

Countering Legal Voids of Exceptionalism in Pakistan

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Analytical study of violent extremism reveals that deterrence theory of criminal law is ineffective to curb irrational behaviors of ideologically disoriented men. Such behaviors are mostly the outcomes of circumstances where subjectivities of hate, fear, anguish, zeal, and passion override the punitive objectivity of laws. Socio-political and ideological violence are systematic behaviors of masses to express chronic agonies emerging from the scarcity of their basic human needs including dignity, pursuit of happiness, social justice, and common wealth. Whereas concept of fundamental rights primarily emerges from the normative *imperative* of personal and civil liberties. Such liberal interpretations mostly revolve around an ultimate conception of egalitarian equality that is hard to accomplish in ethnically or socially polarized societies. It is because the legal systems in these societies are meant to enforce coercive public order than construction of collective conception of justice. Nevertheless, aforementioned seems relevant to Pakistan as keeping in view its ethnic, socio-cultural, and theological atomization and colonial legacies of administrative and adjudicative patterns. Therefore, owing to institutional psyche and trends to enforce retributive justice, neither governance nor adjudication has ever had a rights centric approach in Pakistan. The resultant judicial apathy to protect personal and civil liberties during law enforcement operations augments an allegation of mass scale human rights abuses with impunity. These gray areas of criminal justice system not only negate egalitarianism but also catalyze unrests into systematic sequels of violent extremism. However, this vicious cycle of impunities and retribution can be redeemed through tangible constitutionalism by installing collective conception of justice in masses through judicial scrutiny of administrative actions on the touchstone of fundamental rights. This pro-people approach has potential to reduce popular unrests and violent extremisms.

Introduction

This article indicates that where politics of interest dominates, the law and logic dismantle automatically to give way to Darwinian real politics.¹ This notion of survival of the fittest knows no limits of legality or validity and promotes a coercive elite and system of government.² Hence, autocratic regimes use a mix of civil and military bureaucracy to sustain the status quo in domestic politics.³ This signifies problem-solving through a pro-administrative approach at the expense of a pro-people approach that has a diminishing impact on civil and personal liberties.

A pro-administrative approach is the core element of the colonial legacy that governs a non-egalitarian society. Permanency, centralization, formalization, vertical faceless hierarchy, patrician training, aristocratic attitude, alienation from the masses and proxy representation of central government through magisterial and police power are basic characteristics of the colonial legacy. It has undermined constitutionalism and the rule of law in Pakistan, not only during authoritarian military regimes but also during democratic eras.⁴ Subsequently, this research argues that excessive delegated legislations in the name of state necessity have a direct relationship with human rights violations especially when armed forces begin to act in aid of civil power.⁵

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¹ *Darwesh M. Arbey, Advocate v Federation of Pakistan* PLD 1980 Lah 206, 288; Michael Haas, *International Human Rights: A Comprehensive Introduction* (Routledge 2008) 34-35.

² *Human Rights Commission of Pakistan v Federation of Pakistan* Constitution petition No 5 of 2010 <http://www.supremecourt.govpk/web/user_files/File/const.p.5_2011.pdf> accessed 15 January 2018.

³ Frederic Grare, *Reforming the Intelligence Agencies in Pakistan's Transitional Democracy* (Carnegie Endowment for Intl Peace 2006) 4, 26-30, 32-35; L.P Sharma, *The Brown Rulers of India* (Konark Publishers Pvt Ltd 1988) 57-61; Peters B. Guy, *The Politics of Bureaucracy* (Longman 1995) 146-203.

⁴ Khalid B. Sayeed, *The Political System of Pakistan* (Houghton Mifflin Company 1967) 101-107; Ivor Jennings, *Constitutional Problems in Pakistan* (Cambridge University Press 1957) 10-350; Reinhard Mehring, 'The Decline of Theory,' in Bernard Schlink and Arthur J Jacobson (eds), *Weimar: A Jurisprudence of Crisis* (University of California Press 2000) 313-333.

⁵ *Muhammad Umar Khan v The Crown* PLD 1953 Lah 528, 538.

The concern of this research is to place these arbitrary and subjective administrative discretions under the constitutional domain through the judicial apparatus of Pakistan. Thus, to avoid executive impunities, this article suggests alternative jurisprudence,⁶ legislation,⁷ and other remedial mechanisms available under constitutionalism⁸ to create a system of law enforcement that thrives on a collective conception of justice. These alternatives would also ensure substantial control on human rights abuses during current counter insurgency operations in the federal and provincial areas of Pakistan.⁹

This research also attempts to locate a practical contingency point between international human rights and international humanitarian law. International humanitarian law ('IHL') concerns the application of the principles of proportionality and distinction. These two principles manage the use of lethal force and identify the lawful object to fire upon under self-defense or military necessity. International human rights law ('HRL') ensures a sustainable quantum of basic human rights protection during all kinds of conflicts to avoid unnecessary human suffering and to diminish the circle of violence.¹⁰ If applied in Pakistan's context, both bodies of law aim to avoid the probability of human rights abuses associated with the proclamation of public emergency in Pakistan, since the judicial revoking of IHL and HRL is held to be a political question out of the ambit of the court of law.¹¹ It becomes especially important to deal with internal disturbances through administrative means when core human rights and personal liberties (such as the right to life, protections against double jeopardy and self-

⁶ Heather Strang, L. W. Sherman and Dorothy Newbury, 'Restorative Justice,' in Center for Justice and Reconciliation (U.S), *What is Restorative Justice?* (Washington D C., U.S. 2008) 1-4.

⁷ *Maneka Gandhi v Union of India* AIR 1978 SC 597, 632-635 – 'The chapter of fundamental rights being a touchstone to test the validity and constitutionality of a statute'.

⁸ Vijay Gupta, *Perspectives on Human Rights* (Vikas Publishing House Pvt Ltd 1998) 139-147.

⁹ The Additional Protocol 11, 1977, art. 6 (penal prosecution); Niaz A. Shah, *Islamic Law and the Law of Armed Conflict: The Conflict in Pakistan* (Routledge, Taylor & Frances Group 2011) 93-135.

¹⁰ Martin Scheinin, 'Terrorism' in Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran and David Harris (eds), *International Human Rights Law* (Oxford University Press 2010) 551-561 – Under HRL, the 'right to life' and [prevention against torture] are widely described as *jus cogens* norms that do not admit derogation even in public emergencies, violent riot or insurrection. The right to life with dignity does not prohibit all use of lethal force by states; rather, it imposes a requirement of justification: states may not use lethal force unless they can show that this extraordinary measure is 'absolutely necessary' to protect life or legal order.

¹¹ *Mir Abdul Baqi Baluch v The Government of Pakistan* PLD 1968 SC 313.

incrimination, torture and inhuman treatment, enslavement, pillage, freedom of conscious and religion, protection of property and family) become vulnerable under the notion of necessity.¹² Subsequently, this study attempts to dig out some plausible ways to strengthen pro-people approaches based on a correlation between collectivism and individualism for peace, tolerance and maximization of social cohesion in Pakistan. The subsequent portions of this study revolve around the theoretical framework of offence against the state and the political dimensions of terrorism and insurgencies. It also examines the British model of executive prerogative, as the legal and administrative system in Pakistan is originally designed on this pattern. Finally, it assesses the core security legislation of Pakistan on the touchstone of constitutional guarantees and judicial pronouncement to identify lacunas in the pro-administrative approach of executive prerogative and exceptionalism.

Theoretical Causation of Internal Disturbance and Violent Conflicts

In his book, titled *Low Intensity Operations: Subversion, Insurgency and Peacekeeping*, Frank Kitson, a defense analyst with a pro-administrative ‘rule by law’ approach, illustrates the role of armed forces to restore order amid Irish unrest in the United Kingdom. He construes an extreme threshold of popular unrest as a *subversion* of the government, which is a non-violent movement against a regime to ouster it from power.¹³ The core determinant that transforms subversion into sabotage, terrorism and insurgency is the use of violence. Accordingly, campaigns of subversion that act as severe law and order crisis have three core dimensions: strategically used to oppose regimes

¹² *Farid Ahmad v Province of East Pakistan* PLD 1969 Dacca 961; *Gohar Nawaz Sindhu v Province of Punjab and others* 2014 CLC 1558 – In context of the long march, civil disobedience and political agitation movement of Pakistan Tehrik-e-Insaf (PTI) and Pakistan Awami Tehrike (PAT) in 2014. It has been observed that ‘unreasonable restrictions had been imposed by the government. It included blocking of all roads, routs, highways, motorway by putting barriers and containers which have violated the constitutional guarantees such as freedom of movement and assembly. Since wholesale blockade of roads and highways are unwarranted, unlawful and unconstitutional. Thus, large scale arrest intended to prevent citizens from participating in processions were abhorrent to the spirit and mandate of the Constitution’; *Kamran Murtaza v Federation of Pakistan* 2014 SCMR 1667. In the same context of PAT/PTI’s political protests and agitation for electoral and constitutional reforms in 2014 in Pakistan, the court observes, ‘in handling of a large-scale agitation violations of fundamental rights under Article of 9 (right to life and security of person), 14 (inviolability of dignity of man), 15 (freedom of movement), 16 (freedom of assembly), 24 (protection of property) are taking place’; *Darwesh M. Arbey, Advocate v Federation of Pakistan* PLD 1980 Lah 206 – ‘Imposition of curfew for indefinite period without relaxing is in violation of fundamental rights’.

¹³ Frank Kitson, *Low Intensity Operations: Subversion, Insurgency and Peace Keeping* (Faber and Faber Limited 1991) 82-86.

and their policies without resorting to sabotage; employed in conjunction with terrorism to achieve objectives; and employed as a precondition for a full-scale insurgency in combination with protracted urban riots and other acts of terrorism.¹⁴ Such classifications of internal strife and disturbance have also been illustrated by the Supreme Court of Pakistan in *Islamic Republic of Pakistan through Secretary, Ministry of Interior and Kashmir Affairs Islamabad v Abdul Wali Khan, MNA, Former President of Defunct National Awami Party* by relying on Kitson's work.¹⁵

Political Connotations of Subversions and Insurgencies

Such violent challenges to the legitimacy of the order and sovereignty of the country are inherently political.¹⁶ They are usually camouflaged as ideological challenges to the status quo. Consequently, Khilnani describes the political intent of 'ism' especially in the crime of terrorism. The notion of 'ism' indicates a forceful assertion of a specific ideology, or policy through the employment of terror in a particular society.¹⁷

However, the important question is what kind of impact do the perpetrators of terror expect to have on a society? Are their violent strategies capable of bringing a desired change in the targeted system?¹⁸ Forst responds that terror engenders fear in the minds of its audience, which distorts the potential for rational thinking. It creates such hysteria that instead of relying upon reason or morality, communities and individuals resort to their instinct for survival.¹⁹ Singer perceives the employment of fear as a tool to create a sense of powerlessness in the mind of its addressees,²⁰ and Hassan considers it as a manipulative tool that can be used to control the will of others.²¹

¹⁴ Ibid, 82-83.

¹⁵ *Islamic Republic of Pakistan through Secretary, Ministry of Interior and Kashmir Affairs Islamabad v Abdul Wali Khan, MNA, Former President of Defunct National Awami Party* PLD 1976 SC 57.

¹⁶ Ibid.

¹⁷ Sunil Khilnani, 'The Politics of Terrorism' (1993) 64 (3) *Political Quarterly*, quoted in Brian Forst, *Terrorism, Crime and Public Policy* (Cambridge University Press 2009) 5.

¹⁸ Michael Freeman, 'Order, Rights and Threats: Terrorism and Global Justice,' in Richard Ashby Wilson (ed), *Human Rights in the 'War on Terror'* (Cambridge University Press 2005) 46.

¹⁹ Brian Forst, *Terrorism, Crime and Public Policy* (Cambridge University Press 2009) 299-337.

²⁰ Margaret Thaler Singer and Janja Lalich, *Cults in our Midst: The Hidden Menace in our Everyday Lives* (Jossey-Bass Publishers 1996) 200-250.

²¹ Steven Hassan, *Releasing the Bonds: Empowering People to Think for Themselves* (Aitan Publishing Company 2000) 60-70 – 'Psychological impact of terror and correlative fears on human behaviors in three interdependent cycles such as *Unfreezing*: which breaks down the

Gearson argues in this context that terror is politically employed to break the will of its opponents. He further contends that terror is paradoxically engendered by an irrational response of the state apparatus to the incidents of terrorism.²² It means that magnification of such incidents through state agents creates a negative effect on the masses; resultantly society becomes psychologically hostage to such propagations. Likewise, normative arguments such as the rule of law, fair trial, innocent until proven guilty, appreciation of evidence and individual integrity lose their social legitimacy amid popular reprisal.

Thompson also contextualizes the terminology of ‘ism’ in terrorism with power politics for assertion of specific ideologies in particular areas during interstate conflicts.²³ He specifically associates it with minorities and other sub-state groups. He excludes the majorities, ruling elites and other state agents from such violent wrangling as their ideologies are already hegemonic and prevalent in society. These terrorist sub-state groups are ‘principled evildoers’. These groups consist of members of society who, out of their own convictions, deviate from the general will and the ‘categorical imperative: a commune for egalitarians’. Resultantly, they not only challenge the legitimacy of the state and its regimes, but also the core social norms by possessing a deviated socio-political and economic mindset.²⁴

Prolonged isolation and exclusion of these terrorist sub-groups from the parliamentary dialectical process motivates them to build radical narratives that further alienate them from the dominant ideology. An ideology in this context is a set of beliefs, based upon the orientation of life and involves a specific mindset to interpret the facts that justify violent acts to protect and promote their self-acclaimed cause. Such an alienating ideology not only leads to fundamentalism, but also helps to formulate

will and reasonability, *Changing*: an indoctrinate process, which transforms reality in to deception and *Refreezing*: which is a process of reinforcing the new identity and mindset’.

²² John Gearson, ‘The Nature of Modern Terrorism,’ in L. Freedman (ed), *Super Terrorism: Policy Response* (Blackwell Publishing Ltd 2002) 7-24.

²³ Peter G. Thompson, *Armed Groups: The 21st Century Threat* (Rowman & Littlefield Publishing Groups Inc 2014) 17.

²⁴ Fernando R. Teson, ‘Liberal Security,’ in Richard Ashby Wilson (ed), *Human Rights in the ‘War on Terror’* (Cambridge University Press 2005) 71-73 – With Kant’s perspective explains the moral convictions of the members of armed groups. It seems that due to their commitment and zeal toward a deviant philosophy, they seize to become egalitarians. It is mainly due to their opposition to the core social values of society as enshrined in ‘categorical imperative’ which is also a foundation stone to further carve out core political values of the ‘general will’ of a state.

particular objectives and strategies to accomplish such causes.²⁵ Hence, conducting severe acts of terrorism is one form of strategy that they employ to transform sub-state groups into armed groups.²⁶

Besides, owing to variations in objectives and accompanying strategies, armed groups are often involved in transnational criminal activities, militia warfare, gang warfare, terrorist campaigns and insurgency.²⁷ Though the element of terrorism remains constant in all kinds of conflicts, yet it could be bifurcated into two core thresholds. In the lower threshold, the terrorist groups are involved in a micro level conflict under the legal order paradigm. They do not intend to destroy the entire structure of the state, rather just require a hegemonic role for their perspectives. In the upper threshold, such insurgent groups are involved in a macro level conflict through revolutionary and separatist movements under a public emergency paradigm. They either intend to cause fundamental changes in the established order or want to institute an entirely new order in accordance with their perspectives. Acts of terrorism are relied upon as a tool by both hegemonic centric terrorists and revolution centric insurgents. It seems that military achievements through sabotage or mayhem are not the core purpose

²⁵ (n 23) 33-36, 44-45, 125-129.

²⁶ Gerard Hugh and Manuel Bessler, *Humanitarian Negotiations with Armed Groups: A Manual for Practitioners* (United Nations office for the Coordination of Humanitarian Affairs 2006) 6 – ‘An Armed Group means a group that have the potential to employ in the use of force to achieve political, ideological or economic objectives: are not within the formal military structures of State, State-alliances or intergovernmental organization: and are not under the control of the State[s] in which they operate’; (n 23) 59 – ‘Armed groups are coherent, autonomous, non-state actors that rely on the threat or use of force to achieve their objectives’. It seems that terrorism is a strategic use of indiscriminate violence by non-conformists to convince coercively and to negotiate manipulatively with majority as well as to propagate their agenda or ideology. Often used by morally and politically disengaged groups who either do not believe in dialectical synthesis or are forced out to do so by a stringent legal system which does not assimilate pluralism and stigmatized them as enemy aliens, hardened criminals, traitors or terrorists. Resultantly two extremely polarized perspectives emerge, where violence is employed to initiate a dialogue, analogically prosecutions and trails are also considered as a dialogue under this scenario. Such contestation varies time to time and place to place such as hegemony over natural resources, propagation of a specific political and constitutional narrative, geostrategic control of territory and its population, advocacy for a particular socio-cultural norm, and an assumed superiority of theological perspectives of a sect.

²⁷ (n 23) 80-92 – Following are some common characteristics of armed groups: 1) autonomous actors; 2) Sub-state actors, means consist of small population s or membership as compared to large communities; 3) small membership; 4) lacks legitimacy and sovereignty; 5) clandestine; 6) believe in covert tactical moves; 7) Transnational-though armed groups operate intra-state yet they have sanctuaries in neighboring countries to gain logistical and moral support.

of these two thresholds; rather terrorists primarily use these tactics as a means to influence people by implanting fear or sympathy. Armed groups perceive this scenario as a political opportunity not only to gain momentum for their cause, but also to create a sense of legitimacy for their ideology in the targeted population.²⁸ The pre-2009 black turban insurgency in Swat and Malakand indicates that the local population, as a consequence of their diminishing utility from the existing legal and justice system of Pakistan, were ensnared in the so-called speedy justice that the Taliban expended in accordance with Sharia.²⁹

As a result, a nexus develops between ideology, politics, and crime amid an internal armed conflict. In turn, this nexus distorts distinctions between criminals and political activists similar to the distortion between combatants and civilians.³⁰ Such amalgamations also make it difficult to categorize an internal conflict objectively and authoritatively. Resultantly the state relies upon a generalized term like ‘internal disturbance’ to categorize these conflicts.³¹ The Supreme Court has also discussed this complication of labeling as it observes, ‘these definitions are wide enough to cover virtually every form of disturbance up to the threshold of conventional war’.³² Reynolds argues that such a broad scope of internal disturbance has its traces in the colonial patterns of administration, which conceived an even lesser

²⁸ Ibid, 34, 67.

²⁹ Dr. Manzoor Khan Afridi, Musab Yousufi and Musa Khan, ‘Military Operation as a Response to Terrorism: A Case Study of Malakand Division Pakistan’ (2014) 5 (20) *Mediterranean Journal of Social Sciences* 2000; Ervin Staub, ‘The Roots of Evil: Personality, Social Conditions, Culture and Basic Human Needs’ (1999) 3 (3) *Personality and Social Psychology Review* 179.

³⁰ Amrith Rohan Perera, *International Terrorism* (Vikas Publishing House Pvt Ltd 1997) 1-13, 113-131.

³¹ (n 23) 6, 35 – The following labels of intra-state conflicts not only overlap each other but are used interchangeably in a sheer ‘confusion’, as the subjectivity of labeling leads to another problem which deals with the application of the relevant legal regime. Since internal armed conflicts as of the threshold of insurgency, low intensity conflicts and civil war attract the application of the laws of war and protection of humanitarian laws especially in the case of proclamation of emergency. While terrorism and other hybrid conflicts come under public order and human rights regime. Therefore, the notion of internal disturbance covers civil war, low intensity conflict, armed conflicts, internationalized conflicts, interstate conflicts, hybrid conflicts, extra systematic conflicts, insurgency, small war, irregular war, and law and order crisis.

³² *Islamic Republic of Pakistan through Secretary, Ministry of Interior and Kashmir Affairs Islamabad v Abdul Wali Khan, MNA, Former President of Defunct National Awami Party* PLD 1976 SC 57.

probability of dissent as ‘*in terrorem populai*’ (sense of insecurity in general public) out of an exaggerated fear of mass resistance.³³

Ben Saul argues that the wide scope of internal disturbance and terrorism blurs a distinction between crimes and political resistance due to which the state resorts to identical tactics to curb both of them. As a corollary, the ordinary criminal justice system misperceives the complexity of the intents and motives of the acts of terrorism, and often ‘lumps’ them in the middle of public order, national security and waging war against the state. Socio-political alienation, economic deprivation, theological misperception, ideological polarization, geographical context and international politics jointly form the intent for such acts. Thus, domestic criminal law proves ineffective to deter terrorist groups punitively from conducting acts of terrorism. This leads to stringent special legislations to curb such ill-defined and unexplored intents and motives. Resultantly, minorities and other segments of society who raise their voices for socio-political empowerment are victimized under the *lex specialis* (law governing a specific subject matter) of anti-terrorism.³⁴ Saul further highlights another aspect of anti-terrorism legislations as he discusses their potential to deter acts of terrorism. He believes that political violence through terrorism is a result of an ideological conviction for a cause that happens to be immune from punitive impacts of stringent administrative actions. Hence, the utilitarian ethics of maximization of pain often prove to be ineffective to deter such ‘principled’ offenders, who perceive such stringency as justification for their cause. Therefore, severe punitive measures without a counter narrative become counterproductive in anti-terrorism campaigns. Such counter narrative mainly deals with educational, economic, socio-political, and constitutional reforms under pragmatic counter violent extremist initiatives of the state to cater to the segregated segments of society.³⁵

Another problem which emerges during intra-state conflicts is that, on the one hand, radical mindsets distort rationality and reasonability of armed groups while, on the other hand the counter narratives of governing

³³ John Reynolds, ‘The Long Shadow of Colonialism: The Origins of the Doctrine of Emergency in International Human Rights Law’ (2010) 6 (5) *Comparative Research in Law & Political Economy* 15.

³⁴ Ben Saul, ‘Criminality and Terrorism,’ in Ana Maria Salinas De Frias, Katja Samuel and Nigel D White (eds), *Counter-Terrorism: International Law and Practice* (Oxford University Press 2012) 133-135.

³⁵ Faiza Patel and Meghan Koushik, *Countering Violent Extremism* (Brennan Center for Justice 2017) 2-5.

elites and state agents distort the regime of the rule of law as well as the reasonability of administrative actions. Yet, the fatal lacunas in these laws implicitly authorize torture, forced disappearances and the ability to shoot on sight for mere suspicion without being fired upon, or in self-defense.³⁶ O'Donnell believes that in the context of protracted and unresolved socio-political conflicts such procedural lacunas produce 'brown zones' even in liberal democracies. Consequently, civil and personal liberties become vulnerable in these zones not only during anti-terrorism and counter-insurgency campaigns but also during the ordinary public order paradigm.³⁷ Dyzenhaus identifies such zones as 'lawless void' of 'legal black holes'.³⁸ Poole argues that, these zones mainly emerge from the political rhetoric of the authorities, which consider human rights protections as major constraints to accomplish strategic gains during law and order operations and anti-terrorism campaigns.³⁹

Likewise, states enthusiastically adopt international obligations on counter-terrorism measures but are mostly reluctant to cope with international obligations on human rights and humanitarian protections. Pakistan has vigorously adopted the United Nations Security Council's ('UNSC') resolutions 1267 and 1373⁴⁰ along with other horizontal conventions on counterterrorism through the Anti-Terrorism Act, 1997. However, the UNSC resolution 1265 relating to humanitarian protections during armed conflicts is completely ignored in this special law.⁴¹ Questions

³⁶ Colm Campbell, 'Beyond Radicalization: Towards an Integrated Anti-Violence Rule of Law Strategy,' in Ana Maria Salinas De Frias, Katja Samuel and Nigel D White (eds), *Counter-Terrorism: International Law and Practice* (Oxford University Press 2012) 255-263

³⁷ G O'Donnell, 'On the State, Democratization and Some Conceptual Problems (A Latin American View with Glances at Some Post-Communist Countries)' (1993) *Kellogg Institute for International Studies Working Paper* < https://kellogg.nd.edu/sites/default/files/old_files/documents/192_0.pdf > accessed 15 January 2018.

³⁸ David Dyzenhaus, 'Schmitt v Dicey: Are States of Emergency inside or outside the Legal Order?' (2006) 27 (5) *Cardozo Law Review* 2020.

³⁹ Thomas Poole, 'Sovereign Indignities: International Law as Public Law' (2011) 22 (2) *European Journal of International Law* 351.

⁴⁰ UNSC Res 1267 (15 October 1999) UN Doc S/RES/1267/1999; UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373 – 'For prevention of act of international terrorism anywhere in the world'; Both of these resolution are the part schedule of the Anti-Terrorism Act 1997.

⁴¹ UNSC Res 1265 (17 September 1999) UN Doc S/Res 1265-1999 – 'Stressing the need to address the causes of armed conflict in a comprehensive manner in order to enhance the protection of civilians on a long-term basis,---Calls on States which have not already done so to consider ratifying the major instruments of International humanitarian,[and] human rights-law and to take appropriate legislative, judicial and administrative measures to

arise regarding the outcomes of these mixed responses to internal disturbances under the criminal law paradigm. It leads to formulations of special laws with special executive powers, such as identified by Dicey, this operates as a 'rule by law' to deal with probable and actual crises.⁴² However, its rationales, likely justifications and implications for rule of law and due process are the subject matters of the subsequent section of this comprehensive chapter. Yet it would initially analyze the probability of ideological and political armed contests in classic egalitarian society, to understand the occurrence of severe law and order crises under contractual paradigms.

Emergence of Exceptionalism and Executive Prerogatives

Rossiter believes that crisis is a kind of turmoil, which is certainly beyond the judicial capacity for corresponding remedial measures. He narrates that what comes in the ambit of rule of law cannot be categorized as a crisis.⁴³ Subsequently, Dyzenhaus identifies such occurrences as a 'lawless void', which cannot be comprehended by the ordinary legal system and its laws.⁴⁴ Schmitt indicates that since an ordinary legal system is prospectively crafted by keeping in mind the normal state of affairs, therefore, it is logical to deduce that the rule of law paradigm fails to counter catastrophic turmoil.⁴⁵ Rossiter further categorizes the occurrence of unusual crisis into three core domains. The first domain deals with external aggressions and trans-border war, the second deals with internal disturbances and insurrections and the last one focuses on economic depressions associated with governmental policies or linked with natural calamities such as famines, droughts, hurricanes, cyclones and/or earthquakes.⁴⁶ For Rossiter's second category, which is the subject of this article, he describes that 'judicial injunctions' and 'dialectical debates' are futile to suppress catastrophic turmoils.⁴⁷ Carr believes that governments resort to adopting counter repression even in liberal democracies. To combat deviant repressions and atrocities, Rossiter identifies such state actions as characteristic of a 'constitutional

implement these instruments domestically---Emphasizes the responsibility of States to end impunity'.

⁴² (n 38) 2031-2032.

⁴³ Clinton L. Rossiter, *Constitutional Dictatorship: Crisis Government in the Modern Democracies* (Princeton University Press 1948) 9.

⁴⁴ (n 38).

⁴⁵ (n 66) 85-86.

⁴⁶ (n 43) 6.

⁴⁷ *Ibid*, 6-7.

dictatorship'.⁴⁸ This is a transitory combination of legislative, executive and judicial powers in the hands of a man or men to curb imminent danger in a democratic country.⁴⁹ Moreover, if the judiciary is kept out of the ambit during such an exceptional period,⁵⁰ then which institution has the authority to adopt or direct others to adopt these counter repressive means? Accordingly, Locke indicates that the prime obligation of political society is to protect contractarian 'commonwealth'.⁵¹ Accordingly, the legislature is not only capable of comprehending such a danger but also recognizes the real danger to public peace.⁵² The legislature does not intend to draft absolute discretionary and ad-hoc orders. However, according to Dicey, during turmoil, the legislature relies upon its optimal supremacy to legislate what Schmitt identifies as 'situational law' in accordance with the political necessity of the time.⁵³ Rossiter illustrates that through a novel device of an 'enabling act', crisis legislations will temporarily delegate legislative powers to the executive, called as 'executive law making during crises' by Rossi,⁵⁴ which provide complete indemnity to all executive actions taken to seemingly deal with apparent danger.⁵⁵ Dicey identifies such crisis legislation as the 'rule by law', and though it may be contrary to natural justice, yet it is still adopted by the legislature as a last resort to save an entire legal order.⁵⁶ He believes that in spite of its unavoidable illegality and rigor, a 'rule by law' is far better than the 'total state' perspective of an absolute administrative state because it is legitimately tasked by the legislature, instead of the Schmitt's 'motivated' dictator or a military commander.⁵⁷ However, Dyzenhaus identifies such a 'rule by law' paradigm as a 'legal black hole', where civil and personal liberties are indiscriminately violated by executives with absolute impunity, as the judicial organ has already been restrained to examine it under the doctrine of political question.⁵⁸

⁴⁸ Cecil T. Carr, 'Crisis Legislation in Great Britain' (1940) 40 (2) *Columbia Law Review* 1324.

⁴⁹ (n 43) 289.

⁵⁰ (n 38) 2013; (n 43) 8.

⁵¹ (n 18) 39-41.

⁵² (n 38) 2028; (n 43) 13.

⁵³ A.V Dicey, *Introduction to the Study of the Law of the Constitution* (Macmillan & Co 1885) 412-413.

⁵⁴ Jim Rossi, 'State Executive Law Making in Crisis' (2006) 56 (1) *Duke Law Journal* 237.

⁵⁵ (n 43) 10.

⁵⁶ (n 53) 229-237, 412-414.

⁵⁷ (n 38) 2029-2030, 2034.

⁵⁸ *Ibid*, 2032-2033.

Hence, owing to such ratio of common law doctrine of necessity amid crisis management, Reynolds and Rajagopal criticize Article 4 of the International Covenant on Civil and Political Rights ('ICCPR').⁵⁹ They believe that permissible derogations of certain political rights by the state to comprehend grave emergencies, as incorporated in the said Article represents Dicey's legacy of 'rule by law' and its resultant 'lawless void'.⁶⁰ Both indicate that since the United Kingdom actively negotiated in the drafting of the ICCPR, its experience of handling law and order crisis through special legislations and stringent police measures especially in colonial territories crept into this instrument. Hence, Reynolds identifies such state prerogative as 'the long shadow of colonialism'⁶¹, whereas Rajagopal declares this 'grim zone' of international human rights incompatible for pragmatic pluralism. Under the guise of state necessity, public emergency attempts to legitimize an almost discretionary and unaccountable administrative penology.⁶² However, the question remains: does such a prerogative possess any neutralizer that limits the scope of discretions, nationally and internationally?

For Schmitt, the police measures under this arena of real politik are absolute until the objectives which a public emergency meant to achieve are met.⁶³ He believes that laws yield to politics and the latter intends total domination.

However, in quite a contrast to him, Rossiter emphasizes on a pro-people special 'rule by law' paradigm under normal constitutionalism. Crisis legislation under his 'constitutional dictatorship' is based on dire necessity, third party appraisal, oversight, sunset clauses, due process, fair trial, and procedural reliability. Moreover, it contains a temporary course of action, pluralistic accountability of such actions, evaluation of the chain of command, repeal by the same appraisal authority and prohibition on extension and post-operative normalcy of the rule of law.⁶⁴ Similarly Ackerman formulates a novel constitutional device, recognized as a 'supra-majoritarian escalator'⁶⁵ to apprise the powers of 'un-commanded

⁵⁹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Art. 4.

⁶⁰ Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge University Press 2005) 177-182.

⁶¹ (n 33) 10-30.

⁶² (n 60) 195-202; (n 38) 2032-2033.

⁶³ (n 43) 96-109.

⁶⁴ (n 43) 288-306; (n 38) 2012-2014.

⁶⁵ Bruce Ackerman, 'The Emergency Constitution' (2004) 113 (5) *Yale Law Journal* 1029.

commander⁶⁶ when acting in the ‘black hole’, either during the pre-emergency exceptional phase or during a public emergency.⁶⁷ Dyzenhaus believes that it is intended to convert the ‘black hole’ of public emergencies in to a ‘gray hole’, when the minority of legislators deliberately file petitions in court to examine the constitutional validity of special crisis legislations.⁶⁸ Under such unusual purview the judiciary examines public emergencies within two spheres, known as ‘macro’ and ‘micro’ respectively.⁶⁹ The former deals with its ‘maximalist’ locus of judicial review of legislation, whereas the latter deals with its ‘minimalist’ locus of judicial review of administrative actions.⁷⁰ Yet, Dyzenhaus indicates further that neither the ‘maximalist’ nor ‘minimalist’ locus is capable of avoiding human rights abuses in either the ‘black hole’ or ‘grey hole’. The latter with its ‘partial legality’ is even more perilous to civil liberties as governments are usually capable of incorporating indemnities and executive discretions in to exceptional legislations and providing them with constitutional protections. Moreover, governments have extensive discretion to declare pre-emergency exceptional situations or to declare a public emergency. Likewise, it is always up to the subjective satisfaction of governments, first to determine the scope and threshold of the crisis and second, to legislate accordingly. In this scenario, the judiciary can neither invalidate such special laws on the touchstone of the constitution nor scrutinize the vires of executive prerogatives, as the law itself gives them protection. Thus, he believes that neither Rossiter’s nor Ackerman’s model can assert itself in the presence of legislative supremacy to declare a ‘rule by law’ exceptionalism.⁷¹

Indigenous Contextualization of Exceptionalism

The question arises: has Pakistan experienced or is experiencing a mild or severe ‘state of exceptionalism’? If yes, then should it be comprehended through pro-administrative responses like Schmitt’s political necessity and Dicey’s doctrine of ‘rule by law’ or should it be confronted with the pro-people rule of law paradigm? An examination of the preambles, statement of objects and reasoning of different special criminal laws indicate that Pakistan is not only facing crisis based exceptional circumstances but also has a ‘rule

⁶⁶ HLA Hart, *Essays in Jurisprudence and Philosophy* (Clarendon Press 1983) 49, 59.

⁶⁷ (n 38) 2014-2016.

⁶⁸ Ibid, 2018.

⁶⁹ Ibid, 2019-2029 – With such ‘*judicialization of politics*,’ judiciary not only tilts away from the established norm of separation of powers but also leans in to a controversial domain of political question through public interest litigations.

⁷⁰ Ibid, 2038.

⁷¹ Ibid, 2035-2040.

by law' paradigm to confront these circumstances.⁷² The same has been reiterated in the Rawalpindi Bar case, in which there were indictments of a large number of civilian victims of terror attacks and presence of armed conflict and insurrections.⁷³ However, it has been observed in the same case that momentary pressure to implement the Protection of Pakistan Act 2014 ('') and to establish military courts for the trials of insurrectionists and terrorists has distorted rational and fair judgment.⁷⁴ The next question that arises from this observation is whether Pakistan's 'rule by law' approach contains a mechanism for procedural fairness to endure a bare minimum of the constitutionally protected due process of law? As the Lahore High Court observed, 'when a law visits a person with serious penal consequences, extra care must be taken to ensure that those whom the Legislature did not intend to be covered by the express language of the statute are not roped in by stretching the language of the law'.⁷⁵ Similarly, the Lahore High Court also declares, 'unless a case falls squarely within special jurisdiction, the forum created under special jurisdiction cannot even touch those matters'.⁷⁶ Likewise, being aware of the extent of statutory powers J. Isa acknowledged the emergence of 'dark holes' in legal systems during exceptional periods in the case of District Bar Association Rawalpindi.⁷⁷ Nevertheless, to sustain reasonability, fair play and justice he relied upon the due process clause as enshrined in Article 4 of the Constitution of Pakistan, 1973 ('Constitution') to fill these 'dark holes'. It was held, 'the best response to terrorists- to isolate, thwart, and defeat them, is to uphold the principles and rights that terrorists trample underfoot. Those accused of terrorist acts must be subjected to legal due process, an impartial court and evidence based convictions. If we sacrifice our principles and slip, we shall come to face them in their swamp of infamy'.⁷⁸ Similarly, to operate due process in

⁷² The Anti-Terrorism Act 1997 (XXVII of 1997); The Pakistan Army (Amendment) Ordinance, 2007; The Fair Trial Act 2012; The Protection of Pakistan Act 2014; The Pakistan Army (Amendment) Act 2015; The Constitution (Twenty-First Amendment) Act 2015.

⁷³ *District Bar Association, Rawalpindi and others v Federation of Pakistan* PLD 2015 SC 401, 990-992.

⁷⁴ *Ibid*, 993.

⁷⁵ *Usman Bhai Dawood Bhai Memon v State of Gujarat* AIR 1988 SC 922; *Muhammad Afzal and other v S.H.O. and others*, 1999 PCrLJ 929.

⁷⁶ *Muhammad Afzal and other v S.H.O. and others* 1999 PCrLJ 929.

⁷⁷ *District Bar Association, Rawalpindi and others v Federation of Pakistan* <http://www.supremecourt.govpk/2015/Judgments/Orders/web/user_file/File/Const.P.12_of_2010.pdf> 894-896, 901, accessed 15 January 2018.

⁷⁸ (n 73); (n 77) 897.

indigenous exceptionalism, J. Bandial relies upon some criterions of fair trial as discussed in *F.B Ali and another v The State*.⁷⁹

Impact of Special Laws on Violent Extremism and Radicalization in Pakistan

The question of the actual effectiveness of special yet stringent laws on actors of violent extremism is very crucial before their constitutional appraisal, as Glazzard indicates while shedding light on the dichotomy of counter terrorism laws and measures. He states that rational men with rational approaches draft such laws and policies with appropriate cost effectiveness, political practicalities and constitutionality but they usually ignore the irrationality of ideologically motivated men who are supposed to be the subject matters of special measures. Resultantly, rule by law approaches lose their efficacy to deter suicide bombing and suicidal attacks during ethnic or religious extremism as also evident in Pakistan during the black turban violent unrest. To curb this structural flaw in counter terrorism initiatives he focuses on holistic pro-people measures such as academic inputs to formulate philosophical counter narratives, media campaigns to expose the atrocities of armed groups, equity based fair implantation of criminal laws and protection of education during armed conflicts through informal means.⁸⁰

Appraisal of the Protection of Pakistan Act (PPA) 2014 in the light of the Military Court Case⁸¹

In conformity with the conventional pro-administrative ‘rule by law’ approach, PPA is seemingly contrary to the spirit of procedural fairness. Instead of focusing on capacity building of prosecutors, to better equip them to construct evidences in ‘hard cases’, under the ordinary rule of law,⁸²

⁷⁹ *F.B Ali and another v The State* PLD 1975 SC 506 – ‘Include (1) the right to know before the trial the charge and the evidence against him; (2) the right to cross-examine the prosecution witnesses; (3) the right to produce evidence in defense; (4) the right to appeal or to apply for revision; (5) the right to be represented by counsel; (6) the right to have the case decided by the Judge who heard the evidence; (7) the right to trial by jury or with the aid of assessors[However observes that trial by jury is not applicable in Pakistan, as by construing the right to fair trial court in the *F.B Ali* case had riled upon foreign jurisprudence as applicable in Anglo-American Jurisdictions]; (8) the right to certain presumptions and defenses; and (9) the right to apply for transfer of the case to another Court’.

⁸⁰ Andrew Glazzard, ‘Losing the Plot: Narrative, Counter-Narrative and Violent Extremism’ (International Center for Counter Terrorism 2017) 3-16; Arun Kundnani, *A Decade Lost: Rethinking Radicalization and Extremism* (Claystone 2015) 22-30.

⁸¹ (n 73).

⁸² *Ibid*; *Sh. Liaquat Hussain v Federation of Pakistan* PLD 1999 SC 504, 848-853.

Sections 5(5) and 15 of the PPA stringently enhance strict liability and the presumption of guilt.⁸³ The presence of in camera proceedings under Section 10, the severity of punishment under Section 16 and the non-availability of pre or post arrest parole under Subsections 5(1) and 18,⁸⁴ leads to a ‘legal black hole’ with a susceptibility of core human rights protections.⁸⁵ Such presumption seems true due to an extensive duration of partially secretive custody and physical remand of an accused in designated internment centers under Subsections 5(4), 6(2) and 9(2) (a) and (b). This is especially emphasized in the absence of writ of habeas corpus under Section 18 of the PPA.⁸⁶ Custody under Section 9 is also ambiguous, in the sense that terms like ‘detainee’, ‘accused’ and ‘interned’ are not only used synonymously but have also been used without a proper definition in the entire statute. The most debatable among them is the expression of ‘interned’, because it neither explains its contextualization nor elaborates its applications. It is as imprecise as the failure to indicate whether it means a person who is preventively detained under Section 6 (1),⁸⁷ or is arrested under Section 15 of the PPA on a presumption of guilt. The latter is also contrary to Art.14 (1) and (2) of the ICCPR.⁸⁸

Moreover, the entire statute of the PPA lacks precise definitions and thresholds of waging war, insurrection and raising arms. Apparently, these can be construed as demonstrations of extreme violence against life and property but they ought to be classified in their entirety for construction of evidences and respective sentencing. The Supreme Court of Pakistan observed that a journalistic and political use of the term ‘war’ creates a hindrance for legal reasoning to evaluate the conduct of hostilities. It was held that the war could be divided into two domains, as ‘public war’ and ‘civil war’. The former connotes an external aggression whereas the later implies insurgency.⁸⁹ Similarly, the expression of ‘militant’ as used in PPA creates ambiguities because it does not explain how a militant is different from a terrorist with regards to his alleged involvement in the scheduled

⁸³ National Assembly Secretariat, ‘The Protection of Pakistan Act, 2014 Act No. X of 2014,’ in *The Gazette of Pakistan*, M-302/ L-7646, no. F.22 (30) /2013-Legis (July 15, 2014): 248-258.

⁸⁴ *Ibid*, s. 10.

⁸⁵ *State v Navjot Sandhu* Criminal Appeal Nos. 373-375, 376-378 of 2004 <<http://Judis.nic.in/supremecourt/imgs1.aspx?filename=27092>> 24-25, accessed 15 January 2018.

⁸⁶ The Protection of Pakistan Act 2014, s. 5(4), s. 6(2) and s. 9(2).

⁸⁷ *Ibid*, s. 6(1).

⁸⁸ H. Victor Conde, *A Handbook of International Human Rights Terminology* (University of Nebraska Press 2004) 291-92.

⁸⁹ (n 73) 1002-1004.

offences.⁹⁰ At this juncture, J. Azmat, in the *Rawalpindi Bar* case seems to follow the Indian perspective on waging war and relies upon Article 245 of the Constitution for his argumentation.⁹¹ J. Azmat indicates that the expression of ‘threat of war’, as incorporated in Article 245(1) is not meant for international armed conflict, which has already been mentioned in the preceding expression of external aggression. In fact, the connotation of ‘war’ in clause (1) of Article 245 construes as waging war against the state in form of armed rebellion or insurgency. Moreover, J. Bandial in the same case indicates that contemporary internal armed conflict in the Federally Administered Tribal Areas (‘FATA’)⁹² cannot be dealt with ordinary criminal laws, as it attracts special and stringent administrative measures even beyond the scope of Article 8 of the Constitution. However, to avoid violations of core human rights values the majority of judges maintain the pro-people forum of judicial review of administrative actions in this regard.⁹³

J. Bandial also indicates that the application of international humanitarian law may function as a law of armed conflict in Pakistan. He indicates further that the contemporary scale of violence in tribal and urban areas, coupled with the quantity of suicide blasts that occur in the wake of perfidy, and the magnitude of sabotage, require an urgent military response under Article 245 of the Constitution. Yet such military response must be coupled with principles of proportionality as enshrined in the four Geneva Conventions⁹⁴ to avoid undue collateral damage. Keeping in line with the pro-people approach, to avoid the miscarriage of justice in the case of detained militants, J. Bandial focuses on the Common Article 3, which is

⁹⁰ National Assembly Secretariat, ‘The Protection of Pakistan Act, 2014 Act No. X of 2014,’ in *The Gazette of Pakistan*, M-302/ L-7646, no. F.22 (30)/2013-Legis (July 15, 2014): 248 for S. 2(f).

⁹¹ National Assembly of Pakistan, *The Constitution of Islamic Republic of Pakistan: As modified up to 28 February 2012* (National Assembly Secretariat 2012) 6-7, 105-107.

⁹² *District Bar Association, Rawalpindi and others v Federation of Pakistan* PLD 2015 SC 401, 1154-1157.

⁹³ *Ibid*, 721-746.

⁹⁴ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31 (First Geneva Convention); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85 (Second Geneva Convention); Geneva Convention Relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 135 (Third Geneva Convention); Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (Fourth Geneva Convention).

common in all the four Geneva Conventions of 1949.⁹⁵ Hence, to accomplish such purpose and to extend judicial guaranties to the interns, he relies upon Article 4 along with Articles 184(3), 187 and 190 of the Constitution.⁹⁶

Conclusion

If a judicial connotation for shielding of due process during grave crises in Pakistan is analyzed under Dyzenhaus's perspective, then it illustrates that the judiciary is merely bound to follow the enacted law. As the court observes, 'during martial law when fundamental rights stood suspended, Article 4 of the Constitution, 1973 furnished the only guarantee or assurance to the citizens that no action detrimental to the life, liberty, reputation, or property of any person would be taken except in accordance with law'.⁹⁷ The question that remains is if the law itself infringes upon fundamental rights, restricts the powers of the judiciary or alters the Constitution itself, then, what kind of remedial powers lay with the judiciary to protect fundamental rights?

The entire supra debate indicates that the security laws of Pakistan uphold executive prerogative in face of a crisis and the executive professes purpose conformity not justice. Hence, in this scenario, what is left for the judiciary to enlarge its scope under the pro-people approach to ensure complete justice under Article 187 of the Constitution. How can the judiciary assert itself to uphold the positive morality of the due process of law in Pakistan in a way that 'due process' and 'law' complement each other at least to achieve the right to a fair trial? The notion of egalitarianism as incorporated in the second last paragraph of the preamble of the Constitution along with its other aims and objectives are identical to the contractual paradigm. Moreover, the primacy of fundamental rights is given in Articles 9-28, read with the due process clause of Article 4. These rights are guaranteed with the aid of the writ jurisdiction of the High Court under Article 199(1) and (2) as well as the 'writ of amparo' under Article 184(3). The importance accorded to fundamental rights is similar to the Kant's perspective of the categorical imperative. It is also identical to Locke's and Hobbes's perceptive to form a civil and political society solely to protect fundamental rights of the egalitarians.⁹⁸ Besides the placement of the

⁹⁵ Jelena Pejic, 'The Protective Scope of Common Article 3: The Eye' (2011) 93 (881) *Selected Articles on International Humanitarian Law* 189.

⁹⁶ (n 73) 1144-1147.

⁹⁷ *Federation of Pakistan and another v Malik Ghulam Mustafa Khar* PLD 1989 SC 26.

⁹⁸ *Haji Lal Muhammad v Federation of Pakistan* PLD 2014 Peshawar 199; *Foundation for Fundamental Rights v Federation of Pakistan and 4 others* PLD 2013 Pesh 94 – Reliance

objectives resolution as a substantive part of the Constitution through Article 2A is implicitly identical to contractual parameters. It seems that the objectives resolution, as a categorical imperative of Pakistan, binds all constitutional and procedural amendments to follow its values.

Moreover, the constitutional emphasizes on the elimination of all forms of exploitation as incorporated in Article 3 of the Constitution is an attempt to promote socio economic justice. It is quite identical to Rawls perspective of institutional justice through equality and equity. A compatible interpretation of Articles 3 and 4 of the Constitution, if read with fundamental rights and principles of policy provides a pragmatic rationale of Pound's sociological jurisprudence to avoid conflicts of interests in Pakistan. It is mainly to establish a new contract under the egalitarian philosophy as is stated in the preamble of the Constitution to accomplish the Hobbesian 'bare minimum of the natural law'. Subsequently, a harmonious interpretation of the Articles 4, 184(3), 187 and 190 of the Constitution elaborates a judicial obligation to materialize a just society based upon due process of law.⁹⁹ Resultantly, the court construes the notion of due process of law as enshrined in Article 4 of the Constitution, as it observes, 'connotation of the word 'Law' is restricted to positive law that is to say a formal pronouncement of the will of a competent law-giver and did not include what were mere legal precepts or theories'.¹⁰⁰ It seems accordingly that due process of law means protection of natural rights as incorporated in the chapter on fundamental rights through the force of positive law to curb the probability of internal unrest.¹⁰¹ It is because the pro-people strategy of counter violent extremism, along with judicial review of administrative actions has the legitimacy to subdue executive prerogatives as well as address the troubles of the segregated classes. Such voids not only create national identity crises but also subdue the political integrity of a country due to which non-state elements and forces thrive to impose their vested agendas.¹⁰² Consequently, ideological polarizations and clashes of values confound the political will of a country to maintain order that may lead to surfacing of internal armed conflicts owing to contested legitimacies.¹⁰³

has been placed on international bill of rights to protect fundamental rights of citizens of Pakistan.

⁹⁹ *Kamran Murtaza v Federation of Pakistan* 2014 SCMR 1667.

¹⁰⁰ *Rustam Ali v Martial Law Administrator, Zone 'C'* PLD 1978 Karachi 736.

¹⁰¹ *Mumtaz Ali Bhutto v The Deputy Martial Law Administrator, Sector 1, Karachi* PLD 1979 Karachi 307.

¹⁰² Ahmed Rashid, *Descent into Chaos: How the war against Islamic extremism is being lost in Pakistan, Afghanistan and Central Asia* (London: Allen Lane, Penguin Books, 2008), 34-36.

¹⁰³ Peter Singer, *One World: The Ethics of Globalization* (Orient Longman 2004), 144-149.