, England. p. 192

[42] Tushnet, M. (2010) "Defending Korematsu? Reflection on Civil Liberties in Wartime", Georgetown University Law Centre. See also, Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation

actions police would normally do anything to charge the detainee rather than letting him/her go free. For example, terror suspects in Pakistan are falsely charged with another offence if after arrest the reasonable suspicion of the investigative authorities does not change into a concrete suspicion.[43]

Another important reason why terror detainees are more vulnerable during pre-charge detention is the nature of the offence of terrorism. Terrorism is a national as well as a transnational security concern.[44] Richard Posner, Michael Ignatieff and Oren Gross would support torture to coerce terror suspects to confess.[45] In this case individual liberty is often sacrificed for greater good.[46]

In addition, terror suspects are more vulnerable during pre-charge detention because there is no 'political check' to safeguard them during that period.[47] Security laws are often invoked against minorities as precautionary measurement to prevent the occurrence of future terrorist attacks.[48] The cost of security is put in the box of the minorities, where they have hardly any representation in legislature to raise voice against any of the mistreatment they are going through.[49] Consequently, law enforcement agencies get the courage to carry out the maltreatment of terror detainees during pre-charge detention.

2nd edition, New York: Oxford University Press. International Covenant on Civil and Political Rights 1966, Article 9. Available at http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

[43] Khan, M. (2017) "Detention in Pakistan: The Means to an End or the End Itself?" available at http://rsilpak.org/detention-pakistan-means-end-end/ last accessed 26 May 2018

[44] Londras de, F. (2011) Detention in the 'War on Terror': Can Human Rights Fight Back? Cambridge: Cambridge University Press

[45] Gross, O. (2003) "Chaos and Rules: Should Responses to Violent Crisis Always be Constitutional", The Yale Law Journal, vol. 112:1011; Posner, R. (2006) Not a Suicide Pact: The Constitution in a Time of National Emergency, Oxford University Press: Oxford and New York. Ignatieff, M. (2005) The Lesser Evil: Political Ethics in an Age of Terror, Edinburgh: Edinburgh University Press.

[46] Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation 2nd edition, New York: Oxford University Press.

[47] Sunstein, C. (2005) Laws of Fear: Beyond the Precautionary Principle, Cambridge: University Press pp. 204 – 226.

[48] Ibid.

[49] Ibid.

Furthermore, the presumption of innocence, a universally accepted principle of human rights that a person is innocent unless proven guilty,[50] seems faded when it comes to combat terrorism, especially post-9/11 and the treatment of terror suspects in the aftermath.[51] Terror suspects are arrested, detained, produced before special courts escorted by heavy security, including police dogs, and accompanied by media reporters in such a frightened and prejudiced way where "all screaming out: 'these defendants are guilty, they must be guilty because this is a terrorist trial'."[52] Terror detainees are, therefore, more vulnerable to maltreatment during the period of pre-charge detention because they are generally denied their universally accepted principle of human rights—the presumption of innocence.

Lastly, and most importantly, why terror detainees are more prone to maltreatment during police custody is the urge to get more information related to the offence for successful prosecution and also to disrupt further terrorist attacks. To get more information for prosecution and prevention of terrorism the detainee is tortured and they are produced before the court when their torture marks have disappeared.[53] They are often kept in incommunicado detention used as a tool to compel them and thus get out of them further information.[54] Perhaps this is why the Human Rights Committee believes that suspects are vulnerable to be mistreated during police custody[55] and in case the suspect is a terrorist that would further aggravate his/her vulnerability.

In summary, this research aims to evaluate Pakistan's treatment of terror detainees during pre-charge detention—including the period of pre-charge detention, police

[50] Steiner, H. J. et al. (2007) International Human Rights in Context, 3rd edition, New York: Oxford University Press, pp. 432–435.
[51] Luban, D. (2005) Eight Fallacies about Liberty and Security in the 'War on Terror' edited by Wilson, R.A. New York: Cambridge University Press, pp. 252 – 253.
[52] Robertson, G. (2005) Fair Trials for Terrorists in the 'War on Terror' edited by Wilson, R.A. New York: Cambridge University Press. P. 173
[53] Khan, M. (2017) "Detention in Pakistan: The Means to an End or the End Itself?" available at http://rsilpak.org/detention-pakistan-means-end-end/ last accessed 26 May 2018
[54] Posner, R. (2006) Not a Suicide Pact: The Constitution in a Time of National Emergency, Oxford University Press: Oxford and New York.
[55] The Human Rights Committee (1992), General Comment No. 21, 44th session at para. 3

interrogation and questioning, internal police review mechanisms, police records, the rights of a terror suspect to contact the outside world, and detention conditions—in light of the human rights laws in the research setting of Pakistan and the UK, although Pakistan will be the primary focus and the UK will act as a comparator. These categories/themes are further elaborated upon in the following subsections.

1.1.2 The Period of Pre-charge Detention

What is the total period of pre-charge detention in terrorism cases in Pakistan and the UK? One can easily invoke the express provision in the anti-terror laws of Pakistan and the UK and can answer that it is 90-days and 14-days in total, respectively.[56] However, what ought to be the period of pre-charge in the two countries seems to be a particularly difficult question to answer. The main reason for this is that there are no express provisions in any regional or international human rights instruments that clearly stipulate the maximum period of pre-charge detention. Therefore, the situation is blurred which necessitates to assess the period of pre-charge terror detention in the two countries in light of the human rights laws and norms. Followers of the conservative approaches to security what might be loosely described as Bruce Ackerman, Mark Tushnet, Richard Posner, and Oren Gross, would probably support lengthy pre-charge detention to enable law enforcement agencies to successfully carry out their investigation in the prosecution of terror suspects.[57] Meanwhile, followers of the liberal approaches to security—such as David Luban, Claire Macken, Clive Walker, Fernando Teson, David Cole, Jeremy

[56] Anti-Terrorism Act 1997, Section 21E, available at http://pakistanlawyer.com/2016/07/23/anti-terrorism-act-1997/ ;see also, The Protection of Freedoms Act 2012, section 57 available at http://www.legislation.gov.uk/ukpga/2012/9/section/57/enacted

[57] Ackerman, B. (2004) "The Emergency Constitution", Yale Law School, Faculty Scholarship Series, Paper 121; see also, Tushnet, M. (2010) "Defending Korematsu?: Reflection on Civil Liberties in Wartime", Georgetown University Law Centre; Gross, O. (2003) "Chaos and Rules: Should Responses to Violent Crisis Always be Constitutional", The Yale Law Journal, vol. 112:1011; Posner, R. (2006) Not a Suicide Pact: The Constitution in a Time of National Emergency, Oxford University Press: Oxford and New York.

Waldron, Lucia Zedner, Fiona de Londras—see a lengthy period of pre-charge detention as an unnecessary incursion on the rights of the accused.[58] Therefore, this research will critique the 'total' period of pre-charge detention in Pakistan and the UK in light of the human rights law. The critique will also cover the period that a terror suspect is required to spend in police custody 'at a time' and her/his prompt production before a court soon after arrest. Any gaps between the law and practice will also be assessed. The laws and practices of the UK's treatment of terror suspects during pre-charge detention will serve as a comparator to the main case-study, which is Pakistan.

1.1.3 Police Interrogation and Questioning

This scholarship will also cover the duration of each police interrogation session without a break. There is a split between 'securicrats' and 'liberals' on the duration and mode of police interrogations. Lengthy police interrogation sessions are preferred by the conservative approaches to security. Coercive techniques are regarded as useful in extracting evidence and more information about terrorism for preventive purposes. Owing to this utilitarian aspect of coercive police interrogations, torture is openly supported by 'securicrats' such as Richard Posner and Michael Ignatieff.[59] In contrast, the followers of the liberal approaches to security—such as David Luban, Lucia Zedner,

[58] Luban, D. (2005) Eight Fallacies about Liberty and Security in Human Rights in the 'War on Terror' edited by Wilson, R.A. New York: Cambridge University Press. See also: Waldron, J. (2003) "Security and Liberty: The Image of Balance", The Journal of Political Philosophy, vol. 11, No. 2; Cole, D. (2007) "The Poverty of Posner's Pragmatism: Balancing Away Liberty After 9/11", 59 Stan. L. Rev. 1735-1751; Zedner, L. (2003) "Too Much Security", International Journal of the Sociology of Law, 31; Teson, F.R. (2005) Liberal Security in Human Rights in the 'War on Terror' edited by Wilson, R.A. New York: Cambridge University Press; Macken, C. (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and international Human Rights Law, New York: Routledge; Teson, F.R. (2005) Liberal Security in Human Rights in the 'War on Terror' edited by Wilson, R.A. New York: Cambridge University Press; Londras de, F. (2011) Detention in the 'War on Terror': Can Human Rights Fight Back? Cambridge: Cambridge University Press; Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation 2nd edition, New York: Oxford University Press.

[59] Posner, R. A. (2006) Not a Suicide Pact: The Constitution in a Time of National Emergency, Oxford University Press: Oxford and New York. See also, Ignatieff, M. (2005) The Lesser Evil: Political Ethics in an Age of Terror, Edinburgh: Edinburgh University Press.

Clive Walker, Jeremy Waldron, David Cole, Fiona de Londras, Claire Macken—are not ready to interfere significantly with civil liberties that have been achieved through a long struggle. Torture to 'liberals' is totally prohibited and there can never be any place or time where its perpetration should be allowed. Because a terror detainee is more vulnerable to the abuse of law enforcement agencies as far as the legal nature of pre-charge terror detention is concerned, this research will also focus on the length of each police interrogation session without break. In particular, it will ask what is the duration of a police interrogation session in Pakistan? And, what ought it be? How many hours a day should a terror suspect be interrogated? Is and ought there be any break time between the two interrogation sessions? What questions should be asked from the suspect? And, do the police electronically record the interviews? Any gaps between the law and practice will also be assessed. Consequently, the evaluation of police interrogation sessions of the main case-study will form a key part of this study. Certain similarities and differences will also be charted between the main case of Pakistan and its comparator—the UK. Once the charge is framed, any subsequent interrogation (i.e. post-charge interrogation) will not form part of this research project.

1.1.4 Internal Police Review Mechanisms

There are five different ways of reviewing laws. The most common is when a court reviews the law and enforcement thereof to determine whether a terror suspect has been treated in accordance with the law. The second type of review is conducted by a parliamentary committee to rule out any possibility that the law in question would result in the violation of human rights. The third type of review mechanism is called an 'independent review', which assesses any law in question through an independent legal expert to find out whether the application of the law is against the letter or spirit of the

human rights obligations.[60] In addition, there are also independent commissions, which hear complaints against police.[61] The last is an internal police review mechanism, which differs from the four previous review mechanisms. Internal police review mechanisms support the existence of an office within the police department to review the actions of those police offices and officers responsible for the custody and investigation of the treatment of terror suspects.[62] The main purpose of the internal police review mechanism is to safeguard a terror suspect from the abuse of the investigating law enforcement agencies, and to furnish the court with an accurate and impartial account of all the activities carried out during pre-charge detention.[63] The review record plays an important in the outcomes of pre-charge terror detention – promptly charge or immediately release.

This research will critique the laws and practices pertaining to the internal police review mechanisms during the entire period of pre-charge detention in Pakistan. The main case-study will also be compared and contrasted to its representative comparator—the UK—for an in-depth understanding of the importance of police review mechanisms for Pakistan.

1.1.5 Police Records

This research will examine the purpose of maintaining a police record and it will describe its relationship to the treatment of terror detainees. Police records are significant for courts to rely on and they are the basis of the court's judgements.[64] Therefore, an inaccurate police record has an adverse impact on the defence of a terror suspect. This research will critique the law and practice related to the maintenance and availability of

[60] Blackbourn, J. (2014) "Evaluating the Independent Reviewer of Terrorism Legislation" Parliamentary Affairs 67, The University of New South Wales, Australia.
[61] Independent Police Complaints Commission, available at http://www.ipcc.gov.uk/page/our-values-0
[62] Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation, 2nd Edition, Oxford: Oxford University Press.
[63] Ibid.
[64] Ibid.

police records in Pakistan in the light of domestic and international human rights law, and in comparison, to the UK.

1.1.6 Rights of a Terror Suspect to Contact the Outside World

Human rights laws clearly recognise the right of a terror suspect to contact the outside world. The list of the persons included in the outside world is quite exhaustive but the most important categories of persons to reach out to from detention are the family and friends of the terror detainee, the lawyer of his or her choice, medical officers, interpreters, religious and political leaders, and embassy staff if the detainee is from another country.

Once again, there is a tension here between 'securicrats' and 'liberals' on a terror suspect's right to contact the outside world. Followers of the conservative approaches to security—such as Richard Posner, Bruce Ackerman, Mark Tushnet, Oren Gross and so on—would discourage this right and they would support keeping a terror detainee in incommunicado detention indefinitely. Conversely, followers of the liberal approaches to security—such as David Luban, Clive Walker, Claire Macken, Fiona de Londras, Jeremy Waldron and so on—would object to this. They would regard this as a significant violation of human rights especially when the detainees are prevented from contacting a solicitor or legal counsel. Thus, this research will critique the law and action of the Pakistan governing the rights of a terror suspect to contact the outside world in light of the human rights law. Consequently, an in-depth study of the rights of terror suspects to contact the outside world in Pakistan will be carried out which will use human rights laws and norms as yardstick to tell how these rights ought to be and what lessons could be learnt from the UK on the theme.

1.1.7 Detention Conditions

This research will also critique the conditions in which terror detainees are kept during the pre-charge detention. Tough detention conditions are recommended by followers of the conservative approaches to security while liberals think that detention conditions should be humane. However, this research does not take consideration of any of the conditions of convicted criminals in jail. It will only focus on the detention conditions of a terror suspect when he or she is in police custody; that is, throughout the period of the pre-charge detention period. Again, the principal focus is Pakistan to learn not only from the human rights laws and norms on the this but also to learn from the UK's experience.

These six categories/themes will be used throughout this research project to fully appreciate the stances of the conservative and liberal approaches to security on the treatment of terror detainees in Pakistan and the UK. This will help us to understand which security paradigm is reflected in the overall treatment of terror detainees in the two countries, particularly in Pakistan. A rigorous case-study of these six categories will be carried out in Pakistan and in light of the relevant human rights laws and norms to find out what is the law in Pakistan on the treatment of terror suspect and how it ought to be. The treatment will also be compared and contrasted with the UK's example.

1.1.7 The Main Argument of the Thesis

The law and its operation in practice needs to be rigorously evaluated from time to time by legal scholars, especially in countries such as Pakistan where there is no mechanism for an independent law review, to determine if they are fit for purpose because societies change with the passage of time and so should their laws. In Pakistan, more than 60,000 people have died due to terrorism.[65] Pakistan follows a predominantly

[65] South Asia Terrorism Portal (22 October 2017) Pakistan, available at http://www.satp.org/satporgtp/countries/pakistan/database/casualties.htm last accessed 30 October 2017

conservative approach to security to combat this terrorist threat. However, this can result in the violation of some of the detainees' human rights to make them confess or to bring a successful prosecution. Despite this approach, Pakistan's conviction rate is less than 10%.[66] Although there may be many reasons behind the low conviction rates of terrorists in Pakistan, the treatment of terror detainees during pre-charge detention has not been evaluated so far. Therefore, an in-depth assessment of Pakistan's laws and practices governing the treatment of terror suspects during pre-charge detention in lights of the human rights law and Pakistan's comparison, in this regard, with the UK is required. Pakistan is the main focus of this evaluation and UK will be used as a comparator.

Before the main argument of this thesis is put forward, it is important to differentiate among the fights against terrorism. There is a clear distinction between the war, executive and crime paradigms of terrorism.[67] In the war paradigm, it is the military who deal with terrorists.[68] In the executive paradigm, it is mainly the executive who confiscates the liberty of a terror suspect for an indefinite period without being challenged in court.[69] In the case of the crime or justice paradigm, it is neither the military nor the executive but the administration of justice system (i.e. the judiciary) who play an important role in bringing those who are responsible for terrorist attacks to justice in accordance with the public law in force in a country.[70] The war and executive paradigms of terrorism might suit a particular conservative approach to security because they

[66] Shah, S. (12 March 2016) "Poor Prosecution Plays Havoc With Judicial System", The News International, available at http://www.thenews.com.pk/print/104661-Poor-prosecution-plays-havoc-with-judicial-system last accessed 30 October 2017

[67] Angli, M.L. "What Does 'Terrorism' Mean", in Counter-Terrorism, Human Rights and the Rule of Law: Crossing Legal Boundaries in Defence of the State (2013) edited by Aniceto Masferrer and Clive Walker, Glos, UK: Edward Elgar Publishing Limited; See also, Saul, B. "Terrorism as a legal concept", in Routledge Handbook of Law and Terrorism (2015) edited by Genevieve Lennon and Clive Walker, Oxon, UK and New York, USA: Routledge; Blank, L.R. "What's in a Word? War, Law and Counter-terrorism, in Routledge Handbook of Law and Terrorism (2015) edited by Genevieve Lennon and Clive Walker, Oxon, UK and New York, USA: Routledge

[68] Ibid.

[69] Ibid.

[70] Ibid.

actively fight against terrorism while the crime or justice paradigm of terrorism will suit a liberal approach to security because the crime paradigm pursues terrorism passively. This research is not going to substantiate which fight is better in combating terrorism. The purpose of shedding light on the three responses to terrorism is to understand that there are certain boundaries and parameters in which to respond to terrorism in each distinct fight and to set a scene for launching the main argument of the thesis.

The main argument of this thesis is that in the absence of a case-study on the treatment of terror detainees during pre-charge detention in Pakistan, the country is unable to differentiate among the three fights against terrorism. Pakistan follows a predominantly conservative approach to security on the treatment of terror suspects during pre-charge detention by reflecting the war or executive model in its legal response to terrorism. Treatment during pre-charge detention is the subject of the crime or justice model, which requires the adoption of a liberal approach to security to pursue terrorism (as stated in the preceding paragraph). The justice model of terrorism pre-conceives the observance of certain important human rights laws and norms when dealing with the detention of terror suspects arrested on charge. Meanwhile, the war paradigm of terrorism might require the adoption of a conservative approach to security to fight against terrorism but does not require the justice model.

The justice model is also different from the executive paradigm of terrorism, which can detain a terror suspect without charge for an indefinite period for preventive purposes. Consequently, in the absence of a context-based case-study on the treatment of terror suspects during pre-charge detention in Pakistan, the country is unable to clearly differentiate, in its laws and its practice, the justice model from the executive or war model when fighting against terrorism. It seems as if Pakistan merges all the three fights into one. A justice model requires the adoption of a liberal approach to security to fight successfully against terrorism which is not the case in Pakistan because for the same

model the country has adopted a predominant conservative approach to security that is more suitable for the executive or war model of terrorism. It is, therefore, very important to critique the justice model of terrorism, particularly the treatment of terror detainees during pre-charge detention, in Pakistan.

One can counter-argue this point—Pakistan's following of a dominant approach to security in its justice model is a right course of action and is proportionate to the threat from terrorism to the country and its people because more than 60,000 people have died in terrorist attacks since 2003. Especially in the case of Pakistan, it is not the liberal security approaches but the conservative ones that can most effectively fight against terrorism and which can also protect human rights. Consequently, this research project will also evaluate the counterargument to show why it does not hold ground when it comes to the treatment of terror suspects during pre-charge terror detention under the crime or justice model. The counterargument will appear in Chapter Five.

In hindsight, the way forward for Pakistan will be to learn from the human rights and norms and the UK's experience when treating terror detainees during pre-charge detention. This will help Pakistan differentiate its legal response from its war or executive response to terrorism. These two countries can also learn from each other's experience in their struggle against terrorism. This case-study, which is human rights law driven, offers more to learn from, not only for Pakistan but also for other countries, including the UK. It can help to improve the justice model by reflecting more liberal attitudes in their respective laws and practices when dealing with terror detainees during pre-charge detention.

One can also counter-argue this point—why can Pakistan not learn from the experience of the United States or any other country following dominant approaches to security. A strong rebuttable to this will be presented in Chapter Two by referring to

certain common historical, legal and political facts that are shared by Pakistan and the UK, which acting as a main case and comparator, respectively.

PART II

1.2.0 WHY? The Research Purposes

The aim of this thesis is to carry out a detailed case-study of the pre-charge terror detention and the treatment of terror suspects therein for Pakistan. This will critique the powers of pre-charge detention in Pakistan in light of the relevant human rights laws and principles. The UK's powers of pre-charge terror detention and its treatment of detainees will serve as a comparator to borrow some lessons for the main case-study in Pakistan. This in-depth study in Pakistan will not only safeguard terror detainees from police abuses but it will also help to identify specific legal provisions to be amended. Consequently, this thesis will contribute a case-study on the treatment of terror suspects in Pakistan in the realm of human rights laws and terrorism.

The case-study will make it clear that the treatment of terror detainees during pre-charge detention is the subject of a justice or crime paradigm of terrorism, which requires a liberal approach to security to pursue terrorism. This will help Pakistan to choose the right approach to security for its crime or justice model on terrorism.

Another purpose of this research is to remind Pakistan that it is in the midst of a constant struggle against terrorism which requires all three models—war, executive and crime—to operate within its respective boundaries. When Al-Qaida attacked the United States in September 2001, the United States did not wait long and retaliated to fight against Osama Bin Laden and his allies in Afghanistan.[71] During the US retaliation, many Al-Qaida and Taliban members either died or were detained in Guantanamo Bay.[72]

[71] Ali, T. (2003) The Clash of Fundamentalism: Crusades, Jihad and Modernity, London: Verso
[72] Ibid.

Eventually, Osama Bin Laden was killed in a top-secret US Navy SEAL operation in Abbottabad, Pakistan.[73] Since the inception of the 'War on Terror', many Al-Qaida and Taliban fugitives have either been killed in US drone attacks in Afghanistan, Pakistan and Yemen or they have been detained by the security forces of the respective countries. Similarly, Saddam Hussein, the then Iraqi president, was hanged for allegedly having connections with Al-Qaida.[74] It follows that terrorism should have been over after the deaths of Saddam Hussein and Osama Bin Laden, and their close allies. However, this is not the case. Terrorism is still going on in many countries, including developed countries in Europe, America and Australia. These victories are in fact the 'purely symbolic gains' cited by Waldron in the struggle against terrorism, which would not last for long.[75] One mode of fight is not enough to defeat terrorism. It needs a well-reasoned and objective approach to cope with terrorism. The case-study of the treatment of terror suspects in Pakistan will serve as a reminder to adopt to a liberal approach to security, especially when the crime or justice model is followed to counter-terrorism.

The next objective is for Pakistan and the UK to learn from each other's experience and to review their respective anti-terror laws governing the treatment of terror detainees during pre-charge detention and to reflect more liberal attitudes showing more respect for individual human rights. The case-study will identify what is the law on the treatment of terror suspects in Pakistan and how it ought to be. It also assesses the practice of Pakistan's treatment of terror suspects during pre-charge detention to determine how terror suspects are actually treated in the country. Similarly, it also assesses the UK's treatment of terror detainees in law and action though UK is also used as a comparator to

[73] The Guardian (2 May 2011) "Osama bin Laden Killed in US raid on Pakistan hideout", available at https://www.theguardian.com/world/2011/may/02/osama-bin-laden-dead-pakistan last accessed on 27 July 2017

[74] BBC News (30 December 2006) "Saddam Hussein executed in Iraq", available at http://news.bbc.co.uk/1/hi/world/middle_east/6218485.stm last accessed on 27 July 2017

[75] Waldron, J. (2003) "Security and Liberty: The Image of Balance", The Journal of Political Philosophy, vol. 11, No. 2. p. 210

the main case-study—Pakistan. Lastly, other countries may also learn from the findings of this research.

PART III

1.3.0 HOW? The Methodology

This scholarship is a case-study of Pakistan where UK will act as a comparator to carry out a diagnostic investigation of the pre-charge terror detention in Pakistan. The anti-terror laws governing pre-charge terror detention in Pakistan will be closely examined and analysed against the relevant laws in the UK. Likewise, similarities and differences in the operation of the laws in practice of the main case and its comparator will also be examined and analysed. The purpose of carrying out this case-study is to carry out an in-depth analysis and evaluation of the pre-charge terror detention in Pakistan and to borrow some useful lessons from its comparator—pre-charge terror detention in the UK. The purpose of case studies is 'the precise description or reconstruction of a case.'[76] A case is embedded in its context. Therefore, it is very important to carry out an in-depth examination in relation to its suitable representative or comparator to grasp the full picture.[77] Part III of Chapter Two will ask if the UK is a suitable comparator for the main case-study (i.e. pre-charge terror detention in Pakistan).

This scholarship will use liberal critique research methodology to evaluate the powers of pre-charge terror detention in Pakistan, as the primary focus, and the UK. The yardstick of the assessment will be the relevant human rights laws and principles. Many liberal scholars—such as David Luban, Lucia Zedner, Fernando Teson, Jeremy Waldron, David Cole, Anders Buhelt, Walker and Masferrer, and Tribe and Gudridge—have used

[76] Flick, U. (2006) An Introduction to Qualitative Research, 3rd Edition, London: Sage, pp. 141 – 142.
[77] Ibid., See also Gillham, B. (2000) Case Study Research Methods, London: Continuum, pp. 1 – 15. Flyvbjerg, B. (2006) "Five Misunderstandings About Case-Study Research," *Qualitative Inquiry, vol. 12, no. 2.*

human rights laws and its norms to critique conservative approaches to security and defend rights to liberty and security of persons.[78]

This scholarship will use relevant primary and secondary data to critique the powers of pre-charge terror detention in Pakistan and the UK. In the context of Pakistan, this study will use the Anti-Terrorism Act 1997 (hereafter, ATA 1997), the Protection of Pakistan Act 2014 (hereafter, POPA 2014), the Investigation for Fair Trial Act 2013 (hereafter, IFTA 2013), and the Actions (in Aid of Civil Power) Regulation 2011 (hereafter, AACPR 2011) as primary data. In the context of the UK, this study will use Schedule 8 of the Terrorism Act 2000 and Code H of Police and Criminal Evidence Act 1984 (hereafter, PACE), the Anti-Terrorism, Crime and Security Act 2001, the Prevention of Terrorism Act 2005, the Terrorism Act 2006, the Counter-terrorism Act 2008, and the Protection of Freedoms Act 2012 as sources of primary data.

This primary data will expose the law on the pre-charge detention in the research settings of the two countries. To determine how the law on this topic ought to be, this research will also use another set of primary data, which is the core international human rights instruments applicable to the treatment of terror suspects during pre-charge detention, specifically: the Universal Declaration of Human Rights 1948 (hereafter, UDHR), the International Covenant on Civil and Political Rights 1966 (hereafter, ICCPR), and the United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment 1984 (hereafter, UNCAT). In the research settings of the UK, the European Convention on Human Rights (hereafter,

[78]Luban, D. (2005) Eight Fallacies about Liberty and Security in Human Rights in the 'War on Terror' edited by Wilson, R.A. New York: Cambridge University Press. See also: Waldron, J. (2003) "Security and Liberty: The Image of Balance", The Journal of Political Philosophy, vol. 11, No. 2; Cole, D. (2007) "The Poverty of Posner's Pragmatism: Balancing Away Liberty After 9/11", 59 Stan. L. Rev. 1735-1751; Zedner, L. (2003) "Too Much Security", International Journal of the Sociology of Law. Tribe, L. and Gudridge, P. (2004) "The Anti-Emergency Constitution", 113 YALE L.J. Buhelt, A. (2013) Policing the Law of Fear in 'Justice and Security in the 21st Century: Risks, Rights and the Rule of Law' edited by Barbara Hudson and Synnove Ugelvik London and New York: Routledge. Masferrer, A. and Walker, C. (2013) Counter-Terrorism, Human Rights and the Rule of Law, Edward Elgar Publishing Limited: Glos., UK.

ECHR) and the Human Rights Act 1998 will help in assessing the country's powers of pre-charge terror detention to find out how we ought to treat terror detainees. Likewise, in the context of Pakistan, Fundamental Rights and Principles of Policies in the Constitution of Pakistan will be used as primary data to assess the powers of pre-charge terror detention. The second set of the primary data will act as a yardstick to critique the first set of the primary data.

The secondary data will include General Comments, Concluding Observations and case laws of the United Nations Human Rights Committee and the United Nations Committee Against Torture. Domestic courts case laws of the two countries on the topic will also be used. The scholarship will also use relevant research articles and reports issued by different national and international non-governmental organisations (NGOs) particularly on the rights to liberty and security of persons. The purpose of using the secondary data is to find gaps between the laws and practices governing pre-charge terror detention in the two countries adding more credibility and validity to the conduct of this research.

One may object the credibility and validity of this research because it includes secondary data to help the evaluation of the powers of pre-charge terror detention in the two countries. It may be suggested that this research should have used empirical research methods by conducting interviews to have obtained primary data on the topic.[79] However, as stated previously, this research does not recruit participants for interviews, focus groups or their observations; rather, it will analyse and assess the powers of pre-charge detention in the two countries in light of different reports produced by NGOs and other international organisations, such as the UN Human Rights Committee. This is due to the handicap of research ethics. No researcher should be allowed to conduct research if it

[79] Kvale, S. (2008) Interviews: An Introduction to Qualitative Research Interviewing, 2nd Edition, London: Sage, pp. 123 – 141.

makes him/her vulnerable due to ethical and security considerations.[80] Therefore, interviewing people in war zones or places affected by internal disturbances, such as Pakistan, is not safe for empirical research, especially on sensitive issues such as terrorism. In addition, access to people in prisons is very cumbersome,[81] let alone gaining access to people arrested under anti-terror laws. So, keeping within the ethical boundaries, it is wise to make use of secondary data available online and inside the library.

PART IV

1.4.0 Thesis Structure

Chapter Two reviews the important literature on the relationship between security and liberty, identifying a niche and a framework wherein to position this thesis. This chapter features conservative and liberal approaches to security in their fight against terrorism in the aftermath of 'War on Terror' and their impact on the treatment of terror detainees during pre-charge detention. A liberal critique of the conservative attitudes to security delineates how conservative approaches to security ignore important human rights principles, such as reasonableness and proportionality, when dealing with terror detainees. This chapter concludes though conservative approaches to security may be useful in a war or executive model to counter-terrorism, the justice model requires a liberal security approach treating terror detainees in accordance with the human rights laws and principles.

Chapter Three brings to the fore the important international, regional and domestic human rights laws governing the treatment of terror detainees during pre-charge detention. These obligations reflect liberal values and natural rights to safeguard people

[80] British Sociological Association (2002) 'Statement of Ethical Practice' March 2002, updated May 04. Available at: http://www.britsoc.co.uk/about/equality/statement-of-ethical-practice.aspx last accessed 01 April 2017.
[81] Kvale, S. (2008) Interviews: An Introduction to Qualitative Research Interviewing, 2nd Edition, London: Sage, pp. 123 – 141.

whose liberty and personal security is at stake at the hands of law enforcement agencies particularly during pre-charge terror detention. These obligations will reveal how a particular law related to the treatment of terror detainees ought to be. These human rights laws and norms will act as a carriage to assess the powers of pre-charge terror detention in Pakistan and the UK.

Chapter Four examines, analyses and assesses the UK's law and practice of the treatment of terror suspects. The purpose of this chapter is to grasp the powers of pre-charge terror detention in the UK which will act as a comparator to the main case-study of Pakistan. Therefore, this chapter will identify the law on the treatment of terror suspects during pre-charge detention in the UK. It also asks what gaps exist in the law and action of the country when actually dealing with the terror detainees. Another purpose of this chapter is to find how terror detainees should be treated in accordance with the human rights law. This chapter will assess the UK's legal response to terrorism and the country's treatment of terror detainees during pre-charge terror detention which will later act as a comparator to the main case-study—Pakistan—to learn lessons from.

Chapter Five is the most important chapter of this thesis because it focuses on the main case-study. It examines, analyses and assesses the anti-terror laws of Pakistan governing the treatment of terror suspects in law and in practice. The purpose of this chapter is an in-depth understanding of the powers of pre-charge terror detention in Pakistan. This chapter examines, analyses and assesses the laws and practices of the country on the topic to find out what these laws and practices are and how they ought to be. This chapter will contribute new knowledge in the area of human rights laws and terrorism in the context of Pakistan by assessing the treatment of terror detainees during pre-charge detention in the country. Chapter Five will also set a stage for the main case to be thoroughly studied in light of its comparator, to learn lessons thereof.

Chapter Six brings together the main case-study and its comparator to draw some useful lessons from. The main case-study in Pakistan is compared and contrasted against its comparator in the UK in terms of the thesis topic. This chapter concludes the evaluation of the treatment of terror detainees in the legal systems of Pakistan and the UK, and it puts forward some useful recommendations—asking what the two countries can learn from this study, with a particular emphasis on Pakistan. This chapter also highlights the importance of this research and its wider implications, together with a description of more research gaps that can be addressed by future research in the area.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

The primary purpose of this chapter is to identify a niche in the discourse of human rights law and terrorism, especially in the context of Pakistan, and to accommodate therein the contribution that this thesis is going to impart. The main argument of this thesis is that in the absence of a case-study on the treatment of terror detainees during pre-charge detention in Pakistan, the country is unable to differentiate among the three fights against terrorism, and consequently the country reflects the war or executive model in its legal response to terrorism. This argument will be positioned within the discourse of human rights and terrorism. This chapter will also identify a broad area of study for the argument by engaging liberal and conservative approaches to security in a debate on liberty and security in the discourse. The debate will appear in Part I. This part will also show how a liberal critique methodology has been used by various liberal scholars by using human rights laws and norms to critique conservative approaches to security.

Several liberals have critiqued conservative approaches to security when dealing with terror detainees.[82] For example, they have criticised the prolonged period of pre-charge detention, certain police interrogation techniques, incommunicado detention and so on.[83] This chapter will compile and review the important liberal critique of the conservative approaches to security to comprehend the liberal and conservative stances

[82] Luban, D. (2005) Eight Fallacies about Liberty and Security in Human Rights in the 'War on Terror' edited by Wilson, R.A. New York: Cambridge University Press. See also: Waldron, J. (2003) "Security and Liberty: The Image of Balance", The Journal of Political Philosophy, vol. 11, No. 2; Cole, D. (2007) "The Poverty of Posner's Pragmatism: Balancing Away Liberty After 9/11", 59 Stan. L. Rev. 1735-1751; Zedner, L. (2003) "Too Much Security", International Journal of the Sociology of Law, 31; Neocleous, M. (2007) "Security, Liberty and the Myth of Balance: Towards a Critique of Security Politics", Contemporary Political Theory, No. 6; Tokimi, I. (2015) "Liberty and Security in the Age of Terrorism: Negotiating a New Social Contract", Plymouth Law and Criminal Justice Review, Vol. 1

[83] Ibid.

on the treatment of terror suspects during pre-charge detention, which will appear in Part II.

This chapter underlines that there is a complete absence of research on the topic. There is hardly any case-study of the treatment of terror suspects in Pakistan, during pre-charge detention, which should have used UK as a comparator on the topic. Consequently, this study enables one jurisdiction to learn from the experience of the other, and vice versa, thus occupying the niche. The indication of a gap in the current knowledge and the urge to occupy the niche in the realm about the topic will appear in Part III. This part will also justify UK as an important comparator to the main case-study. Finally, Part IV will conclude the chapter and it will also put forward four research questions that will be answered in the chapters to follow.

PART I

2.1.0 Theoretical Framework

The purpose of this part is to identify the realm of study from where this thesis belongs to. Conservative and liberal approaches to security are engaged in a debate about liberty and security with a view to understand a liberal critique of the treatment of terror detainees. This will help to comprehend and differentiate between the respective stances of the conservative and liberal approaches to the treatment of terror suspects in the criminal justice system. This part commences with a review of the conservative approaches to security, which will be followed by its liberal critique and an assessment of the respective stances of each security approach to the treatment of terror suspects during pre-charge detention.

2.1.1 Conservative Approaches to Security

This research draws on the debate related to the tension between liberty and security particularly in terrorism-related cases. What then is the relationship between liberty and security, especially when there is a danger from terrorism? Are these two conflicting or complementary virtues? Let us assume, for the time being, that these are two competing virtues—one undermining the other. It has been shown that whenever nations announce emergencies, it is often security that forgoes liberty.[84] The general justification is that grave emergencies demand greater security, which requires less liberty. Many scholars have stressed the need, especially during public emergencies, to strike a right balance between the two.[85] This process is called the 'balancing approach'.[86] Followers of the conservative approaches to security always support more security over liberty.

Ignatieff supports the infliction of torture to avert the threat from terrorism, calling it 'the Lesser Evil':

> *Either we fight evil with evil or we succumb. So if we resort to the lesser evil, we should do so, first, in full awareness that evil is involved. Second, we should act under a demonstrable state of necessity. Third, we should choose evil means only as a last resort, having tried everything else. Finally, we must satisfy a fourth obligation: we must justify our actions publicly to our fellow citizens and submit to their judgment as to their correctness.*[87]

There is a clear shift in favour of security in Ignatieff's balancing approach when he permits the infliction of torture to ensure more security, especially when there is a threat from terrorism, even though laws against torture are absolute and non-derogatory.

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[84] Tushnet, M. (2010) "Defending Korematsu? Reflection on Civil Liberties in Wartime", Georgetown University Law Centre.
[85] Sunstein, C. (2005) Laws of Fear: Beyond the Precautionary Principle, Cambridge: University Press pp. 204 – 226. See also: Posner, R.A. (2006) Not a Suicide Pact: The Constitution in a Time of National Emergency, Oxford University Press: Oxford and New York; Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation, 2nd ed. Oxford University Press: New York.
[86] Ibid.
[87] Ignatieff, M. (2005) The Lesser Evil: Political Ethics in an Age of Terror, Edinburgh: Edinburgh University Press, p. 19.

The balance further tilts in favour of security when Richard Posner presents his own balancing approach—pragmatism.[88] He says that the US Constitution is not a suicide pact but a 'looser garment', which must be adapted to changing circumstances.[89] His phrase 'not a suicide pact' refers to the US Constitution as a product of 'loose interpretations' and, therefore, is subject to modifications when there is a threat from terrorism. He views 'modern terrorism' (especially threats from Al-Qaida) as the worst threat to American society. He fears that terrorists can potentially harm the United States, especially if they acquire nuclear weapons. This type of terrorism is described as an 'existential threat' to the United States.[90]

Posner would agree with Ignatieff, saying that we might 'succumb' to terrorism. Therefore, he supports the 'ticking-bomb scenario', which is described as follows:

> *You have captured someone involved in a bomb plot. He is your only source of information about where the bomb is located and you have only a few hours before the bomb goes off, killing hundreds of innocent people (On some versions of the [scenario], it is a nuclear bomb in a large city.) He won't talk. Do you torture him or not?*[91]

Before it is too late and the bomb explodes, Posner has a solution—a pragmatic response to the threat: let the executives promptly respond to such threats. Furthermore, the courts should have no powers to check the validity of such actions. He firmly believes that judges have 'scant knowledge' about security matters and, therefore, they should not be empowered to review the executive's actions.[92] Meaning thereby to torture suspected terrorists.

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[88] Posner, R.A. (2006) Not a Suicide Pact: The Constitution in a Time of National Emergency, Oxford University Press: Oxford and New York, pp. 147-158.
[89] Ibid, p. 152
[90] Ibid, pp. 1 - 15
[91] Luban, D. (2008) "Unthinking the Ticking Bomb", Working Papers George Town University Law Centre, p. 4
[92] Posner, R.A. (2006) Not a Suicide Pact: The Constitution in a Time of National Emergency, Oxford University Press: Oxford and New York, p. 9

Posner considers that the US nation is prior to the Constitution.[93] In other words, he thinks that the United States as a country existed before there was a Constitution—the Declaration of Independence came at the start of the war and the Constitution came at the end. If there is threat to the United States, then we should let the president use his prerogatives and defeat terrorism, even if constitutional rights are violated,[94] even if the media is banned and even if terror suspects are regarded as unlawful combatants. There is nothing in the Constitution that is against torture, if there be any such need. The president, in Posner's view, can pardon himself *ex post action*. In short, his pragmatism is an 'extra-legal approach', supporting more security and proposing emergency measures to enable executives to take 'extra-legal actions' to thwart any terroristic threat to the United States, even if these impinge upon civil liberties.[95]

Mark Tushnet has taken the pragmatism of Richard Posner to another and higher level of security by introducing his 'emergency powers outside the constitution' approach.[96] Tushnet says that all constitutions recognise and invoke emergency powers in a systematic manner, which he calls 'patterns'.[97] First, governments often exaggerate and over-react to the threat. Second, it is the executive who over-reacts to the threat. Third, courts are thoroughly aware that civil liberties are being violated but they justify emergencies *ex post action*. Next, society later finds that it was a mistake, which is never to be repeated in future. Tushnet shows that when an emergency repeats its cycle, the government does not learn from the last mistake and acts in the same manner. Consequently, the same pattern is followed each time that an emergency appears.[98]

[93] Ibid, p. 4
[94] Ibid, p. 155
[95] Ibid, p. 154
[96] Tushnet, M. (2010) "Defending Korematsu? Reflection on Civil Liberties in Wartime", Georgetown University Law Centre.
[97] Ibid.
[98] Ibid.

The reason why this pattern is persistent is that courts are usually deferential in times of emergency and so are the people.[99] The emergency powers are included in the Constitution and these are manipulated (or creatively interpreted) in such a way as to justify the emergency. Tushnet says that this kind of 'persistent emergency' and its justification normalises the temporary as permanent. He refers to Carl Schmit by saying that a 'state of exception' is created.[100] This state of exception has no limits and it has a tendency to spread over all geographic places and times. Tushnet believes that this pattern threatens our civil liberties. What then should be done to prevent the normalisation of the temporary as permanent? Tushnet suggests a model of the 'emergency powers outside the constitution' to deal with the threat from terrorism. Tushnet thinks that terrorism is not a war but it is a 'condition' of war. He further states that conditions are not emergencies.[101] He then adds that for the wrongful actions, there should be a reparation mechanism in 'calmer times'. Once the emergency is over, normalcy should return.[102] In other words, Tushnet is ready to sacrifice more liberty for added security to thwart any threat from terrorism.

Bruce Ackerman summarises almost all of Tushnet's model in his 'emergency constitution'.[103] According to Ackerman, the war and crime paradigms of terrorism have failed.[104] We know that terrorism is special, we know that special police are there, we know they have special powers, we know that terrorists are judged in a special court; however, we did not know beforehand that terrorism will also need a special constitution. Consequently, Ackerman argues that we need to find other means to contain the threat. The only way to do this is to draft an 'emergency constitution'.[105] He believes that this

[99] Ibid.
[100] Ibid.
[101] Ibid.
[102] Ibid.
[103] Ackerman, B. (2004) "The Emergency Constitution", Yale Law School, Faculty Scholarship Series, Paper 121
[104] Ibid.
[105] Ibid.

constitution will uphold the 'reassurance' that the threat is going to be contained more effectively.[106] Ackerman's constitution allows for the detention of terror suspects for 60 days without being challenged in any court of law.[107] The emergency constitution will not damage the permanent rights incorporated in national constitutions. The threshold for the operation of the emergency constitution will be passed when there is an attack of a similar nature as 9/11.[108] The legislature will authorise the duration of the further emergency (i.e., supermajoritarian escalator) for a maximum period of another three months.[109] Only the executive can contain the threat (executive paradigm of terrorism). Although the courts, Ackerman argues, cannot challenge the invocation of the emergency constitution (i.e., macroadjudication), they will look into cases of compensation and whether or not detainees are fairly treated during emergencies (i.e., microadjudication).[110] Thus, Ackerman supports more security at the expense of liberty and proposes tough treatment of terror detainees through his emergency constitution.

Oren Gross seems more nuanced about the need for more security through his 'extra-legal measure' model.[111] According to this model, during extraordinary security situations, public officials can act outside the normal legal order to respond to extraordinary security threats, such as 9/11.[112] However, the officials should openly acknowledge their extraordinary actions in the public.[113] Here, Gross agrees with Ignatieff, Tushnet and Ackerman in that public officials are accountable to the people and not to the courts. Their actions either receive *ex post* public ratification or refusal. Officials acting in bad faith do not receive any public ratification. On such a refusal, the official will be impeached by the people and the aggrieved party shall be paid

[106] Ibid.
[107] Ibid.
[108] Ibid.
[109] Ibid.
[110] Ibid.
[111] Gross, O. (2003) "Chaos and Rules: Should Responses to Violent Crisis Always be Constitutional", The Yale Law Journal, vol. 112:1011
[112] Ibid.
[113] Ibid.

reparation.[114] Gross gives the following three reasons in support of his model:[115] first, an emergency calls for an extraordinary response from government; second, ordinary constitutions do not normally stop a government from taking emergency actions; and finally, because emergency measures often penetrate ordinary laws, something needs to be done to stop this practice. Every public official in Gross's model is the judge of his or her own actions to decide upon the 'obvious question'—when to react to an emergency.[116] They are accountable to the public and not the judiciary for the 'tragic question'—how the action was carried out.[117] No doubt, Oren Grosse's model is an executive response to terrorism asking to sacrifice liberty to respond to terrorism.

These scholars all reflect Thomas Hobbes's security approach. Hobbes is the father of the conservative approach to security.[118] His famous Leviathan, written during the English Civil War (1642–1651), is the mainstream ideology for all pragmatists.[119] Hobbes had lived through more than a decade of civil war.[120] His main fear was that when a state collapses, a 'state of nature' is the outcome, thus triggering the worst of human actions; in other words, 'continual fear and danger of violent death, and the life of man solitary, poor, nasty, brutish, and short.'[121] How can one avoid drifting into a state of nature? Hobbes suggests that we need to surrender to our individual wills and 'to erect a common power or a commonwealth' conferring all powers upon one man or assembly of men.[122] The commonwealth or central government transforms life into a social, rich, delightful, gentle and long-lived life but not to a free life. Therefore, liberty, in the

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[114] Ibid.
[115] Ibid.
[116] Ibid.
[117] Ibid.
[118]Teson, F.R. (2005) Liberal Security in Human Rights in the 'War on Terror' edited by Wilson, R.A. New York: Cambridge University Press, p. 60.
[119] Ibid. See also MacGillivary, R. (1970) "Thomas Hobbes's History of the English Civil War: A Study of Behemoth", Journal of the History of Ideas, Vol. 31, No. 2. pp. 184 - 185
[120] MacGillivary, R. (1970) "Thomas Hobbes's History of the English Civil War: A Study of Behemoth", Journal of the History of Ideas, Vol. 31, No. 2.
[121]Hobbes, T. [1651(1998)]. Chapter XIII in Leviathan. J.C. Gaskin (Ed). Oxford: Oxford University Press
[122] Ibid, Chapter IX.

Hobbesian state, does not belong to an individual but solely to the central government.[123] The anxiety and agitation of Hobbes to avoid a state of nature gave birth to the idea of a strong central government where that state's security has all value and an individual's liberty has none. Therefore, it is reasonable to inflict torture pursuant to Ignatieff's lesser evil argument for greater security. There is nothing wrong in dismissing the role of judges in security matters as propounded by Posner. There is nothing wrong in following Tushnet's and Ackerman's emergency constitution detaining people for months. Finally, there is no harm in adherence to Gross's 'extra-legal measures' because Thomas Hobbes had said four hundred years ago that we should sacrifice liberty for the sake of more security.

2.1.2 Liberal Critique of the Conservative Approaches to Security

Many liberals have critiqued the conservative approaches to security using human rights as yardstick.[124] They believe that terrorism is a crime, as opposed to the war or executive understanding of terrorism, for which liberal approaches to security are the most appropriate to respond to terrorism. Let the criminal justice system, by adherence to the human rights laws and principles, should respond to it. Therefore, they critique the above conservative approaches to security in light of the human rights. David Luban puts forward his 'eight fallacies' to prove that conservative security 'conceals persistent fallacies' when fighting terrorism.[125] First, the question, 'How much liberty should be

[123] Bramhall, J. (1995) The Catching of Leviathan, or the Great Whale. In Leviathan: Contemporary Responses to the Political Theory of Thomas Hobbes. Edited by Rogers, G.A.J. Bristol: Thoemmes Press.
[124] Luban, D. (2005) Eight Fallacies about Liberty and Security in Human Rights in the 'War on Terror' edited by Wilson, R.A. New York: Cambridge University Press. See also: Waldron, J. (2003) "Security and Liberty: The Image of Balance", The Journal of Political Philosophy, vol. 11, No. 2; Cole, D. (2007) "The Poverty of Posner's Pragmatism: Balancing Away Liberty After 9/11", 59 Stan. L. Rev. 1735-1751; Zedner, L. (2003) "Too Much Security", International Journal of the Sociology of Law, 31; Neocleous, M. (2007) "Security, Liberty and the Myth of Balance: Towards a Critique of Security Politics", Contemporary Political Theory, No. 6; Tokimi, I. (2015) "Liberty and Security in the Age of Terrorism: Negotiating a New Social Contract", Plymouth Law and Criminal Justice Review, Vol. 1
[125] Luban, D. (2005) Eight Fallacies about Liberty and Security in Human Rights in the 'War on Terror' edited by Wilson, R.A. New York: Cambridge University Press, pp. 242 - 243

sacrificed for security?' he argues, is the wrong question. Laws curtailing liberty are applicable to all within a state. Rather, we should ask, 'Am I ready to be jailed for a minute added security?'[126] Luban thinks that conservative approaches to security assume the division of people into separate groups of 'Us' and 'Them'. Second, conservative security treats liberties and rights differently from security while rights themselves are forms of security against the coercive powers of the government.[127] Third, 'securicrats' think that special powers are necessary to deal with the threat of terrorism and that more safeguards within the anti-terror laws will protect civil liberties, which is a form of power. However, how can mere safeguards protect civil liberties when the latter is power in itself? The next fallacy relates to the presumption of innocence, which is a universal human right of a suspect. How can tough-minded security laws presume the guilt of a terror suspect, thus negating the universal human right? His last fallacy relates to the 'militarization of civil life' and 'perpetual emergency'. How can a president (referring to the US presidential powers to declare formal war) under his civilian powers declare war on terrorism? Similarly, the emergency plea of the conservatives no longer makes sense: calling longstanding conditions (like standing danger of terrorism) an 'emergency' is confusing because emergencies are temporary departures from normal conditions.[128] Luban also criticises Posner's support for the ticking-bomb scenario. The scenario has no real-life case, what he calls 'cartoonish'.[129] This artificially created plot works well as a propaganda device but is based on the wrong assumptions to legitimise torture.

Like Luban, Jeremy Waldron also criticises conservative approaches to security. He believes that the idea of conservative security is 'insidious…false…ill-concealed

[126] Ibid.
[127] Ibid.
[128] Ibid, p. 249
[129] Luban, D. (2008) "Unthinking the Ticking Bomb", Working Papers George Town University Law Centre

sneer of outrage…objectionable.'[130] He calls into question the conservative myth of balancing security at the cost of liberty and levels four main criticisms against it.[131] First, liberty and security are abstractions and, therefore, cannot be quantified for precision and balancing purposes. These can neither be expressed in an algebraic formula or expression. Second, the idea of rights as 'trump cards' cannot be regarded as adjustable to routine changes. For instance, it is unacceptable to state that higher security threats always curtail liberty. Third, there is a strong issue with the distribution of liberty and security. For example, the perpetrators of 9/11 were foreigners, mostly Arab Muslims, so the cost of liberty can very easily be placed on the shoulders of an identifiable group. Like Luban, Waldron is also mindful that society should not be divided into 'Us' and 'Them'. Finally, when subjected to adjustments, liberty becomes a 'relational term'.[132] This has dramatic ramifications in the long term on liberty. For instance, if liberty is negative—that is, it can be reduced by enhancing state powers—, then this diminution of liberty increases the fear of civil libertarians that these powers may be used against their liberty. In particular, Waldron states, "The existence of a threat from terrorist attack does not diminish the threat that liberals have traditionally apprehended from the state. The former complements the latter; it does not diminish it, and it may enhance it".[133] His last criticism reveals that the increase in state powers for security, in the presence of a terrorist threat, may enhance our fears.

Similarly, Zedner identifies 'six paradoxes of security' and describes them as costs of security. One of the paradoxes enumerates that 'security promises reassurance but in fact increases anxiety.'[134] Here, Zedner rejects Ackerman's belief that more security reassures people; rather, she endorses Waldron's belief that more security

[130] Waldron, J. (2003) "Security and Liberty: The Image of Balance", The Journal of Political Philosophy, vol. 11, No. 2.
[131] Ibid.
[132] Ibid.
[133] Ibid. p. 205
[134] Zedner, L. (2003) "Too Much Security", International Journal of the Sociology of Law, 31

enhances our fears and anxieties. She argues that although security promises more freedom, it erodes our civil liberties.[135] She also identifies that security is presented as a universal good but presumes social exclusion;[136] that is, it is inimical to good society.[137] Here, she acknowledges the argument of Luban and Waldron that too much security divides a good society into two identifiable groups: 'We' and 'They'.

David Cole attacks Ackerman's emergency constitution. In particular, he calls it 'a magic bullet where there is none' in reality.[138] Cole says Ackerman's constitution will have a tendency to become 'permanent' if put in place.[139] If this happens, then certainly it will create 'lawlessness'.[140] He says that the whole idea of Ackerman's constitution is to reassure the public but, in fact, it does the opposite—creating anarchy. However, innocent people will be detained for 60 days and beyond without assigning any reason. Cole considers that 'suspicionless detention' is in fact arbitrary detention.[141] After every terrorist attack, people will fear for their liberty in this lawlessness situation. In another example, David Luban expresses concern about innocent children in the West who exchange text messages or 'flirt' with a member from a terrorist network,[142] and who may then find themselves detained for months. Here, Luban, Waldron, Zedner and David Cole all believe that more security does not reassure but instead enhances our fears of violating our civil liberties at the hands of excessive governmental powers.

Laurence Tribe and Patrick Gudridge find that Ackerman's constitution is "constitutional amnesia… a dead zone…constitution noire…a black hole".[143] They argue

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[135] Ibid.
[136] Ibid.
[137] Ibid.
[138] Cole, D. (2004) "The Priority of Morality: The Emergency Constitution's Blind Spot", 113 Yale L.J. p. 1757
[139] Ibid. p. 1756
[140] Ibid. 1785
[141] Ibid.
[142] Luban, D. (2005) Eight Fallacies about Liberty and Security in Human Rights in the 'War on Terror' edited by Wilson, R.A. New York: Cambridge University Press.
[143] Tribe, L. and Gudridge, P. (2004) "The Anti-Emergency Constitution", 113 YALE L.J

Ackerman has reflected his own fear through this constitution.[144] In addition, governments have 'long wished' to attain such powers and then use them against their own citizens.[145] Tribe and Gudridge also believe that placing more powers in the hands of the government to fight against terrorism increase our fears of insecurity instead of giving reassurance.

Anders Buhelt also dismisses conservative approaches to security and suggests the adoption of a 'rightisation' model to protect liberty in worse security situations.[146] He argues that most security laws are the product of fear. Although the government aims to reassure the public through gaining symbolic achievements in the fight against terrorism, these achievements are short term—people continue to fear. The main reason for this is that security laws are the product of fear and are more focused on the threat than on liberty. These laws can only function if our liberty is diminished. Buhelt finds that the application of these laws enhances our fears. Consequently, he proposes a rightisation model where we can fight against terrorism more effectively 'with our values rather than at their expense.'[147]

Sunstein uses a different type of balancing approach, which he terms 'second-order balancing'.[148] His balancing approach has three distinct features. First, unlike the executive, parliament should expressly authorise to limit civil liberties during emergency. Any curtailment of civil liberties by the executive is an example of 'bad balancing'.[149] Second, the courts should give 'special scrutiny' to restrictions imposed on identifiable minority group within a country. His main aim here is to protect vulnerable groups from the tyranny of the majority. Given that there is no 'political check' on the abuses of the

[144] Ibid.
[145] Ibid.
[146] Buhelt, A. (2013) Policing the Law of Fear in 'Justice and Security in the 21st Century: Risks, Rights and the Rule of Law' edited by Barbara Hudson and Synnove Ugelvik London and New York: Routledge.
[147] Ibid, p. 193.
[148] Sunstein, C. (2005) Laws of Fear: Beyond the Precautionary Principle, Cambridge: University Press pp. 204 – 226.
[149] Ibid.

majority against the selective group sharing the entire burden of emergency, it is imperative for courts to protect the latter. He calls for a balance to be struck because limiting the rights of an identifiable group is an example of 'worse balancing'.[150] Finally, the courts should carry out the balancing practice from case to case.[151]

Fernando Teson developed the concept of 'liberal security',[152] which considers that added security can only be justified if, "the amount of freedom it restricts is necessary to preserve the total system of freedom."[153] Liberal security is against the division of society into 'We' and 'They'. Therefore, Teson's concept of liberal security using human rights as yardstick to support the fair treatment of all suspects, including terror detainees.[154]

Anderson researched the role of liberal security when fighting against terrorism abroad.[155] She discourages the war model of terrorism (i.e. it is not advisable to wage war on terrorism).[156] Anderson suggests that instead of going to war on terrorism in any particular country, such as Afghanistan or Iraq, why not to help the country to build its own institutions to further protect the life, liberty and prosperity of its own people?[157] Anderson has well justified liberal security over conservative security by using human rights laws and principles as carriage to protect liberty.

Dunne describes how a liberal democratic state such as the United States would wage a 'War on Terror', especially after the 9/11 attacks.[158] He calls this particular

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[150] Ibid.
[151] Ibid.
[152] Teson, F.R. (2005) Liberal Security in Human Rights in the 'War on Terror' edited by Wilson, R.A. New York: Cambridge University Press.
[153] Ibid.
[154] Ibid.
[155] Anderson, L. (2004) "Liberalism and the War on Terrorism", A Practical Guide to Winning the War on Terror, available at http://media.hoover.org/sites/default/files/documents/0817945423_27.pdf last accessed 01 May 2017
[156] Ibid.
[157] Ibid.
[158] Dunne, T. (2009) "Liberalism, International Terrorism, and Democratic Wars", International Relations, Volume 23 (1)

approach the 'second image of liberal thought'.[159] In other words, Dunne, like Anderson, writes about the role of liberal security in the war paradigm of terrorism and the treatment of terror suspects, which he refers to as the 'first image' of the liberal security.

Fiona Londras talks about the relationship between individual liberty and security and argues that the resilience of the international human rights has emboldened domestic courts in the United States and UK to protect the human rights of terror suspects.[160] She rigorously examined the influence of international human rights laws on the decisions of the domestic courts in the countries on the detention of terror suspects.[161]

Weinberg is also in search of a preferable action to successfully fight against terrorism. He has edited the work of many scholars in this regard.[162] After reviewing their work, he strongly believes that the democratic response is the best answer to terrorism.[163] He rejects the notion that it is possible to defeat terrorism with 'brute force' because doing so would mean to sacrifice democracy in the fight.[164] His work is mainly focused on the role of a particular form of government and its importance, which is democracy in his case, to eradicate the evil of terrorism. He comes in support of a legal response to defeat terrorism embraced with democratic values and human rights.

Walker's preferred method is to recourse to the principle of 'constitutionalism' if we wish to successfully fight against terrorism and save individuals from the arbitrary actions of the government during precarious security situations.[165] This principle can be understood in three parameters. First, all rights need to be categorised and audited to determine which rights will diminish during the emergency. This process is termed as a

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[159] Ibid.
[160] Londras de, F. (2011) Detention in the 'War on Terror': Can Human Rights Fight Back? Cambridge: Cambridge University Press.
[161] Ibid.
[162] Weinberg, L. (2008) Democratic Responses to Terrorism, New York and London: Routledge and Taylor & Francis Group.
[163] Ibid.
[164] Ibid.
[165] Walker, C. (2009) Blackstone's Guide to The Anti-Terrorism Legislation 2nd edition, Oxford University Press: New York pp. 17 – 21. See also, Walker, C. (2011) Terrorism and the Law, first edition, Oxford University Press: New York, 51.

'rights audit'.[166] The rights should be categorised into absolute, fundamental and provisional rights. Absolute rights can never be conditioned or qualified, such as the right against torture. These rights can never be balanced or limited, however perilous situation it may be. Fundamental rights can be curtailed or balanced in very limited circumstances, such as liberty. Provisional rights can always be limited even during normalcy. Security laws must ensure that this will bear no adverse impact on absolute rights. The law can limit or curtail certain fundamental and provisional rights only if doing so is 'necessary' and 'proportionate' to a terrorist threat.[167] The need for more security requires special powers, for which corresponding safeguards are inevitable.[168]

The second parameter of constitutionalism is called 'accountability'.[169] This judges the utility, dispensability and proportionality of the security legislation through the democratic process. Accountability should be carried out through various institutions, such as parliamentary debates, by the executive through its review action programme, by courts through the judicial accountability mechanism, and by independent experts.

The third aspect of constitutionalism relates to the 'constitutional governance' of the legislation.[170] There should be provision in the special laws subjecting executive actions to the lawful interpretation of the courts. This impartially determines the scope and manner of the executive actions carried out under the anti-terrorism legislation. The judicial interpretation of the executive actions should consider the tenets of domestic constitutional law, such as principles of policy and fundamental rights and so on. In summary, Walker seeks the help of constitutionalism to save terror detainees from arbitrary treatment by the government.

[166] Ibid.
[167] Ibid.
[168] Ibid.
[169] Ibid.
[170] Ibid.

Masferrer and Walker have pointed out a few grey areas surrounding the notion of terrorism in which conservative attitudes to security try to cross certain legal boundaries for the sake of national security.[171] These areas create confusion when it comes to the understanding of the concept of terrorism; that is, whether terrorism should be treated as a crime or war. If it is a crime, then should ordinary or special courts try the terror suspects? If not, then is it a war? If so, then should the terror suspects be tried under the national or international laws?[172] Masferrer and Walker carefully examined these boundaries and they have found that conservative approaches to security encourage counter-terrorism legislation to cross its boundaries for the defence of the state and, thus, violate the human rights of terror detainees in a legal response to terrorism. This research takes the crossing boundaries idea of Masferrer and Walker to evaluate and compare the treatment of terror detainees in Pakistan and the UK. The idea will support the thesis main argument: in the absence of an in-depth study on the treatment of terror detainees during pre-charge detention in Pakistan, the country is unable to differentiate among the three fights against terrorism. Pakistan follows a predominantly conservative approach to security on the treatment of terror suspects during pre-charge detention by reflecting the war or executive model in its legal response to terrorism.

Macken argues that the practice of preventive detention in terrorism cases is fading[173] and it is being replaced by pre-charge detention.[174] Macken further elaborates that the detention and interrogation period should be short because the purpose of pre-charge detention is to freeze time and we cannot freeze time for long.[175] She strongly

[171] Masferrer, A. and Walker, C. (2013) Counter-Terrorism, Human Rights and the Rule of Law, Edward Elgar Publishing Limited: Glos., UK
[172] Ibid.
[173] Macken, C. (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and international Human Rights Law, New York: Routledge
[174] Ibid.
[175] Ibid.

suggests treating terror suspects humanely and in accordance with international human rights laws.[176]

All of these liberal views derive in one way or another from John Locke—the father of civil libertarians. His famous work, *Two Treatises of Government*, published in 1690, emphasises the positive role of law for the preservation, welfare and overall good of the society and individual.[177]

PART II

2.2.0 Liberal and Conservative Stances on the Treatment of Terror Suspects

The literature review has been able to describe the conservative and liberal approaches to security on the treatment of terror detainees. All of the conservative scholars that were reviewed are in favour of enhancing security at the cost of liberty. Similarly, all of the liberals give more preference to liberty over security and advocate a fair treatment of terror detainees. This difference in attitudes to security has certain ramifications for the treatment of terror suspects in police custody. Next, it is important to map out the distinct and nuanced stances of both the conservative and liberal approaches because this will enable us to label and measure how far a particular anti-terror legislation accommodates conservative or liberal attitudes affecting the treatment of terror suspects during pre-charge detention. Consequently, how conservative attitudes related to the treatment of terror detainees have crossed their legal boundaries for the treatment in a justice or crime approach to terrorism.

[176] Ibid.
[177] Laslett, P. (1970) John Locke's Two Treaties of Government. Cambridge: Cambridge University Press. pp. 3 – 15. See also; Dunne, T. and Hanson, M. (2009) Human Rights in International Relations in Human Rights: Politics and Practice edited by Goodhart, M. Oxford: Oxford University Press, p. 63.

2.2.1 The Period of Pre-charge Detention

The conservative attitudes to security support that prolonged detention period for terror suspects, such as Ackerman, demand a detention period of 60 days followed by a further extension of three months with no safeguards. To create a state of exception, this detention cannot be challenged in any court of law to determine whether it is unnecessary or unreasonable. Because the role of the court in the conservative approach is almost dormant, it is not incumbent to produce a terror suspect in court promptly. Why should conservative security provide for the prompt production of the suspect when he or she is regarded as an unlawful combatant?

As opposed to the conservative approaches to security, civil libertarians recommend a shorter period of pre-charge detention. David Luban believes that the threat from terrorism is neither existentialist nor it should be considered as permanent, thereby paving the way to remain in a state of constant emergency to justify longer detention periods. Similarly, Macken is of the opinion that the period of pre-charge detention should be kept to a minimum to serve its purpose: to charge or release the detainee. David Cole introduces the idea of reasonableness and regards lengthy detention periods as unnecessary and against our civil liberties. He also regards 'suspicionless detention' as a kind of arbitrary detention. Liberal approaches to security are very clear that anti-terror legislation should refrain from empowering the police to keep people in detention for longer periods of time. They believe that detention should be short enough not to violate the human rights of terror suspects and long enough for the criminal justice system to decide whether to charge or set the detainee free. It is also evident from the critique that a terror detainee should promptly be produced before a court. In other words, there should not be an unreasonable delay in the production of a terror suspect before a court in the criminal justice system, as opposed to the war or executive paradigm of terrorism.

2.2.2 Police Interrogation and Questioning

The conservative approach to security also has repercussions for the treatment of terror detainees during police interrogation. Because Posner regards terror suspects as 'unlawful combatants', they do not deserve fair treatment when the police question them. They should be subjected to 'brutal' or 'coercive' police interrogations, not to prosecute but to get more information and prevent further terrorist attacks in future.[178] Posner and Ignatieff would not object if terror suspects are subjected to torture or other inhumane or degrading treatment if it leads to information that prevents terrorism in a legal response to terrorism. Posner deems terrorism to be an 'existential threat', as does Ignatieff. Consequently, they would not mind if a terror suspect is subjected to interrogations for unlimited time. It is neither disproportionate nor unnecessary or unreasonable to interview a terror suspect for long hours, making him or her confess his or her guilt or provide more information, as long as doing so prevents another terrorist attack. They can be asked any questions, no matter if they are oppressive, to preserve national security. In addition, declaring terror suspects unlawful combatants also supports the attitude that terror suspects are the 'enemy'. These attitudes divide society into two, 'We' and 'They'. 'They' are the terrorists and 'We' are the peaceful citizens of our country. 'We' have every right to security and 'They' have no rights at all. So, police should interrogate the detainee for as long as they wish.

In contrast, liberal approaches to security do not tolerate overly long sessions of police interrogations. For example, Buhelt's rightisation model supports protecting human rights at every phase of a trial. No one can be an enemy or unlawful combatant. Meanwhile, Tribe and Gudridges' criticism of Ackerman's emergency constitution suggests that there is a need to stop the government from exercising its excessive powers.

[178] Posner, R. A. (2006) Not a Suicide Pact: The Constitution in a Time of National Emergency, Oxford University Press: Oxford and New York pp. 77 - 87

One such power can be to prolong the duration of police interrogations. David Luban, Jeremy Waldron and Lucia Zedner reject the division of society into 'We' and 'They'. This not only rejects the conservative conception of terrorists as enemy combatants but also emphasises the need not to torture or mistreat terror suspects during their detentions. So, we can infer that liberal approaches to security reject long police interviews and uphold humane treatment of terror suspects.

2.2.3 Internal Police Review Mechanisms

The conservative approaches to security are also indifferent towards the provision of an internal police mechanism to check police abuses of terror detainees. For example, Gross argues that every public official is the judge of his or her own actions. They have unlimited powers to treat terror detainees at their discretion to deal with the 'existential threat'. Gross, Posner, Tushnet and Ackerman are unanimous that it is the job of the executive to deal with the terror threat where courts either have no or a very limited role to play considering cases of unlawful detentions for compensations only. Alternatively, public officials are accountable to the public for their wrongful actions and are exempt from judicial review of their actions. This infers that police review mechanisms to check the treatment of terror suspects during pre-charge detention have no importance because conservative approaches to security even deny the need for judicial review of the law enforcement actions, let alone the internal police review mechanism.

Liberals, such as Walker through his constitutionalism, suggest that there is a need to keep internal checks on the abuses of police powers. As long as a detainee is in police custody, his or her record should be periodically reviewed within the police department. This right should be available to all detainees.

2.2.4 Police Records

Conservative approaches do not seemingly believe in the active role of courts in terrorism cases. Hence, a terror suspect's access to police records and accurate entries are not an important factor in the conservative paradigm on security.

Liberals believe in the important role of courts in administering justice in terrorism cases. Police records should be accurate and maintained without prejudice because this record is very important for the court to decide to convict or release the person in custody. Walker's constitutionalism suggests the need for accurate and timely documentation of police activities during investigation.

2.2.5 Rights of a Terror Suspect to Contact the Outside World

Similarly, conservative approaches place no importance on the need to ensure that a terror detainee is given the right to access his or her relatives or friends to help in preparing his or her defence. Because Posner is not interested in prosecuting terror suspects but seeks instead to interrogate them brutally to disrupt another terror attack, "[a terror] detainee who feels isolated and has no access to a lawyer can more easily be pressured to provide information sought by the government."[179]

David Cole, Tribe and Gudridge are against Ackerman's concept of an emergency constitution. They believe that an emergency constitution would bring chaos and lawlessness. To infer from this and the rightisation model of Buhelt, a terror suspect has every right to contact his or her family or friends. Liberals, such as Walker, also believe that this will help in the administration of justice because it will provide an opportunity to the defendant to prepare his or her case on his or her behalf. In addition, Posner's denial of the detainee's right to contact a lawyer not only hampers the administration of justice

[179] Posner, R. A. (2006) Not a Suicide Pact: The Constitution in a Time of National Emergency, Oxford University Press: Oxford and New York p. 63

but also contradicts his view that judges have scant knowledge about security matters. If judges have less knowledge about security, then how can Posner, as an ex-judge, predict that a terror suspect will give more information if held in incommunicado detention?

2.2.6 Detention Conditions

Fair detention conditions (e.g., enough food and sleep, taking short and long breaks, attending to personal hygiene, reading prayers, books, doing light exercise, etc.) are not of importance for conservative approaches to security. The main reason is that followers of the conservative approaches to security remain more focused on security than the rights of terror detainees, which is why they try very hard to find extra-legal ways to defeat terrorists at any cost. Given that conservative approaches to security have the tendency to enhance security at the cost of liberty, adversely affecting the treatment of terror detainees in police custody has been subject to vehement criticisms by liberals.

Liberals do not differentiate between an ordinary detainee and a terror detainee because they do not differentiate between 'Us' and 'Them'. In addition, they believe in the greater role of the courts and fair treatment of all detainees. It can be inferred from this that liberals support fair detention conditions, such as reasonable food portions and breaks to attend to personal hygiene, carrying out light exercise, read their prayers, and so on.

A close examination of the conservative approaches and their stance on the treatment of terror suspect suggests that they will always forgo liberty at the cost of security. Whether it is Posner's pragmatism argument or Ignatieff's lesser evil theory, both are focused on the torture of terror detainees. They are both focused on finding ways and means, no matter how harsh or inhuman these may be, to persecute terrorists or people suspected of terrorism. Posner would even circumvent the constitution because he thinks that it is 'not a suicide pact' but a body of loose interpretations and, therefore, it can be

disabled for the treatment of terrorists. Similarly, Ackerman's emergency constitution idea and Gross's extra-legal measures are aimed at empowering the executive with unfettered powers to capture or kill terrorists, with no check on these abuses by the courts. They believe that terrorists do not abide by any ethics and it is, therefore, lawful for us to fight them with brutal power. In other words, conservative approaches justify the use of all 'unfair means' in responding to terrorism. If terrorism is met with brute force, there would be no terror attacks.[180] All of the conservative approaches advocate some sort of counter-terror strategy that do not abide by any human rights laws or principles.

In contrast, liberal security approaches stress the importance of human rights when fighting against terrorism. They use human rights laws and principles as a potential yardstick to protect liberty. Both Luban's 'eight fallacies' and Zedner's 'security costs' are aimed at treating terror suspects with fairness and humanity. They both believe that to defeat terrorism, we need to respect the human rights of everyone. Similarly, Cole, Buhelt, Londras, Waldron, Teson, and Sunstein are mindful that we can more successfully combat terrorism by using liberal values to inform our security policies than we can with conservative security measures. These scholars think of terrorism as an ideology to be defeated. They are in agreement that we should not respond to terrorists in the same way that they carry out their terrorist operation but we can instead defeat them with all the good values that human beings are endowed with. They believe that terrorism cannot be eradicated by killing or torturing terrorists but through our firm adherence to civil liberties, so that people in general can easily differentiate between what is right and wrong, and what is just or cruel. Since liberal approaches to security emphasise the role of human rights laws and norms in a criminal justice response to terrorism, it is fair to adopt these approaches and critique the treatment of terror detainees in the administration

[180] Hussain, S. (2010) "Impact of Terrorist Arrests on Terrorism: Defiance, Deterrence, or Irrelevance" University of Pennsylvania, publicly accessible Penn Dissertations, Paper 136.

of justice of Pakistan (which is the basis of this thesis) and to use UK as a comparator to the main case-study to learn useful lessons from.

PART III

2.3.0 Indicating a Niche

Although many scholars have conducted terrorism research in Pakistan, few seem to have touched upon the treatment of terror suspects particularly during pre-charge detention. Fasihuddin has carried out a qualitative research to explore the difficulties faced by police in investigating terrorism cases.[181] He has identified and elaborated more than a dozen constraints faced by Pakistani police while investigating. He has also suggested a human rights friendly policing system for Pakistan.[182] He thinks that this policing model is a 'paradigm shift' in police science in the country and has asked criminologists, field practitioners, and human rights experts to contribute more in the area. Even though has touched upon human rights, he did not examine the treatment of terror detainees during pre-charge detention in Pakistan. In addition, the UK has not been used as comparator to the main case-study i.e. Pakistan's treatment of terror detainees during pre-charge detention.

Suddle has compared and contrasted the Pakistani criminal justice and police system with that of the UK and Irish systems.[183] He has suggested certain recommendations if the Pakistani police system is to be made a 'people-friendly public service'.[184] In addition, he gave a detailed historical account of the Pakistani policing system, which evolved during the period of colonisation following the 'Irish

[181]Fasihuddin (2012) "Terrorism Investigation in Pakistan: Perceptions and Realities of Frontline Police" *Pakistan Journal of Criminology* 3(3) p. 55
[182] Fasihuddin, (2011) "Human Rights-friendly Policing: A Paradigm Shift in Pakistan, a Case of KPK police", in *Asian Policing Strategies: Comparative Perspective*, the 2011 AAPS Annual Conference Proceeding, University of New Haven, USA.
[183] Suddle, M.S. (2003) "Reforming Pakistan Police: An Overview" United Nations Asia, available at http://www.unafei.or.jp/english/pdf/RS_No60/No60_12VE_Suddle.pdf, last accessed 26 January 2017.
[184] Ibid.

Constabulary' model,[185] which was famous for using brutal force to quell any civilian uprising.[186] His work is mainly based on a historical analysis of the ordinary criminal justice and police system of Pakistan. However, because there is no dimension of his work touching upon terrorism and the tenets of human rights, his work offers little appreciation of the treatment of terror detainees.

Similarly, Imam has critically discussed the development of the rule of law in Pakistan while focusing on the role played by police in the country.[187] He proposes several recommendations to improve the deteriorating situation of the rule of law in Pakistan. His study refers to a policing system that existed during British India; however, it lacks any comparison with the UK. Therefore, his work is neither suspect-centred nor substantiated as a case-study.

Hussain has analysed the causal connection between religion and terrorism in the country.[188] His research findings show that religious extremism in Pakistan is the main source of terrorism in the country. In another paper, he tested Sherman's theory of defiance.[189] According to this theory, there is always defiance on the part of criminals under four necessary conditions, which are: first, when the offender perceives criminal sanctions as unfair; second, when the offender defines sanctions as stigmatising; third, when the offender is poorly bonded to the punishing community; and finally, when the offender refuses to accommodate shame. Hussain has researched 20 years of the police database and has concluded that arresting terrorists in Pakistan has always resulted in more retaliation.[190] Therefore, he suggests using brutal force against them, preferring

[185] Ibid.
[186] Ibid.
[187] Imam, K. (2011) "Police and the Rule of Law in Pakistan: a historical analysis. *Berkeley Journal of Social Sciences, 1*(8). Available at http://berkeleyjournalofsocialsciences.com/August3.pdf
[188] Hussain, S. (2012) "Myths about Terrorism in Pakistan", in *Stabilizing Pakistan through Police Reforms*, Asia Society Report by the Independent Commission on Pakistan Police Reforms.
[189] Hussain, S. (2010) "Impact of Terrorist Arrests on Terrorism: Defiance, Deterrence, or Irrelevance" University of Pennsylvania, publicly accessible Penn Dissertations, Paper 136.
[190] Ibid.

killing terrorists over arresting them. To curb terrorist incidents in Pakistan, Hussain remarks,

> *We [Pakistani police] need to break their [terrorists'] pride. I fear that humane treatment and fairness in court would add glamour to their situation. Fairness is likely to lead to failure of cases in the court as terrorists are terrorists not bound by any ethics.*[191]

Hussain has used quantitative research methodologies to establish that sectarian and religious extremism in Pakistan are the main causes of terrorism. However, he neither mentioned any human rights of the terror suspects nor did he compare, in this regard, Pakistan with the UK. As a senior police officer, Hussain looks at terrorists as being outside the purview of human rights, which is similar to Posner's concept of unlawful combatant. His research methodology is also atypical of the liberal critique. He holds the typical extreme hard-nose security approach to anti-terrorism legislation, where national security is worshiped and protected at any cost. Hussain categorically denies fair treatment for terror detainees. However, he has neither focused on Pakistan's human rights obligations or pre-charge detention nor has he compared Pakistan with the UK. He sounds very much like Posner, Ackerman and Gross.

Hameed has critiqued both the broad definition of terrorism adopted in the Anti-Terrorism Act 1997 of Pakistan and the role of the country's criminal justice system under the Act.[192] He thinks that Pakistan has adopted a very broad definition of terrorism, which even includes certain ordinary offences such as kidnapping and extortion of money. Consequently, many terror suspects have been released.[193] He suggests that, 'Pakistan must reform its criminal justice system in order to ensure that terrorism is being handled effectively'.[194] However, this work is very broad, especially in its evaluation of the

[191]Ibid. at pp.42-43.
[192] Hameed, Z. (2012) "Antiterrorism Law", in *Stabilizing Pakistan through Police Reforms*, Asia Society Report by the Independent Commission on Pakistan Police Reforms.
[193]Ibid
[194] Ibid.

function of the courts and police performance. In addition, this work lacks a specific focus on the treatment of terror detainees, such as a case-study on the total period of pre-charge detention in Pakistan, the duration of police interrogation sessions, internal police review mechanisms to check police excesses in detention centres, the rights of a terror suspect to contact and hire a lawyer of his choice and the detention conditions. Finally, Hameed has neither used a particular theoretical framework nor has he compared Pakistan with the UK.

To enhance the professionalism of the police in Pakistan, Naqvi has carried out a comparative analysis of Pakistani, Indonesian and Turkish police models. However, this study only examined models of good police practice and it was not suspect-centred.[195] A similar approach was adopted by Abbas and Kureshi, who undertook a comparative study of Pakistani police models with other states in South Asia (i.e., India, Sri Lanka and Bangladesh).[196] Meanwhile, Ras has compared the South African police model with that of Pakistan and has suggested ways of improving Pakistani police responses to combating terrorism.[197] In all of these studies, the treatment of terror detainees during pre-charge detention in Pakistan has not been used as a case-study where UK should have been used as a comparator on the topic.

Kennedy has produced a chronological development of the anti-terrorism regime in Pakistan. In this work, his main contention is to evaluate Pakistan's anti-terrorism laws to determine whether the purpose of the law is to punish terrorists or political opponents.[198] Although his work seems useful to understand the evolution of anti-terrorism laws in Pakistan, it is too general and lacks focus on the treatment of terror

[195]Naqvi, N. (2012) "Models for Reform: Indonesia and Turkey", in *Stabilizing Pakistan through Police Reforms*, Asia Society Report by the Independent Commission on Pakistan Police Reforms.
[196]Abbas, H. & Kureshi, Y. (2012) "Lessons from South Asia" (2012), in *Stabilizing Pakistan through Police Reforms*, Asia Society Report by the Independent Commission on Pakistan Police Reforms.
[197]Ras, J. (2010) "Policing the Northwest Frontier Province of Pakistan: Practical Remarks from a South African Perspective" *Pakistan Journal of Criminology* 2(1).
[198] Kennedy, C. (2004) The Creation and Development of Pakistan's Antiterrorism Regime, 1997–2002. Religious Radicalism and Security in South Asia.

detainees, which is the main concern of this present research project. Later, Raza responded to Kennedy's work; however, he did not touch upon the treatment of terror detainees.[199]

Ali has narrated the history of 'War on Terror' in the contexts of Pakistan, Afghanistan, the then Soviet Union and the United States.[200] Likewise, Malik has elaborated Pakistan's historical, political, socio-religious and geographical aspects in the context of the 'War on Terror'.[201] Similarly, a recent study of Pakistan that was conducted by Jalal, a prominent Pakistani historian, has linked the country's history with the current threat of terrorism.[202] Although these scholars have provided accounts of social, political and geographical perspectives of Pakistan, their contributions lack a comparison of the Pakistani anti-terror laws with those used in the UK. Their works do not touch upon human rights during internal disturbances, such as terrorism. Their research is far from helping to show that Pakistan's anti-terror laws and practices endanger the human rights of people suspected of terrorism.

So far, the latest research on the anti-terror legislation of Pakistan has been carried out by Sitwat Waqar Bokhari,[203] who identified and commented on various pieces of the anti-terror laws in the country.[204] Her historical exposition of the law covers the period from 1974 to 2013. In her work, she has briefly commented on each piece of legislation, providing an overview of Pakistan's journey in the anti-terrorism legislation. In particular, Bokhari has identified several shortcomings in the law. One of the

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[199] Raza, S.S. The Anti--Terrorism Legal Regime of Pakistan and the Global Paradigm of Security: A Genealogical and Comparative Analysis, paper submitted with WPSA available at http://wpsa.research.pdx.edu/papers/docs/The%20anti-terrorism%20regime%20Paper%20for%20WPSA.pdf last accessed 07 January 2016

[200] Ali, T. (2003) The Clash of Fundamentalisms: Crusades, Jihads and Modernity, London: Verso

[201] Malik, I. (2010) Pakistan: Democracy, Terrorism, and the Building of a Nation, Massachusetts: Olive Branch Press.

[202] Jalal, A. (2014) The Struggle for Pakistan: A Muslim Homeland and Global Politics. Harvard University Press.

[203] Bokhari, S.W. (2013) "Pakistan's Challenges in Anti-terror Legislation", *Centre for Research and Security Studies*.

[204] Ibid.

shortcomings is the abuse of the law. By abuse of the law, she means that it has been used for political gains.[205] Her work looks like an outstanding job in the sense that all of the anti-terror legislation used in Pakistan can be seen together with a commentary, which is unique; however, her work is neither suspect-centred nor has it been compared with the UK's treatment of terror suspects.

Rehman et al. have compared the counter-terrorism strategies of Pakistan, Malaysia and the UK.[206] Their main focus is to survey the similarities and differences in the 'prevention' policies and laws in the three countries. However, their work is not meant to be a critique of the treatment of terror suspects in Pakistan. In addition, although there is a comparison of Pakistan with the UK on how to prevent people from been drawn into terrorism, it does not examine the treatment of terror suspects in the two countries.

'Prevent' is an important component in the counter-terrorism strategy used in the UK. The strategy as a whole is called 'CONTEST'.[207] This works in four different areas, which are: 'Pursue', 'Prevent', 'Protect' and 'Prepare'.[208] The purpose of 'Pursue' is to stop terrorist attacks in the UK and abroad, such as stopping terrorism against British High Commissions around the world and other diplomatic and educational services. 'Pursue' detects and investigates threats at the earliest possible stage, disrupting terrorist plans before they can endanger the public and most importantly prosecuting those responsible.[209] 'Prevent' refers to stopping people from being drawn into terrorism and ensure that they are given appropriate advice and support. Consequently, 'Prevent' is an effort to stop the radicalisation of individuals.[210] Rehman et al. have written about

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[205] Ibid.
[206] Rehman, J. et al (2015) 'Prevent' Policies and Laws: A Comparative Survey of the UK, Malaysia, and Pakistan in Routledge Handbook of Law and Terrorism edited by Clive Walker and Genevieve Lennon. Oxon and New York: Routledge pp. 383 – 399
[207] "CONTEST: The United Kingdom's Strategy for Countering Terrorism" (July 2011) *Home Office*, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97994/contest-summary.pdf, last accessed 15 February 2015.
[208] Ibid.
[209] Ibid.
[210] Ibid.

'Prevent' in the research settings of the UK, Pakistan and Malaysia. The meaning of 'Protect' is evident from its name: it protects the country's vulnerabilities (i.e., public places where ordinary citizens gather and congregate, such as airports, religious places, shopping malls, train stations, etc).[211] Meanwhile, 'Prepare' aims to mitigate the impact of a terrorist attack where that attack cannot be stopped. This includes work to bring a terrorist attack to an end and to increase the UK's resilience to recover from its aftermath.[212] Rehman et al. compared and contrasted 'Prevent' policies and laws in the UK, Pakistan and Malaysia with a primary focus seeking to stop people from being drawn into extremism and terrorism. However, their research fails in the 'Pursue' and not in the 'Prevent' part of the CONTEST seeking to disrupt, investigate and prosecute terrorism cases. In particular, they do not discuss the fair treatment of terror detainees during pre-charge detention.

None of the studies detailed in this review have focused on the treatment of terror suspects during pre-charge detention in Pakistan. Given that there is no systemic investigation or an assessment of the treatment of terror suspects, it is reasonable to state that there is gap in the knowledge focusing on the treatment of terror detainees in the research settings of Pakistan. There is no case-study on the treatment of terror suspects during pre-charge terror detention of Pakistan where UK should have been used as a comparator on the topic. Although many scholars have studied terrorism in the context of Pakistan, the treatment of terror detainees and a comparison with the UK has not been addressed to date. In other words, there is a 'complete absence'[213] of research in the area. Consequently, this research will 'occupy the niche'[214] by evaluating the treatment of terror suspect in Pakistan during pre-charge detention and using UK as a comparator. In

[211] Ibid.
[212] Ibid.
[213] Lim, J.M. (2012) "How Do Writers Establish Niches? A Genre-based Investigation into Management Researcher's Rhetorical Steps and Linguistic Mechanisms", Journal of English for Academic Purposes 11 (229-245) p. 231 and 234
[214] Ibid.

particular, this scholarship will carry out a case-study of the prevalent period of pre-charge detention in Pakistan. The case will include police interrogation of terror suspects, the duration of interrogation, its mode, place and the conditions of the place in which such interrogations are carried out. This research will adopt a liberal security approach to critique Pakistan's detention conditions, in which suspected terrorists are kept during police custody. This study will also assess the country's police records and the rights of a terror suspect to contact his or her family, friends and legal counsels in the light of the human rights law. Pakistan's treatment of terror suspects will be evaluated in light of the human rights law to know how a terror suspect ought to be treated. Similarly, Pakistan's treatment of terror suspects will be compared to their treatment in the UK to learn some lessons from.

It is, therefore, reasonable now to argue that in the 'complete absence' of an in-depth study on the treatment of terror suspects during pre-charge detention in Pakistan, the country does not understand the legal boundaries of a war or executive model of terrorism, as a result the models are reflected in the country's legal response to terrorism mistreating terror detainees. A terror suspect arrested on a reasonable suspicion of committing an offence of terrorism comes under the crime or justice paradigm of terrorism, which requires the adoption of a liberal approach to security.

In the absence of any systemic investigation or an assessment on the treatment of terror suspects in Pakistan, it is also reasonable to state in furtherance of the thesis argument that the way forward for the country is to learn from the UK's experience when treating terror detainees during pre-charge detention. However, one can also counter-argue about the reasons why we should use UK as comparator to the main case-study of Pakistan's treatment of terror detainees, why should we not use other countries—the United States, Australia, France, Germany, Spain, Iraq, China, India or Afghanistan—as potential comparators to the main case-study.

There are several reasons why this research will use UK as a potential comparator to the main case-study. First, Pakistan has inherited most of its laws from the UK. Pakistan came into existence when British India was partitioned in 1947.[215] Soon after its creation, the country faced many problems. Consequently, there was not enough time to enact new laws on important issues, so that it adopted various constitutional and legal codes of its predecessor—British India.[216] For example, the very first constitution of Pakistan was a legacy of the British Empire, particularly the Government of India Act 1935. The second major reason why this research will compare Pakistan with the UK, and vice versa, is that they share almost the same length of time in combating terrorism. For example, the UK has been dealing with the Northern Ireland Troubles since 1970,[217] while the first cycle of terrorism started in Pakistan in 1974.[218] So fighting against terrorism is neither new to Pakistan nor to the UK. Third, the definition of terrorism in the UK and Pakistan is almost the same—Pakistan has borrowed this definition from the UK.[219] In addition, the enemies or terrorist threats come from almost the same organisations: Al-Qaida, and its allies and its descendants. Lastly, and most importantly, the UK's CONTEST strategy of 2011[220] clearly stipulates that the highest threat to its national security comes from terrorism and most of the threats come from non-state actors in Pakistan. The main reason for this is that British Muslim communities have strong social and religious ties with Pakistan.[221] Consequently, it makes sense to use UK as a

[215]Alavi, H. (1989) "Formation of the Social Structure of South Asia under the impact of colonialism", in *Sociology of Developing Societies: South Asia*, ed. Alavi & Harris. London: Macmillan Education Ltd.
[216] Asad, M. (2012) "The Criminal Justice System", in *Stabilizing Pakistan through Police Reforms,* Asia Society Report by the Independent Commission on Pakistan Police Reforms, at p.20.
[217] Dingley, J. (2001) "The Bombing of Omagh, 15 August 1998: the Bombers, Their Tactics, Strategy, and Purpose Behind the Incident" Studies in Conflict and Terrorism 24: 463.
[218] Hussain, S. (2012), "Myths about Terrorism in Pakistan" in *Stabilizing Pakistan through Police Reforms*, Asia Society Report by the Independent Commission on Pakistan Police Reforms at 46.
[219] Roach, K. (2015) "The Migration and Derivation of Counter-terrorism" in Routledge Handbook of Law and Terrorism, first published 2015, edited by Genevieve Lennon and Clive Walker, Oxon, New York: Routledge.
[220] *CONTEST: The United Kingdom's Strategy for Countering Terrorism*, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97994/contest-summary.pdf last accessed on 26 January 2015
[221] Riedel, B. (2008) "Pakistan and Terror: The Eye of the Storm", The Annals of the American Academy of Political and Social Sciences 618(1) 31 - 45

suitable comparator in this regard. This research will help policymakers in both countries to combat terrorism while keeping within the bounds of human rights limits. CONTEST also undertakes that the British government will collaborate with other countries for 'Prevent' and 'Pursue' purposes to identify and disrupt any such threats nationally or overseas. In addition, why should the UK not be used as a strong comparator to the main case-study when, in the past, they have even jointly interrogated suspects of terrorism?[222] Finally, comparing the treatment of terror suspects of Pakistan with countries other than the UK is highly unlikely to bring about significant results. Consequently, it is arguably reasonable to use Pakistan as a case-study on the topic and to use the UK as a potential comparator in this regard.

Part IV

2.4.0 Conclusion

To conclude, it is evident from this discussion that there is arguably a 'complete absence' in the current knowledge focusing on the treatment of terror suspects in Pakistan in the framework of the liberal and conservative approaches to security, and also to the relationship between liberty and security. This chapter has arguably indicated a potential gap in the topic and has also devised a strategy to occupy the niche to contribute new knowledge in the discourse of human rights law and terrorism.

Although many scholars in the research setting of Pakistan have written about terrorism, none have focused on the treatment of terror suspects during pre-charge detention. This chapter has also assessed the liberal's and securicrats' viewpoints to comprehend their respective stances on the treatment of terror suspects during pre-charge detention. The finding is that the securicrats' are in favour of a lengthy and prolonged

[222] Human Rights Watch, (2009) UK Should Investigate Role in Torture in Pakistan, available at https://www.hrw.org/news/2009/02/02/uk-should-investigate-role-torture-pakistan last accessed on 01 February 2017

period of pre-charge detention while liberals believe that the administration of criminal justice system prefers to keep the period to a minimum and so avoid an incursion on liberty. Likewise, when talking about the period of each police interrogation session, the securicrats prefer longer interrogation to get important information from a terror detainee to prevent future terrorism, while liberals are in favour of shorter police interrogation session. Securicrats are not concerned about reviewing the work of an investigation officer while liberals see this a potential safeguard to save a suspected terrorist from the police abuses during detention. Police records are less important in the eyes of conservative approaches to security for securicrats (such as Posner, Ackerman, Tushnet and Gross) and they do not give much importance to the role of the courts in the fight against terrorism. Therefore, they are not serious about keeping and presenting an accurate account of all of the police record during pre-charge detention. In contrast, liberals (such as Walker, Macken, Luban, Fiona, Waldron and Cole) stress the importance of an accurate police record for the administration of criminal justice. Courts have very important role to play in the fight against terrorism, for which the production of an accurate account of the police records is extremely important. The conservative approaches to security do not believe in granting rights to a terror suspect to contact her or his family, friends, legal counsel and so on, while liberals consider these rights as complementary of the justice model. Finally, the detention conditions in which people suspected of terrorism are kept may not be a matter of concern for certain securicrats; however, to liberals the terror detainees should be kept in humane detention conditions.

Because the treatment of terror detainees during pre-charge detention in Pakistan has not been evaluated, this research will initiate to take the opportunity and fill the gap. Similarly, it is also evident from the debate between liberals and securicrats on the treatment of terror detainees that the treatment in Pakistan has not been used as a main case-study to have used UK as a suitable comparator. This research urges the need for

Pakistan to learn from the liberal approaches to security and especially the UK's experience in how to treat terror suspects in a justice system, and vice versa for the UK.

The following research questions have been developed to address the gap in the current knowledge:

i) Which human rights law govern the treatment of terror suspects during pre-charge detention? And, what treatment should they receive?

ii) What is the law on the treatment of terror detainees during pre-charge detention in the UK? To what degree the country complies with the human rights obligations in this regard? And, is there any gap between the UK's law and practice when dealing with terror detainees during pre-charge detention?

iii) What is the law on the treatment of terror detainees during pre-charge detention in Pakistan? To what degree does the country comply with the human rights obligations in this regard? And, is there any gap between the Pakistan's law and practice when treating terror detainees?

iv) What can Pakistan learn from the UK's treatment of terror detainees, and vice versa? What can the two countries learn from the human rights law in this regard?

CHAPTER THREE

HUMAN RIGHTS LAW REGULATING PRE-CHARGE TERROR DETENTION

3.0 Introduction

The purpose of this chapter is to answer the first research question of this thesis, which asks: Which human rights laws govern the treatment of terror suspects during pre-charge detention? And, what ought to be the treatment of terror detainees thereunder? To answer the first part, this chapter will begin by identifying the relevant international human rights law, with a focus on those provisions applicable to the treatment of terror suspects during pre-charge detention. The review of human rights law will also include certain regional and domestic human rights laws that are applicable in the jurisdictions of the UK and Pakistan. This section will also include a discussion of the nature of the human rights law, its classification, and the two countries' commitment to adhere to their respective human rights obligations when fighting against terrorism. In summary, Part I is a brief introduction to the human rights laws (international, national, domestic) that cover the treatment of terror detainees.

This chapter will then answer the second part of the research question: How should a terror detainee who is arrested on a reasonable suspicion of having committed an offence of terrorism be treated in accordance with the human rights law? In other words, how ought we treat a terror detainee as opposed to how is a suspect treated in a country's anti-terror law. A human rights law assessment of the treatment of terror suspects will appear in Part II. This part will also identify the specific human rights laws and principles that are applicable to the treatment of terror suspects, covering the six categories/themes that were identified in the previous chapter. Part II will review the body

of human rights laws to find out how terror detainees ought to be treated in a criminal justice system. In particular, what ought to be the total period of pre-charge detention? How prompt should a terror suspect be brought before a court? What ought to be the period of further detention in police custody at a time? What should the duration of each police interrogation session without break be? Should there be an internal police review mechanism to remain a check on police officers and protect terror detainees? Should a terror suspect be allowed to contact his or her family, friends, or lawyer? What should be the detention conditions in which terror detainees are kept during pre-charge detention? The answers to these questions will act as yardstick or driving force to evaluate the powers of pre-charge terror detention in Pakistan and the UK, where the former will be a case-study and the latter a comparator to the main case. Part III will conclude this chapter.

Part I

3.1.0 Human Rights Law in General

This part aims to identify the human rights laws and their specific provisions governing the treatment of terror suspects in Pakistan and the UK. The human rights laws, for the purpose of this research, includes all important international human rights instruments (also called the International Bill of Rights), and regional and domestic human rights laws applicable in the jurisdictions of the two countries.

3.1.1 International Human Rights Law

The core international human rights instruments applicable to the treatment of terror suspects are the Universal Declaration of Human Rights 1948 (hereafter, UDHR), the International Covenant on Civil and Political Rights 1966 (hereafter, ICCPR), and the United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment 1984 (hereafter, UNCAT).

The UDHR is regarded as the mother charter of all human rights.[223] The declaration has contributed to the growth of customary international law and is also cited in the decisions of various domestic courts in many states.[224] No one can deny the significance of the UDHR; however, holistically the document is a declaration of the United Nations which is not legally binding. The non-binding nature of the declaration is clear from the following oft-cited words of Eleanor Roosevelt, chairperson of the United Nations Commission on Human Rights in 1948:

> *In giving our approval to the declaration today, it is of primary importance that we keep clearly in mind the basic character of the document. It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation. It is a declaration of basic principles of human rights and freedoms, to be stamped with the approval of the General Assembly by formal vote of its members, and to serve as a common standard of achievement for all peoples of all nations.*[225]

Notwithstanding the non-binding nature of the UDHR, some provisions of the declaration operate as customary international law and the principle of jus cogens which are considered binding. "Customary international law results from a general and consistent practice of states followed by them from a sense of legal obligation."[226] International law resources include treaties and customs. A treaty is made by the express consent of the state parties to it. A treaty (either bilateral or multilateral) is binding on the state parties alone. However, treaties that incorporate certain customary international rules also become binding on all states.[227] The international customs are consistent states' practices and they are not backed by express but by implied state consent; for example, the states' practices on diplomatic immunity, respecting children, women, scholars and

[223] Steiner, H. J. et al. (2007) International Human Rights in Context, 3rd edition, New York: Oxford University Press, pp. 160–161.
[224] Hannum, H. (1995) "The Status of the Universal Declaration of Human Rights in National and International Law", Ga. J. Int'l & Comp. L. 25, 287.
[225] Ibid., p. 318.
[226] Steiner, H. J. et al. (2007) International Human Rights in Context, 3rd edition, New York: Oxford University Press, p. 72.
[227] Ibid., pp. 107–111.

all civilians during war under the four Geneva Conventions.[228] Some parts of the UDHR are also binding due to the principle of jus cogens. The doctrine of jus cogens is also called peremptory norms and it includes: prohibition of the use of force; the law of genocide; the principle of racial non-discrimination; crimes against humanity; prohibition of slavery, piracy and torture; the right to life, liberty and security of persons.[229] Consequently, some of the rights enumerated in the declaration, particularly rights to liberty and security of persons, being parts of the customary international law and the jus cogens doctrine, are binding on all states. All states are obliged to respect the binding rights enshrined thereunder, including the UK and Pakistan.[230]

In 1966, the rights enshrined in the UDHR were for the first time categorised, given considerably greater detail and more formally enforced through the International Covenant on Civil and Political Rights (hereafter, ICCPR).[231] The ICCPR distinguished between the different right categories that were earlier enshrined in the UDHR.[232] Thus, all rights mentioned in the ICCPR are categorised as 'civil and political rights',[233] they are also known as the 'first-generation rights'.[234] These rights include the rights to life and liberty, freedom of speech and religion, rights against torture and other ill treatments, freedom from unlawful arrest and detention, right to nationality, right to participate in political life, and so on. The remaining rights of the UDHR were separately incorporated in the International Covenant on Economic, Social, and Cultural Rights of 1966 (hereafter, ICESCR).[235] The ICESCR includes 'social and economic rights'. These are

[228] Ibid., pp. 72–73.
[229] Rehman, J. (2003) International Human Rights Law, London, New York: Pearson Education Limited pp. 26 and 82.
[230] Stone, R. (2012) Textbook on Civil Liberties and Human Rights, 9th edition, Oxford: Oxford University Press pp. 3–4.
[231] Steiner, H. J., et al. (2007) International Human Rights in Context, 3rd edition, New York: Oxford University Press. pp. 152–155.
[232] Stone, R. (2012) Textbook on Civil Liberties and Human Rights, 9th edition, Oxford: Oxford University Press pp. 3–9.
[233] Ibid.
[234] Ibid.
[235] Ibid.

also known as 'second-generation rights'.[236] There is another a category of human rights that is known as 'third-generation rights',[237] which are mainly group rights. The prime examples of these rights are minority rights, women's rights, gay and lesbian rights, and children's rights. Although it is not clear how far these rights fulfil the need of a human being, civil and political rights are prioritised over social and economic rights.[238] This research project focuses on the treatment of terror suspects in detention, which comes under the first-generation rights—that is, civil and political rights.

The ICCPR further elaborated the civil and political rights mentioned in the UDHR. For example, Article 5 of the UDHR refers to the notion of 'punishment' while ICCPR expands the notion by restricting capital punishment to most serious crimes only.[239] The Second Optional Protocol to the ICCPR abolishes capital punishment.[240] The ICCPR also created a more formal enforcement mechanism for civil and political rights. A treaty organ such as the Human Rights Committee, which was created under the ICCPR, provides institutional support to the Covenant norms.[241] All state parties are under obligations to submit periodic reports to the Committee that is tasked with reviewing the human rights situation in these countries.[242] The Committee then prepares its recommendations to help improve human rights in a particular state party.[243] The Committee is also empowered to provide clarity on the interpretation of any clause or provision mentioned in the substance of ICCPR in the form of a 'General Comment'.[244] The work of the Human Rights Committee forms the body of jurisprudence applicable to

[236] Ibid.
[237] Ibid.
[238] Ibid.
[239] International Covenant on Civil and Political Rights (ICCPR) 1966, Article 6(2). Available at http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx (last accessed 18 September 2014).
[240] Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty 1989 available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx
[241] ICCPR, Article 28.
[242] Ibid., Articles 40 and 41.
[243] Ibid.
[244] Ibid.

all civil and political rights in the Covenant, including the treatment of terror suspects during pre-charge terror detention.

The ICCPR came into force when it received sufficient state ratifications on 23 March 1976.[245] So far, there are 169 state parties to the Covenant.[246] The UK ratified the ICCPR on 20 May 1976 and Pakistan ratified it on 23 June 2010.[247] State parties can derogate from some of its provisions during a public emergency by making reservations. Initially, Pakistan made eight reservations[248] to the Covenant but later on all of them were withdrawn.[249] Similarly, there is no reservation as such on the part of the UK affecting the rights of terror suspects in the treaty.

The ICCPR broadened the meaning and scope of the rights mentioned in the UDHR, just as the UNCAT had expressed in a fuller form the 'right against torture and other ill treatments'. For instance, the ICCPR and the UDHR enshrine and restate the prohibition of torture and other ill-treatment in its Articles 5 and 7, respectively. However, the entire treaty of UNCAT is focused on torture and other cruel, inhumane or degrading treatment.[250] It came into force on 26 June 1987, when it was ratified by a sufficient number of states.[251] Currently, UNCAT has 162 state parties. The UK ratified it on 8 December 1988 and Pakistan ratified it on the same day that it ratified the ICCPR—23

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[245] United Nations Treaty Collection Databases. Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en (last accessed 8 November 2017).
[246] Ibid.
[247] Ibid.
[248] Amnesty International (23 June 2011) Pakistan's reservations: a challenge to the integrity of the United Nations human rights treaty system. Available at http://www.amnesty.org/fr/library/asset/ASA33/006/2011/fr/28d1c075-7b96-4cb5-b0fb-fca2d6b11915/asa330062011en.html (last accessed 18 September 2014).
[249] The Nation (23 June 2011) "Pakistan decides to withdraw most of reservations on ICCPR, UNCAT" Available at http://nation.com.pk/national/23-Jun-2011/Pakistan-decides-to-withdraw-most-of-reservations-on-ICCPR-UNCAT (last accessed 18 September 2014).
[250] United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment. Available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx (last accessed 18 September 2014).
[251] United Nations Treaty Collection Databases. Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en#EndDec (last accessed 8 November 2017).

June 2010.[252] Like the Human Rights Committee under the ICCPR, the Committee Against Torture under the UNCAT enforces rights against torture and other ill-treatment.[253] The Committee Against Torture receives reports about torture and other ill-treatment from state parties and it then provides them with 'General Comments'.[254] Thus, the work of this Committee also forms an important part of the human rights laws. Consequently, this research will closely examine the UDHR, ICCPR, UNCAT, and the work of the two committees thereunder to find out which specific provisions of the human rights laws govern the treatment of terror suspects during pre-charge detention.

3.1.2 Regional Human Rights Laws for the UK and Pakistan

Apart from international human rights instruments, there are certain regional human rights arrangements applicable to states that are located in that specific region. For example, the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter, ECHR) came into force on 3 September 1953 to protect human rights in Europe. The convention received 10 ratifications, and thus came into force.[255] The convention currently has 47 member-states. The UK ratified the ECHR on the same day as it came into force—3 September 1953.[256]

One of the distinctive features of the ECHR is that all rights therein are civil and political in nature, therefore, are justiciable,[257] which means that the rights are enforceable in a court. The European Court of Human Rights (hereafter, ECtHR) hears cases from

[252] Ibid.
[253] United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment. Available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx Article 17 (last accessed 18 September 2014).
[254] Ibid., Article 19.
[255] Council of Europe, Treaty Office, Chart of signatures and ratifications of Treaty 005. Available at http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures?p_auth=3n3wyl65 (last accessed on 7 June 2017).
[256] Ibid.
[257] Steiner, H. J., et al. (2007) International Human Rights in Context, 3rd edition, New York: Oxford University Press. See also, Stone, R. (2012) Textbook on Civil Liberties and Human Rights, 9th edition, Oxford: Oxford University Press

around Europe, including the UK, on the human rights enshrined in the ECHR. This is why the rights enforcement mechanism in the ECHR is arguably much tighter than the ICCPR.[258] The UK, as a signatory to the ECHR, is under a strong obligation to respect the human rights enshrined in the instrument when fighting against terrorism. Consequently, this research will use, especially in the UK context, the ECHR and the ECtHR case laws to find the regional human rights stance on the treatment of terror suspects during pre-charge terror detention.

In the context of Pakistan, unfortunately, there is no regional arrangement for the protection of human rights.[259] Pakistan is situated in South Asia, its neighbours include India, Bangladesh, Sri Lanka, Bhutan, Burma, Nepal and the Maldives.[260] There is a forum of regional global society, called the Asian Forum for Human Rights and Development, which strives for the creation of a mechanism similar to other regional mechanisms for the protection of human rights in the region.[261] In August 2014, scholars, delegates and activists met in India and Nepal to initiate steps for the creation of a mechanism governing regional human rights in the region, which is yet to be fulfilled.[262] Given that there is no formal mechanism in the region for the protection of human rights, Pakistan is under no regional obligation to respect human rights, let alone the rights of terror suspects. However, this does not mean that the country is absolved of any international or domestic human rights obligations.

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[258] Ibid.
[259] Basnet, M. (1997) "South Asian Regional Initiative on Human Rights" *Washington College of Law*. Available at http://www.wcl.american.edu/hrbrief/v4i2/saarc42.htm
[260] Ibid.
[261] Ibid.
[262] Asian Forum for Human Rights and Development (30 August 2014) India: it is time for the establishment of a South Asian Human Rights Mechanism. Press release. Available at http://www.forum-asia.org/?p=17624 (last accessed 18 November 2017).

3.1.3 Domestic Human Rights Laws for the UK and Pakistan

The UK has a long history to the commitment of human rights, including the Magna Carta of 1215 and the development of common law. This research will use the Human Rights Act 1998 and some recent court decisions to find the domestic human rights obligations of the UK on the treatment of terror detainees during pre-charge detention.

One of the salient features of the Human Rights Act 1998 is that all of the decisions made by the European Court of Human Rights are relevant to all British courts regarding the convention rights. This means that the British courts should follow the European courts' decisions. However, this does not mean that the decisions are binding on the UK courts. Section 2 states that the UK courts or tribunals must only 'take into account' any European court decision. The same principle applies to all UK legislation in this regard.[263] Similarly, if a court in the UK finds that any piece of legislation is against the letter or spirit of the ECHR rights, then such laws may be declared incompatible as per Section 4(2).[264] The declaration of incompatibility is elaborated more in Chapter Four.

Under the Human Rights Act 1998, Section 14, as well under the ECHR, Article 15 (1), the UK is entitled to enter a valid derogation whereby any provision of law can be retained by the country even if such law goes against the ECHR rights. A derogation, in respect of Article 5 (Right to liberty and security of person), can validly be made. The UK has made such derogations in the past. For example, an initial derogation was made as a result of the decision made in the Brogan case.[265] In this case, a further detention period was extended by the UK government under the Prevention of Terrorism Act 1974 without the approval of the national court, which was held to violate Article 5 of the ECHR by ECtHR. The UK government consequently entered a derogation regarding

[263] Hoffman, D., and Rowe, J. (2003) Human Rights in the UK: An Introduction to the Human Rights Act 1998, 4th edition, Pearson: Harlow, England; see also The Human Rights Act 1998.
[264] Ibid.
[265] Brogan v United Kingdom, European Court of Human Rights, 1988 Ser. A, No. 145-B, 11 EHRR 117

Article 5 on the basis that there was emergency in Northern Ireland at that time and it was apt to enter the derogation. That derogation has now been lifted.[266]

A second derogation was entered by the UK regarding the Anti-Terrorism, Crime and Security Act 2001, which authorised the indefinite detention of foreign terror suspects (i.e. not UK nationals). The derogation referred to powers to extend the detention period indefinitely if a terrorist suspect on the basis of reasonable suspicion was a foreign national. The government argued that international suspects can neither be taken to trial in case they are arrested on the basis of intelligence that cannot be disclosed in the public nor can they be deported because they might be subjected to torture or other ill-treatment in the country to which the detainee was to be deported. The House of Lords declared such derogation disproportionate and discriminatory contrary to Articles 14 and 15 (1) of the ECHR. Currently, there are no derogations in place.[267]

In the context of Pakistan, the domestic human rights laws appeared in its 1973 constitution.[268] All domestic human rights in Pakistan are called 'Fundamental Rights',[269] which includes security of persons, safeguard as to arrest and detention, right to fair trial, inviolability of the dignity of man, and freedom of movement, assembly, association and so on. The courts interpret these rights in light of the 'Principles of Policies' given in the constitution.[270]

All of the fundamental rights mentioned in the Pakistan's constitution are justiciable. This means that the fundamental rights can be enforced through the courts. An aggrieved person can make an application to the High Court of Pakistan if his or her fundamental right is violated.[271] The High Court can also direct any authority in the

[266] Hoffman, D., and Rowe, J. (2003) Human Rights in the UK: An Introduction to the Human Rights Act 1998, 4th edition, Pearson: Harlow, England; see also The Human Rights Act 1998
[267] Ibid.
[268] Constitution of Pakistan 1973. Available at http://www.pakistani.org/pakistan/constitution/ see Part II, Chapters 1 and 2.
[269] Ibid., Chapter 1.
[270] Ibid., Chapter 2.
[271] Ibid., Article 199(1)(c).

country to produce any detainee to ascertain whether or not such person is detained lawfully—habeas corpus.[272] Similarly, the Supreme Court also has jurisdiction to hear fundamental rights-related cases under Article 184(3).

Another distinctive feature of a fundamental right is that no laws should be enacted against them. It is one of the duties of Pakistan not to make any laws that are either inconsistent with or in derogation of the fundamental rights.[273] In the case of *Benazir v President of Pakistan*, the Supreme Court of Pakistan has observed that the interpretation of the fundamental rights should be 'dynamic, progressive and liberal'.[274] The reason behind the liberal interpretation is to provide the maximum possible benefits of the fundamental rights enshrined in the constitution.[275] The Supreme Court further observed that while interpreting the fundamental rights, not only the letter but also the spirit of the constitution should be kept in mind. The same view has been upheld in the case of *Arshad Mahmood v Government of Punjab.*[276] The Supreme Court and the High Court can declare any law null and void if it is found to either be in conflict with or in derogation of the fundamental rights or its interpretation as understood by the courts. There is a strong judicial review concept in Pakistan. The declaration of incompatibility, in the context of the UK, is an example of a limited judicial review which will be elaborated in Chapter Four.

The fundamental rights can be suspended when the President of Pakistan is satisfied that there is an emergency that threatens the security of the country.[277] In this case, the President makes a proclamation of an emergency in the whole or in part of the

[272] Ibid., Article 199(1)(b)(i).
[273] Ibid., Article 8(1).
[274] Benazir Bhutto v President of Pakistan PLD 1998 SC 388. Available at https://pakistanconstitutionlaw.com/p-l-d-2007-karachi-544/ (last accessed 5 June 2017).
[275] Ibid.
[276] Arshad Mahmood v Government of Punjab PLD 2005 SC 193. Available at https://pakistanconstitutionlaw.com/p-l-d-2007-karachi-544/
[277] Constitution of Pakistan 1973, Articles 232 and 233.

country. The fundamental rights are then restored after the emergency is revoked through a subsequent proclamation.[278]

There are certain non-justiciable provisions in the constitution of Pakistan, which are called 'Principles of Policy'.[279] These are included in Part II, Chapter Two of the Constitution, including the promotion of the Islamic way of life, the promotion of local government institutions, full participation of women in national life, the promotion of social justice and eradication of social evils, promotion of economic well-being, and so on.[280] However, these provisions are merely aspirational and the state laws or actions are not judged against these directives or aspirations. Although these principles cannot be enforced through the courts, they are taken into consideration when interpreting the fundamental rights or any provisions of the constitution.[281] Consequently, this present research will examine all of the fundamental rights and principles of policies applicable to the treatment of terror detainees to find how should a terror detainee be treated in the domestic human rights laws of Pakistan.

In summary, the human rights laws applicable to the treatment of terror detainees spread over international, regional and domestic levels. On the international level, this research will use the UDHR, ICCPR, UNCAT and the work of the respective committees thereunder. On the regional level, the ECHR and case laws from the ECtHR will be used. On the domestic level, in the context of the UK, the Human Rights Act 1998 and the country's common law will be used; and, in the context of Pakistan, the country's fundamental rights and principle of policies together with the country's court decision will be used. Now that the whole body of the human rights law related to the treatment of terror detainees has been identified, this research will next identify the specific provisions

[278] Ibid., Article 236.
[279] *Constitution of Pakistan* (1973), Part II Chapter 2, see also Redding, J. A. (2004) "Constitutionalizing Islam: theory and Pakistan" Virginia Journal of International Law 44(3), 759–828.
[280] Ibid.
[281] Ibid.

to answer the second part of the first research question—how a terror suspect ought to be treated.

Part II

3.2.0 Human Rights Law Regulating the Treatment of Terror Suspects

Part II will attempt to answer the second part of the first research question: How terror detainees ought to be treated in a criminal justice system? This part will use the six categories/themes that were identified in the previous chapter on the treatment of terror suspects to find how long a terror detainee may be kept in police custody, the duration of each police interrogation session, the opportunities that a terror suspect should have to contact the outside world, the standard of maintaining police records, the safeguards that should be included in the law to ensure internal police review mechanisms to protect terror detainees from police abuses, and the detention conditions in which a terror detainee is detained. Consequently, this part will bring to the fore all of the important human rights obligations of the UK and Pakistan applicable to the treatment of terror detainees during pre-charge detention. These specific provisions will serve as yardstick to evaluate the treatment of terror detainees during pre-charge detention in the two countries, Pakistan being the principal focus and the UK acting as a comparator.

3.2.1 The Period of Pre-charge Detention

The denial of liberty is a source of 'substantial concern' in all countries.[282] The lengthy period of pre-charge can further aggravate the concern. Thus, what ought to be the period of the pre-charge detention to mitigate the level of concern? Article 9 of the

[282] Rehman, J. (2003) International Human Rights Law, London, New York: Pearson Education Limited p. 101.

ICCPR embodies very important substantive and procedural safeguards in this regard, as follows:

1. *Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*
2. *Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*
3. *Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.*
4. *Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*
5. *Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.*[283]

Article 9 embraces two important principles: the principle of promptness and the principles of reasonableness. According to the principle of promptness, an arrested person must be presented before a court as soon as possible.[284] The Human Rights Committee thinks that the term 'promptly' may vary in its meaning but that 'delays should not exceed a few days from the time of arrest'.[285] The Committee further believes that 48 hours is ordinarily sufficient to produce the detainee before the court.[286]

The principle of reasonableness is also called the principle of justice.[287] This principle goes into the substantive part of any legal provision in question and takes its objective assessment.[288] This is what should be the purpose of a legal provision. This principle is an important part of the concept of law.[289] The principle is also read and

[283] International Covenant on Civil and Political Rights 1966, Article 9. Available at http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx
[284] Macken, C. (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and international Human Rights Law, New York: Routledge.
[285] The Human Rights Committee, General Comment No. 35, CCPR/C/GC/R.35/Rev.3 at para 33
[286] Ibid.
[287] Macken, C. (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and International Human Rights Law, New York: Routledge, pp. 40 and 41.
[288] Ibid.
[289] Zorzetto, S. (2015) "Reasonableness", The Italian Law Journal, Vol. 1 No. 1 p. 124

applied in 'context', extending not only in vertical but also in horizontal dimensions.[290] In other words, the principle of reasonableness (in this particular case) questions what the purpose of the pre-charge detention is.[291] The purpose of pre-charge detention is to determine whether or not to bring a criminal charge or set free any person arrested on reasonable suspicion of committing an offence, as is evident from Article 9. In fact, this is to 'freeze time' and facilitate investigation.[292] Hence, promptness and reasonableness are both liberal concepts that try to discourage prolonged and unnecessary detention periods, the opposite of which is 'arbitrariness'. The Human Rights Committee, in its General Comment No. 35, provides a further explanation of Article 9 and says that liberty rights are "precious for their own sake."[293] The Committee believes that the word 'arbitrariness' is broader than unlawfulness and includes "elements of inappropriateness, injustice, lack of predictability, and due process of law, as well as elements of reasonableness, necessity and proportionality."[294]

Article 9 of the ICCPR and the opinions of the Human Rights Committee clearly oppose Ackerman's emergency constitution, which provides for an initial detention up to two months followed by a further detention of three months—five months in total. Instead, they embrace the idea of reasonableness as pronounced by David Cole.[295] International human rights laws also support Macken[296] and Luban's[297] liberal security attitudes not to freeze time forever. In other words, there is no express time period of the

[290] Hickman, T.R. (2004) "The reasonableness principle: reassessing its place in the public sphere", Cambridge Law Journal 63(1), 198.
[291] Macken, C. (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and international Human Rights Law, New York: Routledge pp. 40 and 41.
[292] Ibid., pp. 138–140.
[293] *The Human Rights Committee* (2014), General Comment No. 35, CCPR/C/GC/R.35/Rev.3, para 2
[294] Ibid., at para 12.
[295] Cole, D. (2004) "The Priority of Morality: The Emergency Constitution's Blind Spot", 113 Yale L.J.
[296] Macken, C. (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and international Human Rights Law, New York: Routledge.
[297] Luban, D. (2005) Eight Fallacies about Liberty and Security in Human Rights in the 'War on Terror' edited by Wilson, R.A. New York: Cambridge University Press.

pre-charge detention in the ICCPR but it and the Human Rights Committee encourage that state to keep it to the shortest possible period.

The right to liberty is historically valuable in the UK. In 1215, the Magna Carta, the oldest written constitution in the world, guaranteed the right to liberty and security of person in the following words:

> *No free man shall be taken or imprisoned or dispossessed, or outlawed or exiled, or in any way destroyed, nor will we go upon him, nor will we send against him except by the lawful judgment of his peers or by the law of the land.*

Liberty is an inherent right of human beings. The Magna Carta recognised this and enshrined that liberty must be cherished. It can only be taken away through just laws. Similarly, British courts are the defenders of personal liberty and security of persons. The courts have long ago resisted any encroachment by the executive in this regard. For example, in 1931, during the British colonial period in Nigeria, the governor ordered Eleko, a British subject, to leave a specified area. It was argued in this case that a court of law had no authority to challenge the legality of the executive orders. In reply, the Privy Council held that "no member of the executive can interfere with the liberty or property of a British subject except on the condition that he can support the legality of his action before a court of justice".[298] In other words, the Privy Council believes that though liberty is conditional, however, the laws that deprive someone of his/her liberty must be reasonable or just.

In another case, Lord Atkin warned the executive branch against encroaching upon the right to liberty and authorised a judicial review of all actions violating personal liberty and security:

> *In England amidst the clash of arms the laws are not silent. They may be changed, but they speak the same language in war as in peace. It has always been one of*

[298] The Judicial Committee, His Majesty's Privy Council, Tuesday, the 24th day of March 1931, Appeal No 42 of 1930, available at http://www.nigeria-law.org/Eshugbayi%20Eleko%20v.%20The%20Officer%20administering%20the%20Government%20of%20Nigeria%20No%202.htm ; see also Hoffman, D., and Rowe, J. (2003) Human Rights in the UK: An Introduction to the Human Rights Act 1998, 4th edition, Pearson: Harlow, England. p. 184.

> *the pillars of freedom, one of the principles of liberty for which, on recent authority, we are now fighting, that the judges are no respecters of persons, and stand between the subject and any attempted encroachments, on his liberty by the executive, alert to see that any coercive action is justified in law. In this case, I have listened to arguments, which might have been addressed acceptably to the Court of King's Bench in the time of Charles I.*[299]

In the famous case of Belmarsh, where 10 international terrorist suspects were indefinitely detained under the Anti-terrorism Crime and Security Act 2001, the House of Lords declared incompatible the provision related to indefinite detention contained in the Act and ordered the release of the detainees.[300] The court also considered another argument that liberty is something very precious and the judiciary should decide whether it would be proportionate to deprive someone of his or her liberty against any possible terrorist threat. The government argued that it is within the discretion of the democratic organ of the state to decide on such questions. The court upheld the government's point of view on this,[301] which means that liberty is conditional in the UK's conception of domestic human rights law.

Although the right to liberty and the security of the person are fundamental rights in the UK, the former can be curtailed or limited. There are strict criteria given in the Human Rights Act 1998 to fulfil certain conditions before detaining someone. The right to liberty and security of person is guaranteed under Article 5 of the ECHR, and the same text is incorporated in Schedule 1 of the Human Rights Act 1998. The Article provides material scrutiny of detention rather than mere consideration of provisions regulating arrest and detention under any ordinary or special criminal laws.[302] In particular, Article 5 (1) states: "Everyone has the right to liberty and security of person. No one shall be

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[299] Liversidge v Anderson [1941] UKHL 1 Sept. 18, 19, 22; Nov. 3; see also Azfar, K. "The Role of Judiciary in Good Governance". Supreme Court of Pakistan, available at http://www.supremecourt.gov.pk/ijc/Articles/3/2.pdf p. 4

[300] A and Others v Secretary of State for the Home Department, [2004] UKHL 56; see also Chirinos, A (2005) "Finding the Balance Between Liberty and Security: The Lords' Decision on Britain's Anti-terrorism Act" 18 *Harv. Hum Rts. J.* 265 at 271–272.

[301] Ibid.

[302] Hoffman, D., and Rowe, J. (2003) Human Rights in the UK: An Introduction to the Human Rights Act 1998, 4th edition, Pearson: Harlow, England. pp. 184–204.

deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law." The Article further enlists conditions from Clauses (a) to (f) in which Clause (c) is directly related to this thesis because it relates to the pre-charge detention. Consequently, pre-charge detention must be carried out 'lawfully' and 'in accordance with a procedure prescribed by law'. Clause (c) also contains another safeguard against arbitrary arrest or detention and that is 'reasonable suspicion'. Reasonable suspicion is different from mere suspicion that 'presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence'.[303]

Similarly, detentions should not be 'arbitrary'. An additional procedural safeguard against arbitrary detention is that an arrested person shall be informed promptly of the reason of his or her arrest or of the charge against him or her. Article 5(2) clearly enshrines this safeguard, which states: "Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

In the case of Saadi, a Kurdish asylum seeker in the UK who was told the reasons for his detention 76 hours after his arrest. The European Court of Human Rights declared that although it was not a breach of Article 5(1), Article 5(2) was clearly violated by informing the detainee so late of the reasons for his arrest.[304]

Another important procedural right that comes under the umbrella of treatment of terror detainees during pre-charge detention is enshrined in Article 5 (3), which states:

> *Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*

[303] Ibid., p. 192; also see ECHR, Article 5(1)(C).
[304] Ibid., p.198.

This guarantees the prompt production of any suspect before a court. The clause stipulates that the period of the pre-charge detention should be 'reasonable'. In addition, if a terror detainee is not charged within that reasonable period, then he or she must be released immediately. This guarantees the right to liberty in the same way as Article 9 of the ICCPR.

Pakistan's domestic human rights are protected in Part II of the 1973 Constitution of Pakistan, which expressly protects citizen's liberty. The right to life and liberty is recognised and protected under Articles 9 and 10, respectively. Liberty as enshrined in Article 9 is judicially interpreted by the Supreme Court of Pakistan in the case of *Faisal v the State*.[305] In this case, the Supreme Court stated that the liberty of an accused can be 'circumscribed' because the person is 'accountable' before the state and society.[306] The Supreme Court further interpreted that the full liberty of the accused can be relegated to a 'limited liberty',[307] which means that only the detainee's freedom of movement is curtailed and the detainee is entitled to all other rights available to a free person, including fair treatment. The Supreme Court, in a series of cases, has upheld that although liberty can be curtailed, it is open to judicial review.[308] The court has followed, in most of the liberty-related cases, the dissenting judgement of Lord Atkin in the famous case of *Liversidge v Anderson*, as reported in 1941 in England.[309] Consequently, the UK's and Pakistan's human rights stances on the importance of individual liberty are the same.

Liberty in Pakistan is protected against any attempted encroachments by the government in the same way as they are protected by the domestic and regional human rights laws in the UK. Liberty is a fundamental right but not absolute. Chapter Two has

[305] *Faisal v the State, PLD 2007 Karachi 544* available at http://pakistanconstitutionlaw.com/p-l-d-2007-karachi-544/
[306] Ibid.
[307] Ibid.
[308] Liversidge v Anderson [1941] UKHL1, Sept. 18, 19, 22; Nov. 3; see also, Azfar, K. "The role of judiciary in good governance" (n.d.) *Supreme Court of Pakistan*, available at http://www.supremecourt.gov.pk/ijc/Articles/3/2.pdf, last accessed 18 October 2014.
[309] Ibid.

identified the difference among fundamental, absolute and no-absolute rights. Consequently, the Pakistani judiciary views liberty as a conditional or non-absolute right that the government can put certain reasonable restrictions on. All such restrictions are subject to judicial interpretation.

Article 10 recognises 'arrest and detention' as necessary measures depriving certain individuals of their liberty. The Supreme Court of Pakistan is of the view that the state is under a 'strict liability' to respect, ensure, guarantee and safeguard the limited liberty of the accused.[310] The Supreme Court has given two reasons for this decision: first, limited liberty is very precious to the accused; and second, the duty of care on the part of the state is increased when the accused is arrested or detained.[311] The state is under strict liability as long as the accused is in custody. The Supreme Court further declared that although the accused is accountable, the state is responsible.[312] The principle of strict liability stems from English Common Law.[313] The principle was first stipulated in *Ryland v Fletcher*.[314] According to this principle, a defendant is liable for his or her inadvertent acts causing harm to the plaintiff while keeping or using dangerous products. The duty of care increases under this liability and the defendant is bound to safeguard others from the risks of dangerous products.[315] Strict liability is also known as absolute liability; that is, a liability having no exceptions. In the case of the liberty under Article 9 of Pakistan's constitution, the state is doing something dangerous—that is, curtailing the liberty of its citizens—and, therefore, is duty bound to provide for adequate safeguards. Consequently,

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[310] *Faisal v the State, PLD 2007 Karachi 544* available at http://pakistanconstitutionlaw.com/p-l-d-2007-karachi-544/
[311] Ibid.
[312] Ibid.
[313] Rylands v Fletcher 1868 UKHL 1; see also, Calabresi, G., and Hirschoff, J. T. (1972) Towards a test for strict liability in torts. Yale Law School. Available at http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3044&context=fss_papers&sei-redir=1&referer=http%3A%2F%2Fscholar.google.co.uk%2Fscholar%3Fq%3DRyland%2Bvs%2Bfletcher%2Bstrict%2Bliability%26btnG%3D%26hl%3Den%26as_sdt%3D0%252C5#search=%22Ryland%20vs%20fletcher%20strict%20liability%22 (last accessed 18 October 2017).
[314] Ibid.
[315] Ibid.

Article 10 recognises certain substantive safeguards protecting people against arbitrary treatment during arrest and detention. First, any person who is arrested or detained *shall* be informed as soon as possible of the grounds of such arrest or detention.[316] There is an obligation on the State of Pakistan to communicate with the accused in language which he or she understands and, thus, informs him or her of the charges. The Supreme Court of Pakistan interprets liberty as including the right of access to justice.[317] The Supreme Court is of the view that the limited liberty of the accused must be protected because it is precious and at the same time vulnerable. As stated in Chapter One a detainee is vulnerable to be mistreated during pre-charge detention. If he/she is a terror detainee the vulnerability further rises up. Owing to this vulnerability of terror detainees during pre-charge terror detention, there are certain safeguards to protect them against any possible maltreatment. So, every person arrested *shall* be produced before a magistrate within 24 hours of such arrest.[318] Article 10 has used the word '*shall*' to impose an obligation on the State of Pakistan to refrain from arbitrary arrest and detention.

On this basis, the human rights laws (ICCPR, ECHR, the Human Rights Act 1998—in the context of the UK—and liberty rights in the constitution of Pakistan) does not expressly provide the period for the pre-charge detention of a terror suspect. However, the human rights law does say that the period ought to be reasonable, meaning thereby not exceeding more than a few days in total. The terror detainee should also be promptly produced before a court for the administration of criminal justice. Therefore, human rights law expresses liberal values to protect liberty during pre-charge detention thus recognising the need that terror detainees are more vulnerable to be mistreated during that period.

[316] Constitution of Pakistan 1973. Available at http://www.pakistani.org/pakistan/constitution/part2.ch1.html (last accessed 18 September 2014).
[317] Constitution of Pakistan 1973.
[318] Constitution of Pakistan 1973.

3.2.2 Police Interrogation and Questioning

International human rights governing the treatment of terror suspects during police interrogation also embody liberal values and state that all detainees shall be 'treated with humanity'.[319] In its General Comment No. 21, Human Rights Committee elaborates on this by saying that treating detainees with humanity is fundamental, universal and thus applicable to all deprived of their liberty.[320] The Committee, while elaborating Article 9, states that the term 'everyone' includes civilians, soldiers, aliens and "even persons who have engaged in terrorist activity."[321] So, persons arrested under the anti-terrorism legislation are entitled to be treated with humanity. Detainees are "persons who are particularly vulnerable";[322] therefore, no hardships or constraints should be imposed on them. They enjoy "all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment."[323] Therefore, any interrogation session during police custody will go against the human rights of terror suspects if it is of unreasonable length or duration. This can be both a physical hardship to answer police questions for a long period and also a constraint affecting a detainee's sleep, meal, or any other short breaks.

All states are obliged not to subject terror detainees to 'torture or to cruel, inhumane or degrading treatment or punishment', as enshrined in the UDHR.[324] The ICCPR also prohibits torture, cruel, inhumane and degrading treatment as per Article 7.[325] No state parties can derogate from the Article (prohibition of torture).[326]

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[319] Ibid., Article 10(1).
[320] The Human Rights Committee (1992), General Comment No. 21, 44th session at para. 2 and 4
[321] The Human Rights Committee (2014), General Comment No. 35, CCPR/C/GC/R.35/Rev.3, para 2
[322] The Human Rights Committee (1992), General Comment No. 21, 44th session at para. 3
[323] Ibid.
[324] *The Universal Declaration of Human Rights* (1948), Article 5. Available at http://www.un.org/en/documents/udhr/ (last accessed 18 September 2014).
[325] *International Covenant on Civil and Political Rights* (1966), Article 7. Available at http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.
[326] Ibid., Article 2.

The UNCAT further elaborates and provides details of rights against torture and other ill-treatment. This treaty defines torture in Article 1 as:

> *Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.*

Therefore, Article 1 provides greater details than the UDHR and ICCPR on the torture meaning and its essentials; that is, perpetrator and victim of torture, its purpose or motive, and its methods. It further differentiates between torture and other ill-treatment. All state parties have certain obligations under the UNCAT to respect the dignity of all terror detainees and ensure that they are not treated contrary to the provision of the treaty.[327] They are under an obligation 'to prevent' torture on their soil, as per Article2.[328] In its General Comment No. 2, the Committee Against Torture further elaborates on Article 2. The Committee emphasises that state parties should name and define torture and other ill treatments in their respective penal laws.[329] The Committee further clarifies that the codification of torture and other ill treatments will emphasise the need for its appropriate punishment to deter its perpetrators.[330] The Committee further says that the executive and judiciary should also play an active role in preventing torture. The Committee states that prohibition against torture is absolute and non-derogable.[331] It is further laid down that torture and other ill-treatment are difficult to be differentiated in practice; therefore, these

[327] United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx, the Preamble and Article 2 (last accessed on 10 November 2017).
[328] United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment. Available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx, Article 2 (last accessed on 10 November 2017).
[329] The Committee Against Torture, General Comment No. 2 CAT/C/GC/2, para 11
[330] Ibid.
[331] Ibid., para 5.

are indivisible, interdependent and interrelated.[332] The prohibition against torture has attained the status of customary international law.[333] The prevention of torture shall prevail at all times, including during war, public emergency or any other political instability.[334] Orders from superiors can never be invoked as justifications for torture. In other words, there is no defence to torture; for example, a subordinate acting on the instruction of his or her superior to perpetrate torture will not be regarded as justification of torture.[335]

International human rights on the treatment of terror suspects during police interrogation adopt liberal security attitudes and oblige on all states to treat such detainees with humanity. The law has refrained from designating terror suspects as unlawful combatants to have authorised torture, as suggested by Posner[336] and Ignatieff.[337] So, all terror detainees should be treated in accordance with the human rights law. This stance of human rights laws has also discouraged their suggestion to divide a community into two identifiable groups—'We' and 'They'—and interrogate and torture 'them' for unlimited time. Rather, human rights laws fully reflect the views of Luban,[338] Waldron,[339] and David Cole[340] not to divide a community during heightened security situations.

In the regional and domestic contexts of the UK, the ECHR and the Human Rights Act 1998 place the same burdens on the country when questioning or interrogating a terror detainee.

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[332] Ibid., para 3.
[333] Ibid., para 1.
[334] United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment. available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx, Article 2 (last accessed on 18 September 2014).
[335] Ibid.
[336] Posner, R.A. (2006) Not a Suicide Pact: The Constitution in a Time of National Emergency, Oxford University Press: Oxford and New York,
[337] Ignatieff, M. (2005) The Lesser Evil: Political Ethics in an Age of Terror, Edinburgh: Edinburgh University Press,
[338] Luban, D. (2005) Eight Fallacies about Liberty and Security in Human Rights in the 'War on Terror' edited by Wilson, R.A. New York: Cambridge University Press.
[339] Waldron, J. (2003) "Security and Liberty: The Image of Balance", The Journal of Political Philosophy, vol. 11, No. 2
[340] Cole, D. (2004) "The Priority of Morality: The Emergency Constitution's Blind Spot", 113 Yale L.J.

In the context of Pakistan, Article 14 in the constitution of Pakistan recognises the right to respect for human dignity and obligates the prohibition of torture. This is one of the positive obligations of Pakistan to stop torture and self-incrimination; that is, a suspect should not be compelled to make confession.[341] Positive obligations refer to the state's duties to act or provide for the realisation of civil and political rights.[342] Civil and political human rights were explained previously in this chapter. The state is no longer considered to be only under negative obligations; that is, not to interfere in individual rights.[343] The human rights law, especially the law governing civil and political rights, has transformed the state obligations from negative to positive. The individual is regarded as an active agent and is not merely a passive recipient of the rights. Therefore, states are under positive obligations to ensure that all civil and political rights are protected and guaranteed.[344] Thus, Pakistan is under positive obligations to prevent and criminalise torture. Only voluntary confessions should be admissible in court. Pakistan is constitutionally bound to provide equal protection under the law to all citizens without any discrimination.[345]

In summary, in terms of the treatment of terror suspect during police interrogations, international and regional, and also the UK's and Pakistan's domestic human rights laws not only prohibit torture and other ill-treatment but they also recognise the fact that states should not create hardships for detainees because they are vulnerable, which infers that long interrogation sessions are deemed to create hardships for detainees. The human rights laws clearly reject the conservative attitudes of Posner[346] and

[341] Constitution of Pakistan 1973, Article 13(b)
[342] Fredman, S. (2006) "Human rights Transformed: Positive Duties and Positive Rights", Research Paper, University of Oxford, Faculty of Law. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=923936.
[343] Ibid.
[344] Ibid.
[345] *Constitution of Pakistan* (1973).
[346] Posner, R.A. (2006) Not a Suicide Pact: The Constitution in a Time of National Emergency, Oxford University Press: Oxford and New York.

Ignatieff[347], which support torture and designate terror suspects as unlawful combatants. Instead, it embodies the liberal attitudes of Cole[348], Luban[349] and Waldron[350], which discourage the use of torture and the division of the community into 'We' and 'They'. The human rights laws are also mindful of the fact that terror detainees are more vulnerable to be mistreated during police interrogations, therefore, discourage lengthy police interrogation sessions.

3.2.3 Internal Police Review Mechanisms

Article 11 of the UNCAT specifically makes all state parties duty bound to review the actions of those who are responsible for the custody, treatment and interrogation of all detainees, including terror suspects.[351] The provision did not accommodate Gross's[352] conservative attitudes on this that every public official is the judge of his own actions. Neither does it support Posner's,[353] Tushnet's[354] and Ackerman's[355] conservative point of view that it is the job of the executive to deal with the terror threat where courts have either no or only a very limited role to play. This is to infer that human rights laws give more importance to the police review mechanism to check the treatment of terror suspects during pre-charge detention. This provision has fully embraced the liberal attitudes of

[347] Ignatieff, M. (2005) The Lesser Evil: Political Ethics in an Age of Terror, Edinburgh: Edinburgh University Press
[348] Cole, D. (2004) "The Priority of Morality: The Emergency Constitution's Blind Spot", 113 Yale L.J.
[349] Luban, D. (2005) Eight Fallacies about Liberty and Security in Human Rights in the 'War on Terror' edited by Wilson, R.A. New York: Cambridge University Press.
[350] Waldron, J. (2003) "Security and Liberty: The Image of Balance", The Journal of Political Philosophy, vol. 11, No. 2.
[351] United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment. Available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx, Article 11 (last accessed on 18 September 2014).
[352] Gross, O. (2003) "Chaos and Rules: Should Responses to Violent Crisis Always be Constitutional", The Yale Law Journal, vol. 112:1011
[353] Posner, R.A. (2006) Not a Suicide Pact: The Constitution in a Time of National Emergency, Oxford University Press: Oxford and New York.
[354] Tushnet, M. (2010) "Defending Korematsu?: Reflection on Civil Liberties in Wartime", Georgetown University Law Centre.
[355] Ackerman, B. (2004) "The Emergency Constitution", Yale Law School, Faculty Scholarship Series, Paper 121

Walker,[356] where he supports initial and periodic review of the treatment of terror suspect during the entire period of his pre-charge detention.

3.2.4 Police Records

We cannot conceive of a justice system without the courts. These courts rely on the police records to administer criminal justice. They receive complaints from aggrieved persons, and they then look into the facts and records maintained by the authorities in charge of the detainee's custody. Accurate police records are very important for the administration of criminal justice. The courts and committees resort to the record and base their decision on the available record. In addition, human rights are justiciable and it is due to this reason that the courts and committees are able to rely on accurate and timely updated police records. Here, human rights laws adopt a full liberal stance on the accurate and timely maintenance of the police record.

3.2.5 Rights of a Terror Suspect to Contact the Outside World

The ICCPR believes that the family is a natural and fundamental unit of society that needs protection.[357] Article 17 of the ICCPR also recognises the right of a detainee to contact his or her family or home.[358] There should be no unlawful or arbitrary interference with such contact. Similarly, Article 9 (3) and (4) clearly recognise the right of an accused to defend his or her case. Therefore, international human rights laws give a suspect the right to access the outside world (including lawyers, family members, friends, doctors or interpreters) to help prepare his or her defence.[359] The ECHR Articles

[356] Walker, C. (2009) Blackstone's Guide to The Anti-Terrorism Legislation 2nd edition, Oxford University Press: New York; See also, Walker, C. (2011) Terrorism and The Law, first edition, Oxford University Press: New York.
[357] ICCPR, Article 23.
[358] Ibid., Article 17.
[359] Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation, 2nd Edition, Oxford, England: Oxford University Press.

6 and 8, and the Human Rights Act 1998 in the UK also recognise the right of a suspect to contact the outside world.[360]

Article 10 of the Pakistani Constitution places an important negative obligation on the state not to deny a detainee the right to contact a legal practitioner of defence for her or his case. This is one of the important rights of suspects to contact the outside world.

On the right of a terror suspect to contact the outside world, international, regional, UK and Pakistani domestic human rights laws are very clear. These laws resonate with the liberal security paradigm and they fully embrace Buhelt's[361] rightisation model and Walker's[362] constitutionalism to recognise the terror suspects' rights during pre-charge detention and to give them the opportunity to defend their cases.

3.2.6 Detention Conditions

The preambles of the International Bill of Rights (UDHR, ICCPR and UNCAT) believe in the 'inherent dignity' of mankind. All three instruments stress the fair and humane treatment of people under arrest. The same is true with the ECHR and the domestic human rights laws of the UK and Pakistan, which state that detainees should be treated with fairness and humanity. This suggests that human rights reflect more liberal security attitudes, and authorise enough food and water, enough hours of sleep, and breaks for praying, exercising or attending to personal hygiene when in police custody. These human rights do not recognise the viewpoints of Posner[363], who would treat terror detainees as unlawful combatants and deprive them of their right to life or security of person while in detention.

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[360] ECHR, Articles 5, 6 and 8; See the Human Rights Act 1998.
[361] Buhelt, A. (2013) Policing the Law of Fear in 'Justice and Security in the 21st Century: Risks, Rights and the Rule of Law' edited by Barbara Hudson and Synnove Ugelvik London and New York: Routledge.
[362] Walker, C. (2009) Blackstone's Guide to The Anti-Terrorism Legislation 2nd edition, Oxford University Press: New York p. 17 – 21. See also, Walker, C. (2011) Terrorism and The Law, first edition, Oxford University Press: New York
[363] Posner, R.A. (2006) Not a Suicide Pact: The Constitution in a Time of National Emergency, Oxford University Press: Oxford and New York.

Part III

3.3.0 Conclusion

This chapter has answered the first research question: which human rights law govern the treatment of terror suspects during pre-charge detention? And, what ought to be the treatment of terror detainees thereunder? The human rights, whether it is the International Bill of Rights (UDHR, ICCPR, UNCAT), ECHR or the UK's and Pakistan's domestic human rights laws, regard the liberty and security of detainees as being very important. Liberty and security of person have attained the jus cogens character. No person can be deprived of his/her liberty 'save in accordance with the law'. The human rights law provides sufficient safeguards to protect the residual liberty of a detainee.

The human rights law clearly lays down certain substantive and procedural safeguards to guarantee the fair treatment of detainees, including terror detainees, during pre-charge detention. The human rights law prescribes how a terror detainee should be treated. The ICCPR and the Human Rights Committee tell that the period of pre-charge detention should be 'reasonable'—not more than a few days. A detainee must promptly be produced before a court either to charge or release him. These human rights laws and principles reflect a liberal stance on the interrogation of terror detainees; that is, not to torture or humiliate a terror detainee during police interrogation. They also tell us that the detention conditions in which a terror suspect is kept should be humane. In addition, they expressly grant detainees the right to contact the outside world, including his or her family, friends, or a legal counsel. Similarly, police records and mechanisms to check the abusive powers of the police also form an important part of the human rights laws. Consequently, the human rights laws and principles set a standard for the treatment of terror detainees during pre-charge detention. The standard will act as a yardstick to assess the treatment of terror detainees in Pakistan and the UK in the following chapters. This human rights law driven case-study of Pakistan will further unearth the thesis main

research argument: in the complete absence of a context-based study (case-study) on the treatment of terror suspects during pre-charge detention in Pakistan, the country follows the war and executive paradigm of terrorism in its legal response to terrorism thus adversely affecting the human rights of terror detainees. The way forward for Pakistan is let the country should learn from the human rights laws and the UK how to treat terror detainees in its criminal justice systems, and vice versa.

CHAPTER FOUR

PRE-CHARGE TERROR DETENTION IN FOCUS: AN ASSESSMENT OF THE LAW AND PRACTICE IN THE UK

4.0 Introduction

This chapter attempts to answer the second research question, which is: What is the law on the treatment of terror detainees during pre-charge detention in the UK? To what degree the country complies with the human rights obligations in this regard? And, is there any gap between the UK's law and practice when dealing with terror detainees during pre-charge detention? This chapter will use liberal critique research methodology to assess the UK's anti-terror laws and practices on the topic in light of the human rights laws and norms. The UK's treatment will be used as comparator to the main case-study of Pakistan in the following chapters to learn some useful lessons from.

This chapter begins by highlighting all of the major terror incidents in the UK, starting from the Irish Troubles and moving on to the recent terror attacks in Manchester and London, which justify the country's need to have anti-terror laws for its legal response to terrorism. The terror incidents appear in Part I.

The second part of this chapter will assess the treatment of terror detainees during pre-charge detention in the UK. It will first identify which anti-terror laws are applicable to the treatment of terror suspects during police custody. Next, the country's actual practices related to the treatment of the detainees are also identified. In addition, and most importantly, a human rights assessment of the treatment of terror suspects during police custody in the UK will consider their treatment in human rights law to understand the differences between how terror detainees are actually treated in the country as opposed to

how they ought to be treated. For example, what is the period of pre-charge detention in the UK? And, how is it different from the human rights law conception of the period? How are terror detainees interrogated in the UK? And, how different is this treatment from police interrogation in the human rights law? What rights does a terror suspect enjoy in the UK to contact his/her family, friends and a lawyer as compared to the rights under the human rights law? What is the status of internal police review mechanisms in the UK? And, how far the mechanisms comport with the human rights obligations? What is the condition of detention centres in the country? Does it comply with the human rights laws and principles requirement? Finally, another assessment of the country's treatment of terror suspects in law and its actual practices will be carried out to see if there is any gap between the treatments at the two different levels (i.e. law and action).

If the UK's treatment is found to be in accordance with its various human rights obligations related to the six categories/themes of the treatment of terror suspects that are used in this research project, then the UK's legal response to terrorism seems to remain intact in its legal boundary. The UK is credited for knowing the difference among the three responses to terrorism—war, executive and the administration of criminal justice. It can also set an example for other states, such as Pakistan, to learn from. So, the country can be used as a suitable comparator. However, in the unlikely finding that terror detainees are treated harshly and are denied their rights under the human rights law during pre-charge detention, then the UK seemingly will fail to be used as a comparator to the main case-study. If the country is unable to fulfil its human rights obligations in exercising its powers of pre-charge terror detention, then this will not only harm its human rights image but will also lose its credibility to be used as a potential comparator. Finally, Part III concludes this chapter.

Part I

4.1.0 Major Terror Incidents in the UK

The UK has a long history of terrorist attacks, particularly in Northern Ireland, stemming from the Irish 'Troubles'.[364] The Troubles refer to the conflict of two communities over civil rights in Northern Ireland, which started in the late-1960s.[365] The Unionist, significantly Protestant majority in the region, wished to continue to be part of the UK. On the other hand, the aim of the nationalist Republicans, who were almost a Catholic minority, was to accede from the UK to the Republic of Ireland. During the conflict, many terrorist attacks were launched, killing over 3,600 people and maiming or injuring more than 50,000, while the number of people who were psychologically damaged due to those attacks is unknown.[366]

The Troubles spanned a period of 30 years (1968–1998).[367] This period witnessed the rise and fall of many militant organisations claiming to liberate Northern Ireland from British rule.[368] The Irish Republican Army (IRA), a paramilitary organisation, emerged as the major Irish republican militant group.[369] In 1970, the IRA split into the 'Provisional IRA' and the 'Official IRA'. It was the Provisional IRA who waged the main terrorist activities against British rule during the Troubles. Other noteworthy splinter groups include the 'Continuity IRA', the 'Irish National Liberation Army', and the 'Real IRA', who all had different strategies to achieve their main goal—freedom from British control of the north of Ireland.[370]

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[364]Dingley, J. (2001) "The Bombing of Omagh, 15 August 1998: The Bombers, Their Tactics, Strategy, and Purpose Behind the Incident" Studies in Conflict and Terrorism 24 at 463
[365] "BBC History (N.d.) "More Information About: The Troubles" Available at http://www.bbc.co.uk/history/troubles last accessed 10 February 2015.
[366] Ibid.
[367] Ibid.
[368] Ibid.
[369] Ibid.
[370] Dingley, J. (2001) "The Bombing of Omagh, 15 August 1998: The Bombers, Their Tactics, Strategy, and Purpose Behind the Incident" Studies in Conflict and Terrorism 24 at 451-452.

In 1971, Northern Ireland, then governed by the UK, introduced new anti-terror laws that provided for internment (indefinite detention) without trial, which led to three days of violence and the death of 23 people.[371] The downward spiral of the Troubles intensified soon after the killings, and this led to an increase in the number of terrorist attacks. For example, on 21 November 1974, two bombs were exploded at pubs in Birmingham, killing 19 people and injuring over 180.[372] In 1976, a gunman ambushed a van near the County Armagh village of Kingsmills, killing 10 textile factory workers.[373] On 27 August 1979, at least 18 soldiers were killed at Warrenpoint, close to the border with the Irish Republic, when a bomb was detonated, hitting a vehicle carrying British soldiers. On the same day, Lord Mountbatten, the Queen's cousin, was killed by a bomb in the Irish Republic.[374] The Provisional IRA accepted responsibility for these attacks.[375] One of the worst atrocities came on Remembrance Sunday in 1987 when the IRA detonated a bomb in Enniskillen detonated that killed 11 civilians.[376] On 15 August 1998, a car bomb exploded in a market near the town centre of Omagh,[377] killing 29 people and injuring over 200 others. The Real IRA accepted responsibility for these attacks.[378]

A number of political solutions attempted to put an end to the Troubles, including the 1973 Sunningdale Agreement, the 1985 Anglo-Irish Agreement, and the 1998 Good

[371] "BBC News (2005) "Provisional IRA: War, ceasefire, endgame?" Available at http://news.bbc.co.uk/hi/english/static/in_depth/northern_ireland/2001/provisional_ira/1971.stm last accessed 11 February 2015.
[372]"BBC News (2008) "1974: Birmingham pub blasts kill 19" On This Day. Available at http://news.bbc.co.uk/onthisday/hi/dates/stories/november/21/newsid_2549000/2549953.stm last accessed on 10 February 2015.
[373] Dingley, "The bombing of Omagh, 15 August 1998," at 456.
[374]" BBC News (2005) "1979: Soldiers die in Warrenpoint massacre" On This Day. Available at http://news.bbc.co.uk/onthisday/hi/dates/stories/august/27/newsid_3891000/3891055.stm last accessed 10 February 2015.
[375]Dingley, J. (2001) "The Bombing of Omagh, 15 August 1998: The Bombers, Their Tactics, Strategy, and Purpose Behind the Incident" Studies in Conflict and Terrorism 24
[376] BBC News (2005) "Provisional IRA: War, ceasefire, endgame?" Available at http://news.bbc.co.uk/hi/english/static/in_depth/northern_ireland/2001/provisional_ira/1971.stm
[377] Dingley, J. (2001) "The Bombing of Omagh, 15 August 1998: The Bombers, Their Tactics, Strategy, and Purpose Behind the Incident" Studies in Conflict and Terrorism 24 at 451-453.
[378]Ibid.

Friday Peace Agreement.[379] Years later, in late-July 2005, following the Good Friday Agreement, the IRA officially renounced violence and promised to work within the political and democratic process of the north of Ireland. Tony Blair, then British Prime Minister, regarded this move as a "step of unparalleled magnitude in the entire peace efforts of the Troubles."[380]

The Irish Troubles had not yet completely come to an end when the 'War on Terror' knocked at the door of the UK.[381] On 7 July 2005, a series of coordinated terrorist bombs exploded during the morning rush hour, hitting London's public transport system.[382] This attack killed 52 and another 700 were injured. It caused severe disruption and affected the nation's telecommunication systems.[383] Haroon Rashid, a member of Al-Qaida, was the mastermind of the attacks.[384] A year later, an airline bomb plot was disrupted, which aimed to kill more than 1500 passengers flying from London Heathrow Airport to various airports in the United States. Ali, Sarwar and Hussain all were found guilty of conspiring to kill the crew and passengers by using homemade liquid bombs.[385] On 30 June 2007, two Islamist extremists attempted a terrorist attack when they drove a jeep into the doors of the main terminal building at Glasgow Airport in Scotland.[386] When the vehicle came to a halt, they threw gasoline over it and attempted to detonate the vehicle.[387] The two men were overpowered and arrested.[388] In 2008, a 22-year-old convert

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[379] BBC History (N.d.) "More information about: the Troubles"Available at http://www.bbc.co.uk/history/troubles last accessed 10 February 2015.
[380] "BBC News (2005) "Provisional IRA: War, ceasefire, endgame?" Available at http://news.bbc.co.uk/hi/english/static/in_depth/northern_ireland/2001/provisional_ira/1971.stm last accessed 11 February 2015.
[381] BBC News (2008) "Age of terror" See London attacks, available at http://news.bbc.co.uk/1/hi/programmes/age_of_terror/7306413.stm last accessed 15 February 2015.
[382]Memon, N., et al. (2008) "Detecting Hidden Hierarchy in Terrorist Networks: Some Case Studies" Intelligence and Security Informatics Lecture Notes in Computer Science 5075.at 484–485.
[383]Ibid.
[384]Ibid.
[385] The Guardian (07.09.2009) "Three guilty of transatlantic bomb plot" Available at http://www.theguardian.com/uk/2009/sep/07/plane-bomb-plot-trial-verdicts last accessed 15 February 2015.
[386] Townsend, M. (01.07.2007) "Terror threat 'critical' as Glasgow attacked", The Guardian. Available at http://www.theguardian.com/uk/2007/jul/01/terrorism.world2 last accessed 10 February 2015.
[387]Ibid.
[388]Ibid.

to Islam attempted to kill members of the public in the Giraffe restaurant in Exeter using homemade bombs.[389] The recently converted Muslim confessed that the attempt was to avenge the oppression of Muslims around the world. Another atrocity occurred in Woolwich, southeast London, on 22 May 2013, when Fusilier Lee Rigby of the British army was murdered as he returned to his barracks.[390] Rigby had served in Afghanistan. He was dragged into the road and attacked: his killers considered themselves to be the 'Soldiers of Allah'.[391] One of the killers was recently sentenced for life and the other was ordered to serve 45 years in prison.[392]

More recently, the UK has been hit by a series terror attacks in 2017. The people of Manchester witnessed a particularly horrible terror attack that was perpetrated mostly on young children.[393] Salman Abedi, a 23-year-old of Libyan descent from Manchester, carried out a suicide attack, killing at least 20 people and leaving 119 injured.[394] Within just two weeks of the Manchester attack, a terror attack in London killed seven people and left 48 injured. Three terrorists drove a white van over pedestrians on London Bridge and then left the van, stabbing more people in a nearby market.[395] At the time of writing, the latest terror attack was carried out by Darren Osborne, a 47-year-old man and a father of four, who he drove a van into a group of Muslim worshippers in Finsbury Park London on 19 June 2017: killing one man and injuring another nine.[396]

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[389] The Guardian (2008) "Man pleads Guilty to Attempted Restaurant Suicide Bombing" Available at http://www.theguardian.com/uk/2008/oct/15/uksecurity last accessed 15 February 2015.
[390] BBC News (26.02.2014) "Lee Rigby Murder: Adebolajo and Adebowale Jailed." Available at http://www.bbc.co.uk/news/uk-26357007 last accessed 10 February 2015.
[391] Ibid.
[392] Ibid.
[393] Palazzo, C., and Allen, E. (26 May 2017) "Manchester Terror Attack: Everything We Know", The Telegraph, available at http://www.telegraph.co.uk/news/0/manchester-terror-attack-everything-know-far/ last accessed on 22 June 2017
[394] Ibid.
[395] BBC News (19 June 2017) "London Bridge Attack: Timeline of British Terror Attacks", available at http://www.bbc.co.uk/news/uk-40013040 last accessed on 22 June 2017
[396] Ibid.

Owing to the terrorist attacks that started in the aftermath of the War on Terror, the UK has been regarded as under an 'increased threat of nuclear attack'. Duncan Gardham, security correspondent, is quoted as saying:

> *Bomb makers who have been active in Afghanistan may already have the ability to produce a 'dirty bomb' using knowledge acquired over the internet. It is feared that terrorists could transport an improvised nuclear device up the Thames and detonate it in the heart of London. Bristol, Liverpool Newcastle, Glasgow and Belfast are also thought to be vulnerable.*[397]

The same opinion has been translated by the Home Office as a national threat:

> *The threat to the UK and our interests from international terrorism is severe. This means that a terrorist attack is highly likely. The terrorist threats we face now are more diverse than before, dispersed across a wider geographical area, and often in countries without effective governance. We therefore face an unpredictable situation.*[398]

Consequently, the British government has launched a counter-terrorism strategy called 'CONTEST' in an attempt to overcome the threat.[399] All four of the important components—'Pursue', 'Prevent', 'Protect' and 'Prepare'—have been discussed before in Chapter Two.[400] In a televised speech in the aftermath of the recent attacks in Manchester and London, the Prime Minister Theresa May said that, 'It is time to say "Enough is enough"'.[401] She reiterated the previous commitment of the country to fight against terrorism and renewed the resolve to bring changes in the fight against terrorism.

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[397] The Telegraph (22.03.2010) "Nuclear Terror Risk to Britain from Al-Qaeda" Available at http://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/7500719/Nuclear-terror-risk-to-Britain-from-al-Qaeda.html last accessed 15 February 2015.

[398] Home Office (12.12.2012) "Protecting the UK against Terrorism" Available at https://www.gov.uk/government/policies/protecting-the-uk-against-terrorism last accessed 15 February 2015.

[399] "CONTEST: The United Kingdom's Strategy for Countering Terrorism" (July 2011) *Home Office*, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97994/contest-summary.pdf, last accessed 15 February 2015.

[400] Ibid.

[401] Chandler, M. (4 June 2017) "London attack: Theresa May declares 'enough is enough' and promises new era in fighting against terrorism", Evening Standard, available at http://www.standard.co.uk/news/crime/london-attack-theresa-may-declares-enough-is-enough-and-promises-new-era-in-fight-against-terorism-a3556436.html last accessed on 22 June 2017

The UK government is, therefore, fully committed to respond to terror threats. In this regard, the country has legislated against terrorism since the Irish Troubles and has also actively responded through legal means to cope with the ongoing episode of the Third Millennium Terrorism. Why then would the country not enact anti-terrorism laws when it has international as well as regional obligations to do so? The UK is under an international obligation to fight terrorism. For example, in March 2001, the UK ratified the UN International Convention for the Suppression of the Financing of Terrorism 1999.[402] Likewise, the ECHR imposes obligations on the country to combat terrorism for the protection of the human rights of its own citizens. Under Article 15(1), the country may "take measures derogating from its obligations under this Convention [ECHR] to the extent strictly required by the exigencies of the situation." Similarly, Article 17 of the Convention reiterates that the government should combat any threat or act "aimed at the destruction of any of the rights and freedoms set forth" in the convention. It will be interesting to see how the UK balances its responsibilities to fight against terrorism and its human rights obligations to treat terror detainees with fairness.

Part II

4.2.0 Pre-charge Terror Detention in the UK: Law, Practice and Assessment

This part will cover the treatment of terror suspects during pre-charge detention in the UK. It will also bring to the fore all legal provisions governing the treatment of terror detainees during pre-charge detention in the country. It also embarks upon police practices in this regard. This part will then analyse all of the legal provisions applicable during pre-charge detention to the treatment of suspected terrorists to find out what is the law on the treatment of terror suspect in the country.

[402] United Nations Treaty Collection Databases, available at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-11&chapter=18&lang=en, last accessed 15 February 2015.

The schema of Part II is to identify what is the law on the treatment of terror suspects during pre-charge detention in the UK, followed by what the law ought to be in this regard. The identification of the law and its human rights law assessment will appear in subsection A of this part, which will analyse the period of pre-charge detention, police interrogation, police records, internal police review mechanisms, rights of a terror suspect to contact the outside world, and the detention conditions in which terror suspects are kept. Similarly, an assessment of the country's practices on the topic will appear in subsection B, related to the same six categories/themes.

4.2.1.A. The Period of Pre-charge Detention: Law and Assessment

The previous chapter found that both ICCPR and ECHR expressly recognise the principles of promptness and reasonableness. These impose important human rights obligations on all member states not to detain someone, including a terror suspect, for an unnecessary or unreasonable period. For example, a terror detainee must 'promptly' be produced before a judge (habeas corpus).[403] He or she must 'promptly' be informed of any charges against him or her.[404] The judge, without delay, should decide upon the lawfulness of his or her detention; that is, to charge or release him or her.[405] If charged, his or her trial must be arranged within a 'reasonable' time.[406] These principles are procedural safeguards against arbitrary detention with an aim to discourage a prolonged period of pre-charge detention.

The UK's anti-terror laws governing the treatment of terror detainees are located in Schedule 8 of the Terrorism Act 2000 and Code H of the Police and Criminal Evidence Act 1984 (hereafter, PACE).[407] Schedule 8 of the Terrorism Act 2000 provides a

[403] ICCPR, Article 9 (3); see also ECHR, Article 5 and the Human Rights Act 1998
[404] Ibid, Article 9 (2); see also ECHR, Article 5 and the Human Rights Act 1998
[405] Ibid, Article 9 (3); see also ECHR, Article 5 and the Human Rights Act 1998
[406] Ibid.
[407] Walker, C. (2011) Terrorism and the Law, 1st ed. New York: Oxford University Press at 173.

comprehensive framework on the treatment of terror detainees, which is supplemented through the Anti-Terrorism, Crime and Security Act 2001, the Prevention of Terrorism Act 2005, the Terrorism Act 2006, the Counter-terrorism Act 2008, and the Protection of Freedoms Act 2012. These laws will be examined in their historical and contemporary perspectives, moving from the Troubles in Northern Ireland to the current problem of Third Millennium Terrorism. The aim of this review is to find the legal provisions applicable to the period of pre-charge detention in the current anti-terror laws of the UK.

The Irish Troubles era in the UK has geared-up anti-terrorism legislation in the country. When civil unrest in Northern Ireland peaked in 1971, the country invoked powers to detain IRA organisers, leaders, and members indefinitely and without trial in pursuant of the Civil Authorities (Special Powers) Acts (Northern Ireland) 1922.[408] The Acts, however, did not disturb the period of pre-charge detention, which was regulated in accordance with ordinary criminal law.[409] Therefore, an arrested person was to be brought before a court within 24 hours. For the first time in the country's history, the period of pre-charge detention was extended from 24 hours to 48 hours by virtue of Section 132 of the Magistrate's Courts Act (Northern Ireland) 1964.[410] Under this Section, a police officer could extend without limit such period and only then did the suspect have to be brought before judicial authority. There was another increase in the period of the pre-charge detention to a maximum of 72 hours under Section 10(1) of the Northern Ireland (Emergency Provisions) Act 1973 (hereafter, EPA 1973).[411] The rationale behind this was that the police might require more time to effectively investigate the case and at the same time it would give more time to Secretary of State to decide to make an interim custody

[408] Dickson, B. (2009) "The Detention of Suspected Terrorists in Northern Ireland and Great Britain", University of Richmond Law Review 43 at 931
[409] Ibid. at 942-954.
[410] Ibid.
[411] Ibid.

order of the arrested person.[412] Under the prevailing law, the Secretary of State was able to issue interim custody orders for detainees.

The increase in the period of pre-charge detention did not stop at 72 hours. The UK parliament enacted the Prevention of Terrorism (Temporary Provisions) Act 1974 (hereafter, PTA 1974), which not only conferred more police powers but also increased the period of pre-charge detention to seven days.[413] The PTA 1974 expressly allowed that after 48 hours, a police officer could apply to the Secretary of State to extend the detention period for another five days—altogether constituting seven days.

The seven-day police detention was challenged in the ECHR by four men who were arrested and then released without charge in *Brogan v United Kingdom*.[414] The Court evaluated the period of seven days in the light of Article 5(3) of the ECHR, wherein a suspect, after arrest, shall be brought 'promptly' before a judicial authority. This Article has been examined in detail in Chapter Three. In this case, the Court held that seven days' detention period is too lengthy and that it not only violates the rights protected under Article 5(3) but would also import a potential procedural weakness that would damage individual rights.[415] This decision surprised the UK government and it subsequently rushed to apply for derogation under Article 15 of the ECHR.

Since this decision, the UK government has regularly reviewed its anti-terrorism legislation, seeking ways and means to combat terrorism while at the same time complying with Article 5 of the ECHR. In this regard, John Rowe QC carried out annual reviews of the UK's anti-terrorism legislation.[416] He later suggested that there should be a judicial control in the process of granting an extension in detention cases. In other

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[412] Ibid.
[413] Ibid.
[414] Brogan v United Kingdom ECHR, 1988Ser. A, No. 145-B, 11 EHRR 117; see also, Dickson, B. (2009) "The Detention of Suspected Terrorists in Northern Ireland and Great Britain", University of Richmond Law Review 43 at 931
[415] Ibid.
[416] Dickson, B. (2009) "The Detention of Suspected Terrorists in Northern Ireland and Great Britain", University of Richmond Law Review 43 at 931

words, a judge or judicial authority if involved in granting further detention, would aim to comply with the provisions of the ECHR. Before this point, the executive, usually the Secretary of State, granted these extensions. Rowe also suggested that the production of terror detainees before a court should not be delayed by more than 48 hours in total.

Rowe's recommendations were accepted and included in the Terrorism Act 2000. According to Section 41(3) of this Act, an arrested person shall be brought before a judge no later than 48 hours after arrest. This period could be further extended by involving a judicial authority to decide on such an extension.[417] However, the Act did not alter the seven-day pre-charge detention period.

The terrible events of 9/11 demanded more anti-terror legislation and, like many other countries, the UK introduced further terror legislation, particularly the Anti-Terrorism, Crime and Security Act 2001. Even at this time, the UK government did not change the period of the pre-charge detention. However, two years after 9/11, pre-charge detention was doubled to 14 days through a provision of the Criminal Justice Act 2003.[418] Terrorist incidents often increase public demand for strict laws that provide lengthy detention. Soon after the London bombing in 2005, the government pushed to increase the pre-charge detention period to 90 days. However, it was defeated in parliament and instead a period of 28 days was included in the Terrorism Act 2006.[419] Another attempt was made to increase the 28 days period to 42 days during PM Gordon Brown's government in 2008 but, once again, the attempt was defeated in parliament.[420]

Many scholars have expressed concerns about the 28-day period of pre-charge detention and its compatibility with Article 5 of ECHR. Therefore, when there was a change in government in 2010, the new coalition government decided to reduce the period

[417] *Terrorism Act* 2000 Schedule 8, para. 32.
[418] *Criminal Justice Act* 2003 c. 44 s. 306.
[419] Walker, C. (2009) *Blackstone's Guide to the Anti-Terrorism Legislation* 2nd ed. New York: Oxford University Press at 163; see also *Terrorism Act* 2006 s. 23.
[420] Ibid.

to 14 days, which was introduced by the Protection of Freedoms Act 2012. The recent terror attacks at Manchester Arena and London Bridge have once again brought the debate back to 10 Downing Street to increase the period of pre-charge detention.[421] However, so far there has been no increase in the pre-charge detention period in the UK.

To date, no change has occurred in the total period of pre-charge detention in the UK.[422] Since 2012, a terrorist suspect cannot be detained longer than 14 days.[423] A terrorist detainee can remain in police custody up to a maximum of 48 hours after arrest. The detention can be further extended by involving the judiciary, up to a maximum of 12 days or 14 days in total from arrest. A warrant for further detention can never be authorised for more than six days at a time.[424]

When a person who is suspected of terrorism is arrested in the UK, he or she can remain in police custody for up to 48 hours. Their detention can then be further extended. A prosecutor or a police officer of at least the rank of superintendent may apply to a judicial authority for the issue of a 'warrant of further detention'. Further detention shall not be more than 12 days. However, the period of such warrant of further detention, at one time, shall not be more than six days.[425] As mentioned previously, seven days' detention was previously granted by the Secretary of State but now the judiciary makes pre-charge detention provisions compatible with Article 5 of the ECHR and Article 9 of the ICCPR. An application for warrant of further detention shall be made to a judicial authority within 48 hours of the person's arrested or within six hours of the end of the 48 hours of detention. The official applying for the issuance of warrant of further detention

[421] Syal, R., and Walker, P. (4 June 2017) "Theresa May responds to London Bridge attack with anti-terror laws promise", The Guardian, available at https://www.theguardian.com/uk-news/2017/jun/04/london-bridge-attack-pushes-theresa-may-into-promising-new-laws last accessed on 15 June 2017

[422] Blackbourn, J. (2014) "Evaluating the Independent Reviewer of Terrorism Legislation" Parliamentary Affairs 67, The University of New South Wales, Australia.

[423] Protection of Freedoms Act 2012, section 57, "In paragraph 36(3)(b)(ii) of Schedule 8 to the Terrorism Act 2000 (maximum period of pre-charge detention for terrorist suspects) for "28 days" substitute "14 days"."

[424] Terrorism Act 2000 Schedule 8, para. 29.

[425] *Ibid*.

must fulfil certain requirements to satisfy the judicial authority before authorising the warrant. First, the official must satisfy the judicial authority that there are reasonable grounds either to obtain or preserve relevant evidence. Second, the former must convince the latter that the investigation concerning the case is carried out 'diligently and expeditiously'.[426]

So far, it is clear which anti-terror laws and provisions are applicable to regulate the total period of pre-charge detention in the UK and what is the law on the total period of pre-charge detention, its management in chunks or parts, and the period of production of a terror detainee before a court. These form the second research question. Consequently, a human rights law assessment of this part will be carried out to find out what ought to be the total and part period of the pre-charge detention in which to decide either to charge or release a terror suspect, and how promptly a terror suspect should be produced before a court to authorise his or her further detention.

Regarding the first 48 hours detention during police custody and its compatibility with Article 9 of the ICCPR and Article 5 of the ECHR, such period is in compliance and, therefore, is compatible with the safeguards mentioned in the articles. Several scholars, such as Walker, Dickson, Awan, Macken and Greer, have assessed pre-charge detention in terrorism cases in the UK but none has objected to the first 48 hours in favour of 24 hours of detention.[427] These authors did not consider that 48 hours in police custody would contravene the liberty safeguards in international human rights law. Similarly, the Human Rights Committee thinks that "48 hours are ordinarily sufficient to transport the

[426] Ibid., para. 32.
[427] Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation 2nd edition, New York: Oxford University Press. See also Dickson, B. (2009) "Article 5 of the ECHR and 28-day Pre-charge Detention of Terrorist Suspects" Queen's University Belfast. NILQ 60(2): 231-244. Awan, I. (2011) "The Erosion of Civil Liberties: Pre-charge Detention and Counter-terror Laws", The Police Journal 84. Macken, C. (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and international Human Rights Law, New York: Routledge. Greer, S. (2008) "Human rights and the Struggle Against Terrorism in the United Kingdom", European Human Rights Law Review 2:163

individual and to prepare for the judicial hearing."[428] The Committee adopted its view in a communication following the case of Michael Freemantle, who alleged a violation of Article 9 when he was produced for the first time before a court of law four days after his arrest. The Committee remarked that "in the absence of a justification for a delay of four days before bringing the author to a judicial authority, the Committee finds that this delay constitutes a violation of Article 9, paragraph 3 of the covenant."[429] In another Brisenko case, the Committee adopted the view that even a delay of three days violated the principle of promptness as mentioned in Article 9, paragraph 3 of the covenant.[430] So, 48 hours, or two days delay, is clearly compatible with the UK's international human rights obligation to produce a terror detainee before a court.

Next, is the UK's period of six days, at a time, in compliance with Article 9 of the ICCPR? In the UK, an application for a warrant of further detention shall be made to a judicial authority within 48 hours of the person's arrest or within six hours of the end of the 48 hours of detention. The official applying for the issuance of a warrant of further detention must fulfil certain procedural safeguards to satisfy the judicial authority before authorising the warrant. First, the official must satisfy the judicial authority that there are reasonable grounds either to obtain or preserve relevant evidence. Second, the former must convince the latter that that the investigation of the case is carried out 'diligently and expeditiously', as discussed previously.[431] After the court is satisfied, a terror detainee can be remanded in police custody for six days, at a time, to get further evidence to help make a decision of whether to bring a charge against or release him/her. Walker,

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[428] General Comment No. 35, para 33, available at http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrdB0H1l5979OVGGB%2bWPAXjdnG1mwFFfPYGIlNfb%2f6T%2fqwtc77%2fKU9JkoeDcTWWPIpCoePGBcMsRmFtoMu58pgnmzjyiyRGkPQekcPKtaaTG last accessed 13 March 2016

[429] Freemantle v Jamaica 625/1995, para 7.4

[430] Brisenko v Hungary 852/1999, para 7.4 "With regard to the claim of a violation of article 9, paragraph 3, the Committee notes that the author was detained for three days before being brought before a judicial officer. In the absence of an explanation from the State party on the necessity to detain the author for this period, the Committee finds a violation of article 9, paragraph 3 of the Covenant."

[431] Terrorism Act 2000, Schedule 8, para. 32.

Dickson, Awan, Macken and Greer did not shed any light on this issue. Similarly, the Human Rights Committee has not even mentioned this in its response to the recent periodical reports on the UK laws and practices.[432] It seems evident that the six days' period at a time in the UK anti-terror laws is reasonable and, thus, compatible with the safeguards mentioned in Article 9.

Finally, is the 14 days' total period of pre-charge detention from arrest compatible with the guarantees mentioned in Article 9? Although the UK reduced the period of detention from 28 days to 14 days in 2012, the Human Rights Committee expressed its concern about 14 days and suggested the UK further reduce the duration.[433] Liberty, a human rights NGO in the UK, has criticised the 14-day pre-charge detention period:

> *Fourteen days is still the longest period of pre-charge detention of any comparable democracy. In the USA the limit is two days, in Ireland it is seven, in Italy it is four and in Canada it is just one. Extended detention without charge flies in the face of our basic democratic principles of justice, fairness and liberty. Unjustifiable and unnecessary, it is also counterproductive in practice, alienating innocent people, their families and communities.*[434]

This clearly shows that the UK will find it hard to justify its power to detain terror suspects for 14 days in light of its international human rights obligations. First, the country provides one of the highest pre-charge detentions in the Western world. The West faces almost the same threat level from international terrorism as the UK but provides pre-charge total detention period ranging from one to seven days. Hence, the UK is more likely to fail the tests of reasonableness and proportionality. It will be quite interesting to see how the UK will reply to the concerns of the Human Rights Committee on its 14-day

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[432] The Human Rights Committee Concluding Observation on the Seventh Periodical report of the UK, CCPR/C/SR.3168 and 3169

[433] Ibid, para. 14, "The Committee is also concerned that the Protection of Freedoms Act 2012 maintains the 14-day limit on pre-charge detention in terrorism cases…The State Party should …consider reducing the maximum period of pre-charge detention in terrorism cases." See also Khomami, N. (2015) "Britain told to review counter-terrorism powers by UN human rights committee", The Guardian, available at http://www.theguardian.com/politics/2015/jul/23/britain-told-to-review-counter-terrorism-powers-by-un-human-rights-committee last accessed 05 July 2016

[434] Liberty, "Extended Pre-charge Detention", available at https://www.liberty-human-rights.org.uk/human-rights/countering-terrorism/extended-pre-charge-detention last accessed 05 July 2016

pre-charge detention. Second, on productivity, 14 days of detention does not seem more convincing as a negligible number: 8% of terror detainees was kept in detention up to 14 days while 92% were charged in less than a week.[435] The Manchester Arena and London Bridge attacks have pushed Theresa May to seriously consider an increase in the current 14-day pre-charge detention period. An increase is likely to further upset the Human Rights Committee and other NGOs.

On balance, the UK's current power of pre-charge detention seems to be placed in-between the liberal and conservative attitudes to security. In the Western world, countries such as Canada, the United States, Italy and Germany limit pre-charge detention to less than a week. Consequently, the UK's criminal justice model of terrorism in terms of the power to detain terror suspects can be seen to be a liberal-cum-conservative approach to security.

The UK's domestic and regional human rights obligations are grouped together to assess the treatment of terror suspects in the country. Although this has been justified earlier in this work, it can be briefly put that there are no significant differences between the UK's domestic and regional human rights obligations when it comes to the treatment of terror suspects. First, the preamble of the Human Rights Act 1998 categorically states to "give further effect to rights and freedoms guaranteed under the European Convention on Human Rights." Second, the main articles (Right to Liberty and Security of Persons) for the assessment guaranteed in the ECHR and the Act are exact copies. Third, the UK courts do 'take into account' the earlier decisions of the ECHR. Lastly, the UK courts may issue a 'declaration of incompatibility' regarding any provisions of the primary legislation or any action taken if they are found to be incompatible to the Convention.[436] This does not *ipso facto* invalidate the provision in respect of which the declaration is

[435] Anderson, D. (2013) "The Terrorism Acts in 2012" see para 8.10 on page 79 available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243472/9780108512629.pdf last accessed on 06 July 2016

[436] Human Rights Act 1998, Section 4(2).

issued.[437] The declaration is not even binding on the parties to the proceedings.[438] Courts in the UK can invalidate only those actions or decisions that are improperly or unlawfully taken by the executive.[439] The courts can declare invalid an unjust decision or improper action carried out by the executive; however, they cannot strike down any provisions made by parliament.[440] This is due to the constitutional concept of the sovereignty of parliament in the country.[441] Owing to the sovereignty of parliament, courts in the UK can only exercise a "limited judicial review".[442] The incompatibility of the provision in question may be removed by a minister who thinks there are 'compelling reasons' to do so.[443] The minister may exercise his 'power to take remedial action' and thus may make an amendment to the effect.[444] Remedial actions are fairly fast for it is not mandatory for the amendments to observe the entire parliamentary process as it would have required to enact a new statute.[445]

Although the British people have voted for Brexit and it has already been triggered, the UK's obligations under the ECHR remain binding because the ECHR is independent of the EU and is established by the Council of Europe.[446] However, if the UK's current government repeals the Human Rights Act 1998, as it has already promised to do, then it would not be just to group together the country's domestic and regional human rights obligations.[447] The current government has promised to repeal the Human

[437] Ibid., Section 4(6).
[438] Ibid.
[439] Hoffman, D., and Row, J. (2003) Human Rights in the UK: An Introduction to the Human Rights Act 1998, Fourth edition Edinburgh: Pearson pp. 76 – 80.
[440] Ibid., p. 44 – 47.
[441] Ibid.
[442] Ibid.
[443] Ibid., p. 76 – 80
[444] Ibid., see also Human Rights Act 1998, Section 10(2).
[445] Ibid.
[446] Anderson, D. (2013) "The Terrorism Acts in 2012" see para 8.10 on page 79 available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243472/9780108512629.pdf last accessed on 06 July 2016

[447] Conservatives (2014) "Protecting Human Rights in the UK: The Conservative's Proposals for Changing Britain's Human Rights Laws", available at https://www.**conservatives**.com/~/media/files/.../**human_rights**.pdf

Rights Act 1998 in favour of the British Bill of Rights, empowering national courts to overrule the ECtHR decision. The UK government might also change the wording of the Right to Liberty and Security of Person article.[448] Theresa May, in a very emotional public speech, said that she would 'rip up human rights'. In case it does happen and domestic human rights are materially changed, then two separate assessments of the UK's treatment of terror suspects will be carried out—each in light of its domestic and regional obligations. So, it is reasonable to group together the domestic and regional human rights obligations of the UK for now and to carry out the assessment of its anti-terror laws in light thereof.

Is the pre-charge detention period in the UK compatible with Articles 5(3) and (4) which, respectively, state that everyone arrested or detained 'shall be brought promptly before a judge', and they 'shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily'? Here again, three sub-questions arise. First, is the 48 hours detention in police custody compatible with the principle of promptness in Article 5(3)? Second, is it in compliance with the clauses to keep a terror detainee in police custody for a maximum of six days, at a time, after his warrant of further detention is authorised by a court? Third, is the 14-day total detention period a reasonable time period for a speedy decision to be made to determine the lawfulness of detention (i.e., to set free or charge a detainee) in terror cases?

Regarding 48 hours police custody, one can counter-argue and ask why it is not possible to produce a terror detainee, arrested without warrant, before court within 24 hours of the arrest? Several scholars, such as Walker, Dickson, Awan, Macken and Greer have assessed pre-charge detention in terrorism cases in the context of the UK but none has objected to the first 48 hours in favour of 24 hours' detention.[449] This suggests that

[448] Ibid.

[449] Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation 2nd edition, New York: Oxford University Press. See also Dickson, B. (2009) "Article 5 of the ECHR and 28-day Pre-charge Detention of Terrorist Suspects" Queen's University Belfast. NILQ 60(2): 231-244. Awan, I. (2011) "The

48 hours' detention in police custody is reasonable, proportionate and thus compatible with Article 5 (3) of the ECHR. Why would the provision not be compatible when it has been in force since 1964 and has remained so without any objection by any of the independent reviewers?[450] Likewise, the ECtHR has decided that 48 hours' detention in police custody does not infringe on the right to be brought promptly before a judge in Article 5(3).[451] Similarly, these authors point out that the Court did not object to keeping a terror detainee in police custody for six days at a time on further warrant of arrest.[452] Perhaps, this period is also reasonable and proportionate in their eyes? However, the Brogan case,[453] as already discussed here, makes it clear that any detention in police custody longer than six days, without the authorisation of a court of law, will violate Article 5(3). Though this case relates to the first seven days of arrest in police custody before a further warrant of detention, perhaps it has set the time limits for a further warrant of detention. This is the reason why six days' detention does not violate Article 5(3).

Finally, how does the total 14 days' detention comply with Article 5 guaranteeing 'prompt' production and 'speedy' review of an arrested terror suspect, either to charge him/her or set him/her free? In *Magee v United Kingdom*, when three terror suspects were detained for a total of 12 days, the Court held that it was a reasonable period in terrorism cases on reasonable suspicion.[454] If the court is in agreement with 12 days, then it should also be in agreement with 14 days. The ECHR, at present, does not have any issue with the UK's 14-day pre-charge detention duration. Middleton thinks that 14 days' pre-charge

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Erosion of Civil Liberties: Pre-charge Detention and Counter-terror Laws", The Police Journal 84. Macken, C. (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and international Human Rights Law, New York: Routledge. Greer, S. (2008) "Human Rights and the Struggle Against Terrorism in the United Kingdom", European Human Rights Law Review 2:163

[450] Blackbourn, J. (2014) "Evaluating the Independent Reviewer of Terrorism Legislation. Research Note Parliamentary Affairs 67: 955-968.

[451] Magee v United Kingdom (2016) 62 E.H.R.R. 10 paras 77, 78 and 93

[452] Magee v United Kingdom (2016) 62 E.H.R.R. 10 para 92

[453] Brogan v United Kingdom (1989) 11 E.H.R.R. 117

[454] Magee v United Kingdom (2016) 62 E.H.R.R. para 105, "In the present case the applicants were detained for 12 days, which was a relatively short period of time. As such, the Court considers that they were at all times in "the early stages" of the deprivation of liberty, when their detention could be justified by the existence of a reasonable suspicion that they had committed a criminal offence."

detention is 'piecemeal' in terrorism legislation and is one of the 'modest improvements' in the UK's history of terror laws that has been 'well received'.[455] However, once again, in comparatively similar jurisdictions, the UK provides the highest detention duration; as was argued at a time when 28 days' pre-charge detention was in force in the country.[456] The next highest pre-charge detention period in force in a country, after the UK, is France with six days. Spain and Russia both provide five days each, while in Italy it is four days. Germany and the United States only provide two days.[457] At present, the 14 days' pre-charge detention period seems compatible with Article 5 of the ECHR, though the UK comparatively still has the lengthiest period of pre-trial detention. To conclude, the total pre-charge detention period of the UK is in compliance with Article 5 of the ECHR as far as the country's domestic and regional human rights obligations are concerned. However, the UK's 14-day pre-charge detention will contravene its international human rights obligations under ICCPR, Article 9 because it is one of the highest among the comparable jurisdictions, the same objection has also been raised by the Human Rights Committee.

On balance, in view of the UK's international, regional and domestic human rights obligations, the country follows its major human rights obligation for the prompt production of a terror suspect before a court and it can keep the detainee in six-day detention at a time. However, the total period of the pre-charge detention means that the country does not seem to fulfil its human rights obligation to detain a terror detain during pre-charge detention for a 'reasonable' period that is not more than a few days. In other words, not more than seven days in total. So, the country follows a liberal-cum-

[455] Middleton, B. (2011) "Rebalancing, Reviewing or Rebranding the Treatment of Terrorist Suspects: the Counter-
Terrorism Review 2011", The Journal of Criminal Law vol. 75 no. 3 225-248
[456] Liberty (2010) "Release or Charge: Terrorism Pre-charge Detention Comparative Law Study", available at https://www.liberty-human-rights.org.uk/sites/default/files/comparative-law-study-2010-pre-charge-detention.pdf
[457] Ibid.

conservative security approach by keeping the period of pre-charge detention in law as 14 days in total.

4.2.1.B. The Period of Pre-charge Detention in Practice

The previous section, on the UK's power to detain a terror suspect, reveals that at present the country can detain a terror suspect for not more than 14 days in total. The next section will attempt to find whether someone can be detained for more than the permitted period in force at that time. In other words, this section will try to identify any gaps between the law and action or practice on the principles of promptness and reasonableness.

To identify police excesses in the UK, various NGO annual reports, since 2001, were examined. These NGOs are Human Rights Watch, Amnesty International, and Liberty. There are no records in these NGO reports of an arrestee who was detained for more than the permitted period or whose appearance before the court was delayed.

There are, however, two reported instances regarding the violation of the principle of promptness in the UK's history: the first is *Brogan v United Kingdom* also known as the Brogan case[458] and the second is the Brannigan case (*Brannigan and McBride v the United Kingdom*).[459] In the Brogan case, four men were arrested under terror charges during the Irish Troubles and were kept in police custody for more than six days without being brought before a judge. The court held that their right of prompt production before a court was violated. The case of *Brannigan and McBride v the United Kingdom is* almost the same but the court decided that no right was violated due to the fact the UK, at that time, had entered a valid derogation under Article 15 of the ECHR.[460]

[458]Brogan v United Kingdom 11 EHRR 117 1988
[459] Brannigan And McBride v. The United Kingdom, Application no. 14553/89; 14554/89, 25 May 1993
[460] Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation 2nd ed. New York: Oxford University Press, p. 15

Both of these cases reveal that police actions were not in excess of the law in force at that time. With reference to the Brogan case, during the Troubles the UK parliament had enacted PTA 1974, which not only conferred more police powers but also increased the period of pre-charge detention to seven days.[461] The Act expressly allowed that after 48 hours, a police officer could apply to the Secretary of State to extend the detention period for another five days—altogether constituting seven days without judicial control. The police in fact did not exceed their powers in the Brogan case but followed the law in force at that time. So here it was not the police action to detain the four men for more than six days without judicial oversight but the law, authorising such detention, that was held to be in contravention of the ECHR. In the Brannigan case, because the UK had entered a valid derogation, it was legal for the police to detain a terror suspect for more than six days. Consequently, the UK's law enforcement agencies do not further prolong the permitted pre-charge detention period in practice or action and neither have they delayed the production of any terror suspect before a court. Therefore, the UK's law enforcement agencies possess liberal attitudes to security when it comes to the period of pre-charge detention in practice.

There is no gap between the laws as stated and the law applied in practice in the UK on the period of pre-charge detention. Police practices have not violated the law, which is why the UK's practice reflects a liberal approach to security. A police staff member is not a judge of his or her own action; therefore, this goes against what Oren Gross, Bruce Ackerman and Richard Posner suggest that the executive should judge their own actions and courts have nothing to do with these. Perhaps, the police are well-aware that conservative attitudes to security divide community into 'We' and 'Them', as

[461] Dickson, B. (2009) "The Detention of Suspected Terrorists in Northern Ireland and Great Britain", University of Richmond Law Review.

discouraged by liberals such as Fiona, Sunstein, Luban, Waldron and Cole. The police are also aware of the costs mentioned by Zedner not to create fear among the public.

A combined assessment of the law and practice of the UK's period of pre-charge detention suggests that although the country reflects liberal attitudes in actions, in its laws it reflects liberal-cum-conservative security attitudes.

4.2.2.A. Police Interrogation and Questioning: Law and Assessment

Once a terror suspect is arrested under Section 41 of the Terrorism Act 2000, he or she is handled by three different police officers; that is, the custody, review and investigation officers. The powers and roles of the custody and review officers will be assessed later in this thesis. Before assessing the investigative powers of the police, it is important to know which powers an investigating officer has. An investigating officer has full knowledge of the case in which the arrest is made.[462] The investigating officer interviews or questions the arrested person on suspicion of being a terrorist. Before the suspect is interviewed, he or she is cautioned and informed of the grounds of such arrest and are given some information relating to his or her involvement in the offence.[463] All of the interviews are carried out in places that are specifically designated for detention. Use of oppressive questions to compel confession or elicit any statement during an interview is forbidden.[464] The interviews are video recorded.[465]

A detainee is allowed to take at least 8 hours of rest in 24 hours.[466] Before any interview is conducted, it must be made sure that the detainee is fit for the interview. Then, he or she should be interviewed by the investigating officer in an interview room

[462] Terrorism Act 2000 Schedule 8 and PACE Code H para. 11.
[463] Ibid.
[464] Ibid., para. 11.6.
[465] Ibid., para. 11.8.
[466] Ibid., para. 12.2.

that is lit and heated adequately.[467] He or she should not be made to stand up to answer any questions during the interview. A police interrogation does not last for an indefinite duration. Its maximum duration is two hours, after which the detainee is allowed to take a 15-minute break.[468] If it coincides with a mealtime, then there should be a break from the interview. A total of 45 minutes should be provided for a meal break, after which the interview should be resumed.[469] During the entire interview session, the investigating officer takes the custody officer's responsibility in relation to the safety and care of the detainee.[470]

The investigation officer is authorised to interview or question a terror suspect for two hours to get further evidence, information, or confession for the administration of justice.[471] The officer can only further prolong the duration if there are 'reasonable' grounds to do so.[472] These grounds are risk of harm or serious damage to people and property, respectively, and prejudicing the outcome of the investigation for which the arrest is made.[473]

The question is whether the two hours of continuous questioning and its further extension at the discretion of the investigation officer are in compliance with the UK's international, regional, and domestic human rights obligations. None of the human rights instruments lays down a time frame for the police investigation in terrorism cases. This has perhaps been left to the discretion of each country, reflecting its anti-terror laws and actions.

Various scholars such as Walker, Hoffman and Rowe, Macken, Greer, Dickson, and Awan have assessed the anti-terrorism legislation of the UK in light of its various

[467] Ibid., para. 12.4.
[468] Ibid., para. 12B.
[469] Ibid.
[470] Ibid, para. 12.1.
[471] PACE Code H para. 12.8.
[472] Ibid.
[473] Ibid.

human rights obligations but none of them has felt the 'need' to assess the two-hour interrogation session permitted by the PACE Code H in the UK. What does this suggest? Perhaps, this provision does not contravene any individual human rights? Perhaps, it is very much in comport with the UK's human rights obligations to treat terror detainees with 'humanity'? Perhaps, PACE Code H and paragraph 12 and 12B are so exhaustive and codifying of certain liberal provisions that even prominent human rights writers do not feel the need to bring any human rights argument against these? For example, Walker assesses six investigative powers mentioned in Schedule 5 of the Terrorism Act 2000 but he did not touch upon the power to hold terrorist interviews for two hours.[474] Macken talks about the investigative powers and police practices in terrorism cases. She states that evidence obtained through police impropriety shall be excluded from a court hearing.[475] However, she did not either discuss or evaluate the two-hour interrogation duration of terrorist suspects at all in her book. Similarly, Hoffman and Rowe talk about terrorist investigation such as disclosure of information and search of persons and premises but they did not mention the two hours questioning session of the terrorist suspects.[476] And the same is the case with other writers—Awan, Greer and Dickson—who have all assessed the total duration of pre-charge detention in the context of the UK but have not given any space in their articles to the two-hour interrogation session for terrorists. Likewise, the Human Rights Committee is seemingly fine with the duration because it, like the other legal scholars, has not raised any concerns about the first two hours of a police interrogation sessions in the country.[477]

[474] Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation 2nd edition, New York: Oxford University Press. pp. 106 – 113.
[475] Macken, C. (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and international Human Rights Law, New York: Routledge. pp. 154 – 155.
[476] Hoffman, D., and Row, J. (2003) Human Rights in the UK: An Introduction to the Human Rights Act 1998, Fourth edition Edinburgh: Pearson pp. 410 - 415
[477] The Human Rights Committee Concluding Observation on the Seventh Periodical report of the UK, CCPR/C/SR.3168 and 3169

There has hardly been any attempt to critique or substantiate the duration of interrogation sessions in the UK and this is where we can say that the country has adopted a liberal security approach for several reasons. First, there is a break of 15 minutes after every two hours of interrogation in which short refreshments are served. Second, the sessions are normally run during the day because the suspects are generally allowed to take at least eight hours of rest, 'free from questioning', during night time.[478] Third, they can have drinks on request, even during the interview session.[479] In addition, during the two hours, the suspects are not required to stand up, which legally acknowledges respect for the personal dignity of persons detained on terror charges. Lastly, the two-hour interrogation session is reasonable and almost the same time is required for a patient to visit hospital, for a business person to hold a business meeting, or for a university student to attend a postgraduate lecture, followed by 10 or 15 minutes and of course some light refreshments. Here the UK's anti-terror laws are in comport with its international, regional and domestic human rights obligations. The country does not consider Richard Posner's 'coercive interrogation'[480] or Michael Ignatieff's 'lesser evil'[481] argument to torture a terror suspect.

4.2.2.B. Police Interrogation and Questioning in Practice

This section will find out if there is any gap between the UK's law and its practices when interrogating a terror detainee during pre-charge detention. Although I have analysed many reports from NGOs such as Human Rights Watch, Amnesty International, and Liberty, there is hardly any evidence to suggest that the UK's practices have violated

[478] PACE Code H. para 12.2
[479] Ibid, para. 8.6 "Drinks should be provided at meal times and upon reasonable request between meals."
[480] Posner, R. (2006) Not a Suicide Pact: The Constitution in a Time of National Emergency, Oxford University Press: Oxford and New York.
[481] Ignatieff, M. (2005) The Lesser Evil: Political Ethics in an Age of Terror, Edinburgh: Edinburgh University Press.

any provision of its anti-terrorism law governing the interrogation of terror suspects. This account might be true as far as a terror detainee is seen in a crime or justice model of terrorism and is on the British soil, but what is the conduct of British security forces and law enforcement agencies abroad when acting under the war paradigm of terrorism? In its concluding observation, the Human Rights Committee has substantiated a strong case against British 'overseas' human rights violations.[482] For example, Baha Mousa, a young hotel receptionist in Iraq, died within just 36 hours of his arrest in the custody of British troops in 2003.[483] A public inquiry was held and the report clearly held that members of the British troops were responsible for his death.[484] The UK government has even publicly apologised for his death in its Seventh Periodic Report before the Human Rights Committee.

Two detailed reports of the UK's overseas treatment of terror detainees have been published: the Handling of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq of 2005,[485] and the Detainee Inquiry of 2013.[486] On a number of occasions, reports have held that although the British troops were not keeping terror detainees in their custody, they were aware of their torture and ill-treatment at the hands of US troops.[487]

In another case, British law enforcement agents were suggested to have been involved in the torture and ill-treatment of five British citizens who were arrested and

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[482] The Human Rights Committee (2015) Concluding Observation on the Seventh Periodic report of the United Kingdom and Northern Ireland. Para 9

[483] Turns, D. "The Treatment of Detainees and the "Global War on Terror": Selected Legal Issues", International Law Studies, Vol 84. See also The Seventh Periodical Report submitted by the United Kingdom before the Human Rights Committee in 2013; See also The Amnesty International Report (2006) United Kingdom – Human Rights: A Broken Promise, available at http://www.statewatch.org/news/2006/feb/ai-uk-report.pdf p. 66. See also WWW.Bahamousainquiry.org

[484] Ibid.

[485] The UK Government Website: Intelligence and Security Committee Independent Report (2005) "The Handling of Detainees by UK Intelligence Personnel in Afghanistan, Guantanamo Bay and Iraq" available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/224699/isc_handling_detainees.pdf last accessed on 28 October 2016

[486] The Report of the Detainee Inquiry (2013) available at http://www.detaineeinquiry.org.uk/wp-content/uploads/2013/12/35100_Trafalgar-Text-accessible.pdf last accessed on 28 October 2016

[487] Ibid.

detained in Pakistan from 2004 to 2007.[488] There is credible evidence that the detainees were tortured during investigation by the Pakistani law enforcement agencies and that the British officers were aware of this.[489] Human Rights Watch claims that Britain was complicit in these abuses.[490] The organisation has put forward many recommendations to stop British overseas human rights abuses in their fight against terrorism.[491] However, the UK continues to deny these allegations.

Blakely and Raphael have recently argued that the UK cannot defend its post-9/11 abuse of terror detainees. They argue that these denial of the use, condonation or facilitation of torture or other ill-treatment is a new "British approach to torture in the 'War on Terror'".[492] These authors further explain that the UK's elected representatives categorically deny their complicity in the abuses while the non-elected representatives (bureaucracy and law enforcement agencies), who act as 'petty sovereigns', continue to perpetrate the human rights violations.[493] The overseas human rights abuses show that the UK's hands are not clean. Consequently, the country's counter-terror actions abroad reflect the dominant conservative attitudes of Richard Posner[494] (e.g. torture and coercive interrogation) and Ignatieff's[495] lesser evil argument.

One can counter-argue that there was no specific law in force in the UK on the treatment of terror suspect when the British agencies committed these overseas human rights violations. However, this defence cannot legitimise the UK's overseas human rights abuses. The Detainee Inquiry of 2013 and the Detainee Report of 2005 have time

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[488] Human Rights Watch (2009) "Cruel Britannia: British Complicity in the Torture and Ill treatment of Terror Suspects in Pakistan", available at https://www.hrw.org/sites/default/files/reports/uk1109web_0.pdf last accessed on 01 November 2016
[489] Ibid.
[490] Ibid.
[491] Ibid.
[492] Blakely, R., and Raphael, S. (2016) "British Torture in the 'War on Terror' "European Journal of International Relations 1 - 24
[493] Ibid.
[494] Posner, R.A. (2006) Not a Suicide Pact: The Constitution in a Time of National Emergency, Oxford University Press: Oxford and New York,
[495] Ignatieff, M. (2005) The Lesser Evil: Political Ethics in an Age of Terror, Edinburgh: Edinburgh University Press.

and again referred to the third Geneva Convention and other memos issued from time to time wherein a terror detainee is protected against torture or other ill-treatment during police or security agencies questioning. Similarly, and as stated previously, right against torture comes under customary international and jus cogens.

The effects of UK's human rights violations abroad are being felt within the country. The main reason for this is that nearly all of these abuses were perpetrated against Muslim detainees abroad. The UK is home to more than three million Muslims.[496] Currently, one in every 20 Britons is a Muslim.[497] British Muslims seem quite disappointed at the British government's policies and approaches to security in many Islamic countries abroad.[498] They also think that the British anti-terror legislation is primarily aimed at Muslims.[499] Whenever the UK government speaks of increasing police powers, lengthening the period of detention, or broadening the scope of the offence of terrorism, fears in the Muslim community surge about possible targeted policing and discrimination.[500] This is exactly what the liberal critique of the conservative approaches to security stipulates—conservative security attitudes divide society into two identifiable groups, 'We' and 'They'. According to a recent report that was presented in the House of Commons, of those detained on terror charges, 97% are Muslim.[501] This figure is overwhelming and is the reason why Rehman terms the UK's anti-terror legislation and its adverse impact on the Muslim community an "agenda of short-sightedness and

[496] Finnigan, L. (2016) "Number of UK Muslims exceeds three million for first time", http://www.telegraph.co.uk/news/uknews/12132641/Number-of-UK-Muslims-exceeds-three-million-for-first-time.html The Telegraph accessed on 01 November 2016
[497] Ibid.
[498] Rehman, J. (2007) "Islam, "War on Terror" and the Future of Muslim Minorities in the United Kingdom: Dilemmas of Multiculturalism in the Aftermath of the London Bombings", Human Rights Quarterly, vol. 29 p. 877
[499] Ibid.
[500] Ibid, p. 851 - 853
[501] Politowshki, B. (9 June 2016) "Terrorism in Great Britain: The Statistics", Briefing Paper No. 7613 in the House of Commons Library available at www.researchbriefings.files.parliament.**uk**/documents/CBP-7613/CBP-7613.pdf *last accessed on 01 November 2016.*

hysteria".[502] The agenda of hysteria will spread fear in the British Muslim community. This is Zedner's and Waldron's security cost. David Anderson QC, a reviewer of UK anti-terror legislation, has also admitted in a recent press release that the UK has had a 'spying programme' to tackle extremism and terrorism within Muslim communities.[503] According to Anderson, there is a genuine and 'real fear' among Muslims that the programme targets not radicalisation but the 'practice of Islam'.[504] This means that the British overseas human rights violations, coupled with its spying programme within the country, trigger a real fear among the three million British Muslims.

The investigation powers in the UK's anti-terror laws may well be in compliance with its human rights obligations and, thus, reflective of liberal security attitudes; however, in practice, and especially in its operations abroad, it clearly reflects dominant security attitudes because the country is accused of complicity in torture. However, the UK's overseas human rights violation of terror detainees come under the war paradigm of terrorism. This research is related to the UK's legal response to terrorism, which comes under the justice or crime paradigm of terrorism seeking the prosecution of terror detainees to pursue terrorism. There is hardly any evidence available to show that the UK police have interrogated a terror detainee during pre-charge detention for more than two hours at a time. Furthermore, none of the leading NGOs or the Human Rights Committee have raised any concern about the police interrogation of terror suspect during pre-charge detention in practice. So, when it comes to the investigative powers of the UK in terrorism cases, the country fulfils its human rights obligation on how to treat terror detainees in a criminal justice system. There is hardly any evidence that the UK has used the war or the

[502] Rehman, J. (2007) "Islam, "War on Terror" and the Future of Muslim Minorities in the United Kingdom: Dilemmas of Multiculturalism in the Aftermath of the London Bombings", Human Rights Quarterly, vol. 29 p. 877

[503] "Now, I'm sure those fears are exaggerated, and they are certainly not what the programme is supposed to be about, but the fact is that they are very real." Available at http://www.independent.co.uk/news/uk/politics/muslims-prevent-scheme-seen-as-spying-says-terrorism-law-watchdog-a7347751.html last accessed on 02 November 2016

[504] Ibid.

executive model in its criminal response to terrorism. This suggests that the country is well-aware of the legal boundaries of the three models of counter-terrorism, and the country therefore does not allow to cross the criminal justice boundaries and reflect therein the war or executive paradigm of terrorism.

4.2.3.A. Internal Police Review Mechanisms: Law and Assessment

This section will find if there is a law in the UK anti-terrorism legislation that provides for internal police review mechanisms. The law will then be assessed in light of the human rights law conception of the internal police review mechanism.

As mentioned previously, during pre-charge detention, there are three police officers who deal with a terror suspect and who have responsibility for investigation, custody and review. The review officer's job is to check whether a terror detainee has been treated in accordance with the law. The updated Schedule 8 of the Terrorism Act 2000 has made it obligatory that the arrested person's detention "shall be periodically reviewed by a review officer" to ensure the validity of the detention.[505] A review officer differs from the investigating and custody officers (i.e., they are an officer neither investigating nor keeping custody of the arrested person).[506] The review officer is required to carry out a review of the treatment of the terror detainee "as soon as reasonably practicable after the time of the person's arrest". One of the requirements, during the 48 hours of detention, is to carry out subsequent reviews. The review officer must carry out such subsequent reviews at intervals of not more than 12 hours.[507] The subsequent review may be postponed in three situations: first, an investigating officer must satisfy a review officer that "an interruption of the questioning to carry out the review would prejudice

[505] *Terrorism Act* 2000, schedule 8, para. 21.
[506] Ibid., para. 24.
[507] Ibid., para. 21.

the investigation in connection with which the person is being detained"; second, when a review officer is not available, the review can be deferred; and lastly, the review can also be postponed for "any other reason".[508]

Detentions are not automatically continued. To authorise continued detention, a review officer must be satisfied on any of the grounds. First, that it is necessary to authorise continued detention to obtain or preserve relevant evidence. Second, that it is necessary to wait for the outcome of an examination with a view to obtaining relevant evidence. Third, the review officer must be satisfied that the detainee is about to be deported and in this connection the Secretary of State is being contacted. Lastly, continued detention can also be authorised where a decision is awaited regarding whether the detained person should be charged with an offence. The review officer can decline continued detention if he or she is not satisfied that the investigation in which the person is detained is not being conducted "diligently and expeditiously".[509]

A review officer shall give an opportunity to the person detained to challenge the legality and treatment about the detention by making representation himself/herself or through a legal counsel. The review officer acts here in the capacity of quasi-judicial authority, giving the detainee the right of being heard. The representation may be refused if the person detained is unfit to make such representation due to his/her condition or behaviour.[510]

How should an internal police review mechanism proceed in accordance with the human rights law? The internal police review is a distinct review process that is separated from other external reviews, such as judicial review, external independent reviews, and independent police complaints; however, this is not expressly recognised as a human right in the ECHR or the Human Rights Act 1998. The UNCAT specifically makes all state

[508] Ibid., para. 22.
[509] Ibid., para. 23.
[510] Ibid., para. 26.

parties duty bound to review the actions of those who are responsible for the custody, treatment and interrogation of all detainees including terror suspects.[511] The right to an internal police review also has a very strong relationship with the administration of justice to determine the lawfulness of pre-charge detention, which is a human right expressed in Article 5 ECHR and Article 9 ICCPR. The Human Rights Committee believes that "every decision to keep a person in detention should be open to review periodically."[512] The Committee has used the word 'review', thus including all types of review. Consequently, the Human Rights Committee ensures that there should be an internal police review mechanism during pre-charge detention. This obligation is applicable to all member states, including the UK. Thus, the UK is under an obligation to provide for internal police reviews periodically as long as the suspect remains in police custody. Does the UK fulfil this obligation?

The UK's anti-terror law is clear on police reviews but only up to the first 48 hours pre-charge detention. The review includes certain important safeguards to protect a terror detainee from police abuses. After a terror suspect is arrested on reasonable suspicion, an initial police review (first safeguard) is carried out by a review officer "as soon as reasonably practicable after the time of the person's arrest."[513] Because police reviews are periodic and systematic, subsequent reviews (second safeguard) are carried out "at intervals of not more than 12 hours."[514] A review officer, not an investigating officer, shall authorise continued detention to obtain or preserve relevant evidence.[515] The extension of detention is not automatic (third safeguard), it is authorised by the review officer internally and then by the court (as explained previously). The review officer is

[511] United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx, article 11, last accessed on 18 September 2014.
[512] A v. Australia 560/1993, UN Doc CCPR/C/59/D/560/1993, para 9.4
[513] Terrorism Act 2000, Schedule 8, Part II, para 21
[514] Ibid.
[515] Ibid, para 22. See also PACE Code H, para 14B.

barred from putting questions to the detainee regarding his or her involvement in the offence (fourth safeguard).[516] If a review is delayed, then the grounds thereof must be documented, forming part of the record (fifth safeguard).[517] The UK anti-terror laws have a strong police review mechanism, which flows expressly from Schedule 8 and then reinforced by the PACE Code H. Sadly, the review is available only for a limited time; that is, during the first 48 hours.[518] This is one of the drawbacks of the police review mechanisms in the UK anti-terror laws. If a terror suspect is detained in police custody, after his or her continued detention is authorised by the court, there ceases to be further police review checks to balance the powers of the investigating officer who interrogates the suspect. The lack of this check or balance may expose the detainee to maltreatment during police interrogations. Walker has suggested the internal police review mechanism in the country to run formally for the whole period of pre-charge detention.[519] In addition, the review can be postponed 'for any other reasons'. This means that the police can easily deprive a terror detainee of his/her right to review during pre-charge detention.

On balance, it is reasonable to conclude that the UK's police review mechanism fulfils its main human rights obligations because the mechanism is not only expressly recognised in the law but has also incorporated several procedural safeguards to protect the detainee from police maltreatment. Although the protection is guaranteed for the first 48 hours, it does not continue until the end of the entire period of pre-charge detention; that is, it does not cover the full detention period of 14 days. The UK fulfils its human rights obligations here but, unfortunately, it does not do so throughout the whole period of pre-charge detention. Therefore, the country reflects liberal-cum-conservative attitudes

[516] PACE Code H, para 14.2
[517] PACE Code H, 14.12
[518] Terrorism Act 2000, Schedule 8, Part II, para 21 (4); see also Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation 2nd edition, New York: Oxford University Press. p. 143
[519] Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation, 2nd Edition, Oxford, England: Oxford University Press. p. 162 "Finally police review should formally continue after forty-eight hours."

in powers to question terror detainees without police review beyond 48 hours. Lastly, the review is not firmly enacted because it can be postponed 'for any other reasons'.

4.2.3.B. Internal Police Review Mechanisms in Practice

There is nothing reported so far to indicate that the police reviewing powers have been misused. The country has adopted liberal attitudes in the exercise of its authorised internal police review mechanisms. A review of the various NGO reports and the concluding observations of the Human Rights Committee on the UK's human rights obligations shows there are no reported discrepancies in action regarding this point. Therefore, it is appropriate to say that the UK reflects liberal security attitudes in action by sticking to the proper standards of the initial and subsequent internal police review mechanism in force.

4.2.4.A. Police Records: Law and Assessment

What is the law on police records in the UK? Record keeping is the duty of all officers, including the investigation officer, review officer and custody officer. The country's anti-terror laws clearly provide for the keeping of full and accurate records of the treatment of terror suspect during the pre-charge detention. Whether the record pertains to custody, investigation or review, it is available to the court beforehand to decide the lawfulness of detention.[520] For accountability purposes, it is the duty of the review officer to keep written records of all of the activities carried out during the 48 hours of detention. The officer shall make such records in the presence of the detainee and the former must inform the latter about authorising continued detention and the grounds thereof.[521]

[520] PACE Code H, para 2, see also Terrorism Act 2000, Schedule 8, para 3
[521] *Terrorism Act* 2000 Schedule 8, para. 28.

What is the human rights law assessment of the UK's police records? Interviews are audio and video recorded (first safeguard).[522] There is nothing to indicate the use of Walker's 'off the record' in terrorism cases.[523] The person interviewed shall be given the opportunity to go through his or her recorded interview and sign it as correct or refuse to do so and write his or her disagreement note to that effect (second safeguard).[524] Anything stated by the suspect outside the context of the interview is also limited to writing and makes part of the record (third safeguard).[525] Here, the UK clearly fulfils its human rights obligations by keeping full and accurate records of the detainee's custody, interviews, and reviews. The country's anti-terror laws show that very humane approach has been adopted. The UK's anti-terror laws governing the police record reflects a liberal approach to security because it fulfils its human rights obligations on the topic.

4.2.4.B. Police Records in Practice

As explained in Chapters One and Two, police records form the foundation on which to build and realise other human rights, such as the right to be brought promptly before a court, the right to challenge the lawfulness of detention, the right to know the reasons of arrest and detention, the right to be released or charged in reasonable time, and the right to a fair trial. The courts would be helpless to administer justice if timely and accurate police records were not provided. The UK's law relating to police records fulfil human rights standards but what about the country's actual practices in this regard?

None of the NGOs has documented any discrepancies in the UK's police record since 2001 particularly during pre-charge detention. Walker has also provided a full account of police record in terrorism cases and did not mention a single instance of

[522] PACE Code H, para 2, see also Terrorism Act 2000, Schedule 8, para 3
[523] Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation 2nd edition, New York: Oxford University Press. p. 151
[524] Ibid, see also PACE Code H, para 11.8 and 11.8A
[525] PACE Code H, Para 11.8 and 11.8A

inaccuracy or any other issue.[526] Because police records in the UK are accurate, there is 83% conviction rate of terrorism cases in the country.[527]

One can counter-argue and question the UK's accuracy of police record of terror detainees abroad. In the majority of the terror cases abroad, the UK did not keep the detainees in its custody.[528] The British law enforcement and security agencies only interviewed terror suspects or handed them over to other countries.[529] The agencies did not keep a proper record of these interviews, which has remained the subject of the ongoing criticisms of the UK's overseas human rights violation episode.[530] It seems that the UK did not fulfil its obligations abroad. As mentioned previously, the UK's abroad operation against terrorism come under the war or executive paradigm to disrupt terrorism which is not the main focus of this research. The main focus of this research is the treatment of terror detainees during pre-charge detention which comes under the criminal justice model of terrorism.

On balance, the UK reflects liberal security attitudes as long as a terror detainee is on UK soil and is related to the administration of criminal justice in terrorism cases. However, the UK departs from this and follows a conservative approach to security by not documenting accurate records of the interviews of terror detainees conducted abroad. This highlights how the UK fails to keep a record of terror detainees under the war paradigm of terrorism, which is outside the purview of this research project. Here, the UK

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[526] Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation 2nd ed. New York: Oxford University Press, p. 151 - 152

[527] Politowshki, B. (9 June 2016) "Terrorism in Great Britain: The Statistics", Briefing Paper No. 7613 in the House of Commons Library available at www.researchbriefings.files.parliament.**uk**/documents/CBP-7613/CBP-7613.pdf *last accessed on 01 November 2016.*

[528] Blakely, R. and Raphael, S. (2016) "British Torture in the 'war on terror' " European Journal of International Relations 1 – 24. "In other cases, record keeping
by officers on the ground was so poor that there were no interrogation records or records
with no or limited details of the welfare of the prisoner concerned." See also The Report of the Detainee Inquiry (2013) available at http://www.detaineeinquiry.org.uk/wp-content/uploads/2013/12/35100_Trafalgar-Text-accessible.pdf last accessed on 28 October 2016

[529] Ibid.

[530] Ibid.

does not reflect the war or executive paradigm of terrorism in its legal response to terrorism through its criminal justice system.

4.2.5.A. Rights of a Terror Suspect to Contact the Outside World: Law and Assessment

The UK anti-terror law expressly embodies the right to access the outside world. For example, the reviewing officer, after authorising continued detention, shall inform the detainee of his/her rights to contact the outside world.[531] In these cases, the outside world includes a friend of the detainee, a relative, a person who takes interest in his/her welfare, or a solicitor.[532] Interpreters, consular officers, custody visitors, faith representatives, members of either Houses of Parliament, and security services officials also come under the purview of the outside world.[533]

If a person is arrested under the Terrorism Act 2000 (Section 41), then he or she, upon request, is entitled to contact, as soon as reasonably practicable, a friend, a relative, or any person known to the arrested or detained person.[534] The right to contact a solicitor is also expressly recognised.[535] In Scotland, these rules are more strict. It is the responsibility of the police to inform the detainee's relatives and solicitor of their arrest.[536] Furthermore, these rights have also been reinforced in PACE Code H. The detainee is informed by a reviewing officer to contact his family and solicitor. Schedule 8 lays down a detailed list of situations where access to these contacts may be denied if it involves interference with or without harm to evidence, physical injury to any person, the alerting of persons who are suspected of having committed a serious offence, and so on.[537]

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[531] Ibid., para. 27.
[532] Ibid., para. 6-7.
[533] Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation, 2nd Edition, Oxford, England: Oxford University Press at 152
[534] Schedule 8, Part I, para 6, see also PACE Code H, para 5
[535] Ibid, para 7
[536] Ibid, para 16
[537] Ibid, para 8

The right to access the outside world or the right not to be held incommunicado is an important human right for persons under arrest or detention. As mentioned in Chapter Three, a person under arrest or detention is entitled to contact his or her family or home, lawyer, doctor, or an interpreter to assist him or her to either challenge the legality of his or her arrest or detention, or to prepare his or her defence. The ECHR clearly recognises the right to contact family or home and it prohibits any unlawful interference with this right by a public authority, as per Article 8(1).[538] Similarly, Article 2(3) of the ICCPR believes that the family is a natural and fundamental unit of society which needs protection, as per Article 17.[539] The Covenant also recognises the right of a detainee to contact his or her family or home.[540] How far then does the UK fulfil this obligation in its laws when treating terror suspects during pre-charge detention?

The UK's approach on the rights of a terror suspect to contact the outside world seems to be in compliance with its international, regional and domestic human rights obligations. There can be denials but only in cases permitted by law, which are also in compliance with the conditions specified in the ECHR and ICCPR because of their conditionality and proportionality. These instruments are unanimous on the conditionality of the rights to contact family and solicitors. The conditional phrases are,

> *Except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*[541]

Hence, the UK is not violating the human rights of a person detained under the anti-terror laws to contact family or solicitors by delaying them in accordance with the law and in compliance with the conditions mentioned in ECHR and ICCPR.

[538] ECHR, Article 8 (1). See also the Human Rights Act 1998
[539] ICCPR, Article 23
[540] Ibid, Article 17
[541] ECHR, Article 8.

There are clear rules in PACE Code H on access to medical personnel. A custody officer must make sure that each detainee receives appropriate medical care as soon as is practicable.[542] There must be daily medical check-ups beyond 96 hours detention.[543] Under the law, in Scotland, a medical examination is carried out towards the end of the 48 hours. In Northern Ireland, a medical examination is carried out soon after arrival in police station, followed by daily checks, before any interview and on release.[544] Similarly, the right to contact or arrange an interpreter has clearly been given due importance in PACE Code H.[545]

On balance, the UK's anti-terror laws on the right to contact the outside world seems quite liberal and in favour of the person in detention. The detainee's right to access family members, solicitors, medical officers, or interpreters is expressly guaranteed. Other public figures can also visit a detainee. This of course helps the detainee to prepare his or her case and look after his or her physical and emotional health by staying in touch with lawyers, medical personnel and his or her family or home, respectively. This is humane treatment and a genuine reflection of liberal security ideals.

4.2.5.B. Rights of a Terror Suspect to Contact the Outside World in Practice

There is nothing in the annual reports of various NGOs such as Human Rights Watch, Amnesty International, Liberty, or Reprieve to suggest that someone arrested on terror charge would have been detained incommunicado.

In the case of *Ibrahim and Others v the United Kingdom*, the country's law enforcement agencies have been found in violation of this right. This case relates to the judgement of the Grand Chamber of the ECtHR on the unexploded bomb plot in London

[542] PACE Code H, para 9.6
[543] Ibid, para 9
[544] Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation 2nd edition, New York: Oxford University Press. p. 152
[545] PACE Code H, para 13

on 21 July 2005.[546] In this case three suspects were arrested and later convicted of conspiring to detonate four bombs, which fortunately did not explode. The fourth person as a potential witness, was charged with the same offence on 3 August 2005 after several interviews as a witness and later as a terror suspect. The suspect's access to his lawyer was denied by the authorities on the pretext that it would prevent further acts of terrorism. Eventually, he was convicted in the UK courts of committing the offence. However, the Grand Chamber of the ECtHR held that the fourth applicant's right to access his lawyer was denied, which prejudiced his trial, culminating in his conviction in domestic courts. The Grand Chamber held that the three suspects' rights to contact their solicitors were rightly denied because of further threats of terrorism at that time. The Chamber, however, stressed that in the case of the fourth applicant, the situation did not demand the need to have denied his right to contact his lawyer. The main reasons for this are that he was charged at a time when a further act of terrorism was not imminent, so there was no need to have denied his right to contact his counsel. In addition, the police did not caution him when he was about to incriminate himself during the interviews. Consequently, the Chamber held that in the case of the fourth suspect, his right to access his lawyer was infringed.

Apart from this single instance, the UK's actions on the rights of a terror suspect to contact the outside world do not often violate their human rights because no violations have been reported. This research finds that if there is a gap between the law governing the right of a terror suspect to contact the outside world and the police actions on the grounds, then it is negligible. Therefore, the UK's actions to allow terror suspects to contact the outside world seem liberal. The UK rejects Posner's suggestion to keep a terror suspect in incommunicado detention as a means of helping extract more

[546] Ibrahim and Others v. The United Kingdom Applications Nos. 50541/08, 50571/08, 50573/08 and 40351/09

information from him or her. Rather, it follows liberal security attitudes of Buhelt, Cole, Tribe and Gudridge in rejecting the emergency constitution of Ackerman and the extra-legal measures of Posner and Oren Gross. Here, the UK truly reflects human rights in its law and practice.

4.2.6.A. Detention Conditions: Law and Assessment

When a person is arrested under Section 41 of the Terrorism Act 2000, he or she is brought before a custody officer.[547] The custody officer is primarily responsible for the detainee's safe custody and care.[548] They are also responsible for the custody record's accuracy and completeness.[549] This section will assess the custody officer's duties, particularly the safety and care of a terror detainee during pre-charge detention.

There are several duties imposed upon the custody officer in relation to the care and safety of the detainee. Cells should be provided for detention and not more than one detainee should be placed in each cell.[550] The cell should be adequately ventilated, lit, cleaned and heated. The detainee's bedding supplies (pillows, mattresses, blankets, etc.) should be in a sanitary condition. The detainee must have access to personal hygiene and washing.[551] He/she must be allowed two light meals and one main meal in 24 hours. Specific dietary needs as sanctioned by certain religious beliefs of a detainee must be fulfilled.[552] Families and friends may also provide food for the detainee; the custody officer should allow this after thorough consideration and inspection. A detainee should also be allowed brief outdoor exercise or religious prayer.[553] A separate room should be provided for religious prayers and uncontaminated religious books should be provided.[554]

[547] PACE 1984, Code H, para. 2.1.
[548] Ibid, para. 3.5.
[549] Ibid, para. 2.1.
[550] Ibid, para. 8.
[551] Ibid, para. 8.
[552] Ibid.
[553] Ibid.
[554] Ibid, para 8.8

Other resources are also provided for reading.[555] Juveniles are detained separately and should never be placed in adult cells.[556]

British society is arguably founded on the principles of democracy, the rule of law, and individual liberty and, more significantly, it should impose obligations on people and government to "treat others with fairness".[557] Thus, the fair treatment of detainees stems from the British common law. Similarly, the Human Rights Act 1998, the ECHR, the ICCPR and the UNCAT all emphasise the humane treatment of all those deprived of their liberty and dignity. Likewise, the Human Rights Committee concludes that a violation of Article 10 of the ICCPR occurs if a detainee is given "insufficient food, of very low nutritional value, no access whatsoever to recreational or sporting facilities… or even basic hygienic facilities, medical or dental care, or any type of educational services".[558] This then is how a terror detainee should be treated in accordance with the human rights law. How similar or different is the UK's law from the international human rights law on the detention conditions in which terror suspects are kept during pre-charge detention?

The UK's anti-terror laws governing the conditions of detention are very clear on the guarantees stated in various human rights instruments. The UK's treatment of terror detainees during detention is very much in compliance with the country's international, regional, and domestic human rights obligations. We can find from the concluding observation of the Human Rights Committee that such conditions are in compliance with the human rights standards.[559] The Committee did not refer to the facilities and conditions

[555] Ibid, para 8.10
[556] Ibid, para 8.9
[557] Life in the UK Test Study Guide (2016) edited by Henry Dillon and George Sandison, London: Red Squirrel Publishing. p. 2 and 3.
[558] Report of The Human Rights Committee, General Assembly forty sixth session, 40(A/46/40) p. 244, available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/N91/291/64/PDF/N9129164.pdf?OpenElement last accessed 20 March 2016; see also General Comment No. 21
[559] The Human Rights Committee Concluding Observation on the Seventh Periodical report of the UK, CCPR/C/SR.3168 and 3169

provided to detainees under the PACE Code H. Consequently, the UK's laws on the terror detention conditions follow the human rights law approach.

This shows that the UK's attitudes to security are very liberal when it comes to the conditions and facilities provided to the people detained under its anti-terror laws. The country treats them with humanity and dignity. The UK has not departed from its human rights obligations. Every effort has been carried out to frame these rules to be more humane. As far as the law is concerned, there are clear provisions governing the conditions of detention from arrest until formal charges are framed, and beyond. Any gaps between the law and action or practice will be raised in the next section.

4.2.6.B. Detention Conditions in Practice

There is hardly any evidence to state that terror suspects who are on charge are kept in arbitrary, inhumane, cruel, or degrading detention conditions in the UK. However, there is one exception to this, which is the plight of Belmarsh Detention Centre. The conditions of Belmarsh may be outside the purview of this research project because it focuses on pre-charge detention; however, it is worth mentioning Belmarsh here for reference because the UK's history on the detention conditions is not as fair as it may appear from its recent NGOs reports.

The Belmarsh Detention Centre was a high security prison for several indefinitely detained (as was permitted by law in force at that time to do so) foreign nationals on account of their various links to international terrorism.[560] The detention centre was closed following a court decision (as discussed previously). Amnesty International at that time had repeatedly reported on the inhumane, cruel, harsh, and degrading detention

[560] The Amnesty International Report (2006) United Kingdom – Human Rights: A Broken Promise, available at http://www.statewatch.org/news/2006/feb/ai-uk-report.pdf p. 21

conditions in the prison.[561] Human Rights Watch had also substantiated a full report on the UK's harsh detention conditions in the prison.[562] The abuses at Belmarsh were also picked up by the UK's leading media.[563] In particular, Rehman refers to one of the media reports and reconfirms that, owing to the detention conditions in Belmarsh prison, it can be called the 'British Guantanamo Bay'.[564]

There have been no further instances of the inhumane or ill-treatment of terror detainees in the current UK actions, especially after Code H was introduced in July 2006. Since then, no reported gaps in the law and in action have been suggested. So, on the treatment of terror detainees, especially on the detention conditions, the UK has adopted a strict liberal approach to security by reflecting its human rights obligations in law and in practice in its legal response to terrorism. There is hardly any evidence of the violations of human rights on the magnitude of the Belmarsh prison in the country's legal response to terrorism. The Belmarsh prison was an executive response to terrorism, the reflection of which is absent in the country's detention centres for terror detainees on suspicion of terror charges.

PART III

4.3.0 Conclusion

The laws governing the treatment of terror detainees in the UK are to be found in Schedule 8 of the Terrorism Act 2000 and Code H of PACE.[565] Schedule 8 of the

[561] Ibid, "the lack of adequate association time and activities in communal areas; the lack of educational, sport, and other meaningful activities and facilities; and the lack of access to open air, natural daylight and exercise in a larger space."
[562] Human Rights Watch (2003) "In the Name of Counter-Terrorism: Human Rights Abuses Worldwide", p. 20 -22 available at https://www.hrw.org/legacy/un/chr59/counter-terrorism-bck.pdf last accessed on 02 November 2016
[563] Clare, D. (10 June 2005) " UK Treatment of Terror Suspects 'inhumane'" The Guardian, available at https://www.theguardian.com/politics/2005/jun/10/humanrights.terrorism last accessed on 02 November 2016; See also BBC News (6 October 2004) "Belmarsh – Britain's Guantanamo Bay", available at http://news.bbc.co.uk/1/hi/magazine/3714864.stm last accessed on 02 November 2016.
[564] Rehman, J. (2007) "Islam, "War on Terror" and the Future of Muslim Minorities in the United Kingdom: Dilemmas of Multiculturalism in the Aftermath of the London Bombings", Human Rights Quarterly, vol. 29 p. 868

[565] Walker, C, (2011) *Terrorism and the Law*, 1st ed. New York: Oxford University Press, p. 173.

Terrorism Act 2000 provides a contemporary framework for the treatment of terror detainees, which was supplemented through the Anti-terrorism, Crime and Security Act 2001, the Prevention of Terrorism Act 2005, the Terrorism Act 2006, the Counter-terrorism Act 2008, and the Protection of Freedoms Act 2012. In the UK, a terror suspect shall be produced before a court within 48 hours of her/his arrest. S/he shall not be detained for more than 14-days in total, starting from her/his arrest. In addition, the detainee shall not be kept for more than six days detention at a time. The duration of a police interrogation session shall not be more than two hours at a time. There shall be a break of 15 minutes between interrogation sessions. All interviews are audio and video recorded. The police are duty bound to maintain an accurate and proper police record for the administration of criminal justice. The UK provides an internal police review mechanism during the first 48 hours. The law also permits the review to be postponed for any reason. The law relating to the rights of a terror suspect to contact the outside world is also clear and allows a terror suspect to contact his/her family, friends or a lawyer for the defence of his/her case. There are clear laws and rules governing the facilities in which terror detainees are kept during pre-charge detention.

Here, a human rights law assessment of these laws was carried out by deploying a liberal critique research methodology to assess if the UK's position on the treatment of terror detainees is in compliance with its human rights obligations. There are four categories/themes under which the country fulfils all of its human rights obligations and these are based on the detainee's right to access the outside world, the country's detention conditions, the maintenance of police records, and conducting police interrogation during pre-charge detention. In the remaining two categories, the UK partly fulfils its human rights obligations. The first partial fulfilment is the total period of the pre-charge detention, which is 14-days in total. The Human Rights Committee and Liberty have objected to this total period. The second partial fulfilment is the internal police review

mechanism. The human rights law demands that a review of the treatment of terror suspects should cover the entire period of pre-charge detention to safeguard the detainee during detention. The same objection is also raised by Walker.[566]

There have also been a few notable human rights violations in the country's anti-terror operations abroad, mainly related to the detention of terror suspects abroad. Given that this research mainly focus is on the treatment of terror detainees during pre-charge detention (i.e. the treatment under the justice system), the UK's overseas human rights violation will not contribute to the human rights assessment in this research.

The human rights assessment of the UK's law related to the treatment of terror detainees suggests that the UK reflects most of its human rights obligation in this regard. However, a couple of failures have also been noted in the country's justice system. This partial fulfilment of the country's human rights obligation in the UK model is a reflection of a liberal-cum-conservative security approach.

In summary, the UK fulfils all of its major human rights obligation in the treatment of terror detainees during pre-charge detention, except in two categories. This suggests that the UK's security approach oscillates between liberal and conservative views. The UK's approach is neither purely liberal nor purely conservative in nature but is instead a combination of both. Since the UK fulfils the majority of its human rights obligations in law and practice, it can be used as an example for Pakistan to learn from. Consequently, it is reasonable for the main case-study—Pakistan—to use UK as a comparator on the topic.

[566] Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation, 2nd Edition, Oxford, England: Oxford University Press. p. 162 "police reviews should formally continue after forty-eight hours."

CHAPTER FIVE

PRE-CHARGE TERROR DETENTION IN PAKISTAN: AN ASSESSMENT OF THE LAW AND PRACTICE

5.0 Introduction

This chapter aims to answer the third research question: What is the law on the treatment of terror detainees during pre-charge detention in Pakistan? To what degree Pakistan complies with its human rights obligations in this regard? And, is there any gap between the country's law and practice when treating terror detainees? This chapter will first identify and examine all of the legal provisions applicable to the treatment of terror detainees during pre-charge detention in Pakistan followed by an assessment in light of the human rights laws and principles identified in Chapter Two.

All states are under certain obligations to enact, enforce and apply anti-terrorism laws in such a manner as not to significantly violate the human rights of the terror suspects. Pakistan has many such obligations under its domestic human rights laws, such as the fundamental rights protected under its constitution. Pakistan also has certain international obligations under the core international human rights legal instruments to respect and ensure the rights of the people detained under its anti-terror legislation. The national and international obligations of the country demand fair treatment of terror detainees. These human rights obligations have been discussed in detail in Chapter Two. Although there have been some shocking terror incidents in the country's history, these do not mean that Pakistan should resort to the maltreatment of terror detainees.

The principal focus of this research is to prepare a case-study of the powers of pre-charge terror detention in Pakistan. In this chapter, an evaluation of the treatment of terror detainees during pre-charge detention will be carried out in light of the human rights law. The case-study, which is the first in the context of Pakistan, will reveal how different/similar the legal treatment of Pakistan is to the human rights law treatment of terror suspects. The case-study of the treatment is related to the six categories/themes that have been identified in this scholarship, which are: the period of pre-charge detention; police interrogation, police records, internal police review mechanisms; rights of a terror suspect to contact the outside world; and the detention conditions in which terror suspects are kept during pre-charge detention.

The case-study will also include an assessment of the treatment in practice to find if there is a gap between the country's laws and practices on the topic. This assessment will also be limited to the six categories/themes that were mentioned in the preceding paragraph and throughout this research. These assessments are intended to support the main argument of the thesis: in the absence of an in-depth study of Pakistan's treatment of terror detainees during pre-charge terror detention, the country continues to follow a dominant approach to security that might be viable for the war or executive paradigm of terrorism but is not viable for the justice model or paradigm of terrorism.

This chapter begins with a chronological account of terror incidents, including all of the major terror incidents in Pakistan that have posed threats to its national security, public order and peoples' lives, necessitating the enactment of anti-terror laws and measures to contain the threat of terrorism.

The actual assessment of the treatment of terror detainees during pre-charge detention of Pakistan will appear in the second part of this chapter. The assessment will be split into two parts: assessing the anti-terror laws of Pakistan governing the powers of pre-charge terror detention and the anti-terror practices thereof using human rights laws

and principles as a yardstick to carry out the assessments. This will pioneer a rigorous case-study of the treatment of terror suspects in the context of Pakistan, for which the UK will be used as a comparator to learn some lessons from. The final section concludes the chapter.

Part I

5.1.0 Major Terror Incidents in Pakistan

Pakistan has a long history of terrorism. Since 1974, it has experienced four cycles of terrorism.[567] The first cycle started in 1974 and ended in 1978, which was mainly committed by foreigners against foreign targets inside Pakistan[568] but the cycle also witnessed political terrorism due to separatist movements in the province of Balochistan.[569] The second cycle started in 1979 and lasted until 1986. This era witnessed indiscriminate terrorism,[570] including political terrorism aimed at General Zia (the then Pakistani leader) allegedly by surviving members of the family of Zulfiqar Ali Bhutto, the Pakistani leader before General Zia.[571] The third cycle was mostly sponsored by sectarian and linguistic-based terrorist organisations, which started in 1987 and continued until 2002. This emerged in the Sindh province where the Urdu-speaking community clashed with other ethnic communities on a largely linguistic divide.[572] The current cycle of terrorism, post 9/11, started in 2003 and is regarded as one of the worst terror cycles

[567]Hussain, S. (2012) "Myths About Terrorism in Pakistan", in *Stabilizing Pakistan through Police Reforms*, Asia Society Report by the Independent Commission on Pakistan Police Reforms at 46.
[568]Ibid.
[569]Bansal, A. (2006) "Balochistan: Continuing Violence and Its Implications", *Strategic Analysis* 30(1) at 49.
[570] Ibid.
[571]BBC News (15 March 1981) "Pakistani jet hostages released", available at http://news.bbc.co.uk/onthisday/hi/dates/stories/march/15/newsid_2818000/2818437.stm, last accessed 14 August 2014.
[572]Irshad, M. (2011) "Terrorism in Pakistan: causes & remedies", available at http://www.qurtuba.edu.pk/thedialogue/The%20Dialogue/6_3/Dialogue_July_September2011_224-241.pdf, last accessed 15 August 2014.

in the country's history.[573] To date, it has claimed more than 60,000 lives.[574] These attacks are being carried out by Al-Qaida and its associates, such as Tehreek-e-Taliban Pakistan (hereafter, TTP).[575] Civilians, law enforcement agencies and the Pakistani military are the direct targets.[576]

One may object to the baseline of the inception of terrorism in Pakistan that this research makes reference to in the year of 1974. For example, one may refer to the Bengali insurrection, prior to the baseline for this research, of 1971 and counter-argue why this study did not regard the insurrection as a first cycle of terrorism Pakistan. A detailed rebuttal, based on certain historical facts and accounts during the Bengali insurrection of 1971, is presented here.

When Pakistan came into existence after the partition of British India in 1947, the country had two main provinces—East Pakistan and West Pakistan.[577] East Pakistan is now the People's Republic of Bangladesh or simply Bangladesh.[578] The formal title of West Pakistan is the Islamic Republic of Pakistan or simply Pakistan.[579] Bangladesh came into existence after a prolonged insurrection (January 1971—December 1971) by the Bengalis against Pakistan.[580]

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[573] Hussain, S. (2012) "Myths About Terrorism in Pakistan" , in *Stabilizing Pakistan through Police Reforms*, Asia Society Report by the Independent Commission on Pakistan Police Reforms at 46.
[574] South Asia Terrorism Portal (2017) "Fatalities in terrorist violence in Pakistan 2003-2017", available at http://www.satp.org/satporgtp/countries/pakistan/database/casualties.htm , last accessed 3 July 2017. See also Z Hameed, Z. (2012) "Antiterrorism Law", in *Stabilizing Pakistan through Police Reforms,* Asia Society Report by the Independent Commission on Pakistan Police Reforms at 50. Here the number of casualties is more than 50,000 because the account is till 2012.
[575]Boone, J. (24 September 2013) "Pakistan church bomb: Christians mourn 85 killed in Peshawar suicide attack" *The Guardian*, available at http://www.theguardian.com/world/2013/sep/23/pakistan-church-bombings-christian-minority, last accessed 2 March 2014; see also Ahmad, M. (2010) "Implications of the War on Terror for Khyber Pukhtunkhwa, Pakistan" *Journal of Critical Globalization Studies* 3.
[576]Fasihuddin, (2012) "Terrorism Investigation in Pakistan: Perceptions and Realities of Frontline Police", *Pakistan Journal of Criminology* 3(3) at 55.
[577] Alavi, H. (1989) "Formation of the Social Structure of South Asia under the Impact of Colonialism", in Sociology of Developing Societies: South Asia, ed. Alavi & Harris. London: Macmillan Education Ltd
[578] Laporte, R. Jr. (1972) "Pakistan in 1971: The Disintegration of a Nation", *Asian Survey, Vol. 12, No. 2,* pp. 97 – 108
[579] Ibid.
[580] Ibid.

The Bengali insurrection did not start in 1971. When Ayub Khan, the then President of Pakistan, handed over his government to General Agha Muhammad Yahya Khan in 1969, who was a second military dictator of the country, Sheikh Mujibur Rahman, who later laid the foundation of Bangladesh, formally asked for certain autonomous demands for East Pakistan from the new government.[581] Those demands were related to the economic, administrative, social and linguistic developments of the other wing of the country and a return to democracy.[582] To put an end to his military rule, General Yahya Khan promised to hold elections in the country as quickly as possible, so national elections were held in December 1970. Sheikh Mujibur Rahman won all seats except two in East Pakistan, with 72% of the vote.[583] Zulfiqar Ali Bhutto, a prominent leader in West Pakistan, who later also became the Prime Minister of Pakistan, gained 81 seats in West Pakistan. These elections shocked the nation because people generally believed that Mr. Bhutto would win the majority of the national seats in the elections.[584] Even though Pakistan completed its national elections, the transfer of power to civilian government was never granted. Consequently, the Bengalis resorted to a national resistance against the General Yahya's government in Pakistan and demanded a separate country for themselves under their leader, Sheikh Mujibur Rahman.[585]

In the early months of 1971, military and civilian clashes erupted in Dacca, now the capital of Bangladesh, and later in the whole of the East Pakistan.[586] Over 300 people died in the Dacca riots. These were the first riots of the insurrection. General Yahya ordered the military to restore peace in the country by quelling the armed struggle[587]. Sheikh Mujibur Rahman was arrested and charged with treason. He was later released

[581] Ibid.
[582] Ibid. See also, Maniruzzaman, T. (1975) "Bangladesh: An Unfinished Revolution", *Journal of Asian Studies, Vol. 34, No. 4, pp. 891 – 911.*
[583] Ibid, See also, Baxter, C. (1971) "Pakistan Votes – 1970", *Asian Survey, Vol. 11, No. 3, pp. 197 – 218.*
[584] Ibid.
[585] Ibid.
[586] Ibid.
[587] Ibid.

when Mr. Bhutto intervened. On the return of Sheikh Mujibur Rahman, the resistance became more violent and it spread to all parts of the East Pakistan and attained the status of a civil war.[588] Many Bengali soldiers were either incarcerated or disarmed while many fled to India, where they formed Mukti Bahini, the main organisation that fought a guerrilla war against Pakistani army and non-Bengalis in East Pakistan.[589] India actively trained members of the Mukti Bahini. Pakistan accused India of interfering in its internal affairs. The Indian interference also led to the War of 1971 between Pakistan and India. India succeeded and separated the East part of Pakistan from the West, and thus Bangladesh came into existence. It is estimated that 200,000 to 1.5 million people died during the Civil War and the War of 1971 between Pakistan and India.[590]

This scholarship does not consider the Bengali insurrection as terrorism because at that time Pakistan did not use the word 'terrorists' to describe the Bengalis, they were referred as 'miscreants' or 'rebels'.[591] According to the Oxford dictionary, a miscreant is a, "person who has done something wrong or unlawful." General Yahya used to refer to the members of Mukti Bahini as rebels and miscreants.[592] Soon after the cessation of East Pakistan, when General Yahya had stepped down and Mr. Bhutto had assumed the status of Civil Martial Law Administrator in 1972, the latter ordered the formation of a commission to investigate the Bengali insurrection. Chief Justice Hamoodur Rahman was appointed as the head of the commission to report on the facts and calamities of the insurrection. Even in the commission report, Bengalis were referred to as 'rebels' and 'miscreants'.[593] It was only in 2011 when the word 'miscreant' was properly defined in

[588] Ibid.
[589] Ibid.
[590] Ibid.
[591] Ibid.
[592] Laporte, R. Jr. (1972) "Pakistan in 1971: The Disintegration of a Nation", *Asian Survey, Vol. 12, No. 2,* pp. 97 – 108
[593] Hamoodur Rahman Commission Report, Dunya News, available at http://img.dunyanews.tv/images/docss/hamoodur_rahman_commission_report.pdf last accessed 30 May 2018

Pakistan, which included the word 'terrorist'.[594] Consequently, Pakistan did not consider the Bengali insurrection as terrorism. Qadir refers to the insurrection as 'unfortunate events of 1971' rather than calling it terrorism.[595] Furthermore, Aziz et al. stated that the cycle of terrorism in the country began in 1977, without substantiating the Bengali insurrection as terrorism.[596] This is a very different context than the aftermath of the 9/11 attack, which changed the global paradigm of security and also shifted the outlook of Hali, who regards the insurrection as terrorism.[597]

The word 'terrorist' was used for the first time in the history of Pakistan in the Suppression of Terrorist Activities (Special Courts) Ordinance 1974.[598] This Ordinance then became an Act of Parliament in 1975. A detailed discussion on the development of the anti-terrorism laws in Pakistan will be given in Part II of this chapter.

Even though many people had died during the Civil War, Pakistan never declared it an act of terrorism. When the Civil War had escalated to an unbearable situation, it was Mr. Bhutto who campaigned against the dictatorship of General Yahya in West Pakistan for not transferring power to civilians after the 1970 elections.[599] Therefore, Mr. Bhutto indirectly came in support of the Bengalis by putting pressure on General Yahya to step down rather than declaring the Bengalis as terrorists. Consequently, this research will consider 1974 as the advent of terrorism in Pakistan because neither the country's

[594] Actions (in Aid of Civil Power) Regulation 2011, section 2 (L) ""miscreants" means any person who may or may not be a citizen of Pakistan and who is intending to commit or has committed any offence under this Regulation and includes a terrorist, a foreigner, a non-state actor or a group of such persons by what so ever names called."
[595] Qadir, S. (2001) "The Concept of International Terrorism: An Interim Study of South Asia", *The Round Table, 90:360, pp. 333 – 343.*
[596] Aziz, J. et al (2013) "The Case for Change: A Review of Pakistan's Anti-Terrorism Act of 1997", Research Society of International Law, Pakistan, p. 11.
[597] Hali, S.M. (2016) "Mukti Bahini: Terrorists or Freedom Fighters", Pakistan Observer, available at https://pakobserver.net/mukti-bahini-terrorists-or-freedom-fighters/ last accessed 30 May 2018.
[598] Aziz, J. et al (2013) "The Case for Change: A Review of Pakistan's Anti-Terrorism Act of 1997", Research Society of International Law, Pakistan.
[599] Laporte, R. Jr. (1972) "Pakistan in 1971: The Disintegration of a Nation", *Asian Survey, Vol. 12, No. 2,* pp. 97 – 108

leadership nor the public in general in the West regarded the Bengali insurrection as terrorism.

There are two reasons why Pakistan did not regard the Bengali insurrection as terrorism. First, Pakistan was aware that there is a fundamental difference between terrorism and a struggle for freedom. Second, terrorism was still a new concept at that time, which is the reason why Pakistan had no anti-terrorism laws to be implemented during the Civil War of 1971.

With reference to the first assumption, there is a need to understand the legal definition of terrorism to understand the difference between terrorism as an ideology and a struggle towards the right to self-determination. A legitimate definition of terrorism encompasses three important elements.[600] First, terrorism has collective dimension (i.e. the involvement of organisation as opposed to a lone perpetrator). Second, terrorism has communication dimension to create fear among public (i.e. mass intimidation). Lastly, it has a programmatic dimension (i.e. to disrupt the constitutional order of a country).[601] A good legal definition of terrorism differentiates terrorism from ordinary crimes, crimes against humanity, war crimes and most importantly a struggle against an authoritative government for the right of self-determination.[602] This study further builds on the assumption that Pakistan was aware of this distinction and, therefore, the Bengali insurrection was not labelled as terrorism. Another main reason could be Pakistan's support for the freedom fighting movements of the Kashmiris and Palestinians since

[600] Melia, M.C. and Petzsche, A. (2013) Terrorism as a Criminal Offence, in Counter-Terrorism, Human Rights and the Rule of Law, edited by Masferrer, A. and Walker, C. Glasgow: Edward Elgar Publishing, p. 96 – 105.
[601] Laporte, R. Jr. (1972) "Pakistan in 1971: The Disintegration of a Nation", *Asian Survey, Vol. 12, No. 2,* pp. 97 – 108
[602] Roach, K. (2015) The Migration and Derivation of Counter-terrorism in Routledge Handbook of Law and Terrorism, first published 2015, edited by Genevieve Lennon and Clive Walker, Oxon, New York: Routledge. See also, Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation, 2nd Edition, Oxford, England: Oxford University Press, pp. 1 – 13. Gorostiza, J.M.L. (2013) Terrorism and Crimes against Humanity: Interferences and Differences at the International Level and their Projection upon Spanish Domestic Law in Counter-Terrorism, Human Rights and the Rule of Law, edited by Masferrer, A. and Walker, C. Glasgow: Edward Elgar Publishing.

1948.[603] However, this explanation might not stand. Had Pakistan been aware of the difference between terrorism and a struggle towards independence and its strict adherence to the causes of Kashmir and Palestine, then it would not have declared the movements of the Balochis and Pashtuns in the north as terrorism in 1975.[604] Consequently, this study considers that the non-labelling of the Bengali insurrection as terrorism was not because Pakistan wanted to differentiate between terrorism and a struggle for autonomy or independence but because terrorism was still a new concept for the country. There were no anti-terrorism laws in Pakistan at the time of the civil unrest in 1971, which is why the first anti-terrorism laws were drafted as an ordinance only two years of the cessation of Bengal. If Pakistan did not consider the insurrection as terrorism, then why would this study consider it so? In summary, this research has correctly presumed the inception of terrorism in Pakistan since 1974.

As stated previously, this scholarship will focus on the current cycle of terrorism in Pakistan in the aftermath of the 'War on Terror', in which more than 60,000 people have died. A chronological account of the major terror incidents in the country follows.

The first serious incident of terrorism since 2003 took place in Dargai.[605] On 8 November 2006, a suicide bomber detonated explosives just as young recruits from the Pakistan Army were going through their morning exercises.[606] The attack left some 45 troops dead and 20 injured.

In October 2007, Benazir Bhutto, former Pakistani Prime Minister, arrived in Karachi to participate in the upcoming parliamentary elections.[607] She had returned to the

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[603] The News International (12 December 2017) "General Bajwa says Pakistan views Palestine issue at par with Kashmir issue", available at https://www.thenews.com.pk/latest/255234-gen-bajwa-says-pakistan-views-palestine-issue-at-par-with-kashmir-issue last accessed 31 May 2018.
[604] Aziz, J. et al (2013) "The Case for Change: A Review of Pakistan's Anti-Terrorism Act of 1997", Research Society of International Law, Pakistan.
[605] Alvi, H. (2012) Police and Counterterrorism in Khyber Pukhtunkhwa in *Stabilizing Pakistan through Police Reforms,* Asia Society Report by the Independent Commission on Pakistan Police Reforms at 105.
[606] Ibid.
[607] Wilkinson, I. (2007) "Twin bombs strike at Benazir Bhutto's parade", *The Telegraph*, available at http://www.telegraph.co.uk/news/worldnews/1566627/Twin-bombs-strike-at-Benazir-Bhuttos-parade.html, last accessed 12 August 2014.

country after eight years in self-imposed exile. She was warmly welcomed by thousands of supporters.[608] As she was parading through the crowd, two consecutive bombs exploded, killing at least 120 people and injuring more than 150.[609] Bhutto survived the attacks. The Pakistani establishment was blamed for the attacks; however, the Pakistani Taliban had also warned that they would attack Benazir Bhutto prior to her visit, mostly because of her secular agenda and intentions to start military operations against the militants after coming into power.[610] Nevertheless, Bhutto continued her election campaign. She was assassinated on 27 December 2007, outside a large gathering of her supporters.[611] A suicide bomber detonated his jacket full of explosives among the crowd, killing at least 22 people.[612] A police report was registered against Baitullah Mehsud, the then Taliban commander in Pakistan, who was later killed in a drone attack in Pakistan.[613] However, Bhutto's party blamed the Pakistani establishment for her death. So, the government, then led by President Pervaiz Musharraf, requested the United Nations to investigate her assassination. The commission reported that there was no 'proof of culpability' against President Musharraf—and so he avoided the blame. The commission also suggested that it would be upon the country's authorities to determine whether he was criminally responsible in some other way.[614] Later, Musharraf was formally charged for Bhutto's murder in August 2013.[615] Musharraf did not appear in any of the court

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[608] Ibid.
[609] Ibid.
[610] Ibid.
[611] "Assassination" (2007) *Benazir Bhutto*, available at http://www.benazirbhutto.com/assassinatination.html, last accessed 12 August 2014.
[612] Ibid.
[613] CNN (2007) "Benazir Bhutto assassinated", available at http://edition.cnn.com/2007/WORLD/asiapcf/12/27/pakistan.sharif/#cnnSTCText, last accessed 12 August 2014.
[614] UN News Centre (15 April 2010) "UN report on Bhutto murder finds Pakistani officials 'failed profoundly'", available at http://www.un.org/apps/news/story.asp?newsid=34384&cr=bhutto#.VBWxWmM0_vU, last accessed 12 August 2014.
[615]Boone, J. (20 August 2013) "Pervez Musharraf charged with Benazir Bhutto murder", *The Guardian*, available at http://www.theguardian.com/world/2013/aug/20/pervez-musharraf-benazir-bhutto-pakistan, last accessed 12 August 2014.

proceedings and so has been declared an absconder.[616] So far, a total of 13 suspects have been charged with the murder of Bhutto, including Musharraf. Only two persons have been given 17 year each imprisonment while five have been acquitted.[617]

August 2008 witnessed one of the deadliest attacks, which struck one of Pakistan's military installation. The Taliban attacked the Wah ammunition factory and depot with twin suicide bomb explosions.[618] At least 63 people died and dozens were wounded.[619] The first explosion took place outside the main gate of the factory as staff members were leaving work during a shift change. Seconds later, another blast took place at another gate of the factory. According to eyewitnesses, there was smoke, blood, dead bodies and human body parts scattered all around.[620]

In September 2008, a large bomb blast tore through the Marriot Hotel in Islamabad. At least 40 people died, including foreign nationals.[621] A big truck filled with explosives struck with the hotel reception. The hotel caught fire in seconds, killing the people inside and destroying the property.[622]

A suicide bomber attempted to assassinate Asfandyar Wali Khan, leader of the Awami National Party, in October 2008.[623] The Awami National Party is a secular political party representing ethnic Pashtuns in the northwest of Pakistan, who have largely been targeted by the Taliban for their secular agenda.[624] Khan was present among the

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[616] Naseer, T. (31 August 2017) "Benazir murder case: ATC acquits 5 accused, declares Musharraf as absconder", The Daily Dawn, available at https://www.dawn.com/news/1355153 last accessed 10 November 2017
[617] Ibid.
[618]BBC News (21 August 2008) "Pakistan bomber hits arm factory", available at http://news.bbc.co.uk/1/hi/world/south_asia/7574267.stm, last accessed 12 August 2014.
[619] Ibid.
[620] Ibid.
[621] BBC News (20 September 2008) "Dozens killed in Pakistan attack", available at http://news.bbc.co.uk/1/hi/7627135.stm, last accessed 15 August 2014.
[622] Ibid.
[623] The Nation (2 October 2008) "4 killed, 6 injured in suicide blast outside Asfandyar Wali Khan's house: officials", available at http://nation.com.pk/politics/02-Oct-2008/4-killed-6-injured-in-suicide-blast-outside-Asfandyar-Wali-Khans-house-officials, last accessed 12 August 2014.
[624] Roggio, B. (02 October 2008) "Suicide bomber targets chief of Pakistani Pashtun political party" *Long War Journal*, available at http://www.longwarjournal.org/archives/2008/10/suicide_bomber_targe_1.php, last accessed 12 August 2014.

guests at his house to celebrate one of their religious festivals when the bomber detonated a suicide jacket full of explosives.[625] Luckily, Khan survived the attack; however, it killed four people and left six others injured.[626]

The Sri Lankan cricket team was the main target of terrorism in March 2009.[627] The team was on an official visit to play cricket against Pakistan when their bus was attacked by 12 assailants. At least six security staff and a bus driver were killed. Seven players and their coach were injured. Police recovered grenades and rocket launchers from the scene.

In October 2009, the Pakistani main army quarter in Rawalpindi was attacked. Six soldiers, including two senior officers, were killed in the attack.[628] Another terrorist attack was launched on the International Islamic University in Islamabad. Twin suicide blasts were carried out in which three females and two male students were killed instantly and more than 35 were injured.[629]

On 5 April 2010, the Taliban launched an organised attack on the US consulate in Peshawar.[630] They were almost 15 in number, and they were armed with guns and hand grenades. The consulate was heavily guarded at that time. The attackers were contained after a gun battle 20 yards away from the consulate. One of the attackers blew himself up with a suicide vest full of explosives, killing one policeman and a pedestrian. The police made arrests and recovered unexploded grenades from the scene.[631]

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[625] Ibid.
[626] Ibid.
[627] BBC News (03 March 2009) "Gunmen shoot Sri Lanka cricketers", available at http://news.bbc.co.uk/1/hi/world/south_asia/7920260.stm, last accessed 13 August 2014.
[628]Mohammad, F. (2012) "Suicide – bombing: A Unique Threat to Security Agencies in Pakistan", *Pakistan Journal of Criminology* 3(1) at 85; see also Khosa, T. (2012) "Agenda for reform" , in *Stabilizing Pakistan through Police Reforms*, Asia Society Report by the Independent Commission on Pakistan Police Reforms at 32.
[629] International Islamic University Islamabad (October 2009) "A press conference addressed by IIUI Rector and President", available at http://www.iiu.edu.pk/news/october_09.html, last accessed 12 August 2014.
[630] The Telegraph (05 April 2010) "Taliban attempt to storm US consulate in Peshawar, Pakistan", available at http://www.telegraph.co.uk/news/worldnews/asia/pakistan/7556166/Taliban-attempt-to-storm-US-consulate-in-Peshawar-Pakistan.html, last accessed 12 August 2014.
[631] Ibid.

In the same year, the Taliban launched another attack in Peshawar, this time at a funeral.[632] A young suicide bomber detonated his explosive vest while the general public was attending the funeral of a local tribal leader, killing at least 37 and injured many. The Taliban claimed that this was retaliation against the leaders of local militia (also known as 'aman lashkar')[633]. 'Aman lashkar' is depicted very well by Shah as:

> *A group of armed men who get together to defend themselves or take revenge for wrongs done to them by the TTP. A lashkar consists of young men carrying whatever arms they can lay their hands on and guided by motives of self-help and revenge. A lashkar is usually led by tribal leaders or other community figures.*[634]

In May 2011, the Karachi naval base was attacked. At least 12 people were killed and a US-made spy plane was destroyed.[635]

The Pakistan military had a particularly tragic day on 27 June 2012 when 17 captured soldiers were beheaded by the Taliban.[636] Their heads were shown in a shocking video for which the Taliban claimed responsibility.[637] The soldiers had been captured few days before in a skirmish at a checkpoint in a district bordering Pakistan and Afghanistan.[638] The Taliban were inept during the military operation against them, so the brutality of the killings was an act of revenge.[639]

On 16 August 2012, the Taliban launched an audacious attack on Minhas Airbase in Kamra, some 75 kilometres north west of Islamabad, the capital.[640] The fight continued for hours. The security claimed that all nine attackers were killed during the gun battle,

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[632] Roggio, B. "Taliban suicide bomber kills 37 at funeral in Peshawar".
[633] Ibid.
[634] Shah, N.A. (2010) "War Crimes in the Armed Conflict in Pakistan", *Studies in Conflict & Terrorism* 33(4) at 297-298.
[635] Walsh, D. (23 May 2011) "Pakistani militants hit Karachi naval base in Bin Laden revenge attack" *The Guardian*, available at http://www.theguardian.com/world/2011/may/23/militants-attack-pakistani-naval-base-karachi, last accessed 15 August 2014.
[636] Dawn (27 June 2012) "Taliban release video of beheaded Pakistani soldiers", available at http://www.dawn.com/news/729939/taliban-release-video-of-beheaded-pakistani-soldiers, last accessed 13 August 2014.
[637] Ibid.
[638] Ibid.
[639] Ibid.
[640] Malik, Y. (16 August 2012) "Terrorists attack Kamra air base: Nine attackers dead, plane damaged" *Dawn*, available at http://www.dawn.com/news/742690/terrorists-attack-kamra-air-base-%E2%80%A2-nine-attackers-dead-%E2%80%A2-plane-damaged, last accessed 12 August 2012.

while one security guard died.[641] The Taliban spokesman claimed that 12 security guards were killed.[642] A plane at the airbase was also damaged during the attack.[643]

Malala Yousafzai, a popular child activist in Pakistan, and her two classmates, who sitting in a school van, were shot by the Taliban in Swat Valley when they were going home after school in October 2012.[644] Malala received severe injuries to her head, neck and shoulder.[645] She was taken by air ambulance to Peshawar[646] to save her life. She was later evacuated to the UK for further treatment. A Taliban spokesman said that she had been shot because of her support of Western education and because she promoted Western culture in the country. This tragic incident was nationally criticised, creating revulsion among the nation and leading many to take a stand against extremism and the militants.[647] The incident was also strongly criticised by important world leaders.[648] Malala has been awarded many prizes and has also received the honour of being nominated for the Nobel Peace Prize.[649] She was shortly awarded the Nobel Peace Prize in October 2014.[650] Ten of the suspects in her shooting were arrested in Pakistan and they were all jailed for life.[651]

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[641] Ibid.
[642] Ibid.
[643] Ibid.
[644] Boone, J. (10 October 2012) "Malala Yousafzai: Pakistan Taliban causes revulsion by shooting girl who spoke out", *The Guardian*, available at http://www.theguardian.com/world/2012/oct/09/taliban-pakistan-shoot-girl-malala-yousafzai, last accessed 12 August 2014.
[645] Ibid.
[646] Ibid.
[647] Ibid.
[648] Dawn (10 October 2012) "Obama, Clinton, UN Chief condemn attack on Malala", available at http://www.dawn.com/news/755666/clinton-condemns-attack-on-malala-yousafzai, last accessed 12 August 2014.
[649] New York Daily News (11 October 2013) "Malala Yousafzai honored by Nobel Peace Prize nomination for her advocacy work", available at http://www.nydailynews.com/news/world/malala-yousafzai-honored-nobel-peace-prize-nom-article-1.1482919, last accessed 12 August 2014.
[650]Dawn (10 October 2014) "Malala Yousafzai, Kailash Satyarthi win Nobel Peace Prize", available at http://www.dawn.com/news/1137079/malala-yousafzai-kailash-satyarthi-win-nobel-peace-prize, last accessed 10 October 2014.
[651] BBC News Asia (12 September 2014) "Malala Yousafzai suspects arrested, Pakistan army says", available at http://www.bbc.co.uk/news/world-asia-29177946, last accessed 12 August 2014. See also http://www.bbc.co.uk/news/world-asia-32530324

On 16 December 2012, the Taliban launched a brazen attack on Peshawar airport.[652] Of the five attackers, three were suicide bombers. The attackers used a vehicle full of explosives to break through the airport's wall.[653] All of the attackers entered the airport and had a gun battle with the security for more than half an hour.[654] They used heavy firearms and explosives. In the attack, nine people, including the five attackers, were killed and 40 others were wounded. Peshawar airport is used for private and military traffic. A Taliban spokesman claimed that the intended targets were military jet fighter planes and gunship helicopters.[655]

In the same year, the Awami National Party was once again targeted by the Taliban. Bashir Bilour, a prominent leader of the party, was assassinated in a suicide bomb in the city of Peshawar on 22 December 2012.[656] Bilour was chairing a party meeting for the upcoming election when the bomber detonated his explosives, killing eight others and injured 17 people.[657] Bilour's death was declared as a major loss for the country by various national political leaders. The dead included civilians and police staff members.[658]

In March 2013 Peshawar was hit once again by another terror incident. This time, Taliban suicide bombers targeted a judicial complex.[659] They posed as court clerks to deceive the guards and enter the building. The guards doubted their story and wanted to conduct a body search. The bombers refused the body search and thus entered the building

[652] Buneri, N. (16 December 2017) "Audacious Taliban attack on Peshawar Airport", available at http://nation.com.pk/national/16-Dec-2012/audacious-taliban-attack-on-peshawar-airport, last accessed 12 August 2014.
[653] Ibid.
[654] Ibid.
[655] Ibid.
[656] The Express Tribune (22 December 2012) "Bashir Bilour killed in Peshawar suicide blast", available at http://tribune.com.pk/story/483051/peshawar-blast-kills-four-live-updates/, last accessed 12 August 2014.
[657] Ibid.
[658] Ibid.
[659] The Express Tribune (18 March 2013) "Suicide bombing at Peshawar Judicial Complex kills four", available at http://tribune.com.pk/story/522610/two-blasts-firing-in-peshawar/, last accessed 12 August 2014.

by force.[660] One attacker threw a hand grenade and the second started firing at members of the public. The security arrived quickly and after a gun battle, the building was cleared. At least four people died and 29 were injured.[661] The same courts had been attacked in 2009, in which at least ten died and 50 were injured.[662]

Tourism in Pakistan was once again affected after the attacks on the Marriott Hotel and Sri Lankan cricket team, as discussed above. This time, 10 foreign climbers were 'forced to kneel and were shot in the head' at Nanga Parbat base camp, north of Pakistan, on 24 June 2013.[663] The climbers were identified as American, Chinese, Ukrainian, Slovakian, Lithuanian, Nepali and one Pakistani.[664] The Taliban's intention was to send a violent message to the international community.[665]

In September 2013, there was a horrific attack on a Christian minority in the city of Peshawar, killing at least 85 and injuring more than 100.[666]

The judiciary was again struck by terrorism when twin suicide bombers killed themselves in Islamabad courts on 4 March 2014.[667] They had loaded guns and hand grenades and they started firing indiscriminately, killing 11 people and injuring more than 36.[668] Among the dead were locals, lawyers, a judge and members of the police.[669]

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[660] Ibid.
[661] Ibid.
[662] Rediff News (07 December 2009) "10 killed, 50 injured in Peshawar suicide bombing", available at http://www.rediff.com/news/report/blast-at-peshawar-court-complex/20091207.htm, last accessed 12 August 2014.
[663] BBC News (24 June 2013) "Nanga Parbat attack: Taliban say new faction killed climbers", available at http://www.bbc.co.uk/news/world-asia-23027031, last accessed 13 August 2014.
[664] Ibid.
[665] Ibid.
[666] Boone, J. (24 September 2013) "Pakistan church bomb: Christians mourn 85 killed in Peshawar suicide attack" *The Guardian*, available at http://www.theguardian.com/world/2013/sep/23/pakistan-church-bombings-christian-minority, last accessed 02 March 2014.
[667]Anjum, S. (4 March 2014) "11 dead in suicide attack on Islamabad district courts, *The News*, available at http://www.thenews.com.pk/Todays-News-13-28890-11-dead-in-suicide-attack-on-Islamabad-district-courts, last accessed 12 August 2014.
[668] Ibid.
[669] Ibid.

Initially, the Taliban denied the attack but later on one of its splinter groups accepted responsibility for the attack.[670]

On 9 September 2014, a Pakistan naval dockyard in Karachi was attacked.[671] In the skirmish, one security guard was killed and seven others were injured while two attackers were killed in the crossfire—four other attackers were captured alive.[672] The attempted attack was successfully thwarted by the navy security personnel.[673]

One of the most horrible attacks was launched against schoolchildren at the Army Public School in Peshawar on 16 December 2014. This attack was termed a 'national tragedy', akin to the 9/11 attacks as far as the savagery and brutality of the terrorists is concerned. A total of 141 people died, including 132 young children.[674]

Pakistan experienced many terror attacks in 2015 and 2016. Recently, coordinated terror attacks were carried out in Parachinar and Quetta, killing dozens of innocent civilians and maiming more than a hundred just before the Eid celebrations.[675]

Over the course of the last decade, Pakistan has experienced many terrorist attacks. This situation necessitates anti-terrorism legislation to combat the threat. This engenders a need to know the country's legal response to terrorism. Consequently, the next part will examine and evaluate the provisions contained in Pakistan's anti-terrorism laws and its practices governing the treatment of terror detainees during pre-charge detention.

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[670] Geo T.V. News (3 March 2014) "TTP splinter faction, Ahrar-ul-Hind claims staged Islamabad attack", available at http://www.geo.tv/article-139849-TTP-splinter-faction-Ahrar-ul-Hind-claims-staged-Islamabad-attack-, last accessed 13 August 2014.
[671] Dawn (09 September 2014) "Terror attack thwarted at Karachi Naval Dockyard", *Dawn*, available at http://www.dawn.com/news/1130663, last accessed 12 August 2014.
[672] Ibid.
[673] Ibid.
[674] BBC News (16 December 2014) "Pakistan Taliban: Peshawar school attack leaves 141 dead", available at http://www.bbc.co.uk/news/world-asia-30491435 , last accessed on 3 July 2017
[675] The Guardian (23 June 2017) "Dozens killed in two separate attacks in Pakistan on eve of Eid", available at https://www.theguardian.com/world/2017/jun/23/dozens-killed-in-two-separate-attacks-in-pakistan-on-eve-of-eid last accessed on 3 July 2017

Part II

5.2.0 Pre-charge Terror Detention in Pakistan: Law, Practice and Assessment

This part will identify, analyse and assess the law related to the treatment of terror detainees during pre-charge detention in Pakistan. The country's laws and practices are also assessed to find if there are any gaps between the two. The human rights law assessment will prepare a pioneering case-study of the treatment of terror detainees during pre-charge detention in Pakistan, thus contributing new knowledge in the realm of human rights law and terrorism.

The schema of Part II is to identify what is the law on the treatment of terror suspects during pre-charge detention in Pakistan, followed by what the law ought to be in this regard. The identification of the law and its human rights law assessment will appear in Section A of this part, related to the following six categories/themes: period of pre-charge detention, police interrogation, police records, internal police review mechanisms, rights of a terror suspect to contact the outside world, and detention conditions in which terror suspects are kept. Similarly, an assessment of the practices will appear in section B related to these six categories/themes.

5.2.1.A. The Period of Pre-charge Detention: Law and Assessment

The National Internal Security of Pakistan (hereafter, NISP) envisages the need for anti-terrorism legislation to combat the threat from terrorism because more than 60,000 people have died in Pakistan since 2003. The NISP looks at terrorism, militancy and extremism as 'non-traditional threats' to the country's national security.[676] It is viewed as an existential threat following the conservative understanding of threat from

[676] National Counter Terrorism Authority (2014) "National Internal Security Policy – 2014 – 18", available at http://nacta.gov.pk/Download_s/Rules/NISP.pdf at para. 6, last accessed 14 August 2014.

terrorism. Consequently, Pakistan is currently "faced with the complexity of the situation, use of chemical and biological substances by terrorists… networks lurk in shadows and thrive on a strategy of invisibility and ambiguity."[677] This situation surely demands that there should be anti-terror laws in the country to cope with the threat. However, the existing security apparatus of Pakistan is inadequate and 'enormously strained to tackle these threats'.[678] This is alarming if the country bears in mind Posner's pragmatism, Ackerman's emergency constitution, and Gross's extra-legal measures to fight against terrorism. Therefore, it seems imperative for the country to enact stringent anti-terror laws to contain the threat. Hence, it is important to provide an overview of the development of anti-terror legislation governing the treatment of terror suspects in Pakistan and to find out what is the 'total period of pre-charge detention' in the country; how 'prompt a terror detainee is produced' before a court and for how long the detainee 'is remanded in police custody at one time'.

Arguably, the first terrorism cycle started in Pakistan in 1974, which led to the enactment of the first anti-terrorism legislation in the country. The president of Pakistan promulgated the Suppression of the Terrorist Activities (Special Courts) Ordinance 1974 (hereafter, STAO 1974), which aimed to counter terrorist activities in the country.[679] Later, STAO 1974 was approved by parliament and it became the Suppression of Terrorist Activities (Special Courts) Act 1975 (hereafter, STAA 1975).[680] STAA 1975 did two important things. It was the first time in Pakistan's history when it created 'special laws' different from ordinary criminal laws.[681] The special laws created 'special courts' working without adjournments to provide speedy justice under Section 3.[682] Before

[677] Ibid. at para. 7-8.
[678] Ibid. at para. 3.
[679] Bokhari, S.W. (2013) "Pakistan's Challenges in Anti-terror Legislation", *Centre for Research and Security Studies* at 1.
[680] Ibid.
[681] Ibid.
[682] "Suppression of Terrorist Activities (Special Courts) Act of 1975" (1975) *United Nations Office of Drugs and Crimes, Country - Pakistan*, available at https://www.unodc.org/tldb/showDocument.do?documentUid=2296, last accessed 16 August 2014.

STAA 1975, ordinary law, such as Section 144 of the Criminal Procedure Code, which was created by the British in 1898 (hereafter, CrPC 1898), was used to regulate pre-charge detention to prevent "danger to human life… or disturbance of the public tranquillity, or a riot."[683] Second, STAA 1975 denied certain rights of the suspect. In particular, it negated the universally accepted principle that an accused is innocent until proven guilty. Section 8 had presupposed the commission of an offence if any 'article' or 'thing' was recovered from the suspect. The burden of proof, contrary to normal practice, was shifted to the accused to prove that he/she was not guilty of the offence. Amnesty International has raised this issue many times with the successive governments of Pakistan.[684] However, the country's first anti-terror legislation was silent about the detention and questioning of the terror suspects because it was regulated by the ordinary law Section 144 of CrPC.

Although STAA 1975 remained in force for the first and second cycles of terrorism, it was later realised that the Act could not cope with the third cycle of linguistic and sectarian terrorism in Pakistan.[685] So, in August 1997, parliament, led by Nawaz Sharif, then Prime Minister of Pakistan, presented the Anti-Terrorism Act 1997 (hereafter, ATA 1997) and got it passed.[686] This Act expressly repealed and replaced STAA 1975.[687] For the first time, ATA 1997 legally defined terrorism for the purpose of detention. According to Section 6 (1) terrorism means:

> *Any 'terrorist act' mentioned in Section 6(2): 'to coerce and intimidate or overawe the Government or the public or a section of the public or community or*

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[683] *Criminal Procedure Code of Pakistan* (1898), available at http://www.oecd.org/site/adboecdanti-corruptioninitiative/39849781.pdf, last accessed 16 August 2014.
[684] Amnesty International (March 1991) "Document - Pakistan: legal changes affecting application of the death penalty", available at http://www.amnesty.org/en/library/asset/ASA33/003/1991/en/5336bd41-ee55-11dd-9381-bdd29f83d3a8/asa330031991en.html, last accessed 16 August 2014.
[685] Kennedy, C.H. (2002) "The creation and development of Pakistan's anti-terrorism regime, 1997–2002", *Asia-Pacific Center for Security Studies*, available at http://www.apcss.org/Publications/Edited%20Volumes/ReligiousRadicalism/PagesfromReligiousRadicalismandSecurityinSouthAsiach16.pdf 387-389, last accessed 17 August 2014.
[686] Ibid.
[687] *The Anti-terrorism Act 1997 of Pakistan*, available at http://www.fia.gov.pk/ata.htm ; see also http://www.ppra.org.pk/doc/anti-t-act.pdf at Section 39 – B, last accessed 17 August 2014.

sect; or create a sense of fear or insecurity in society; or the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause.[688]

The actions mentioned in Section 6 (2) include offences against the person (death, hurt), property (extortion, damage to infrastructure), places of worships, hijacking, public order, public servants, and so on. However, the terrorism definition under ATA 1997 is so broad that it has nearly brought 'any act of violence under the umbrella of terrorism'.[689] It also provides for the establishment of special courts.[690] The government appoints judges and their tenure of office is not specified or fixed, as would have been in case for their appointment in regular judicial system.[691] Any aggrieved party can appeal against the decision to the special anti-terrorism tribunal that was created by the government, whose decision is considered to be final.[692] The special courts can hear cases in the absence of the accused.[693] The ATA 1997 introduced the first provisions regulating the period of pre-charge detention. The Act has been amended from time to time. At present, it has gone through 22 amendments, not all of them related to the treatment of terror detainees.[694] Apart from the amended ATA 1997, there are several other laws regulating the treatment of the terror detainees, namely: the Protection of Pakistan Act 2014 (hereafter, POPA 2014), the Investigation for Fair Trial Act 2013 (hereafter, IFTA 2013), and the Actions (in Aid of Civil Power) Regulation 2011 (hereafter, AACPR 2011).[695] All these anti-terror laws will be examined in detail to find out what is the 'total period of pre-charge detention' in the country to make a decision to charge or release a terror detainee; how 'prompt a terror detainee is produced' before a court soon after his/her arrest; and for how long the detainee 'is remanded in police custody at one time'.

[688] Ibid., Section 6.
[689] Bokhari, S.W. (2013) "Pakistan's Challenges in Anti-terror Legislation" at 2-3.
[690] Ibid.
[691] Ibid.
[692] Ibid.
[693] Ibid.
[694] Ibid. at 29.
[695] Ibid.

As mentioned in the introductory chapter, there are five different types of detention: indefinite, pre-charge, pre-trial, detention at seaports or airports, and detention during police stop and search. A historical development of each type, in the context of Pakistan, is touched upon below, with a focus on pre-charge detention in the country.

Indefinite detention, in cases of terrorism, is legal in Pakistan. The law expressly governing indefinite detention in Pakistan is AACPR.[696] The President of Pakistan is empowered through Article 245 (4) of the 1973 Constitution to promulgate laws asking its armed forces to combat any threat to its sovereignty or constitution.[697] These laws have been promulgated through the AACPR. For example, according to Section 11 of AACPR, armed forces can detain terror suspects, until the continuation of action in aid of civil power'. In other words, a suspect remains in detention until the military operation is over in a specified area and the order of aid of civil power is officially withdrawn. This law has retrospective and overriding effects over other laws for the time being.[698] It is applicable to people detained since 1 February 2008, even though it was passed in 2011. There are, however, two important safeguards: the prohibition of torture[699] and creation of an 'Oversight Board'[700] to protect the human rights of the detainees. Currently, there are over 700 people in the country suspected of terrorism who have been detained since 2008 and they will remain in detention until the order is withdrawn under AACPR 2011.[701]

The AACPR is applicable to the Federally Administrative Tribal Areas (hereafter, FATA) of Pakistan. Apart from FATA, indefinite detention in other parts of Pakistan can also be promulgated through ATA 1997. This law states that the federal government can

[696] *The Actions (in Aid of Civil Power) Regulation* (2011), available at http://www.isj.org.pk/the-actions-in-aid-of-civil-power-regulation-2011/#sthash.1CGyXHQ0.dpuf, last accessed 18 August 2014.
[697] Ibid.
[698] Ibid., Sections 1 and 24.
[699] Ibid., Section 15.
[700] Ibid., Section 14.
[701] Bokhari, S.W. (2013) "Pakistan's Challenges in Anti-terror Legislation" at 46.

pass an order to deploy armed forces for 'action in aid of civil power', combating terrorism, in any of its provinces at the request of the provincial government.[702] If the situation so warrants, indefinite detention can be introduced easily by extending AAPRC 2011 to any parts of Pakistan under the ATA 1997.

Another form of detention, which is a focus of this scholarship, is pre-charge detention. Pakistani anti-terrorism legislation recognises pre-charge detention; that is, keeping an accused person in police custody for investigation. Section 21E of the ATA 1997 contains provisions governing pre-charge detention. The total period of the pre-charge detention shall not exceed 30 days in total.[703] Where a person is arrested on 'reasonable suspicion'[704] of terrorism, then he/she shall be produced before the 'special court' within 24 hours of the arrest.[705] If the accused cannot be produced, then a temporary order from the nearest magistrate can be obtained to authorise police custody for another 24 hours,[706] after which an investigating officer will apply a warrant for further detention in police custody. The period of pre-charge detention shall not exceed 15 days uninterrupted at one time.[707] A further warrant may be allowed if the court is satisfied that more evidence is obtainable and that no bodily harm has been caused to the accused during any previous police custody.[708]

The period of the pre-charge detention was increased through an ordinance called the Protection of Pakistan Ordinance 2013 (hereafter, POPO 2013).[709] This ordinance was promulgated "to provide for protection against waging of war against Pakistan and the prevention of acts threatening the security of Pakistan." According to Section 5(4), the

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[702] *The Anti-terrorism Act 1997 of Pakistan* at Section 4. Available at http://www.molaw.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L21vbGF3L3VzZXJmaWxlczEvZmlsZS9BbnRpLVRlcnJvcmlzbSUyMEFjdC5wZGY%3D last accessed on 15 March 2014
[703] Ibid. at Section 21E(2).
[704] Ibid. at Section 5(2)(ii).
[705] Ibid. at Section 21E(1).
[706] Ibid., at Section 21E(1).
[707] Ibid.
[708] Ibid.
[709] *Protection of Pakistan Ordinance* (2013), available at http://nacta.gov.pk/Download_s/Rules/POPO2013.pdf, last accessed 18 August 2014.

total period of the pre-charge detention shall not exceed 90 days.[710] The ordinance remained in force for 120 days, as authorised by the Constitution of Pakistan and it was renewed once by the parliament for another 120 days.[711] Therefore, the 90-day pre-charge detention period and its management were made part of the ATA 1997 in 2013. Consequently, the total pre-charge detention was increased to 90 days in ATA 1997, for which each warrant of further detention in police custody allowed is not less than 15 days and not more than 30 days at one time.[712]

In July 2014, because POPO 2013 could not be extended for a third time due to the constitutional limitation on the powers of president of renewing ordinance for a third time, the Protection of Pakistan Act 2014 (hereafter, POPA 2014) was introduced.[713] However, the period of pre-charge detention was reduced from 90 to 60 days due to vehement criticisms from the opposition[714] and certain human rights organisations.[715] The laws governing pre-charge detention can be found in Sections 21E and 5(4) of ATA 1997 and the POPA 2014, respectively. Section 21E of the ATA 1997 provides for the period not exceeding 90 days while Section 5(4) of POPA 2014 stipulates 60 days' maximum period of such detention. POPA 2014 was used as an emergency measure with sunset duration of two years, which expired in July 2016,[716] while the ATA 1997 remains in force. A fundamental difference between ATA 1997 and POPA 2014 is that the former covers terrorism against government or society while the latter covers terrorism if

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[710] Ibid.
[711] Bilal, M. (30 Jan 2014) "Protection of Pakistan Ordinance 2013: Govt puts PPO into Force", *The Express Tribune*, available at http://tribune.com.pk/story/665234/protection-of-pakistan-ordinance-2013-govt-puts-ppo-into-force/, last accessed 18 August 2014.
[712] Section 21E, after the 2013 Amendment available at http://www.molaw.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L21vbGF3L3VzZXJmaWxlczEvZmlsZS9BbnRpLVRlcnJvcmlzbSUyMEFjdC5wZGY%3D
[713] *Protection of Pakistan Act* (2014), available at http://nacta.gov.pk/Download_s/Rules/POPO_2014.pdf, last accessed on 18 August 2014.
[714] Alvi, M. (5 February2014) "Protection of Pakistan Ordinance Presented in Senate", *The News*, available at http://www.thenews.com.pk/Todays-News-13-28387-Protection-of-Pakistan-Ordinance-presented-in-Senate, last accessed 18 August 2014.
[715] Human Rights Watch (3 Jul 2014) "Pakistan: Withdraw Repressive Counterterrorism Law", available at http://www.hrw.org/news/2014/07/03/pakistan-withdraw-repressive-counterterrorism-law, last accessed 18 August 2014.
[716] Protection of Pakistan Act 2016, Section 1

committed against the State of Pakistan. In summary, the total period of pre-charge detention under the anti-terrorism legislation of Pakistan, at present, is 90 days which shall not be less than 15 days and shall not be more than 30 days at a time. Although the total period of pre-charge detention is 90 days, a terror investigation must be completed within 30 days after arrest.[717]

The normal criminal laws of Pakistan governing pre-charge detention provide that an accused person shall be produced before a magistrate within 24 hours of his/her arrest.[718] If the police have not completed their investigation, then an investigating officer can apply for further detention not exceeding 15 days[719] in total, as compared to 90 days in cases of terrorism.

Another form of detention is pre-trial detention. Although the anti-terrorism legislation of Pakistan does not specifically provide period for the pre-trial detention, Section 19 of ATA sheds some light on it. Any terrorist investigation must be completed within seven working days.[720] The report is then submitted to the anti-terrorism court.[721] The court is required to decide the case within seven working days.[722] So, literally, the total period of pre-trial detention is just seven working days. However, in practice, there are more than a thousand cases where suspects have been detained for years.[723] For example, the suspects arrested in December 2003 on suspicion of attempting suicide attacks on General Musharraf, the then president of Pakistan, are still awaiting a decision on their cases.[724] The provision governing period of the pre-trial detention looks very good but in practice there are many pending cases before various anti-terrorism courts.

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[717] Anti-Terrorism Act 1997, Section 19 (1); available at http://www.molaw.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L21vbGF3L3VzZXJmaWxlczEvZmlsZS9BbnRpLVRlcnJvcmlzbSUyMEFjdC5wZGY%3D

[718] *Criminal Procedure Code of Pakistan* (1898) at Section 61, available at http://www.oecd.org/site/adboecdanti-corruptioninitiative/39849781.pdf, last accessed 16 August 2014.

[719] Ibid., Section 167.

[720] *The Anti-Terrorism Act 1997 of Pakistan* at Section 19(1).

[721] Ibid.

[722] Ibid. at Section 19(7).

[723] Bokhari, S.W. (2013) "Pakistan's Challenges in Anti-terror Legislation" at 37-38.

[724] Ibid.

Although the pre-trial detention is only supposed to be a maximum of seven working days, in hundreds of cases the detainees have waited for a court decision for more than seven years.[725]

The remaining forms of detention are at seaports or airports, and detentions during stop and search. The anti-terrorism legislation (ATA 1997) does not specifically provide for detention at either seaport or airports. All it says is that if any person is arrested, then they must be brought before the court within 24 hours.[726] However, any person can be stopped, searched, and arrested without warrant under ATA 1997, and if taken into arrest, then the 24 hours limitation is also applicable.[727]

To conclude, in Pakistan's anti-terrorism laws governing the forms and period of detention, there are only three major forms of detention. The first is indefinite detention; the law specifically provides for this and it has been practised since 2008. The second is pre-charge detention, where a terror suspect can be kept in detention for 30 days, at one time, not exceeding 90 days in total. Also, for one warrant of detention at a time, there is an obligatory minimum benchmark of 15 days. So, if a terror suspect is detained, then he or she shall not be detained for less than 15 days and more than 30 days at a time. A terror detainee is produced before a court within 24 hours of his/her arrest. The last is pre-trial detention, which provides for a total period of seven working days; however, it is considerably longer in practice. This research project will focus solely on pre-charge detention. The continuation of indefinite detention under the anti-terrorism legislation could be one of the major concerns and threats to human liberty but its examination, analysis and assessment would require further research and is, therefore, outside of the purview of this project; however, reference will be made to it. On pre-trial detention, the

[725] Ibid.
[726] *The Anti-Terrorism Act 1997 of Pakistan*, at Section 21(E), available at http://www.fia.gov.pk/ata.htm, last accessed on 17 August 2014.
[727] Ibid. at Section 5(2)(i).

wide gap between law and practice also provides an interesting research problem for another project.

Pakistan's domestic and international human rights obligation on the period of pre-charge detention will be used as yardstick to assess the anti-terror laws of Pakistan on the period of pre-charge terror detention. Chapter Three has shown that there is nothing expressly present in the constitution of Pakistan for the period of pre-charge detention. Article 9 simply prohibits the government from depriving anyone of his/her liberty except in accordance with the law. Articles 10(1) and 10(2) relate to the constitutional safeguards against arbitrary arrest and detention in cases of pre-charge detention. Certain substantive and procedural safeguards are guaranteed thereunder. The safeguards mentioned in Article 10 (2) are directly related to the period of pre-charge detention period. In particular, Article 10 (2) states:

> *Every person who is arrested and detained in custody shall be produced before a magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the nearest magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.*[728]

This Article expressly recognises the principle of promptness or habeas corpus, which is to produce the arrested person before court within 24 hours. It also puts a procedural prohibition on the law enforcement agencies not to authorise, on their own, the period of pre-charge detention beyond 24 hours. It is under 'the authority of a magistrate' to authorise a warrant for further detention beyond that period. However, there is nothing expressly describing how long a magistrate can extend the duration of the detention.

The rest of Article 10 relates to preventive detention. It expressly mentions the period of preventive detention, which is a minimum of three months and a maximum of 12 months.[729] The main purpose of preventive detention is to prevent a suspect from

[728] Constitution of Pakistan, Article 10 (2), available at http://www.pakistani.org/pakistan/constitution/part2.ch1.html last accessed on 27 February 2016
[729] Constitution of Pakistan, Article 10 (3 - 9), available at http://www.pakistani.org/pakistan/constitution/part2.ch1.html last accessed on 27 February 2016

committing an imminent terrorist act as opposed to pre-charge detention contemplating criminal charge.[730] The detention is authorised not by the judiciary, as in the case of pre-charge detention, but by an executive order.[731] Chapter One has explained the various forms of detention. However, preventive detention is not the focus of this research project, which focuses on the treatment of terror suspects during pre-charge detention. The period of pre-charge detention is not expressly given in the constitution of Pakistan (i.e. far how long the period of pre-charge detention ought to be). How many days will suffice then for the total period of pre-charge detention in the country in the context of its domestic human rights law obligations—two, seven, 15, 30, 60, 90 or even more? Pakistan ratified the ICCPR on 23 June 2010 and it is internationally bound to treat terror suspects with humanity and fairness.[732] The ICCPR imposes a higher standard than Pakistan's domestic human rights law. The main reason for this is the express procedural safeguards, on arrest and detention that are entrenched in Article 9. These safeguards are to inform, during arrest of a suspected terrorist, the reasons of his arrest;[733] to inform the person 'promptly' of any charges against him or her;[734] to bring the person 'promptly' before a judge;[735] to arrange his or her trial within a 'reasonable time';[736] to challenge the lawfulness of his or her detention;[737] and to pay compensation for his or her unlawful arrest or detention.[738]

Pakistan's pre-charge detention duration (90 days at present) will be assessed in light of the two time-related descriptors mentioned in Article 9: 'promptly' and 'reasonable time'. The Human Rights Committee, while elaborating the meaning of the

[730] Macken, C. (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and international Human Rights Law, New York: Routledge pp. 5 – 7.
[731] Ibid.
[732] United Nations Treaty Collection Databases, available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en, last accessed 13 March 2016.
[733] ICCPR, Article 9 (2)
[734] Ibid.
[735] ICCPR, Article 9 (3)
[736] Ibid.
[737] ICCPR, Article 9 (4)
[738] ICCPR, Article 9 (5)

word 'promptly' in Article 9, suggests that "delays should not exceed a few days from the time of arrest."[739] The Committee further comments that any delays beyond 48 hours must "remain absolutely exceptional and be justified under the circumstances."[740] The Committee also comments on bringing a suspected terrorist to trial within a 'reasonable time'. The reasonable time is applicable to both pre-charge and pre-trial detentions.[741] In the case of pre-charge detention, a criminal charge should be brought against a suspected terrorist within a reasonable time, which should not exceed 'a few days'. Its main reason, in the eyes of the Committee, is that a longer detention in police custody increases the risk of ill-treatment.[742]

The Human Rights Committee is authorised, under Article 2 of the First Optional Protocol to the ICCPR, to hear complaints from individuals on the violation of their human rights. The communications that take place among the Human Rights Committee, individual complainants and any state party form a body of law that is called the '*case law of the Human Rights Committee*'.[743] The Committee has decided a case in this regard for Albert W. Mukong, a journalist, scholar and a strong opponent of the one-party system in Cameroon, who was arrested, without warrant, in June 1988 after the BBC aired an interview in which he had criticised the country's political system.[744] He was charged two months after his arrest with what the government called 'intoxication of national and international public opinion', which is a security crime.[745] He alleged a violation of Article 9, paragraph 3 because the charges were not brought against him within

[739] General Comment No. 35, para 33, available at http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrdB0H1l5979OVGGB%2bWPAXjdnG1mwFFfPYGIlNfb%2f6T%2fqwtc77%2fKU9JkoeDcTWWPIpCoePGBcMsRmFtoMu58pgnmzjyiyRGkPQekcPKtaaTG last accessed 13 March 2016
[740] Ibid.
[741] Ibid., para 27 in conjunction with para 40 stating that the right is available to a person detained under terror laws.
[742] Ibid., para 33
[743] Macken, C. (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and international Human Rights Law, New York: Routledge p. 166
[744] Albert W. Mukong v Cameroon, 10 August 1994 CCPR/C/51/D/458/1991 para 2.1 and 2.2
[745] Ibid., para 2.6 and 3.2

'reasonable time'.[746] The state party presented evidence to show that Mukong was informed of the reasons of his arrest and, thus, they had charged him in accordance with the law of the land. The Committee found that the evidence produced before it showed that the two-month delay in giving reasons for his arrest and bringing charges against him were in violation of Article 9.[747]

In another case that was brought before the Human Rights Committee, Mr Otabek Akhadov was arrested in Kyrgyzstan on account of terror charges.[748] He was produced before a judge two weeks after his arrest, where he was given the reasons of his detention. He was formally charged after a few months. He complained to the Human Rights Committee, alleging a violation of Article 9. The state party argued that Akhadov was dealt in accordance with the anti-terror laws of the land. However, the Committee held that keeping a detainee for two weeks in police custody and charging him after a few months clearly violated Article 9 in this case.[749] This suggests that the detainee was not promptly brought before a judge within a reasonable time.

How then can Pakistan justify the 90-day detention if the standard, in the eyes of the Human Rights Committee, is just a few days? A suspected terrorist in Pakistan, at one time, could lawfully remain in police custody for the first 30 days of his arrest.[750] If the authorities cannot find any credible evidence to bring terror charges against a suspected terrorist within that period, then the time period can further be extended for another 30 days, not exceeding 90 days in total. As mentioned previously, a terror investigation must be completed within 30 days.[751] If the anti-terror laws of Pakistan expressly provide to

[746] Ibid., para 3.2
[747] Ibid., para 9.8 and 9.9
[748] Otabek Akhadov v Krygyzstan, 29 April 2011 CCPR/C/101/D/1503/2006 para 2.1 and 2.2
[749] Ibid., para 7.4
[750] Anti-Terrorism Act 1997, Section 21E, available at http://www.molaw.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L21vbGF3L3VzZXJmaWxlczEvZmlsZS9BbnRpLVRlcnJvcmlzbSUyMEFjdC5wZGY%3D last accessed on 02 March 2016.
[751] Anti-Terrorism Act 1997, Section 19 (1); available at http://www.molaw.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L21vbGF3L3VzZXJmaWxlczEvZmlsZS9BbnRpLVRlcnJvcmlzbSUyMEFjdC5wZGY%3D

complete the investigation in 30 days then the total period of 90 days does not make any sense. This means the total period of 90 days is unreasonable. In addition, scholars such as Greer, Dickson and Walker also think that 90 days total period of pre-charge detention is violative of Article 9 of the ICCPR. Greer is very confident in saying that 28-days' pre-charge detention is in violation of international human rights laws.[752] Dickson has tried very hard to defend 28-days' period, which in his opinion will not breach international human rights law; however, he clearly admits that a 90-day period in reference to Article 9 ICCPR is the violation of liberty rights.[753] Similarly, Walker strongly believes that a 90-day period will be in contravention of the safeguards mentioned in Article 9 of the ICCPR.[754] Although these writers evaluate the detention powers in the research settings of the UK. They do so in light of Article 9 of the ICCPR, to which Pakistan is also a state party. Due to the universal nature of human rights, the number of pre-charge detention days should be the same for all states, if not at the very least similar. Therefore, the 90-day pre-charge detention period is contrary to accepted international human rights law and principles.

Pakistan has submitted its initial reports with the Human Rights Committee, wherein the country assures the Committee about its firm resolve to the protection and promotion of human rights as enshrined in the ICCPR.[755] It also specifically refers to the safeguards in Article 9 of the ICCPR and reaffirms that the country's constitution prevents 'the exercise of state/governmental power to infringe upon the liberty of not only citizens but also anyone else lawfully present within Pakistan.'[756] The country also mentions the

[752] Greer, S. (2008) "Human Rights and the Struggle Against Terrorism in the United Kingdom", European Human Rights Law Review, EHRLR 163 – 172.
[753] Dickson, B. (2009) "Article 5 of the ECHR and 28-day Pre-charge Detention of Terrorist Suspects", Queen's University Belfast. NILQ 60(2): 231-244.
[754] Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation 2nd ed. New York: Oxford University Press. p. 163
[755] Initial Report of Pakistan (November 2015), para 5, available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/267/96/PDF/G1526796.pdf?OpenElement last accessed 14 March 2016.
[756] Ibid., para 96

pre-charge detention in its Anti-Terrorism Act 1997 in its reports; however, it does not say anything about the detention total period thereunder.[757] It will be interesting to see the 'general observations' of the Committee on Pakistan's pre-charge detention period and the country's response thereof. It is arguable that the country will not be able to defend the 90-day pre-charge detention. What should be reasonable for Pakistan in this regard and what safeguards should the country put in place so long as a suspected terrorist remains in police custody will form part of the last chapter of this research project. But for now, the assessment of the 90-day pre-charge detention period in Pakistan suggests that it is not in accordance with the human rights law and principles. Longer detention periods, as mentioned before, are favoured in more conservative approaches to security and the 90-day period in Pakistan is a strong evidence that the country follows the same approach in its legal response to terrorism. In this case, the 90-day pre-charge detention period definitely violates individual human rights. The 90-day period is based on Pakistan's apprehension and fears, the application of which will ultimately spread fears among citizens (i.e., Zedner's security cost).

Some followers of conservative approaches to security in Pakistan will argue that 90-days is compatible with Article 10(2) of the Pakistan constitution because there is no express constitutional time limit on the pre-charge detention period. The followers will further support this owing to the terrorist threats in the country. So far, more than 60 thousand people have died in various terrorist attacks in Pakistan.[758] The toll is high and, therefore, the conservative support to retain the current 90-day detention period apparently seems just.

The first argument (support for the compatibility of 90 days in the absence of express constitutional time limit) is based on the 'principle of legality'. According to this

[757] Ibid., para 99
[758] South Asia Terrorism Portal. March, 2017. Fatalities in terrorist violence in Pakistan, 2003-2017. Available at http://www.satp.org/satporgtp/countries/pakistan/database/casualties.htm , last accessed on 08 March 2017.

principle, "unless the parliament makes unmistakably clear its intention to abrogate or suspend a fundamental freedom, the courts will not construe a statute having that operation."[759] In cases of arrest and detention, a country must comply with its laws.[760] In the eyes of the Human Rights Committee, the principle of legality 'is violated if an individual is arrested or detained on grounds which are not clearly established in domestic legislation.'[761] In other words, if a state law, governing the arrest and detention of suspected terrorists, is fulfilling the requirements of its constitution, then it does not violate the principle of legality. This principle also puts a restriction on states, including Pakistan, not to make any law which is expressly against the fundamental rights mentioned in its constitution.[762] There are two important safeguards in Article 10(2): first, to produce a detained person within 24 hours before a magistrate and, second, to request a warrant of further detention through court. Both of these safeguards are expressly guaranteed in the anti-terror laws of Pakistan.[763] Given that there is no constitutional limit fixed in the country for the total period of the detention, Pakistan does not violate the principle of legality by keeping the current detention period as long as it recognises the two constitutional safeguards in its anti-terrorism laws. Here a full advantage can be taken by fixing the pre-charge detention period as high as 90 days in total. In other words, if a person is arrested in Pakistan on account of terror charges, then they can be kept in police custody for 90 days in total without being formally charged.

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[759] Meagher, D. (2013) "The Common Law Principle of Legality", Alternative Law Journal 38:4 p. 209
[760] Macken, C. (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and international Human Rights Law, New York: Routledge pp. 39 & 42.
[761] UN Document: Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, Chapter 5: Human Rights and Arrest, Pre-trial Detention and Administrative Detention, available at http://www.ohchr.org/Documents/Publications/training9chapter5en.pdf p. 165
[762] The Constitution of Pakistan, Article 8 available at http://www.pakistani.org/pakistan/constitution/part2.ch1.html
[763] The Anti-Terrorism Act 1997 of Pakistan, Section 21 E (1). Available at http://www.molaw.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L21vbGF3L3VzZXJmaWxlczEvZmlsZS9BbnRpLVRlcnJvcmlzbSUyMEFjdC5wZGY%3D last accessed on 15 March 2014

One has to counter-argue and ask if it is reasonable to fix the detention period as high as one can as long as constitutional requirements are fulfilled? In other words, is it just to keep someone in police custody without charge for 90 days? The principle of legality seems narrow, even though it is a liberal concept. Perhaps, the liberal critique of the conservative approaches to security reflecting human rights norms persuades us to be more liberal when civil liberties are threatened and asks us to be more reasonable. Thus, should the 'reasonable' period for the pre-charge detention be fixed? The principle of justice or reasonableness is broader than the principle of legality and it imposes a higher standard.[764] Reasonableness is a more liberal value that is used "as an antidote to coercive decisions and an important guarantee of liberty and equality."[765] Its function is to increase legal certainty.[766] Zorzetto explains 'reasonableness' by describing its corresponding negative meaning; that is, 'unreasonableness'. Anything is unreasonable if it is senseless, based on unfairness, or lacks sympathy.[767]

The principle of legality is satisfied when any procedural safeguards are fulfilled; however, this is not the case with the principle of justice or reasonableness. The principle of reasonableness goes into the substantive part of any legal provision in question and takes its objective assessment.[768] It is an inner feature of law and it is an important part of the concept of law.[769] The principle is also read and applied in 'context', extending not only in vertical but also in horizontal dimensions.[770] In other words, the principle of reasonableness, in this particular case, simply questions what the purpose of the pre-

[764] Macken, C. (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and international Human Rights Law, New York: Routledge pp. 40 & 41.
[765] Zorzetto, S. (2015) "Reasonableness", The Italian Law Journal, Vol. 1 No. 1 pp. 113 and 114
[766] Ibid., p. 130
[767] Ibid., p. 114
[768] Macken, C. (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and international Human Rights Law, New York: Routledge pp. 40 & 41.
[769] Zorzetto, S. (2015) "Reasonableness", The Italian Law Journal, Vol. 1 No. 1 pp. 124
[770] Hickman, T.R. (2004) "The Reasonableness Principle: Reassessing Its Place in the Public Sphere", Cambridge Law Journal 63 (1) p. 198.

charge detention is.[771] The purpose of pre-charge detention is to determine either to bring a criminal charge or to set free any person arrested on reasonable suspicion of committing an offence. As mentioned in Chapter One, there is no third outcome in pre-charge terror detention. In fact, detention aims to 'freeze time' to facilitate investigation to decide how weak or strong that reasonable suspicion is.[772] In case the reasonable suspicion fails to turn into a 'concrete suspicion', the arrested person is released; otherwise, a charge is framed against him or her.[773]

The principle of reasonableness is deep rooted[774] in constitutional systems.[775] The constitution of Pakistan categorically recognises the principle of reasonableness, justice and fairness. For example, Article 10A clearly recognises the right to fair trial and due process.[776] The principle of reasonableness has been recognised in its various articles pertaining to freedom of movement, freedom of assembly, freedom of association, freedom of speech, freedom to acquire property and right to information.[777] It will be apt to apply the principle of reasonableness as part of a liberal approach to security to assess the 90-day pre-charge detention period in Pakistan's anti-terror laws. In particular, why should one not do this when the period of pre-charge detention impacts on the right to fair trial and due process?

Next, Pakistan's ordinary criminal law on the total period of pre-charge detention the principle of reasonableness therein will be analysed. According to the ordinary criminal law of Pakistan, the total period of pre-charge detention shall not exceed 15 days.[778] Once a person is arrested, he/she should be brought before a court without

[771] Macken, C. (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and international Human Rights Law, New York: Routledge pp. 40 & 41.
[772] Ibid., p. 138 - 140
[773] Ibid.
[774] Hickman, T.R. (2004) "The Reasonableness Principle: Reassessing Its Place in the Public Sphere", Cambridge Law Journal 63 (1) p. 198.
[775] Zorzetto, S. (2015) "Reasonableness", The Italian Law Journal, Vol. 1 No. 1 pp. 114 and 115.
[776] The Constitution of Pakistan, available at http://www.pakistani.org/pakistan/constitution/part2.ch1.html
[777] Ibid., Articles 15, 16, 17, 19, 19A, and 23
[778] The Code of Criminal Procedure 1898 with commentary, Lahore: PLD Section 167 (2) p. 246

unnecessary delay.[779] Such person must be produced within 24 hours of his/her arrest.[780] If an investigation cannot be completed in 24 hours, a magistrate can keep an accused person in police custody for the shortest possible period at a time but not exceeding 15 days as a whole.[781] An investigating officer must submit his/her report, without unnecessary delay, within 14 days of the arrest.[782] A total of 15 days' total period of pre-charge detention in ordinary crimes seems high and unreasonable. However, it is worth mentioning that the said provision came into force in 1898.[783] It was perhaps reasonable at that time to give an accused in police custody for that long to complete an investigation. In earlier times, transport and communication were slow, causing delays in investigation. There were no computers and the whole investigation was manually documented. However, in the modern world, due to advances in science and technology, 15 days' period for pre-charge detention, especially in ordinary offences, seems high. This is an interesting question for new research, which could assess the pre-charge detention duration in the light of the right to liberty in Pakistan. What was reasonable at the time that the law was passed is reflected in the then ordinary criminal law, although the 15 days' period has been in force and unaltered since 1898. The ordinary criminal laws of Pakistan emphasise avoiding unnecessary delays and keeping the split period of pre-charge detention to the minimum, thus recognising the principle of reasonableness.

It is apt to say that the total period of the pre-charge terror detention must be reasonable to complete a terrorism investigation. Law enforcement agencies, following conservative approaches to security, often claim longer periods for detention due to difficulties in terrorism investigations.[784] There is also the possibility to get even more

[779] Ibid., Section 60 & 81
[780] Ibid., Section 61
[781] Ibid., p. 249
[782] Ibid., Section 173 (1) (b)
[783] Ibid., Section 1
[784] Macken, C. (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and international Human Rights Law, New York: Routledge p. 65. See also Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation 2nd ed. New York: Oxford University Press, p. 161

evidence during a longer detention period but, following this logic, the period of pre-charge detention should be unlimited! The purpose of pre-charge detention is to bring criminal charges or to set free an arrested person for which we 'freeze time'. The period must make sense and be fair. Previous research has found that a terrorism investigation can be completed within 14 days.[785] Consequently, any time period beyond 14 days is unreasonable because we cannot freeze time for months. If this is the case, then the 90-day period is undesirably arbitrary: "This means that a law that turns out to be unreasonable is invalid and cannot be binding."[786] This is the reason why Hussain declared the 60-day pre-charge detention period in the Protection of Pakistan Act 2014 as ultra vires of the Pakistani constitution.[787] Having said that, how then can a 90-day detention period in the Anti-Terrorism Act 1997 of Pakistan be compatible with the right to liberty and safeguards as entrenched in Articles 9 and 10 of the country's constitution? In short, Pakistan will not be able to pass the test of reasonableness on the 90-day period of the pre-charge detention in terrorism cases. The UN Committee Against Torture has recently objected the 90-day period of Pakistan's pre-charge detention.[788] However, if Pakistan still persists in keeping the same period of detention, then the this will be in clear violation of her domestic as well as international human rights obligations, undermining the individual human rights of its own citizens.

The second argument—support for 90 days' total pre-charge detention period in Pakistan because more than 60 thousand people have died in the country in various terrorist attacks—relates to the principle of proportionality. This principle has three essentials:

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[785] Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation 2nd ed. New York: Oxford University Press, p. 161

[786] Zorzetto, S. (2015) "Reasonableness", The Italian Law Journal, Vol. 1 No. 1 pp. 126

[787] Hussain, F. (2014) "Testing the Vires of Protection of Pakistan Act (PPA), 2014 on the Touchstone of Constitution." In Pakistan Journal of Criminology, Vol. 6 No. 2 pp. 161 – 170, see page 168 available at http://www.pakistansocietyofcriminology.com/publications/2015_03_28_3310.pdf last accessed 01 March 2016

[788] The UN Committee Against Torture (1 June 2017) "Concluding observation on the initial report of Pakistan", CAT/C/PAK/CO/1

1. It identifies a logical template of questions to be addressed.
2. It provides for an intensive review by the courts as to the way in which those questions are to be asked and answered.
3. It involves placing upon the public authority an important onus, of satisfying itself and the court that there are proper answers.[789]

The principle of proportionality in the eyes of the UN Human Rights Committee means a law or action which is appropriate, less intrusive and, 'proportionate to the interest to be protected.'[790] The test of proportionality applies to the two opposing needs of society—security and liberty.[791] The test focuses on four questions in this regard:[792] first, whether or not a terrorist threat is clear and present for intervention; second, whether or not security laws are fit to deal with the threat; third, whether or not there are sufficient safeguards protecting civil rights; and finally, whether or not the laws will strike a proper balance between the level of the threat and liberty.[793] Now, if we apply the test in the context of Pakistan, more than 60 thousands people have died so far and more will die in the future because the tide of terrorism has not yet subsided in the country. Hussain, like Posner, Ignatieff, Ackerman and Gross, acknowledges that Pakistan is faced with 'existential threat' from terrorism.[794] Gross says that terrorism is an existential threat and that he who brings in the issues of human rights violations are 'hypocrites'.[795] Pakistan's counter-terrorism policy perceives terrorist threats as serious and detrimental to its national security. The need for greater security is reiterated in the preambles of the

[789] Fordham, M. and Mare, T. (2001) 'Identifying the Principles of Proportionality', in Understanding Human Rights Principles edited by Jowell, J. and Cooper, J. Oxford and Oregon: Hart Publishing. P 27 - 29
[790] The Human Rights Committee, General Comment No. 27, para 14 and 15 available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11 See also Beck, L.D. (2011) Human Rights in Times of Conflict and Terrorism, New York: Oxford University Press Pp. 77 and 78, See also Fenwick, H. (1994) Civil Liberties and Human Rights, 4th edition New York: Routledge-Cavendish pp. 286
[791] Walker, C. (2011) Terrorism and the law, 1st edition, New York: Oxford University Press. p. 21
[792] Ibid.
[793] Ibid.
[794] Hussain, F. (2014) "Testing the Vires of Protection of Pakistan Act (PPA), 2014 on the Touchstone of Constitution." In Pakistan Journal of Criminology, Vol. 6 No. 2 pp. 161 – 170, see page 162 available at http://www.pakistansocietyofcriminology.com/publications/2015_03_28_3310.pdf last accessed 01 March 2016
[795] Gross, O. (2003) "Chaos and Rules: Should Responses to Violent Crisis Always be Constitutional", The Yale Law Journal, vol. 112:1011 p. 1044 - 1045

Protection of Pakistan Act 2014,[796] the Pakistan Army (Amendment) Act 2015,[797] and in the Constitution (21st Amendment) 2015 Act[798] of the country. Therefore, Pakistan potentially fears for national security by allowing 90 days of total time for the pre-charge detention in her criminal justice system. The fear level is such that the country does not even tolerate a shorter possible period (a safeguard) of the detention by setting 15 days as the minimum benchmark time period.[799] All these justifications can be presented through an opposing principle to the principle of proportionality called 'margin of appreciation'.[800] Margin of appreciation is also known as 'room for manoeuvre', 'breathing space', or 'elbow room'.[801] It allows some freedom to states to justify their national laws or domestic actions questioned under the principle of proportionality. Thus, Pakistan can potentially put forward these justifications in support of the 90-day pre-charge detention period.

There is no doubt that terrorism has killed many people in Pakistan. The country has responded in multiple ways to defeat terrorism. Owing to the threat of terrorism and, as explained before, Pakistan allows indefinite detention of terrorist suspects, following the executive paradigm of terrorism. The country's executive power is also empowered to give preventive detention to those posing real threats to the state. In the presence of stringent measures, such as indefinite and preventive detention for two years,[802] the power

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[796] Protection of Pakistan Act 2014, available at http://www.na.gov.pk/uploads/documents/1409034186_281.pdf last accessed 02 March 2016.
[797] Pakistan Army (Amendment) Act 2015, available at http://www.molaw.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L21vbGF3L3VzZXJmaWxlczEvZmlsZS9QYWtpc3RhbiUyMEFybXklMjAoQW1lbmRtZW50KSUyMEFjdCwlMjAyMDE1LnBkZg%3D%3D last accessed 02 March 2016
[798] Constitution (21st Amendment) Act 2015, available at http://www.pakistani.org/pakistan/constitution/amendments/21amendment.html last accessed on 02 March 2016
[799] Anti-Terrorism Act 1997, Section 21E, available at http://www.molaw.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L21vbGF3L3VzZXJmaWxlczEvZmlsZS9BbnRpLVRlcnJvcmlzbSUyMEFjdC5wZGY%3D last accessed on 02 March 2016.
[800] Fordham, M. and Mare, T. (2001) 'Identifying the Principles of Proportionality', in Understanding Human Rights Principles edited by Jowell, J. and Cooper, J. Oxford and Oregon: Hart Publishing. P 27 - 29
[801] Stacy, H. M. (2009) Human Rights for the 21st Century, California: Stanford University Press. Pp. 134 - 138
[802] Anti-Terrorism Act 1997, Section 11EEEE 2(A)

to detain terror suspects for 90 days during the pre-charge detention does not seem convincing or proportionate. This is a response to terrorism through the country's criminal justice system and which must be differentiated from the war and executive conception of terrorism. If the 90-day period of the pre-charge detention is supported on the pretext to avert any imminent terrorist threat, then why not to use indefinite or preventive detentions for this purpose? The purpose of pre-charge detention is either to bring criminal charge or set free a suspected terrorist. There is no third outcome in the legal nature of pre-charge detention. Owing to the principle of proportionality, too much leverage goes in favour of security, undermining the right to liberty that is entrenched and safeguarded in Articles 9 and 10 of Pakistan's constitution. The onus is on Pakistan to prove that its response is proportionate to the threat of terrorism. However, it is highly likely that the test of proportionality in the case of Pakistan will fail if indefinite and preventive detentions continue to make part of the country's anti-terrorism laws—which is a disproportionate response. It is 'certain' that the test of proportionality will fail if the 90-day pre-charge detention period continues to remain in force—which is a second disproportionate measure. Not only this but fixing the upper and lower limits of the detention periods (90 and 15 days, respectively) also acts as a vacuum to suffocate the right to liberty of a suspected terrorist in Pakistan—which is a third disproportionate measure.

There can be a third argument in support of the 90-days pre-charge detention in the context of Pakistan which might say that Pakistan's fear of terrorism is genuine and that the country needs to keep the period of detention that long. Fear or anxiety is a useful element because it alerts governmental machinery for timely actions to 'do something' about an imminent and present danger from terrorism.[803] Therefore, a wise to approach

[803] Posner, E. and Vermuele, A. (2007) Terror in the Balance: Security, Liberty and the Courts. New York: Oxford University Press. p. 62

to the threat of terrorism is to introduce laws providing longer pre-charge detention period. Posner and Vermeule express the argument in these words:

> *First, fear enhance the senses: the person who feels fear is attuned to the threat and alert to every nuance of the environment. Second, fear provides motivation. Where a fully rational person spends time deliberating, the fearful person acts quickly. Both of these factors suggest that fear can play a constructive role during emergencies*.[804]

This argument can be rebutted. There are many criticisms against this from several liberals. Luban says that governments, when acting under the influence of fear from terrorism, do not deliberate properly on the information that they receive.[805] Londras says that fear-influenced decisions are highly likely to put at risk many individual rights during emergencies.[806] Cole says that history shows a pattern in terrorism-related matters, as governments often act on their assumed fears. They often expand their powers through policies, laws and counter-terroristic operations resulting in disproportionate violations of human rights.[807] Lindner says, 'Intense fear causes "tunnel vision", reducing the range of one's perceptions, thoughts and choices, putting us in danger of making suboptimal decisions.'[808]

The 90-day pre-charge detention period in Pakistan should also be assessed owing to its utility or productivity. Utilitarianism suggests that rights have utilities and that any laws putting any restrictions on rights should have greater utility.[809] A utilitarian approach, in its simplest form, refers to the average success of any law or action.[810] Perhaps, Pakistan thinks that longer detention would make a conviction of suspected

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[804] Ibid.
[805] Luban, D. (2005) Eight Fallacies about Liberty and Security in Human Rights in the 'War on Terror' edited by Wilson, R.A. New York: Cambridge University Press.
[806] Londras, de F. (2011) Detention in the 'War on Terror': Can Human Rights Fight Back? Cambridge: Cambridge University Press. p. 32
[807] Cole, D. (2003) "The New McCarthyism: Repeating History in the War on Terrorism", 38 Harvard Civil Rights and Civil Liberties Law Review.
[808] Lindner, E. (2009) Emotion and Conflict: How Human Rights Can Dignify Emotion and Help us Wage Good Conflict, London: Praeger Security International p. 27 - 28
[809] Steiner, H.J. et al (1996) "International Human Rights in Context: Law, Politics, Morals", 3rd edition, Oxford: Oxford University Press. Pp. 477 - 478
[810] Dworkin, R. (1984) 'Rights as Trumps' in Theories of Rights, edited by Waldron, J. New York: Oxford University Press. pp. 153 - 167

terrorist more certain by extracting more credible evidence? It is argued that a longer detention period is required for police to collect and analyse intercept evidence, translate messages from various languages turning a reasonable suspicion into a concrete one for onward successful prosecution.[811] However, this is not the case in Pakistan: "The overall conviction rate in Pakistan in terrorism cases stood at 5%."[812] Hussain refers to the conviction rates in Pakistan as 'abysmally low'.[813] According to a more recent survey, the conviction rate in Pakistan in terrorism cases is less than 10%.[814] A utilitarian approach of Pakistan to curb the liberty of terror suspects for 90 days does not reflect a greater utility—a rate of successful prosecution. If this is the case, then how can the 90-day detention period in Pakistan be justified with such a low conviction rate?

It would have been very useful to have had access to the terror detainees' data in Pakistan and to have critically analysed the utility of the country's adherence to the 90-day pre-charge detention. The data could perhaps reveal the percentage figures of those terror detainees who had been charged in a week, two weeks, three weeks, a month, two months, or three months. The Pakistan Bureau of Statistics maintains data on all important heads, including data on crimes in the country since 1950.[815] The crime data spreads over all provinces and different offence heads, however, there is nothing in the data related to the terror detainees to reveal when they are arrested and when charges are brought against

[811] Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation 2nd ed. New York: Oxford University Press.
[812] Fasihuddin (2012) "Terrorism Investigation in Pakistan: Perceptions and Realities of Frontline Police", Pakistan Journal of Criminology, Vol. 3, No. 3 pp. 51 – 78. Note, Pakistan Bureau of Statistics and Police department do not publish official conviction rates in terrorism cases, http://www.pbs.gov.pk/sites/default/files//tables/Crimes%20%28website%29.pdf ; http://kppolice.gov.pk/crime/year2015.php
[813] Hussain, F. (2014) Testing the Vires of Protection of Pakistan Act (PPA), 2014 on the Touchstone of Constitution. In Pakistan Journal of Criminology, Vol. 6 No. 2 pp. 161 – 170, see page 162 available at http://www.pakistansocietyofcriminology.com/publications/2015_03_28_3310.pdf last accessed 01 March 2016
[814] Shah, S. (12 March 2016) "Poor Prosecution Plays Havoc With Judicial System", The News International, available at http://www.thenews.com.pk/print/104661-Poor-prosecution-plays-havoc-with-judicial-system last accessed 13 March 2016
[815] Pakistan Bureau of Statistics, Government of Pakistan, available at http://www.pbs.gov.pk/content/about-us last accessed 04 June 2018.

them.[816] Likewise, there is National Counter-terrorism Authority (hereafter, NACTA) in the country, functional since 2013, to receive and collect terrorism-related data for analysis and policy making to combat terrorism and extremism.[817] The NACTA's general data showing a decline in terrorism in the country together with a comparative analysis of the terror incidents in the world is placed on their website.[818] NACTA also maintains a National Counter-terrorism Database on the terror detainees and convicted terrorists; however, the data is only shared among the relevant government departments through a virtual private network.[819] Even police in the country do not display any data on terror detainees to have shown when are the detainees arrested and charged with a terror offence.[820] However, they do maintain data on ordinary crimes (i.e. how many are arrested and convicted in various offence heads).[821] Similarly, there is a Federal Judicial Academy of Pakistan; however, the academy does not provide data related to the detention of terror suspects or to their treatment.[822] In addition, there is a Pakistan Society of Criminology, researching ordinary and special crimes; however, there is no data on the terror detainees on their website.[823] Furthermore, the Human Rights Commission of Pakistan (hereafter, HRCP) maintains their statistics on the prison conditions in the country, although the statistics are silent about giving any information on the dates of arrest and charge of the terror detainees, which could have helped in assessing the productivity of the 90-day terror detention in Pakistan.[824] Finally, there is another research society in the country

[816] Ibid., http://www.pbs.gov.pk/sites/default/files//tables/19.3.pdf last accessed 04 June 2018.
[817] National Counter Terrorism Authority Pakistan (NACTA), available at https://nacta.gov.pk/mandate/ last accessed 04 June 2018.
[818] Ibid., https://nacta.gov.pk/terrorism-decline-in-pakistan/ last accessed 04 June 2018.
[819] Ibid., https://nacta.gov.pk/national-counter-terrorism-database/ last accessed 04 June 2018.
[820] Khyber Pakhtunkhwa Police, available at http://www.kppolice.gov.pk/ ; see also, Punjab Police, available at https://www.punjabpolice.gov.pk/crimestatistics ; see also, Sindh Police, available at http://www.sindhpolice.gov.pk/annoucements/crime_stat_all_cities.html ; see also, Balochistan Police, available at http://www.balochistanpolice.gov.pk/Deputation.php last accessed 04 June 2018.
[821] Ibid.
[822] Federal Judicial Academy, available at http://fja.gov.pk/ last accessed 04 June 2018.
[823] Pakistan Society of Criminology, available at http://pscriminology.com/ last accessed 04 June 2018.
[824] Human Rights Commission of Pakistan, available at http://hrcp-web.org/hrcpweb/wp-content/uploads/2015/09/Violence-in-prisons-2014.pdf last accessed 04 June 2018.

called Research Society of International Law which publishes very informative articles and reports, which have also been cited several times inside this research at variations.[825] The society refers to terror incidents in the country, showing a decline in the trend; however, there is nothing on the statistics related to the arrest and charge of the terror detainees.[826] In the absence of any such data showing the date and time of arrest and charge of the terror detainees in Pakistan, this research will make several recommendations in the last chapter to help in analysing the productivity of the 90-day pre-charge terror detention in Pakistan.

The next possible utility for Pakistan to support its current period of pre-charge detention is to use the period for 'sorting out' terror detainees. Pakistan classifies terror detainees into three different categories—white, grey and black.[827] The country, therefore, needs more time to sort them out to assign them, after rigorous scrutiny, into their respective statuses.[828] Terror detainees classified as 'white' pose 'little or no threat' to the security of Pakistan.[829] They are either immediately released or charged with a 'minor' terror offence.[830] The 'grey' terror detainees are 'strongly suspected of posing a threat' to the national security of Pakistan.[831] They perform different roles, such as, showing active sympathy for known terrorists, working in their subordination, carry out terrorist activities as foot soldiers, or facilitating in various ways terrorist groups.[832] They are thoroughly interrogated to further determine their status or to charge them with the offence of terrorism and thus transfer them to the criminal justice system of the country.[833] The last category, black terror detainees, are leaders or active members of a wide terrorist

[825] Research Society of International Law, available at http://rsilpak.org/ last accessed 04 June 2018.
[826] Ibid.
[827] Soofi, A.B. et al (2016) "Preventive Detention: A Guide to Pakistan's Operations", *The Conflict Law Centre, Research Society of International Law Pakistan,* pp. 24 – 27.
[828] Ibid.
[829] Ibid.
[830] Ibid.
[831] Ibid.
[832] Ibid.
[833] Ibid.

network often having ties with other international terrorist groups. They are the 'real threat' to the security of Pakistan and, therefore, they are kept under the Pakistani military supervision for indefinite period.[834] Is there any space or third outcome in the legal nature of the pre-charge detention to allow the sorting out of terror detainees during the period? Chapter One clearly enumerated that the legal nature of pre-charge detention will always lead into two different outcomes—release or charge the detainee. There is no third outcome. If Pakistan uses the 90-day pre-charge detention to sort terror detainees out in the period is trying to introduce a third outcome of the pre-charge detention. The act is contrary *ab initio* to the legal nature of the pre-charge terror detention. In addition, there hardly seems any greater utility of the sorting out of terror detainees, particularly during pre-charge terror detention. The 'white' category of terror suspects are potentially innocent and their liberty is at stake. They are the ones who pay the total security cost. Even if the suspects in the 'white' category are not innocent, the probability that the 'grey' category—being the subject of the criminal justice system—comes to 'one-third' only, which does not satisfy the 'greater utility' argument of the utilitarian approach for the successful prosecution of terrorists in Pakistan. For the country to satisfy the greater utility argument, the probability that the suspects in the grey category would successfully be charged and prosecuted should be two-thirds or greater.

Lastly, on the productivity of the 90-day pre-charge terror detention in Pakistan, the prolonged period increases the number of detainees leading to the problem of overcrowded detention centres in the country. The overcrowded detention centres in Pakistan will be further elaborated upon in the last section of this part. There are more than 50,000 terror detainees in various detention centres in the country.[835] The increase in number has a direct relationship with the 90-day pre-charge detention. Apart from the

[834] Ibid.
[835] Khan, M. (2017) "Detention in Pakistan: The Means to an End or the End Itself?" available at http://rsilpak.org/detention-pakistan-means-end-end/

detention centre being overcrowded, the country will find it hard to provide housing and other facilities, which might incur huge costs. It would have been very interesting to have found out the annual total cost of all the terror detainees in the country. Unfortunately, there is hardly any evidence on the management and housing of the terror detainees in the country.

To conclude on the assessment of Pakistan's pre-charge detention, the 90-day time frame surely fails all three tests—reasonableness, proportionality and productivity. The period fails to seem reasonable in light of the country's fundamental rights and international human rights obligations. It is neither proportionate nor productive in combating terrorist threats or successfully prosecuting terror suspects owing to the country's domestic and international human rights obligations. Pakistan fulfils its human rights obligations on the prompt production of a terror detainee before a court within 24 hours. However, the country seemingly fails by allowing to remand a terror suspect, at a time, in police custody for 30 days.

5.2.1.B. The Period of Pre-charge Detention in Practice

The Human Rights Commission of Pakistan strongly believes that the 90-day pre-charge detention period clearly violates the human rights standards in Pakistan.[836] It also reports that suspects are arrested on the basis of mere suspicion and they are kept in police custody 'for varying lengths and longer detention' periods than what is permitted by the law.[837] As explained previously, there is difference between mere suspicion and reasonable suspicion. The former is a blind guess to make an arrest while the later

[836] Human Rights Commission of Pakistan, State of Human Rights in 2015, Chapter II Enforcement of Law, p. 6 & 12, available at http://hrcp-web.org/hrcpweb/hrcp-annual-report-2015/
"The special policing powers that allow paramilitary soldiers to arrest people without a warrant and any concrete evidence, keep them in custody for 90 days, and torture or humiliate suspects in their custody violated the principles of human rights."
[837] Ibid.

presupposes certain facts and information gathered from intelligence to make an objective judgement and then proceed with the arrest. Reasonable suspicion is an important liberal safeguard against arbitrary detention. Pakistani anti-terror laws here overlook this liberal attribute and adopt extreme conservative security attitudes. David Cole criticises and terms such detention as 'suspicionless detention'. The Commission is also worried about the lack of transparency in the number of suspects arrested, detained or released.[838] The law authorising 90-day pre-charge detention, as assessed before in the context of Pakistan, fails the test of reasonableness. Police excesses in this regard prove beyond a reasonable doubt that the 90-day pre-charge detention period is not only unreasonable in law but also in action. The police misuse their authority and further prolong the unreasonable period of 90 days permitted in law.

Police excesses have also been reported where suspects are not produced before any court in accordance with the law. The Anti-Terrorism Act 1997 in Pakistan clearly recognises the principle of promptness and it states that an arrested person must be produced before a court within 24 hours. Although the prompt production of a terror suspect within 24 hours in law before a court is one of the most fascinating provisions of all in the anti-terror laws of Pakistan, it is not so in action or practice. The Human Rights Commission of Pakistan interviewed 63 children in police custody under ordinary crimes and reported that the principle of promptness was not followed in any of these cases. Nearly all of the interviewees not only complained of custodial torture but also disclosed that they were kept in police custody for more than 24 hours after the arrest.[839] The reason why these detainees were not usually produced promptly before a court was that the police had tortured them and they were waiting for the torture marks to disappear before they

[838] Ibid.
[839] Human Rights Commission of Pakistan, State of Human Rights in 2011, p. 183, available at http://hrcp-web.org/hrcpweb/wp-content/pdf/AR2011-A.pdf

could be produced before a court.[840] The situation in terror-related arrests will, of course, be worse than this because it is a question of national security. Unfortunately, access to terror detainees has remained one of the vital impediments in empirical research on terrorism around the world.

The Human Rights Commission of Pakistan (HRCP) in all of its annual reports (2009–2015) condemns instances of 'arbitrary detention' in the country. It seems as if arbitrary detention is endemic in Pakistan. This may be due to what the law does in practice. The Commission reports that:

> *HRCP noted with deep concern credible reports of a large number of people in custody of the security forces … who had not been produced in court. Many such detainees were relatives of suspected militants, who had apparently been taken into custody to force the militants to surrender.*[841]

The Human Rights Committee strongly thinks of such detention as an example of 'egregious arbitrary detention'.[842]

Human Rights Watch strongly believes that there is 'public fear of the police' in Pakistan.[843] This organisation has recently interviewed more than 30 police officers in the country on police abuses and excesses:

> *People fear the police because a lot of police officers are badly behaved …many [police officers] believe that if we don't frighten or overpower people they will not accept our authority or respect us. The police are also convinced of this.*[844]

The public fear of the police, which is a wider translation of fear in action, is a response to the badly failed police complaint system in Pakistan.[845] In this situation, civil liberties

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[840] Justice Project Pakistan, World Organization Against Torture, and Reprieve (2016) "Pakistan: Alternative Report to the Human Rights Committee", p. 25 available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/PAK/INT_CCPR_ICO_PAK_24479_E.pdf last accessed 27 September 2016

[841] Human Rights Commission of Pakistan, State of Human Rights in 2010, p. 365, available at http://hrcp-web.org/hrcpweb/wp-content/pdf/ar/ar10e.pdf last accessed on 27 September 2010

[842] The Human Rights Committee, General Comment No. 35, para 16

[843] Human Rights Watch (2016) "This Crooked System": Police Abuse and Reform in Pakistan, p. 87 available at https://www.hrw.org/report/2016/09/25/crooked-system/police-abuse-and-reform-pakistan last accessed 27 September 2016

[844] Ibid.

[845] Ibid., p. 2

should be protected when people are afraid of or hesitant to approach to or complain against police excesses. This is how people lose faith in their institutions.

To conclude, Pakistan adopts a dominant conservative security attitude on the period of pre-charge detention in law and practice. The country translates Ackerman's emergency constitution in its laws and actions, which provides lengthy detentions. Pakistan acts on Posner's suggestion that the constitution is not a suicide pact and it is more important to save people from terrorism. In addition, it is lawful to treat terror detainees as unlawful combatants and keep them in long detention to get information from and thwart future terror attacks. Pakistan seems to fail its domestic and international human rights obligations because its period of pre-charge detention is 90 days, which is unreasonable in the eyes of human rights law. Consequently, this thesis first argues that, in the absence of an in-depth evaluation on the treatment of terror detainees during pre-charge detention, Pakistan continues to cross boundaries of its legal response to terrorism by reflecting in its anti-terror laws the war or executive paradigm of terrorism.

5.2.2.A. Police Interrogation and Questioning: Law and Assessment

The questioning of terror suspects in Pakistan is governed by the ATA 1997. An investigation is conducted by the Joint Investigation Team.[846] There are five officers in the team—one from the police and four from the military.[847] The Joint Investigation Team have 30 days to complete their investigation before making a decision to either release or charge the suspects.[848] Terrorist investigations can also be made by any police officer under ATA 1997.[849] As to the methods and procedures of questioning the accused, there

[846] The Anti-Terrorism Act 1997, Section 19.
[847] Ibid.
[848] Ibid.
[849] *The Anti-Terrorism Act 1997,* Section 21(B).

are no provisions governing the duration of questioning in any of the anti-terror legislation of Pakistan. So, how does Pakistan regulate police interrogations in terrorism cases?

According to the ordinary criminal laws of Pakistan, a police investigation refers to the collection of evidence by a police officer.[850] An investigation under the anti-terror laws of the country means a 'terrorist investigation' conducted in acts of terrorism.[851] Pakistan's anti-terror laws and its ordinary criminal laws are silent about how a suspected terrorist is questioned and for what duration he/she is kept under interrogation to collect evidence. Although the anti-terror laws refer to a time period, they ignore the duration of questioning or interrogation of a suspected terrorist. According to the Anti-Terrorism Act 1997, a terrorist investigation must be completed within 30 days of the arrest. If such investigation cannot be completed within the period, then within three days an interim police report must be submitted to the court.[852] The Act does mention investigation and it does not shed any light on the duration of the questioning; rather, it lays down other police powers, such as cordoning the area, entering and searching any area, restricting individuals and vehicles in the area, taking possession of property recovered from the area, and so on.[853] Similarly, the Protection of Pakistan Act 2014, which is no longer in force, mentioned the total period of pre-charge detention but it did not lay down any provision regulating the duration of a suspected terrorist interrogation.[854] Likewise, although the Investigation for Fair Trial Act 2013 was enacted 'to prevent the law enforcement and intelligence agencies from using their powers arbitrarily',[855] the Act is silent about the duration.

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[850] The Code of Criminal Procedure 1898 with commentary, Lahore: PLD Section 4 (L), p. 10
[851] Anti-Terrorism Act 1997, Section 2 (Z); available at http://www.molaw.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L21vbGF3L3VzZXJmaWxlczEvZmlsZS9BbnRpLVRlcnJvcmlzbSUyMEFjdC5wZGY%3D last accessed on 02 March 2016.
[852] Ibid., Section 19 (1)
[853] Ibid., 21 (B)
[854] Protection of Pakistan Act 2014, Section 5, available at http://www.na.gov.pk/uploads/documents/1409034186_281.pdf
[855] Investigation for Fair Trial Act 2013, Preamble, available at http://www.na.gov.pk/uploads/documents/1361943916_947.pdf last accessed 13 March 2016

What then about the duration of questioning an ordinary suspect to get an estimation of the duration for questioning a suspected terrorist? The Anti-Terrorism Act 1997 also expressly authorises the police to use its ordinary criminal law powers to investigate terrorism cases.[856] Pakistan also confirms this in its initial reports submitted to the Human Rights Committee.[857] So, according to the ordinary criminal procedural laws, a police officer must write the time at which he or she commences and closes his or her investigation on a daily basis.[858] The law does not state how long a suspect can be interrogated and leaves the matter at the discretion of the investigating officer. However, the police laws of Pakistan expressly stipulate to draft a code of conduct regulating police powers in the country in relation to 'detention, treatment and questioning of persons by police officers.'[859] The Code of Conduct embarks upon police honesty and integrity, fairness and impartiality, politeness and tolerance, use of force and confidentiality, and so on. However, it does not regulate the duration of police interrogation or questioning.[860] Although there is a whole chapter on investigation in the Police Rules of Pakistan, the duration of interrogation or questioning of a suspect is not mentioned.[861]

In the absence of any legal provisions regulating the duration of police interrogation in Pakistan, one has to ask if the police can interrogate a terror suspect for an unlimited time? Obviously, this is not the case because it would be neither just or fair.

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[856] Anti-Terrorism Act 1997, Section 11 EEEE (4); available at http://www.molaw.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L21vbGF3L3VzZXJmaWxlczEvZmlsZS9BbnRpLVRlcnJvcmlzbSUyMEFjdC5wZGY%3D last accessed on 02 March 2016.

[857] Initial Report of Pakistan (November 2015), para 99, "*There are special and specialized Federal and Provincial statutes such as Accountability laws and Anti-Terrorist laws which establish criminal offences in addition to the ones given in PPC. The provisions of the CRPC {Criminal Procedure Code of Pakistan) applicable to all criminal proceedings apply generally to these statutes as well.*" Available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/267/96/PDF/G1526796.pdf?OpenElement last accessed 14 March 2016.

[858] The Code of Criminal Procedure 1898 with commentary, Lahore: PLD Section 172, p. 254

[859] Police Order 2002, para 114 (c), available at http://punjabpolice.gov.pk/system/files/police-order-2002-updated-version.pdf last accessed 15 March 2016

[860] Pakistan Police Code of Conduct 2002, available at http://punjabpolice.gov.pk/system/files/Code-of-Conduct-for-Punjab-Police-Officers.pdf last accessed 15 March 2016

[861] Police Rules of Pakistan, Chapter Investigation, available at http://www.pakistansocietyofcriminology.com/laws/PoliceRulesVolume3.pdf last accessed 15 March 2016

How then can the unlimited powers to interrogate qualify the test of reasonableness in the country's constitution? How can one reconcile the unlimited powers with the verdict of Pakistan's Supreme Court that a detained person enjoys all rights available to a free person except freedom of movement? The complete absence of the duration from the anti-terror laws on the treatment of terror suspects needs a human rights assessment in the context of Pakistan to find if the country's current position is in conformity with its human rights obligations in this regard.

The Pakistani constitution embodies the right to liberty and guarantees its protection against any unlawful arrest and detention. Similarly, Pakistan's Supreme Court believes that 'limited liberty' of an arrested person is 'valuable'. The court further states that the government is under a 'strict liability' to ensure that an arrested person enjoys some limited liberty. In addition, the court strongly believes that when a person is arrested, he or she enjoys all these rights available to a free person except freedom of movement. Similarly, the constitution of Pakistan and the International Bill of Human Rights prohibit torture, cruel, inhumane and degrading treatment. This means that unlimited powers to question or interrogate, torture or mistreat a terror suspect would be in violation of Pakistan's domestic and international human rights obligations.

Perhaps, conservative security attitudes and support for the ticking-bomb scenario have affected the anti-terror laws of Pakistan and have led them not to regulate the duration of questioning or interrogation of a suspected terrorist. Arguably there is a complete absence of a case-study of the treatment of terror detainees during pre-charge detention in Pakistan, therefore, the country reflects a war or executive conception of terrorism in its legal response to terrorism by not specifically stipulating the duration of police interrogation session. Instead, this matter has been left to the discretion of police authority. Normally, a longer duration of police interrogation should result in a higher rate of conviction; however, this is not the case in Pakistan. As mentioned previously, the

terrorist conviction rate in Pakistan is recorded at less than 10%. It seems pretty evident that the lack of any legal provision in Pakistan's anti-terror laws regulating the duration of police interrogation will fail the tests of reasonableness, proportionality and productivity.

Will these tests of the lack of police interrogation duration be qualified in the context of international human rights obligations of the country when they impose a higher standard than the domestic obligations? International human rights law does not lay down specific durations for police interrogations. The ICCPR places a prohibition on arbitrary arrest and detention. All of the important human rights covenants (UDHR, ICCPR and UNCAT) also prohibit torture, inhumane and degrading treatment. In addition, states shall enact interrogation rules, instructions, methods and practices to avoid torture and other inhumane treatment of detainees.[862] The United Nations General Assembly emphasises that the duration of police interrogations shall be recorded.[863] Therefore, will Pakistan be exonerated from its international human rights obligations by not keeping any duration for police interrogations?

Terrorist interrogations are usually coercive and they create 'parallel zones of state violence.'[864] The Human Rights Committee is convinced that the risk of being subjected to inhumane treatment increases with the increased length of time that a suspect spends in detention. The risk of inhumane treatment will show increase if the interrogation is coercive and is conducted for an unlimited time period. On the principle of legality, because there is no fixed duration for police interrogations in international

[862] United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx , article 11, last accessed on 15 March 2016.
[863] United Nations General Assembly Resolution 43/173 of 9 December 1988, Principle 23: Available at http://www.ohchr.org/Documents/ProfessionalInterest/bodyprinciples.pdf last accessed 15 March 2016. See also ICRC International Rules and Standards for Police, available at https://www.icrc.org/eng/assets/files/other/icrc-002-0809.pdf last accessed on 15 March 2016.
[864] Brysk, A. (2007) "Human Rights and National Insecurity" In National Insecurity and Human Rights: Democracies Debate Counterterrorism, edited by Brysk, A. and Shafir, G. London: University of California Press, Ltd.

human rights law, Pakistan can perhaps avoid its international obligations. The principle of reasonableness suggests that one cannot interrogate a suspected terrorist for an unlimited period of time. Arguably, this is why the infamous interrogation techniques that were used at Guantanamo Bay, which permitted detainees to be interrogated for 20 hours, amounted to torture.[865]

Pakistan might invoke the principles of necessity and proportionality to support its lack of rules regulating the duration of interrogation of terror suspects. Pakistan has been badly hit by terrorist attacks and, therefore, it might use unlimited powers to interrogate a terror suspect as a justification to prevent any ticking-bomb terrorist threat in real life. This means that Pakistan follows the war or executive paradigm of terrorism in its legal response to terrorism. If the duration is not expressly regulated, then this creates a legal lacuna, which endorses Posner's concept of coercive interrogation and denies certain human rights obligations. This state of affairs supports the main research argument that in the absence of a case-study on the treatment of terror suspect in Pakistan, the country follows the war or executive models of terrorism in its justice or crime model to terrorism. It will be interesting to see the impact of this legal lacuna in practice or action.

5.2.2.B. Police Interrogation and Questioning in Practice

There are hardly any reports about the duration of police interrogation session in terrorism cases in Pakistan. However, many NGOs and governmental organisations have credible reports that suspects, particularly terror detainees, are subjected to ill-treatment, torture and even death during custody in Pakistan. If that is the case, then police interrogations might be very lengthy because torture and death during police

[865] Nowak, M. (2006) "What Practices Constitute Torture? US and UN Standards", Human Rights Quarterly, Vol. 28 No. 4 pp. 809 - 841

interrogations do require more time.[866] Although torture is prohibited by the country's constitution and anti-terror laws, the HRCP reports that, "Custodial torture remained one of the gravest and most pressing human rights issues in Pakistan."[867] In the HRCP's reports between 2009 and 2015, there are many instances of custodial torture in the country. The Justice Project Pakistan interviewed hundreds of detainees and reports their custodial torture:

> *The pervasiveness of police brutality and torture in Pakistan is no secret…. This report offers evidence, unprecedented in Pakistan in its scale and reliability…. The Pakistani government has failed to take effective measures to prevent police brutality and torture and to punish perpetrators.*[868]

Another report by the Justice Project Pakistan and Reprieve narrates a terror suspect who recalled his experience of torture in Pakistan: "Police tortured me to try and make me confess. I was hung by my hands, beaten repeatedly with batons, punched, slapped and kicked. They held a gun to my head and said they would kill me if I did not confess."[869]

The Asian Human Rights Commission reports that in Pakistan, confessions are recorded heavily on the basis of torture, which causes a miscarriage of justice. Similarly, Human Rights Watch reports in detail on custodial torture in the country:

> *Torture and other ill-treatment of suspects in police custody is a widespread problem in Pakistan. Human Rights Watch discovered that such practices include custodial beatings, by hand or with batons and littars (strips of leather), the stretching and crushing of detainees' legs with roola (metal rods), sexual violence, prolonged sleep deprivation, and mental torture, including forcing detainees to witness the torture of others.*[870]

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[866] Luban, D. (2008) "Unthinking the Ticking Bomb", Working Papers George Town University Law Centre.
[867] Human Rights Commission of Pakistan, State of Human Rights in 2015, Chapter II Enforcement of Law, p. 5 available at http://hrcp-web.org/hrcpweb/hrcp-annual-report-2015/
[868] Justice Project Pakistan (2014) "Police as Torture", p. 28 available at http://venturerepublic.net/testingserver/jpp/wp-content/uploads/2015/10/JPP-Launch-Report_031914-use-this-to-print-JPP-version-2.pdf last accessed on 27 September 2016
[869] Justice Project Pakistan and Reprieve (2014) "Terror on Death Row", p. 17 available at http://www.reprieve.org.uk/wp-content/uploads/2014/12/2014_12_18_PUB-Pakistan-Terror-Courts-Report-JPP-and-Reprieve.pdf
[870] Human Rights Watch (2016) "This Crooked System": Police Abuse and Reform in Pakistan, p. 4 available at https://www.hrw.org/report/2016/09/25/crooked-system/police-abuse-and-reform-pakistan last accessed 27 September 2016

Amnesty International reports on the treatment of terror detainees in Pakistan and concludes that torture and other ill-treatment of terror suspects are 'endemic' in the country. Amnesty International, like many others, strongly believes that confessions are extracted solely through torture because the police do not know any other methods of investigation.[871] The organisation describes the following story of a terror suspect and depicts how fear is translated in action during interrogations:

> *Benyam Mohamed al-Habashi, an Ethiopian arrested in April 2002 at Karachi airport and held until mid-July in Karachi, reported that he was hung up by his wrists, allowed to go to the toilet only twice a day, given food only every other day, beaten with a leather strap and subjected to a mock execution by a guard holding a loaded gun to his chest. He said in his testimony, 'I knew I was going to die … I looked into his eyes and saw my own fear reflected there.'*[872]

The US State Department reports that in 2015 there were more than 6,000 cases that involved torture in Pakistan.[873] Similarly, the UK Home Office, citing various human rights reports, concludes that custodial torture is very common in Pakistan.[874] This has led Reprieve to launch a project to curb the culture of torture in police stations across Pakistan.[875]

The UN Committee Against Torture has recently expressed deep concern over the 'widespread' torture in Pakistan and its criminalisation.[876] The Committee also regrets the inadequate complaint system against police officers involved in torture.[877] The

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[871] Amnesty International (2006) "Pakistan: Human rights ignored in the 'war on terror'", available at https://www.amnesty.org/en/documents/asa33/036/2006/en/
[872] Ibid.
[873] US Department of State (2016) "Country Reports on Human Rights Practices for 2015: Pakistan", available at http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper last accessed on 27 September 2016
[874] Home Office (2016) Prison Conditions in Pakistan, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/528401/PAK_Prison_conditions.pdf ; see also The Guardian (08 October 2010) "Stop the Torture in Pakistan's Prisons", available at https://www.theguardian.com/commentisfree/libertycentral/2010/oct/08/pakistan-torture-prison last accessed on 27 September 2016
[875] Reprieve (2010) "Reprieve launches investigation into systematic torture of British citizens by Pakistani police in Pakistan Police Torture Project", available at http://www.reprieve.org.uk/press/2010_07_02_pakistan_police_torture_project/
[876] The UN Committee Against Torture (1 June 2017) "Concluding observation on the initial report of Pakistan", CAT/C/PAK/CO/1
[877] Ibid.

Committee also notes that there is no redress or compensation mechanism in the country for the torture victims.[878]

The treatment during police interrogations clearly translates fear in action. The fear particularly spreads when custodial torture is perpetrated in the presence of other detainees. Most detainees have families and friends all over the country, and Pakistan is a very closely-knit society. So, it would not take long to spread the news of witnessed torture. These instances in police actions endorse Zedner's, Luban's and Waldron's point that even though the purpose of anti-terror laws is to reassure, they instead spread fear. Torture is perhaps 'endemic' and 'widespread' in Pakistan because there is no law to regulate the duration of interrogation of suspected terrorist.

There are reports that terror suspects are ruthlessly maimed or shot in the *Half-Fry or Full-Fry Practice*.[879] Those suspects who do not pose an imminent and major threat to the country's security are shot in their limbs, which is usually referred to as 'half-fry'. Those who pose a real threat to the security of Pakistan, in the eyes of those officers following extreme conservative security attitudes, are subjected to fake police encounters. This practice is referred to as 'full-fry'.[880] One of the country's highest-ranking police officers strongly advises the full-fry or extra-judicial killing of terrorists over their arrest.[881]

Benyam Mohamed describes how police behaviour and treatment of terror suspects further the cause of terrorism by reflecting fear. If every year more than 6,000 people are subjected to torture and other ill-treatment at the hands of the police in Pakistan, then soon fear will prevail over the entire country. The police are convinced that

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[878] Ibid.
[879] Asian Human Rights (2015) "Pakistan: From the Frying Pan, to the Fire", available at http://www.humanrights.asia/resources/hrreport/hr-reports/ahrc-spr-002-2015.pdf last accessed 29 September 2016
[880] Ibid.
[881] Hussain, S.E. "Impact of Terrorist Arrests on Terrorism: Defiance, Deterrence, or Irrelevance", Pakistan Society of Criminology, available at http://pakistansocietyofcriminology.com/articles/ImpactofTerroristArrestsonTerrorism.pdf p. 42 – 43 last accessed 29 September 2016

the anti-terror laws, which are meant to be for prosecuting terror suspects, reflects the war or executive conception of terrorism, and that any action taken in furtherance of the laws should be more on the war or executive model of terrorism. The police also know that anything done in furtherance of the purpose will not be investigated. The UN Committee Against Torture has raised this point in its recent Concluding Observation on Pakistan. Pakistan's anti-terror laws may purposively not provide for the duration of interrogation sessions of suspects, licensing the police to continue with the culture of torture. In short, there does not exist an in-depth evaluation on the treatment of terror detainees during pre-charge detention in Pakistan, and so the country's legal battle against terrorism is modelled in a way to accommodate the war or executive model of terrorism.

5.2.3.A. Internal Police Review Mechanisms: Law and Assessment

In the internal police review mechanisms in Pakistan, there is an absolute absence in the anti-terror laws of the country to review the work of an investigating and a custody officer. The only safeguard in place is that the anti-terrorism court can refuse further detention if it is found that any bodily harm has been done to the accused during any previous interrogation.[882] However, this safeguard does not come under the purview of an internal mechanism but is instead an external review mechanism.

In Pakistan, there is no reviewing officer to review the powers of an investigation and custody officers. The Anti-Terrorism Act 1997 authorises the arrest of any suspected terrorism to be made in accordance with the ordinary criminal law of the country.[883] A police officer when making an arrest 'shall actually touch or confine' a suspect of committing any acts of terrorism.[884] The suspect is then produced in court within 24 hours

[882] The Anti-Terrorism Act 1997, Section 21E (2).
[883] Anti-Terrorism Act 1997, Section 19 (A); available at http://www.molaw.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L21vbGF3L3VzZXJmaWxlczEvZmlsZS9BbnRpLVRlcnJvcmlzbSUyMEFjdC5wZGY%3D last accessed on 16 March 2016.
[884] Section 46, The Code of Criminal Procedure 1898 with commentary, Lahore: PLD p. 47

of the arrest (first safeguard) or within 48 hours if he or she cannot so be produced provided that the court is satisfied that further evidence may be available (second safeguard) and that no 'bodily harm has been or will be caused to the accused' (third safeguard).[885] The suspected terrorist 'shall' then remain in police custody for up to 15 days.[886] He/she shall not remain in police custody for more than 30 days at one time and the total period of the custody shall not exceed 90 days as a whole.[887] The suspect, from time to time, remains under the authority of two officials—the investigation and custody officers.[888] There is no provision in either the anti-terror laws or in the ordinary criminal laws of Pakistan to review the work of the investigation and custody officers. One has to ask again if it is reasonable to grant special powers upon law enforcement agencies without providing corresponding special safeguards to review their work?

It is important to understand the omission of police review mechanisms in Pakistan's anti-terror laws. The laws, apart from indefinite and preventive detentions, sanction 90 days of pre-charge detention with unlimited powers to investigate a suspected terrorist, which is arguably intrusive upon individual human rights. There are several reasons why Pakistan's lack of a review mechanism will fail the test of reasonableness. First, the constitution of Pakistan mentions safeguards against unlawful arrest and detention. If the powers are increased, then it is only reasonable to also increase safeguards. Second, the Supreme Court of Pakistan thinks that a detainee is 'vulnerable' but a terror detainee is the most vulnerable, so it is incumbent upon the state to put in place proper safeguards to protect the most vulnerable detainees. The vulnerability of the detained terrorist increases when the police want more information to prevent future

[885] Anti-Terrorism Act 1997, Section 21 (E), available at http://www.molaw.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L21vbGF3L3VzZXJmaWxlczEvZmlsZS9BbnRpLVRlcnJvcmlzbSUyMEFjdC5wZGY%3D
[886] Ibid.
[887] Ibid.
[888] Section 156, The Code of Criminal Procedure 1898 with commentary, Lahore: PLD p. 204 – 205; see also Pakistan Police Rules 2002, vol. 2, Rules 12.7 and 22.5 available at http://www.pakistansocietyofcriminology.com/laws/PoliceRulesVolume2.pdf p. 180 - 182 last accessed 15 March 2016.

terrorist attacks or to procure confessions for successful prosecutions. Consequently, it is reasonable to carry out a domestic and international human rights law assessment of the absence of internal police review mechanisms in Pakistan.

The constitution of Pakistan does not expressly mention the guarantee of 'police review mechanism' as a safeguard for its citizens. However, there is an express provision regarding a 'Review Board', but only in cases of preventive detention.[889] Even the ordinary criminal law of the country does not contain any provision specifying police periodic review, from arrest to the all other stages of the proceedings. Does the absence of a review, under the domestic human rights obligations of Pakistan, absolve the country from her international human rights obligations in this regard? International human rights law expressly provides for the systematic review of any arrest, detention, and interrogation.[890] This obligation is applicable to all member states, including Pakistan. Therefore, the lack of the police review mechanism can neither be justified by the rule of proportionality nor by the rule of necessity because the review has no relevancy to the rules. The courts, while determining the lawfulness of any terror detention, will infer from the review record as to how the detainee has been treated, suggesting judicial review is dependent on police review.[891] The police review mechanisms seem very significant and will, no doubt, help the administration of criminal justice.[892] Pakistan has recently submitted its initial reports to the UN Human Rights Committee and it will be interesting to see if the Committee comments on the lack of a review mechanism in Pakistan's anti-terror laws. It seems highly probable that Pakistan will fail to justify the lack of police review mechanism in its anti-terror laws when fighting against terrorism through its

[889] Constitution of Pakistan, Article 10 (4), available at http://www.pakistani.org/pakistan/constitution/part2.ch1.html
[890] United Nations Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx , article 11, last accessed on 15 March 2016.
[891] Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation 2nd ed. New York: Oxford University Press. p. 142 - 143
[892] Ibid.

criminal justice system. The country not only has made harsh anti-terror laws, which allow for a very lengthy period for pre-charge detention and which lack provisions governing the duration of interrogation session, but it has also allowed the police to operate without any internal review mechanism of its own. If such harsh laws are enforced by a policing agency in a country without internal review mechanism, then this would definitely violate the human rights of terror detainees.

5.2.3.B. Internal Police Review Mechanisms in Practice

The absence of an internal police review mechanism is one of the biggest challenges in Pakistan's anti-terror laws. This means tying a terror suspect absolutely to the police authority. Whatever is written down by an investigating officer is produced in court. How the suspected terrorist is treated throughout his or her detention period is not reviewed by a distinct reviewing officer. Thus, any such record produced in the court raises many questions of its being genuine and accurate, and reflecting the humane treatment of the detainee during police custody. So far, many references have been made to various NGOs and governmental reports but unfortunately none of the reports directly critiques the absence of police review mechanisms in the anti-terror laws of Pakistan. However, many of the reports speak about the general accountability of the police.[893] The accountability of the police can only be ensured when there are automatic, periodic and neutral internal police reviews of the treatment of terror suspects.

The lack of internal police review mechanism perhaps encourages the police to exceed their authority. Suspected terrorists are tortured to extract confessions or information, which is neither accounted for nor reviewed. This, seemingly, is a major shortcoming in the law which casts a huge and frightening picture in action in the form

[893] Human Rights Watch (2016) "This Crooked System": Police Abuse and Reform in Pakistan, p. 79 – 85 available at https://www.hrw.org/report/2016/09/25/crooked-system/police-abuse-and-reform-pakistan last accessed 27 September 2016; See also the Human Rights Commission of Pakistan reports.

of torture and other ill-treatment during detention. This inaction in Pakistan's anti-terror laws ensures the translation of fear in action or practice. Terror laws in Pakistan might be aimed to reassure the public but in practice they do the opposite—they spread fear—, which is one of the six security costs of Zedner. Perhaps terror suspects are considered unlawful combatants for whom there is no need to extend the safeguard of internal police review mechanism. The absence of a review divides society into 'We' and 'They'. Terror suspects are at the mercy of the executive where the judiciary, even if it wants to, cannot play an important role to save the suspect from torture or any other ill-treatment because of the absence of an internal review mechanism. In other words, when no review record is available, then however strong the courts may be, they cannot protect a terror suspect from the tyranny of the police. Consequently, Pakistan's legal response to terrorism is streamlined more to the pattern of war or executive model of terrorism. Arguably, it is so because there is no an in-depth evaluation or case-study on the treatment of terror detainees in Pakistan and the country continues to cross the legal boundaries of the justice model for the war or executive paradigm of terrorism.

5.2.4.A. Police Records: Law and Assessment

The law related to police records in Pakistan can be found in the Anti-Terrorism Act 1997. Although statements, evidence or confessions made during police questioning are admissible in the court,[894]certain conditions need to be fulfilled.[895] The police officer taking any evidence or confession must record it.[896] He/she must make it clear to the accused that the said evidence or confession will be used against him/her. The officer must make sure that the evidence or confession is given voluntarily.[897] According to the

[894] Anti-Terrorism Act 1997, Section 21H.
[895] Ibid.
[896] Ibid.
[897] Ibid.

ordinary laws of evidence in Pakistan, any statement or confession made before a police officer is not admissible.[898] All such statements or confession must be made before court in ordinary cases. Here, the anti-terrorism law is in contradiction with the ordinary law. The Investigation for Fair Trial Act 2013 provides for police surveillance and any evidence recorded thereunder to be admissible in court in all terrorism cases.[899] There is nothing in the law to electronically (audio or video recording) record questioning or interviews with the suspects.

The constitution of Pakistan recognises the principle of reasonableness and fairness. All fundamental rights are justiciable. This means that the courts need accurate records of the treatment of terror suspect during pre-charge detention in order to administer justice. Therefore, it is of paramount importance to have police records available to courts: "The keeping of full and accurate records of the treatment of a detainee is a vital element of ensuring propriety and humanity."[900] The courts rely on police records to determine the lawfulness of any detention, frame a charge, and conduct a fair trial. Almost all democratic states and core international human rights instruments give these rights to any suspect, including a suspected terrorist. However, the anti-terror laws of Pakistan do not provide a special procedure to record police investigation, except recording confessions.[901] The laws authorise the use of ordinary criminal law procedure to record police investigations.[902] The ordinary procedural law prescribes that all investigation officers shall write, on a daily basis, in police investigation diary details regarding the time when the information reached them, the time at which they began and

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[898] *Qanun-E-Shahadat Order* (*Evidence Act of Pakistan*) (1984) at Section 38 and 39, available at http://punjabpolice.gov.pk/system/files/qanun-e-shahadat-order-1984.pdf, last accessed 18 August 2014.
[899] *The Investigation for Fair Trial Act*, 2013, Schedule 1 and Chapter 5, available at http://nacta.gov.pk/Download_s/Rules/Investigation_for_Fair_Trial_Act_I_of_2013.pdf, last accessed 18 August 2014.
[900] Ibid., p. 151
[901] Anti-Terrorism Act 1997, Section 21 (H), available at http://www.molaw.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L21vbGF3L3VzZXJmaWxlczEvZmlsZS9BbnRpLVRlcnJvcmlzbSUyMEFjdC5wZGY%3D
[902]Ibid., Sections 19 (1) and 28 (5)

closed their investigation, the places visited by them, and the circumstances ascertained through their investigations.[903] The law does not provide for audio or video recording of police interrogation. The terrorists' confessional statements are recorded under the anti-terror laws of Pakistan, but even thereunder, there is no mention of audio or video recording of the proceedings. In addition, any such record is not presented to, or signed by the detainee. How then will this record pass the test of reasonableness and fairness? Police records are the evidence on the basis of which courts not only determine the lawfulness of detention but also frame charge, conduct trial, and issues orders of acquittal or conviction.

Special laws require special safeguards and procedures to balance special powers thereunder not to be intrusive upon individual human rights. Consequently, the ordinary criminal law procedure is insufficient to balance the anti-terror special powers of Pakistan's police. Special laws must provide special procedures or special safeguards to what Walker calls 'augmented safeguards' thereunder. Macken also recommends 'enhanced human rights protections'[904] during police interrogation sessions in terrorism cases. The audio or video recording of interrogation sessions can, to some extent, balance the arbitrary powers of the police. The recording of audio or video interrogation sessions is not new to the country. The police have been given the powers to use audio or video recording for surveillance purposes and their production is admissible in court.[905] However, such recording has not been given any place in police interrogations of terrorism cases. The principle of reasonableness or fairness excludes any evidence that is improperly or unfairly obtained.[906] If Pakistan continues to conduct terrorist interrogation

[903] Section 172, The Code of Criminal Procedure 1898 with commentary, Lahore: PLD p. 254 – 255
[904] Macken, C. (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and international Human Rights Law, New York: Routledge p. 154 – 155.
[905] Investigation for Fair Trial Act 2013, Section 3 (p), available at http://www.na.gov.pk/uploads/documents/1361943916_947.pdf last accessed 16 March 2016.
[906] Macken, C. (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and international Human Rights Law, New York: Routledge p. 154 – 155.

without audio or video recording, then it will arguably violate its domestic and international human rights obligations by producing the evidence in court for prosecuting suspected terrorists. This state of affairs further strengthens the thesis main argument that in the absence of an in-depth assessment of the topic in Pakistan, the country adopts the war or executive model of terrorism in its legal response to terrorism.

5.2.4.B. Police Records in Practice

The conservative security attitudes in Pakistan are evident from its orthodox police record keeping. A police record is manually maintained from the first information report to the actual release of a detainee.[907] This hampers a quick response to deal with terrorism cases and prosecution. Many have suggested modern computerised and centralised police record keeping to tackle the menace of terrorism.[908]

In Pakistan, the record is neither accurate nor credible for prosecution purposes. The resultant outcome is a low conviction rate ranging from 5% to 10% in terrorism cases.[909] This low terrorist conviction rate spreads fear among the public. Many people who have witnessed terrorism offences do not appear in courts to record their evidence to

[907] Perito, R. and Parvez, T. (2014) "A Counterterrorism Role for Pakistan's Police Station", p. 11 available at https://www.usip.org/sites/default/files/SR351-A-Counterrerrorism-Role-for-Pakistan%E2%80%99s-Police-Stations.pdf last accessed 28 September 2016

[908] Perito, R. and Parvez, T. (2014) "A Counterterrorism Role for Pakistan's Police Station", p. 11 available at https://www.usip.org/sites/default/files/SR351-A-Counterrerrorism-Role-for-Pakistan%E2%80%99s-Police-Stations.pdf last accessed 28 September 2016; See also Human Rights Watch (2016) "This Crooked System": Police Abuse and Reform in Pakistan, p. 60 & 61 available at https://www.hrw.org/report/2016/09/25/crooked-system/police-abuse-and-reform-pakistan ; see also Abbas, H. (2011) "Reforming Pakistan's Police and Law Enforcement Infrastructure", available at http://www.usip.org/sites/default/files/SR266-Reforming_Pakistan%E2%80%98s_Police_and_Law_Enforcement_Infrastructure.pdf

[909] Bhandari, V. (2014) "Pretrial Detention in South Asia: Examining the Situation in India, Pakistan and Bangladesh", p. 58 available at http://www.pensamientopenal.com.ar/system/files/2014/12/doctrina39811.pdf last accessed 28 September 2016; See also Shah, S. (12 March 2016) "Poor Prosecution Plays Havoc With Judicial System", The News International, available at http://www.thenews.com.pk/print/104661-Poor-prosecution-plays-havoc-with-judicial-system last accessed 28 September 2016

avoid reprisals from terrorist groups.[910] Such fear holds further sway when there is little protection for the witness in law, as is the case in Pakistan.[911]

As to the inaccuracy of police record, how can one judge the treatment of terror detainees in light of the human rights standards? For example, a bailiff discovered that the police in Pakistan write daily entries into the station daily diary in lead pencil, this enables them to change these entries at their convenience.[912]

Muhammad Akhtar, who had received three death sentences from various courts in Pakistan, including an anti-terrorism court, lodged an appeal to the Supreme Court of Pakistan alleging police torture and misconduct. The Court found some 'clear signs of police misconduct' in the investigation record. Some 89 witnesses had appeared in favour of the accused before the investigating officer but there was no such record on police files. The Court acquitted him on 'utterly unreliable' evidence.[913] In this situation, how can a judge be sure that a terror suspect has been told the reasons for his or her arrest and detention? That he or she has been promptly produced before a court? And, that he or she has been charged or released promptly? Perhaps, there is no case-study on the treatment

[910] Perito, R. and Parvez, T. (2014) "A Counterterrorism Role for Pakistan's Police Station", p. 12 available at https://www.usip.org/sites/default/files/SR351-A-Counterrerrorism-Role-for-Pakistan%E2%80%99s-Police-Stations.pdf ,"The witness protection system in Pakistan is almost nonexistent. Consequently, those who testify
against powerful criminals and militants in courts receive no security. In dozens of cases, police officers investigating militants have been gunned down."

[911] Ibid.

[912] Justice Project Pakistan, World Organization Against Torture, and Reprieve (2016) "Pakistan: Alternative Report to the Human Rights Committee", p. 25 available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/PAK/INT_CCPR_ICO_PAK_24479_E.pdf "Ali Raza was arrested and detained by police officers on 3 January 2016. Following his arrest, he was kept in custody for three days without being produced before a magistrate. Upon the filing of a habeas corpus petition by members of his family, a bailiff was dispatched by the court to the police station where he was detained. The bailiff discovered that the police officers were recording entries into the station diary in lead pencil to enable them to be changed at will. He also discovered that Mr. Raza had been subjected to heinous torture by the police whilst in custody. Despite these findings, the magistrate continued to extend the physical remand for further investigation."

[913] Justice Project Pakistan and Reprieve (2014) Case study of Muhammad Akhtar published in "Terror on Death Row: The Abuse and Overuse of Pakistan's Anti-terrorism Legislation" at p. 15 and 16, available at http://www.jpp.org.pk/upload/Terror%20on%20Death%20Row/2014_12_15_PUB%20WEP%20Terrorism%20Report.pdf last accessed 01 May 2016

of terror detainees during pre-charge detention and this is the reason why the importance of police records in terrorism cases is overlooked in Pakistan.

5.2.5.A. Rights of a Terror Suspect to Contact the Outside World: Law and Assessment

There is nothing in either ATA 1997 or in POPA 2014 to prohibit terror detainees contacting their relatives. However, the anti-terror laws of Pakistan expressly recognise a narrow version of the right to contact the outside world. A terror suspect has the right to contact a 'legal practitioner of his choice'.[914] The law also recognises that a medical officer will examine a suspected terrorist before and after police custody.[915] Nevertheless, the law does not say anything about further categories in the right to contact the outside world, such as family members, or political or spiritual representatives. This may also be governed by the ordinary criminal law of the country.

In terrorism cases, the government of Pakistan will determine the place of custody, investigation and trial.[916] The government is privileged to withhold information about any detention centre or the whereabouts of any suspected terrorist.[917] The government is also privileged not to disclose any grounds for detention 'in the interest of the security of Pakistan'.[918] Therefore, the place of custody and whereabouts of terror detainees can be kept secret, in which case access to relatives will be refused. In certain cases, the public can also be excluded from certain terror trials.[919] If it is found that any evidence given

[914] Anti-Terrorism Act 1997, Section 19 (11A), available at http://www.molaw.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L21vbGF3L3VzZXJmaWxlczEvZmlsZS9BbnRpLVRlcnJvcmlzbSUyMEFjdC5wZGY%3D
[915] Anti-Terrorism Act 1997, Sections 11EEEE (5) and 21 (E)(2), available at http://www.molaw.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L21vbGF3L3VzZXJmaWxlczEvZmlsZS9BbnRpLVRlcnJvcmlzbSUyMEFjdC5wZGY%3D
[916] *Protection of Pakistan Act* (2014) at Section 9(1), available at http://nacta.gov.pk/Download_s/Rules/POPO_2014.pdf, last accessed 18 August 2014.
[917] Ibid., Section 9(2)(a).
[918] Ibid. at Section 9(2)(b).
[919] *Protection of Pakistan Act* (2014) at Section 10, available at http://nacta.gov.pk/Download_s/Rules/POPO_2014.pdf, last accessed 18 August 2014.

during any terror trial would prejudice public safety, then the anti-terrorism court can exclude the public from it.[920]

As explained in Chapter Three, Pakistan has domestic as well as international human rights obligations to allow a terror suspect to contact the outside world. People in the outside world include family members, friends, lawyers, interpreters, doctors, religious leaders, members of parliament, and so on. The entire purpose of this right is to help the detained person to prepare his/her defence.[921] Doing so facilitates the administration of justice. As explained in Chapter Three, the prohibition of incommunicado detention and the permission to access the outside world is a liberal concept.

On assessment, Pakistan is perhaps performing better here than in its other human rights obligations. Pakistan at least expressly provides for the right of terror suspects to contact the outside world, though narrowing its scope, but it is still apt to recognise the suspected terrorist's right to contact a legal counsel to prepare his/her defence. Here, the country seems highly likely to fulfil its domestic and international human rights obligations on contacting a lawyer but unfortunately not in other categories under the outside world, such as family, friends and so on. However, in practice, terror detainees have been given opportunities to meet their relatives but sadly the law was misused by the authorities taking bribes from the relatives of suspected terrorists for each contact.[922] It will be interesting to assess the gap between law and its operation in practice in this regard.

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[920] Ibid.
[921] Greer, S. (2009) "The Detention of Suspected Terrorists in Northern Ireland and Great Britain", University of Richmond Law Review, 43 at 929–930.
[922] Ahmed, S. (2012) "Police reform in Balochistan", published in Stabilizing Pakistan through Police Reforms, Asia Society Report by the Independent Commission on Pakistan Police Reforms at 114.

5.2.5.B. Rights of a Terror Suspect to Contact the Outside World in Practice

In the past, terror detainees had rights to contact their relatives but they were misused by the authorities, who collected bribes from the relatives for each contact.[923] So, there are credible reports that in practice detainees are usually deprived of this right or some hardships are placed in the way to get access to the outside world. The UK Home Office stated on their website that in Pakistan "some police and security forces reportedly held [detainees] incommunicado and refused to disclose their location."[924] Human Rights Watch reports that police and security forces in Pakistan continuously deny terror detainees access to their lawyers, relatives, independent monitors and humanitarian agencies.[925] On a number of occasions, Asian Human Rights have reported that access to terror suspects has been a perpetual problem in Pakistan and that this has led to the illegal practice of enforced disappearance in the country.[926] It has also been reported that police in Pakistan extract bribes from the relatives of the arrested person for access to see their loved ones in detention.[927] The UN Committee Against Torture has also raised the issue of incommunicado detention in the context of Pakistan.[928]

If access to the outside world is denied in practice, then how can a terror suspect prepare his/her defence? This triggers the violations of other rights, such as the right to a fair trial. The UN Human Rights Committee in two of its General Comments also finds that incommunicado detention amounts to torture.[929] This happens when conservative

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[923] Ahmed, S. (2012) "Police Reform in Balochistan", in *Stabilizing Pakistan through Police Reforms*, Asia Society Report by the Independent Commission on Pakistan Police Reforms at 114.
[924] Home Office (2016) "Pakistan: Prison Conditions", para 5.3.3 available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/528401/PAK_Prison_conditions.pdf last accessed 28 September 2016
[925] Human Rights Watch (2014) World Report 2014, available at https://www.hrw.org/world-report/2014/country-chapters/pakistan
[926] Asian Human Rights Report (2013) "Pakistan: Country has turned into a killing field", available at http://www.humanrights.asia/resources/hrreport/2013/AHRC-SPR-005-2013.pdf/view last accessed 28 September 2016
[927] Ahmed, S. (2012) "Police Reform in Balochistan", published in Stabilizing Pakistan through Police Reforms, Asia Society Report by the Independent Commission on Pakistan Police Reforms at 114
[928] The UN Committee Against Torture (1 June 2017) "Concluding observation on the initial report of Pakistan", CAT/C/PAK/CO/1
[929] Human Rights Committee General Comment No. 35 and 20

attitudes are dominantly reflected in the anti-terror laws—the law enforcement agencies further circumvent them and resort to enforce the law more harshly in action. The outcome is the destruction of civil rights and the legalisation of torture. In practice, Pakistan follows Posner's approach to keep a terror detainee incommunicado to extract evidence, money, or more information from him. This evaluation of the rights of a terror suspect to contact the outside world suggest that Pakistan does not take its legal response to terrorism very seriously. Perhaps, the country relies on other fights—war or executive—in its legal response to terrorism, the purpose of which is to prosecute terror suspects.

5.2.6.A. Detention Conditions: Law and Assessment

Like the earlier sections, this section will first identify and then assess the law related to the detention conditions in Pakistan in light of the country's domestic and international human rights obligations.

What then is the law regulating detention conditions during pre-charge detention in Pakistan? There is no provision either in ATA 1997 or in POPA 2014 governing food, water, clothing, bed, space or medical examination of the persons detained. The Acts do not even mention the extension of the Pakistan Prison Act 1894[930] (hereafter, PPA 1894) or the Pakistan Prison Rules 1978 (hereafter, PPR 1978), which govern the treatment of the accused detained under the ordinary criminal laws of Pakistan. Therefore, the anti-terror laws of Pakistan do not regulate the detention conditions in the country. These are left to the ordinary criminal law as is evident from Pakistan's initial reports submitted to the Human Rights Committee.[931] Police Rules of Pakistan provide detailed information

[930] *Pakistan Prison Act* (1894), available at http://www.icrc.org/applic/ihl/ihl-nat.nsf/6fa4d35e5e3025394125673e00508143/2b59eb02419269eec12576fd00331bd5/$FILE/Pakistan%20The%20Prisons%20Act%201894.pdf

[931] Report of The Human Rights Committee, General Assembly forty sixth session, 40(A/46/40) p. 244, available at https://documents-dds-

on the detainees' food during breakfast, lunch and dinner.[932] The detainee is also entitled to a bed and a blanket, they can attend the toilet and pray during prayer time as long as he/she remains in police custody.[933] As mentioned previously, terror suspects are subjected to special powers. They are the subject of national security. There is, therefore, a greater likelihood that their breaks (food, sleep, personal hygiene, prayer, etc.) might be interrupted. Why would this not be in the case of Pakistan when the country authorises a 90-day detention period and unlimited police interrogation periods, which are not even reviewed? The detainees are also kept in incommunicado detention. The ordinary laws regulating the food, sleep, personal hygiene, prayer or recreational facilities of terror suspects in the country would, therefore, not be able to cope with the situation.

So, what are Pakistan's domestic and international human rights obligations related to the detention conditions. As explained in Chapter Three, Pakistan is under domestic and international human rights obligations to treat terror detainees humanely and with fairness.[934] They shall be provided with enough food and sleep. They have the right to take short and long breaks. They shall be given access to attend to personal hygiene, exercise in fresh air, read books or magazines, and be allowed to perform prayer.

The UN Human Rights Committee concludes that it is violation of Article 10 ICCPR to provide a detainee with 'insufficient food, of very low nutritional value, no access whatsoever to recreational or sporting facilities… or even basic hygienic facilities, medical or dental care, or any type of educational services'.[935] The UN Human Rights

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ny.un.org/doc/UNDOC/GEN/N91/291/64/PDF/N9129164.pdf?OpenElement last accessed 20 March 2016; see also General Comment No. 21

[932] Pakistan Police Rules 2002, Vol. 3 Appendix 32.22 (3), available at http://www.pakistansocietyofcriminology.com/laws/PoliceRulesVolume3.pdf p. 372 - 375
[933] Ibid., Rule 32.19
[934] ICCPR, Article 10; See also University of Minnesota, "Right to Humane Treatment and Terrorism", available at https://www1.umn.edu/humanrts/iachr/humanetreatment.html last accessed 20 March 2016
[935] Report of The Human Rights Committee, General Assembly forty sixth session, 40(A/46/40) p. 244, available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/N91/291/64/PDF/N9129164.pdf?OpenElement last accessed 20 March 2016; see also General Comment No. 21

Committee has also decided a case, related to prison conditions, between Maria S. Arredondo, a Peruvian citizen and the state party, Peru, in 2000. Arredondo was arrested on account of several terrorist offences in the state of Peru and she was detained there in a high security prison for women. She describes the prison conditions in which she was kept as follows:

> *She claims that prison conditions are appalling, and that the inmates are allowed out of their 3 x 3 metre cells only for half an hour each day. They are allowed no writing materials…radio or television. The quality of the food is poor. Many inmates suffer from psychiatric problems or contagious diseases. All inmates are housed together and there are no facilities for the sick. When inmates are taken to hospital, they are handcuffed and fettered. Inmates are allowed only one visit a month from their closest relatives.*[936]

The Human Rights Committee found these prison conditions 'excessively restrictive' and,[937] thus, in violation of Article 10, paragraph 1(humane treatment) of the ICCPR. Given that the special anti-terror laws of Pakistan do not govern the detention conditions in terrorism cases, this is left to the ordinary law of the country to cope with. Consequently, there seems to be a great likelihood that the application of ordinary in cases of terrorism would either be circumvented or overlooked in Pakistan because the terror detention conditions needs special laws to be governed and not ordinary laws. So, what are the detention conditions in practice in which terror suspects are kept in Pakistan? It will be interesting to see the impacts in action of the treatment of terror suspects who are not protected through special laws providing special or augmented safeguards.

5.2.6.B. Detention Conditions in Practice

There are many credible reports to rely on for the assessment in practice of the law related to the detention conditions in Pakistan. According to these reports, the terror

[936] Maria S. Arredondo v Peru, 14 July 2000, CCPR/C/69/D/688/1996, para 3.1
[937] Maria S. Arredondo v Peru, 14 July 2000, CCPR/C/69/D/688/1996, para 10.4

detainees are usually kept in miserable detention conditions. The HRCP reports on the conditions of prison and detention centres in the country, as follows:

> *The condition of prisoners [including terror detainees] in Pakistan remained dismal. Chronic issues such as overcrowding, lack of proper healthcare system, inferior quality food, corruption and rampant torture continued in the year under review…HRCP's fact-finding missions in 13 prisons all over Pakistan in 2013 and 2014 failed to see improvement in food quality.*[938]

The Commission reiterates the status quo in these words in its next annual report, "The harsh conditions of detention in Pakistani prisons remained unchanged in 2015 and a failure to consider alternatives to custodial detention remained the biggest challenges."[939]

The US State Department reports that many chronic health issues have erupted in the detention centres of Pakistan due to inadequate food, malnutrition, and bad sanitation.[940] Similarly, the International Commission of Jurists reported, "Overcrowded prisons, torture and other ill-treatment, and inadequate health and hygiene facilities generally plague detention and prison facilities for all crimes."[941] Freedom House reports:

> *Prison conditions are appalling [in Pakistan]. Many prisons have been associated with gross human rights violations and feature chronic malnutrition, extremely tight shackles leading to gangrene and amputation, endemic physical abuse (including rape), and the routine use of torture.*[942]

Likewise, Amnesty International has raised 'serious concerns' over the transparency and the treatment of terror suspects arrested in Pakistan.[943] Owing to these concerns, the UN Committee Against Torture has also asked Pakistan to provide information on steps taken

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[938] Human Rights Commission of Pakistan, State of Human Rights in 2014, available at http://hrcp-web.org/hrcpweb/data/ar14c/2-2%20jails%20and%20prisoners%20-%202014.pdf
[939] Human Rights Commission of Pakistan, State of Human Rights in 2015, available at Human Rights Commission of Pakistan, State of Human Rights in 2014, available at http://hrcp-web.org/hrcpweb/data/ar14c/2-2%20jails%20and%20prisoners%20-%202014.pdf
[940] US Department of State (2016) "Country Reports on Human Rights Practices for 2015: Pakistan", available at http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper
[941] International Commission of Jurists (2015) "On Trial: The Implementation of Pakistan's Blasphemy Laws", available at http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2015/12/Pakistan-On-Trial-Blasphemy-Laws-Publications-Thematic-Reports-2015-ENG.pdf last accessed 29 September 2016
[942] Freedom House (2011) "Countries at the Crossroads", available at https://freedomhouse.org/report/countries-crossroads/2011/pakistan last accessed on 29 September 2016
[943] Amnesty International, Pakistan 2015/2016 available at https://www.amnesty.org/en/countries/asia-and-the-pacific/pakistan/report-pakistan/ last accessed on 29 September 2016

to improve its detention conditions.[944] There seems little doubt that the conditions in which terror suspects in Pakistani detention centres are kept will be awful.

Stringent anti-terror laws lead to stringent actions and, as mentioned before, the Pakistani police are convinced of this. So, in practice, they keep in mind the dominant conservative security attitudes keeping dire conditions of detention for the detainees to confess or teach them a lesson. In summary, Pakistan does not seem to fulfil its human rights obligations when it comes to the detention conditions during pre-charge detention in terrorism cases. This state of affairs reaffirms the main argument of this thesis: in the absence of an in-depth evaluation on the treatment of terror suspects during pre-charge detention in Pakistan, the legal response of the country is modelled on the pattern of the war or executive model of terrorism.

PART III

5.3.0 Conclusion

Terrorism poses a unique threat to the security of Pakistan and its people. The country has been hit hard during the recent terrorism cycle, which has led to the deaths of more than 60,000 people, including members from various law enforcement agencies and civilians.[945] Its political leadership has also been targeted, including the killings of prominent political figures such as Benazir Bhutto and Bashir Bilour. The country's airports, air defences, and naval defence capabilities have also been targeted. Even beyond the killings and attacks on political and military leaderships, the country's tourist industry has also suffered a tremendous number of losses due to attacks on them.

[944] The UN Committee Against Torture (1 June 2017) "Concluding observation on the initial report of Pakistan", CAT/C/PAK/CO/1

[945] South Asia Terrorism Portal (19 November 2017) 'Pakistan', available at http://www.satp.org/satporgtp/countries/pakistan/database/casualties.htm last accessed 19 November 2017.

Meanwhile, schools and school going children have not been spared. Consequently, it is apt for the country to have its own anti-terrorism laws to guard against terrorism.

This chapter has answered the third research question: what is the law on the treatment of terror detainees during pre-charge detention in Pakistan? To what degree the country complies with its human rights obligations in this regard? And, is there any gap between the Pakistan's law and practice when treating terror detainees? This chapter examined and evaluated the laws related to the treatment of terror detainees during the pre-charge detention in Pakistan. It says that if a suspect is arrested, then he/she can be held in detention for a total of 90 days. The total period is split into single durations which, at one time, shall not be more than 30 days. There is an obligatory minimum period of 15 days (e.g. an arrested terror suspect shall not spend in detention less than 15 days). An arrested person must be produced within 24 hours of his or her arrest. There is no provision regulating the duration of police interrogation and there are no legal provisions allowing internal police review mechanisms during that 90 days detention. The accuracy of police records and conditions of detention are regulated through the ordinary criminal procedural laws, which are insufficient to safeguard terror detainees from police abuses. A terror suspect has a right to contact his legal practitioner but no other closely related categories, such as family and friends.

Owing to the close examination and assessment of these laws, Pakistan seems to be in violation of its domestic, as well as international, human rights obligations. There are also many gaps between the country laws and actions. Many NGOs and other human rights bodies have gathered evidence of torture, maltreatment of terror suspects and Pakistan's major domestic and international human rights obligations when treating terror detainees during pre-charge detention. The main reason for this is that there is hardly any case-study on the treatment of terror detainees in the country. Therefore, Pakistan seems unable to differentiate its legal response to terrorism from its war or executive response.

Pakistan gives more importance to its national security over individual human rights. Therefore, it neglects its major domestic and international human rights obligations for several reasons. First, the 90 days pre-charge detention period is excessive. The period seems a failure due to very low conviction rates of less than 10%. Similarly, a major part of the period (i.e. 60 days) is unnecessary because the anti-terror laws of the country obligates the police to submit a full police report within 30 days of the arrest. This clearly reflects the war or executive model by keeping terror detainees for 60 days under unnecessary and arbitrary detention. The 90 days pre-charge detention period is, therefore, unnecessary and unreasonable specially when the country allows, simultaneously, indefinite and preventive detentions. Second, there is no specified length for the duration of police interrogation sessions of terror suspects. The country can, therefore, interrogate the suspect for an unlimited time period, for 90 days in total; thus, significantly sacrificing individual human rights in favour of its national security. Third, a police review mechanism that would serve as a check on the abusive powers of the police is absent in the law. Furthermore, interrogation sessions are not electronically (audio or video) recorded to minimise police arbitrary powers and assist courts in the administration of justice. In addition, apart from the suspected terrorist's right to contact the outside world, his or her food, sleep, breaks, attending to personal hygiene or recreational facilities and so on are all regulated by the ordinary criminal law. The ordinary criminal law regulation of the food, sleep, personal hygiene, prayer or recreational facilities of terror suspects in the country seems to be weak in the presence of special powers, such as to detain a suspect for 90 days and interrogate him or her for unlimited time period. The anti-terror laws of Pakistan provide special powers but no special safeguards.

In conclusion, this evaluation clearly suggests that Pakistan follows Posner's pragmatism—declaring terror suspects as unlawful combatants, supporting coercive

interrogation sessions and techniques, and advocating incommunicado detention, in its legal response to terrorism. Pakistan also reflects Ackerman's emergency constitution where the executive is empowered to defeat terrorism at all costs without any accountability. The country seems to be in line with the 'Extra-legal Measure' model of Oren Gross, permitting prolonged pre-charge detention when the country at the same time also allows for indefinite detention and continues not to provide any internal police review mechanism. It is arguably obvious now that Pakistan crosses certain legal boundaries in its legal response to terrorism. The country arguably reflects the war or the executive conception of terrorism in its anti-terrorism laws. This evaluation of the treatment of terror detainees during pre-charge detention in Pakistan arguably introduces new knowledge in the realm of human rights law and terrorism. A case-study of the powers of pre-charge terror detention in Pakistan will arguably add more credibility when UK is used as a comparator to the main case. As was mentioned in Chapter Two, there is a complete absence of a case-study of Pakistan's treatment of terror detainees during pre-charge detention because none of the scholars has used UK acting as comparator for Pakistan; therefore, an in-depth study of the two countries in this regard is very important for introducing new knowledge in the field. Doing this will provide a good opportunity for the two countries, particularly for Pakistan, to learn each other's experience on the topic.

CHAPTER SIX

CONCLUSION

6.0 Introduction

This chapter will answer the last research question—What can Pakistan learn from the UK's treatment of terror detainees during pre-charge detention, and vice versa? And, what can these two countries learn from the human rights law in this regard? This is a concluding chapter on the treatment of terror detainees in Pakistan and the UK. Pakistan is the main case-study while UK acts as a comparator to the main case. The study will compare and contrast in greater depth, the treatments in the two countries so that these two countries will be able to learn how to treat terror detainees in a criminal justice system during pre-charge detention. The scholarship will also compare and contrast the practices of both countries on the topic.

Chapter Five arguably filled the niche—the absence of an evaluation on the treatment of terror detainees during pre-charge detention in Pakistan because there was none before this on the topic. This chapter will further support the evaluation in the context of Pakistan by comparing and contrasting the country with the UK's experience on the topic for drawing some useful conclusions or lessons.

Part I provides several recommendations on the treatment of terror detainees during pre-charge detention for Pakistan to learn from and amend its anti-terror laws accordingly. These recommendations are related to: an unnecessary lengthy pre-charge detention period in the country; unlimited interrogation powers; a lack of internal police review; an inaccurate police record; and, the rights of a terror suspect to contact the outside world and other detention conditions such as the quantity and quality of food and drink, sleep, breaks for prayer, attend to personal hygiene, exercise in fresh air, and so on. Chapter Five arguably filled the niche by assessing the treatment of terror detainees

because there was hardly any such evaluation related to the topic. This chapter will put forward useful suggestions to plug the shortcomings or violations of the human rights obligations, together with some useful findings that are more in compliance with the human rights law and principles in the topic. This will help Pakistan's legal response to terrorism to distance itself from the war or executive response to terrorism.

Part II covers the context of the UK. The UK can learn from Pakistan's experience on the principle of promptness. There are other potential areas in which the UK can learn on the treatment of terror detainees during pre-charge detention in Chapter Four, particularly in relation to the lengthy period of the detention (14 days in total) and the limited internal police review during the first 48 hours.

Part III identifies more gaps for further research closely connected with this research project. It also provides implications for other similar jurisdictions to benefit from the findings and recommendations of this research project.

Part I

6.1.0 Lessons for Pakistan

Chapter Five arrives at several useful research findings in the context of Pakistan on the topic. First, the total period of 90-days pre-charge detention in the country is unreasonable. Pakistan's police also detain terror suspects for longer than the permitted period in practice. They can detain a terror suspect for a maximum period of 30-days at a time, which shall not be less than 15-days. Pakistan fully complies with the prompt production of terror detainees to produce them before a court within 24 hours of the arrest; however, such production is often delayed in practice. Second, there is no express law governing the duration of police interrogation in the country. Third, there is no law to regulate police records in terrorism cases. This chapter also finds that police records are often misused in practice. Next, the assessment also finds that there are no internal review

mechanisms in the country's police to remain a check on the coercive powers of an investigation or custody officer. In addition, there is a limited right available to a terror suspect to contact the outside world and even that is also misused in practice. Finally, the detention conditions in which terror detainees are kept during the 90-days are not in accordance with the human rights law and principles.

These findings reveal that there is a grave need for Pakistan to reform its treatment of terror detainees during pre-charge detention. The human rights law and the UK experience in this regard can guide Pakistan to improve its treatment of terror detainees in law as well as in practice.

6.1.1 The Period of Pre-charge Detention

Chapter Five on the treatment of terror detainees in the context of Pakistan concludes that the country can detain a terror suspect in police custody for a total of 90-days during pre-charge detention. The human rights law assessment of the period in this chapter also concludes that such period is unnecessary and arbitrary, and not only violates Article 9 of the ICCPR but also violates the rights to liberty, life and security of person as entrenched in the constitution of Pakistan. In other words, the total 90-days pre-charge 'ought not to be like what it 'is'. This chapter also carried out an assessment of the period in practice and found out that the it is further extended during the operation of the law. The human rights assessment says that the period is unnecessary and arbitrary while the assessment of the law in practice makes it more unnecessary and arbitrary in what it does in practice. Therefore, it is very important that Pakistan should consider reducing its total period of the pre-charge detention.

The human rights law in Chapter Three and the assessment of the treatment of terror detainees in light thereof can offer certain guiding principles that can help Pakistan to reform its pre-charge detention. The country should learn that the purpose of detention

is not penalising or teaching a lesson to a detainee but to gather information for a successful prosecution or release of the suspect.[946] As stated in the previous chapter, there is no third outcome in pre-charge terror detention. The country should also know that there is a marked difference between a legal response to terrorism and the war or executive response to terrorism. A legal response to terrorism, which is different from the war or executive responses to terrorism, seeks to prosecute successfully terror suspects. The 90 days of pre-charge detention, as we saw in Chapter Five, is unnecessary and unreasonable, and it deprives someone of her/his liberty.

Pakistan follows Bruce Ackerman's emergency constitution, providing 60 days detention extendable to another three months.[947] As Macken said, the purpose of pre-charge detention is to 'freeze time'.[948] Liberal approaches to security do not tolerate a perpetual freezing of time. As David Luban said, emergencies are temporary departures and they are not a perpetual phenomenon.[949] Pakistan cannot freeze time to detain a terror suspect for 90-days as a whole in a criminal justice model. If it does so, then the country clearly violates Article 9 of the ICCPR and its own constitution protecting fundamental rights. Many have objected to the 90-day period of the pre-charge detention.[950] So, the country should consider reducing its total period of the pre-charge detention. Also, is noted in Chapter Two, human rights law states there should be a reasonable period for the pre-charge detention.

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[946] Macken, C (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and international Human Rights Law, New York: Routledge.
[947] Ackerman, B. (2004) "The Emergency Constitution", Yale Law School
[948] Macken, C (2011) Counter-terrorism and the Detention of Suspected Terrorists: Preventive Detention and international Human Rights Law, New York: Routledge.
[949] Luban, D. (2005) Eight Fallacies about Liberty and Security in Human Rights in the 'War on Terror' edited by Wilson, R.A. New York: Cambridge University Press.
[950] Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation, 2nd ed. Oxford University Press: New York. See also, Dickson, B. (2009) "Article 5 of the ECHR and 28-day Pre-charge Detention of Terrorist Suspects", Queen's University Belfast. NILQ 60(2): 231-244. Awan, I. (2011) "The Erosion of Civil Liberties: Pre-charge Detention and Counter-terror Laws", The Police Journal 84. Greer, S. (2008) "Human rights and the Struggle Against Terrorism in the United Kingdom", European Human Rights Law Review 2.

What will suffice as a reasonable period in the context of Pakistan then? If we look at this from a liberal interpretation of the UN Human Rights Committee, then the total period of the pre-charge detention should not be more than a 'few days'.[951] In other words, there should be a small number of days to detain a terror suspect and gather information from them to help change a reasonable suspicion into a concrete suspicion. In other words, a terror suspect should be charged or released within a few days. This period, in the eyes of the UN Human Rights Committee, is less intrusive on liberty and is, therefore, reasonable. This reasonable period is a peculiar feature of a legal response to terrorism which differentiates it from a war or executive response to terrorism providing indefinite and lengthy detentions respectively.

Seven days should, perhaps, suffice the 'few days' requirement of the UN Human Rights Committee. But how can Pakistan suddenly reduce the periods of its current pre-charge from 90-day to seven days? This apparently seems an uphill task for the country for two reasons. First, reducing the 90-days to seven days would overburden the police to carry out that efficient investigation in that comparatively shorter period to gather sufficient evidence in making the decision to either charge or release the detainee. The seven days reduction of the pre-charge detention would require Pakistan to altogether revamp its criminal justice system; particularly the investigation and prosecution departments, which would require more time. Second, as was noted in Chapter Five, in ordinary cases a suspect can be kept in police custody for a total of 15-days. It is understandable from the conservative approaches to security and their stance on the treatment of terror detainees in Chapter Two that terrorism cases require more time to be investigated due to the unique threat that it poses to the national security. Consequently,

[951] *The Human Rights Committee* (2014), General Comment No. 35, CCPR/C/GC/R.35/Rev.3, para 33, available at http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsrdB0H1l5979OVGGB%2bWPAXjdnG1mwFFfPYGIlNfb%2f6T%2fqwtc77%2fKU9JkoeDcTWWPIpCoePGBcMsRmFtoMu58pgnmzjyiyRGkPQekcPKtaaTG

in the case of Pakistan, the total period of the pre-charge detention in terrorism cases cannot be less than the total period of the detention in ordinary cases—this is illogical.

Owing to the two main issues associated with the reduction of the total period of pre-charge detention in Pakistan to seven days, how then can the country achieve this aim? It is suggested to achieve the target slowly by learning from the UK's experience. There was a time when the UK's pre-charge detention period was 28 days.[952] At that time, there were two opinions—conservative and liberal—the former wanted to extend the period further while the latter wanted to reduce it.[953] Conservative proponents in the UK made two attempts to increase the period. Gordon Brown, the then Labour PM but who supported conservative attitudes, decided to elevate the length of pre-charge detention to 42 days while David Cameron, the Conservative PM after Gordon Brown, was in favour of elevating it to 90 days.[954] However, none of these attempts succeeded. Eventually, the 28 days detention was reduced to a total of 14 days.[955] Therefore, keeping in view the UK parliament's resistance to increasing the period—instead, it reduced it—Pakistan should immediately start thinking to reduce its total period of the pre-charge detention. What Pakistan is recommended to do is to start thinking reducing the total period of pre-charge terror detention. Pakistan should bear in mind its obligations to fight against terrorism and its parallel obligations to respect individual human rights.

In contrast to the UK's experience and liberal values to reduce the total period of the pre-charge detention, Pakistan's own anti-terror laws state that a terror investigation

[952] Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation, 2nd ed. Oxford University Press: New York. See also, Dickson, B. (2009) "Article 5 of the ECHR and 28-day Pre-charge Detention of Terrorist Suspects", Queen's University Belfast. NILQ 60(2): 231-244. Awan, I. (2011) "The Erosion of Civil Liberties: Pre-charge Detention and Counter-terror Laws", The Police Journal 84. Greer, S. (2008) "Human Rights and the Struggle Against Terrorism in the United Kingdom", European Human Rights Law Review 2.
[953] Ibid.
[954] Ibid.
[955] Blackbourn, J. (2014) "Evaluating the Independent Reviewer of Terrorism Legislation", Parliamentary Affairs 67, The University of New South Wales, Australia

must be completed within 30 days after arrest.[956] This is an obligation in the country to respond to terrorism through its criminal justice system. This is a positive obligation to gather information within 30 days either to charge or release the terror suspect. Therefore, the 90-day pre-charge detention is a clear contradiction to the positive obligation of Pakistan to complete a terrorism investigation within 30 days. While the country's 90-day period is so high, it should first consider reducing the total to 30 days, which is a mandatory period within which a completed police file must be submitted with the court. In that 30-days, Pakistan should decide whether to charge or release the detainee.

After some time, perhaps within couple of years, Pakistan could further reduce the new 30 days period of the detention to 15 days. The country's commitment and perpetual adherence to the reduction practice should continue until the total period is cut down to what is reasonable in the eyes of the human rights law; that is, a few or seven days. This will bring Pakistan into compliance with the UN Human Rights Committee's 'few days' pre-charge detention. However, one can counter-argue by pointing out that the ordinary laws of the country allow for 15 days pre-charge detention.[957] This is a genuine hurdle. This research, therefore, exposes another gap in the knowledge, which is that the 15 days pre-charge detention in ordinary cases is too high. It is even higher than the UK's current total period of pre-charge detention (14 days in total) in terrorism cases. It is suggested to carry out future research in this area to assess the total period of pre-charge detention of Pakistan related to ordinary criminal cases only within similar jurisdictions. The 15-day pre-charge detention period in ordinary criminal laws of Pakistan can be traced back to British rule in India. It was introduced in 1898 and still has not been critically evaluated in light of the UDHR and the ICCPR. If Pakistan is to ever achieve a seven days total period of pre-charge detention in terrorism cases, then it must reduce first

[956] *Anti-Terrorism Act 1997,* Section 19 (1); available at http://www.molaw.gov.pk/gop/index.php?q=aHR0cDovLzE5Mi4xNjguNzAuMTM2L21vbGF3L3VzZXJmaWxlczEvZmlsZS9BbnRpLVRlcnJvcmlzbSUyMEFjdC5wZGY%3D

[957] The Code of Criminal Procedure 1898 with commentary, Lahore: PLD Section 167 (2) p. 246

the detention period of ordinary offences to save the argument. No doubt, Pakistan needs to adhere to its human rights obligations and learn from its comparator (the UK) to make it a reality.

What then can Pakistan learn from the human rights law and the UK's experience on the police custody, at a time, of a terror suspect? Chapter Five found that Pakistan can keep a terror detainee in police custody for a maximum of 30-days at a time. Chapter Three noted that a terror suspect should not be detained for more than two days at a time in police custody, as per the body of human rights law. It was also noted in Chapter Four that, currently, UK police can keep a terror suspect in custody for a maximum of six days at a time. Consequently, Pakistan seems far from fulfilling this human rights obligation because there is a big difference between 30-days and two days police remand at a time. However, although the UK's six days is in compliance with the human rights law, which ideally requires two days, it does not seem to be as far away from the requirements of human rights law as Pakistan's 30-days.

If Pakistan has to comply with the human rights law, which requires two days police custody, then per its current 90-days total period of pre-charge detention would require issuing a total number of 45 further warrants of detention in police custody. However, if Pakistan reduces its current total period of 90-days of pre-charge detention to the suggested 30-days, then it would issue a total number of 15 further warrants of detention—that is, two days police custody at a time spread over the total period of the suggested 30-days pre-charge detention. However, if Pakistan follows the UK's six days further detention at a time in police custody, then it would require a total of 15 further detention warrants spreading over a total period of 90-days pre-charge detention. In this case, if Pakistan reduces the total period of 90-days pre-charge detention to a new suggested total period of 30-days and the country follows the UK's period of police

custody (i.e. six days at a time), then Pakistan would have to issue a total of five further warrants of detention spread over a total period of 30-days.

The assessment of the treatment of terror detainees in Pakistan in Chapter Five identified another dominant conservative attitude in the pre-charge detention regime of Pakistan—which is the country's mandatory minimum period of detention in police custody of 15 days. This minimum benchmark period is even greater than the total period of the pre-charge detention in the UK. The 15-days obligatory minimum period of one remand in police custody is unreasonable, as concluded in Chapter Five, and Pakistan ought to repeal it if the country is to fulfil its human rights obligation. How can Pakistan repeal the minimum 15 days obligatory period in police custody? The country should look again at the UK's pre-charge detention management. There is no such provision for obligatory minimum restriction in the UK's law on the pre-charge detention period. The UK courts can give a terror suspect in police custody from one to six days at a time. If Pakistan lowers its total 90-day pre-charge detention period to 30 days and then sticks to the six days in police custody at a time, it will still surpass the 15 days mandatory minimum bench mark detention.

As was noted in Chapter Four, there is no gap between the law and its enforcement on the period of pre-charge detention in the UK. However, Chapter Five reveals that in Pakistan terror detainees are kept in detention for more than the total permitted period (i.e. 90-days). Police excesses have also been reported when a terror detainee is not produced within 24 hours of their arrest produced before the court. As mentioned in Chapter Five, detainees are often produced late because the police in Pakistan torture them, which leave marks on the detainee's body. Consequently, the police wait until the torture marks have disappeared before producing the detainees before the court. Therefore, Pakistan must make sure, just like the UK, that there is no gap between the country's law and practice on the period and management of the pre-charge detention.

Chapter Five also found that the lengthy period of pre-charge terror detention (90 days in total) does not prove to be useful. There is only 10% successful prosecution rate in the country. The chapter also noted that there is no data available on pre-charge terror detention for analysis. If there is any data in the country, then a research and development wing in police department should add information as to when a terror detainee is formally charged soon after his/her arrest. If a higher percentage of the arrested persons are charged, say for example, within a week, then the country must immediately reduce its total 90-day pre-charge detention to a week.

In conclusion, although Pakistan already follows the human rights standard on the prompt production of a terror detainee (i.e., producing a terror suspect before a court within 24 hours), it should ensure that the principle is not violated in practice. All unexplained delays should be criminalised. The country should also reduce its 90-days period of the pre-charge detention to a new total period of 30-days spread over a total number of five further detention warrants, each warrant not more than six days at a time. This would allow Pakistan to fulfil all of its human rights obligations related to the management of the pre-charge detention in law and in practice. In addition, Pakistan should put in place a system of compensation for suspects who have been unlawfully detained. Once Pakistan has adopted all of these suggestions into its law and practice, then it would be able to confidently reply to the objections raised by the UN Human Rights Committee on the total period of the pre-charge detention in terrorism cases.[958] Pakistan will also be able to confidently say that it understands a clear difference between a legal response to terrorism and the war or executive response to terrorism.

[958] The Human Rights Committee (15 November 2016) "List of Issues in Relation to the Initial Report of Pakistan", CCPR/C/PAK/Q/1

6.1.2 Police Interrogation and Questioning

Chapter Five in the context of Pakistan found that the country's anti-terror laws do not provide the regulation of police interrogation sessions. There is a complete absence of the law on this topic. Perhaps, this has been left to the discretion of law enforcement agencies. This attitude supports Posner's coercive interrogation.[959] This is perhaps why the torture and mistreatment of terror suspects in the country is endemic, as concluded in Chapter Five. The human rights law and the experience of the UK provides a good example that Pakistan could learn from.

First, there should be system of codes and schedules in Pakistan enlisting in detail how to carry out a terror investigation. These should also stipulate the length of the interview with the terror suspect. In the UK, a police officer cannot interrogate a terror suspect for more than two hours. This is a safeguard to protect a terror detainee in police custody. As noted previously, a terror suspect in Pakistan can remain in police custody for a total of 90-days. If this detainee is thoroughly interviewed, because currently there are no time limits to regulate police interrogation sessions in the country, then it will definitely amount to arbitrary treatment because it will be coercive. If Pakistan keeps its 90-day total detention period then it should not leave the interrogation session duration to the discretion of police. This state of affairs maximises the chance for torture and other mistreatment at the hands of police. As mentioned by Luban, torture needs more time because a terror suspect is kept under a constant and prolonged fear of death, injuries to vital organs, or emotional torture.[960] The law must provide a time frame for when to start and end such interrogations. It is suggested, in the presence of 90-days detention period, that Pakistan should interrogate a terror detainee for not more than 30 minutes at a time because the 90-day detention as a whole gives more time to police to carry out their

[959] Posner, R. A. (2006) Not a Suicide Pact: The Constitution in a Time of National Emergency, Oxford University Press: Oxford and New York.
[960] Luban, D. (2008) "Unthinking the Ticking Bomb", Working Papers George Town University Law Centre.

investigation more effectively. If we look at the ratio of the pre-charge detention total period to the length of police interrogation period in the UK, then we can see that it is a ratio of 14-days to two hours. If we extend the same ratio to Pakistan, it approximately comes to the ratio of 90-days to 30 minutes. The country should give a suspect a 15-minute break between interrogation sessions. If the country lowers its detention period to 30 days in total, then it could increase the interrogation sessions to one hour at a time. This mirrors the UK's ratio of 14 days detention to two hours interrogation at a time.

Pakistan must video record all police interrogations. There should be nothing off the record, as in the UK.[961] No interrogation should be permitted during the night. The codes and schedules should also provide for the conditions of the place where police interrogations are carried out. These places must be lit and maintained to a comfortable temperature. A detainee, as in the UK, should not be compelled to either stand up during the interview or be required to maintain any other stress positions. It is hoped that all these safeguards will improve the treatment of terror suspects in Pakistan. The country should not only enact laws in this regard but it should also make sure that the laws are truly reflected in practice. There are many other important procedural safeguards that are lacking in the country's anti-terror laws regulating the treatment of terror suspects, which will be discussed next.

6.1.3 Internal Police Review Mechanisms

Unfortunately, there is no internal police review mechanism during pre-charge detention in the anti-terror laws of Pakistan. As mentioned in Chapter Five, a terror suspect is handled by custody and investigating officers. There is no review officer to check the actions of the custody and investigating officers in the handling or treatment of

[961] Walker, C. (2009) Blackstone's Guide to the Anti-terrorism Legislation, 2nd ed. Oxford University Press: New York.

terror detainees in Pakistan. A police review mechanism is an important procedural safeguard, as mentioned in Chapters Four and Five. As described in Chapter Five, this saves a terror detainee from the cruelty and arbitrary acts of police. It is strongly suggested that Pakistan should provide a police review mechanism to save terror suspects from possible police torture and other excesses. The UN Human Rights Committee has asked in its List of Issues for Pakistan to provide the Committee with the criteria of placing a suspect in police custody.[962] The Committee has also asked Pakistan to provide it with the information on the mechanisms in place to guarantee the protection and safety of terror suspects from the law enforcement officials.[963] These come under the police review mechanism, which is currently absent in the anti-terror laws of Pakistan. It is suggested the country should learn from the human rights law and the UK's practice on this. Just as any country has an obligation to fight terrorism, for which it makes arrests and allows detention, similarly there is a corresponding obligation on the country to safeguard the residual liberty and security of a terror suspect in police custody.

Pakistan should incorporate a police review mechanism into its anti-terror laws. There is ample opportunity for the country to learn from the UK's experience. Pakistan should create the office of a review officer by enacting the duties and powers of the review officer, who will not only keep an eye on police excesses, from time to time, but will also make important decisions pertaining to granting further detention of a terror suspect in police custody. In the UK, there is provision for police review but, unfortunately, it is limited to the first 48 hours in police custody. Pakistan should learn from the UK to provide for a police review mechanism but the country should also reflect more liberal attitudes and allow the review methods to cover the total period of the pre-charge detention. The first review should be in the first 12 hours of the arrest followed by

[962] The Human Rights Committee (15 November 2016) "List of issues in relation to the initial report of Pakistan", CCPR/C/PAK/Q/1
[963] Ibid.

subsequent reviews after every 48 hours. The review officer should also have the power to make a decision to release a terror suspect or forward his/her case for further detention to the court. If a review officer recommends a terror suspect for further detention, then he or she should inform the suspect about this decision. The review officer must be satisfied before releasing the suspect that there is no reasonable ground to charge him and that he is *prima facie* innocent. If the suspect is innocent, then he or she should be told that he has an enforceable right to compensation. The review officer must also be satisfied before a terror suspect is recommended for further detention that there are reasonable grounds on which to charge the suspect but further interrogations are needed for clarification and that the investigation is carried out 'diligently and expediently'.[964] The review officer should also remind detainees about the reasons for their arrest and of other rights, such as to contact their family members or friends. The review officer should make sure that the detainees are treated humanely at all times. The review officer should also make sure that any voluntary statement, disclosure of facts or confession made by the suspect is signed by the suspect. If the suspect refuses to do so, then the confession should be accompanied with a note by the investigating officer signed in the presence of the review officer. The incorporation of the police review mechanism in Pakistan's anti-terror laws will improve the treatment of terror detainees during pre-charge detention. The country should also make sure that the review mechanism is professionally carried out in practice.

6.1.4 Police Records

Chapter Five assesses Pakistan's police records and the way that it is maintained. Even in this modern technological era, according to the assessment, the country still adheres to manual record keeping. The study blames police records for keeping the pre-

[964] Walker, C. (2009) Blackstone's Guide to the Anti-Terrorism Legislation, 2nd ed. Oxford University Press: New York.

charge detention period so lengthy, which renders it unnecessary. In addition, most of the time the record is found inaccurate, resulting in more acquittals.[965] To overcome this, Pakistan must revamp its police record system. It will improve the rate of successful prosecutions, and it will also serve as a technological check on police mistreatment of terror suspects. It will keep account of the police actions that are in excess of their powers, in addition to keeping a record of the criminals' histories. The detainee or his or her legal counsel should be given copies of the record, free of charge, from arrest to release.

Pakistan should understand that the police record plays very important role in the administration of criminal justice. The country should not only legislate on police records but it should also ensure that the records are professionally maintained. This will not only improve the human rights image of the country but also will lead to increase in the successful rate of prosecution in terrorism cases, which at present is less than 10% (as mentioned in Chapter Five). Pakistan should also understand that the legal response to terrorism is a fight against terrorism, which relies on the successful prosecution of terrorism cases and which is different from the war or executive responses.

6.1.5 Rights of a Terror Suspect to Contact the Outside World

It was noted in Chapter Five that Pakistan's anti-terror laws expressly recognise a terror suspect's right to contact his lawyer and doctor. It also noticed that this right has been violated in practice in the past. Perhaps this happens because there are no expressly detailed provisions in the anti-terror laws of the country governing this right. What Pakistan should learn from its human rights law assessment in Chapter Five and the UK's experience is that the country should amend the current law and incorporate into it the

[965] Case study of Muhammad Akhtar published in "Terror on Death Row: The Abuse and Overuse of Pakistan's Anti-terrorism Legislation" (2014) p. 15 and 16 Justice Project Pakistan and Reprieve, available at http://www.jpp.org.pk/upload/Terror%20on%20Death%20Row/2014_12_15_PUB%20WEP%20Terrorism%20Report.pdf

full meaning and scope of this right to the human rights standards. For example, which outsiders can a terror detainee contact? There should be different categories, such as relatives, friends, colleagues, lawyers, medical officers, interpreters, religious scholars and visitors from governments and NGOs, and so on. The law should make it incumbent upon the police to inform outsiders on the part of the detainee. It should also be made clear how to inform outsiders: phone call or through a formal letter or informing them in person. The law should also make clear when to contact the outsiders. Such contact should not be unnecessarily delayed. There should be a detailed list of categories describing extraordinary situations in which such access may be denied. All these should come under a consolidated code, such as the UK's Code H. The code should mention the visitors' time and duration of each visit, and so on. There should also be a complaint system for the terror detainees, which should show the full procedure of how to use it under the code if they are not given the right to contact the outside world. These will help prevent instances of enforced disappearance and other forms of incommunicado detention in Pakistan. This will change Pakistan's current legal response to terrorism rather than reflecting the war or executive paradigm of terrorism in its criminal justice system. In addition, Pakistan's human rights image will *ipso facto* improve.

6.1.6 Detention Conditions

Chapter Five found that there is no provision in the anti-terror laws of Pakistan that govern conditions (food, sleep, prayer, reading or exercising, etc.) of detention centres in which terror suspects are kept for 90-days. It was also noted that terror detainees are kept in awful conditions. Chapter Five concluded that Pakistan violates its human rights obligations by not making any special rules to regulate the quality and portions of food for terror detainees, allowing enough time for sleep, providing regular medical care, providing breaks for prayer and personal hygiene; providing reading or writing facilities,

or allowing exercise in the fresh air and at their free will. The UN Human Rights Committee in its recent List of Issues has asked Pakistan to provide more information on the improvement of detention conditions in the country.[966] It is time for the country to fulfil its human rights obligations on the topic and to treat terror suspects with humanity and dignity, at least during their pre-charge detention period. The country should also bear in mind that a terror suspect is innocent until proven guilty.

In summary, Pakistan should learn not only from the human rights law on the treatment of terror detainees but also from the UK's Code H, providing clearer rules governing the treatment of terror suspects in detention centres. Pakistan should make a similar code, keeping in mind its human rights obligations and monetary budget, to that of the Code H. Why should Pakistan not do so when it is its positive duty to save people, including terror suspects, on its soil from arbitrary arrest and detention? This will also allow society to not be divided into two or more 'identifiable groups' paying for the cost of security. Pakistan is also responsible for guaranteeing the right to life and security of person without discrimination. The proposed code should clearly define a single portion meal and list down all the ingredients and the quantity thereof for one person at one time. Similarly, it should list how many times a day, bearing in mind its human rights obligations and monetary strengths, meals should be provided to a detainee. Likewise, it should also detail how much tea and how many times in 24 hours a terror suspect can be provided with tea. In addition, breaks for personal hygiene, reading and writing books and so on, offering prayers and open-air exercise should also be prepared and displayed inside the premises. Finally, Pakistan should draft and display a complaint procedure to address the detainees' grievances, if any. The country is not only duty bound to enact

[966] The Human Rights Committee (15 November 2016) "List of Issues in Relation to the Initial Report of Pakistan", CCPR/C/PAK/Q/1

these laws but it should also make sure that there is no gap between the law and its practice.

Part II

6.2.0 Lessons for the UK

The evaluation in Chapter Four in the context of the UK found the country follows most of its human rights obligations when treating terror detainees during pre-charge detention. Hence, this chapter concludes the UK can be used as a suitable comparator to learn lessons from. However, the chapter also revealed a number of findings where there is a need for the country to further improve its treatment of terror detainees during pre-charge detention. First, the 14-days total pre-charge detention period is not in compliance with the human rights law. Second, the country's maximum allowed police custody of a terror detainee is six days at a time. Although this is not against the human rights law, the period can be further reduced to further improve the country's law and practice. Third, on the prompt production of a terror detainee, although the country does not violate the standards set by the human rights law, there is still more room to produce a terror detainee before a court more promptly. Finally, the evaluation also finds that the country does not allow for the internal police review mechanism to run throughout the total 14-day period. The human rights law and Pakistan's experience can offer the UK some examples to learn from and further improve its treatment of terror detainees during pre-charge detention.

6.2.1 The Period of Pre-charge Detention

It was noted in Chapter Four that the UK can detain a terror suspect in the administration of criminal justice system for a total period of 14-days. The UK's current pre-charge detention period may not be the highest but it is definitely the highest in the

comparable jurisdiction, as noted from the assessment on the treatment of terror detainees in the UK in Chapter Four. The UN Human Rights Committee has raised its concern about the country's longer pre-charge detention period.[967] Liberty has also raised its concern over the 14-day pre-charge detention period.[968] What the UK should learn from the human rights law is to consider a further reduction in the total detention period. The UK should take a bold step and amend its Protection of Freedoms Act 2012 to allow a seven-day total pre-charge detention period. In the UK, 92% of suspects are charged within a week.[969] If this is the case, then why should there be a deprivation of liberty for an additional week? Therefore, the UK should seriously consider reducing its current total period of pre-charge detention, which is currently 14-days, to a total of seven days. It is highly likely that if the UK implements this revision, it would no longer receive objections from the UN Human Rights Committee on this point. The seven days total period seems just and reasonable, and there is also no big gap between the country's total period of the pre-charge detention in terrorism and ordinary criminal law cases. The country's ordinary criminal law allows a total pre-charge detention period not more than 96 hours (i.e. four days).[970] The seven-day detention period in terror cases is not even double that of the ordinary detention period.

The UK can legally keep a terror detainee in police custody for a maximum of six days as previously found out in Chapter Four. If the UK still commits to keep her total period of the pre-charge detention as 14-days, then it should minimise the period of each warrant of detention in police custody. If two days at a time is considered to be a

[967] The Human Rights Committee Concluding Observation on the Seventh Periodical report of the UK, CCPR/C/SR.3168 and 3169. "The Committee is also concerned that the Protection of Freedoms Act 2012 maintains the 14-day limit on pre-charge detention in terrorism cases…The State Party should …consider reducing the maximum period of pre-charge detention in terrorism cases."
[968] Liberty, "Extended Pre-charge Detention", available at https://www.liberty-human-rights.org.uk/human-rights/countering-terrorism/extended-pre-charge-detention last accessed 05 July 2016
[969] Anderson, D (2013) "The Terrorism Acts in 2012" see para 8.10 on page 79 available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/243472/9780108512629.pdf
[970] PACE 1984 section 44 available at http://www.legislation.gov.uk/ukpga/1984/60/section/44

reasonable period for one remand in police custody, then the UK should allow a total number of six warrants of further detention spreading over the country's total period of 14-days pre-charge detention. However, if the advised seven days period of the total pre-charge detention is accepted, then there will be a total number of three further warrants of detention spreading over the total period of the newly suggested pre-charge detention which is seven days. This will function as an important safeguard to protect a terror suspect from ill-treatment and arbitrariness during police custody.

Chapter Four assessed and concluded that the UK police fully comply with the standards of promptness mentioned in the ECHR and ICCPR in terrorism cases. However, the UK could learn from Pakistan's example and produce a terror suspect before a court within 24 hours, which is currently 48 hours in the UK. While Pakistan has been hit worse by terrorism than the UK, if Pakistan's law allows for the production of a terror suspect within 24 hours then why should the UK not do so?

The UK is a role model when it comes to the enforcement of the laws related to the management of the pre-charge detention. The assessment in Chapter Four in the context of the UK did not find much evidence where the country's practices in this regard are in violation of her laws on the management of the total period of the pre-charge detention, the period a terror detainee is kept in police custody at a time, and the prompt production of a terror detainee for the first time before the court.

In summary, at present a terror suspect can be detained for a total period of 14-days, of which a total number of two further warrant of detention maximum of six days at a time are allowed and a terror detainee is produced before a court within 48 hours. If the UK accepts the suggestions in this part, then it should reduce its total period of pre-charge detention to seven days there is a possibility that a terror suspect would remain in police custody for a total number of two further warrant of detention or police remand each for a maximum period of three days at a time after a review officer and court are

satisfied that further detention should be authorised and the prompt production of the terror suspect should be reduced to 24 hours. Consequently, this research suggests that the UK should consider halving its current 14-days total detention to seven days; six days detention at a time to three days; and 48 hours to 24 hours.

6.2.2 Police Interrogation and Questioning

The UK is one of the best examples to learn from when it comes to the treatment of terror suspects during police interrogation for the administration of criminal justice. As mentioned in Chapter Four, the UK has enacted codes and schedules that provide minute details regarding the handling of terror suspects. The treatment is suspect-centred for several reasons: the police do not compel a terror suspect to stand up during interrogations; their cell is lit and heated, the police conduct interviews during the day time; a suspect takes short and long breaks, for which the investigating officer usually stops questioning the suspect; and, the duration of interrogations is not more than two hours at a time. It has also been noted in Chapter Four that the UK police do not exceed their actions. They remain within the bounds of law to carry out their duties. All these are true as long as a terror suspect remains on the soil of the UK. The laws and actions of the UK police complies with its human rights obligations.

However, all that changes when the UK's law enforcement agencies operate outside the country. Although this is not the focus of this research, it is necessary to note that the UK is not a role model in all sorts of interrogations. Unfortunately, the UK law enforcement agencies, as mentioned in Chapter Four, are accused of being complicit in the torture and other ill-treatment of the terror detainees interrogated overseas. Various NGOs and the UN Human Rights Committee have substantiated strong cases against the

UK in this regard.[971] The UK has accepted these allegations and it has even publicly apologised for the wrongful actions.[972] If the UK adheres to conducting its overseas interrogations to the same standards as it observes on its soil when interrogating terror detainees, then this will surely improve its human rights record of the country. If so, then the UK would not have to publicly apologise and pay high reparation costs, as were paid in the case of Baha Musa.

6.2.3 Internal Police Review Mechanisms

The internal police reviews (initial and subsequent) are useful procedural safeguards in the UK to protect a terror suspect from abuses and mistreatment from the police. As mentioned previously, these safeguards are available to a terror suspect during his or her first 48 hours in police custody. The assessment in Chapter Four in the context of the UK can provide some guiding principles for the UK in this regard. Another lesson the country should learn is to allow the police to review the treatment of terror suspects from arrest to the end of the pre-charge detention period. At present, it will be administratively more difficult and expensive to cover the entire 14-days detention and review handling of the suspect. However, if the country reverts to the seven-day detention period, then it would be less difficult to carry out such reviews. Chapter Four on the UK's treatment of terror suspect regards the UK's internal police review mechanism as a liberal ideal and if it is applied throughout the period of the pre-charge detention, then it might become exemplary for other countries to follow.

[971] Turns, D. "The Treatment of Detainees and the "Global War on Terror": Selected Legal Issues", International Law Studies, Vol 84. See also The Seventh Periodical Report submitted by the United Kingdom before the Human Rights Committee in 2013; See also The Amnesty International Report (2006) United Kingdom – Human Rights: A Broken Promise, available at http://www.statewatch.org/news/2006/feb/ai-uk-report.pdf p. 66. See also WWW.Bahamousainquiry.org
[972] Ibid.

6.2.4 Police Records

The UK keeps up-to-date records of a terror suspect during police custody. According Chapter Four on the treatment of terror detainees in the UK, a custody officer is responsible for the accuracy and safety of the record. This chapter also found that an investigating officer assumes the duties of a custody officer when interrogating a terror suspect.[973] Most importantly, there is nothing 'off the record' when an investigating officer questions a terror suspect. The evaluation did not find a gap between the law and police practices when maintaining the police record. Therefore, the UK laws and practices are in compliance with human rights law when it comes to its obligations on the police record.

Chapter Four also highlighted the discrepancy in it its overseas interrogation of terror suspects and criticised the UK's law enforcement agencies because they did not keep proper accounts of their interviews. Although these were overseas operations and were part of an episode of the war paradigm of terrorism. These operations are not the focus of this research. It is important here to differentiate between the UK's police record in a legal response to terrorism from the war or executive paradigm of terrorism. The evaluation brought to the fore that the UK's agencies argued that they were not responsible for the custody of the detainees and, therefore, did not bother to keep records of the interviews in the overseas operations. The UK's episode of the overseas human rights violation in terrorism cases is seemingly due to the lack of keeping interview records. If the UK looks at its own maintenance of the police record in its legal response

[973] Blakely, R. and Raphael, S. (2016) "British Torture in the 'War on Terror'" European Journal of International Relations 1 – 24. "In other cases, record keeping
by officers on the ground was so poor that there were no interrogation records or records
with no or limited details of the welfare of the prisoner concerned." See also The Report of the Detainee Inquiry (2013) available at http://www.detaineeinquiry.org.uk/wp-content/uploads/2013/12/35100_Trafalgar-Text-accessible.pdf last accessed on 28 October 2016

to terrorism, then it can adopt this example in its overseas interviews if it still intends to pursue the war on terror abroad.

6.2.5 Rights of a Terror Suspect to Contact the Outside World

Chapter Four did not find anything in the rights of a terror detainee to contact the outside world that is against the human rights law. Instead, it appreciated the UK's stance, which even reminds a terror suspect of his or her right to contact the outside world (i.e., relatives, friends, solicitors etc.). The assessment did not find any gap in the law and the practice of the police. Here, the UK is very clear in its legal response to terrorism, which requires a terror suspect to contact the outside world, including his or her lawyer, to prepare her/his defence.

6.2.6 Detention Conditions

Similarly, Chapter Four also observed that terror detainees in the UK are kept in good conditions during their pre-charge detention. As long as they are in police custody, they are provided with nutritious food, enough hours to sleep (eight-hour rest), prayer time, exercise facilities, and short breaks for tea and personal hygiene, and so on. This humane treatment of terror suspects during police custody is welcomed and act as a useful comparator for other countries to follow.

Part III

6.3.0 Further Research and Implications

If Pakistan follows the proposals for reform in Part I of this chapter in its anti-terrorism laws governing the treatment of terror suspects, then this will safeguard liberty

for all during the pre-charge detention period. However, further research is required to protect liberty during all stages of a terrorist trial in Pakistan. How then should liberty be protected from intelligence gathering, surveillance and profiling? This research will only be able to help to protect terror suspects during pre-charge detention. Therefore, this protection is only available for a limited time—30 days, after arrest, but only if Pakistan reduces her current 90-days detention. What treatment do terror suspects experience during post-charge detention? Bokhari has mentioned that many terrorists have waited for years for their trial to commence.[974] What about the treatment of the terror suspects after conviction? Therefore, there is a need for further research to evaluate all of the anti-terrorism laws in Pakistan in light of the human rights law and principles. This should overhaul the anti-terrorism laws and regimes of Pakistan, fundamentally changing its more aggressive and dominant conservative attitudes to more liberal ones. The residual liberty of terrorists will be protected throughout. Pakistan has recently promised to reform its criminal justice system with a particular focus on the reformation of anti-terrorism laws.[975] Ideally, experts in Pakistan should bear in mind this case-study on the treatment of terror detainees when reforming Pakistan's legal response to terrorism.

Chapter Five found that Pakistan tends to prefer to reflect the war or executive conception of terrorism in its legal response to terrorism. It is, therefore, recommended that Pakistan should clearly differentiate its criminal justice response to terrorism from its war or executive responses. The conservative approaches to security that were described in Chapter Two might prove useful in the war paradigm of terrorism or an executive response to terrorism because these responses are directed to disrupt terrorism rather than prosecuting terrorists. However, a legal response to terrorism requires the

[974] Bokhari, S.W. (2013) "Pakistan's Challenges in Anti-terror Legislation", Centre for Research and Security Studies.
[975] Abbasi, A. (2016) "Criminal Justice System to be Overhauled", The News available at https://www.thenews.com.pk/print/155038-Criminal-justice-system-to-be-overhauled last accessed 20 March 2017

criminal justice system to act on certain liberal ideals to make that defeat of terrorism possible. However, if the country shifts from more conservative to more liberal attitudes in its legal fight against terrorism, then this will have implications for countries with similar jurisdictions, such as India. All of those states which currently adhere to hard-nosed security approaches will learn from Pakistan's change of attitude and will follow the same course. For example, India can detain a terror suspect for 180 days.[976] India's treatment of terror suspects has been the subject of constant criticism.[977] Likewise, in Israel a terror suspect can also be detained for 180 days.[978] Israel's counter-terror powers often lead to human rights violations.[979] Others, such as Iran, allow pre-charge detention for 120 days;[980] and Afghanistan authorises 75 days detention,[981] which often violates the detainee's human rights for the sake of security.[982] We can learn from Pakistan's example that these countries' current dominant conservative attitudes should be changed to more liberal attitudes. This will enable the human rights of terror detainees to be protected throughout the world. Consequently, there will cease to be discrimination between 'they'

[976] The Prevention of Terrorism Act of India, 2002 section 49 (2) b available at http://www.satp.org/satporgtp/countries/india/document/actandordinances/POTA.htm last accessed 20 March 2017; see also Sen, S. (2015) "Anti-terror Law in India: A Study of Statutes and Judgements, 2001 – 2004" Vidhi Centre for Legal Policy, p. 64

[977] Human Rights Watch, 2016 annual report on India available at https://www.hrw.org/world-report/2017/country-chapters/india last accessed on 20 March 2017

[978] Blum, S. (2008) "Preventive Detention in the War on Terror: A Comparison of How the United States, Britain, and Israel Detain and Incapacitate Terrorist Suspects", The Journal of the NPS Center for Homeland Defense and Security available at https://www.hsaj.org/articles/114 ; see also Lokesson, M. (2013) "How the World Treats Terrorist Suspects", National Geographic available at http://news.nationalgeographic.com/news/2013/13/130423-dzhokhar-tsarnaev-boston-marathon-bombing-terrorist-rights-detention/ last accessed 20 March 2017

[979] Human Rights Watch, 2016 annual report on Israel available at https://www.hrw.org/world-report/2017/country-chapters/israel/palestine last accessed 20 March 2017; see also Ma'an News Agency (2016) "Israel's Knesset passes 'draconian' anti-terrorism law", available at https://www.maannews.com/Content.aspx?id=771897 last accessed on 20 March 2017

[980] Human Rights Watch (2013) "Iran: Guarantee Rights of Terror Suspects", available at https://www.hrw.org/news/2013/02/22/iran-guarantee-rights-terror-suspects last accessed 20 March 2017

[981] United States Department of State, 2015 Country Reports on Human Rights Practices - Afghanistan, 13 April 2016, available at: http://www.refworld.org/docid/5711040d4.html accessed on 20 March 2017; see also https://www.unodc.org/tldb/pdf/Afghanistan_anti-terrorism_law_2008.pdf and https://www.unodc.org/res/cld/document/criminal-procedure-code_html/Criminal_Procedure_Code_-_Endorsed_by_President_EN_2014_03_14_with_TOC.pdf

[982] Ibid; see also Human Rights Watch (2013) "Iran: Guarantee Rights of Terror Suspects", available at https://www.hrw.org/news/2013/02/22/iran-guarantee-rights-terror-suspects last accessed 20 March 2017

and ‘we’, and between the ‘enemy’ and an ordinary criminal. The focus will remain on prosecuting terror suspects in accordance with the relevant human rights law and norms.

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