The Sabbath Pond in the Courtroom: Anonymous Tribunals, Form Without Substance, and the Right to Confront under Pakistan's Anti-Terrorism (Punjab Amendment) Bill 2026

Sabbath Pond Test II

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Abstract

This paper extends the Sabbath Pond Test — an analytic device drawn from Qur'an 7:163–166 for detecting arrangements that preserve the *form* of a rule while defeating its *substance* — from Islamic finance, where it was first applied, to criminal procedure. It examines Section 21AAA of the Anti-Terrorism Act 1997 as inserted by Bill No. 47 of 2026 of the Provincial Assembly of the Punjab (passed 31 August 2026), which permits an unnamed executive officer of BS-20 to designate any case or "class of cases" a "special security case," whereupon the identities of judges, prosecutors, defence counsel, police officers and witnesses "shall not be disclosed in any case," the record is sealed, proceedings may be conducted under the officer's "instructions and guidelines," and the regime may be applied *mutatis mutandis* to the appellate courts. Running the provision through the test's four criteria, and through Pakistan's constitutional guarantees (Articles 10-A, 175(3), 143, 2A and 227), the protection scheme that the Anti-Terrorism Act *already* contains in Sections 21 and 21AA and that the Punjab Witness Protection Act 2018 duplicates, comparative fair-trial jurisprudence (the UN Human Rights Committee, the Inter-American and European Courts, the House of Lords, the US Supreme Court), and the classical Islamic law of testimony and *ḥiyal*, the paper argues that Section 21AAA retains every formal element of a trial while removing the substance of each — and that it does so by displacing a judicially-controlled protection regime that Parliament enacted in 2018 on the very model the comparative law recommends. A documented case study — the author's own 2016 prosecution before an Anti-Terrorism Court, in which the trial court observed that the recovery proceedings "appear to have been prepared while sitting in the Police Station" — illustrates the class of harm that anonymity would render undiscoverable. The author's position as the accused in that case is declared.

Keywords: anonymous witnesses; faceless courts; fair trial; Article 10-A; Anti-Terrorism Act 1997; Section 21AAA; Section 21AA; witness protection; confrontation; *ḥiyal*; *tazkiyat al-shuhūd*; form and substance; Pakistan; Sabbath Pond Test.

Positionality statement. The author was one of two accused in FIR No. 56/2016, Police Station CTD, Lahore, tried before Anti-Terrorism Court No. II, Lahore, and acquitted by judgment announced 24 October 2017. Section 8 of this paper analyses that judgment. The author has no proceeding pending under the Anti-Terrorism Act. Nothing in this paper seeks any relief, names any official in its text, or alleges any offence against any person; the case study is confined to what the attested public judgment records. Readers should weigh the analysis with that interest in view.

Notice. This is an AI-assisted academic preprint (see Section 10.3). It is written solely for research and scholarly discussion. It is not legal advice, not a religious ruling, not a pleading, and not a call to any action by any person or body. It asks nothing of anyone except that its sources be read. See the Disclaimer at Section 10.5.

1. Introduction: the test, stated

In Sūrah al-Aʿrāf the Qur'an recalls a town by the sea whose people were forbidden to fish on the Sabbath (*yawm al-sabt*, the Saturday rest-day of the Jewish law). The fish, the narrative says, came to them openly on the Sabbath and stayed away on other days; and so the people devised a means of taking on the Sabbath what they were forbidden to take on the Sabbath, while being able to say that they had not fished (Qur'an 7:163–166). The classical exegetes read the passage as the paradigm of the *ḥīla* — the legal device that keeps the letter of a rule while defeating its purpose — and the Ḥanafī jurists, who developed the most elaborate doctrine of lawful devices (*makhārij*), treated the Sabbath people as the boundary case that no device may cross: a stratagem whose whole object is to obtain the thing prohibited [1, 2].

An earlier paper adopted this narrative as an analytic device, the "Sabbath Pond Test," and applied it to contemporary Islamic banking, asking whether products such as *murābaḥa* and *tawarruq* avoid the substance of *ribā* or merely its form [3]. The present paper extends the device to a different domain — criminal procedure — and to a different prohibition: the constitutional rule that no person may be convicted except by a fair trial. It argues that Section 21AAA of the Anti-Terrorism Act 1997, as inserted by the Anti-Terrorism (Punjab Amendment) Bill 2026, is a Sabbath pond in the precise sense of the test. It preserves every noun of a criminal trial — a judge, a prosecutor, defence counsel, witnesses, evidence, a record, an appeal — and removes the substance of each, so that a conviction may be obtained without confrontation while the State can say that there was a trial.

The device is stated formally so that it can be applied and, if it fails, be seen to fail. An arrangement fails the Sabbath Pond Test when four conditions hold together:

1. **A rule prohibits an outcome X.**
2. **The arrangement obtains the effect of X.**
3. **It does so by preserving the rule's formal elements** — the labels, actors and steps the rule requires — so that the rule appears to be satisfied.
4. **It cannot be defended by reference to the rule's purpose**: the purpose the rule serves is either already secured by other means, or is not served by the arrangement at all.

Criteria (1)–(3) describe the mechanism of every *ḥīla*; criterion (4) distinguishes the lawful device from the unlawful one. A device that serves the rule's purpose by another route — the *makhraj* of the Ḥanafīs — passes. A device whose only work is to obtain the prohibited thing fails. The banking paper argued that a sale-and-buy-back that reproduces an interest-bearing loan fails criterion (4) because nothing in it serves the purpose of the *ribā* prohibition. This paper argues that an anonymous tribunal fails criterion (4) twice: the protective purpose it invokes is already served by a judicially-controlled scheme that the same statute contains, and the anonymity of the judge and of defence counsel serves no protective purpose that anyone has articulated.

The paper proceeds as follows. Section 2 sets out Section 21AAA from the authentic text of the Bill. Section 3 places it within Pakistan's constitutional framework. Section 4 sets out the protection regime that already exists in Sections 21 and 21AA of the Anti-Terrorism Act and the Punjab Witness Protection Act 2018, and shows that Section 21AAA is different in kind. Section 5 surveys the comparative law of anonymous evidence and faceless tribunals. Section 6 examines the classical Islamic law of testimony and of legal devices. Section 7 runs Section 21AAA through the four criteria. Section 8 presents a documented case — the author's own — from the trial court's attested judgment, and asks which of that court's findings could have been reached under the impugned procedure. Section 9 sets out what a lawful version would require. Section 10 concludes.

A word on register. The Qur'anic narrative ends with a punishment. This paper does not invoke it, and nothing here should be read as directed at any legislator, official or court. The lesson taken from the narrative is structural: that a rule can be kept in form and broken in substance, and that the difference can be detected. The author writes as a person who was the subject of the procedure analysed in Section 8, and says so; the analysis is offered as analysis, to be tested against the sources it cites, all of which are public.

2. Section 21AAA: mechanism, status, and what it changes

2.1 Text

The Anti-Terrorism (Punjab Amendment) Bill 2026 (Bill No. 47 of 2026), dated 8 June 2026 and passed by the Provincial Assembly of the Punjab on 31 August 2026, inserts a new Section 21AAA into the Anti-Terrorism Act 1997 (XXVII of 1997) immediately after the existing Section 21AA [4, 5]. By Section 1(2) of the Bill the amendment "shall come into force at once." The operative provisions, from the text published by the Assembly, are these:

- **Sub-section (1).** "The designated authority may, if considers appropriate that in a case or class of cases, the judges, counsels, public prosecutors, police officers, witnesses, defense counsels and persons concerned with the trial, inquiry and judicial proceedings of such case or class of cases require extraordinary protection, declare such case or class of cases as special security case."
- **(2)(a).** "on the request of designated authority, the Chief Justice of the Lahore High Court shall assign such case to one of the judges of Anti-terrorism Courts in Punjab."
- **(2)(b).** On the authority's request the Prosecutor General provides "a panel of five eligible Public Prosecutors … and the designated authority shall assign the case to one of the Public Prosecutors from the panel."
- **(2)(c).** "identities of the judges, counsels, Public Prosecutors, police officers, witnesses, defense counsels and persons concerned … shall not be disclosed in any case and official titles or designations shall be referred."
- **(2)(d)–(e).** "all orders … shall be signed without disclosing personal identities"; "witnesses shall be identified through specific identities given to them by the designated authority."
- **(2)(f).** The names of judges and prosecutors are not to be gazetted, and the "complete record of trial, inquiry and other judicial proceedings shall remain sealed and retained by the Chief Justice of the Lahore High Court and the designated authority."
- **(2)(g)–(h).** Proceedings by video-conferencing, recorded "through audio and video and shall be protected as such," "using voice modification technology to protect identities," in secure premises accessible only to participants.
- **(2)(i).** Virtual proceedings from prison "in accordance with the instructions and guidelines issued by the designated authority."
- **(2)(j).** "Government may adopt such other measures as it may deem appropriate for the purpose of this section."
- **(3).** "The provisions of this section may, mutatis mutandis, be applied to the proceedings of special security cases before the appellate courts."
- **(4).** The designated authority is "an officer not below the rank of BS-20 or equivalent … whose credentials shall be kept confidential and only be communicated to the Chief Justice of the Lahore High Court."
- **(5).** The authority is to "decide whether a case or a class of cases require extraordinary protection measures," to "consult and coordinate with the Government," and to "issue such orders or directions as may be necessary to give effect to the provisions of this section."
- **(6).** "The provisions of this section shall have effect notwithstanding anything contained in this Act or the Code."

The Statement of Objects and Reasons states that the amendment will ensure the safety of participants "while upholding the constitutional guarantees of fair trial, dignity, and security of person under the Constitution" — invoking, that is, Articles 10-A, 14 and 9, the very guarantees this paper argues it abridges.

2.2 Status

At the time of writing the measure is a Bill passed by the Assembly; it becomes an Act on the Governor's assent under Article 116 of the Constitution, and its text as notified in the Punjab Gazette may differ from the Bill as passed. Everything said here about "the provision" refers to the Bill's text and should be re-read against the Gazette when it appears. Its passage was contested: it was passed on 31 August 2026 after the opposition walked out, and its amendments were rejected in its absence [6]. A different Bill of the previous year, Bill No. 71 of 2025, amended Section 11EEEE (preventive detention) and is not a predecessor of the present measure [7].

2.3 What the provision does and does not say

Three features of the text deserve notice because they were not reported at the time of passage and because they bear directly on the analysis that follows. First, sub-section (3) extends the regime to the appellate courts, so that the High Court appeal itself may be conducted faceless — a point of consequence for Section 3.5 below. Second, sub-sections (2)(i) and (5)(d) give the designated authority not merely a power of designation but a power to issue the "instructions and guidelines" under which proceedings are conducted and "such orders or directions as may be necessary" — a rule-making power over the trial itself. Third, the concealment in (2)(c) is unqualified: identities "shall not be disclosed in any case," with no exception for the accused or his counsel, and no distinction between non-publication to the public and concealment from the defence.

Equally, the text does not say certain things that commentators inferred. It contains no express bar on an application for recusal or a challenge to the constitution of the tribunal. It does not need one: an accused who is forbidden to know who is trying him cannot in practice make either, and the right is extinguished by concealment rather than by prohibition. And it contains no criterion for designation, no requirement of notice, no right of objection, no judicial determination of the need for protection, no duration, and no review.

Table 1 summarises the provision against the questions that Section 4 and Section 5 will put to every comparator.

Table 1 — Section 21AAA at a glance

Question	Section 21AAA
Who decides that a case needs protection?	An executive officer (BS-20), himself unnamed (ss. (1), (4))
On what criteria?	"if considers appropriate" (s. (1)) — none stated
Individual case or class?	"a case or class of cases" (s. (1))
Who assigns the judge?	The Chief Justice, but "on the request of" the authority and "shall" (s. (2)(a))
Who selects the prosecutor?	The authority, from a panel (s. (2)(b))
Whose identity is concealed?	Judge, prosecutor, defence counsel, police, witnesses, "persons concerned" (s. (2)(c))
From whom?	"in any case" — no exception for the accused (s. (2)(c))
Who assigns witness identities?	The authority (s. (2)(e))
Who holds the record?	Chief Justice and the authority, sealed (s. (2)(f))
Who writes the rules of conduct?	The authority (ss. (2)(i), (5)(d)); Government (s. (2)(j))
Appeal?	The regime "may, mutatis mutandis" apply to the appellate courts (s. (3))

Notice, objection, review, duration?	None
Relationship to the Act and the Code?	"notwithstanding anything contained in this Act or the Code" (s. (6))

3. The constitutional frame

3.1 Article 10-A: the anonymous judge

Article 10-A of the Constitution guarantees to every person, "for the determination of his civil rights and obligations or in any criminal charge against him," the right to "a fair trial and due process." A trial before a judge whose identity is concealed cannot satisfy that guarantee. An accused cannot know whether the judge is related to the complainant, has previously appeared against him, holds an interest in the outcome, or possesses the qualifications the law requires. The right to an impartial tribunal is meaningless if the accused is forbidden to know who is trying him.

This is not a novel proposition; it is the one the Inter-American Court reached on identical facts. Of Peru's faceless treason tribunals it held that "because judges who preside over the treason trials are 'faceless,' defendants have no way of knowing the identity of their judge and, therefore, of assessing their competence," and found a violation of the right to a competent, independent and impartial tribunal on that ground [8, ¶¶133–134]. The UN Human Rights Committee has said the same in general terms, and its formulation is worth setting out because it anticipates every element of Section 21AAA:

> "Some countries have resorted to special tribunals of 'faceless judges' composed of anonymous judges, e.g. within measures taken to fight terrorist activities. Such courts, even if the identity and status of such judges has been verified by an independent authority, often suffer not only from the fact that the identity and status of the judges is not made known to the accused persons but also from irregularities such as exclusion of the public or even the accused or their representatives from the proceedings; … severe restrictions or denial of the right to summon and examine or have examined witnesses, including prohibitions on cross-examining certain categories of witnesses, e.g. police officers responsible for the arrest and interrogation of the defendant. Tribunals with or without faceless judges, in circumstances such as these, do not satisfy basic standards of fair trial and, in particular, the requirement that the tribunal must be independent and impartial." [9, ¶23]

Two things in that passage bear directly on the Punjab provision. The Committee's objection survives verification of the judge "by an independent authority" — so the fact that the Chief Justice assigns the judge under sub-section (2)(a) does not cure the defect, since the accused still does not know who the judge is. And the Committee singles out prohibitions on cross-examining "police officers responsible for the arrest" — precisely the category that sub-section (2)(c) conceals.

3.2 Article 175(3): executive control of the judicial process

Article 175(3) requires the separation of the judiciary from the executive. The Supreme Court has treated that separation as the hallmark of the Constitution: "The hallmark of our Constitution is that it envisages separation of the Judiciary from the Executive (which is founded on the Islamic Judicial System) in order to ensure independence of Judiciary and, therefore, any Court or Tribunal which is not subject to judicial review and administrative control of the High Court and/or the Supreme Court does not fit in within the judicial framework of the Constitution" [10]. It was on that principle that *Mehram Ali* held several provisions of the Anti-Terrorism Act 1997 "not valid in [their] present form as the same militates against the concept of independence of Judiciary and Arts. 175 & 203 of the Constitution," and directed that appellate power be vested in the High Court rather than an Appellate Tribunal [10]; and on the same principle that *Sh. Liaquat Hussain* held that an unconvicted person "has a vested right to a fair trial before a Court or Tribunal validly established under Article 175(1)," and that military courts trying civilians "do not fulfil the criteria of a 'Court' exercising judicial functions within the purview of the guide-lines provided in the case of Mehram Ali" [11].

Section 21AAA inverts the separation those cases protect. An unnamed executive officer decides which cases, or which classes of cases, enter the regime (ss. (1), (5)(b)); upon his request the Chief Justice "shall" assign the judge (s. (2)(a)); he selects the prosecutor (s. (2)(b)); he issues the identities by which witnesses are known (s. (2)(e)); he holds the sealed record jointly with the Chief Justice (s. (2)(f)); proceedings from prison are conducted under his "instructions and guidelines" (s. (2)(i)); and he may "issue such orders or directions as may be necessary" (s. (5)(d)). The cumulative effect is that the executive determines the forum, the prosecutor, the identity of the witnesses, the rules under which the proceedings are conducted, and the material available for appellate scrutiny. A court so constituted is not an independent tribunal but an instrument of the authority that prosecutes before it.

3.3 Article 25: classification by unguided discretion

Article 25 guarantees equality before the law. A classification is permissible only where it rests on an intelligible differentia bearing a rational nexus to the object sought, and where the classification is made by law rather than by unguided executive discretion. Section 21AAA permits an unnamed officer to subject not merely a case but an entire "class of cases" to a diminished procedure, without stated criteria, without notice to the accused, and without any right of objection. Two persons charged with identical offences may thus be tried under wholly different procedures at the unreviewable choice of a functionary.

3.4 Article 143: repugnancy to Federal law

The Anti-Terrorism Act 1997 and the Code of Criminal Procedure 1898 are Federal enactments. Article 142(b) confers concurrent competence over criminal law and procedure on Parliament and the Provincial Assemblies; Article 143 provides that where a Provincial Act is repugnant to an Act of Parliament, the Federal law prevails and the Provincial law is void to the extent of the repugnancy. The Speaker's reliance on Article 142 during passage [6] answers the question of competence but not the question of conflict, which Article 143 governs. The "notwithstanding" clause in sub-section (6) does not establish invalidity; it establishes that the Provincial legislature intended the provision to prevail over Federal law, and so the question is whether the two can stand together. They cannot:

- Section 353 of the Code provides that "all evidence taken under Chapters XX, XXI, XXII and XXIIA shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader" [12]. Section 21AAA permits evidence from persons whose identity the accused may never know.
- Section 265-C of the Code requires that "copies of the following documents shall be supplied free of cost to the accused not later than seven days before the commencement of the trial," including "the statements of all witnesses recorded under sections 161 and 164" [12]. Section 21AAA permits the record to be sealed.
- Section 25 of the Act of 1997 provides that an appeal "shall lie to a High Court," that copies of the judgment "shall be supplied to the accused … free of cost on the day the judgment is pronounced," and that "the record of the trial shall be transmitted to the High Court within three days" [13]. Section 21AAA permits that record to be withheld under seal, and by sub-section (3) permits the appeal itself to be faceless.

- Most directly, Section 21AAA is repugnant to **Section 21AA of the same Act**, a Federal provision inserted by Act XV of 2018, which makes witness anonymity a matter for a court order on stated conditions. That relationship is the subject of Section 4.

3.5 The faceless appeal

Under the existing scheme the record goes to the High Court and the convict gets the judgment. By sealing the record with the Chief Justice and the designated authority (s. (2)(f)), Section 21AAA makes effective appellate scrutiny impossible: an appellant cannot identify errors in a record he may not see, and an appellate court cannot evaluate the credibility of witnesses it cannot identify. Sub-section (3) then applies the regime to the appellate courts themselves. The appeal may thus be heard by judges whose identity is concealed, reviewing the judgment of a trial judge whose identity is concealed, on the evidence of witnesses whose identity is concealed. An appellate court that does not know who tried the case, and cannot know who testified, cannot perform the appellate function at all. *Mehram Ali* struck down the Act's original appellate arrangements precisely because they took the appeal away from the High Court [10]; Section 21AAA leaves the appeal with the High Court in name and takes away the High Court's capacity to hear it.

3.6 Articles 2A, 31 and 227

The Objectives Resolution is a substantive part of the Constitution (Article 2A); Article 227 provides that no law shall be enacted repugnant to the Injunctions of Islam. The Supreme Court's own statement that the separation of the judiciary from the executive "is founded on the Islamic Judicial System" [10] links these provisions to Article 175(3). The Islamic law of testimony and adjudication is examined in Section 6; the jurisdiction to declare a law repugnant to the Injunctions of Islam belongs to the Federal Shariat Court under Article 203D, and nothing in this paper trespasses on it. The submission is confined to construction: Articles 2A and 227 inform the content of the fair-trial guarantee, and the Constitution is to be read in harmony with them.

4. What already exists: judicial protection under Sections 21 and 21AA, and the Act of 2018

The premise of Section 21AAA, stated in its Objects and Reasons, is that "the existing provisions of the Anti-Terrorism Act, 1997 do not adequately provide mechanisms for conducting secure proceedings in cases involving high security risks" [4]. The Act's own text does not bear that out. It contains two protection provisions already, one of them enacted by Parliament in 2018 on precisely the model that the comparative law of Section 5 recommends.

4.1 Section 21

Section 21 of the Act, as amended between 2001 and 2020, provides that "the Court may … make such necessary orders or take such measures, as it deems fit … for the protection of a witness, judge, public prosecutor, counsel and other persons concerned in court proceedings," including that proceedings be held in camera or under restricted entry; that "the names of judges, counsel, public prosecutor, witnesses and persons concerned with court proceedings shall not be published"; that "adequate protection shall be provided to a witness identifying any accused, in order to protect the identity of the witness from the accused"; that "screens may be used during trial to shield witnesses, Judges and Prosecutors from public view"; that "trial may be held in jail premises or through video link"; and that the Government and the Armed Forces "shall also provide comprehensive protection and security to the judges, accused, witnesses, prosecutors, investigators, defence counsel and all those concerned" [13, s. 21].

Section 21 therefore already permits non-publication of the names of judges and counsel, screening, trial in jail, video link, and physical protection — under the order of the court seized of the case. What it does not do is conceal the judge from the accused, seal the record, or place any of these decisions in an executive officer.

4.2 Section 21AA

Section 21AA, "Protection of Judges, prosecutors, witnesses and persons concerned with Court proceedings," was inserted by the Anti-Terrorism (Amendment) Act 2018 (XV of 2018) [13, s. 21AA]. It provides that "the Court may make such necessary orders or take such measures, as it deems fit," including that "witness anonymity order may be passed by a Court that requires such specified measures to be taken in relation to a witness … as the Court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings." The measures may include "that the witness's name and other identifying details shall be withheld or removed from materials disclosed to any party to the proceedings"; a pseudonym; a bar on "questions of any specified description that might lead to the identification of the witness"; screening; "that the witness's voice is subjected to modulation to any specified extent"; live link, with cross-examination by live link and the image and voice "morphed"; and identification parades by screening.

Sub-section (2) then imposes conditions: "The Court may make such an order only if it is satisfied that the following conditions are met, namely: (a) the proposed order is necessary, (i) in order to protect the safety of the witness or another person or to prevent any serious damage to property; or (ii) in order to prevent real harm to the public interest; or (iii) in order to ensure expeditious trial; and (b) having regard to all the circumstances, the effect of the proposed order should be consistent with the defendant receiving a fair trial."

Readers of Section 5 will recognise this text. Conditions (a)(i)–(ii) and (b) are, almost word for word, Conditions A and B of Section 88 of the United Kingdom's Coroners and Justice Act 2009 [14] — the statute Parliament enacted after the House of Lords held anonymous witness evidence unlawful at common law in *R v Davis* [15]. In 2018 the Federal legislature of Pakistan chose the judicial model: a court makes the order, on stated conditions, and only where doing so is "consistent with the defendant receiving a fair trial." Section 21AA is that choice, on the face of the Act.

4.3 The Punjab Witness Protection Act 2018

The Provincial legislature made the same choice in the same year. Section 14 of the Punjab Witness Protection Act 2018 provides that "where a person is or is likely to be required as a witness, the court on the application of any party or of its own motion, [may] make an order for the preservation of the anonymity of the witness," including that "the name, address, and identifying details shall be withheld," that "the witness may use a pseudonym," and that "no question is asked at the trial that might lead to the identification of the witness … without the express permission of the court"; violation of a Witness Anonymity Order is an offence punishable under Section 16 [16]. The Act also provides for screening (s. 9), video link (s. 10), restricted entry (s. 11), rules of cross-examination (s. 12), reporting restrictions (s. 13) and trial in jail (s. 15) — each on the order of, or in consultation with, the court.

4.4 The difference in kind

Table 2 sets the three existing provisions beside Section 21AAA.

Table 2 — The existing scheme and the new one

	ATA s. 21	ATA s. 21AA (2018)	PWPA 2018 s. 14	s. 21AAA (2026)
Who decides	The court	The court	The court	**An unnamed executive officer**
Basis	As it "deems fit" for protection	Stated conditions incl. fair-trial guard	On application or own motion	**"if considers appropriate"**
Scope	The case before the court	A witness in the proceedings	A witness in the proceedings	**"a case or class of cases"**
Witness identity	Protected from the accused where identifying	Withheld; pseudonym; screen; voice modulation	Withheld; pseudonym	**Assigned by the officer; concealed "in any case"**
Judge's identity	Not *published*	—	—	**Concealed from the accused**
Defence counsel's identity	Not *published*	—	—	**Concealed**
Prosecutor	Court's protection	—	—	**Selected by the officer**
Record	Ordinary	Ordinary	Ordinary	**Sealed with the officer**
Rules of conduct	The court's orders	The court's orders	The court's orders	**The officer's "instructions and guidelines"**
Appeal	s. 25: High Court, on the record	s. 25	Ordinary	**Faceless "mutatis mutandis"**
Fair-trial condition	Implicit	**Express** (s. 21AA(2)(b))	Implicit	**None**

The honest concession must be made and is made: the protection of witnesses, and of judges, in terrorism cases is a legitimate object, and the State is entitled to secure it. The point is that the State already has. Every protective measure that Section 21AAA offers a witness — pseudonym, screening, voice modification, video link, trial in jail — the court can already order under Section 21AA, subject to the condition that the order be "consistent with the defendant receiving a fair trial." What Section 21AAA adds is not protection. It adds an executive designator in place of the judge, a "class of cases" in place of the case, the concealment of the judge and of defence counsel, a sealed record, a faceless appeal, and the removal of the fair-trial condition — and it does all of this "notwithstanding anything contained in this Act," which is to say notwithstanding Section 21AA itself.

That is the shape of a Sabbath pond. The legislature had already built the lawful means of taking the fish; the new provision keeps the name of the means and removes the condition that made it lawful.

5. Comparative law: what the jurisdictions that tried anonymity decided

Anonymous evidence and faceless tribunals are not new. Each of the major human-rights systems and the two principal common-law jurisdictions has confronted them, and the results are consistent enough to be stated as a body of doctrine. This section sets that doctrine out from the primary texts, and Section 5.6 tabulates it against Section 21AAA. The purpose is not to argue that Pakistan is bound by any of these decisions — only the Covenant is binding on it, and only at the level of international obligation — but to show that the questions Section 21AAA raises have been asked before, and answered.

5.1 The UN Human Rights Committee

Article 14(1) of the International Covenant on Civil and Political Rights, which Pakistan ratified in 2010, guarantees "a fair and public hearing by a competent, independent and impartial tribunal established by law," and Article 14(3)(e) the right "to examine, or have examined, the witnesses against him." The Committee's General Comment No. 32 addresses faceless tribunals directly in the passage quoted at Section 3.1: such tribunals, "even if the identity and status of such judges has been verified by an independent authority," and "with or without faceless judges, in circumstances such as these, do not satisfy basic standards of fair trial and, in particular, the requirement that the tribunal must be independent and impartial" [9, ¶23].

The Committee applied that view in *Polay Campos v Peru*, the case of a man tried in a prison by a "tribunal of faceless judges" under Peru's anti-terrorism decrees. It held that "such trials by special tribunals composed of anonymous judges are incompatible with article 14 of the Covenant," that "the very nature of the system of trials by 'faceless judges' in a remote prison is predicated on the exclusion of the public from the proceedings," and that in such a system "neither the independence nor the impartiality of the judges is guaranteed," which "also fails to safeguard the presumption of innocence" [17, ¶8.8]. The Committee found violations of Article 14(1), (2) and (3)(b) and (d).

5.2 The Inter-American Court

The Inter-American Court has twice condemned the Peruvian model on which Section 21AAA is, in its essentials, patterned. In *Castillo Petruzzi*, the Court held that "because judges who preside over the treason trials are 'faceless,' defendants have no way of knowing the identity of their judge and, therefore, of assessing their competence," and — a point directly relevant to Section 2.3 above — that the decree "does not allow these judges to recuse themselves" [8, ¶133]. It found a violation of Article 8(1) of the American Convention [8, ¶134]. In *Lori Berenson*, the Commission's submission, which the Court accepted in substance, put the point in terms that could be transposed to Punjab without alteration: "When the judge's identity is unknown, the possibility of determining his independence and impartiality are jeopardized; this was reinforced by the provisions of Article 13(h) of Decree Law No. 25,475, which excluded objections to the officials who acted in these trials" [18]. Peru excluded recusal expressly; Section 21AAA excludes it by concealment. The result is the same.

The documentary record of what the faceless courts produced is preserved in Human Rights Watch's 1996 report, whose opening sentence is that "the incarceration of hundreds of innocent prisoners charged or convicted of terrorist crimes they did not commit is now an open secret in Peru," and which records that "no one in Peru, including the architect of the court system, President Alberto Fujimori, denies that the problem exists" [19]. The Inter-American Court's own record in *Lori Berenson* notes that after the faceless courts ceased, "from August 1996 to December 1999, more than 600 people were acquitted" on review [18]. That is the empirical footnote to the doctrinal point: a procedure that prevents the defence from testing evidence does not merely risk wrongful conviction; it produces it at scale, and the scale becomes visible only when the procedure is dismantled.

5.3 The European Court

The European Court's line of authority is the most developed, because the Netherlands and other States attempted to reconcile witness anonymity with Article 6 rather than abandon it, and the Court was obliged to say precisely where the line lies.

Kostovski (1989) is the foundation. The Court did not object to anonymous informants at the investigative stage; it objected to "the subsequent use of anonymous statements as sufficient evidence to found a conviction," which "involved limitations on the rights of the defence which were irreconcilable with the guarantees contained in Article 6" [20, ¶44]. Its reasoning is the reasoning of this paper: "If the defence is unaware of the identity of the person it seeks to question, it may be deprived of the very particulars enabling it to demonstrate that he or she is prejudiced, hostile or unreliable. Testimony or other declarations inculpating an accused may well be designedly untruthful or simply erroneous and the defence will scarcely be able to bring this to light if it lacks the information permitting it to test the author's reliability or cast doubt on his credibility. The dangers inherent in such a situation are obvious" [20, ¶42].

Doorson (1996) is the concession. Anonymity may be permitted where "the handicaps under which the defence laboured were sufficiently counterbalanced by the procedures followed by the judicial authorities" — there, questioning by an investigating judge who knew the witnesses' identity, in the presence of counsel — but "even when 'counterbalancing' procedures are found to compensate sufficiently the handicaps under which the defence labours, a conviction should not be based either solely or to a decisive extent on anonymous statements," and such evidence "should be treated with extreme care" [21, ¶¶72, 76].

Van Mechelen (1997) is the case on the exact category that Section 21AAA(2)(c) conceals: police officers. The applicants were convicted on statements "made before the trial by the anonymous police officers" who were "identified to the defence and the court only by a number" [22, ¶¶14–15]. The Court held that "the position of police officers is to some extent different from that of a disinterested witness," that "any measures restricting the rights of the defence should be strictly necessary," and that "if a less restrictive measure can suffice then that measure should be applied" [22, ¶¶56, 58]. The defence "was thus not only unaware of the identity of the police witnesses but were also prevented from observing their demeanour under direct questioning, and thus from testing their reliability" [22, ¶59]. Violation was found.

Al-Khawaja and Tahery [GC] (2011) [32] and *Schatschaschwili* [GC] (2015) consolidate the doctrine into a three-step test for any untested witness evidence: "(i) whether there was a good reason for the non-attendance of the witness … (ii) whether the evidence of the absent witness was the sole or decisive basis for the defendant's conviction … and (iii) whether there were sufficient counterbalancing factors" [23, ¶107]. The steps are cumulative and each must be examined by the trial court on the record [23, ¶110].

Four features of the European doctrine matter here. The anonymity is *of witnesses*, never of the judge, the prosecutor or defence counsel. It is *ordered by a court*, on the facts of the individual case, with reasons. It must be *counterbalanced* — typically by a judicial officer who knows the witness's identity and can be questioned about it. And it may not be *sole or decisive*, which presupposes a record from which the appellate court can assess what weight it bore. Section 21AAA fails on each.

5.4 The United Kingdom

The English answer is the most instructive, because it shows a legislature responding to the problem within the constraints of fair trial rather than around them. In *R v Davis* [2008] UKHL 36 the House of Lords quashed a murder conviction founded on three anonymous witnesses. Lord Bingham began from first principles: "It is a long-established principle of the English common law that, subject to certain exceptions and statutory qualifications, the defendant in a criminal trial should be confronted by his accusers in order that he may cross-examine them and challenge their evidence" [15, ¶5]. He traced the departures from that principle to "the Court of Star Chamber and … common law trials for treason, as notoriously at the trial of Sir Walter Raleigh," observing that the Star Chamber "came over time to attract the same popular loathing as the Inquisition, its procedures regarded as foreign, cruel, oppressive and unfair" [15, ¶5].

Parliament's response came within weeks. The Criminal Evidence (Witness Anonymity) Act 2008, re-enacted as Chapter 2 of Part 3 of the Coroners and Justice Act 2009, permits a court — and only a court — to make a "witness anonymity order," and "only if it is satisfied that Conditions A to C below are met": that the order is "necessary … in order to protect the safety of the witness or another person … or in order to prevent real harm to the public interest" (Condition A); that "having regard to all the circumstances, the effect of the proposed order would be consistent with the defendant receiving a fair trial" (Condition B); and that "the importance of the witness's testimony is such that in the interests of justice the witness ought to testify" and would not do so, or there would be real harm to the public interest, without the order (Condition C) [14, s. 88; 24, s. 4]. Section 87 requires that the trial judge be informed of the witness's identity; Section 89 requires the court to consider "whether evidence given by the witness might be the sole or decisive evidence implicating the defendant"; Section 90 requires a warning to the jury; and Sections 91–93 provide for discharge or variation, including by the appeal court [14].

This is the democratic model. It is what Parliament in Pakistan enacted in Section 21AA in 2018 (Section 4.2 above), and what the Punjab Assembly enacted in Section 14 of its own Act of the same year. Section 21AAA is not a development of that model. It is its replacement by the model the model was designed to exclude.

5.5 The United States

During passage it was asserted in the Assembly that the United States uses faceless courts [6]. It does not. The Sixth Amendment provides that "in all criminal prosecutions, the accused shall enjoy the right … to be confronted with the witnesses against him." In *Crawford v Washington* the Supreme Court held that "where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is confrontation," that "the principal evil at which the Clause was directed was the civil-law mode of criminal procedure, particularly the use of ex parte examinations as evidence against the accused," and that "interrogations by law enforcement officers fall squarely within that class" [25, syllabus and Part III]. American law does not permit an anonymous judge in any court, and the confrontation right is at its strongest in exactly the category of evidence — statements generated by police — that Section 21AAA would place beyond challenge.

5.6 Synthesis

Table 3 — Who decides, what is concealed, from whom, with what safeguards

	Who decides	What may be concealed	From whom	Safeguards	Review
UN HRC (GC32; *Polay*)	—	Nothing as to the judge; witness anonymity only with full defence rights	—	Faceless judges incompatible with Art. 14 even if verified by an independent authority	—
IACtHR (*Castillo*; *Berenson*)	—	Nothing as to the judge	—	Accused must be able to assess the judge's	Appeal to an ordinary court

				competence and to object	
ECtHR (*Kostovski* → *Schatschaschwili*)	The trial court	Witness identity, exceptionally; police only if strictly necessary	The defence, not the court	Good reason; counterbalancing; judge knows identity; not sole or decisive	On the record
UK (CJA 2009 ss. 86–97)	The trial court, on application	Witness identity	The defence and the public; never the judge (s. 87)	Conditions A–C; sole-or-decisive consideration; jury warning	Discharge/variation; appeal court
US (Sixth Amendment; *Crawford*)	—	Nothing testimonial	—	Confrontation is the only sufficient indicium of reliability	—
Pakistan, ATA s. 21AA (2018)	**The trial court**	**Witness identity**	**Parties**	**Necessity; "consistent with the defendant receiving a fair trial"**	**s. 25, on the record**
Pakistan, PWPA 2018 s. 14	**The trial court**	**Witness identity**	**Parties and public**	**Court's express permission for identifying questions**	**Ordinary**
Pakistan, s. 21AAA (2026)	**Unnamed executive officer**	**Judge, prosecutor, defence counsel, police, witnesses, "persons concerned"**	**Everyone, "in any case"**	**None stated**	**Sealed record; faceless appeal**

The pattern is not that the world forbids witness protection. It is that every system that has taken fair trial seriously has kept the decision with the court, confined the concealment to witnesses, required reasons and counterbalancing, and kept the judge known. Pakistan's own Section 21AA sits in the same row as the Coroners and Justice Act. Section 21AAA sits alone, in the row that Peru vacated in 1997.

6. The Islamic law of testimony and of legal devices

The Constitution requires laws to conform to the Injunctions of Islam (Article 227) and makes the Objectives Resolution substantive (Article 2A); the Supreme Court has said that the separation of judiciary from executive "is founded on the Islamic Judicial System" [10]. An analysis of Section 21AAA within Pakistan's constitutional order is therefore incomplete without asking what the Islamic law of evidence and adjudication says about known testimony, open judgment, and devices that keep a rule's form. This section treats those sources as law — as the classical jurists treated them — and not as exhortation. It makes no claim to the jurisdiction of the Federal Shariat Court and issues no ruling. The classical works were consulted in the Urdu editions listed in Section 10.4; verses are cited by number, hadith by the standard collections.

6.1 Testimony as an open obligation

The Qur'an's treatment of testimony begins from its openness. Believers are to "stand firm in justice, witnesses for Allah, even if it be against yourselves or your parents and relatives" (4:135). Testimony is not to be withheld: "do not conceal testimony, for whoever conceals it, his heart is indeed sinful" (2:283). And judgment is to be rendered justly and, by implication, accountably: "when you judge between people, judge with justice" (4:58). The verse of debt (2:282) — the longest in the Qur'an — commands that transactions be written and witnessed, and specifies the witnesses ("two witnesses from among your men, or a man and two women, from those you approve as witnesses"). The phrase *mimman tarḍawna min al-shuhadāʾ* — those you *approve* as witnesses — is the textual root of the doctrine that a witness must be a known and approved person, not merely a voice.

6.2 Protection of the witness as a Qur'anic concern

The same verse contains the concession that any honest treatment of Section 21AAA must make. It commands that "no harm be done to the scribe or the witness" (*wa lā yuḍārra kātibun wa lā shahīd*, 2:282). The protection of those who discharge the duty of testimony is thus itself a Qur'anic injunction, and a State that protects witnesses in terrorism cases is doing what the text requires. The question is not whether to protect but how, and the classical law is precise about that: the answer to harm threatened against a witness is the prevention and punishment of the harm, not the abolition of known testimony. The Punjab Witness Protection Act 2018, with its Section 16 penalty for breach of an anonymity order, and Section 21AA of the Act of 1997, are recognisably within that tradition; a regime that conceals the judge is not.

6.3 *Tazkiyat al-shuhūd*: the court must know the witness

The classical law did not admit testimony on the strength of its content. It required the qadi to satisfy himself of the *ʿadālah* — the probity, uprightness — of the witness before acting on his word, through the inquiry known as *tazkiyat al-shuhūd*, the vetting of witnesses [26]. Al-Jaṣṣāṣ, commenting on 2:282 in his *Aḥkām al-Qurʾān*, treats the phrase "those you approve" as an express condition of *ʿadālah*, and the Ḥanafī school he represents developed both a secret inquiry (*tazkiyah sirriyyah*), in which the qadi asked trusted persons privately about the witness's character, and a public one (*tazkiyah ʿalāniyyah*), in which the witness was confronted before the court [27]. The letter attributed to the Caliph ʿUmar to Abū Mūsā al-Ashʿarī on the conduct of judgment, preserved in the *sunan* literature and regarded by the jurists as the foundational statement of Islamic procedure, states the presumption and its exceptions: Muslims are upright witnesses to one another, "except one who has been flogged for a *ḥadd*, or one known to have given false testimony, or one suspect in kinship or clientage" [28]. Each exception is a fact about the witness *as a person* — his record, his prior testimony, his relationship to the parties. None can be established about a code.

That is the point at which the classical law and Section 21AAA(2)(c) part company. *Tazkiyah* presupposes that the court, and through it the opposing party, can identify the witness and inquire into his antecedents: whether he has testified falsely before, whether he has an interest, whether he is the accuser's kinsman or subordinate. The Anti-Terrorism Court in the case examined in Section 8 did exactly this kind of inquiry when it recorded that a corporal named in the FIR as a member of the raiding party could not remember whether he had been, and that a station record said to be in one hand was in several. Under the impugned provision the corporal is a designation assigned by the designated authority, and the record is sealed. The witness is neither *muzakkā* nor *majrūḥ*; he is unexaminable. A testimony that cannot be vetted is, in the classical scheme, not testimony on which a qadi may act — and the burden the tradition places on the accuser is the reason: "the burden of proof is on the claimant, and the oath on the one who denies" [29]. Proof that cannot be tested is not proof; it is assertion with a seal on it.

6.4 The known judge

The Islamic judicial tradition is equally insistent that the judge be known — known to the parties, answerable for his conduct, and subject to challenge for partiality. The Prophet forbade a judge to give judgment while angry, a rule that presupposes that the parties can see the judge and the judge's state [30]; the whole literature of *adab al-qāḍī* is a literature of a visible officer whose conduct before the parties is regulated. The historical tradition records the Caliph ʿAlī appearing as an ordinary litigant before the qadi Shurayḥ in a dispute over a coat of mail, losing for want of admissible witnesses, and accepting the judgment [28]; the report is offered here not for its chain but for what the tradition treats as exemplary — the ruler before a named judge in open court, bound by the same law of evidence as his opponent. A tribunal whose judge is unnamed and whose record is sealed has no place in that tradition, and the Supreme Court's observation that Pakistan's separation of powers "is founded on the Islamic Judicial System" [10] was not made in ignorance of it.

6.5 *Ḥiyal*: the law's own theory of form without substance

Islamic jurisprudence has a developed doctrine for exactly the phenomenon this paper examines. A *ḥīla* (pl. *ḥiyal*) is a legal device that reaches a result by a route the letter of the law permits. The Ḥanafī school, which developed the doctrine most fully, distinguished between devices that preserve a right or avoid a hardship without defeating any rule's purpose — the *makhārij*, "exits" — and devices whose whole object is to obtain what the rule prohibits [1]. Al-Bukhārī devoted a book of his *Ṣaḥīḥ* (*Kitāb al-Ḥiyal*) to the condemnation of the latter, and Ibn Qayyim al-Jawziyyah, in the third part of *Iʿlām al-Muwaqqiʿīn*, made the Sabbath people of 7:163–166 the paradigm case: a community that kept the letter of the prohibition and defeated it entirely, and whose stratagem was treated as a breach of the rule itself and not as compliance with it [2]. Al-Jaṣṣāṣ's commentary on the verse reads it the same way, and the Ḥanafī condemnation of *ḥiyal al-ribā* — the sale-and-repurchase that reproduces a loan at interest — rests on the same principle [27]. The earlier paper in this series traced that doctrine through the finance literature [3].

The test the jurists applied is the test stated in Section 1. Does the device preserve the rule's form? Does it obtain the prohibited effect? Can it be justified by the rule's purpose? A *makhraj* that lets a debtor avoid ruin, or a *bay*ʿ that genuinely transfers risk, passes; a sale that exists only to disguise interest fails. The doctrine is domain-general because it is a doctrine about the relation between rules and purposes, not about any particular rule. Applied to procedure, it asks whether an arrangement that keeps the words "judge," "witness," "prosecutor," "record" and "appeal," and removes the function of each, is compliance with the injunction of fair judgment or a *ḥīla* against it.

6.6 Synthesis

The Islamic law of evidence, read as law, yields four propositions. Testimony is an open act by an approved and identifiable person. The witness is to be protected from harm, and the harm punished. The court must be able to vet the witness, and the party against whom he testifies must be able to impugn him. And the judge must be known and answerable. Section 21AAA is consistent with the second proposition and inconsistent with the other three; and the doctrine of *ḥiyal* supplies the vocabulary for saying why a provision that keeps every noun of a trial is not, for that reason, a trial. The Constitution's requirement that laws conform to the Injunctions of Islam is, on this analysis, not a fifth argument against the provision but the same argument in the legal system's oldest register.

7. Pond 1: Section 21AAA through the four criteria

The materials are now in place to apply the test stated in Section 1.

Criterion 1 — a rule prohibits an outcome. The rule is that no person may be convicted of a criminal charge except by a fair trial before an independent and impartial tribunal established by law, in which he may confront and test the evidence against him. In Pakistan that rule is Article 10-A read with Articles 4, 9, 175(3) and 203 of the Constitution [33]; it is Article 14 of the Covenant [35]; it is Section 353 of the Code ("all evidence … shall be taken in the presence of the accused") and the right of cross-examination secured by the Qanun-e-Shahadat Order 1984 [12, 34]; and it is, on the analysis of Section 6, the Islamic law of testimony and judgment. The Supreme Court has called it "a vested right to a fair trial before a Court or Tribunal validly established under Article 175(1)" [11]. The outcome the rule prohibits is conviction upon untestable evidence before an unaccountable tribunal.

Criterion 2 — the arrangement obtains that outcome. Under Section 21AAA an accused may be convicted upon the evidence of witnesses he cannot identify, including the police officers who arrested him, before a judge he cannot identify, on a prosecution conducted by a prosecutor selected by an executive officer, on a record he may not see, with an appeal that may itself be faceless. Each of those elements is expressly authorised by the text set out in Section 2.1. The effect is the prohibited outcome.

Criterion 3 — the rule's formal elements are preserved. The provision retains every noun that the rule requires. There is a judge (assigned by the Chief Justice, s. (2)(a)). There is a prosecutor (from a panel furnished by the Prosecutor General, s. (2)(b)). There is defence counsel (s. (2)(c) names him among those to be concealed, which presupposes his existence). There are witnesses (with "specific identities," s. (2)(e)). There is a record (sealed, s. (2)(f)). There is an appeal (to which the regime applies "mutatis mutandis," s. (3)). The Statement of Objects and Reasons affirms that the amendment operates "while upholding the constitutional guarantees of fair trial" [4]. The form of a trial is complete. That completeness is what distinguishes a *ḥīla* from a simple breach: a statute that abolished trials would be struck down on sight; a statute that keeps every element and removes the function of each must be examined element by element to be seen for what it is.

Criterion 4 — the arrangement cannot be defended by the rule's purpose. This is the decisive criterion, and it must be applied honestly. The protective purpose that the provision invokes is real. Judges, prosecutors and witnesses in terrorism cases have been killed in Pakistan; the Objects and Reasons speak of "threats, intimidation faced by judges, public prosecutors, investigators, and witnesses" [4]; and the Qur'an itself commands that no harm come to the witness (Section 6.2). If Section 21AAA were the only means of securing that purpose, criterion 4 would require a much harder judgment about proportionality.

It is not. Section 4 showed that the purpose is already served — by Section 21 of the Act (non-publication of names, screens, trial in jail, video link, physical protection, all on the court's order), by Section 21AA of the Act (court-ordered witness anonymity with pseudonym, screening, voice modulation and live link, on stated conditions including that the order be "consistent with the defendant receiving a fair trial"), and by the Punjab Witness Protection Act 2018. Every protective measure that Section 21AAA gives a witness, the court could already give. What the provision adds over the existing scheme is exactly the list of things that serve no protective purpose anyone has articulated: the concealment of the judge from the accused, the concealment of defence counsel, the executive selection of the prosecutor, the sealed record, the "class of cases," the faceless appeal, and the removal of the fair-trial condition. No submission has been made, in the Bill, in the Assembly, or in the public debate [6, 36, 37], that the accused is a threat to his own counsel, or that a judge is safer because the man he is trying does not know his name while the Chief Justice and an executive officer do. The concealments that go beyond Section 21AA are not protective. They are what makes the outcome in criterion 2 possible.

The verdict is that the provision fails all four criteria. It is a Sabbath pond: the fish are taken on the Sabbath, the nets were set the day before, and the words of the prohibition are intact.

8. Pond 2: a documented case

The test has so far been applied to a statute. It can also be applied to a set of facts, and the reason for doing so is that the harm of Section 21AAA is not abstract. It is the class of case in which the formal elements of a lawful prosecution are all present and the substance is absent, and in which the difference is discoverable only because the witnesses are known and can be confronted. The author's own case is such a case, and its record is a public judgment. The account below is confined to what that judgment records, and the attested copy of the judgment is deposited with this preprint, unaltered, as Annex A. The text of this paper names no official; the official record names those who appear in it, as every public judgment does, and the paper makes no allegation against any person beyond what the court itself found. The reader is reminded of the positionality statement on page 1.

8.1 The prosecution's account

FIR No. 56/2016 was registered at Police Station CTD, Lahore, on 5 October 2016, under Sections 4 and 5 of the Explosive Substances Act 1908 and Sections 11(ff) and 11-F(2) of the Anti-Terrorism Act 1997, against the author and one co-accused. The prosecution's case was that both had been arrested red-handed that day in possession of explosive material, weighed on an electric scale by the complainant at 500 grams each [31].

8.2 The defence record

The defence case was that the author had been taken from a public place in Lahore on the evening of 12 May 2016 — some four months and three weeks before the FIR — and held thereafter. That account was not left as assertion. The judgment records that his wife's missing-person report to the police of 14 May 2016 (Mark-D) was proved by the officer who received it (DW.6); that a newspaper report of the abduction of a software engineer, dated 14 May 2016, was exhibited (Ex.DC); that the housing society's gate register recording the entry of CTD officials into the society on 16 May 2016 (Mark-E) was proved by DW.3; and that the author's office attendance record proved his absence from employment from 13 May 2016 (Mark-F) [31, ¶¶21–22]. In his statement under Section 342 of the Code the author stated that "they kept me in their illegal detention and subjected to torture me"; that is his own statement, and is recorded here as such, not as a finding [31].

8.3 What cross-examination produced

The judgment records, at paragraphs 14 to 18, what the cross-examination of the prosecution witnesses in open court produced [31]:

- The complainant (PW.4), who claimed to have weighed the explosive on an electric scale at the place of arrest, admitted in cross-examination that he had left home carrying "only one mobile phone" and a wallet.

- A corporal (PW.1), shown in the FIR as a member of the raiding party, stated in cross-examination that he "does not remember whether he was member of raiding party or not," and could not give the time or place of the occurrence.
- The Moharrar (PW.2) claimed that all entries in the station's daily diary (*roznamcha*) were in his hand; the court found the entries "in different hand writings."
- The timings given by the complainant, the investigating officer and the bomb-disposal witness could not be reconciled.

The learned prosecutor had argued that the defence had failed to shatter the witnesses' credibility "inspite of lengthy cross examination" [31, ¶11]. The court did not agree.

8.4 The court's findings

The judgment was announced on 24 October 2017. It acquitted both accused. It is necessary to state its findings with their own qualifiers, because a reader who checks the record will find them, and because the distinction between them matters for the argument.

At paragraph 22 the court held that "the above said documentary evidence supports the defence plea raised by said accused" — a finding in favour of the author's account — while at paragraph 23 it recorded that the co-accused's plea had *not* been established. At paragraph 19 it found that the prosecution "has failed to establish that the accused are members of proscribed organization or their names are mentioned in the fourth schedule." At paragraph 20 it observed — with the qualifier preserved — that "it appears that the entire proceedings about recovery of explosive material etc. have been prepared while sitting in the Police Station." At paragraph 24 it concluded that the prosecution evidence "does not appear to be believable and worthy of credence." And at page 17 it extended the benefit of doubt [31]. The acquittal thus rests on both: on the absence of credible proof, and on positive observations about the manner in which the prosecution's evidence came into existence. Nothing in this paper depends on characterising it as more than that.

8.5 The Sabbath structure of the case

Read against the test, the case has the same shape as the statute. Every formal element of a lawful arrest and recovery was present: a raiding party, a complainant, a weighing, a recovery memo, a daily-diary entry, an FIR, a bomb-disposal report, prosecution witnesses, a trial. The court's observation at paragraph 20 is an observation that the form was complete and that the substance — the events the form purported to record — had, so far as it could tell, been supplied afterwards. That is criterion 3 and criterion 2 of the test applied to a record rather than a rule.

The question this section exists to ask is the counterfactual. Suppose the case had been designated a "special security case" under Section 21AAA. Which of the court's findings could have been reached?

- **The complainant's scale.** The admission that he had carried "only one mobile phone" was drawn from a known officer, confronted in open court with his own FIR. Under s. (2)(c) and (2)(h) he is a designation on a voice-modified link. The question can still be asked; whether it can be pressed, and whether the demeanour that led the court to disbelieve the answer can be observed, is precisely what *Van Mechelen* held it could not [22, ¶59].
- **The corporal who did not remember.** His answer was damaging because the FIR named him. Under s. (2)(e) the witness is a "specific identity given … by the designated authority," and the FIR —

under s. (2)(f) — is part of a sealed record. There is no document with which to confront him, and no way to establish that the designation before the court is the person the FIR names.

- **The daily diary in different hands.** The finding depended on the court and the defence seeing the register. Under s. (2)(f) the record is sealed and held by the Chief Justice and the designated authority. The Moharrar's claim cannot be tested against the page.
- **The irreconcilable timings.** These were established by comparing the testimony of three known witnesses against each other and against the documents. Under the regime, three designations testify by link, and the documents are under seal.
- **The gate register and the missing-person report.** These are the defence's documents, and the defence could still produce them. But their force lay in proving that the author was in the custody of the same department that later claimed to have arrested him red-handed. Under s. (2)(c) the identity of the "police officers … concerned" is concealed "in any case," and the connection between the officers who entered the society on 16 May and the officers who deposed to an arrest on 5 October cannot be drawn.
- **The finding at paragraph 20.** It is an inference from the totality of the above. Remove the above, and the inference has nothing to rest on.

The honest answer to the counterfactual is that under Section 21AAA the case examined here would, in all likelihood, have ended in a conviction on a complete formal record. The author is aware that this is the answer his interest would prefer, and so he has confined the analysis to what the judgment says and invited the reader to check it. The point survives the interest: a procedure under which fabricated evidence cannot be shown to be fabricated does not deter fabrication. It insures it — and it does so in the category of cases that carry the gravest punishments.

8.6 What the case does not show

The case does not show that anti-terrorism prosecutions are generally fabricated; a single case shows nothing about a population. It does not show anything about the motives of any person; the court made no such finding and neither does this paper. It does not show that witness protection is unnecessary; the author's own witnesses (DW.3, DW.6) testified openly, and a regime that protected them would have done no harm to his defence. What it shows is narrower and, for the argument, sufficient: that the safeguards Section 21AAA removes are the safeguards by which a court once distinguished a recovery from the record of one, and that with them removed the distinction would not have been drawn.

There is a wider question, which the case cannot answer and which the author does not pretend to. It is how often anti-terrorism prosecutions in the Punjab end in acquittal upon adverse findings about the prosecution's evidence, as distinct from acquittal upon the absence of proof, and whether a small number of individuals recur as recovery witnesses across unconnected cases. A 2018 study of Khyber Pakhtunkhwa's anti-terrorism courts reported that most cases registered under the anti-terrorism laws were discharged before trial for want of evidence, and that acquittals occurred in more than half the cases that reached trial [39]; the structural weaknesses of anti-terrorism prosecutions in Pakistan — reliance on police-generated evidence, coerced confessions, and weak legal representation — have been documented elsewhere [38], and the Punjab debate has raised the same concerns [36, 37]. Whether the Punjab's record is similar, and what it consists of, is knowable from the courts' own records and from nothing else. Section 9 says what should be done with that question.

9. What a lawful version would require

The analysis above does not lead to the conclusion that nothing should be done to protect participants in terrorism trials. It leads to the conclusion that what should be done has, in substance, already been enacted, and that the impugned provision should be withdrawn in favour of it. The following elements describe a regime that would pass the test — one in which the protective purpose is served and the form of a trial retains its function.

1. **A court decides.** Every protective measure, including any anonymity order, is made by the trial court seized of the case, on application or of its own motion, with reasons on the record. This is Section 21AA of the Act, Section 14 of the Act of 2018, and Section 86 of the Coroners and Justice Act 2009. An executive officer may apply; he may not designate.
2. **Case by case, on conditions.** The order is made in the individual case upon a finding of necessity and upon the court's satisfaction that its effect is "consistent with the defendant receiving a fair trial" (ATA s. 21AA(2)(b); CJA 2009 s. 88 Condition B). There is no "class of cases."
3. **Witnesses only.** Anonymity extends to witnesses and, where necessary, to their identifying details. It never extends to the judge, to the prosecutor, or to defence counsel. Section 21(1)(b) of the Act already permits the *non-publication* of judges' and counsel's names; that is the lawful limit.
4. **The judge knows.** The trial judge is informed of every anonymous witness's identity (CJA 2009 s. 87) and can be questioned about the basis of the order; where a witness is a police officer the *Van Mechelen* standard of strict necessity applies [22, ¶58].
5. **Defence access under supervision.** Where the defence shows a particular need — to establish that a witness has deposed in other cases, is related to the complainant, or has a record — the court may permit access to identity under conditions, on the model of the investigating judge in *Doorson* [21, ¶73].
6. **The record travels.** The full record, including the identity of every witness and the reasons for every protective order, is available to the appellate court under seal, so that Section 25 of the Act means what it says. The appeal is never faceless.
7. **Not sole or decisive.** A conviction may not rest solely or decisively on anonymous evidence (Doorson ¶76; CJA 2009 s. 89), and the trial court records its assessment of that question.
8. **Sunset and review.** Any special regime lapses after a fixed period unless renewed by the legislature upon a report of its operation.
9. **An inquiry into the underlying problem.** The premise of the Bill is that trials fail because participants are intimidated. That premise is testable. A commission under the supervision of the High Court could establish, from the courts' own records: the number of cases instituted before the Anti-Terrorism Courts of the Punjab since 2015 and the outcome of each; in cases ending in acquittal, whether the judgment contains adverse findings as to fabrication or credibility, whether or not the benefit of doubt was also extended; the identities and frequency of appearance of individuals who deposed as recovery or *mashir* witnesses across separate cases; and whether any departmental or criminal action followed a judicial finding that a case was false. These are questions, not conclusions. If the answers show that a significant proportion of prosecutions fail upon findings of falsity and that a small number of witnesses recur across them, then the impugned provision does not address a problem. It conceals one.

10. Conclusion

The Sabbath Pond Test asks a single question of any arrangement: does it keep the form of a rule while defeating the rule's purpose, without being able to justify itself by that purpose? Applied to Islamic finance, the question distinguishes a sale from a disguised loan. Applied to criminal procedure, it distinguishes a trial from a procedure that has the nouns of one. Section 21AAA of the Anti-Terrorism Act 1997, as inserted by the Punjab Assembly in 2026, retains a judge, a prosecutor, defence counsel, witnesses, a record and an appeal, and removes the function of each; and it does so by displacing a judicially-controlled protection regime — Sections 21 and 21AA of the same Act, and the Punjab Witness Protection Act 2018 — that Parliament and the Assembly enacted in 2018 on the model the comparative law recommends. Every human-rights body and common-law court that has examined faceless tribunals has rejected them; the jurisdictions that permit witness anonymity permit it only by court order, case by case, with reasons, never for the judge, and never as the sole or decisive basis of conviction. The Islamic law of testimony, read as law, requires a known and vetted witness and a known and answerable judge, and has a doctrine — *ḥiyal* — for exactly the manoeuvre by which a rule's letter is kept and its substance lost. A documented case shows what the removed safeguards do: they are how a court once told a recovery from the record of one.

The paper's conclusion is therefore not that participants in terrorism trials should go unprotected. It is that they are already protected by law, that the impugned provision adds nothing to their protection, and that what it adds instead is the capacity to convict without confrontation while saying that there was a trial. That is the Sabbath pond.

10.1 Limitations

The provision analysed is a Bill passed by the Assembly and not, at the time of writing, an Act notified in the Gazette; the text may change on assent, and the analysis should be re-read against the notified text. The analysis is of a single jurisdiction and a single provision. The author was the accused in the case examined in Section 8 and has an interest in its characterisation; the account has been confined to the judgment's own words, with its qualifiers, and the judgment is a public document that readers can obtain. The classical Islamic sources were consulted in Urdu translation and are cited by work and chapter rather than by pinpoint; the propositions drawn from them are the settled ones, but a specialist reader may wish to verify them against the Arabic. The comparative material is confined to the primary texts on disk and does not survey the secondary literature. No empirical claim is made about the Punjab's anti-terrorism courts; Section 9 says how such a claim could be tested.

10.2 Ethics statement

The text of this paper names no police officer, prosecutor or witness, and alleges no offence against any person. The judgment annexed as Annex A is the official record of a court, deposited exactly as attested, and the names it contains are the court's, not the author's; altering an attested record would make it something other than the record. The case study in Section 8 is drawn from a public judgment of an Anti-Terrorism Court and from the author's own recorded statement under Section 342 of the Code; it seeks no relief and is not a pleading. Nothing in this paper is legal advice, and nothing in Section 6 is a *fatwā* or a ruling on repugnancy, which is the jurisdiction of the Federal Shariat Court alone. The Qur'anic narrative from which the test is drawn ends in a punishment; that clause is not invoked, and the paper is not directed at any legislator, official or court.

10.3 AI assistance disclosure

This paper was researched and drafted with substantial AI assistance (Anthropic's Claude: source retrieval and extraction from the primary texts listed in Section 10.4, comparative-law summaries, structural editing, and prose drafting), following the disclosure practice of the author's earlier preprints on IrshadOS. Every quotation was verified by the author against the source document; every characterisation of the judgment in Section 8 was checked against the attested copy; and the analysis, the positionality statement and the conclusions are the author's own. No AI tool is credited as an author, and the author bears sole responsibility for the content in accordance with the Committee on Publication Ethics guidance on authorship.

10.4 Data and source availability

All primary sources cited — the Bill as published by the Provincial Assembly of the Punjab, the Anti-Terrorism Act 1997 and Code of Criminal Procedure 1898 from the Pakistan Code, the Punjab Witness Protection Act 2018 from the Punjab Code, the two Supreme Court judgments, the judgments of the European and Inter-American Courts, the Human Rights Committee's General Comment and views, the House of Lords and United States Supreme Court decisions, and the United Kingdom statutes — are public documents obtained from official or archival sources, whose URLs appear in the reference list. The trial-court judgment cited as [31] is a public judgment of a court of record. The author's attested copy is deposited with this preprint as Annex A, unaltered, so that every quotation in Section 8 can be checked against the page. The text of this paper refers to witnesses by their trial designations; the annexed record names them, as the court wrote it. The classical Islamic works were consulted in the Urdu editions noted in the references. The Bill analysed in Section 2 is deposited with this preprint as Annex B, in the form published by the Provincial Assembly of the Punjab (its own .docx file, unaltered), together with a dated capture of the Assembly's bill page taken on 6 September 2026 as provenance; when the Act is notified, the Gazette text will be added as a further file. An archived copy of this preprint, with Annexes A and B, is deposited at Zenodo, DOI 10.5281/zenodo.22472831 (https://doi.org/10.5281/zenodo.22472831).

10.5 Disclaimer

This paper is a scholarly examination and nothing more. It is written solely for research and academic purposes, to advance understanding of how a rule can be kept in form and lost in substance, and it carries no call to action of any kind. It does not ask, urge, invite or encourage any person, group, court, official or institution to do or to refrain from doing anything. It is not a pleading, a petition, a complaint, a campaign, or a statement on behalf of any party or cause. It is not legal advice: a reader with a legal question should consult a qualified advocate about their own facts. It is not a *fatwā* or a religious verdict: the Islamic sources are discussed as law of evidence in the academic tradition, and any question of repugnancy belongs to the Federal Shariat Court alone. It makes no allegation against any person; where it quotes a court's findings, the findings are the court's, with the court's own qualifiers, and the annexed record is the court's unaltered document.

The provision analysed was, at the time of writing, a Bill and not a notified Act; the analysis is offered on that text and is subject to correction against the Gazette. The comparative and classical material is offered as an academic reading of public sources, in translation where noted, and is open to scholarly disagreement (*ikhtilāf*) in the ordinary way. The paper was prepared with substantial AI assistance, as disclosed in Section 10.3, and is subject to human and machine error; readers are asked to verify every quotation against the sources listed before relying on it for any legal, religious or academic purpose.

Any accuracy in this work is a mercy; any error is the author's own, and correction is welcomed at the address on the title page.

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