

*[Published in the Gazette of Pakistan, Extraordinary,  
Part-I, dated the 1<sup>st</sup> October, 2009]*

ORDINANCE NO.XXI OF 2009

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ORDINANCE

*Further to amend the Anti-terrorism Act, 1997*

WHEREAS it is expedient further to amend the Anti-terrorism Act, 1997 (XXVII of 1997), for the purposes hereinafter appearing;

AND WHEREAS the National Assembly is not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to make and promulgate the following Ordinance:—

1. **Short title and commencement.**—(1) This Ordinance may be called the **Anti-terrorism (Amendment) Ordinance, 2009.**

(2) It shall come into force at once.

2. **Amendment of section 6, Act XXVII of 1997.**—In the said Act, in section 6,—

(i) in sub-section (1), in clause (c), after the word “cause” at the end, the words and comma “or intimidating and terrorizing the public, social sectors, business community and preparing or attacking the civilians, government officials, installations, security forces or law enforcement agencies,” shall be added;

(ii) in sub-section (2),—

(a) in clause (c), after the word “property” the commas and the words “, including government premises, official installations, schools, hospitals, offices or any other public property” shall be added; and

(b) clause (g) shall be substituted as under:—

“involves taking the law in own hand, award of any punishment by an organization, individual or group whatsoever, not recognized by the law, with a view to coerce, intimidate or terrorize public, individuals, groups, communities, government officials and institutions, including Law Enforcement Agencies beyond the purview of the law of the land.”; and

(c) after clause (n), the following new clauses (o) and (p) shall be added:—

“(o) involves in acts as part of armed resistance by groups or individuals against law enforcement agencies.”;

“(p) involves in dissemination, preaching ideas, teachings and beliefs as per own interpretation on FM stations without explicit approval of government or its concerned departments.

3. **Amendment of section 11B, Act XXVII of 1997.**—In the said Act, in section 11B, in sub-section (1), in clause (c), for the semicolon at the end a colon shall be substituted and thereafter the following proviso shall be inserted, namely:—

“Provided that if any or all office bearers, activists or associates of a proscribed organization form a new organization under a different name, upon suspicion about their involvement in similar activities, the said organization shall also be deemed to be a proscribed organization and the Government may issue a formal notification of its proscription”.

4. **Amendment of section 11E, Act XXVII of 1997.**—In the said Act, in section 11E, after sub-section (1), the following new sub-section shall be inserted, namely,—

“(la) Upon proscription of an organization, if the office bearers or the members or the associates of such organization are found continuing the activities of the proscribed organization, in addition to any other action under this Act or any other law for the time being in force to which they may be liable,—

- (a) they shall not be issued any passport or allowed to travel abroad;
- (b) no bank or financial institution or any other entity providing financial support shall provide any loan facility or financial support to such persons or issue the credit cards to such persons; and
- (c) the arms licenses, if already issued, shall be deemed to be cancelled and the arms shall be deposited forthwith in the nearest Police Station, failing which such arms shall be confiscated and the holders of such arms shall be liable for the punishment provided under the Arms Ordinance, 1965. No fresh license to such persons for any kind of weapon shall be issued.”

5. **Amendment of section 11EE, Act XXVII of 1997.**—In the said Act, in section 11 EE, in sub-section (2), in clause (a), after the word “sureties” occurring for the first time, the words “alongwith a bank guarantee or cash not less than three hundred thousand rupees to be deposited in Court” shall be inserted.

6. **Amendment of section 110, Act XXVII of 1997.**—In the said Act, in section 110,—

- (a) after the word “the”, occurring for the first time, the words “Federal Government or” shall be inserted; and

- (b) in the proviso for the full stop, at the end, a colon shall be substituted and thereafter the following explanation shall be inserted, namely:—

*“Explanation:—The authorized officer under this section shall not be less than an officer of the rank of Inspector or equivalent”.*

7. **Amendment of section 11Q, Act XXVII of 1997.**—In the said Act, in section 11Q, after sub-section (6) the following new sub-section shall be inserted, namely:—

- “(7) A person other than an accused, claiming the ownership or interest in any property or assets, suspected to be terrorist property, may within a period of fifteen days of the freezing of account or of taking into possession or control of such property or assets, as the case may be, file his claim before the court. The court after giving notice to the prosecution and hearing the parties, shall decide the claim.”

8. **Amendment of section 11W Act, XXVII of 1997.**—In the said Act, in section 11W, in sub-section (1):—

- (a) after the words “video-cassettes” the words “or FM radio station” shall be inserted; and
- (b) after the word “which” the words and comma “glorifies terrorists or terrorist activities” shall be inserted.

9. **Insertion of new sections, Act XXVII of 1997.**—In the said Act, after section 11EEEE, the following new sections shall be inserted:—

*“11EEEE Preventive detention for inquiry.—(1) Any person who has been concerned in any offence under this Act or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned, the Government may issue order of his preventive detention for a period not exceeding ninety days, and which shall not be challenged in any Court, for the purposes of inquiry, specifying reasons and grounds thereof.*

- (2) The inquiry under sub-section (1) may be conducted by a Police Officer not below the rank of Inspector or through a Joint Interrogation Team (JIT) to be notified by the Government, comprising a police officer not below the rank of Inspector and officers of other investigation agencies and the powers of the inquiry officer will be vested as per section 5 of the FIA Act.

- (3) The detenu shall be produced in camera before the presiding officer of Anti-terrorism Court and in his absence, the District and Sessions Judge within twenty four hours.
- (4) During inquiry the concerned Police Officer not below the rank of Inspector or equivalent officer of the law enforcement agencies or the members of Joint Interrogation Team (JIT), as the case may be, shall have all the powers relating to search, arrest of persons and seizure of property, and other relevant material connected with the commission of offence and shall have all the powers as a Police Officer has in relation to the investigation of offences under the Code or any other law for the time being in force:

Provided that the detenu shall be kept in a detention centre so notified by the Government and the presiding officer of Court referred in sub-section (3) shall have the authority to inspect the detention centers to ensure that the custody is in accordance with the laws for the time being in force.

*"IIEEEE Prohibition on disposal of property.—*(1) If during the course of inquiry or investigation, the Police Officer not below the rank of Inspector or the Joint Investigation Team, as the case may be, has sufficient evidence to believe that any property which is the subject matter of the inquiry or investigation, is likely to be removed, transferred or otherwise disposed of before an order of the appropriate authority for its seizure is obtained, such officer or the team may, by order in writing, direct the owner or any person who is, for the time being, in possession thereof not to remove, transfer or otherwise dispose of such property in any manner except with the previous permission of such Officer or the team, as the case may be, and such order shall be subject to any order made by the Court having jurisdiction in the matter.

- (2) Any contravention of an order made under sub-section (1) shall be punishable with rigorous imprisonment for a term which may extend to two years, or with fine, or with both.

**10. Amendment of section 12, Act XXVII of 1997.—**In the said Act, in section 12:—

- (a) in sub-section (1), after the word "Province" the words "or the Islamabad Capital Territory" shall be inserted; and
- (b) in sub-section (3), after the word "Province" the words " or the Islamabad Capital Territory" shall be inserted.

11. **Amendment of section 13, Act XXVII of 1997.**—In the said Act, in section 13, in sub-section (1), for the words brackets and figures “referred to in sub-section(2) and sub-section(3) of section 39A” the words “under this Act” shall be substituted.

12. **Amendment of section 19, Act XXVII of 1997.**—In the said Act, in section 19:—

(a) for sub-section (1), the following shall be substituted, namely:—

“(1) The offences under this Act shall be investigated by a police officer not below the rank of Inspector. The Government, if deems necessary, may constitute a Joint Investigation Team of the officers from other law enforcement agencies including intelligence agencies for assisting the investigation officer. The investigating officer or the Team shall complete the investigation in respect of cases triable by Anti-terrorism Court within ninety working days and forward a report under section 173 of the Code directly to the Anti-Terrorism Court:

Provided that, where investigation is not completed within a period of ninety days from the date of recording of the first information report under section 154 of the Code the investigation officer or the Team shall, within three days after expiration of such period, forward to the Anti-terrorism Court through the Public Prosecutor, an interim report under section 173 of the Code, stating therein the result of investigation made until then and the Court shall commence the trial on the basis of such interim report, unless, for reasons to be recorded, the Court decides that the trial should not so commence”.

(b) after sub-section (1) substituted as aforesaid, the following new sub-section shall be inserted, namely:—

“(1a) Notwithstanding anything contained in any other law for the time being in force, the Federal Government may, in respect of any case registered by or under investigation with, the Police or any other investigation agency or authority, by order in writing, entrust inquiry or such investigation to such agency or authority as it may deem fit and thereupon the Police, or any other investigation agency or the authority shall transfer the record of the case to such agency or authority”.

13. **Insertion of new section, Act XXVII of 1997.**—In the said Act, after section 19, the following new section shall be inserted, namely:—

“19-A *Mode of making searches and arrest.*—The provisions of the Code of Criminal Procedure, 1898, except that of section 103, shall *mutatis mutandis*, apply to all searches and arrest by police officer and an officer of equivalent rank of the law enforcement agencies made under this Act.

14. **Amendment of section 21D, Act XXVII of 1997.**—In the said Act, in section 21D,—

(i) for sub-section (1) the following shall be substituted, namely:—

“(1) Notwithstanding anything contained in section 496 and 497 of the Code of Criminal Procedure, 1898, no court including a High Court or the Supreme Court shall grant bail to a person accused of an offence under this Act punishable with death or imprisonment for life or imprisonment exceeding ten years.”

(ii) in sub-section (2), for the colon at the end a full stop shall be substituted and the proviso shall be omitted;

(iii) sub-sections (3),(4) and (5) shall be omitted; and

(iv) in sub-section (6), for the words “in accordance with the conditions of his bail.” the words and comma “during investigation, remand or trial” shall be substituted.

15. **Amendment of section 21E, Act XXVII of 1997.**—In the said Act, in section 21E,—

(a) in sub-section (1), for the words “fifteen days” the words “not less than thirty days at one time” shall be substituted;

(b) in sub-section (2), in the proviso for the word “thirty” the word “ninety” shall be substituted; and

(c) in sub-section (3), for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:

Provided that the Magistrates appointed under Nizam-e-Adal Regulation, 2009 shall also have the same powers as given to a Court under this section.

16. **Insertion of section 21EE, Act XXVII of 1997.**—In the said Act, after section 21E, the following new section shall be inserted, namely:—

**“21EE Power to call information etc.—(1) The Superintendent of Police during the course of investigation or an equivalent officer of security forces operating in aid of civil power under section 4 and 5, may by an order in writing:—**

- (a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made there under.
- (b) require any person to produce or deliver any document or thing useful or relevant to the inquiry or investigation;
- (c) examine any person acquainted with the facts and circumstances of the case;
- (d) require any bank or financial institution, notwithstanding anything contained in any other law for the time being in force, to provide any information relating to any person, including copies of entries made in the bank's or a financial institution's book, including information of transactions saved in electronic or digital form which are reasonably believed to be connected with commission of an offence under this Act, and the keeper of such books or records shall be obliged to certify the copies in accordance with law;
- (e) require information or obtain record of telephone and mobile phone data, e-mail, MMS and CNIC or any other information suspected to be linked in any manner with commission of an offence under this Act, from any service provider company or department.

(2) The copies obtained, information received or evidence collected in pursuance of clause (d) and (e) shall be kept confidential and shall not be divulged to any unauthorized person or used for any purpose other than the legal proceedings under this Act.

(3) Any contravention of an order made under sub-section (1) shall be punishable with imprisonment which may extend to two years or with fine which may extend to one hundred thousand rupees or with both.”

17. **Amendment of section 21F, Act XXVII of 1997.**—In the said Act, in section 21F:—

- (a) the words and comma “other than a child,” and the comma and words “,unless granted by the Government” shall be omitted;
- (b) for the full stop at the end, a colon shall be substituted and thereafter the following provisions shall be inserted, namely:—

“Provided in case of a child convicted and sentences for an offence under this Act, on satisfaction of government, may be granted remission, as deemed appropriate”.

18. **Amendment of section 21H, Act XXVII of 1997.**—In the said Act, in section 21H, in the existing proviso, after the word “Provided” the word “further” shall be inserted and before the proviso amended as aforesaid the following new proviso shall be inserted, namely:

“Provided that the confessional statement made before the District Police Officer or equivalent officer of security forces operating in aid of civil power in the military / security operational areas notified by the Government under section 4 of this Act, involving attack on the members of Armed Forces, Civil Armed Forces, Law Enforcement Agencies, Government installations, hotels or public property shall be admissible in evidence.”

19. **Amendment of section 25, Act XXVII of 1997.**—In the said Act, in section 25,—

- (a) in sub-section (3), for the word “seven” the word “fifteen” shall be substituted; and
- (b) in sub-section (4), for the word “fifteen” the word “thirty” shall be substituted.

20. **Insertion of new section, Act XXVII of 1997.**—In the said Act, after section 27, the following new section shall be inserted, namely:—

“27A. *Presumption of proof against accused.*—(1) Any person having in possession, without lawful excuse, any explosive substance with or without explosive devices without justification or having been concerned with such explosive substance and devices, shall be presumed, unless contrary is proved, that the explosive substance was for the purpose of terrorism.

(2) Any person who has been convicted for an offence punishable under this Act, if having property or assets, which are disproportionate to his known sources of income, it shall be presumed, unless contrary is proved, that the said property and assets have been acquired through terrorist activities and shall be liable to be forfeited.”

21. **Amendment of section 28, Act XXVII of 1997.**—In the said Act, in section 28, after the word “concerned” the words “on the application of any party to the proceedings or on the application of the Federal Government” shall be inserted.

22. **Substitution of section 35, Act XXVII of 1997.**—In the said Act, for section 35 the following shall be substituted, namely:—

“35. *Powers to make rules.*—The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.”

### **STATEMENTS OF OBJECTS AND REASONS.**

Growing menace of terrorism and attacks on Armed Forces, Civil Armed Forces and Law Enforcement Agencies (LEAs) have adversely affected security situation. The extra-ordinary circumstances demand more stringent laws to curb the terrorist violence and punish those found involved with a view to create adequate deterrent. In order to improve the provision of Anti-Terrorism Act, 1997 (ATA) amendments have been proposed to achieve the desired goal.

**A. REHMAN MALIK**  
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Member-in-Charge