

**“CRITICAL ANALYSIS OF ANTI- TERRORISM  
JURISPRUDENCE IN PAKISTAN”**



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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

وَقَدْ نَزَّلْنَاهَا

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# DEDICATION

I humbly dedicate my Research work to my parents, my family and my beloved elder brother (Late) Umer Farooq, and I especially dedicate this research to (Late) **Sir, Ghulam Qadir Bari** *Ex Assistant Prosecutor General*, who always supported me, their coordination and corporation strengthen me to achieve this milestone. Lastly to victims of terrorism in Pakistan.

## **ACKNOWLEDGEMENT**

Allah, The Most Merciful and Most Beneficent, deserves all the praise and glory for bestowed upon us, to accomplish this research treatise, I always ask for His blessings and unwavering strength. I owe Hazrat Muhammad (Peace Be Upon Him) a huge debt of appreciation since his personality is always a source of inspiration for me.

I am grateful to my research supervisor, Dr. Major Ataullah, whose learning and legal understanding have been a rich source of inspiration for me, He guided me through this task despite his personal commitments and busy schedule, and he extended his critical suggestions and valuable views whenever I approached him for this purpose.

I am also thankful to the Prosecutor General Punjab, Mr. Arif Kamal Noon and Mr. Justice Ihtesham Qadir, (Ex Prosecutor General) and Prosecution Department for great support .

**Usman Iqbal**

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## ABBREVIATIONS

A.T.C	Anti-Terrorism Court
A.R.C.A	The Anarchical and Revolutionary Crimes Act, 1919
ATA	Anti-terrorism Act, 1997
CTD	Counter Terrorism Department
CTS	Critical Terrorism Studies
Cr. P. C	Criminal Procedure Code,1898
ESA	Explosive Substance Act, 1908
EU	European Union
GA	General Assembly
LHC	Lahore High Court
MPO	The West Pakistan Maintenance of Public Order Ordinance, 1960
NATO	The North Atlantic Treaty Organization
UN	United Nation
PCr.L.J	Pakistan Criminal Law Journal
PPC	Pakistan Penal Code,1860
PO	Presidential Order

PPA	Pakistan Protection Act
PRODA	Public and Representative Officer Disqualification Act ,1949
PLD	Pakistan Law Digest
SC	The Supreme Court of Pakistan
SCMR	Supreme Court Monthly Review
SPA	Security of Pakistan Act, 1952
TA	Tele Graph Act, 1885
WPSA	West Punjab Safety Act

# ABSTRACT

This research examines the period from 1997 to 2020, during which the Supreme Court of Pakistan grappled with interpreting the Anti-terrorism Act 1997. From the Mehram Ali Case (1998) to the Ghulam Hussain case (2020), the court's approaches remained unsettled. The definition of terrorism and interpretation of Section 6 of the Anti-terrorism Act 1997 led to the classification of two primary categories: cumulative effect-based approach and mens-rea-based approaches. The cumulative effect-based approach centers on the actual commission of the offense and its immediate impact and its consequences on the public, irrespective of motive or design. The design-based approach, an act might be labeled as terrorism if it was purposely crafted to evoke fear and insecurity among the public, even if the act's immediate consequences didn't necessarily generate such sentiments. This research encapsulates legal provisions of Anti-terrorism Laws and legislations related to heinous crimes in Pakistan along with their historical backdrop, prevailing socio-political conditions, and their shortcomings. Additionally, it examines international best practices, legal provisions, and international conventions and treaties based upon cumulative effect-based approach. The research also discusses the issue of overlapping criminal offenses in different statutes in Pakistan and the reasons for acquittals in anti-terrorism cases, the elements of flawed investigation, and the failure to enforce supporting laws due to unsettled definition of terrorism. the study concludes with recommendations that could aid in combating terrorism through proper legislation in the country.

# CHAPTER ONE

## INTRODUCTION

### 1.1 THESIS STATEMENT:

The Supreme Court of Pakistan is facing uncertainty over the adoption of either a cumulative effect-based approach or a design-based approach in defining terrorism within Section 6 of the Anti-terrorism Act of 1997 due to which special courts have become not only overburdened but also suffering parallel jurisdictional issues resulting in undue benefit to hardcore terrorists. It is real-time to differentiate domestic and international terrorism.

### 1.2 INTRODUCTION:

The criminal administration of justice in Pakistan is based upon procedural as well as substantive laws. The procedural laws and substantive laws have its own importance in society. Pakistan Penal Code, 1860 is a general penal substantive law while Criminal Procedure Code, 1898 is a general procedural law. Criminal Administration of justice in Pakistan, mainly revolves around Pakistan Penal Code 1860, Criminal Procedure Code, 1898, Qanoon Shahadat Order 1984, Police Order, 2002, Police Rules 1934, and High Court Rules and Orders. Salmond has stated difference between Procedural and Substantive law. The Procedural law governs the process of litigation while all the residue is substantive law.<sup>1</sup> Procedural law are remedial statutes and for effective implementation of these laws, there is need of effective procedural laws.<sup>2</sup> Anti-terrorism Act 1997, is a combination of

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<sup>1</sup> Salmond, John W. and Fitzgerald, P.J. Salmond on Jurisprudence. London: (Sweet & Maxwell, 1966),128.

<sup>2</sup> Lever, Jeremy. "Why Procedure Is More Important than Substantive Law." *The International and Comparative Law Quarterly*, vol. 48, no. 2, (Cambridge University Press, 1999),2.



both substantive as well as of procedural laws. It provides not only penal provisions but also carries procedural provisions. From 1998 to 2020 the Supreme Court of Pakistan is unable to draw a clear-cut distinction between jurisdiction of Anti-terrorism and ordinary Court cases. Definition of terrorism and interpretation of section 6 of the Anti-terrorism Act 1997, divided it into two basic categories including actus-reus and mens-rea-based approaches. Actus reus-based or effect-based approach means that the commission of the offense was of such a nature that caused an immediate sense of fear and insecurity among the public regardless of any motive or design. On the other hand, the design-based approach, means that the commission of the offense was designed in such a manner as to cause fear and insecurity among the public.

### **1.2.1 FIRST PHASES OF LEGISLATION REGARDING HEINOUS OFFENCES**

In Pakistan legislation for heinous offences, was divided into different phases, First phase was dealing with insurgencies and political violence and for this purpose, different statutes like ‘West Punjab Safety Act 1949, Public Representative Officer (Disqualification Act),1949, The Security of Pakistan Act, 1952, along with The West Pakistan Maintenance of Public Order, ordinance1960 were promulgated by the government and purpose was to combat political activities and anti-state activities in the country. On the other hand, Pakistan Penal Code 1860, Criminal Procedure Code, 1898 were dealing with ordinary penal provisions in Pakistan. Pakistan, after its emergence in 1947, adopted the criminal legal system of British government. Initially, Pakistan was facing problem of riots and insurgencies in different parts of the country. However ordinary criminal legal system failed to combat sectarian violence and offences of political nature, due to this legislatures in Pakistan introduced first time another parallel legal system in the form of speedy courts in the 1970s,<sup>3</sup> and Special courts were created under The Suppression of

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<sup>3</sup>Bukhari, Waqar and Sitwat, Ms. “Pakistan Challenges in Anti-Terrorism Legislation”, (Center for Research & Security Studies October, 2013),1

Terrorist Activities (Special Courts) Act of 1975 with the aim to counter terrorist activities in Pakistan, “The Suppression of Terrorist Activities (Special Courts) Act” of 1975 was promulgated for speedy trial of cases mentioned in the Scheduled Offences as mentioned in its preamble<sup>4</sup>. Section 2(b) of Suppression of Terrorist Activities (Special Courts) Act of 1975 defined Scheduled Offence as “offence specified in the Schedule.”<sup>5</sup> Different penal provisions were added in schedule i.e Sections, 121, 121-A, 122, 123, 123-A, 124-A, were dealing with anti-state activities, section 365-A was about Kidnapping for ransom, section 400, section 402-A, section 402-B, 402-C were offences of Hijacking and section 302 relating Murder or section 307, it also include, sections 392, 393 dealing robbery, 394, 395, 396 dacoity , 397 dacoity with murder , 398 and 399, of attempt of robbery and dacoity, if offences are committed by using, grenade, cannon, rocket or bomb, or an arm of a prohibited bore, and also include offences if any public property is destroyed or stolen, or damaged at time of commission of the offence; or offences were falling in section 435, to 440, by use of mineral oil, or its any type of product, explosive substance, is used for the commission of the offence. The Preamble of Act of 1975, contained word “Terrorism” whereas it is not defined by Act, however, section 4 explains that the offences mentioned in schedule shall be triable by a Special Court,<sup>6</sup> Therefore terrorism had to be interpreted with reference to the nature of offences mentioned in schedule as well as by mode and manner of commission of such offences.

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<sup>4</sup> The Suppression of Terrorist Activities (Special Courts Act) of 1975, Preamble, “.- “Whereas it is expedient to make special provisions for the purposes of suppressing acts of sabotage, subversion and terrorism and to provide for speedy trial offence committed in furtherance of or in connection with such acts.”

<sup>5</sup> The Suppression of Terrorist Activities (Special Courts) Act, of 1975, Section 2(b).

<sup>6</sup> The Suppression of Terrorist Activities (Special Courts) Act of 1975, Section 4:—“Jurisdiction of Special Court.-

(1) Notwithstanding anything contained in the Code, the scheduled offences shall be triable exclusively by a Special Court”

### **1.2.2 SECOND PHASE IS DEALING WITH SECTARIANISM;**

Sectarianism remained a persistent issue in Pakistan, leading to frequent outbreaks of violence and conflict between different religious groups. In response, the government has attempted to address sectarianism through various legal measures. During the second phase of addressing sectarianism in Pakistan, the government replaced the Suppression Act with the Anti-Terrorism Act in 1997. The Anti-Terrorism Act aimed to provide more effective legal mechanisms for combating terrorism, including sectarian violence. However, the Act has been criticized for its broad definitions of terrorism, which have been used to target political opponents and activists. Prior to the enactment of the Anti-Terrorism Act, the government introduced several statutes aimed at curbing sectarianism. These measures included the "Speedy Trial Ordinance (1987)," which aimed to expedite the legal proceedings for cases related to sectarian violence, and the "Terrorist-Affected Areas (Special Courts) Ordinance" (1990) and "Terrorist-Affected Areas (Special Courts) Act (1992)," which sought to establish special courts for trying cases related to terrorism.<sup>7</sup> However, despite these efforts, sectarian violence has continued to be a major challenge in Pakistan. The effectiveness of these legal measures has been limited by issues such as corruption, political interference, and a lack of capacity within the justice system. To address sectarianism in Pakistan, it is crucial to address these underlying challenges and to develop more effective and transparent mechanisms for enforcing the law and ensuring justice for all.

### **1.2.3 THIRD PHASE IS DEALING INTERNATIONAL TERRORISM**

Third Phase started after 9/11 is dealing with international terrorism or hard-core terrorism. Pakistan brought many changes in the jurisprudence of terrorism through large number of

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<sup>7</sup>Fayyaz, Shabana. "Responding to Terrorism: Pakistan's Anti-Terrorism Laws". *Political violence & Terrorism Perspectives on Terrorism* Vol. 2, No. 6 (March 2008),11

amendments. In this regard, different constitutional responses based upon different kinds of structures along with policies were introduced in this era. Pakistan also introduced speedy trial concept through establishment of special courts. Its purpose was to strengthen the National Counter Terrorism Authority, not only countering hatred speech, but also controlling element of extremist material as well as financial terrorism. No doubt, it was creating and organizing an enthusiastic force for counter terrorism with a purpose to regulate the Madrasas System in Pakistan along with its mandatory registration. The purpose was to restore and improve the criminal justice system and its administration in Pakistan. The main object was to strengthen the counter-terrorism agencies. After 21<sup>st</sup> amendment involvement of Military Courts. In land mark case Mehram Ali vs State (1998),<sup>8</sup> the Supreme Court of Pakistan held, “the Schedule offences of anti-Terrorism Act must have nexus with the object of the Act”. In another landmark Judgment titled as Sheikh Liaquat Hussain Vs. Federation of Pakistan<sup>9</sup> gave its verdict against Pakistan Armed Forces (Acting in Aid of the Civil Power) Ordinance, 1998.<sup>10</sup> The Supreme Court observed that the civilians could not be tried by Military Courts.<sup>11</sup> After the verdict in Liaquat Hussain Case, The PAFO was repealed owing to strong criticism on ‘Nawaz Sharif Government’<sup>12</sup> The amendments were made in the definition of Terrorism Act and the word ‘Terrorist Act’ was introduced first time in 1999.<sup>13</sup> Definition of Terrorist Act under “Anti-Terrorism (second amendment) Ordinance, 1999 (Ordinance No. XIII of 1999)” is reproduced as under:

“A person is said to commit a terrorist act if he,

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<sup>8</sup> [Mehram Ali and others v Federation of Pakistan and others; PLD 1998 Supreme Court 1445](#)

<sup>9</sup> [Sheikh Liaquat Hussain Vs. Federation of Pakistan; PLD 1999 Supreme Court 504:](#)

<sup>10</sup> Pakistan Armed Forces (Acting in Aid of the Civil Power) Ordinance, 1998. “This ordinance was passed for the Sind Province in which the armed forces were called upon to act in aid of the civil power under Article 245 The Constitution of the Islamic Republic of Pakistan”

<sup>11</sup> [Sheikh Liaquat Hussain case, 505](#)

<sup>12</sup> [Ibid, 515](#)

<sup>13</sup> Anti-Terrorism (second amendment) Ordinance, 1999 (Ordinance No. XIII of 1999), Section 6

“(a) in order to, or if the effect of his actions will be to, strike terror or create a sense of fear and insecurity in the people, or any section of the people, does any act or thing by using bombs, dynamite or other explosive or inflammable substances, or such fire-arms or other lethal weapons as may be notified, or poisons or noxious gases or chemicals, in such a manner as to cause, or be likely to cause, the death of, or injury to, any person or persons, or damage supplies of services essential to the life of the community, or threatens with the use of force public servants in order to prevent them from discharging their lawful duties; or

(b) commits a scheduled offence, the effect of which will be, or be likely to be, to strike terror, or create a sense of fear and insecurity in the people, or any section of the people or to adversely affect harmony among different sections of the people; or

(c) commits an act of gang rape, child molestation, or robbery coupled with rape as specified in the schedule to this Act; or

(d) commits an act of civil commotion as specified in section 7-A”<sup>14</sup>

So that definition contained words of ‘Create a sense of fear and insecurity’, ‘Commits an act of gang rape, child molestation or robbery coupled with rape’ and ‘Commits an act of civil commotion’ in the enactment. In this definition most important thought was “the effect of act or of offence, whether it was actual, intended or having a potential of it and there was no element of design as well as purpose behind that offence in the enactment”<sup>15</sup>

In year 2001, Anti-Terrorism Act was amended again and the term ‘Terrorist Act’ was replaced with “terrorism” with altogether different definition<sup>16</sup>. “Section 6 was amended and new phrases were introduced first time in enactment. the words “*use or threat, design to coerce and intimidate or overawe government*” and “*fear or insecurity in society*” along with “threat for the purpose of advancing religious, ethnic or sectarian cause” were added,<sup>17</sup> “so according to theses phrases the action will be considered as act

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<sup>14</sup> Ibid,

<sup>15</sup> National Police Bureau. “Manual on Anti-Terrorism Act, 1997” (Islamabad: National Public Safety Commission, CT, 2008).1

<sup>16</sup> The Anti-Terrorism (Amendment) Ordinance, 2001 (Ordinance No. XXXIX of 2001), Section 6(1);

<sup>17</sup> Anti-terrorism Act, 1997 (amendment of 2001). Section 6.

of terrorism if it will create a serious risk to the safety of the public or is designed to frighten the public and thereby prevents them from coming out and carrying on their lawful trade, daily business and disrupts civil life”<sup>18</sup> Further amendments were made in definition clause<sup>19</sup> in Provisions 6(1) (b)<sup>20</sup> and in 6(1) (c)<sup>21</sup>.

*“(1) In this Act terrorism means the use or threat of action where:  
(a) the action falls within the meaning of subsection (2), and  
(b) the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society; or  
(c) the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause”<sup>22</sup>*

Section 6(2) (ee), 6 (2) (O), section 6 (3-A), section 6(7) (a) & (b) of the Anti-terrorism Act were also amended.

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<sup>18</sup> [Soorat Khan Versus Anti-Terrorism Court, Sibi, P L D 2010 Quetta 52:](#)

<sup>19</sup> Amendments were made in sub clause (b) and sub clause (c) of Section 6(1) of Anti-Terrorism Act, 1997

<sup>20</sup> Words “or a foreign government or population or an international organization” “Inserted in section 6(1) (b) By the Anti-Terrorism (Amdt.) Act, 2013 (XIII of 2013)

<sup>21</sup> words “ or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians, including damaging property by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies” were inserted by the “Anti-Terrorism (second amendment) Act 2013 (XX of 2013) in section 6(1) (c)”

<sup>22</sup> Anti-terrorism Act, 1997 (amendment of 2001.)

### 1.3 PROBLEM STATEMENT

The Supreme Court of Pakistan since 1998, from *Mehram Ali and others v Federation of Pakistan and others*<sup>23</sup> to till date is unable to define clear-cut interpretation of section 6 of Anti-terrorism Act. In 1998, *Mehram Ali* case is considered as first ever case which brought major developments in the provisions of Anti-Terrorism Act 1997 and left the forceful impact on future legislations in Pakistan. Two different approaches are prevailing in Supreme Court of Pakistan regarding interpretation of definition of terrorism under section 6 of Anti-Terrorism Act. One is relating to consequences or cumulative effect -based approach while the other is dealing with design- based approach. The cumulative effect -based approach primarily focuses on the actual commission of the offense and its immediate impact on the public, without considering any underlying motive or design. On the other hand, the design-based approach, an act may be categorized as terrorism if it was purposely designed to cause fear and insecurity among the public, even if the immediate impact of the act did not create such feelings. Section 6 of the antiterrorism Act has three different kinds of *mens-rea* regarding act of terrorism firstly, to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect. Secondly, to create a sense of fear or insecurity in society. Thirdly, made for the purpose of advancing a religious, sectarian or ethnic cause society.”<sup>24</sup> Since, 1998 to 2007, The Supreme Court of Pakistan in *Syed Munawar Hassan, Secretary-General v Federation of Pakistan through Secretary, Law, Justice and Parliamentary Affairs*<sup>25</sup> and many other cases as discussed in chapter 3 of this research adopted cumulative effect based approach. In 1999, Anti-terrorism (second Amendment) ordinance,1999 (Ordinance No. XIII of 1999) was introduce and for determination of terrorism effect of his action was only key criteria

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<sup>23</sup>: [Mehram Ali case, 1445](#)

<sup>24</sup>[Advocate General v. Muhammad Shafiq, PLD 2003 Supreme Court 224.](#)

<sup>25</sup> [Jammat-I-Islami Pakistan versus Federation of Pakistan PLD 2000 Supreme Court 111](#)

and in 2004 there was only one judgement of Lahore High Court Lahore as Basharat case dealing designed based approach. Between 2007 and 2016, there was a rapid fluctuating approach from the Supreme Court, causing cases to oscillate between ordinary courts and anti-terrorism courts. The supreme court of Pakistan after analyzing all judgement of Supreme Court of Pakistan in Ghulam Hussin case<sup>26</sup> held that action should have nexus with object of Anti-terrorism act, Chief Justice Mr. Asif Saeed Khosa who authored this judgement and headed a larger bench of Supreme court Comprising of seven judged discussed terrorism cases and its jurisdictions he has already established his view in 2004 on the same subject in “Basharat Ali vs. Special Judge, Anti-Terrorism Court II, Gujranwala,PLD 2004 Lah 199 and he almost reproduced his judgement. Although he discussed judgements from 1998 to 2018 along with legal provision and make his opinion that act of terrorism when it has nexus with object mentioned in 6(1)(b) and 6(1)(c). it was further held that the scheduled offences it should not be treated as ATA offences, ATC court will conduct trial of these offences as heinous offences and penalized these offences under ordinary law. In Ganda Singh cases in district Kasur 17 sodomy cases were tried under ordinary laws while 14 cases were tried under ATC courts.<sup>27</sup> Recently Jahangir Khan vs Khalid Latif<sup>28</sup>It was case of Kidnapping or abduction for ransom, accused moved application for transfer of case which was dismissed then he approached to High Court and Supreme Court of Pakistan and both courts decided that let the trial court to decide fate of case ” so again there was question what was need of section 23 if High Court and Supreme Court are not deciding fate of case. So cases mentioned above clearly indicating that our superior courts are unable to provide uniform interpretation of definition of terrorism. Now the Supreme Court of Pakistan has re-constitute larger the bench for definition of terrorism

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<sup>26</sup> Ghulam Hussin vs State ; PLD 2020 Supreme Court 61

<sup>27</sup> Data received from PGP office.

<sup>28</sup> Jahangir Khan versus Khalid Latif, 2021 SCMR 136



#### **1.4 RESEARCH QUESTIONS**

1. What was object of Anti-Terrorism Act 1997 whether definition of terrorism was based upon consequential based approach or designed based approach?
2. What laws were introduced to combat hard core terrorist activities in Pakistan and What were the reasons of their failure of these enactments in Pakistan? Whether there was need to introduce amendments in Anti-Terrorism laws and what was the effect of these amendments on the interpretation of these laws?
3. What are international standard dealing with terrorist activities whether theses are addressing consequential based approach or designed based approach and what kind of measures have been taken through proper legislation?
4. What were the reasons of the acquittal of Anti-Terrorism cases in courts and what were the legislation regarding poor Investigation in Anti-Terrorism cases? What kind of hurdles are faced by the investigating officers during the investigation of terrorism cases?
5. What are the differences between Anti terrorism Offences, and Ordinary Offences which are overlapping and their by problems faced by the prosecution, The Anti-terrorism Courts and The Ordinary Court?.

#### **1.5 SIGNIFICANCE OF RESEARCH**

At the end of this research, we will be able:

- I. To provide a clear definition of terrorism in Anti-terrorism Laws and provide the how consequence / effect based approach is more beneficial and same will resolve the issue of multiplicity of laws regarding Anti-terrorism Act, Pakistan Penal Code and Special laws and same will also restrict the courts from using their unlimited discretion at time of interpretation. It will also assist the courts to adopt a uniform policy throughout proceeding in anti-terrorism cases in Pakistan.

- II. To point out the non-curable defects of investigation in terrorism cases due to rapid transfer of cases from ATA to ordinary court vice versa and to provide guidelines how to avoid of such like defects in future. it will be is only possible when investigation officer will conduct investigation under anti-terrorism laws.
- III. To make sure that rights of accused provided by law be given to him and it will be possible when he will not be rolling stone between the ordinary and terrorism jurisdiction.
- IV. To provide international best practice based upon consequential used approach . it will provide different mechanism for hard core terrorist and ordinary terrorist by way of classifications of domestic and international terrorism.

## 1.6 LITERATURE REVIEW

Many authors have discussed concept of terrorism specially after 9/11 but there is no research based upon legislative work on this topic in Pakistan. Dr. Manzar Zaidi<sup>29</sup> having many publications one is “Insight on Insecurity in Pakistan”<sup>30</sup> (2012) ‘This book provides all necessary answers of important questions that the people in Pakistan and elsewhere in the world have about radicalization and terrorism in Pakistan’ Similarly another work of same author is “Taliban In Pakistan; A Chronicle Of Resurgence”<sup>31</sup>(2010) is dealing only activities of Taliban in Pakistan, Another work “Punjabi Taliban research”<sup>32</sup>(2014)in this assignment he discussed the emergence of the Punjabi Taliban in Punjab province in Pakistan. Similarly other publications of same author dealing organization of Taliban both

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<sup>29</sup>“Zaidi; working as Criminal Justice Adviser to the British High Commission in Pakistan, and ex Director CT at the National Counter Terrorism Authority of Pakistan, is an ex Police Senior CT practitioner, with a Phd in Terrorism Studies, Author of three books on the phenomenon of Talibanisation of Pakistan, besides having published in several international Journals about regional security, Talibanisation and politics in South Asia.

<sup>30</sup>Manzar Zaidi “Insight on Insecurity in Pakistan”, (Islamabad , Nova Science, 2012),.2

<sup>31</sup>Ibid.3

<sup>32</sup>A. Manzar, Taliban in Pakistan: “A Chronicle of Resurgence (Terrorism, Hot Spots and Conflict-Related Issues) Published by Nova Science, (2010),1 Accessed March 12, 2017 [http://strategiskanalyse.no/Publikasjoner%202014/2014-02-20\\_SISA12\\_The%20Punjabi%20Taliban](http://strategiskanalyse.no/Publikasjoner%202014/2014-02-20_SISA12_The%20Punjabi%20Taliban).

are discussing social political scenario in Pakistan and it is comprehensive work discussing political scenario in Pakistan time to time. He does not discuss the legal and procedural changes emerged by the new laws and its effect on criminal justice system.

“Countering Militancy and Terrorism in Pakistan”<sup>33</sup> by Shuja Nawaz (2016) This work is based upon interviews with “politicians and civil and military officials and discuss the poor governance and unevenness of power in Pakistan and offered key recommendations for the military, civilian institutions, to achieve the objectives outlined in Pakistan's National Action Plan (NAP)’ but this work is not dealing with laws and procedural changes.

“Combating Terrorism: Pakistan’s Anti-Terrorism Legislation in the Post-9/11 Scenario”<sup>34</sup> by Naeem Ahmad (2015) in this eighteen pages article he has discussed Evolution of anti-terrorism laws in paragraph two and discuss failure of legislation is due to Broad definition of terrorism but failed to discuss area regarding practical application of procedural and statutory laws and court decision

“Reforming Pakistan’s Criminal Justice System”<sup>35</sup> Asia Report (2010) this report has mentioned that there is need to refine definition of terrorism act 1997 he has suggested that refine only those acts whose impact is large in scale and causes and create element of fear and insecurity in the public community; and no need of anti-terrorism courts and all cases should try in regular courts but he has not discussed legal reason of it without mentioning any legal and procedural application of antiterrorism laws,

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<sup>33</sup>Nawaz, Shuja. Countering Militancy and Terrorism in Pakistan: The Civil-Military Nexus. (United States Institute of Peace, 2016) 1.

<sup>34</sup>: Naeem Ahmad “Combating Terrorism: Pakistan’s Anti-Terrorism Legislation in the Post-9/11 Scenario” “Journal of Research Society of Pakistan”, (2015) 132. Accessed January 12, 2018 at [http://pu.edu.pk/images/journal/history/PDF-FILES/9.%20Naeem%20%20Ahmad\\_v\\_52\\_2\\_15.pdf](http://pu.edu.pk/images/journal/history/PDF-FILES/9.%20Naeem%20%20Ahmad_v_52_2_15.pdf)

<sup>35</sup>“ International Crisis Group. "Reforming Pakistan's Criminal Justice System." Asia Report 196 (2010): Accessed January 12, 2018 “<http://www.refworld.org/pdfid/4d00dee42.pdf>”

“Terrorism and the Criminal Justice System”<sup>36</sup>by Mr. ftikhar Chaudhry, the Chief Justice of Pakistan he has discussed that “ There is no specific and precise definition terrorism because its complex natures of action falling in area of terrorism not only in Pakistan but also at international level ” He also mentioned that “The international law thus has adopted large number of legal instruments at international level to combat the different kinds of the terrorism. like “Convention on the Prevention and Punishment of Crimes against and Internationally Protected Persons, including Diplomatic Agents” 1973, “International Convention against the Taking of Hostages”, 1979, “Convention on the Physical Protection of Nuclear Material, 1979.other instruments” so this complete article deals application of international law and conflict of definition of terrorism.

There is another research “Counter Terrorism Laws”by Munir Sadiq he has discussed international laws dealing terrorism and applications of different international conventions this work does not discuss Pakistani legislation as well as international and domestic terrorism laws.

“Terrorism in Pakistan: Causes & Remedies”<sup>37</sup>by Muhammad Irshad<sup>38</sup>(2011)This work deals with history of terrorism and also discussed the factors of war against terrorism in Pakistan. He mentioned that “Element of non-state terror is not a new concept rather it is old concept and lately discovered. Concept of International terrorism being important instrument of political agenda from 1960s. according to him “The United States is pursuing its War on Terror without addressing its root causes which are social, economic and

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<sup>36</sup>[www.supremecourt.gov.pk/jc/Articles/4/1.pdf](http://www.supremecourt.gov.pk/jc/Articles/4/1.pdf)

<sup>37</sup>Irshad, Muhammad. "Terrorism in Pakistan: Causes & Remedies." Dialogue (Pakistan) (2011). 3 Accessed April 12, 2018 [http://www.qurtuba.edu.pk/thedialogue/The%20Dialogue/6\\_3/Dialogue\\_July\\_September2011\\_224-241.pdf](http://www.qurtuba.edu.pk/thedialogue/The%20Dialogue/6_3/Dialogue_July_September2011_224-241.pdf)

<sup>38</sup> Ibid.,2

political in nature and not military. This work is not describing law reforms at national and international level”<sup>39</sup>

“Major threat to Pakistan’s National Security”<sup>40</sup> by Umbreen (2007) it is literature on national security, dealing both internal factors as well as traditional factors. According to her, “Pakistani state is feeling serious challenge from its internal factors as compared to external. Pakistan government is combating multi -dimensional forms of terrorism, including ethnic terrorism as well as nationalist terrorism and also Jehadi terrorism which were emerged from post 9/11 scenario and is most serious threat to Pakistan according to him It is not in control of a single person or a onetime effort to eliminate this kind of deep rooted problems from society, “An institutional base mechanism along with active participation on both way permanent as well as regular basis is the only solution to combat and fight this menace”<sup>41</sup>.

“The Terrorist Threat and the Policy Response in Pakistan”<sup>42</sup> Aarish Ullah Khan (2005) this one was Policy Paper which was dealing with the different aspects like political and historical, as well as different other factors in Pakistan which were basic reason of motivation for terrorism as both a tool as well as a curse in society. He discussed key factors compelling leadership of Pakistan to do more in favour of western powers this work does not deal to legal aspects of terrorism.

Pakistan: Terrorism Ground Zero<sup>43</sup> by Khuram Iqbal(2012) He mentioned that Pakistan has key role today, regarding its international fight against terrorism. After the collobration

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<sup>39</sup> Ibid,.2

<sup>40</sup>Umbreen “Major threat to Pakistan’s National Security” Reads Research Gate January 2007 <http://pu.edu.pk/images/journal/pols/Currentissue-pdf/UMBREEN.pdf>

<sup>41</sup> Ibid.3

<sup>42</sup>Khan, Aarish Ullah. The terrorist threat and the policy response in Pakistan. Stockholm: Stockholm International Peace Research Institute,(2005).1

<sup>43</sup>Gunaratna, Rohan, and Khuram Iqbal. Pakistan: Terrorism ground zero. Reaktion Books,( 2012) 320

with United State Pakistan has targeted the terrorist groups who are operating in Afghanistan, and large number insurgent groups which were operating their activities has discussed in this book with detailed analysis. He pointed out that Pakistan has to its role at frontline of the fight otherwise international community can not win this battle against such ideological and operational terrorism around the world, However there is no discussion on laws relating terrorism

“Terrorism: Reality of Invisible Balance of Power”<sup>44</sup> by Naveed Ahmed (2005), In his book, he pointed out basic reasons of terrorism according to him “an interaction of state terrorism led by the United States and the group terrorism by the Al Qaeda or Islamic militants”. Large number of authors have written a lot of work including various books about the 9/11 but not stating legal provision dealing terrorism.

Terrorism in Pakistan<sup>45</sup> by Syed Ejaz Hussain(2010) According to him terrorism in Pakistan has got not only local but also global attention. In this book, “he has discussed different pattern of incident dealing terrorism, he has also discussed terrorism incidents in Pakistan from year 1974 to 2009, he has also mentioned weapon of different types used by different terrorist groups in Pakistan, and he has also discussed demographic characteristics terrorist who were arrested in Pakistan from 1990 to 2009 which were 2344 in numbers, “Prof. Lawrence Sherman, from Cambridge University termed this study as the first systematic analysis of evidence on terrorism in Pakistan” but did not discuss any legal instruments.

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<sup>44</sup>Naveed Ahmed “Terrorism: Reality of Invisible Balance of Power” Ferozsons Lahore, 2005), 60,

<sup>45</sup>Hussain, Syed Ejaz. Terrorism in Pakistan: Incident patterns, terrorists' characteristics, and the impact of terrorist arrests on terrorism. University of Pennsylvania, (2010),160

Another research paper “Historical Overview: Counter Terrorism Laws in Pakistan”<sup>46</sup> by Barrister Ahmed Uzair. He has discussed only history of terrorism laws in form of heading and there is no detail regarding laws and judicial verdicts.

There is another report “Justice System for The 21st Century”<sup>47</sup> by D.Geoffrey, on August 27, 2012 dealing to what kind of changes required with passage of time and also discussed that terrorism case and application of public interest test but not dealing procedural changes.

The Grave New World: Terrorism in the 21st Century<sup>48</sup> by Bruce Riedel Friday, December 9, 2011 also dealing history of Taliban and its activities but not dealing Anti-terrorism laws.

“Terrorism and International Justice<sup>49</sup>” by James P. Sterba It comprises of 272 pages which consist of different articles / essays like Murderers, Not Warriors: The Moral Distinction in both Terrorists and Legitimate Fighters as freedom fighters in Conflicts of Asymmetric powers, but he has discussed three aspects of terrorism and international justice in these new essays, first is about nature of terrorism secondly why do people hate terrorists and thirdly how morally they justified response to terrorism But do not deal terrorism laws

“Interesting Times for International Humanitarian Law Challenges from the War on Terror”<sup>50</sup> by Gabor Rona this article discuss humanitarian law and its applications along with other domestic, municipal and also international law. “As concerns the scope of application, it must first be understood, that humanitarian law applies only in armed

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<sup>46</sup>Accessed May 12, 2019 [http://www.nacta.gov.pk/Downloads/5.Historical%20Overview%20-%20Counter%20Terrorism%20Laws%20in%20Pakistan%20\(2016\).pdf](http://www.nacta.gov.pk/Downloads/5.Historical%20Overview%20-%20Counter%20Terrorism%20Laws%20in%20Pakistan%20(2016).pdf)

<sup>47</sup>Riedel, Bruce. "The grave new world: Terrorism in the 21st century.". Accessed June 12, 2018 at <https://www.brookings.edu/articles/the-grave-new-world-terrorism-in-the-21st-century/>

<sup>48</sup>Ibid, 2

<sup>49</sup>Archibugi, Daniele, and Iris Marion Young. "Envisioning a global rule of law." (2003).1

<sup>50</sup>Rona, Gabor. "Interesting Times for International Humanitarian Law: Challenges from the" War on Terror". In The Fletcher Forum of World Affairs, . The Fletcher School of Law and Diplomacy, 2003. 55

conflict; that other legal regimes such as domestic and international criminal and human rights law also apply, but only to a limited extent, during armed conflict, that terrorism and the War on Terror are sometimes manifested in armed conflict, other times not; and that there are good reasons involving the global balance between state and personal security”<sup>51</sup>

“Terrorism: A Very Short Introduction”<sup>52</sup> Second Edition Charles Townshend he has discussed the incidents of 9/11 and the 7/7 London bombings, 2005 the along with its influence. He has also narrated the consequences of many other terrorist attacks, in this work he discussed the important questions like What is war and terrorism and its impact on democracy ? and how we can stop this one? “It explores the impact of increased terrorism on society, including debates surrounding the erosion of civil liberties”<sup>53</sup> but what kinds of Procedural changes were brought in legislation of UK and USA work is silent.

Domestic Versus Transnational Terrorism: Data, Decomposition, and Dynamics<sup>54</sup>  
Walter Enders Department of Economics and Finance University of Alabama this very important article discussed various natures of serious attacks like bombing as domestic terrorism on basis of nationality.

“Pakistan and Terrorism: A Summary”<sup>55</sup> by K. Alan Kronstadt<sup>56</sup> (2007) This report deals issues relating toward Pakistan and impact of terrorism on it, and also discussed the effect of U.S. interests, and their policies with goals, also describes “The outcomes of U.S. policies toward Pakistan since 9/11, while not devoid of meaningful successes, have neither

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<sup>51</sup> Ibid, 56

<sup>52</sup>Ch, Townshend. "Terrorism: A Very Short Introduction." (2002 Oxford University (2011) 1 available at <https://global.oup.com/academic/product/terrorism-a-very-short-introduction-9780199603947?cc=pk&lang=en&author>

<sup>53</sup> Ibid..1

<sup>54</sup>[http://wenders.people.ua.edu/uploads/2/6/3/8/26382715/domestic\\_trans\\_ms\\_final.pdf](http://wenders.people.ua.edu/uploads/2/6/3/8/26382715/domestic_trans_ms_final.pdf)

<sup>55</sup>Kronstadt, K. Alan."Pakistan and terrorism: A summary."Congressional Research Service, Library of Congress, (2007)1.



neutralized anti-Western militants and reduced religious extremism in that country, nor have they contributed sufficiently to the stabilization of neighboring Afghanistan.”

“The Making of Terrorism in Pakistan: Historical and Social Roots of Extremism”<sup>57</sup> by Eamon Murphy (2013) in this book he has explained and discussed the origins as well as nature of terrorism particularly in Pakistan keeping in view not only effect of its political and social factors but described economic factors which can play important role in the development of political ferocity, since 9/11. He mentioned Pakistan as central point of terrorist activities which are committed in the name of religion and Islam. He has discussed the basic the root which causes of terrorism in Pakistan.

“Designating Domestic Terrorist Individuals Or Groups”<sup>58</sup>by David E. Heller – 2010 according to him individuals who has coated terrorism it may be based on his a political agenda might be on social agenda which was designed by him to influence a government or people.

Terrorism and Counterterrorism<sup>59</sup>by Brigitte L Nacos<sup>60</sup> focused on terrorism and its impacts, “*Terrorism and Counterterrorism* investigates this form of political violence in an international and American context and in light of new and historical trends. In this comprehensive and highly readable text, renowned expert Brigitte Nacos clearly defines terrorism's diverse causes, actors, and strategies; outlines anti- and counter-terrorist responses; and highlights terrorism's relationship with the public and media”<sup>61</sup>.

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<sup>57</sup>Murphy, Eamon. The making of terrorism in Pakistan: historical and social roots of extremism. Routledge, 2012.2 <https://books.google.com.pk/books?isbn=041556526X>

<sup>58</sup>David E. Heller Designating Domestic Terrorist Individuals Or Groups” by –International Peace Research Institute (SIPRI) Stockholm 2010 accessed 3 March, 2017 at [https://calhoun.nps.edu/bitstream/handle/10945/5213/10Sep\\_Heller.pdf](https://calhoun.nps.edu/bitstream/handle/10945/5213/10Sep_Heller.pdf)

<sup>59</sup> Brigitte L Nacos“Terrorism and Counterterrorism” Edition fifth edition Routledge London (2016) 5

<sup>60</sup>Brigitte L. *Terrorism and Counterterrorism: Threats and Responses in the Post-9/11 World*;( 2021).9.

<sup>61</sup> Ibid, 2

*"Terrorism and Counterterrorism"* has discussed number of important and significant developments in terrorism since 2012 including death of Osama bin Laden, or including bombing at the Boston Marathon, He discussed important issues including "justifiable" as well as "legitimate" terror, terrorism wave, and state who is backed terror, in other states. It also discuss role media how it introducing terrorism through e-terrorism, how media is promoting the, "propaganda by deed,"

*"Researching Terrorism, Peace and Conflict Studies: Interaction, Synthesis"*<sup>62</sup> by edited by Ioannis Tellidis, Harmonie Toros. "This book examines potential synergies between the fields of Terrorism Studies and Peace and Conflict Studies. The volume presents theoretically- and empirically-informed contributions, which shed light on whether the two fields can inform each other on issues of mutual interest and importance"<sup>63</sup>.

*"Criminology Theory and Terrorism New Applications and Approaches"*<sup>64</sup> by Joshua D. The focus in this book on criminology based concept which narrates that how to engage terrorism and how the responses to terrorism are exceptional. It has discussed through group of researchers who offer criminological perspectives on terrorism. This work has viewpoints from rational choice to social disorganization.,

*Evaluation of Anti-Terrorism Laws in Pakistan: Lessons from the Past and Challenges for the Future*<sup>65</sup> by Ayesha Jawad, this This research critically evaluates the anti-terrorism legal regime of Pakistan along with its structural flaws. While vigorous efforts to defeat terrorism have taken place in Pakistan, much needs to be done to achieve de-radicalisation

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<sup>62</sup>IoannisTellidis, HarmonieToros "Researching Terrorism, Peace and Conflict Studies: Interaction, Synthesis"<sup>62</sup> by edited by. Routledge; 1<sup>st</sup> Edition London (2015),2

<sup>63</sup> Ibid 2

<sup>64</sup>Freilich, Joshua D., and Gary LaFree, eds. Criminology theory and terrorism: New applications and approaches. Routledge,(2017),3

<https://books.google.com.pk/books?id=j6wxrgEACAAJ&dq=criminology+theory+and+terrorism&hl=en&sa=X&ved=0ahUKEwifDvverVAhUDqxoKHQHODIkQ6AEIJTAA>

<sup>65</sup> Jawad, Ayesha. "An evaluation of Anti-Terrorism laws in Pakistan: Lessons from the past and challenges for the future." Security and Defence Quarterly 38, no. 2 (2022): 30.

along with identifying and addressing areas of vulnerability. In this article parallel criminal provision in general laws and special laws were not discussed.

Defining Terrorism in Pakistan's Anti-Terrorism Law<sup>66</sup>, by Khurshid Iqbal, Niaz A. Shah, (2018):He has examine the definition of ‘terrorism’ in the Anti-Terrorism Act 1997 of Pakistan and discussed principle of legality in criminal and human rights law standards.\_According to him the definition of terrorism under the Anti-Terrorism Act does not pass the test of the principle of legality and the jurisprudence of the Supreme Court of Pakistan is inconsistent confounding the situation further however he has not mentioned issue of overlapping of offences and jurisdictional issues in detailed.

Defining Terrorism in Pakistan The Supreme Court’s Judgment by Muhammad Amir Rana (2020) this one is detailed analysis on the judgement of Supreme Court of Pakistan in Ghulam Hussain vs State and has given analysis in detailed along recommendations however there is no discussion on the legal provisions and depth analysis of case laws by the supreme court of Pakistan.<sup>67</sup>

Combating International Terrorism by Waseem Ahmad Qureshi in this research he has discussed in detail definition of terrorism by the different authors and also discussed the development in definition of terrorism after the 9/11 especially in UN Charter however legal provisions dealing terrorism in different countries is not mentioned in it.<sup>68</sup>

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<sup>66</sup> Khurshid Iqbal, Niaz A. Shah, Defining Terrorism in Pakistan's Anti-Terrorism Law, Global Journal for Comparative Law 7 (2018) 272-302,;

<sup>67</sup> Defining Terrorism in Pakistan The Supreme Court’s Judgment – A way forward for Parliament Muhammad Amir Rana Friedrich Ebert Stiftung (2020) 1-60 accessed 17 March 2024 <https://pakistan.fes.de/e/defining-terrorism-in-pakistan>

<sup>68</sup> Qureshi, Waseem Ahmad "Combating International Terrorism," Florida Journal of International Law: Vol. 29: Iss. 0, Article 1. Accessed 17 March, 2024: <https://scholarship.law.ufl.edu/fjil/vol29/iss0/1bating-International-Terrorism>; Waseem Ahmad Qureshi

## **1.7 SCOPE OF RESEARCH**

Anti-terrorism legislation is a vast subject and it is linked with other several laws. It is also linked with different departments but as per thesis statement, this present research is limited only to the extent of definition of terrorism and its jurisdiction. It is based on jurisdictional issues, conflict of Supreme Court of Pakistan while defining terrorism and issues of overlapping of offences. Effort is being made to make the research meaningful and result-oriented. Data not only relating to the province of the Punjab but also from other provinces subject to availability will be the part of this research. The concept of fear and terror in public is wider in nature hence, this research is limited only to the criteria mentioned above.

## **1.8 RESEARCH METHODOLOGY**

The present research employs, qualitative, and quantitative research methods, combined with comparative and analytical approaches. This study is the case study/analysis of criminal cases. This approach involves the in-depth examination of specific criminal cases to gain insights into the legal and jurisdictional issues involved. To provide a comparative perspective, the study examines criminal cases and legal systems in other countries, including the UK, USA, European countries, and international conventions. This approach enables the researcher to identify similarities and differences in legal frameworks and jurisdictional issues and draw conclusions and recommendations for the local context.

## **1.9 THEORETICAL FRAME WORK**

Although legislatures in Pakistan have made different attempts to define terrorism with several amendments with the purpose to provide inexpensive and speedy justice to all stakeholders across the board. This research is based upon two ideas. Firstly, the analysis of conflicted approaches of superior courts Cumulative effect based approach and designed based approach, and secondly, international best practice approaches. This research is based on the issues arising out of jurisdictional conflict of ordinary and special courts due to cumulative effect based approach. In this research, reasons of acquittals in Pakistani courts due to designed based approach adopted by courts along with recommendations and suggestions for effective and speedy justice along with proactive role of prosecutor in domain of anti-terrorism legislation has been discussed.

## **CHAPTER TWO**

### **HISTORICAL BACKGROUND OF HEINOUS OFFENCES**

#### **AND LEGISLATION OF PAKISTAN**

##### **2.1 HISTORICAL BACKGROUND**

Different enactments dealing with the heinous offences have been the part of criminal justice system of Pakistan. Some of them were borrowed from British colonial system i.e Pakistan Penal Code 1860, Police Rules 1934 and Criminal Procedure Code 1898. Some were later on made the part of criminal Justice system through different enactments. Legislation in Pakistan pertaining to grave offenses and anti-state actions has been divided into three phases. The first phase was focused on combating insurgencies and political violence since the inception of Pakistan. Acts such as the West Punjab Safety Act 1949, Public Representative Officer (Disqualification Act),1949, The Security of Pakistan Act, 1952, and The West Pakistan Maintenance of Public Order, Ordinance1960 were introduced to tackle political and anti-state activities in the country. Special Courts were established under The Suppression of Terrorist Activities (Special Courts) Act of 1975 with the objective of countering terrorist activities in Pakistan, under The Suppression of Terrorist Activities (Special Courts) Act,1975. Second Phase is dealing with Sectarianism in Pakistan, In 1997 the Suppression of Terrorist Activities (Special Courts) Act,1975 was replaced by Anti-Terrorism Act, 1997, copuled with other legislations “Speedy Trial Ordinance (1987), ‘the Terrorist-Affected Areas (Special Courts) Ordinance’ (1990) and “Terrorist-Affected Areas (Special Courts) Act (1992)” but to no avail.

Third Phase started with the introduction of hardcore terrorist or phenomena of international terrorism after 9/11. Pakistan came out with many changes in the jurisprudence of terrorism through large number of amendments in already existing enactment i.e Anti-Terrorism Act 1997. In this regard, different constitutional responses based upon different kinds of structures along with policies were introduced in this era. Pakistan also introduced speedy trial concept through establishment of special courts. Its purpose was to strengthen the National Counter Terrorism Authority, not only countering hatred speech, but also controlling element of extremist material as well as financial terrorism. No doubt, it was creating and organizing a enthusiastic force for counter terrorism with a purpose to regulate the Madrasas System in Pakistan along with its mandatory registration.

### **2.1.1 THE PAKISTAN PENAL CODE, 1860**

Pakistan Penal Code, 1860 which was originally drafted by Lord Macaulay along with Anderson, Messor, and Millett and same was submitted to Governor General in 1833 as code of different offences in Subcontinent, which was passed in 1860,<sup>69</sup> After the emergence of Pakistan, in 1947 same code was inherited and subsequently after amendments it has become a mixture of Islamic and English Law.<sup>70</sup> Chapter VI dealing serious nature of offences which are against the state, like interruption of public safety and peace and tranquility in state as well as it deals with disruption of sovereignty. After almost 160 years, no big change in the provisions of this code except insertion of section 121-A which was also inserted in year 1870. We can see large number of heinous offences, which are part of latest amended anti-terrorism laws are also part of Pakistan Penal Code 1860, In Chapter V-A section 120-A dealing criminal

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<sup>69</sup> Pakistan Penal Code 1860 ; Commentary M. Mahmood History, 2

<sup>70</sup> Ibid,2

conspiracy, while chapter VI dealing offences which are against the state, section 121 of PPC dealing with ‘Waging or abetment of waging of a war against the Pakistan’ having punishment with death and life, Section 124 PPC is dealing with assaulting high profile state dignities like President, Prime Minister, and Governor etc. Section 124-A PPC is about Sedition and section 131 of PPC dealing with Mutiny while section 402-B of PPC was dealing High-jacking, above mentioned sections are also part of the current Penal legislation. Chapter XVI dealing offences against the human body including murder and hurt of human body. So many other offences present in Pakistan Penal Code, 1860 are now part of Anti-terrorism laws. We will discuss in detail in chapters five with comparative study and application of these laws.

### **2.1.2 The Anarchical & Revolutionary Crimes Act,1919**

“The Anarchical and Revolutionary Crimes Act” 1919 was one of initial legislation which was protecting state from anti-state activities and object was “an act *to cope with anarchical and revolutionary crime*,<sup>71</sup> and dictionary meaning of *anarchical* is lawlessness, without control, in Black law dictionary it a state of society without government or law,<sup>72</sup> and “it is political and social disorder due to the absence of governmental control and criminal anarchy is doctrine advancing the over throw of organized government or violence, by some other unlawful act.”<sup>73</sup> Under this enactment British government was authorized to arrest any person or suspect due to terrorist activities<sup>74</sup> Section 34 clause (a) of act empowered local government not only to arrest the person without warrant if there is sufficient and reasonable believe that person is involved in anarchical as well as revolutionary crime and may confine him with restrictions

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<sup>71</sup> Preamble of “Anarchical and Revolutionary Crimes Act, 1919” available at [https://legislative.gov.in/sites/default/files/legislative\\_references/1919.pdf](https://legislative.gov.in/sites/default/files/legislative_references/1919.pdf)

<sup>72</sup> available at <https://www.dictionary.com/browse/anarchy>

<sup>73</sup> Black’s Law Dictionary, Abridged, 8<sup>th</sup> Edition [Bryan A. Garner] ;94

<sup>74</sup> “The Rowlatt Act & Jallianwala Bagh Massacre (1910)” available at <http://www.lcwu.edu.pk/ocd/cfiles/History/Maj/Hist-403/The-Rowlatt-Act-Jallianwala-Bagh-Massacre-1919-1.pdf>



and Section 34 clause (b) of act empowered local government to make search any place, if person, is involved in the schedule offences as mentioned in section 121, 121-A 122,123,124 of Indian Penal Code and if person is involved offences mentioned in explosive substance. As mentioned above it allowed to arrest people without any trial or warrant. the Rowlatt Act of 1919 was also called the black act or law, and its worst misuse came to surface on “13th April 1919, day of the festival of Baisakhi in Jallianwala Bagh, in Amritsar, protestors gathered. General Dyer and his troops not only blocked the crowd at the entrance to the garden., but he ordered the troops to make fire at the innocent crowd, without warning and due to the indiscriminate firing least 1000 people resulted in the deaths and more than 1500 people injured.<sup>75</sup> It also empowering the government order for detention up to 2 years without trial. This enactment was dealing only detention and not covering sectarian violence etc.

## **2.2 SOCIO -POLITICAL CONTEXT OF PAKISTAN**

After emergence in 1947, Pakistan faced constitution-making as a dilemma and political leaders at this stage set directions for the political dynamics cutting across religion, ethnic identity and socio-economic development. Pakistan borrowed the British colonial political, administrative and judicial structures. No serious effort was made to weed out the colonial mind-set and reform the institutional structures which promote and perpetuate it adopted the same system of criminal administration of Justice in form of Pakistan Penal Code,1860, Criminal Procedure code 1898 , Law of Evidence 1913 and Police Rules 1934 . initial government was used as instruments of political oppression. Constitutional quarrels over the Islamic concept of state were fought inside parliament as well as on the streets and started political anti-state activities in the different parts of the country. The issue of provincial

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<sup>75</sup> Ibid,1

autonomy lacerated into the body politics of the country, first in the East Pakistan (that led to dismemberment of the country in 1971) and later on (until the 1977 military takeover), in Baluchistan and the Khyber Pakhtunkhwa provinces<sup>76</sup>. First phase was dealing with insurgencies and political violence and for this purpose, different statutes like ‘West Punjab Safety Act 1949, Public Representative Officer (Disqualification Act), 1949, The Security of Pakistan Act, 1952, along with The West Pakistan Maintenance of Public Order, ordinance 1960 were promulgated by the government and purpose was to combat political activities and anti-state activities in the country. After that period of General Zia ul Haq from 1977 to 1988 was notable for a massive Islamization of laws, Russian invasion of Afghanistan and the 1979 Islamic Revolution put the impact upon legislation of Pakistan., the Shia-Sunni sectarian rift enhanced. the emergence of the MQM, Karachi immersed in ethnic-linguistic conflict leading to terrorist activities till today. Third, in order to undermine and defeat Russia in Afghanistan, Western countries led by the US exploited the Islamic sentiments of the Pakistani people by branding the Afghan resistance as *jihad*. Afghan war was merely a proxy war, the undue exploitation of the concept of *jihad* through Kalashnikov culture, sowed anti-state activities in the country and sectarianism the governments enacted certain anti-terrorism laws in early 1990s including Speedy Trial Ordinance (1987), ‘the Terrorist-Affected Areas (Special Courts) Ordinance’ (1990) and “Terrorist-Affected Areas (Special Courts) Act (1992) but all were ineffective then the government of Pakistan introduced Anti-terrorism Act, 1997 to combat uncontrolled sectarianism in Pakistan. After 9/11 the undue exploitation of the concept of *jihad* brought new wave of terrorism and Pakistan brought many changes in the

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<sup>76</sup> Khurshid Iqbal, Niaz A. Shah, Defining Terrorism in Pakistan's Anti-Terrorism Law, Global Journal for Comparative Law 7 (2018), 272

Jurisprudence of terrorism through large number of amendments. In this regard, different constitutional responses based upon different kinds of structures along with policies were introduced in this era. Pakistan also introduced speedy trial concept through establishment of special courts. Modern terrorism in Pakistan has often targeted soft targets such as government institutions and civilians. This is because these targets are more vulnerable to attacks and can cause widespread fear and chaos among the population. Terrorist attacks on government institutions in Pakistan have included suicide bombings and armed assaults on police stations, army bases, and other government buildings. These attacks have often been carried out by extremist groups who seek to undermine the authority of the government and promote their own extremist ideologies. Civilians in Pakistan have also been targeted by terrorists in a range of different ways. This has included attacks on public places such as markets, schools, and religious sites, as well as targeted killings of individuals who are deemed to be working against the interests of extremist groups. The impact of these attacks on civilian life in Pakistan has been significant. Many people now live in fear of being targeted by terrorists, and have had to change their daily routines to minimize their risk of exposure to such attacks. The threat of terrorism has also had a negative impact on the country's economy, as foreign investors are often reluctant to invest in a country with such security risks. Despite these challenges, however, the Pakistani government has taken a number of steps to address the issue of terrorism. These include the establishment of specialized anti-terrorism courts and the introduction of new laws and regulations aimed at curbing extremist activities. Additionally, the government has worked to improve security measures across the country, including at major public places such as airports and train stations., while modern terrorism has targeted soft targets such as government institutions and civilians in Pakistan, the government remains

committed to addressing this issue and working towards a more peaceful and secure future for all its citizens.

### **2.2.1 “The Public and Representative Officer (Disqualification) Act of 1949”**

“Public and Representative Officer (Disqualification) Act of 1949” PARODA, was one of the political weapons introduced by government. It was not only used against politician with a political objects but also used against the Government and Public servants. Judges of Tribunals were retired judges of Supreme Court and almost 3000 officials were removed from official positions.<sup>77</sup> In those days The Muslim League was held responsible for the deterioration of politics and society after independence and had to answer for its failure to fulfill people's high expectations. There was a rising level of opposition and frustration and an increasing use of repressive laws inherited from the British or enacted by Pakistan. Level of corruption was increasing so Public and Representative Officer (Disqualification) Act of 1949” was introduced by the government.

### **2.2.2 THE WEST PUNJAB PUBLIC SAFETY ACT, 1949**

Section 3<sup>78</sup> of that West Punjab Public Safety Act, 1949 authorized the both Central government as well as the Provincial Government if there is element of satisfaction that person is acting in any manner prejudicial public peace and tranquility or any public order make order of his arrest and detention.<sup>79</sup> And section 3(d) about notifying his movement, and section 3(e)

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<sup>77</sup> Sabir Shah, “Steps against corruption remained futile in Pakistan’s history” accessed 13 June,( 2019) 1 <https://www.thenews.com.pk/print/114035-Steps-against-corruption-remainedfutile-in-Pakistans-history>

<sup>78</sup> West Punjab Public Safety Act, 1949, section 3

“3 (1) “The Government, if satisfied that with a view to preventing any person from acting in any manner prejudicial to public safety or the maintenance of public order, it is necessary so to do, may by an order in writing direct the arrest and detention in such custody as may be prescribed under subsection (9), of such person for such period as may, subject to the other provisions of this section, be specified in the order, and the Government, if satisfied that for the aforesaid reasons it is necessary so to do, may subject to the other provisions of this section extend from time to time the period of such detention”

<sup>79</sup> Ibid

to abstain him from doing any act however if arrest made by or on the direction of any authority other than the Government, shall report the matter to the competent authority so making or directing the arrest otherwise, the detention in custody could not last for a period exceeding one month section 4 of the act was dealing control of subversive association in which central government was empowered to disband and wound up any association prejudicial to the public peace and safety. In this act provision of 17 A of Criminal Law Amendment Act, 1908 regarding “power make any notification and also to take possession of places used for the purposes of an unlawful association”<sup>80</sup>. and 17-E regarding Power to forfeit funds of an unlawful association if the Government is satisfied, “after such inquiry as it may think fit, that any monies, securities or credits are being used or are intended to be used for the purposes of an unlawful association, the government may by order in writing declare such monies securities or credits to be forfeited to Government.” Section 6 was dealing to control of information by the government. Under section 13(1) offences were cognizable and non bailable’

Question regarding detention whether this was violation of section 7 of constitution of Pakistan 1956 because Article 7 of the constitution of Pakistan empowered that detention of any person shall not be made unless he has been informed, along with grounds for his such arrest, he shall also have right regarding consultation through legal practitioner and detained person who is in custody, within 24 hours of arrest shall brought before Magistrate, this provision is similar to article 10 of the constitution of Pakistan 1973 so article 7 has two exception when it will

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<sup>80</sup> Section 3, West Punjab Public Safety Act, 1949, see also Criminal Law Amendment Act, 1908.

not applicable firstly an enemy alien secondly, person is arrested for preventive detention. Detention shall not exceed three months with permission of the appropriate Advisory Board.

it was held by the supreme Court of Pakistan in Abdul Aziz Alias Labha Vs Province Of West Pakistan that “provisions under section S. 3 (6)(7) (8) of the West Punjab Public Safety Act (XVIII of 1949) of do not make Act unworkable and its validity is not affected by Art. 7 (4),of Constitution of Pakistan,<sup>81</sup> for the extending of period of detenu it was settled principle that Order extending period of detention which had already expired-Of no legal effect”<sup>82</sup> The word satisfied used in section 3 is explained by Per Abdul Rashid, C. J. in Muhammad Hayat vs Crown,<sup>83</sup> “The words "if satisfied" are not preceded by any qualifying adverb, such as, "reasonably". It is the satisfaction of the arresting officer that forms the basis of the arrest of the detenu. “The legislature has omitted the word " reasonably " which would have enabled Courts of law to examine the sufficiency of the reasons for the satisfaction of the arresting authority. In these circumstances, the satisfaction of the officer ordering the arrest must be taken to be subjective satisfaction. The word satisfaction in the context cannot be held to have been used in an objective sense”<sup>84</sup>This legislation was only dealing detention of person and control of subversive association there is no concerned with modern terrorism offences.

### **2.2.3 SECURITY OF PAKISTAN ACT, 1952**

Preamble<sup>85</sup> of the Security of Pakistan Act, 1952 was designed with object to take person in custody acting in a manner prejudicial to the defence of state and its including the external

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<sup>81</sup>Abdul Aziz Alias Labha Vs Province Of West Pakistan: PLD 1958 Supreme Court 499

<sup>82</sup>Inayatullah Khan Mashriqi vs Crown PLD 1952 Lahore 331, also see Muhammad Baqir vs The Government of The Punjab PLD 1954 Lahore 172

<sup>83</sup>Muhammad Hayat vs Crown: PLD 1951 Federal Court 15

<sup>84</sup> ibid

<sup>85</sup> Preamble: “An Act to provide for special measures to deal with persons acting in a manner prejudicial to the defence, external affairs and security of Pakistan where as it is expedient to provide for special measures to deal with persons acting in a manner prejudicial to the defence, external affairs and security of Pakistan”

affairs as well as the security of Pakistan. section 3 of the enactment of 1952, was imposing restrictions on movement of persons who is suspected and their detention if his acts are prejudice to defence, as well as external affairs along with security of Pakistan.

*“Restrictions on the movements of suspected persons and their detention.—(1) The [Federal Government] if satisfied with respect to any particular person, that, with a view to preventing him from acting in any manner prejudicial to the defence or the external affairs or the security of Pakistan, or any part thereof, it is necessary so to do, may make an order directing such person to remove himself from Pakistan in such manner, before such time, and by such route, as may be specified in the order; directing that he be detained”<sup>86</sup>*

Supreme Court of Pakistan defining scope of word satisfaction used in section 3 in case Federation of Pakistan vs Mrs. Amatul Jalil Khawaja<sup>87</sup> in Word "satisfaction" though has been used in S.3, of enactment, 1952 and held that

*“High Court under Article 199 of the Constitution can examine reasonableness of the grounds of detention so as to satisfy itself that the detenu has not been held to custody without lawful authority or in an unlawful manner as it is not satisfaction of only the detaining Authority but judicial conscience is also required to be satisfied- so power article 199 cannot be limited or taken away by a sub-Constitutional legislation viz. the Security of Pakistan Act , 1952 , therefore, a balance is to be maintained between the powers conferred upon the High Court by the Constitution and the relevant provision of the sub-Constitutional legislation-----it was also held that subjective satisfaction does not mean satisfaction of the Authority without any base. it similar provisions like detention provided in Anti-terrorism act 1997 and 4<sup>th</sup> schedule requirement. It was also held that detaining Authority could not refuse the*

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<sup>86</sup> section 3 of the Security of Pakistan Act, 1952

<sup>87</sup>. Federation of Pakistan vs Mrs. Amatul Jalil Khawaja, PLD2003 Supreme Court 442

*production of the material before the Court upon which the said Authority claimed to have been satisfied in terms of S.3(1) of the Security of Pakistan Act, 1952. Such Authority, however, at the most could claim privilege and request for holding the proceedings in camera”<sup>88</sup>*

its section 10 was also dealing with issues of Control of subversive associations and similar provisions were provided in section 4 of West Punjab Public Safety Act, Government is empowered to suspend all kinds of activities of association with written order for period not exceeding three months. the Federal Government was empowered under section 11 “to control of information and to take any document made, printed or published contains any news, report or information likely to endanger the defence or external affairs or security of Pakistan or any part thereof by written order and may prohibit the further publication of such news, report or information, and the sale and distribution of such document it may also declare such document and every copy or translation thereof or extract therefrom to be forfeited to Government If any one contravenes any of the provisions of Section 11 or 12 he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.. No Court shall take cognizance of any offence under this Act, except on a report in writing by a public servant as defined in Section 21 of the Pakistan Penal Code (XLV of 1860) secondly Proceedings in respect of an offence under this Act alleged to have been committed by any person may be taken before the appropriate Court having jurisdiction in the place where that person is for the time being or where the offence or any part thereof was committed. Notwithstanding anything contained in the Code an offence under this Act shall be triable by a Magistrate of the first Class”<sup>89</sup>

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<sup>88</sup> Ibid

<sup>89</sup> Section 11; Security of Pakistan Act, 1952



It was held in Roman Catholic Diocese Of Islamabad/Rawalpindi vs Federation Through Secretary Ministry Of Interior, Islamabad<sup>90</sup> Section 3 empowered to Central government to provide for prohibiting regulating or restricting entry of foreigners into Pakistan or their departure therefrom or their continued presence therein so power exercised by the official concerned in such behalf was within his authority and was not colorable exercise or misuse of authority.<sup>91</sup> Again this legislation was similar in nature of West Punjab Public Safety Act, 1949 and again it not dealing modern terrorism acts.

#### **2.2.4 THE WEST PAKISTAN MAINTENANCE OF PUBLIC ORDER ORDINANCE ,1960.**

The West Pakistan Maintenance of Public Order Ordinance, 1960. When martial law was imposed by Gen Ayub Khan, legislation was introduced by the governor, West Pakistan, and object was mentioned in its preamble that was “preventive detention and control of persons and publications for reasons connected with public safety, public interest and the maintenance of public order”<sup>92</sup> “As controversial law, there is universal fact that no efforts was made from democratic government as well as from government of dictators to make this sort of legislation as human friendly, this enactment was always misused by the government.<sup>93</sup> Powers regarding issuing detention order as mentioned in section 3 was in the hand of the deputy commissioners/district magistrates under section 26 of the MPO,

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<sup>90</sup>Roman Catholic Diocese Of Islamabad/Rawalpindi vs Federation Through Secretary Ministry Of Interior, Islamabad: MLD2015 Islamabad 1714

<sup>91</sup> Ibid

<sup>92</sup> Preamble; West Pakistan Maintenance Of Public Order Ordinance, 1960.

<sup>93</sup>“50 years and MPO misuse continues” Waseem Ahmed Shah Published July 9, 2012

<https://www.dawn.com/news/732857/50-years-and-mpo-misuse-continues>

“Government may, by order in writing, direct that the power under sub-section (1) of section 3 shall, subject to such restrictions as may be specified, be exercisable by any District Magistrate within his jurisdiction”<sup>94</sup>

Local government started in Aug 2001, due to abolishment of office of DC the Home secretary took these powers under the MPO , and in 2008 Government delegated same powers again to DCO. Now under section 3, DCO can issue order of detention any time on the satisfaction that activities are against public peace and order. However there should be solid and cogent grounds based upon reasoning because the courts have many time laid down rule that detention should not be based upon flimsy grounds and such stereo-typed orders without legal grounds for detention must be discontinued.

Section 3 of Ordinance, 1960 empowered Government regarding arrest and detention of any person if government satisfied that any person who acting in any manner prejudicial to public safety or the maintenance of public order and order in this regard may be in writing for period extent from time to time however such detention not exceeding six months at a time. Although its purpose is to curb activities which are prejudicial to public safety or maintenance of public order.<sup>95</sup>it was very difficult to check misuse of such power because presumption of good faith has been given to act of state. It was held in Asif Gohar Vs Sardar Aman Khan<sup>96</sup> that “presumption of good faith was attached to official acts committed during discharge of official duties under ordinance unless proved to the contrary and it could not be held or to based with mala fide and in excess of authority or power amounting to abuse and misuse of authority in

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<sup>94</sup> Section 26, “The West Pakistan Maintenance Of Public Order Ordinance, 1960”

<sup>95</sup> Section 3, “The West Pakistan Maintenance Of Public Order Ordinance, 1960”

<sup>96</sup> Asif Gohar Vs Sardar Aman Khan: YLR 2010 Peshawar 2219

the discharge of his legal duties and functions”<sup>97</sup>. In an other case *Kausar Ali vs Govt. of N. W. F. P.*<sup>98</sup> it was held that “Maintenance of Public Order Ordinance, 1960, is not warranted by law and if any order passed on such a ground which reflect mala fides high cour is empowered to set aside order if it is based on malafide and any order of preventive detention, must have the backing of a living and immediate cause/ground due to which a preventive detention would become indispensable”.<sup>99</sup>so its basic purpose was well elaborated in case *Hamayun vs D.C.O., Kohat*<sup>100</sup>

“Purpose and object of West Pakistan Maintenance of Public Order Ordinance, 1960 was the preventive detention and control of persons and publications for reasons, connected with public safety, interest and maintenance of public order it was also held that Act/activity complained of a person must be an act prejudicial to the public order and its outcome or result would directly affect the public at large, and it was further held that When an act or activity of person was there then the Provincial Government or the person authorized in such behalf had the ample material to take action or pass an order under S.3 of the West Pakistan Maintenance of Public Order Ordinance, 1960 and same would be within the theme of law. So Where an act or activity was person specific and did not amount to an activity prejudicial to the public peace and tranquillity same could in no way be encompassed within the sphere of the Ordinance and that would be out of the scope of the law”<sup>101</sup>

The MPO has been used to target political opponents, human rights activists, and journalists. The ordinance has been invoked to suppress peaceful protests and demonstrations, and to justify the use of force against civilians. Detainees have been subjected to torture and mistreatment while in custody, and have been denied access to legal representation. Furthermore, the MPO has been ineffective in achieving its intended objectives. Despite the

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<sup>97</sup> Ibid

<sup>98</sup> *Kausar Ali vs Govt. of N. W. F. P ; PLD 1999 Peshawar 82*

<sup>99</sup> Ibid

<sup>100</sup> *Hamayun vs D.C.O., Kohat :PCrLJ 2014 Peshawar 173*

<sup>101</sup> Ibid

broad powers granted to law enforcement agencies, acts of terrorism and violence have continued to occur in the region. The MPO's focus on suppressing dissent rather than addressing the root causes of violence has exacerbated the situation. The West Pakistan Maintenance of Public Order Ordinance has been widely criticized for being used to suppress political dissent and civil liberties, while failing to effectively address the issue of terrorism and violence in the region. Reforms are necessary to ensure that the ordinance is used in a fair and just manner, and to address the underlying causes of violence in the region.

### **2.2.5 The Prevention of Antinational Activities Act, 1974**

In 1974 when Zulfikar Ali Bhutto was the Prime Minister of Pakistan, three years after the secession of East Pakistan, Pakistan recognized Bangladesh there were riots in different areas of Pakistan then government of Pakistan introduced new enactment for control of anti-national and treasonable activities on 9th February, 1974 as it was mentioned in its preamble to prevent anti national and treasonable activities of individuals. Word anti-national was defined in section 2(a) of act,<sup>102</sup>

*“Antinational activity in relation to an individual or association means anything done by such individual or association, whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise,—*

*(i) “which is intended, or supports any claim, to bring about, on any ground whatsoever, the secession of a part of the territory of Pakistan from the Federation or which incites any individual or group of individuals to bring about secession”*

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<sup>102</sup> Preamble, ‘The Prevention Of Anti National Activities Act, 1974’

(ii) *“which disclaims, questions disrupts or is intended to disrupt the sovereignty and territorial integrity of Pakistan”*

(iii) *“ which in any manner encourages or incites, or is intended or is likely or tends to encourage or incite the public or any group thereof to create open or continue any regional front or mahaz of any kind based on racial linguistic or similar ideologies and considerations with a view to disrupting the unity of the people of Pakistan”; or*

(iv) *which in any manner propagates or advocates that the citizens of Pakistan comprise more than one nationality;*<sup>103</sup>

Section 3 dealing power of Declaration of an association as anti-national after notification if involved in anti-national activities and section 7 was dealing with Power federal government to prohibit the use of funds of an antinational association. Section 13 of the act was dealing Punishment for antinational activities. “If person (a) takes part in or commits, or (b) advocates or abets, or attempts to advocate or abet, the commission of,any antinational activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine and in case of any assistance antinational activity of any association declared antinational under section 3, shall be punishable with imprisonment for a term which may extend to five years, and shall also be liable to fine”<sup>104</sup>This law was dealing to curb anti-national association and it was not dealing other offences against state. The Prevention of Anti-national Activities Act (PAA), also known as the MISA (Maintenance of Internal Security Act), was enacted in India in 1974 during the emergency period. The act was aimed at curbing acts that were deemed to be anti-national, including dissent against the government. However,

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<sup>103</sup> Section 2(a) , The Prevention Of Anti National Activities Act, 1974

<sup>104</sup> Section 7, The Prevention Of Anti-National Activities Act, 1974

the PAA was widely criticized for being used to suppress political dissent and civil liberties. The act gave law enforcement agencies sweeping powers to arrest and detain individuals without charge, and to hold them for prolonged periods without trial. The act was used to target political opponents, journalists, and human rights activists, many of whom were subjected to torture and mistreatment while in custody. The PAA was repealed in 1977 after the end of the emergency period, and several of its provisions were incorporated into the National Security Act (NSA) of 1980. However, the NSA has also been criticized for its broad and vague definitions of what constitutes a threat to national security, and for its use to suppress political dissent and civil liberties

### **2.3 The Suppression of Terrorist Activities (Special Courts) Act of 1975**

In 1975 Pakistan introduced law and very first time word terrorism used in this law its preamble<sup>105</sup> was very clear regarding *overpowering acts of disruption, subversion and terrorism and to provide speedy trial pf these offences.*

Preamble.- “Whereas it is expedient to make special provisions for the purposes of suppressing acts of sabotage, subversion and terrorism and to provide for speedy trial offence committed in furtherance of or in connection with such acts”<sup>106</sup>

Under section 3 empowered government to establish Special Courts, and appoint a Judge for such Court and its offences were mentioned in schedule II were Sections 121, 121-A, 122, 123, 123-A, 124-A, dealing offences against state including waging of war section 203 about giving of false information, section 365 which is dealing ‘Kidnapping or abduction offences, etc. Section 400 dealing gang of thieves ,sections 402-A, 402-B, 402-C dealing Hijacking,

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<sup>105</sup> The Suppression of Terrorist Activities (Special Courts) Act of 1975 available at <https://www.malaw.org.pk/pdflaw/SUPPRESSION%20OF%20TERRORIST%20ACTIVITIES.pdf>

<sup>106</sup> ‘Preamble of The Suppression of Terrorist Activities (Special Courts) Act of 1975’

section 147 about rioting and section 431 about Mischief through irrigation and including wrongfully diverting the water and Section 216 about Harboring to provide shelter and protection against his legal arrest with subject to condition that if committed should be Schedule offence. Section 302 of qatl-amed and its related sections, if committed in the course of the same transaction specified in schedule is committed," in this schedule sections 392, 393, 394, 395, 396, 397, 398 and 399, dealing offences robbery and docility if a cannon, grenade, bomb, rocket or an arm of a prohibited bore is used for, or any public property is stolen, destroyed or damaged in, the commission of the offence ; or section 435, 436, 437, 438 and 440 dealing Mischief, if an explosive substance, mineral oil or any product of mineral oil is used for the commission of the offence; Any offence punishable under the Explosive Substances Act, 1908 (XI of 1908); and any offence punishable under the Arms Act, 1878 (XI of 1878), or any offence punishable under any of the following sections for the West Pakistan Arms Ordinance, 1965 (West Pakistan Ordinance No.XX of 1965), namely, sections 8, 9 and 10, if committed in respect of a cannon, grenade, bomb or rocket;". In this enactment there was no definition of terrorism. However Adjournments were prohibited under this enactment unless it necessary for the interest of justice and purpose was to provide speedy trial. Section 5 of this enactment dealing with Procedure of Special Court.- it was mentioned that after cognizance there shall be day to day proceeding of trial and expeditiously it will decide, and section 5 (2) was clearly indicating that A Special Court shall not grant any adjournment for more than two days unless it is necessary in the interest of justice. Case shall be not recall and hear for the evidence merely on ground that it was transfer. Its section 4 was court to decide case in absentia If court consider that delay is deliberately on the part of accused<sup>107</sup> although The Act

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<sup>107</sup> Section 5 ;The Suppression of Terrorist Activities (Special Courts) Act of 1975,

act providing that once the accused had appeared before the court, the remaining trial could proceed even if the accused subsequently absconded but it was held in *Khalid Mahmood vs State*<sup>108</sup> “trial in absentia without providing opportunity of personal defence even to an absconded accused was against justice and trial against accused was not concluded in accordance with law and Lahore high court set aside conviction awarded to accused and acquitted him”<sup>109</sup>. Similarly in another case *Tahir Lodhi Alias Shaheen vs State*<sup>110</sup> Lahore High Court acquitted the accused in which accused was tried, convicted in absentia by the Special Court, it was held that “sentenced was not warranted by law and had caused grave miscarriage of justice Conviction and sentence of accused were consequently set aside and case was remanded to Special Court to conduct de novo trial right from the point of framing. charge against him”<sup>111</sup>

Another exception of general principle that prosecution has to prove its case was introduced in section 8 “any person who is accused of scheduled offence is found to be in Possession of any thing , in connections with, the Commission of scheduled offence, with a reasonable suspicion that he has committed this offence. he shall be presumed to have committed the offence unless he can prove that he had not in fact committed the offence”<sup>112</sup> and supreme court of Pakistan held *Muhammad Gull vs the Sate*<sup>113</sup> that “burden of proof under the provisions of Suppression of Terrorist Activities (Special Courts) Act and as well as in Explosive Substances Act is on the accused and he has to prove that the explosive material was in his possession and same was only for a lawful object, and convicted the accused in this

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<sup>108</sup> *Khalid Mahmood vs State*; YLR 1999 Lahore 2287

<sup>109</sup> *Ibid*,2289

<sup>110</sup> *Tahir Lodhi Alias Shaheen vs State* MLD 1994 Lahore 2053

<sup>111</sup> *Ibid*,2053

<sup>112</sup> Section 8, the Suppression of Terrorist Activities (Special Courts) Act, 1975

<sup>113</sup> *Muhammad Gull vs the Sate*: 1991 SCMR 942



case.<sup>114</sup> So in case Qalandro vs the state<sup>115</sup> Sindh High court held “condition precedent of the application of section 8 is upon prosecution to make out a reasonable case against him,<sup>116</sup> and then Burden of proof under S.8 of the Suppression of Terrorist Activities (Special Courts) Act, 1975 does lie on accused and same principle was elaborated in M khurishid vs the State<sup>117</sup> Khawar vs state<sup>118</sup> even in Nuzhat Fatime vs the state<sup>119</sup> it was held that Rule, as to burden of proof enacted in S.8 of Suppression of Terrorist Activities. (Special Courts) Act, 1975 may itself stand over-shadowed on account of disregard of the mandate in S. 103, Cr.P.C. In another case Liaqat Pervaiz khan vs Govt<sup>120</sup> of Punjab while deciding question whether section 8 is violation of Art.12, Constitution of Pakistan (1973) it was held that “first prosecution established the prerequisite contained in the first part of S.8 of the Act so in Such a situation, thus section 8 could not be said to be violative of any provision of law as Art;121, Qanun-e Shahadat also envisaged situation of similar nature so Provisions of S.8, Suppression of Terrorist Activities (Special Courts) Act, 1975 were in no manner derogatory to the ordinary dispensation of criminal justice or for that matter violative of Art.12, Constitution of Pakistan (1973), so as to be struck down”<sup>121</sup>. Although many heinous offences were mentioned in schedule of The Suppression of Terrorist Activities (Special Courts) Act of 1975 but it was not sufficient to deal religious sects increased slogan of Islamization by General Zia time period and this act was not dealing provisions of sectarianism and ethnicism. The Suppression of Terrorist Activities (Special Courts) Act of 1975 was a failure because it violated basic human rights and civil liberties, and because it was not effective in achieving its intended objective of

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<sup>114</sup> Ibid,942

<sup>115</sup> Qalandro vs the state ; MLD 1997 Karachi 1632

<sup>116</sup> Ibid 1633

<sup>117</sup> khurishid vs the State; PCRLJ 1997 Karachi 567

<sup>118</sup> Khawar vs state ;PLD 1995 Karachi 105

<sup>119</sup> Nuzhat Fatime vs the state ; PLD 1996 Karachi 559

<sup>120</sup> Liaqat Pervaiz khan vs Govt :PLD 1992 Lahore 517

<sup>121</sup> Ibid,517

curbing terrorist activities. Its legacy serves as a reminder of the dangers of giving law enforcement agencies unchecked powers, and the need for safeguards to protect civil liberties and human rights.

### **2.3.1 SPECIAL COURTS FOR SPEEDY TRIAL ORDINANCE 1987,**

In 1987, Special Courts for Speedy Trial were established as a temporary measure. Over 50 people were sentenced to death in the first six months of their operation, with some trials lasting only two to three days in offence was defined in section 2(c) which are gruesome, brutal and sensational but also created panic and atmosphere of fear and anxiety,

(c) Offence means “an offence specified in the Schedule or an offence punishable under any law for the time being in force which, in the opinion of the Government is gruesome brutal and sensational in character or shocking to public morality or has led to public outrage or created panic or an atmosphere of fear or anxiety amongst the public or a section thereof or which because of increase in its incident needs to be tried most speedily”<sup>122</sup>

Appeals against the sentences was provided in section 13 of act but also provided time frame work for the filing of appeal but also for the decision “An appeal against the final judgment of the Special Court shall lie to the Supreme Appellate court”<sup>123</sup>and it was duty of court to decide within 30 days under section 13(6) of enactment. Despite of legal rights of accused protected by the law, this enactment was only for speedy trial. This one was dealing only speedy trial not

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<sup>122</sup> Section 2 (c) , The Special Courts for Speedy Trials Act 1987

<sup>123</sup> Section 13 (1) , The Special Courts for Speedy Trials Act 1987.

any act of terrorism. The President of the Pakistan issued the Special Courts for Speedy Trial Ordinance of 1991. As per provisions of section 7 of the ordinance, it is mandatory for Police to complete the investigation within time stipulated as 14 days and forward the report straight to the court, as well as conduct the trial from day to day with no more than two-day adjournments. The trial court is required to finish the case within 30 days. A person may appeal his punishment to the Supreme Appellate Court under section 13 after seven days of receiving it, which must consider the appeal within 30 days and is final. There was no right of appeal to the President or the administration. So it was not ensuring full right of accused according to international norms and practices.

### **2.3.2 SPECIAL COURTS FOR SPEEDY TRIALS ACT 1992**

As stated in the act's preamble, it was enacted "to provide for the establishment of Special Courts for swift trials thereto." According to section 5(1), if the Government believes that a matter involving a registered offence should be tried as soon as possible, the Government may transfer the case to a Special Court by writing order. 121-A, 121-A, 123, 123-A, waging war against Pakistan, 161, 162, 163 dealing with corruption, 302, 303, murder, 354-A dealing with woman's modesty 386, 387, 392 to 404, 406 to 409 criminal breach of trust, 417 to 420, cheating so it was only providing speedy trial of cases and not dealing any provision of Anti-terrorism nature cases.

### **2.4 The Anti-Terrorism Act, 1997**

Current legislation is Phase 2 of legislation of heinous offences and The Anti-Terrorism Act, 1997 was major contribution of Pakistan's legislation for combating terrorism and its Preamble provided that "it is necessary to provide for the prevention of sectarianism and terrorism, and

the prompt prosecution of heinous crimes, as well as concerns related to and incidental to those things”<sup>124</sup>

#### **2.4.1 ‘Terrorist Act’:**

“Whoever, to strike terror in the people, or any section of the people, or to alienate any section of the people or to adversely affect harmony among different sections of the people, does any act or thing by using bombs, dynamite or other explosive or inflammable substances, or fire-arms, or other lethal weapons or poisons or noxious gases or chemicals or other substances of a hazardous nature in such a manner as to cause, or to be likely to cause the death of, or injury to, any person or persons, or damage to, or destruction of, property or disruption of any supplies of services essential to the life of the community or displays fire-arms, or threatens with the use of force public servants in order to prevent them from discharging their lawful duties commits a terrorist act.”<sup>125</sup>

Section 7 providing punishments for the terrorist acts while, section 8 dealing offences regarding sectarian hatred, section 9 of the said Act provided for punishment for the offence under section 8. The Schedule of the said Act read as follows:

“1. Any offence punishable under this Act.

2. Any offence punishable under any of the following sections of the Pakistan Penal Code (Act XLV of 1860), namely:-

(a) section 302, -- (i) if committed with a cannon, grenade, bomb, rocket or a light or heavy automatic weapon; (ii) if the victim is a member of police, armed forces or

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<sup>124</sup> Preamble : Anti-terrorism Act 1997; “Manual of Anti-terrorism Laws in Pakistan”; Mian Ghulam Hussain

<sup>125</sup> Section 6, Anti-terrorism Act 1997

civil armed forces or is a public servant; (iii) if there is more than one victim; or (iv) the victim was subjected to cruelty, brutality, torture or burning; and

(b) offences under sections 295-A, 298-A, 364, 364-A, 365, 365-A, 392 to 402 of the Pakistan Penal Code (Act No. XLV of 1860).

3. An offence punishable under sub-section (4) of section 10 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979).

4. Any attempt or conspiracy to commit or any abetment of any of the aforesaid offences.”

This enactment has definition of terrorist act and it's a act which is causing fear among the people or any portion of the people, or creating some sort of panic in any segment of the people, or jeopardizing the harmony of peace among the people. Element of fear and insecurity was main concerned in “Ch. Bashir Ahmad v Naveed Iqbal and 7 others”<sup>126</sup> and in “Muhammad Ajmal v The State”<sup>127</sup> as well as Muhammad Mushtaq v Muhammad Ashiq and others.<sup>128</sup> The focus of judgement was on the nature of seriousness of act and its consequences on the wider public rather than the object or designed of crime as given later in *Basharat Ali vs state*.<sup>129</sup>

#### **2.4.2 “ANTI-TERRORISM (SECOND AMENDMENT) ORDINANCE, 1999 (ORDINANCE NO. XIII of 1999)”**

Definition of a ‘terrorist act’ was then amended through “Anti-Terrorism (Second Amendment) Ordinance, 1999 (Ordinance No. XIII of 1999” and amended definition is:

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<sup>126</sup> Ch. Bashir Ahmad v Naveed Iqbal and 7 others :PLD 2001 Supreme Court 521

<sup>127</sup> Muhammad Ajmal v The State 2000 SCMR 1682

<sup>128</sup> Muhammad Mushtaq v Muhammad Ashiq and others; PLD 2002 Supreme Court 841

<sup>129</sup> Basharat Ali vs state PLD 2004 Lahore 199

“A person is said to commit a terrorist act if he –

(a) *in order to, or if the effect of his actions will be to, strike terror or create a sense of fear and insecurity in the people, or any section of the people*, does any act or thing by using bombs, dynamite or other explosive or inflammable substances, or such fire-arms or other lethal weapons as may be notified, or poisons or noxious gases or chemicals, in such a manner as to cause, or be likely to cause, the death of, or injury to, any person or persons, or damage to, or destruction of, property on a large scale, or a widespread disruption of supplies of services essential to the life of the community, or threatens with the use of force public servants in order to prevent them from discharging their lawful duties; or

(b) commits a scheduled offence, the effect of which will be, or be likely to be, to strike terror, or create a sense of fear and insecurity in the people, or any section of the people or to adversely affect harmony among different sections of the people; or

(c) commits an act of gang rape, child molestation, or robbery coupled with rape as specified in the Schedule to this Act;

(d) commits an act of civil commotion as specified in section 7-A”<sup>130</sup>

“in 1999 basic focus of legislature was only on the effect of the action was extended to a potential or likely effect besides the actual effect of the action and the focal point still remained the effect of the action rather than the incentive or inspiration behind the same”<sup>131</sup>

In this amendment the legislature has focused the consequences of the act as essential element because section 6 says that an act is in order to strike terror or create a sense of fear and insecurity in the people, or any section of the people. This was effect-based

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<sup>130</sup> Anti-Terrorism (Second Amendment) Ordinance, 1999 (Ordinance No. XIII of 1999)

<sup>131</sup> <http://www.satp.org/satporgrp/countries/pakistan/document/papers/images/Pakistan%20Doc.pdf>

approach of legislatures and again element of fear and insecurity was main concerned in *Ch. Bashir v Naveed*<sup>132</sup> , *Muhammad Ajmal versus The State* <sup>133</sup> *Muhammad Mushtaq versus Muhammad Ashiq etc*<sup>134</sup> The focus of Supreme Court was seems to be on the seriousness of the crime and its impact.

### **2.4.3 THE ANTI-TERRORISM (AMENDMENT) ORDINANCE, 2001 (ORDINANCE NO. XXXIX of 2001).**

The Anti-Terrorism Act of 1997 was dramatically changed on August 15, 2001 by the Anti-Terrorism (Amendment) Ordinance, 2001. The Schedule of the Act, which listed numerous offences to be tried under the said Act, it was repealed by the amending Ordinance, in which a term of terrorism was inserted and replaced term terrorist act with the following definition.:

“(1) In this Act terrorism means the use or threat of action where:

(a) the action falls within the meaning of subsection (2), and

(b) the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society; or

(c) the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause”

In this legislation word of effect was removed and word designed was first time introduced by the legislature and the clause 1 of this section involves act of serious nature as mentoned in section 6(2) like murder, hostage taking or , kidnapping for ransom hijacking

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<sup>132</sup> *Ch. Bashir Ahmad v Naveed Iqbal and 7 others* :PLD 2001 Supreme Court 521

<sup>133</sup> “*Muhammad Ajmal v The State*”2000 SCMR 1682

<sup>134</sup> “*Muhammad Mushtaq v Muhammad Ashiq and others*”;PLD 2002 Supreme Court 841

,contempt on religious and ethnic basis or sectarian to stir up violence including, attack on religious places of worship like, mosques, imambargahs, churches, etc, clause (b) and (c) is dealing object behind this act to overawe or threat the government word coerce, intimidate and overawe were introduced in this enactment and all are synonyms of each other means threat the government and second is create fear and insecurity among people while clause (c) is covering acts which are advancing a religious and sectarian or ethnic cause means element of extremism

Anti-Terrorism (Amendment) Ordinance, 2001 including extortion of money (“bhatta”) or property, any act intended to substantially damage or tamper with a communications system or a public utility service; a if by use of force someone is compelling public servant to do or desist from performing his legitimate duties, finally involves serious violence against a member of the police force, armed forces, civil armed forces, or a public servant.<sup>135</sup>” This definition open new pandora box for courts regarding designed based approach and consequences or cumulative effect based approach.

## **2.5 THE PROTECTION OF PAKISTAN ACT, 2014 (X of 2014**

Pakistan Protection Act, 2014, was introduced as ordinance in 2013 then as enactment in 2014, Separate courts were established under this enactment but although this enactment was badly failed due to administration grounds initially courts were established with considerable delay then nomination prosecutor were another problem,. Its schedule has all heinous nature offences. The Pakistan Protection Act 2014 was enacted to combat terrorism in Pakistan by providing law enforcement agencies with more powers to apprehend and prosecute terrorists.

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<sup>135</sup> Section 6, Anti-Terrorism (Amendment) Ordinance, 2001



The Act allowed for the creation of special courts to try terrorism-related cases, and permitted the detention of suspects for up to 90 days without charge. Despite the government's intentions, the Act has been widely criticized for several reasons. First, the Act's broad definition of terrorism has led to the arrest and detention of individuals who have been accused of minor offenses, such as political activists or members of ethnic minorities. This has raised concerns about human rights violations and abuse of power by law enforcement agencies. Second, the Act has been criticized for undermining due process and the rule of law. Detainees have been denied access to legal representation and have been subject to torture and mistreatment while in custody. The special courts established under the Act have been accused of being biased and lacking transparency. Third, the Act has been ineffective in curbing terrorism in Pakistan. Despite the increased powers granted to law enforcement agencies, terrorist attacks have continued to occur with alarming frequency. Critics argue that the Act's emphasis on detaining suspects without charge has failed to address the underlying causes of terrorism, such as poverty, inequality, and political instability. The Pakistan Protection Act 2014 has been widely criticized for its broad definition of terrorism, its violations of due process and the rule of law, and its failure to effectively address the issue of terrorism in Pakistan. Reforms are necessary to ensure that the Act is used in a fair and just manner, and to address the root causes of terrorism in the country

## **2.6 THE PREVENTION OF ELECTRONIC CRIMES ACT, 2016**

Concept of Cyber terrorism was introduced through the Prevention of Electronic Crimes Act, 2016 and “any of the offences under sections 6, 7, 8 or 9, with intention coerce, intimidate, create a sense of fear, panic or insecurity in the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society; or (b) advance inter-faith, sectarian or ethnic hatred, it is punishable with imprisonment which may extent to

fourteen years or with fine which may extend to fifty million rupees or with both<sup>136</sup>” this definition has same parameter which were define in section 6 of anti-terrorism act 1997.

Different theories and approaches were adopted in world while defining legal definition of terrorism and some were giving action should give effect of terror. International community made number of efforts for defining of terrorism. There were number of instruments which were relating to prevention of international terrorism,<sup>137</sup> Although terrorism is offence and we must remember basic elements of crime Prior to discussion of different approaches regarding designed and effect there is need to understand crime and its elements. Although terrorism is offence and we must remember basic elements of crime Prior to discussion of different approaches regarding designed and effect there is need to understand crime and its elements. words crime is act and omission which is punishable by law. “it is act or omission of an act which causes harm to and have tendency to create disturbance and panic in the society same is punishable by laws.”<sup>138</sup>

## **2.7 DEFINITION OF CRIME**

In simple words crime is act and omission which is punishable by law. “it is act or omission of an act which causes harm to and have tendency to create disturbance and panic in the society same is punishable by laws.”<sup>139</sup>

Crimes has different important elements, and prosecution has to prove these beyond a shadow of doubt. These Elements of crime which are mentioned in criminal law are of three kinds, “first is a criminal act which is known as actus reus second is a criminal intention behind that

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<sup>136</sup> Section 10, Prevention of Electronic Crimes Act, 2016

<sup>137</sup> Javier Ruperez “ The United Nations In The Fight Against Terrorism (2017) 1 accessed 7 January 2020 [https://www.un.org/sc/ctc/wp-content/uploads/2017/01/2006\\_01\\_26\\_cted\\_lecture.pdf](https://www.un.org/sc/ctc/wp-content/uploads/2017/01/2006_01_26_cted_lecture.pdf)

<sup>138</sup> <http://lawtimesjournal.in/elements-of-crime/>

<sup>139</sup> <http://lawtimesjournal.in/elements-of-crime/>

act which is also known as mens rea and third one is known as concurrence of both above mentioned elements. Word conduct is also use as synonym of criminal act and conduct means an action or omission and its accompanying state of mind”<sup>140</sup>

## 2.8 TWO TYPES OF ELEMENTS

- Physical elements leads actions
- Mental elements leads intention of act

Pakistan Penal code 1860 has defined the word offence. Offence as defined in. section 40 of Pakistan penal code 1860 a thing made punishable by this code<sup>141</sup> and word “Act” is also defined in section 33 as “The word act denotes as well a series of acts as a single act the word omission denotes as well a series of omissions as a single omission.”<sup>142</sup> So in Pakistani law The term "act" can refer to a series of acts as well as a single act. The term "omission" can refer to a group of omissions as well as a single omission. For omission the Supreme court of Pakistan held that “Mere omission to list an asset could not be labeled as dishonesty unless some wrongdoing was associated with its acquisition or retention which was duly established in judicial proceedings, No set formula could be fixed with regard to every omission to list an asset in the nomination paper and make a declaration of dishonesty and impose the penalty of lifetime disqualification on a candidate”<sup>143</sup> so for act of omission there is need to establish element of dishonesty.

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<sup>140</sup>Introduction to Criminal Law The Elements of a Crime <https://2012books.lardbucket.org/pdfs/introduction-to-criminal-law/s08-the-elements-of-a-crime.pdf>

<sup>141</sup>Section 40. Pakistan Penal code 1860s.

<sup>142</sup>section 33 as The word "act" denotes as well a series of acts as a single act; the word "omission" denotes as well a series of omissions as a single omission

<sup>143</sup>: Khawaja Muhammad Asif Vs Muhammad Usman Dar 2018 SCMR 2128

<sup>143</sup> Section 36. Pakistan Penal Code 1860

## **2.9 SECTION 36 OF PAKISTAN PENAL CODE**

“Whoever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence”<sup>144</sup> So section 36 elaborates that It is to be understood that creating a specific effect, or attempting to create that effect, by an act or by an omission, is the same crime as causing that effect by act or omission.

## **2.10 INTENTION**

intention is mental condition and has often to be gathered from the facts and the surrounding circumstances of the case<sup>145</sup>

## **2.11 MOTIVE**

“The inducement, cause, or reason why a thing is done. An act legal in itself, and which violates no right, is not actionable on account of the motive which actuated it,<sup>146</sup> Motive is some thing objective and external in contrast with a mere mental state,<sup>147</sup> It is only a circumstance which may lead to commission of offence.<sup>148</sup>

## **2.12 COMMON INTENTION" AND "MOTIVE**

“Motive and intent apparently looks similar however in criminal law there is difference between both of them, and motive is reasoning of action which is wanting or desired in nature while an intent ways to achieve that purpose or desire by use of a particular means and actions, for example A is person who caused murder of B by fire arm shot because father of A was

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<sup>145</sup> 1969 SCMR 599

<sup>146</sup> Chatfield v. Wilson, 5 Am. Law Reg. (O. S.) 528.sss

<sup>147</sup> 1942 AC 435

<sup>148</sup> 2007 SD 474(SC)

murdered by B, motive behind act of A is murder of his father by B, intention was reflecting from his action because he made fire arm short with clear intention that it will cause death of him and his action was following his intention. intent and motive are different things. “When a crime is clearly proved to have been committed by a person charged therewith, the question of motive may be of little or no importance, but criminal intent is always essential to the commission of a crime”<sup>149</sup>

### **2.13 COMMON OBJECT AND COMMON INTENTION**

Mr. Justice Shabir Ahmad and Masud Ahmad in 1959 held that “ principle of vicarious liability laid down in section 149 of the Pakistan Penal Code is an extension of the same principle laid down in section 34 of the Pakistan Penal Code. The only difference between the two is that in the former case the guiding factor is the common object, while in the latter case it is the common intention”.<sup>150</sup> Very thin distinction existed between "common intention" and "common object" was laid down by Mr; Justice Dost Muhammad Khan and and justice Jehan Zaib Rahim Khan in Faqir Muhammad case held that “Mere having knowledge that while committing a particular planned crime, the possibility of commission of another crime by one member of the same unlawful assembly would not be sufficient by itself to tag each one with common intention with regard to the crime committed in consequence at the time as it was always a question of fact and was to be determined on the established facts and not on mere bald presumption, unless the law would permit such a course”<sup>151</sup>

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<sup>149</sup> People v. Molineux, 168 N. Y. 204, 61 N. E. 286, 62 L.

<sup>150</sup> Shadman and others Convict Appellants vs The State P L D 1959 (W. P.) Lahore 405

<sup>151</sup> Faqir Muhammad and others-versus The State. MLD 2006 Peshawar 867

## 2.14 INTENTION AND MENS-REA

Whereas motive is ultimate object based upon reasoning of act which person desire to achieve, while intention is immediate state of mind for achieving of that result. Motive is desire which compel a person to formulate intention. Thus, intention means and motive an end <sup>152</sup>

Knowledge is not same thing as intention and in order to constitute common intention its necessary to be established that intention of the assailant which shared by them<sup>153</sup>. It was also held in 2015 that Prosecution, had neither led any evidence to even suggest a 'concert of minds' of accused party to commit the offence of murder or bodily harm during the interim period, the deceased left the place of occurrence and when he returned back with his family members, nor did the circumstances suggest the same---Even during the confrontation of the two parties, there was no evidence, direct or indirect, to establish a sudden meeting of minds, or a common plan of accused party to commit the offence, for which accused was charged and convicted--- To impose upon accused the vicarious responsibility of the act ions of other co-accused would not be safe dispensation of criminal justice, in absence of a common intention to commit murder, or to cause injuries resulting in the offences envisaged under Ss.302 & 324, P.P.C.-<sup>154</sup> Guilt, intent, knowledge , negligence, malice etc., and intention s qua these conditions would be admissible as it was provided under Art. 27 of the Order of 1984---Article 27 of the Order of 1984 had extended the scope to meet the question qua the existence of a person's state of mind or bodily feeling and all these facts and their existence in the state of affairs became relevant.<sup>155</sup>

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<sup>152</sup> AIR 1925 PC 1

<sup>153</sup> 1983 All LJ 1044

<sup>154</sup> 2015 YLR 2322

<sup>155</sup> Raza versus State, PLD 2020 Supreme Court 523

## 2.15 ACTUS REUS

Actus-reus and mens-rea, these both the terms were from in English Law and it was derived from principle of actus non facit reum nisi mens sit rea which was stated by Edward Coke.<sup>156</sup> means “an act is not necessarily a guilty act unless the accused has the necessary state of mind required for that offence” so Actus reus the wrongful act that makes up the physical action of a crime”<sup>157</sup> so word act is comprising of both commission as well as omission. so omission is exactly criminalizes by the legislation through statute.

Terrorist intent was introduced through the amendments after the promulgation of Anti-terrorism Act,1997. Although overlapping of offences in ATA and other statutes is one of major problem and even courts are unable to differentiate them properly and due to overlapping not only hampering and impeding investigation but prosecution also suffers. Interestingly punishment provided in those offences are similar in nature so purpose was only to provide expeditious justice to the victims but to establish criminal intent as mentioned above is very difficult in such cases while at international practice there is no such hurdle so there is need to bring these issues under the consideration of legislatures and to develop mechanism to check these issue as mentioned in detailed in chapter 5,

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<sup>156</sup> See also Actus non facit reum, nisi mens sit rea” by Andrew M. Jung Faculty Mentor: Kimi King, Department of Political Science available at <https://pdfs.semanticscholar.org/920a/65261fd67e0760745f8bf4708de38b3a9fd5.pdf>

<sup>157</sup> Available at <https://www.merriam-webster.com/legal/actus%20reus#:~:text=Legal%20Definition%20of%20actus%20reus,also%20crime%20%E2%80%94%20compare%20mens%20rea>

## **2.16 CONCLUSION**

The West Punjab Public Safety Act, 1949, The Security of Pakistan Act, 1952, and The West Pakistan Maintenance of Public Order Ordinance, 1960 were providing special measures against all the acts which were prejudicial to the public safety, public order and peace. These legislations were only dealing with the detention of persons and control of subversive association. These provisions have no concern with new surge of terrorism offences. All these enactments were failure because these violated basic human rights and civil liberties, and because it was not effective in achieving its intended objective of curbing terrorist activities. Its legacy serves as a reminder of the dangers of giving law enforcement agencies unchecked powers, and the need for safeguards to protect civil liberties and human rights. In 1974, The Prevention of Anti-national Activities Act, 1974 was a unique law and its purpose was to curb anti-national associations and any kind of insurgencies against Pakistan. It was not dealing with other offences against state. In 1975, Pakistan introduced The Suppression of Terrorist Activities (Special Courts) Act of 1975 and very first time word terrorism was used in this legislation. However, the word terrorism was not defined in any provision although its schedule was covering almost all kind of heinous offences mentioned in Pakistan penal Code, 1860. Firstly, this legislation was not sufficient to cope with issue of religious sectarianism which was increasing under the slogan of islamization by General Zia Ul Haq's reign. In fact, both enactments were often used to target political dissent and to suppress civil liberties. These acts were used to detain and prosecute individuals who were not involved in any terrorist activities, and to silence opposition to the government's policies. These enactments were not covering the provisions of sectarianism and ethnicism. Secondly, at that time there was no wave of



modern terrorism. Pakistan introduced concept of Special Courts for the speedy disposal of heinous cases but its application was very limited. Pakistan then introduced The Anti-Terrorism Act, 1997 and it was a first giant leap towards the prevention of sectarianism. The initial legislation was focusing on proscribed organization and their activities. The schedule of was The Anti-Terrorism Act, 1997 was almost similar to the schedule of The Suppression of Terrorist Activities (Special Courts) Act of 1975 regarding heinous offences. After the event of 9/11, anti-state activities of Taliban started in Pakistan land the legislatures realized that this legislation was not sufficient to cope with the genii of new wave of terrorism. They introduced several amendments to meet with the new challenges. Pakistan introduced The Pakistan Protection Act, 2014 which was the epitome to Anti-terrorism Act,1997. Unfortunately, it remained unsuccessful due to the poor administrative polices of the government. Later on, Pakistan introduced National Action Plan to curb anti-state activities of terrorists. In the wake of attack on Army Public School, Pakistan introduced 21st Amendment in the Constitution of Pakistan,1973 along with amendments in Pakistan Army Act, 1952, offences relating to terrorism of civilians were given under jurisdiction of Military Courts. Though it was initially extended for a period of two years. Later on it was further extended till 2019. It was promised by government that the Military Courts working under this enactment was temporary, however, on expiration period of the 21st Amendment, Parliament again introduced the 23rd Amendment with purpose to renew the jurisdiction of the Military Courts. The term was lapsed on 30<sup>th</sup> March 2019. Now ATC regular courts are conducting the ATC cases under the provisions of the Anti-Terrorism Act .

## **CHAPTER THREE**

# **CONFLICT OF DESIGN-BASED APPROACH AND CUMULATIVE EFFECT-BASED APPROACH**

### **3.1 INTRODUCTION:**

We come across different kinds of approaches of Supreme Court of Pakistan while deciding definition of jurisdiction of Anti-terrorism courts. This chapter is dealing three different phases, where courts are adopting consequences or effect-based approach and designed based approaches. Actus reus-based approach or effect-based means that the commission of the offense was of such a nature that caused an immediate sense of fear and insecurity among the public regardless of any motive or design. On the other hand, the designed-based approach, means that the commission of the offense was designed in such a manner as to cause fear and insecurity among the public. Phase one is from 1997 to 2001 where laws of anti-terrorism were developing and initially in 1997 there was no definition of terrorism in enactment then through amendments these were inserted in the legislation, Second Phase started form 2002 to 2007 which was reflecting effect based or consequences-based theory in which the supreme Court of Pakistan was determining interpretation of definition of terrorism on the basis of consequences of act whether it is causing sense of fear and insecurity among the people. and Phase three from 2011 to 2020 and this phase was most critical phase where there was tug of war between the judges of Supreme Court of Pakistan while deciding Jurisdiction of ATC Courts.

There were different phases of legislation for heinous offences in Pakistan. First phase was dealing with insurgencies and political violence and different statutes like ‘West Punjab Safety Act 1949, and Public Representative Officer (Disqualification Act),1949, the Security of Pakistan Act, 1952, along with the West Pakistan Maintenance of Public Order, ordinance1960 were promulgated by the government. In second phase The Suppression of Terrorist Activities (Special Courts) Act” of 1975 was promulgated for speedy trial. Second Phase is dealing Sectarianism in Pakistan, In 1997 the Suppression Act was replaced by Anti-Terrorism Act, 1997 while in third phase amendments were made in Anti-terrorism act 1997 to combat hard-core terrorist and these amendment divided on three different phases regarding interpretation of courts while determining interpretation of definition of terrorism in Pakistan. this chapter is dealing all those amendments and approaches of Supreme Court of Pakistan.

### **3.2 PAKISTANI SUPERIOR COURT APPROACH FROM 1997 TO 2001**

Initially, after the promulgation of the Anti-terrorism Act,1997, the courts were deciding territorial jurisdiction on the basis of single criteria whether the offence was falling in the schedule of enactment or not. So, The Lahore High Court Lahore while deciding Writ Petition No; 2103/1997 titled *Nasreen vs ASJ Attock*, held that the schedule offences are triable by Special Court.<sup>158</sup> The Supreme Court of Pakistan in *Mehram Ali and others vs Federation of Pakistan and others*<sup>159</sup> held that;

“However, it may be observed that the offences mentioned in the Schedule should have nexus with the object of the Act and the offences covered by sections 6, 7 and 8 thereof. It may be stated that section 6

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<sup>158</sup> *Nasreen vs ASJ Attock* : PLD 1998 Lahore 275

<sup>159</sup> *Mehram Ali and others v Federation of Pakistan and others*:PLD 1998 Supreme Court 1445

defines terrorist acts, section 7 provides punishment for such acts, and section 8 prohibits acts intended or likely to stir up sectarian hatred mentioned in clauses (a) to (d) thereof. If an offence included in the Schedule has no nexus with the above sections, in that event notification including such an offence to that extent will be ultra vires. It will suffice to observe that if a Government servant or any other employee of the Government functionaries is murdered because he belongs to the above service and that there was no enmity or plausible reason for commission of the above offence, such a killing is an act of terrorism within the ambit of the Act and can lawfully be included in the Schedule, but if the murder is committed solely on account of personal enmity, such murder will have no nexus with the above provisions of the Act and will not be triable under the Act”<sup>160</sup>

This petition was decided in 1998, Now the moot question arises what was the law of Section 6 of Anti-terrorism , 1997 at that time? It is reproduced here as under:

“Whoever, to strike terror in the people, or any section of the people, or to alienate any section of the people or to adversely affect harmony among sections of the people, does any act or thing by using bombs, dynamite or other explosive or inflammable substances, or fire-arms, or other lethal weapons or poisons or noxious gases or chemicals or other substances of a hazardous nature in such a manner as to cause, or to be likely to cause the death of, or injury to,

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<sup>160</sup> Ibid .1445

any person or persons, or damage to, or destruction of, property or disruption of any supplies of services essential to the life of the community or displays fire-arms, or threatens with the use of force public servants in order to prevent them from discharging their lawful duties commits a terrorist act.”<sup>161</sup>

It punishment was mentioned in section 7 of the act.

*“whoever commits a terrorist act shall--*

- i. If such act has been resulted in the death of any person be punished with death; and*
- ii. In any other case, be punishable with imprisonment for the term which shall not be less than seven year but may extend to life imprisonment, and shall also be liable to fine”<sup>162</sup>*

*In section 6 and seven there was no classification of offences like present section 6 and 7 of antiterrorism act; however, the was schedule act has mentioned following offences.*

The Schedule of the said Act read as follows:

*“1. Any offence punishable under this Act.*

*2. Any offence punishable under any of the following sections of the Pakistan Penal Code (Act XLV of 1860), namely:-*

*(a) section 302, -- (i) if committed with a cannon, grenade, bomb, rocket or a light or heavy automatic weapon; (ii) if the victim is a member of police, armed forces or civil armed forces or is a public servant; (iii) if there is more than one victim; or (iv) the victim was subjected to cruelty, brutality, torture or burning; and*

*(b) offences under sections 295-A, 298-A, 364, 364-A, 365, 365-A, 392 to 402 of the Pakistan Penal Code (Act No. XLV of 1860).*

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<sup>161</sup> Section 6, Antiterrorism act 1997. Available PLJ Federal Statute (1998) 227

<sup>162</sup> Section 7, Anti-terrorism Act, 1997

3. *An offence punishable under sub-section (4) of section 10 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979).*
4. *Any attempt or conspiracy to commit or any abetment of any of the aforesaid offences.*<sup>163</sup>

All the offences in above mentioned schedule were triable under ATA Act,1997, a part of offences mentioned in seton 8 to 11 X dealing with the acts of hate speech, sectarian hatred, lynching, and proscribed organization. The offences mentioned in the schedule were offences of serious nature and almost similar to the schedule given in The Suppression of Terrorist Activities Act,1975. In early time period of this enactment from 1997 to 2000, there was only one criterion whether the offence was falling in the schedule of enactment coupled with causing element of fear and terror among the society and the same was based upon the provision mentioned in Section 6 of Anti-Terrorism Act,1997 that “*act strike terror among the people, or any section of the people, or to alienate or isolate any section of the people or to adversely affect harmony among different sections of the people.*” In 1998, Maharam Ali case brought major developments not only in the prevailing enactment but also left the forceful impact on the next legislation on terrorism. It was important to see the Facts of Mahram Ali case, in this case the accused was tried by Special Anti Terrorist Court-I, Lahore, under Anti-Terrorism, for causing murder of 23 persons and 55 persons got injuries due to explosion of bomb blast through remote control device in the premises of *District Courts, Lahore*. The counsel of the accused took plea that the action has no nexus with the section 6 of Anti-terrorism Act,1997. The Supreme Court of Pakistan held:

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<sup>163</sup> Schedule of Anti -terrorism Act,1997

“If a government servant or other employee of Government functionaries is slain because he belongs to the aforementioned service and there was no hatred or reasonable justification for the commission of the above offence, the killing is considered terrorism under the Act. and can lawfully be included in the Schedule, but However, if the murder is done merely because of personal animosity and hostility, such a murder will have no nexus with the Act's above provisions and will not be triable under the Act”<sup>164</sup>

Why was the question regarding nexus with the section 6 of Anti-terrorism Act,1997 raised in Mehram Ali case? Since, it was a simple bomb blast case, The Supreme Court of Pakistan held that the offences mentioned in the Schedule should have nexus with the object of the Act and the offences covered by sections 6 Anti-terrorism Act,1997. There was only one criteria to decide whether the action was falling in realm of terrorism or not and that was to bring element of fear and insecurity among the people, or any section of the people, or to effect peace and tranquility in different sections of the people. There was no word of design contained in the legislation at that time and there was no need to add the phrase because it was not a case of personal enmity and there was no question of it and it was by the way remarks or obiter dicta of the courts and these remarks opened a new Pandora box for future legislation in Pakistan. Since then from 1998 to 2000, subordinate courts started to observe principle laid down by the Supreme Court of Pakistan.

In year 2000 Supreme court of Pakistan in “Jamat-i-Islami Pakistan through Syed Munawar Hassan, Secretary-General v Federation of Pakistan through Secretary, Law, Justice and Parliamentary Affairs”<sup>165</sup> Bench consisting of five judges including Chief Justice

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<sup>164</sup> PLD 1998 Supreme Court 1445

<sup>165</sup>PLD 2000 Supreme Court 111

Saiduzzarnan Siddiqui, Chief Justice and judges Irshad Hasan Khan, Mr,Raja Afrasiab J, Muhammad Bashir. J and Nasir Aslam J' held that;

“to make an act punishable under the Act, it must be shown that the act bears nexus to sections 6, 7 and 8 of the Act”<sup>166</sup> and these ruling were made after the amendment of 1999 and we must remember that Facts of case were that Constitutional Petitions No.22/1999, filed by Jamat i Islami Pakistan and Muttahida Qaumi Movement (MQM), under Article 184(3) of the Constitution challenging the vires of Ordinance (IV of 1999, Certain amendments in the Anti-Terrorism Act, 1997 (XXVII of 1997) were antithetical to the Constitution and the guidelines set forth by in Mehram Ali case<sup>167</sup>.

To the extent of section 6 after amendment in 1999 through Anti-terrorism ordinance section 6 defines terrorist act as

"Terrorist Act. *“the effect of his actions was key to determine the nature of act whether it will strike terror or create a sense of fear and insecurity in the people, or in section of the people, this act may be caused by Physical act act or by using explosive substances which may be bombs, dynamite or other or inflammable, or any other notified fire arms weapons, even it includes use of poisons or noxious gases and any chemicals, which may cause, or be likely to cause, the death or injury to, person, or property through destruction of property”*

*“(b)commits a scheduled offence, the effect of which will be, or be likely to be, to strike terror, or create a sense of fear and insecurity in the people, or any section of the people or to adversely affect harmony among different sections of the people” or*

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<sup>166</sup>Ibid

<sup>167</sup> Ibid



*(c) “commits an act of gang rape, child molestation, or robbery coupled with rape as specified in the Schedule to this Act”;* or  
*(d) commits an act of civil commotion as specified in section 7 A”<sup>168</sup>*

So, in the year 1999, clause b, c, and d were inserted in section 6 of ATA but the word ‘effect’ was introduced with condition precedent that it should strike terror or create fear and insecurity among the people. Although these provisions were inserted in 1999 in the Anti-terrorism Act, 1997.

In the year 2001, case titled Ch. Bashir versus Naveed Iqbal<sup>169</sup> brought before The Supreme Court of Pakistan wherein the complainant Bashir reported the incident of burning of his daughter by the accused Naveed Iqbal along with six co-accused by sprinkling spirit on her body. The motive behind the offence was the failure of the victim to fetch a car in dowry to the family of her husband, It was held: “if the effect of act of accused caused terror or create a sense of fear and insecurity then it is case of ATC and in this case no person has seen this act and act was not conducted at public place so not case of ATC”.<sup>170</sup> The court concluded that act was not done at public place and there was no question of terror at public at large and even it was not mentioned in FIR that Public at large got scared and frightened. Therefore, it was not applicable. Court further held; “examples of acts which will have aspect of striking terror or creating a sense of fear if acts are done by using explosive, bombs, dynamite, or flammable substances, or acts mentioned in the Schedule to the Act.”<sup>171</sup> In both above mentioned cases there was no question on the effect but the ‘range of effect’ was in question. In these cases, the

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<sup>168</sup> Anti-terrorism (second Amendment) ordinance, 1999 (Ordinance No. XIII of 1999)

<sup>169</sup> “Ch. Bashir Ahmad v Naveed Iqbal and 7 others, PLD 2001 Supreme Court 52

<sup>170</sup> Ibid

<sup>171</sup> Ibid

observations were that the act was not producing element of terror among large group of people but at the same time it was not denying approach of effect causing element of terror or creating sense of fear and insecurity among the people. Similarly, in another case titled *Muhammad Ajmal vs The State*<sup>172</sup> the accused made indiscriminate firing at the complainant party in court room and the member of the staff of Court and thereby the brother of complainant was killed, along with Naib Qasid, Abdul Ghafoor, whereas Umar Draz was injured, who was working as Reader in the same Court, The Supreme Court of Pakistan held that this action had created element of fear and insecurity among the people. The accused was convicted by High court in 7ATA and Supreme Court of Pakistan also refused to interfere into it. Although, this action was based upon personal vendetta of accused and other party but its effect causes element of fear and insecurity among the people.

Similarly, in 2002, The Supreme Court of Pakistan again in a case titled *Muhammad Mushtaq vs Muhammad Ashiq and others*<sup>173</sup> held: “It would thus appear that ordinary crimes are not to be dealt with under the Act. A physical harm to the victim is not the sole criterion to determine the question of terrorism”<sup>174</sup> because in this case accused along with co-accused caused quadruple murder of his relatives namely Haji Muhammad Ashiq, Haji Abid, Haji Muhammad Siddique and Shaukat Ali by the use of Kalashnikovs at 9 15 a.m. near District Courts on road, During the course of police investigation offence under section 7 of the Anti Terrorism Act, 1997 was also added. Court held:

“As a result, it appears that the Act will not be used to prosecute routine offences. The physical injury to the victim is not the only criterion used to evaluate whether or not a person is a victim of terrorism. Important

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<sup>172</sup>“*Muhammad Ajmal v The State*; 2000 SCMR 1682”

<sup>173</sup> “*Muhammad Mushtaq v Muhammad Ashiq and others*”: PLD 2002 Supreme Court 841;

<sup>174</sup> Ibid

to see is the psychological impact of violent action, or the potential for such an impact, on society as a whole or a segment of it, There may be a death or injury caused in the process. As a result, a criminal conduct that is aimed to cause fear or uneasiness or insecurity in the minds of the general public, disrupting the normal pace of life and society's tranquility, may be classified as a terrorist attack. There may be a few targeted or random killings carried out with a single-mindedness of goal. However, the same may have an impact on terrorism by instilling dread or panic in the minds of thousands of individuals”<sup>175</sup>

The word designed was used in this case however it was use to strengthen the effect of the case although it was murder of personal vendetta but court held that

“occurrence took place during .the peak hours of the day on the busy Court Road near the District Courts, Lahore, wherein four persons while on their way to attend the Court were allegedly murdered by the use of kalashnikovs. The cumulative fall out of the occurrence as to the time, place and manner of the act created a sense of the fear insecurity in society. The case was, therefore, triable by the Anti-terrorism Court established under the said Act in view of its peculiar facts and circumstances as also the law and order situation prevailing in the country”<sup>176</sup>

In the cases mentioned above, the approach the Supreme Court of Pakistan was based upon element of fear and insecurity and many other cases in which Supreme Court of Pakistan adopted the same parameter including *Shahsawar vs State*<sup>177</sup>, *The State Vs Javed Ahmed*

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<sup>175</sup> Ibid

<sup>176</sup> Ibid

<sup>177</sup> *Shahsawar vs State* 2000 SCMR 1331

Siddiqui,<sup>178</sup> and Solat Ali Khan Vs The State,<sup>179</sup> even convicted the accused in section 7 of anti-terrorism cases.

### 3.3 SECOND PHASE FROM YEAR 2002 TO 2007 IN ANTI-TERRORISM ACT,

In year 2001, legislation of Anti-terrorism Act was again amended through the “Anti-Terrorism (Amendment) Ordinance, 2001 (Ordinance No. XXXIX of 2001).” So, this new amended ordinance replaced term ‘terrorist act’ with new term ‘Terrorism’ the same is reproduced as under:

“(1) In this Act “terrorism” means the use or threat of action where,

(a) the action falls within the meaning of subsection (2), and

(b) the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society; or

(c) the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause.

(2) An “action” shall fall within the meaning of sub-section (1), if it: .....<sup>180</sup>

Although the Word designed was inserted but Supreme Court of Pakistan was observing cumulative effect of act. Similarly in case title “Mumtaz Ali Khan Rajban and another v Federation of Pakistan and others”<sup>181</sup> in which a candidate caused murder of professor motive of murder was that he did not allow a to use unfair means in examination and Court held in this case that “the act of the accused struck terror and also created sense of fear and insecurity amongst people in general and Teachers/Professors in particular”<sup>182</sup>

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<sup>178</sup> The State Vs Javed Ahmed Siddiqui, 2001 SCMR 612

<sup>179</sup> and Solat Ali Khan Vs The State 2001 SCMR 2005

<sup>180</sup> “Anti-Terrorism (Amendment) Ordinance, 2001 (Ordinance No. XXXIX of 2001)”.

<sup>181</sup> “Mumtaz Ali Khan Rajban and another v Federation of Pakistan and others”:PLD 2001 Supreme Court 169

<sup>182</sup> Ibid

The Supreme Court of Pakistan also in a case titled *Mst. Raheela Nasreen v The State and another*, held that it is a case of terrorism and section 6 is applicable.

“section 6(b) of the Anti-terrorism reveals that it is not essential for the claimed that act have really created terror, since the condition of the aforementioned provision of law might be met, if action was likely to generate sense of terror or a sense of fear and insecurity among the people” The High Court Held that a “Batman who was a trusted person of an army officer if he kills as alleged his master in connivance with his (master’s) wife, the same was likely to strike terror or feeling of insecurity among the army officers which reasonings in our view are based on relevant consideration having logical nexus with the relevant law and do not suffer from any legal infirmitys”<sup>183</sup>

Similarly after amendment of 2001, in a case titled *Muhammad Amin v The State*; in which Accused caused murder during a dacoity, it was held regarding application of terrorism in this case “because murder was committed at time of dacoity and it was day light occurrence and brutal murder through fire arm shots so it is case of terrorism.”<sup>184</sup>

Again, this interpretation was reflecting the concept of ‘*Cumulative Effect of Action*’ which is causing element of terror in the society.

In year 2002 The Supreme Court of Pakistan while deciding case “*Zia Ullah v Special Judge, Anti-Terrorist Court, Faisalabad and 7 others*”<sup>185</sup> in which an advocate who was in uniform and was going to court was murdered due to personal enmity. The Court decided that it was a case of terrorism. It was observed that:

“...We are not having the slightest doubt while holding that the alleged occurrence must have caused fear, panic and wave of sensation and thus the matter squarely falls within the ambit and jurisdiction of Special

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<sup>183</sup> Mst. Raheela Nasreen v The State and another 2002 SCMR 908

<sup>184</sup> Ibid

<sup>185</sup> Zia Ullah v Special Judge, Anti-Terrorist Court, Faisalabad and 7 others ;2002 SCMR 1225)

Court. The gravity of the offence could not be diminished or minimized merely on the ground that alleged murder was not committed exactly within the Court premises”<sup>186</sup> In 2003, case titled “State through Advocate-General, N.-W.F.P., Peshawar versus Muhammad Shafiq” A person was murdered in this case by firing at and sprinkling petrol on him and resultantly his body was charred and some of his bones were also burnt. The said murder had been committed at a deserted place and was a consequence of an on-going personal enmity supreme court of Pakistan held In that case, the Court was not adequately aided, and the newly established concept of "terrorism" was not brought to the Court's attention. in that background, while reproducing and expressly referring to the deleted and inapplicable definition of a ‘terrorist act’ contained in the unamended section 6 of the Anti-Terrorism Act, 1997, this Court observed that a reading of the above provision of the Act demonstrates that it is not necessary that the commission of murder must have created panic and terror among the people. The Courts have only to see whether the terrorist act was such which would have the tendency to create sense of fear or insecurity in the minds of the people or any section of the society. We have to see the psychological impact created upon the minds of the people. The moment such a charred dead body was brought for its funeral rites within the area of the deceased’s residence, it would had certainly caused shock, fear and insecurity among the people of the vicinity. The body was completely charred and the onlookers must have felt fear and insecurity on seeing the barbaric and callous manner in which the human javedbody was mutilated.”<sup>187</sup>

In 2002, The Supreme Court of Pakistan adopted same theory in some other cases and convicted the accused in Muhammad Ashfaq vs The State,<sup>188</sup>, Fayyaz Hussain Shah Versus

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<sup>186</sup>Ibid

<sup>187</sup>State through Advocate-General, N.-W.F.P., Peshawar v Muhammad Shafiq (PLD 2003 SC 224)

<sup>188</sup> Muhammad Ashfaq vs The State, 2002 SCMR 308

The State<sup>189</sup> and Amjad Javed Versus The State,<sup>190</sup> and Shahzad Alias Shaddu Vs The State<sup>191</sup>,

In Year 2003 in another case Naeem Akhtar vs The State.<sup>192</sup> In this case mother of accused was patient of doctor, the accused was dissatisfied with her treatment and accused not only abducted doctor but also caused his murder. Whether this one is case of terrorism or not court held that, “The motive for the occurrence reflecting element of the personal grievance of accused because according to accused deceased was responsible for imputation of leg however murder of the doctor after his abduction for such a motive would be an alarming situation for all doctors and would be a direct source of creating panic and terror in the medical profession”<sup>193</sup>

Further it was held that

“In general terms a fright, dread or an apprehension in the mind of a person induced by an horrible act of a person or causing fear and terror to the people is terrorism and if an act done by a person which is a source of terror in any section of people, which may cause damage to life or property of an individual, is a terrorist act and is an offence as defined in section 6 of A.T.A., 1997 and punishable under section 7 of the said Act. The act of abduction of the deceased and Dr. Javed Umer from an open place on gun point and subsequent murder of Dr. Muhammad Aslam for the reason that patient could not get desired result by the treatment given by him, would create unrest, panic and terror against the doctors who are discharging very sacred duty in the medical field.”<sup>194</sup>

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<sup>189</sup> Fayyaz Hussain Shah Versus The State, 2002 SCMR 1848

<sup>190</sup> Amjad Javed Versus The State, 2002 SCMR 1247

<sup>191</sup> Shahzad Alias Shaddu Vs The State 2002 SCMR 1009

<sup>192</sup> Naeem Akhtar vs The State, PLD 2003 Supreme Court 396)

<sup>193</sup> Ibid

<sup>194</sup> Ibid

Year 2003 in an other case *Sh. Muhammad Amjad v The State*<sup>195</sup> In this **case** accused abducted young Barrister for ransom and subsequently he was murdered in this occurrence, in this case the Supreme Court of Pakistan introduced new term of actual terror and the Supreme Court of Pakistan emphasized that whether cumulative effect of all circumstances is creating terror or not. The Court for determination that whether it is of act of terrorism or not held that:

*“Even if by act of terrorism **actual terror is not created**, yet, above quoted subsection (b) [of section 6(1) of the Anti-Terrorism Act, 1997 will be applicable if it was likely to do any harm contemplated in the said subsection. It is the cumulative effect of all the attending circumstances which provide tangible guidelines to determine the applicability or otherwise of said subsection. It is noted that about 300/400 people gathered at the house of the complainant and they would have destroyed the house of the appellant, if the police would not have intervened. Lawyer community was also annoyed over the murder of a member of their community and had passed a resolution in this regard. Under the circumstances, the case was rightly assigned to AntiTerrorism Court for trial. <sup>196</sup>”*

Year 2003 another case titled ‘*Mst. Najam-un-Nisa v Judge, Special Court*<sup>197</sup>’ constituted under Anti-Terrorism Act, 1997 Mr Tanvir Ahmed Khan and Khalil-ur-Rehman Ramday, observing application of ATA in this case accused slaughtered seven persons at night time in a house and question before court was whether ATA was applicable or not because there argument that act was not of such nature which create any terror any other element of horror in the section of the people secondly, act was in furtherance of a private enmity but Honorable Court observed that: “The location of a crime, the time of occurrence, the reason that led to the

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<sup>195</sup> “*Muhammad Amjad v The State* :PLD 2003 Supreme Court 704

<sup>196</sup> *Ibid*

<sup>197</sup> “*Mst. Najam-un-Nisa v Judge, Special Court* constituted under Anti-Terrorism Act, 1997” (2003 SCMR 1323



commission of a crime, and whether or not the crime was seen by the general public are not the only variables that determine whether or not a case falls within the limitations of the ATA of 1997 and The essential question is whether the alleged act struck terror or created a sense of dread and insecurity among the general public or any segment of the general public. It goes without saying that a crime of this nature, even if perpetrated in a secluded corner, does not go undetected in the region where it is committed, or even in the country, thanks to the print and electronic media. Slaughtering of seven persons in a house at night time is not the such occurrence which would not create element terror and fear in the people or any large section of the people<sup>198</sup>” So Court in this case held that Whether occurrence was witnessed by large section of community or not is not question but whether its cumulating effect was creating terror or not, so effect of terror was not witnessed by large section of community.

In 2003 supreme court decided case titled as Abdul Ghafoor Bhatti v Muhammad Saleem and others<sup>199</sup>In this case, accused kidnapped two minors after a dacoity only for ransom and they were subsequently rescued after the payment of demanded ransom. For application of element of terrorism the court held that:

“The Courts have to see the impact of the act which the miscreants have perpetrated. In the case in hand two minors were abducted for ransom by the miscreants. Such-like act has certainly got the tendency to create sense of fear and insecurity in the minds of the people or any section of the society. The psychological effect created upon the minds of the people would be the guiding feature so as to see whether the act complained of has got nexus with sections 6 and 7 of the Act. It is not necessary that the said act must have created insecurity. As already stated the Courts have to see only the tendency whether nature of such act would create sense of insecurity. By no stretch of

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<sup>198</sup>Ibid

<sup>199</sup> Abdul Ghafoor Bhatti v Muhammad Saleem and others 2003 SCMR 1934:

imagination, it can be said that the abduction of minors at gun points would not create terror among reasonable and prudent persons of the society.”<sup>200</sup>

In 2003, all apex court were observing cumulative effect of action and there was only one element that whether action is creating element of terror among the society or not and all cases were decided on this principle.

Year 2004, was interesting year regarding development of case laws on this issue when the Supreme Court of Pakistan in a cases titled *Muhammad Farooq v Ibrar and 5 others*<sup>201</sup> defined basic object of Anti-terrorism Act 1997 and held that The basic object to promulgate Anti-Terrorism Act, 1997 was to control the acts of terrorism, sectarian violence and other heinous offences as defined in section 6 of the Act and and their speedy trials.”<sup>202</sup> In this case The occurrence took place in Mosque which a public place mainly at time of Jumma prayer, and many people of surrounding were assemble for prayer, although act was purely based upon previous enmity.

The Supreme Court of Pakistan Held that

*“To bring an offence within the ambit of the Act, it is essential to examine that the said offence should have nexus with the object of the Act and the offences covered by its sections 6, 7 and 8. On bare perusal of sub-clauses (b), (d), (h), and (i) of subsection (1) of section 6 of the Act, it is abundantly clear that the offence which creates a sense of fear or insecurity in society, causes death or endangers a person's life, involves firing on religious congregations, mosques, imambargahs, churches, temples and all other places of worship, or random firing to spread panic, or involves any forcible takeover of mosques or other places of worships, falls within its ambit. Although previous enmity yet paramount consideration to be taken note of is the culminative fall*

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<sup>200</sup>Ibid

<sup>201</sup> “Muhammad Farooq v Ibrar and 5 others PLD 2004 Supreme Court 917”:

<sup>202</sup> Ibid

*out of the occurrence.so this one is case of Anti terrorism. In such cases, the time, place and, manner of the act is of eminence importance”<sup>203</sup>*

In 2005 The Supreme Court Pakistan in a case titled Azizullah versus The State<sup>204</sup> in which accused invited wife and children of complainant in his house and were made hostages. In the occurrence two grand-daughters along with the brothers and of the complainant, moved to accused’s house for the release of the abductees they were also made hostages. Not only this but an amount of Rs.5 lacs was accepted by the petitioners and demand for more ransom money was also made, the accused made application u/s 23 of ATA with contention that this is not case of ATA, in this case Chief Justice Supreme Court of Pakistan, Nazim Hussain Siddiqui, and justice Javed Iqbal and Justice Abdul Hameed Dogar, held that

“The main object to promulgate the Act was to prevent and control the acts of terrorism, sectarian violence, hijacking, hostages taking and kidnapping or abduction for ransom. It was for this purpose that the offences falling within the ambit of the Act were to be disposed of expeditiously by way of speedy trial. The above act created sense of fear or insecurity in the public as such the ingredients of sections 6 and 7 of the Act are attracted.”<sup>205</sup>

Another case in same year, 2005 decided by The Supreme Court of Pakistan titled as Mirza Shaukat Baig and others v Shahid Jamil and others<sup>206</sup> Honorable Chief Justice of Pakistan, Nazim Hussain Siddiqui, held:

“The legislation under this section is unambiguous, very simple and plain and there is no need of any kind of interpretation because it is proficient and capable to meet all basic requirements of terrorism. It was held that “the exhaustive nature of this section which elaborate that it does not revolve

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<sup>203</sup>Ibid

<sup>204</sup>, Azizullah versus The State, 2005 SCMR 802

<sup>205</sup> Ibid

<sup>206</sup> Azizullah versus The State, PLD 2005 Supreme Court 530

around the word designed to as used in section of the act in the sense of mensrea but the key word in our opinion is action on the basis whereof it can be adjudged as to whether the alleged offence falls within the scope of section 6 of the Act or otherwise”<sup>207</sup> further held that “The significance and the import of word action cannot be minimized and requires interpretation in a broader prospective which aspect of the matter has been ignored by the learned High Court and the scholarly interpretation as made in the judgment impugned has no nexus with the provisions as contained in section 6 of the Act, the ground realities, objects and reasons, the dictums laid down by this Court and is also not inconsonance with the well-entrenched principles of interpretation of criminal statutes”<sup>208</sup> “Where a criminal act is designed to create a sense of fear or insecurity in the mind of the general public that can only be adjudged by keeping in view the impact of the alleged offence and manner of the commission of alleged offence” it was held that learned High Court has made farfetched and unbelievable interpretation regarding word designed which one is used in section 6 of ATA, court further held that “this court no doubt or ambiguity in mind that this enactment was promulgated not only for the prevention but also for the elimination of terrorism, and sectarian violence with the object of the expeditious dispensation of the justice in the heinous offences as mentioned in its preamble. however, it is to be noted that at this point the concept of terrorism is concerned there is no big substantial and fundamental change between the both enactments” both Suppression of Terrorism Activities (Special Courts) Act (XV of 1975) as well as Anti-Terrorism Act (XXVII of 1997) except a minor changes having no bearing on the meaning and scope of terrorism”

Striking of Terror is Sine Qua Non or fundamental element For The Application Of The Provisions

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<sup>207</sup> Ibid

<sup>208</sup> Ibid

“After having gone through the entire law as enunciated by this Court in different cases the judicial consensus seems to be that striking of terror is sine qua non for the application of the provisions as contained in section 6 of the Act which cannot be determined without examining the nature, gravity and heinousness of the alleged offence, contents of F.I.R., its cumulative effects on the society or a group of persons and the evidence which has come on record. In so far as the factum of intention is concerned that cannot be evaluated without examining the entire evidence which aspect of the matter squarely falls within the jurisdictional domain of the Court constituted under the Act and such questions cannot be decided by invocation of Constitutional jurisdiction without scrutinizing all the circumstances in a broader prospect by keeping in view the ground realities in mind. There could be no second opinion that where the action of an accused results in striking terror or creating fear, panic, sensation, helplessness and sense of insecurity among the people in a particular vicinity it amounts to terror and such an action squarely falls within the ambit of section 6 of the Act and shall be triable by a Special Court constituted for such purpose. What was the real intention of the offender could only be adjudged on the basis of evidence which cannot be determined by invocation of Constitutional jurisdiction and learned Special Judge who is usually a Senior Sessions Judge can take care of the matter which can be transferred by him if it does not fall within his jurisdictional domain. There is no denying the fact that it was never the intention of legislature that every offender irrespective of the nature of the offence and its overall impact on the society or a section of society must be tried by the Anti-Terrorist Court but the question as to whether such trial shall be conducted or not initially falls within the jurisdictional domain of Anti-Terrorist Court which cannot be interfered with in the absence of sufficient lawful justification which appears to be lacking in these cases. It is, however, obligatory for such Courts to watch carefully the nature of accusation and examine the entire record with diligent application of mind to

determine as to whether the provisions as contained in the Act would prima facie be attracted or otherwise? Where such Courts are of the view after taking cognizance of the offence that the alleged offence does not fall prima facie under the provisions of the Act it must transfer the same to regular Court without loss of time.”<sup>209</sup>

In 2006, a case titled “Zahid Imran and others v The State”<sup>210</sup> and others in this case accused Shehzad while taking his B.A's. examination was found using unfair Means, for which the deceased had admonished him, and while leaving the examination center, the accused named above had threatened Professor Abdul Latif of dire consequences and that of his murder. Subsequently, it is alleged that present accused Zahid Imran along with other six co-accused who were armed with irons rods and clubs had launched the attack causing multiple injuries on body of the deceased culminating his instantaneous death although there was personal vendata and it was held by Justice Javed Iqbal, along with Mian Shakirullah Jan and Tassaduq Hussain Jillani, JJ upheld principle laid down in Mehram Ali case

“We may point out that this Court is not oblivious of the factum that the law and order situation has been considerably deteriorated and new types of terrorism have emerged due to tremendous progress made in the field of technology. This Court in more than one cases has held that the approach of the Court while considering criminal matters should be dynamic and it should take into consideration the surrounding situation obtaining in the country and should not lightly set aside a conviction on technical grounds- if the Court's conscience is satisfied that factually the convict was guilty of the offence”

But also discussed principle laid down in Farooq versus. Ibrar PLD2004 SC 917),., Province of Sindh v. Ghulam Hussain (2002 SCMR 908), titled Zia Ullah v. Special Judge

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<sup>209</sup>Mirza ShaukatBaig versus Shahid Jamil PLD 2005 Supreme Court 530)

<sup>210</sup> “Zahid versus The State’ PLD 2006 Supreme Court 109:

(2002 SCMR 1225, Najam-un-Nisa v. Judge, Special Court (2003 SCMR 1323, and Muhammad Mushtaq v. Muhammad Ashiq PLD 2002 SC 841

“The judicial consensus seems to be that striking of terror is sine qua non for the application of the provisions as contained in section 6 of the Act 1997 which cannot be determined without examining the nature, gravity and heinousness of the alleged offence, contents of the F.I.R., its cumulative effects on the society and a class of persons and the evidence which has come on record. There could be no second opinion that where the action of an accused person results in striking terror or creating fear, panic, sensation, helplessness and sense of insecurity among the people in a particular vicinity it amounts to terror and such an action squarely falls within the ambit of section 6 of the Act 1997”<sup>211</sup>

So year 1998 to 2006 is phase 1 in which most of judgements were based on cumulative effect of action. At time Mehram Ali case law was very clear regarding object of act which was based upon effect of action

“if a Government servant or any other employee of the Government functionaries is murdered because he belongs to the above service and that there was no enmity or plausible reason for commission of the above offence, such a killing is an act of terrorism within the ambit of the Act and can lawfully be included in the Schedule, but if the murder is committed solely on account of personal enmity, such a murder will have no nexus with the above provisions of the Act and will not be triable under the Act”<sup>212</sup>

“Whoever, to strike terror in the people, or any section of the people, or to alienate any section of the people or to adversely affect harmony among different sections of the people,.... there

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<sup>211</sup>Zahid Imran and others v The State and others , PLD 2006 SC 109.

<sup>212</sup> PLD 1998 SC 1445

was no word of designed, secondly there was no issue of personal vendata or enmity but judge passed the remarks by the way, ...'if the murder is committed solely on account of personal enmity, such a murder will have no nexus with the above provisions of the Act and will not be triable under the Act" there was no need to mentioned these remarks because case was not such nature it was bomb blast case. then in 2001 to 2002 amendments were introduced in ATA laws. Supreme court of Pakistan Syed Munawar Hassan versus Federation of Pakistan<sup>213</sup> Bashir Ahmad versus Naveed<sup>214</sup> M.Ajmal versus The State<sup>215</sup> , M. Mushtaq versus M Ashiq<sup>216</sup> Mst. Raheela versus The State<sup>217</sup> M. Amin versus The State<sup>218</sup> Zia versus Special Judge,<sup>219</sup> State versus Muhammad Shafiq,<sup>220</sup> Naeem versus The State<sup>221</sup> Sh. Muhammad Amjad v The State<sup>222</sup> Mst. Najam-un-Nisa versus Judge, ATC<sup>223</sup> Abdul Ghafoor versus Muhammad Saleem<sup>224</sup> M Farooq v Ibrar and 5 others<sup>225</sup>, Azizullah and another v The State and another<sup>226</sup> , Mirza ShaukatBaig and others v Shahid Jamil and others<sup>227</sup> , Zahid Imran and others v The State and others<sup>228</sup> in all abovementioned case the Supreme court is observing cumulative effect of action whether action was striking terror or not because In 1999, second Amendment, was introduce and for determination of terrorism effect of his action was only key criteria, because clause a of section 6 was amended in order to bring act in terrorism, if the consequences of his act will strike terror in the people, or among any section of the people,

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<sup>213</sup> PLD 2000 SC 111

<sup>214</sup> PLD 2001 SC 521

<sup>215</sup> 2000 SCMR 1682

<sup>216</sup> PLD 2002 SC 841

<sup>217</sup> 2002 SCMR 908

<sup>218</sup> 2002 SCMR 1017

<sup>219</sup> 2002 SCMR 1225

<sup>220</sup> PLD 2003 SC 224

<sup>221</sup> PLD 2003 SC 396

<sup>222</sup> PLD 2003 SC 704

<sup>223</sup> 2003 SCMR 1323

<sup>224</sup> 2003 SCMR 1934

<sup>225</sup> PLD 2004 SC 917

<sup>226</sup> 2005 SCMR 802

<sup>227</sup> PLD 2005 SC 530

<sup>228</sup> PLD 2006 SC 109



however condition precedent is that act is done by explosive substance including inflammable substances, or act is done by use of any lethal weapons, it also includes use of poison as well as any noxious gases including chemicals, acted in such manner which may cause, the death of person, or injury to person, also includes or any kind of damage and any destruction of, the property,<sup>229</sup>

Despite of above mentioned cases many other case which were decided by Supreme Court of Pakistan on the basis of consequences based approach like State Vs Muhammad Shafiq: PLD 2003 SC 224; Rasab Khan Vs The State; 2003 SCMR 1385, Muhammad Ihsan Vs The State: PLD 2004 SC 376, Umar Farooque Vs State: 2006 SCMR 1605, Suleman Vs State: 2006 SCMR 366; M. Ashraf Bhatti vs M. Aasam Butt PLD 2006 SC 182, Muhammad Aslam alias Moavia Alias Abdul Rehman vs Stat: 2006 SCMR 198, Nazir Ahmed Vs Muhammad Arif: 2006 SCMR 1842, Suleman Vs State: 2006 SCMR 366, MUHAMMAD SAJID vs the State 2006 SCMR 1727, Riaz Masih Vs State PLD 2006 SC 263, Muhamamd Nadeem Vs State PLD 2006 SC 524, MUSHTAQ HUSSAIN alias MUSHTAQI and another vs State; PLD 2006 SC 519 in all cases Supreme court adopted consequences based approach and dismissed the appeal of accused and were awarded sentences on the basis of effect based theory.

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<sup>229</sup> “Anti terrorism (second Amendment) ordinance,” 1999 (Ordinance No. XIII of 1999)

### **3.4 THIRD PHASE OF DESIGNED BASED APPROACH 2007 TO 2019**

Second phase was dealing designed based approach because in year 2001 legislation on terrorism was amended through the Amendment Ordinance. Word “terrorism” was inserted instead of ‘terrorist act’;

“(1) In this Act terrorism” means the use or threat of action where

(a) “the action falls within the meaning of subsection” (2), and

(b) “the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society” or

(c) “the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause”<sup>230</sup>

Similarly in 2002 Supreme Court of Pakistan again in M. Mushtaq versus M.Ashiq and others<sup>231</sup> held that

“It would thus appear that ordinary crimes are not to be dealt with under the Act. A physical harm to the victim is not the sole criterion to determine the question of terrorism”<sup>232</sup> because in this case accused along with co-accused caused quadruple murder of his relatives namely Haji Muhammad Ashiq, Haji Abid, Haji Muhammad Siddique and Shaukat Ali by the use of kalashnikovs at 9 15 a.m. on the road near District Courts which is also known as court road,

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<sup>230</sup> Anti-Terrorism (Amendment) Ordinance, 2001 (Ordinance No. XXXIX of 2001).

<sup>231</sup> Muhammad Mushtaq v Muhammad Ashiq and others PLD 2002 SC 841;

<sup>232</sup> Ibid

During the course of police investigation offence under the section 7 of ATA, 1997 (hereinafter referred to as the Act) was also added. Court further held that :

“It would thus appear that ordinary crimes are not to be dealt with under the Act. A physical harm to the victim is not the sole criterion to determine the question of terrorism. What is to be seen is the psychological effect produced by the violent action or with the potential of producing such an effect on the society as a whole or a section thereof. There may be a death or injury caused in the process. Thus where a criminal act is designed to create a sense of fear or insecurity in the minds of the general public disturbing even tempo of life and tranquillity of the society, the same may be treated to be a terrorist act. There may be just a few killings, random or targeted, resorted to with single mindedness of purpose. But nevertheless the impact of the same may be to terrorise thousands of people by creating a panic or fear in their minds”<sup>233</sup>

The word designed was used in this case however it was use to strengthen the effect of the case although it was murder of personal vendata but court held that

“occurrence took place during .the peak hours of the day on the busy Court Road near the District Courts, Lahore, wherein four persons while on their way to attend the Court were allegedly murdered by the use of kalashnikovs. The cumulative fall out of the occurrence as to the time, place and manner of the act created a sense of the fear insecurity in society. The case was, therefore, triable by the Anti Terrorism Court established under the said Act in view of its peculiar facts and circumstances as also the law and order situation prevailing in the country”

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<sup>233</sup> Ibid

In year 2004 designed base basic Judgment was given by High Court, in case titled “Basharat Ali versus Judge, ATC<sup>234</sup> in which Bench comprising of Mr. Justice Asif Saeed and Justice M. Shahid, in this facts of case were that four persons were murdered along with eight injured persons in village Behroopgarh situated in District Gujranwala in an assault carried out by one group of due to previous enmity, question was whether it was offence of ATA or not, An application under section 23 of the ATA was submitted by the accused party before the learned Court for transfer of this case to a ordinary court with argument that the case has no element of terrorism as it is defined in its section 6 however the application was dismissed by lower court and same has been assailed by the petitioner before High Court.

Court held that;

“Judged on the basis of the requirements of the amended provisions of section 6 of the Anti Terrorism Act, 1997 and examined on the touchstone of the principle of nexus propounded by the largest Bench of the Hon'ble Supreme Court of Pakistan in the case of Mehram Ali and others v. Federation of Pakistan and others (PLD 1998 SC 1445), reiterated by an equally large Bench of it in the case of Jamaat i Islami Pakistan through Syed Munawar Hassan, Secretary General v. Federation of Pakistan through Secretary, Law, Justice and Parliamentary Affairs (PLD 2000 SC 111) and applied by it in the case of Ch. Bashir Ahmad v. Naveed Iqbal and 7 others (PLD 2001 SC 521) the case in hand, despite the brutality displayed by the culprits and the consequent horror, shock, fear and insecurity likely to be created by the savagery perpetrated by the offenders, has not appeared to us to be a case of terrorism

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<sup>234</sup> Basharat Ali v Special Judge, Anti-Terrorism Court-II, Gujranwala and 2 others PLD 2004 Lahore 199

as the motive for the alleged offences was nothing but personal enmity and private vendetta and the motivation on the part of the accused party was not to overawe or intimidate the Government, etc. or to destabilize the society at large or to advance any sectarian cause, etc. The intention of the accused party did not depict or manifest any 'design' or 'purpose' as contemplated by the provisions of section 6(1)(b) or (c) of the Anti Terrorism Act, 1997 and, thus, the actus reus attributed to it was not accompanied by the necessary mens rea so as to brand its actions as terrorism triable exclusively by a Special Court constituted under the Anti Terrorism Act, 1997. The stand taken 'before us by the learned Assistant Advocate General appearing for the State also proceeds on the same lines and it is for these very reasons that the State has chosen not to oppose this petition. This writ petition is, therefore, allowed, the impugned order passed by the learned Judge, Anti Terrorism Court II, 'Gujranwala on 4 10 2003 is declared to be without lawful authority and of no legal effect and the same is set aside, the application filed by the petitioner before the said Court under section 23 of the Anti Terrorism Act, 1997 is accepted and the petitioner's case is declared to be triable by a Court of ordinary jurisdiction"<sup>235</sup>

Although Lahore high court adopted designed based approach and according to this an act should be designed in such manner it may cause fear and insecurity among large section of people. Although wording of section 6 1(b) of ATA defining "terrorism" means act should be designed in such manner that firstly it is threatening or intimidating the government secondly it is causing fear and insecurity among the people and it is advancing religious and ethnic cause

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<sup>235</sup> Ibid

and there was no word of large section of people rather act which is “designed to intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society” reference on which Basharat case relied were also based upon cumulative effect of act which generally causes terror and fear in the society.

At this stage Lahore High Court diverting principles of Supreme court laid down in above cases mentioned in phase two from 2002 to 2007, Despite different approach of Lahore High Court Lahore the Supreme Court of Pakistan was following principle of fear and insecurity due to effect of action as given in Naeem Akhtar versus The State and others,<sup>236</sup> M Amjad versus The State,<sup>237</sup> Mst. Najam-un-Nisa versus Judge, ATC<sup>238</sup> Abdul Ghafoor versus Muhammad Saleem,<sup>239</sup> M Farooq versus Ibrar<sup>240</sup>, Azizullah and another v The State and another<sup>241</sup>, Mirza ShaukatBaig and others v Shahid Jamil and others<sup>242</sup>, Zahid Imran and others v The State and others but in year 2007 Supreme Court of Pakistan, in case Fazal Dad versus Ghulam Muhammad<sup>243</sup> very first time relied upon judgement of Lahore High Court Lahore, Basharat Ali versus Special Judge, ATC<sup>244</sup> in this case F.I.R. was lodged under sections 435, 447, 427, P.P.C. at Police Station Basal, District Attock and during the pendency of the case, the Magistrate, returned the same to the S.H.O. for submission before the Special Court established under Anti-Terrorism Act, 1997 with the direction that in the light of sections 7-A and 7-B of the Act, the offence allegedly committed by the accused could be defined as civil commotion and therefore was triable by special court. Investigating Officer thereafter

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<sup>236</sup> PLD 2003 Supreme Court 396

<sup>237</sup> PLD 2003 Supreme Court 704

<sup>238</sup> 2003 SCMR 1323

<sup>239</sup> 2003 SCMR 1934

<sup>240</sup> PLD 2004 Supreme Court 917

<sup>241</sup> 2005 SCMR 802

<sup>242</sup> PLD 2005 Supreme Court 530

<sup>243</sup> PLD 2007 Supreme Court 571

<sup>244</sup> PLD 2004 Lahore 199

submitted challan before Special Court, accused being aggrieved filed an application before the Special Court for transfer of the case to the ordinary court and same was dismissed, learned High Court accepted Constitution Petition No.296 of 2000 which was filed by the respondent . Petitioner/appellant being aggrieved filed petition before this Court. In this case Justice Sardar Muhammad Raza Khan, held that

“In case after perusal of record and contents of F.I.R. , section 6 of the enactment is not applicable. It is a settled law and acknowledge fact that preamble of any enactment is always key for interpretation of the statute. The object of the Anti-Terrorism Act, 1997 was to control the acts of terrorism, sectarian violence and other heinous offences as defined in section 6 of the Act and their speedy trial to bring the offence within the ambit of the act, it is essential to examine that the said offence should have nexus with the object of the act and offences covered by its relevant provisions such as section 6. For determination of true nature, and scope of enactment It is a settled law that provisions of law must be read as a whole, secondly it was held that It is very clear that in case the all offence which creates a sense of fear or insecurity in society, causes of death or endangers a person's life commits an act of vehicle snatching or lifting, damage to or disturbance of, State or private property failing to create panic charging bhatta or criminal trespasser (Illegal qabza). As mentioned above, the ingredients of aforementioned offences have no nexus while reading the aforesaid provisions along with the contents of the impugned F.I.R. It is pertinent to mention here that nothing was on record to show that occurrence created terror, panic or sense of insecurity among people by securing possession of the land in question by the respondent. The word illegal Qabza must be read with the previous words used by the legislature in clause (d) of section 6 of the Anti-Terrorism Act, 1997 on well-known principle that statutory provisions ought not to be construed in isolation

and courts always to lean towards reasonable interpretation of statute. The learned High Court was justified to examine the scope of terrorism at the time of deciding the constitutional petition with regard to the transfer of case from special court to ordinary court on the well known maxim that legislative intent as a guide to interpretation of statute should be gathered primarily from words used in statute. The case in hand did not qualify to be a terrorist act within the contemplation of section 6 or schedule of Anti-Terrorism Act and the learned High Court was justified to transfer the case to the ordinary court. It is settled law that promulgation of special law by itself is not sufficient to supersede provisions of law contained in Cr.P.C. In case, the offence has no nexus with the parameters of special law, then general law will apply. The judgment of the learned High Court is in consonance with the law laid down by this court in various pronouncements. See Mehram Ali's case PLD 1998 SC 1445 and Jamat-e-Islami Pakistan's case PLD 2000 SC 111.<sup>245</sup> The judges made reliance upon Mehram Ali's case and Jamat-e-Islami Pakistan's case as we discussed in phase 1, regarding facts of cases it was totally different Mehram Ali's case because bomb blast case and that time period in 1998 law was very clear regarding declaration of act as terrorism and that was whether it is creating element of fear and insecurity in the people or section of people and secondly there was no need to mentioned in that case if act is based upon previous enmity it is not act of terrorism and it was by the way remarks of judge in that case and not ratio decendi because there was no such restriction in that law similarly in second case court made reliance was Jamat-e-Islami Pakistan's case; PLD 2000 SC 111 and it was judgement of five judges including chief justice of Pakistan Saiduzzarnan Siddiqui, C.J. and other judges Irshad Hasan Khan, Raja Afrasiab Khan, Muhammad Bashir Jehangiri and Nasir Aslam Zahid, JJ' in Constitutional Petition

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<sup>245</sup> Ibid;



No.22 of 1999 filed by Secretary-General of Jamat-I-Islami Pakistan who was Syed Munawar Hassan, and other Constitutional Petition No.25 of 1999 filed by Deputy Convener of MQM Aftab Ahmed in which they challenged provisions under Section 5(2)(i) , section 10, section 19(10) b along with other provisions of the enactment were challenged to the extent indicated above is complete violative of Article, 9, of the Constitution dealing life and liberty as well as the guidelines provided in the case of Mehram Ali PLD 1998 SC 1445 and it was also held that the offences mentioned in the Schedules should have nexus with the objects mentioned in sections 6, 7 and 8 of the Act and in 1999 act was section 6 of ATA. Terrorist Act means a person commit any act in order to whci cause element of rear and insecurity, whether act or its effect of his actions strike element of terror or create element of fear and insecurity among the people, or any section of the people, by using bombs, any dynamite or any other explosive or any inflammable substances,<sup>246</sup> In both cases element of cumulative effect of action was under consider. The court did not observe principle laid down in Naeem versus The State and others<sup>247</sup> M. Amjad v The State<sup>248</sup> Mst. Najam-un-Nisa versus Judge, ATC<sup>249</sup> Abdul Ghafoor versus Muhammad Saleem and others<sup>250</sup> Muhammad Farooq v Ibrar and 5 others<sup>251</sup>, Azizullah versus The State and another<sup>252</sup> , Mirza Shaukat Baig and others v Shahid Jamil and others<sup>253</sup> , Zahid Imran and others v The State rather followed principle which was laid down at time when law was different. And another case in year 2007 Mohabbat Ali and another v State and another<sup>254</sup> facts of case were that accused started firing from klashnikovs straight at

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<sup>246</sup> Anti terrorism (second Amendment) ordinance,1999 (Ordinance No. XIII of 1999)

<sup>247</sup> PLD 2003 Supreme Court 396

<sup>248</sup> PLD 2003 Supreme Court 704

<sup>249</sup> 2003 SCMR 1323

<sup>250</sup> 2003 SCMR 1934

<sup>251</sup> PLD 2004 Supreme Court 917

<sup>252</sup> 2005 SCMR 802

<sup>253</sup> PLD 2005 Supreme Court 530

<sup>254</sup> Mohabbat Ali and another vs State and another ;2007 SCMR 142

complainant which hit driver Khursheed Sheikh who cried and fell on the driving seat whereas other accused also fired at them but they immediately alighted from the car and took shelter in the Banana Garden. On hue and cries as well as fire shots, many people came running from village Ghulam Hussain Kandhir. the occurrence was result of some previous enmity and due to the personal vendetta. No doubt the occurrence took place in fields as well as in jungle of banana which was about 14/15 miles away from the main road. Motive was previous enmity among the parties even it was also mentioned in the police report. that there was a personal enmity due to land as well as murder case.<sup>255</sup>

Court held that

“keeping story mentioned in the F.I.R., the court has to decide whether this one is case of anti terrorism or not. In the light of the ingredients of this offence whether action has any kind of nexus or any link with the purpose or object of the mentioned under sections 6 of act”,<sup>256</sup> it was further held that “from perusal of record it comes to surface that intention of the accused was neither to create element of insecurity nor to destabilize or create panic the public-at-large or to advance any sectarian cause”<sup>257</sup> Thus, we are of the view that “the design or purpose of the offence as contemplated by the provisions of section 6 of the Act is not attracted.

In this case Supreme court of Pakistan giving reference of Bashir case and ignoring principles laid down by apex court in Naeem Akhtar and others v The State and others”<sup>258</sup> Sh.

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<sup>255</sup> Ibid

<sup>256</sup> Ibid

<sup>257</sup> Ibid

<sup>258</sup> PLD 2003 Supreme Court 396

Muhammad Amjad v The State<sup>259</sup> Mst. Najam-un-Nisa v Judge, Special Court constituted under Anti-Terrorism Act, 1997<sup>260</sup> Abdul Ghafoor Bhatti v Muhammad Saleem and others<sup>261</sup> Muhammad Farooq v Ibrar and 5 others<sup>262</sup>, Azizullah and another v The State and another<sup>263</sup>, Mirza Shaukat Baig and others v Shahid Jamil and others<sup>264</sup>, so in year 2007 Supreme Court of Pakistan also convicted accused in Ranjha vs State: 2007 SCMR 455 (a case of murder of Four persons on previous enmity) Fateh Muhammad vs State: 2007 SCMR 1819 (a case of Murder of wife case of personal vendetta and Ghulam Husain Soomro Vs The State: PLD 2007 SC 71 (a case of ransom) on the basis of consequences based theory although these cases were of personal vendetta.

In year 2008 two cases came to surface on this core issue first was Muhammad Idrees and others v The State<sup>265</sup> in which when the complainant along with one Riaz was on his way back home, on a bicycle, four persons two of whom were armed with pistols.30 bore, the third one with a shotgun and the fourth was empty handed, after snatching the culprits tried to tie their hands at their back, Riaz, having found an opportunity, grappled with one of the culprits, and tried to overpower him, whereupon the rest of the culprits resorted to firing causing injuries to both Riaz and Shakeel, the court after making observation there was no element of fear and insecurity in public nor any section.

“on the face of the record, it was not established that the acts which were done by the accused had created sense of fear or insecurity in public at large and, nor any section of public or any sect, as the occurrence had taken place at night on a bank of canal and same was not be

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<sup>259</sup> PLD 2003 Supreme Court 704

<sup>260</sup> 2003 SCMR 1323

<sup>261</sup> 2003 SCMR 1934

<sup>262</sup> PLD 2004 Supreme Court 917

<sup>263</sup> 2005 SCMR 802

<sup>264</sup> PLD 2005 Supreme Court 530

<sup>265</sup> Muhammad Idrees and others v The State: 2008 SCMR 1544

termed as a public place, therefore, in our view, section 7 of the Anti-Terrorism Act, 1997, was not attracted in the instant case.”<sup>266</sup>

second case was of Tariq Mahmood v State<sup>267</sup> in this case accused who were armed with deadly weapons like rifle, repeater, 12 bore gun and rifles resembling Kalashnikov due to firing of the respondent-accused Shahid Mahmood lost his life while Sardar Asghar and Azram P.Ws. received injuries on the complainant side. Ghazanfar Shah, a passerby also received injuries. The motive behind the occurrence was that a feud existed between Shahid Mahmood deceased, Tahir Mahmood and the respondent-accused over a piece of land and an altercation took place between the parties, the application u/s 23 made by accused party and learned trial court transferred the case to ordinary jurisdiction court. The complainant filed petition against the said order which was dismissed by the Islamabad High Court, Islamabad now supreme court of Pakistan held that

“In our opinion, the case of the respondent accused, who have clean past, rests on a lower pedestal than that on terrorists and sectarian criminals who killed innocent persons either to weaken the State or to cause damage to the parties of the rival sect. The terrorist or the sectarian killers do not have any personal grudge or motive against the innocent victims. The instant case is clearly distinguishable as admittedly a feud existed between the parties over a piece of land prior to the occurrence.”<sup>268</sup>

So in year 2008, cases were decided on the ground that whether act was causing element of fear and insecurity among section of public or public at large and surprisingly in case Tariq Mahmood v State; 2008 SCMR 1631 due to firing of the accused Shahid Mahmood who have enmity with accused, lost his life while Sardar Asghar and Azram

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<sup>266</sup>Ibid

<sup>267</sup> Tariq Mahmood v State 2008 SCMR 1631

<sup>268</sup>Ibid

P.Ws. received injuries on the complainant side. Ghazanfar Shah, who was a passerby also received injuries there was no motive of passerby in this case but observation of court was that “The terrorist or the sectarian killers do not have any personal grudge or motive against the innocent victims although there was no question of sectarian killer or any act of such nature so another doctrine was introduced that terrorist have not any personal vendetta or grudge”<sup>269</sup>

In year 2009 Supreme court of Pakistan took this issue in Muhammad Yaqoob and others versus The State and Bashir Ahmed versus. Siddique ,PLD 2009 SC 11

In Muhammad Yaqoob and others v The State and others<sup>270</sup> As per facts of FIR.. in result of firing of accused, Muhammad Ashfaq, Jamil and Muhammad Sharif died instantly whereas, Javed Akhtar sustained injuries motive was complainant party was following proceeding abduction case against accused.

Honorable Supreme Court of Pakistan held that

“occurrence took place in Bazaar, opposite U.B.L. Branch, where three persons were caused to death and another sustained grievous injuries yet, it was not mentioned in FIR that effect that occurrence had struck terror or panic in the public and there was no evidence regarding effect of action that the incident had created sense of fear or insecurity in the public or any section of public or community or any sect, so section 7 of the Anti-Terrorism Act, 1997 was not attracted in the this case. Further it was held that It is important to note that in order to bring a specific act within the scope of section 7, it must be determined whether the act created a sense of fear or insecurity in the general public, any section of the general public, or any sect, or any community or whether the occurrence was simply the result of personal

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<sup>269</sup>Ibid

<sup>270</sup> 2009 SCMR 527

vendetta or prior enmity. Since in this case it has been cleared from evidence that motive behind the incident was previous strained relations between the parties and it has not been brought on record to show that object was also to strike terror or create sense of fear or insecurity in the general public or community or any sect thereof, therefore not to kill the deceased but, in our view section 7 of the Anti-Terrorism Act was not attracted”

and in *Bashir Ahmed v M. Siddique*<sup>271</sup> court also held in this case accused started firing at the complainant party, as a result of which, four persons namely Ameer Ali alias Bhutto, Jamil Ahmad, Muhammad Ashraf and Mushtaq Ahmad lost their lives and Mohammad Arfakhshand sustained serious injuries. Accused moved an application for transfer of the case from Anti-Terrorism Court to the Court of ordinary jurisdiction, which was dismissed vide order dated 7-3-2007. Feeling aggrieved, respondent Nos. 1 to 4 filed writ petition which was accepted by a Division Bench of Lahore High Court, Lahore and there were two questions firstly “Whether a particular act is an act of terrorism or not, the motivation, object design or purpose behind the said act is to be seen. secondly whether the said act has created a sense of fear and insecurity in the public or any section of the public or community or in any sect” Examining the situation at hand using the aforementioned criterion, it is clear on the surface that the claimed crime was committed as a result of prior animosity and personal revenge. A perusal of the record. Court further held that, “We believe that due to enmity between the parties, this section 6 of the act does not applied in the case, because neither the occurrence shows any element of fear and insecurity or any act relating to terrorism nor it was case of a sectarian matter because due to previous enmity this murders were committed between the two groups so the present case, does not have all the requirements which were laid down in the judgment titled as "Basharat

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<sup>271</sup> PLD 2009 Supreme Court 11

Ali v. Special Judge Anti-terrorism Court-II, Gujranwala (PLD 2004 Lah.199” wherein it was held that fear or insecurity must not be a by-product, fall out or unintended consequence of a private crime. As such, creation of fear and insecurity in the society is not itself terrorism unless the same is coupled with the motive. The gist of the citation is that act of terrorism desires to be determined from the yardstick and scale of motive and object, instead of its result or after effect. From the facts of case, the definition of terrorism is not attracted as the said offence has neither created any threat to coerce or intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society. Reference in this regard can be made on Ch. Bashir Ahmad v. Naveed Iqbal and 7 others (PLD 2001 SC 521), Muhammad Mushtaq v. Muhammad Ashiq and other (PLD 2002 SC 841) and Basharat Ali v. Special Judge, Anti-Terrorism Court-II, Gujranwala (PLD 2004 Lah. 199)”<sup>272</sup> in both case supreme court of Pakistan took principle that act was done on the ground of fear and insecurity. From year 2007 to 2011 Supreme Court hold principle that for terrorism act should be designed with object to cause fear and insecurity among large section of people. but in Supreme Court of Pakistan also convicted accused in Ranjha vs State: 2007 SCMR 455 (a case of murder of Four persons on previous enmity) Fateh Muhammad vs State: 2007 SCMR 1819 ( a case of Murder of wife case of personal vendetta and Ghulam Husain Soomro Vs The State: PLD 2007 SC 71 ( a case of ransom ) and Abdul Rehman vs State: 2010 SCMR 1758 on the basis of consequences based theory although cases were of personal vendetta but accused were convicted.

However in 2012 in Ahmad Jan v Nasrullah and others<sup>273</sup> deciding appeal on 21<sup>st</sup> of September 2011 with facts that Four accused one armed with pistol, one with knife and remaining with

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<sup>272</sup>Bashir Ahmed v M. Siddique PLD 2009 Supreme Court 11

<sup>273</sup> 2012 SCMR 59

sticks attacked complainant party in consequence of which one person died and one received injuries and the case was transferred to Special Court of Anti-Terrorism for trial. The supreme Court of Pakistan. Judges comprising of Tassaduq Hussain Jilani, Mahmood Akhtar Shahid Siddiqui and Asif Saeed Khan Khosa, JJ held that

“The motive for the occurrence is enmity inter se the parties on account of some previous murders. In this view of the matter, we are of the opinion that since motive was enmity inter se the parties, the application of section 7 of the Act, which primarily requires the spread of sense of insecurity and fear in the common mind is lacking in the present case. The occurrence neither reflects any act of terrorism nor it was a sectarian matter instead the murders in question were committed owing to previous enmity between the two groups.”<sup>274</sup>

So this tenure was based upon designed based approach and held that whether act was designed in the light of section 6(2)(b) and 6(2)(c) of anti-terrorism act,1997.

However in 2010 and 2011 Supreme Court Pakistan also convicted accused on the basis of consequences and effect based theory in Abdul Rehman vs State: 2010 SCMR 1758 and in State Vs Abdul Khaliq ; PLD 2011 SC 554 ; Khan Muhammad vs state: 2011 SCMR 705 , Junaid Rehman vs State: PLD 2011 SC 1135. So we can see different approaches of Supreme Court of Pakistan.

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<sup>274</sup>Ahmad Jan v Nasrullah and others 2012 SCMR 59



### **3.5 CUMULATIVE EFFECT AND DESIGNED BASED APPROACH FROM YEAR 2012 TO 2019**

But in year 2012 to 2014 law of land was laid down in light of cases Nazeer Ahmed versus Nooruddin, 2012 SCMR 517 and Shahid Zafar versus The State, supreme court of Pakistan again adopted approach of cumulative effect of action whether it is creating element of fear and insecurity. In Nazeer Ahmed and others v Nooruddin and another<sup>275</sup> court held that “We have perused the record. The learned High Court has examined the material at length and has rightly concluded that the act of the petitioners created sense of insecurity amongst the villagers and did destabilize the public at large and, therefore, attracts the provisions of section 6 of the Anti-Terrorism Act”. The learned council of accused for his arguments has relied upon Mohabat Ali versus State as well as Bashir Ahmed v. Muhammad Siddiq, were having different circumstances. It was further held that “Neither the motive nor intent for commission of the offence is relevant for the purpose of conferring jurisdiction on the Anti-Terrorism Court. It is the act which is designed to create sense of insecurity and or to destabilize the public at large, which attract the provisions of section 6 of the AT Act, which in the case in hand was designed to create sense of insecurity amongst the co-villagers.<sup>276</sup>” the Supreme Court held in another case Shahid Zafar and 3 others v The State<sup>277</sup> facts of case were Sarfraz, complainant's brother had a quarrel with someone in Shaheed Benazir Bhutto Park where police and rangers personnel were available. He then went to Police Station Boat Basin where S.I.P. Zulfiqar Ali duty officer informed him that a young person had been fired at by the

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<sup>275</sup> Nazeer Ahmed and others v Nooruddin and another :2012 SCMR 517

<sup>276</sup> Nazeer Ahmed and others v Nooruddin and another 2012 SCMR 517)

<sup>277</sup> Shahid Zafar and 3 others v The State PLD 2014 Supreme Court 809)

rangers in a quarrel at the park which resulted in an injury and he had been taken to Jinnah Hospital. The complainant therefore went to the Jinnah Hospital and found his brother Sarfraz lying dead despite learned Advocate Supreme Court's contention that the incident could not be defined as an act of terrorism, judges of supreme court of Pakistan Mr. Sarmad Jalal Osmany, Gulzar Ahmed and Muhammad Ather Saeed, JJ held

“we are quite clear in our minds that such a gruesome murder at the hands of a law enforcing agency would certainly create a sense of terror, insecurity and panic in the minds and hearts of those who were available at the scene and the entire public who had watched this DVD on air. In this regard a reference may be made to the definition of terrorism in Section 6(1)(b) of the Anti-Terrorism Act according to which this is the use or threat of action where the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society. In our opinion therefore such definition can be bifurcated into two i.e. where the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or where it creates a sense of fear or insecurity in society, Further held that Although the offence under consideration may not have been designed to coerce and intimidate or overawe the Government or a section of the public or community or sect but it certainly created a sense of fear or insecurity in the society, What could be a more grievous and heinous crime than to shoot an unarmed young boy who was begging for his life and thereafter let him bleed to death despite his pleading that he should be taken to the hospital. This certainly did create a sense of fear and insecurity in the public at large and hence we are of the opinion that the

appellants were correctly charged, tried, convicted and sentenced under Section 302(b), P.P.C. and section 7(a) of the Anti-Terrorism Act, 1997”<sup>278</sup>

So in this there was no motive or any designed of part of accused person but cumulative effect of action was falling case in ambit of terrorism. Other cases in which conviction were given on the basis of consequences of effect were Zeeshan Afzal Alias Shani vs State; 2013 SCMR 1602 ,Hakim Khan vs State; 2013 SCMR 777, Hamid Mahmood vs State; 2013 SCMR 1314 , Muhammad Nawaz vs State; PLD 2014 SC 383, Shahid Zafar vs State: PLD 2014 SC 809,Zafar Iqbal vs State PLD 2015 SC 307, Abdul Haq vs State;2015 SCMR 1326, Nasir Mehmood vs State; 2015 SCMR 423,Dadullah vs State; 2015 SCMR 856

But in year 2016 lot of developments were made by court while observing Malik Muhammad Mumtaz Qadri v The State and others, Khuda-e-Noor versus State, and Sagheer versus The State, Shaukat Ali versus Haji Jan Muhammad were decided by supreme court of Pakistan on the basis designed based approach and while in Kashif Ali v. The Judge, PLD 2016 SC 951 and Shahbaz Khan @ Tippu versus Special Judge ATC, (PLD 2016 SC 1) and Kashif Ali v. Judge ATC (PLD 2016 SC 951) court adopted effect based approach or cumulative effect of action approach In 2016 “Shahbaz @ Tippu versus. Judge ATC”<sup>279</sup> first case was reported in year 2016 and according to facts accused made indiscriminate firing and due to this firing Muhammad Umer along with three brothers namely Rafaqat Akram, and Ali were murdered while two person who were cousins namely Kashif and Kamran were injured and husband Saira Bibi namely, Muhammad Jahangir, was also murdered in this attack. In this case Anwar Zaheer Jamali, C J, Mushir Alam and Umar Ata Bandial, JJ held

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<sup>278</sup>Shahid Zafar and 3 others v The State (PLD 2014 Supreme Court 809

<sup>279</sup> Shahbaz Khan @ Tippu v. Special Judge Anti-Terrorism Court; PLD 2016 Supreme Court 1

“Section 6 of ATA states that to constitute the offence of terrorism under section 6(2) there is need to element of designed or motive as mentioned in Section 6(1)(b) and that is act should intimidate or overawe the public secondly to create a element of fear and insecurity in public so, secondly, that action is committed with design, or intention and mens rea mentioned in section and thirdly, its impact should create element of fear and insecurity”<sup>280</sup> Element of Brutal Killing was also discussed in this judgement and Court also held that “There is little question that the violently five persons murdered on a street of public place so this action would have caused panic, anxiety, as well as insecurity among the neighbouring inhabitants, but because of family dispute among the parties so element of designed mentioned in section 6 is absent in the present case.”<sup>281</sup>. “The next question before the Honorable supreme court regarding murder of Mr. Salman Taseer, who was at time of murder was Governor of the Province of the Punjab, whether act of accused is falling under ATA or not because the mens rea for the offence should have nexus with 6(1)(b) or (c) of ATA and on other sides . Malik Muhammad Mumtaz Qadri who was accused made fire shorts at Mr. Salman Taseer and caused his death secondly motive of occurrence was as mentioned in statement u/s 342 Cr.P.C that he committed this murder of Mr. Salman Taseer for lesson "a lesson for all the apostates, as finally they have to meet the same fate" That statement of accused was clear that he wanted to punish Salman for blasphemy, privately

It was held that “In these circumstances we have entertained no manner of doubt that the action of the appellant and the intention, design or purpose behind such action fully attracted the

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<sup>280</sup> Ibid

<sup>281</sup> Ibid

definition of terrorism contained in section 6 of the Anti-Terrorism Act, 1997 and, therefore, he was correctly and justifiably punished by the trial court under section 7(a) of the said Act for committing the offence of terrorism. In paragraph No. 44 of the impugned judgment the Islamabad High Court, Islamabad had set aside the appellant's conviction and sentence recorded by the trial court under section 7(a) of the Anti-Terrorism Act, 1997 on the sole ground that sufficient evidence had not been brought on the record by the prosecution to establish that the murder committed by the appellant had in fact created any sense of fear or insecurity in the society<sup>282</sup>. So order of acquittal in ATA from Islamabad High Court set aside and convicted under ATA offence”<sup>283</sup> Similarly in Khuda-e-Noor versus State “The crucial question involved in this appeal is as to murder was committed as honour killing and question raised whether it was case of terrorism or not, the court held that

“The case in hand was a case of a private motive set up in the FIR and during the trial the motive set up in the FIR was changed by the prosecution and an element of honour killing was introduced but even that did not change the character of the offence which was nothing but a private offence committed in the privacy of a home with no design or purpose contemplated by section 6(1)(b) or (c) of the Anti-Terrorism Act, 1997 and this case has not all ingredient of case.”<sup>284</sup>

In year 2016, The supreme court of Pakistan while deciding Sagheer versus The State and others give his judgement after

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<sup>282</sup> Ibid

<sup>283</sup> Malik Muhammad Mumtaz Qadri v The State and others PLD 2016 Supreme Court 17

<sup>284</sup> Khuda-e-Noor v The State PLD 2016 Supreme Court 195

“Court has observed as follows:

“The averments of FIR are silent regarding the financial status and source of income of the complainant against which accused have been demanding Bhatta. Complainant has also not disclosed the specific dates, times and places of demanding Bhatta by accused persons nor any such evidence was produced before the Investigating Officer to prima facie establish such allegations. In absence of any tangible material, mere allegations of demanding Bhatta do not attract section 6(2)(k) of Anti-Terrorism Act, 1997, in the present case nor said section was mentioned in the FIR and Challan. Perusal of Challan reflects that Investigating Officer had made a request to the Anti-Terrorism Court for return of FIR and other documents so that Challan may be submitted before the ordinary Court of law as no case under the provisions of Anti-Terrorism Act, 1997 was made out, but his request was declined by the Anti-Terrorism Court vide order dated 09.06.2014, and cognizance was taken by the Court”<sup>285</sup>

Supreme court of Pakistan in case titled Ch. Shaukat Ali v Haji Jan Muhammad and others<sup>286</sup> held that

“In view of the discussion in Para 7 above and the report of police under section 173, Code of Criminal Procedure, prima facie it appears that altercation between the parties occurred all of a sudden when the procession of the complainant side on winning the election was passing in front of house of Haji Jan Muhammad accused and there was no prior 'object/design.' During the course of arguments, we have observed that basic premise of the arguments of learned counsel for the petitioner pivots around the judgment of a Five Member Bench of this Court in Kashif Ali v. The Judge, Anti-Terrorism Court No.II, Lahore and others (PLD 2016 SC 951), wherein the issue of jurisdiction has been dealt with. It is appropriate to

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<sup>285</sup>Sagheer Ahmed v The State and others, 2016 SCMR 1754.

<sup>286</sup> Ch. Shaukat Ali v Haji Jan Muhammad 2016 SCMR 533:

reproduce the relevant portion of Para 12 of the said judgment for ready reference, In order to determine whether an offence falls within the ambit of Section 6 of the Act, it would be essential to have a glance over the allegations levelled in the FIR, the material collected by the investigating agency and the surrounding circumstances, depicting the commission of offence. Whether a particular act is an act of terrorism or not, the motivation, object, design or purpose behind the said Act has to be seen, We have gone through the allegations leveled in the FIR, the material collected by the investigating agency during course of investigation and other surrounding circumstances as discussed above and are of the considered view that present case is not triable by a Court established under the provisions of Anti-Terrorism Act, 1997.” Similarly in *Waris Ali and 5 others v The State*<sup>287</sup> court held that “Mens rea is an essential component of any crime, and it must be addressed by the courts of law but in situations of terrorism or terrorist acts, mens rea takes on a double meaning, whether mens rea is to creating an element of chaos fear or, widespread element of fear and insecurity in the public”<sup>288</sup>

“The last aspect of this case highlighted in the leave granting order is as to whether the courts below were justified in convicting and sentencing the appellants for an offence under section 7(a) of the Anti-Terrorism Act, 1997 or not. We note in that context that a mere firing at one's personal enemy in the backdrop of a private vendetta or design does not ipso facto bring the case within the purview of section 6 of the Anti-Terrorism Act, 1997 so as to brand the action as terrorism. There was no 'design' or 'object' contemplated by section 6 of the Anti-Terrorism Act, 1997 involved in the case in hand. We further note that by virtue of item No. 4(ii) of the Third Schedule to the Anti-Terrorism Act, 1997 a case becomes triable by an Anti-Terrorism Court if use of firearms or explosives, etc. in a mosque, imambargah, church, temple or any

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<sup>287</sup> *Waris Ali and 5 others v The State* 2017 SCMR 1572

<sup>288</sup> *Ibid*

other place of worship is involved in the case. That entry in the Third Schedule only makes such a case triable by an Anti-Terrorism Court but such a case does not ipso facto become a case of terrorism for the purposes of recording convictions and sentences under section 6 read with section 7 of the Anti-Terrorism Act, 1997. The case in hand had, thus, rightly been tried by an Anti-Terrorism Court but the said Court could not have convicted and sentenced the appellants for an offence under section 7(a) of the Anti-Terrorism Act, 1997 as it had separately convicted and sentenced the appellants for the offences of murder, etc. committed as ordinary crimes.” Other cases in which Supreme Court of Pakistan convicted the accused on the basis of consequences of effect. Kareem Nawaz Khan Vs The State through PGP;2016 SCMR 291 Javed Iqbal vs State: 2016 SCMR 787, Nasir Iqbal @ Nasra vs State; 2016 SCMR 2152 In year 2017 the supreme court held In Abdul Nabi v The state, that provisions of ATC are not applicable if there is no design as mentioned in object clause, because in this case there is no element of terror.<sup>289</sup>

The supreme court also stated in Province of Punjab through Secretary Punjab Public Prosecution Department and another v The State PLD 2018 SC 178 that “The preamble of the Act, 1997 clearly indicates that the Act, 1997 was promulgated for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences. So, in the cases of the terrorism, the mens-rea should be with an object to accomplish the act of terrorism and carrying out terrorist activities to overawe the state, the state institutions, the public at large, destruction of public and private properties, make assault on the law enforcing agency and even at the public at large in sectarian matters. The ultimate object and purpose of such act is to terrorize the society but in ordinary crimes committed due to personal vendetta or enmity, such elements

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<sup>289</sup>Abdul Nabi v The State (2017 SCMR 335)



are always missing so the crime committed only due to personal revenge cannot be dragged into the fold of terrorism and terrorist activities”<sup>290</sup> similar view was in the case of Mehram Ali case passed by a full bench (five members bench) of this Court. After the amendment The word "design" is to see that whether act is designed to create element of fear or insecurity in public at large “The Courts are required to see whether the terrorist act was such that it would have the tendency to create the sense of fear or insecurity in the mind of general public as well as psychological impact created in the mind of the society. The Courts can form opinion after going through the facts, circumstances and material so collected by the police in the case under discussion because the facts are varies from case to case”<sup>291</sup> similarly in Dilawar Mehmood alias Dulli and another v The State court held “During the course of arguments, learned counsel for the petitioner vehemently contended that the learned Courts below have also convicted the petitioner under the provisions of AntiTerrorism Act, 1997 without advertng to the fact that the said provisions are not attracted in the circumstances of the present case. Therefore, we have undertaken a detailed scrutiny of the evidence available on record in order to see whether the provisions of the Anti-Terrorism Act, 1997 are attracted to the present case or not. The occurrence in this case took place at cattle Market, Kundian. It is alleged by the prosecution that petitioner along with his co-accused Muhammad Arshad (P.O.) armed with Kalashnikovs came at the spot and made straight firing at deceased Muhammad Afzal, as a result whereof the latter succumbed to the injuries. The motive behind the occurrence as stated in the FIR was previous enmity. Having a look at the time of occurrence, place of occurrence, the mode and manner of the occurrence and the alleged motive between the parties coupled with other circumstances, we are of the considered view that provisions of Anti-Terrorism Act,

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<sup>290</sup> Province of Punjab through Secretary Punjab Public Prosecution Department and another v The State PLD 2018 Supreme Court 178

<sup>291</sup>Ibid

1997 are not attracted in this case and the learned Courts below have erred in law in convicting/sentencing the petitioner under the said provisions of the Anti-Terrorism Act, 1997”<sup>292</sup>

Supreme court held In Kashif Ali v The Judge, Anti-Terrorism, Court No.II, Lahore and others , "The phrase design was replaced with the only intent that if an act is intended to bring element of fear or insecurity in society or public, the Anti-Terrorism Court shall have jurisdiction. The term "design" is defined as "a plan or scheme formed in mind and planned for eventual implementation" in the preceding definition. To see if an offence is covered by Section 6 of the Act so section 6 is not applicable in this case<sup>293</sup>

The supreme court of Pakistan after analyzing all judgement of Supreme Court of Pakistan in Ghulam Hussin case<sup>294</sup> held that action should have nexus with object of Anti-terrorism act, Chief Justice Mr. Asif Saeed Khosa who authored this judgement and headed a larger bench of Supreme court Comprising of seven judged discussed terrorism cases and its jurisdictions he has already established his view in 2004 on the same subject in “Basharat Ali vs. Special Judge, Anti-Terrorism Court II, Gujranwala,PLD 2004 Lah 199 and he almost reproduced his judgement. Although he discussed judgements from 1998 to 2018 along with legal provision and make his opinion that act of terrorism when it has nexus with object mentioned in 6(1)(b) and 6(1)(c) that is action should be designed in such manner that it causes element of fear and insecurity, among the Public, court also discussed element of *mens rea* as guilty mind and *actus-reus* as guilty act to constitute an offence. In this judgement court is focusing on mens-rea based approach rather its effect-based approach.

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<sup>292</sup>Dilawar Mehmood alias Dulli and another v The State,2018 SCMR 593

<sup>293</sup> Ibid

<sup>294</sup> Ghulam Hussain vs State PLD 2020 Supreme Court 61

In Ganda Singh cases in district Kasur 17 sodomy cases were tried under ordinary laws while 14 cases were tried under ATC courts.<sup>295</sup> Recently Jahangir Khan vs Khalid Latif<sup>296</sup> It was case of Kidnapping or abduction for ransom, accused who disguised in police uniforms ostensibly not only arrested and handcuffed the respondent, they kidnapped person and his wife however they were rescued by Highway Patrolling Police, accused moved application for transfer of case which was dismissed then he approached to High Court and high court decided that let the trial court to decide fate of case after recording statements of the prosecution witnesses and supreme Court hold that “View taken by the High Court did not suffer from any jurisdictional error or flaw and, thus, called for no interference” so again there was question what was need of section 23 if High Court and Supreme Court are not deciding fate of case.

The Supreme Court of Pakistan (SCP) rendered a landmark judgment in case titled Ghulam Hussain vs State held that the parliament develop a new and comprehensive legal definition of terrorism<sup>297</sup> It's not hard to envision that the definition could encompass numerous actions already regulated by standard criminal law. The SCP rightly points out the ongoing disagreement within the highest court over the definition of terrorism. Various Supreme Court benches have offered conflicting interpretations, leading to inconsistency in its application<sup>298</sup> The ATA definition apparently covers all the forms and aspects of crimes that could be committed with terrorism intentions. The words ‘grievous’ and ‘serious’ are used in the definitions, without explaining their scope. The focus of the definition is too broad, and the wide range of offenses provided in the definition is problematic<sup>299</sup> Term ‘heinous offenses’,

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<sup>295</sup> Data received from PGP office.

<sup>296</sup> 2021 SCMR 136

<sup>297</sup> Ghulam Hussain vs State PLD 2020 Supreme Court 61

<sup>298</sup> Defining Terrorism in Pakistan The Supreme Court’s Judgment – A way forward for Parliament Muhammad Amir Rana friedrich Ebert Stiftung 1 available at <https://pakistan.fes.de/e/defining-terrorism-in-pakistan>

<sup>299</sup> IBID see also Asad Hashim, Exclusive Pakistani Taliban Down but bot out’ Aljaazeera April 3,2020

which are not otherwise defined in the legislation, have widened the application of the ATA to include cases other than terrorism.’<sup>20</sup> In regular homicide cases, compromises are common under PPC sections 309 or 310, but not under ATA. Victims' heirs aim to invoke ATA provisions in police reports to prevent culprits from escaping penalties. To address jurisdictional issues, it's suggested that anti-terrorism laws shouldn't be isolated from general criminal matters. Instead, provisions concerning anti-terrorism should be integrated into the PPC under a distinct chapter<sup>300</sup> The SCP judgment notes that the current definition of 'terrorism' in Section 6 of the Anti-Terrorism Act, 1997 is overly broad, encompassing actions unrelated to the recognized concept of terrorism. Additionally, the inclusion of unrelated heinous offenses in the Act's preamble and third schedule burdens Anti-Terrorism Courts, causing delays in trying actual terrorism cases.<sup>301</sup> The SCP judgment advises Parliament to align the new definition of terrorism with international perspectives, emphasizing violent actions targeting political, ideological, or religious aims. However, it cautions against categorizing all armed forces as terrorist actors, despite their inherent purpose of achieving such objectives through force<sup>302</sup>Parliament will have to give serious consideration to all these aspects to prevent potential misuse of the new definition. Some of the key things that need urgent addressing are listed below.

“For precision, Parliament must craft a terrorism definition meeting domestic legal and political needs while aligning with minimum universal standards outlined in United Nations resolutions and conventions.. Parliament should define terms like violence,

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<sup>300</sup> Ibid

<sup>301</sup> Ghulam Hussain vs State PLD 2020 Supreme Court 61

<sup>302</sup> Defining Terrorism in Pakistan The Supreme Court’s Judgment – A way forward for Parliament Muhammad Amir Rana friedrich Ebert Stiftung 1 accessed 17 March 2024 <https://pakistan.fes.de/e/defining-terrorism-in-pakistan>

political aims, deliberate intent, civilian targeting, order disruption, and fear induction by non-state actors locally and universally to prevent broad interpretations and political misuse of terrorism. To build political consensus, the parliament should clearly define the other forms of political violence and amend existing constitutional clauses, which widen the scope of treason to crush political dissent. A mere definition of terrorism won't resolve all ambiguities surrounding security issues in Pakistan. Parliament should consider a holistic approach by developing a convention on terrorism. This would offer guidelines for policymakers, political parties, media, and civil society, addressing terrorism-related policies and narratives. Such a convention could clarify the state's stance on legitimate struggles against foreign occupation, aggression, or domination, potentially exempting actions in these struggles from criminal proceedings. International precedents like the Arab Convention for the Suppression of Terrorism demonstrate such provisions, safeguarding against acts jeopardizing territorial integrity..the convention can also clearly define terrorism perpetrated by the state and condemn all of its forms and manifestations.The parliament and its standing committees on Interior, Law and Justice, Human Rights, and Religious Affairs need to review existing mechanisms related to terrorism and extremism, with the aim to afford clarity in defining terrorism.<sup>303</sup>

Data received from Punjab Criminal Prosecution Service<sup>304</sup> is indicating that the large number of cases every year are transferring tom ordinary court to terrorism

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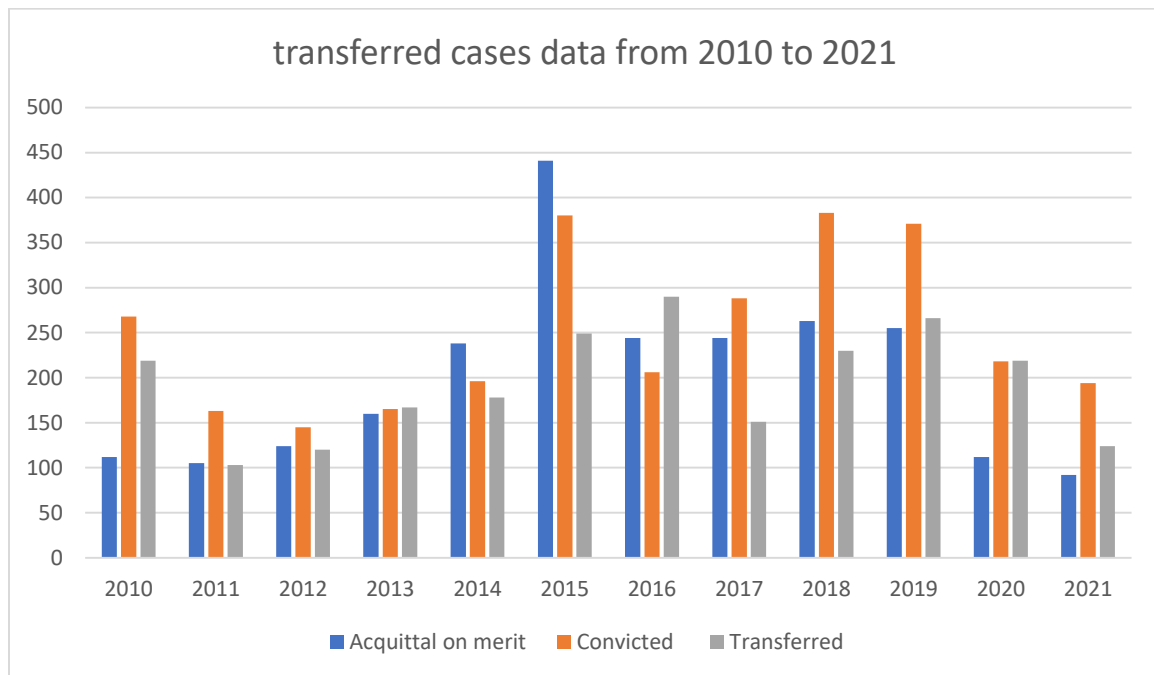
<sup>303</sup> Ibid

<sup>304</sup> Data received from Punjab Criminal Prosecution service in year 2019

courts and indicating year wise punishments including death sentences and life imprisonments on the basis of both approaches as discussed above

Year	Cases registered under ATC	Death sentences awarded by trial court	Other imprisonment	Cases transferred
2008	1185	49	149	
2009	1053	11	154	
2010	885	28	240	219
2011	671	16	147	103
2012	729	64	81	120
2013	659	48	117	167
2014	1238	47	149	178
2015	1835	74	306	249
2016	1397	26	180	290
2017	1127	20	268	151
2018 till august	877	19	254	230

Different kind of approaches followed by the trial courts of anti-terrorim in Punjab since 1998 to onward and convicting accused persons on the basis of consequences and designed based approaches and unable to differentiate how many were convicted on the basis of designed based theory and consequences based theory in Anti-terrorim however we can see large number of cases which were transferring form ATC to ordinary court.



### 3.6 CONCLUSION.

There were different phases of legislation for heinous offences in Pakistan. The first phase was dealing with insurgencies and political violence which was combated through special enactments i.e. The West Punjab Safety Act, 1949, The Public Representative Officer (Disqualification Act), 1949, The Security of Pakistan Act, 1952, along with the West Pakistan Maintenance of Public Order, ordinance 1960. The Suppression of Terrorist Activities (Special Courts) Act” of 1975. The second Phase is dealing with sectarianism in

Pakistan, In 1997, The Suppression of Terrorist Activities (Special Courts) Act” of 1975 was replaced by Anti-Terrorism Act, 1997 while in third phase, amendments were made in Anti-Terrorism Act 1997 to counter with new surge of terrorists’ activities. The new amendments in Anti-Terrorism Act, 1997 started another era of conflict regarding definition of terrorism divideing it into three different phases.. A new tug of war started between the benches of The Supreme Court of Pakistan. Since 1998 to 2019, The Supreme Court of Pakistan on the point of jurisdiction and definition of Anti- terrorism cases, remained divided into cumulative effect-based approach and design- based approaches. Actus reus-based approach or effect-based means that the commission of the offense was of such a nature that caused an immediate sense of fear and insecurity among the public regardless of any motive or design. On the other hand, the designed-based approach, means that the commission of the offense was designed in such a manner as to cause fear and insecurity among the public. Phase one is from 1997 to 2001 where legislation of anti-terrorism was developing and initially there was no definition of terrorism in enactment. Later on, definition of terrorism was made part of the Act through amendments., Second Phase started form 2002 to 2007 which was reflecting effect based or consequences-based theory in which the supreme Court of Pakistan was determining interpretation of definition of terrorism on the basis of consequences of act whether it is causing sense of fear and insecurity among the people. and Phase three from 2011 to 2020 and this phase was most critical phase where there was tug of war between the judges of The Supreme Court of Pakistan while deciding Jurisdiction of ATC Courts. In 2020, The Supreme Court of Pakistan has again constituted Bench to decide jurisdiction anti-terrorism cases again. We have observed that from 1998 to 2007, The Supreme Court of Pakistan in Syed Munawar Hassan, Secretary-General v Federation of Pakistan through Secretary, Law, Justice and Parliamentary



Affairs<sup>305</sup> Ch. Bashir Ahmad v Naveed Iqbal and 7 others<sup>306</sup> Muhammad Ajmal v The State<sup>307</sup>, Muhammad Mushtaq v Muhammad Ashiq and others<sup>308</sup> Mst. Raheela Nasreen v The State and another<sup>309</sup> Muhammad Amin v The State<sup>310</sup> Zia Ullah v Special Judge, Anti-Terrorist Court, Faisalabad and 7 others<sup>311</sup> State through Advocate-General, N.-W.F.P., Peshawar v Muhammad Shafiq,<sup>312</sup> Naeem Akhtar and others v The State and others<sup>313</sup> Sh. Muhammad Amjad v The State<sup>314</sup> Mst. Najam-un-Nisa v Judge, Special Court constituted under Anti-Terrorism Act, 1997<sup>315</sup> Abdul Ghafoor Bhatti v Muhammad Saleem and others<sup>316</sup> Muhammad Farooq v Ibrar and 5 others<sup>317</sup>, Azizullah and another v The State and another<sup>318</sup>, Mirza Shaukat Baig and others v Shahid Jamil and others,<sup>319</sup> Zahid Imran and others v The State and others<sup>320</sup> adopted cumulative effect based approach and observe that whether action was striking terror or not because In 1999, Anti-terrorism (second Amendment) ordinance, 1999 (Ordinance No. XIII of 1999) was introduced and for determination of terrorism effect of his action was only key criteria and in 2004 there was only one judgement of Lahore High Court Lahore as Basharat case however from 2007 to 2011 Supreme court of Pakistan focused on designed based approach and from 2011 to 2020 there was mixed approach of Supreme Court due to which large number of accused were acquitted.

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<sup>305</sup> PLD 2000 Supreme Court 111

<sup>306</sup> PLD 2001 Supreme Court 521

<sup>307</sup> 2000 SCMR 1682

<sup>308</sup> PLD 2002 Supreme Court 841

<sup>309</sup> 2002 SCMR 908

<sup>310</sup> 2002 SCMR 1017

<sup>311</sup> 2002 SCMR 1225

<sup>312</sup> PLD 2003 Supreme Court 224

<sup>313</sup> PLD 2003 Supreme Court 396

<sup>314</sup> PLD 2003 Supreme Court 704

<sup>315</sup> 2003 SCMR 1323

<sup>316</sup> 2003 SCMR 1934

<sup>317</sup> PLD 2004 Supreme Court 917

<sup>318</sup> 2005 SCMR 802

<sup>319</sup> PLD 2005 Supreme Court 530

<sup>320</sup> PLD 2006 Supreme Court 109

## CHAPTER FOUR

### INTERNATIONAL APPROACHES TOWARDS THE LEGISLATION OF TERRORISM

#### 4.1 INTRODUCTION;

It is true that different countries have made different legislations regarding terrorism according to their local requirements. Today, the concept of terrorism is evolving at global levels with new dimensions, like Cyber Terrorism and Terrorism Financing. Now, it is need of the hour to differentiate traditional warfare from armed conflicts. Once, at International level classical warfare was more serious threat because of many non-state actors like groups of militants and organizations which were part of it and they were also beyond control of states.<sup>321</sup> However Today's terrorist and their activities are more complex than ever. Terrorist groups have been dispersed on different areas and conducting their activities in expanded form.<sup>322</sup> So at international level each country is altering its national laws as well as policies at domestic and International level.<sup>323</sup> The word terrorism was defined in 1934 by The League of Nations. The Concept of terrorism has become more complex in twentieth century. Many changes were brought in world 'politic' by disintegration of old colonial empires and the stalemate between the two super powers. Initially, there was only element political involvement. Since 1936 to

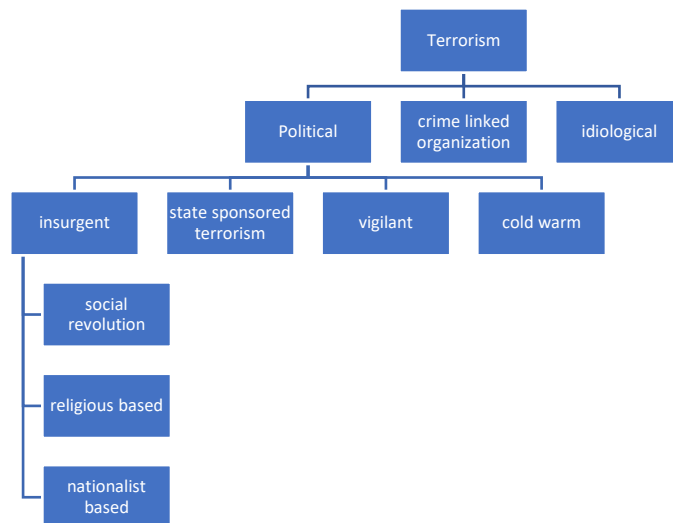
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<sup>321</sup> , M. Cherif Bassiouni, "The New Wars and the Crisis of Compliance with the Law of Armed Conflict by Non-State Actors 98(3) see also A Theory of Asymmetric Warfare: Normative, Legal and Conceptual Issues (2019)1

<sup>322</sup> "Negative effects of terrorism on the enjoyment of human rights" report of the Human Rights Council Advisory Committee available at <https://www.ohchr.org> > A\_HRC\_AC\_24\_CRP1

<sup>323</sup> Alejandro Chehtman, "A Theory of Asymmetric Warfare": Normative, Legal and Conceptual Issues (2019)

1986, more than hundred definitions of terrorism were provided.<sup>324</sup> Different theories and approaches were adopted in world while defining legal definition of terrorism and some were giving action should give effect of terror. International community made number of efforts for defining of terrorism. There were number of instruments which were relating to prevention of international terrorism,<sup>325</sup> The term ‘Terrorism’ was first time introduced at The Third Conference of International Association of Penal Laws at Brussels in 1930.<sup>326</sup> Today terrorism is travelling from concept of Air Line Hijacking, Maritime Piracy, Politically Motivated Violence, and State Sponsored Terrorism to modern hard core terrorism.<sup>327</sup> Furthermore, Power Gaining Economy is accelerating the modern terrorism in the world. Modern terrorism is the result of cold war policies making it an instrument of foreign policy<sup>328</sup> and due to following topology it is difficult to define terrorism at international level.



<sup>324</sup> Alex Schmid, political terrorism; A research Guide to concept, theories, data basis and literature, Amsterdam, North Holland Pub,(1984).88

<sup>325</sup> Javier Ruperez “ The United Nations In The Fight Against Terrorism” 1 Accessed on January 01,2020 1 available at [https://www.un.org/sc/ctc/wp-content/uploads/2017/01/2006\\_01\\_26\\_cted\\_lecture.pdf](https://www.un.org/sc/ctc/wp-content/uploads/2017/01/2006_01_26_cted_lecture.pdf)

<sup>326</sup> Encyclopedia of international terrorism; Verinder Grover,(2002) 67

<sup>327</sup> Ibid, 113

<sup>328</sup> Terrorism as an instrument of foreign policy ; Kshitiji Prabha ; Indian defence review.

So different kind of terrorism using different techniques and methods for the terrorism. They are divided into small groups and used hand guns and grenades along with specialized weapon like car-bombs etc. they also used tactics of kidnaping, assassinations, bombing and ransom etc and their target are state symbols, political opponent and public at large and main concern is to create element of fear and insecurity or psychological coercion.

## **4.2 CONVENTION ON TERRORISM, BY LEAGUE OF NATIONS:**

In initial documents, League of Nations defined word terrorism in a treaty in 1934 and same was drafted during the Conference on Terrorism Repression, held at the League of Nations headquarters in Geneva.

Article 1 subclause 2 defined 'acts of terrorism' as

“in the present convention, the expression  
act of terrorism means *criminal act directed against a state  
and intended or calculated to create a state of terror* in the  
minds of particular persons or groups of persons for the  
general public”<sup>329</sup>

The agreement also defined what kind of anti-state activities were to be treated terrorism, such as assassinating public officials including heads of state and important state dignities or families them, or destroying public property. It required member governments to pass

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<sup>329</sup> Article 2 “With this object, each High Contracting Party should make the following acts criminal offences, whether they affect his own interests or those of another High Contracting Party in all cases where they are directed to the overthrow of a Government or an interruption in the working of public services or a disturbance in international relations, *by the use of violence or by the creation of a state of terror*— available at <https://www.legal-tools.org/doc/502186/pdf> last accessed on

legislation making such crimes extraditable offences in the event that one of its citizens committed a terrorist attack in another country.<sup>330</sup>

Article 2 of convention defined classification terrorist act conducted by the state against any other state if it is fulfilling requirement of section 1 of convention which is imposing condition that act should create state of fear among group of people.

“1) Any willful act which is causing death or grievous bodily harm or loss of liberty to:

- a) Any Heads of States, persons exercising the prerogatives of the head of the State, their hereditary or designated successors;
- b) The wives or husbands of the above-mentioned persons;
- c) Persons charged with public functions or holding public positions when the act is directed against them in their public capacity.

2. Willful destruction of, or damage to, public property or property devoted to a public purpose belonging to or subject to the authority of another High Contracting Party.

3. Any willful act calculated to endanger the lives of members of the public.

4. Any attempt to commit an offence falling within the foregoing provisions of the present article.

5. The manufacture, obtaining, possession, or supplying of arms, ammunition, explosives or harmful substances with the view to the commission in any country whatsoever of an offence falling within the present article.”<sup>331</sup>

In above mentioned definition there was only one element that was to create terror and it was directly against the state. Although the convention never came into being because it was not covering acts against civilians as they were not dealing or covering under this definition of terrorism rather it deals only acts against the state. However this definition of terrorism was

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<sup>330</sup> Convention for the Prevention and Punishment of Terrorism 11579/

<sup>331</sup> League Convention (1937). Convention for the Prevention and Punishment of Terrorism. Article 2 (1) available <https://www.legal-tools.org/doc/502186/pdf>

treated as ready reference by the United Nations and other member countries.<sup>332</sup> So in initial legislation the word expression 'Act of Terrorism' means actions against a state in which intention to cause or create terror in the section of persons.

Thomas M. Franck mentioned in "Preliminary Thoughts Towards an International Convention on Terrorism"<sup>333</sup> has mentioned that in "international penal instrument at the Third (Brussels) International Conference for the Unification of Penal Law" term "terrorism was introduced in (1930)<sup>334</sup>, And this conference was dealing only international terrorism. Since its inception at the end of the eighteenth century, the usual meaning of the word terrorism has evolved, and it has been understood variously depending on the many sorts of activities that were on the minds of people debating the matter at the time. Firstly, it applied to all kind of action which were designed to create fear and terror with consent of states or based upon policies of state, Terrorism is defined by the inflicting of terror, as seen by the word's etymology. This is not usually done to the immediate victims, who may be killed without notice, but the action must be such that it causes dread or anxiety among a specific community or large groups of people. The act must be visibly violent, and it is frequently used to draw public attention and pressure a government into doing a certain action. Endangering, threatening, or taking innocent human lives, as well as jeopardizing basic liberties, is one of the most effective ways to achieve that goal..<sup>335</sup> This definition was dealing element of international terrorism and not covering domestic terrorism because element of involvement of other state was present in it. It was difficult to define terrorism at international level due to different elements i.e perpetrators of

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<sup>332</sup> "The United Nations In The Fight Against Terrorism" Javier Ruperez (2006)2 available at [https://www.un.org/sc/ctc/wp-content/uploads/2017/01/2006\\_01\\_26\\_cted\\_lecture.pdf](https://www.un.org/sc/ctc/wp-content/uploads/2017/01/2006_01_26_cted_lecture.pdf)

<sup>333</sup> Thomas M. Franck "Preliminary Thoughts Towards an International Convention on Terrorism" by "The American Journal of International Law, Vol. 68, No. 1 (1974), 69,

<sup>334</sup> Available at <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/preliminary-thoughts-towards-an-international-convention-on-terrorism/979E75E889B11821A967405939968AFB>

<sup>335</sup> Ibid, 8

terrorist act, range of terrorist act, motive and victim targets and causes of terrorism so upon these elements there are serious difference among the international states and one of the basic obstacles in defining terrorism at international level.<sup>336</sup>

### 4.3 UNO AND DEFINITION OF TERRORISM

On issue of international terrorism report of ad hoc committees 28<sup>th</sup> session /A/9028 1973 of UN General Assembly was important document when member states worked on international terrorism and separate committees were established to analyze definition and measurements for the prevention of terrorism.<sup>337</sup> There was difficulty for the united nation to differentiate freedom fighter and terrorist and secondly state sponsored terrorism. The word “terrorism” was also defined in “The UN General Assembly Resolution, 49/60” which was adopted in year 1994, namely "Measures to Eliminate International Terrorism," describing terrorism:

*“Terrorism means “Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them”<sup>338</sup>*

This definition is again to some extent reflection of definition of terrorism as mentioned in League Convention 1937 however it was covering act against civilian or public also.

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<sup>336</sup> International Law: Surya P.Sharma world focus Volume ii no 2 ,2

<sup>337</sup> Terrorism and the united nation; kshitiji Prabha world foscus volume xx page no 1 see also Encyclopaedia of international terrorism; Verinder Grover,(2002) 108

<sup>338</sup>The UN General Assembly Resolution 49/60 (adopted on December 9, 1994, 1

According to this definition any act which is provoking element of terror in general Public. In this definition words ‘to provoke a state of terror in the general public, a group of persons’ clearly indicating that any action causing fear and insecurity among the people or general Public *is act of terrorism. it also includes* actions against state dignitaries, public property etc. Its preamble, was giving a strong message to the states which were directly involved in international terrorism. So keeping peace and security in society states has to suppress the act of international terrorism.<sup>339</sup> One of major issue that members of United Nations have no agreement on definition of terrorism, because one state is considering him terrorist while another state considering him as freedom fighter or Hero. A report on “measures to eliminate international terrorism”, so international community has to adopt international treaty or instrument on this issue, according to the Secretary-General of the United Nations, that present treaties does not cover different terrorist activities like terrorist bombings, funding or financing of terrorism, and mass destruction.<sup>340</sup>

#### **4.4 “THE ARAB CONVENTION FOR THE SUPPRESSION OF TERRORISM” 1998**

In Egypt, the Council comprising of Arab Ministers in “Arab Convention for the Suppression of Terrorism in 1998” met with purpose to define Terrorism as;

Terrorism Means:

“Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and creating panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking

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<sup>339</sup> Declaration on Measures to Eliminate International Terrorism, (1994),2

<sup>340</sup> Ibid



to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize national resources.”<sup>341</sup>

This definition was also based upon elements of creation of panic, fear by harming and jeopardize national resources and it also covers internal as well as external factors because it may be based upon ill motive of individual or group of person. So any act which is causing fear, panic or terror among the general public regardless its motive is terrorism. As mentioned in article 2(1) that Any act or threat of violence, whatever the motive or purposes behind this is creating fear in people and putting their lives in danger, or causing damage to public or private installations or property is terrorism. In “Arab Convention for the Suppression of Terrorism 1998” Article 2 was dealing nature of acts or classification of acts. Article 2 of The convention says about preventive measures should be taken by the each government. However resistance by people against foreign aggression, whether it armed resistance or self-determination, must not be considered act of terrorism. This rule does not apply to any conduct that jeopardises an Arab state's territorial integrity..

#### **4.5 RESOLUTION 1566 OF THE UNITED NATIONS SECURITY COUNCIL (2004)**

United Nations introduced a new definition of terrorism in Resolution 1566 of Security Council, which was more detailed than the previous definition which was defined in resolution of year 1994,

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<sup>341</sup>Article 2(2), The Arab Convention for the Suppression of Terrorism 1998, Accessed January 7, 2018 at [https://www.unodc.org/images/tldb-f/conv\\_arab\\_terrorism.en.pdf](https://www.unodc.org/images/tldb-f/conv_arab_terrorism.en.pdf).

‘Terrorism’ means

“that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature;”<sup>342</sup>

This definition was little broader as compare to above mentioned definitions. it is not only covering element of fear and terror but also describing the categories of actions like political, philosophical, ideological, racial, ethnic, religious or other similar nature. so initially it was covering elements of political nature. States were compelled to be parties of international treaties and protocols as soon as possible, whether or whether they are parties to regional agreements on the subject, according to the convention. It was also determined that Member States should work together completely and quickly to resolve all issues mentioned in comprehensive treaty on international terrorism including nuclear terrorism. it was also decided in resolution that there is need to strengthen international cooperation not only

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<sup>342</sup> Resolution 1566 (2004) “Adopted by the Security Council at its 505” 3rd meeting, on 8 October 2004, 2 declaration available at <https://www.un.org/ruleoflaw/files/n0454282.pdf>

international, but also regional as well as subregional organizations in this fight against terrorism and need to intensify their interaction with the United Nations. The reason behind this convention that in September 2004 after terrorist attack on Beslan in Russia, where 350 persons, including 11 of them members of the Russian security forces, and 172 children who were students at the school were killed and injured while its purpose was to create a state of fear in the country, so the United Nations introduced this new definition which includes death, injury and hostage taking which create a state of terror.

#### **4.6 RESOLUTION 1624 OF THE UNITED NATIONS SECURITY COUNCIL (2005)**

In year 2005, after 7/7, attack in London in which 56 persons died and almost 700 injured, the United Kingdom brought the matter in the United Nations through resolution 1624 (2005) at the World Summit. All the participants condemn such a brutal attack and terrorism was redefined as any kind of act committed by any person irrespective of their motivation, if it is causing serious threats to peace and security is terrorism.<sup>343</sup> Further it was stated that each member shall not only discourage these terrorist activities in their land but also ensure that they will not allow any terrorist group to use their territory for such activities and will not provide shelter. Further if there is reasonable information regarding their activities they will develop a mechanism for sharing such information. So again it was imposing restrictions on state-sponsored terrorism.

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<sup>343</sup> Resolution 1624 (2005) Adopted by the Security Council at its 5261st meeting, on 14 September 2005 para 2 [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/1624%282005%29](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1624%282005%29)

## 4.7 EUROPEAN UNION

Terrorism was not a serious issue in European countries before to 1970, and the first notable change occurred in 1977. Council of Europe has signed Convention on the Suppression of Terrorism in 1977. In this convention it was decided offences relating to terrorism shall not considered as political offences or linked to political offences and offences motivated by political objectives.<sup>344</sup>

The purpose of the Convention was to make it easier to extradite those who had committed terrorist actions. Offences of a high gravity or serious nature, such as hijacking an airplane, kidnapping hostages, or using explosives, grenades, rockets, or letter or package bombs if their usage puts others in danger.

Article 1 of the Council of Europe Convention on the Suppression of Terrorism, signed on January 27, 1977. Extradition shall not be applicable on the offences mentioned below because these offence were excluded form list of political offences or offences linked with political offences so not only which are offences mentioned in both conventions “*Convention for the Suppression of Unlawful Seizure of Aircraft, 1970 and Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971*” but also any serious offence attack against internationally protected persons, including diplomats which endanger their lives and kidnapping, the taking of a hostage of them shall not be considered as political offence, it also state that any offence committed through a bomb, grenade, etc event use of automatic

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<sup>344</sup> International terrorism: the changing threat the Eu’s Response by Paul Wilkinson 29 accessed December 2021 <https://www.iss.europa.eu/sites/default/files/EUISSFiles/cp084.pdf>

*firearm or letter or parcel bomb were also not considered as political offence but terrorism even its attempt is serious offence.*<sup>345</sup>

This convention of European Union says any offence even its attempt as mentioned in Suppression of Unlawful Seizure of Aircraft, 1970, Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971, shall not be considered as political offence even any offence against protected person shall also be considered terrorism if it will put life of him in danger. Use of bomb and explosion was also removed from list of political offences, although political offence is defined as offence was committed under such circumstances which give him specifically political character<sup>346</sup> and it also true that “every political offence presumes an attack on the law, but not every attack on the law is a political offence”<sup>347</sup>

#### **4.8 THE DECLARATION OF LA GOMERA WAS SIGNED IN 1995.**

In 1995, Ministers for Justice and Home Affairs of the Member States, met at La Gomera where they approved the La Gomera Declaration 1995, and it was determined that

“Terrorism has increased its activities, particularly due to result of fundamentalist action, and is now operating on a transnational scale, which cannot be effectively combated solely through isolated action and the use of each individual State's own resources; it is also developing strategies and employing methods of international organized crime; and it may try to gain impunity by exploiting any differences in legal treatment in different States.”<sup>348</sup> As a first step,

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<sup>345</sup> Article 1 of “European Convention on the Suppression of Terrorism 1977” a accessed December 2019 <https://rm.coe.int/16800771b2>

<sup>346</sup> The Schtraks Case, Defining Political Offences And Extradition available at <https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1468-2230.1965.tb01044.x>

<sup>347</sup> John Hopkins: What Is a Political Offence? The Cambridge Law Journal, 1996), 417

<sup>348</sup> ANNEX 3: Terrorism, La Gomera Declaration 1995 available at [https://www.europarl.europa.eu/summits/mad2\\_en.htm#annex3](https://www.europarl.europa.eu/summits/mad2_en.htm#annex3)

the European Council asks for the establishment of joint investigative teams, as provided for in the Treaty, to combat narcotics and human trafficking, as well as terrorism.<sup>349</sup>

#### **4.9 FRAMEWORK DECISION 2002/475/JHA**

Article (3) narrates that “A number of terrorism-related treaties are signed by all or some Member States. Terrorist offences are not considered political offences, offences linked to political offences, or offences motivated by political objectives under the Council of Europe Convention on the Suppression of Terrorism, which was signed on January 27, 1977. The Convention for the Suppression of Terrorist Bombings was approved by the United Nations on December 15, 1997, and the Convention for the Suppression of Terrorist Financing was adopted on December 9, 1999. Within the United Nations, a draught global convention against terrorism is presently being developed.”<sup>350</sup>

#### **4.10. Article 6 of the convention 2002**

Article 6 of the convention dealt with state cooperation and said, "Each Member State may take the necessary measures to guarantee that the penalties referred to in Article 5 may be reduced if the offender renounces or reject terrorist activity, and It provides information to administrative or judicial authorities that they would not otherwise have access to, allowing them to or offender prevent or mitigate the effects of the offence, in case of bring to justice the other offenders if he finds evidence or prevent further offences referred to in Articles 1 to 4.”<sup>351</sup>it was backed by the special European Council meeting in 2001, Framework Decision 2002/475/JHA was established to better effectively confront terrorism. It was decide that “All

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<sup>349</sup> Tampere European Council 15 October 1999, available at [https://www.europarl.europa.eu/summits/tam\\_en.htm](https://www.europarl.europa.eu/summits/tam_en.htm)

<sup>350</sup> Council Framework Decision, of 13 June 2002 on combating terrorism (2002/475/JHA) available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32002F0475>

<sup>351</sup> ‘Council Framework Decision of 13 June 2002 on combating terrorism’ available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32002F0475>

Member States' definitions of terrorist offences, including those involving terrorist groups, should be approximated. Furthermore, natural and legal people who have committed or are accountable for such offences shall face fines and consequences that reflect the nature of the offence,<sup>352</sup>

#### **4.11 TERRORISM IN FRANCE**

In France legislation Ordinary offences become acts of terrorism when they are "committed purposefully in regard to an individual or collective endeavour whose objective is to significantly disturb public order by intimidation or terror," according to Article 421-1 of the Criminal Code (CC)..’ the government of France has defined terrorism in its section 421-1 of the Criminal Code which has element of “*seriously disturb public order*” *whether it is committed individually or collectively*.

The following offences constitute acts of terrorism if committed with intention to seriously disturb public order whether committed by individually of collectively

“ wilful attacks on life, wilful attacks on the physical integrity of persons, abduction and unlawful detention and also as the hijacking of planes, vessels or any other means of transport, defined by Book II of the present Code; it also include theft, extortion, destruction, defacement and damage, and also computer offences, as defined under Book III of the present Code; thirdly, offences committed by combat organisations and disbanded movements as defined under articles 431-13 to 431-17, and the offences set out under articles 434-6, 441-2 to 441-5 and finally, the production or keeping of machines, dangerous or explosive devices, set out under article 3 of the Act of 19 June 1871 ..... the purchase, keeping, transport or unlawful carrying of explosive substances or of devices made with such explosive substances, as defined

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<sup>352</sup> Ibid

by article 38 of the Ordinance of 18 April 1939 defining the regulations governing military equipment, weapons and ammunition;”<sup>353</sup>

#### **4.12 ENGLAND LEGISLATION ON ANTI-TERRORISM**

Under the Act, terrorism is currently defined as “the use or threat of action designed to influence the government or to intimidate the public or a section of the public, and the use or threat is made for the purposes of advancing a political, religious or ideological cause.”<sup>354</sup> So in English law terrorism means Terrorism is now defined as "the use or threat of action aimed to influence the government or intimidate the public or a segment of the public, and the use or threat is made for the sake of furthering a political, religious, or ideological cause,".

“Year 2006, Lord Carlile concluded about terrorism that the UK definition is “consistent with international comparators and treaties, and is useful and broadly fit for purpose.”<sup>355</sup> two amendments were recommended by him in the definition. He suggested that there is need to insert element of racism which is one of strong reason of terrorism, Lord Carlile suggested changing the language so that only acts or threats of action intended to intimidate the government are included in the term, rather than the considerably broader impact. “We realise that the inclusion of the verb to intimidate in the definition may present problems when used to a government although word Coercion, undue compulsion, and subversion are all options employed in international treaties.. Elements of definition were used in both the “European Union Framework Decision of 2002” and the “Council of Europe Convention on the Prevention of Terrorism” with object to restrict the possibilities for arbitrary and

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<sup>353</sup> Article 421-1 of the Criminal Code (CC) available [https://afvt.org/wp-content/uploads/2009/05/french\\_legislation\\_terrorism\\_AfVT\\_gb.pdf](https://afvt.org/wp-content/uploads/2009/05/french_legislation_terrorism_AfVT_gb.pdf)

<sup>354</sup> section 1(1). Terrorism Act 2000,

<sup>355</sup> Lord Carlile, “The Definition of Terrorism,” March (2007), 1 <http://www.homeoffice.gov.uk/documents/carlile-terrorism-definition?view=Binary>.



discriminatory enforcement in state. After reviewing the UN Security Council's approach and state practice it was concluded in England that any nature of offence if it is committed with the intent of causing death of person or any kind of serious injury or the taking of hostages only for the purpose of creating a state of terror is offence of terrorism.<sup>356</sup>

Legislation on terrorism in UK is based upon both common law as well as state legislation covering criminal as well as civil nature offences.

The Terrorism Act 2000 in UK was enacted with the intention of providing a complete framework for countering terrorism. However, since the terrorist attacks 9/11 in 2001, this enactment was revised and resulted number of other statutes including “Anti-terrorism, Crime and Security Act 2001” in 2005 Prevention of Terrorism Act was introduced and same was repealed in 2011 by the Terrorism Prevention and Investigation Measures Act. And also repealed other legislations Terrorism Act 2006, Counter-Terrorism Act 2008, Terrorist Asset-Freezing etc Act 2010, they also introduced enactment as Protection of Freedoms Act 2012, and Justice and Security Act 2013 as well as Counter-Terrorism and Security Act 2015

England has adopted the definition of terrorism The Terrorism Act of 2006 adopts the Terrorism Act of 2000's. Section 34 somewhat modifies that term to cover specified sorts of activities against international governmental organisations, such as the United Nations. The definition in the Terrorism Act 2000 (as amended) states:

“In this Act terrorism means the use or threat of action

“where the action falls within subsection (2)”

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<sup>356</sup> UN Security Council, Resolution 1566 (2004), S/RES/1566/2004, accessed March 5, 2019, <http://daccessdds.un.org/doc/UNDOC/GEN/NO4/542/82/PDF/NO545282.pdf?OpenElement> (

1. “the use or threat is designed to influence the government or an international governmental organization or to intimidate the public or a section of the public”<sup>s</sup>
2. “the use or threat is made for the purpose of advancing a political, religious or ideological cause”.

So we can see that In UK “The use or threat is intended to influence the government or an international governmental organization, or to intimidate the public or a segment of the public, as defined in subsection section (2), and the threat or use is intended to further a political, religious, or ideological cause as in subsection 3 almost similar to Pakistan and offences covered in it are all actions involves involve element of the serious violence against a person or it also include an act which causes serious damage to the property, or any kind of actions which endangers the life of a person ,

Apart from above mentioned definition offences mentioned in different international conventions like offences committed at Aircraft as given in “The Convention on Offences and Certain Other Acts Committed On Board Aircraft”1963<sup>357</sup> as well as “Convention dealing “Unlawful Acts against the Safety of Civil Aviation”1971,<sup>358</sup> all above mentioned conventions dealing offences relating to Air craft while other offences mentioned in other following convention was part of terrorism “The Convention on the Physical Protection of Nuclear Material1979”,<sup>359</sup> “The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation1988”<sup>360</sup> “The Convention for the Suppression of

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<sup>357</sup> Available at “<https://treaties.un.org/doc/db/terrorism/conv1-english.pdf>”

<sup>358</sup> Available at “<https://treaties.un.org/doc/Publication/UNTS/Volume%20974/volume-974-I-14118-english.pdf>”

<sup>359</sup> Available at “<https://2009-2017.state.gov/t/isn/5079.htm>”

<sup>360</sup> “[https://www.unodc.org/pdf/crime/terrorism/Commonwealth\\_Chapter\\_5.pdf](https://www.unodc.org/pdf/crime/terrorism/Commonwealth_Chapter_5.pdf)”

Unlawful Acts against the Safety of Maritime Navigation 1988”<sup>361</sup> “The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988”<sup>362</sup> “Convention on the Marking of Plastic Explosives for the Purpose of Identification 1991”<sup>363</sup> “The International Convention for the Suppression of Terrorist Bombings 1997”<sup>364</sup> “The International Convention for the Suppression of the Financing of Terrorism 1999”<sup>365</sup> and “The International Convention for the Suppression of Acts of Nuclear Terrorism 2005”<sup>366</sup>

Andrew Byrnes<sup>367</sup> observed that “all These conventions mentioned above for preventive measurements for anti terrorism are based upon three principles, firstly They all agreed on a operational definition that political as well as ideological foundation shall not give any protection terrorist act - this repeated an agreement that activities were such a significant danger to everyone's interests that they couldn't be justified by such motivations, secondly, activities in which non-state actors such as people and organizations, as well as the state, were active allies in the fight against terrorism, Thirdly, They all agreed that the problem should be addressed by criminal law enforcement, in which states would collaborate and punish those accused of committing these crimes.”<sup>368</sup>

Byrnes notes that "this act-specific approach to addressing problems of terrorism in binding international treaties has continued up until relatively recently. Although political denunciation of terrorism in all its forms had continued apace, there had been no successful attempt to define

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<sup>361</sup> Available at “<https://treaties.un.org/pages/showdetails.aspx?objid=08000002800b9bd7>”

<sup>362</sup> Available at “<https://treaties.un.org/doc/Publication/UNTS/Volume%201678/v1678.pdf>”

<sup>363</sup> Available at “<https://treaties.un.org/doc/db/Terrorism/Conv10-english.pdf>”

<sup>364</sup> Available at “<https://treaties.un.org/doc/Publication/MTDSDG/Volume%20II/Chapter%20XVIII/XVIII-9.en.pdf>”

<sup>365</sup> Available at “<https://treaties.un.org/doc/db/terrorism/english-18-11.pdf>”

<sup>366</sup> Available at “[https://legal.un.org/avl/pdf/ha/icsant/icsant\\_e.pdf](https://legal.un.org/avl/pdf/ha/icsant/icsant_e.pdf)”

<sup>367</sup> Andrew Byrnes is Professor of Law at the University of New South Wales, Sydney, Australia, where he served as Chair of the Australian Human Rights Centre from 2005 to 2017

<sup>368</sup> Byrnes, Andrew (May 30, 2002). 2 “Apocalyptic Visions and the Law: The Legacy of September 11” (PDF). Inaugural lecture presented by Andrew Byrnes, Faculty of Law, Australian National University. ANU. 11.

'terrorism' as such in a broad sense that was satisfactory for legal purposes. There was also some scepticism as to the necessity, desirability and feasibility of producing an agreed and workable general definition."<sup>369</sup>

#### **4.13 TERRORISM DEFINE BY THE NORTH ATLANTIC TREATY ORGANIZATION (NATO)**

NATO has also defined word terrorism in the AAP-06 NATO "Glossary of Terms and Definitions, Edition 2019" as "The unlawful use or threatened use of force or violence, instilling fear and terror, against individuals or property in an attempt to coerce or intimidate governments or societies, or to gain control over a population, to achieve political, religious or ideological objectives<sup>370</sup>". It means that any unlawful use of force or any kind of violence against any person or individual even destruction of property in order to compel or frighten functionaries of governments, in order to achieve any political based object, religious, or ideological goals will be considered as terrorism.

#### **4.14 LEGISLATION BY UNITED STATES'**

USA has classified the terrorism in two categories first is the international terrorism and second one is known as the domestic terrorism.<sup>371</sup> "International terrorism means terrorism in which actions are committed by the of foreigner or which are sponsored by the members of designated Foreign Terrorist Organizations, and Homegrown Violent Extremists which deals

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<sup>369</sup> Ibid, 11

<sup>370</sup> "Nato Glossary Of Terms And Definitions" AAP Edition (2013) 6  
[https://www.jcs.mil/Portals/36/Documents/Doctrine/Other\\_Pubs/aap6.pdf](https://www.jcs.mil/Portals/36/Documents/Doctrine/Other_Pubs/aap6.pdf)

<sup>371</sup> See Michael C. McGarrity et al., Confronting White Supremacy, FBI (June 4, 2019), 1  
<https://www.fbi.gov/news/testimony/confronting-white-supremacy> [hereinafter McGarrity, Confronting White Supremacy].

Extremism and Radicalized Violence in the United States”<sup>372</sup>second is “where citizen of United States is committing offence under influence of international terrorist organizations or by external factors who have been radicalized to violence in the United States, so on the basis ideological goals and racial bias or in anti-government sentiment individuals who commit violent criminal acts is domestic terrorism”<sup>373</sup> so in simple words it is terrorism, where Individuals inside the United States who have been radicalised to violence in the United States as a result of foreign terrorism or external circumstances, such as ideological goals, racial bias, or anti-government sentiment, perform violent criminal crimes.

#### **4.14.1 FEDERAL CRIMINAL CODE.**

Federal Criminal Code has defined word terrorism in United State in Title **18** of the United States Code (Crimes and Criminal Procedure).

“involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;”<sup>374</sup>

appear to be intended—

- (i) “to intimidate or coerce a civilian population”
- (ii) “to influence the policy of a government by intimidation or coercion” or

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<sup>372</sup> see jerome p. Bjelopera, cong. Research Sifting Domestic Terrorism From Hate Crime And Homegrown Violent Extremism (2017) 2

<sup>373</sup> Michael C. McGarrity Assistant Director, Counterterrorism Division, Calvin A. Shivers, Deputy Assistant Director, Criminal Investigative Division “Confronting White Supremacy” available [https://www.google.com/search?safe=strict&ei=1cs4YMy5HreAhbIP7Om\\_6AM&q=FTOs+usa&oq=FTOs+usa&gs\\_lcp=Cgdnd3Mtd2l6EAMyBggAEBYQHjIICAAQFhAKEB4yCgAEBYQChAcOgQIABBDOgIIAFDADFInEWCnHGgAcAJ4A IABzA2IAe0jkgEFNy0xLjKYAQCgAQGqAQdnd3Mtd2l6wAEB&sclient=gws-wiz&ved=0ahUKEwiM-ImiqofvAhU3QEEAHez0Dz0Q4dUDCA0&uact=5](https://www.google.com/search?safe=strict&ei=1cs4YMy5HreAhbIP7Om_6AM&q=FTOs+usa&oq=FTOs+usa&gs_lcp=Cgdnd3Mtd2l6EAMyBggAEBYQHjIICAAQFhAKEB4yCgAEBYQChAcOgQIABBDOgIIAFDADFInEWCnHGgAcAJ4A IABzA2IAe0jkgEFNy0xLjKYAQCgAQGqAQdnd3Mtd2l6wAEB&sclient=gws-wiz&ved=0ahUKEwiM-ImiqofvAhU3QEEAHez0Dz0Q4dUDCA0&uact=5)

<sup>374</sup>In Section 2331 (1) , Chapter 113(B), US code

(iii) “to affect the conduct of a government by mass destruction, assassination, or kidnapping; and”...

“occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum”<sup>375</sup>

#### **4.14.2 DOMESTIC TERRORISM IN USA**

“Domestic terrorism” means the activities that—

**(A)**involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;<sup>376</sup>

**(B)**appear to be intended—

**(i)**to intimidate or coerce a civilian population;

**(ii)**to influence the policy of a government by intimidation or coercion; or

**(iii)**to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

**(C)**occur primarily within the territorial jurisdiction of the United States; and

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<sup>375</sup>Ibid

<sup>376</sup>Section 2331(5) , Chapter 113(B), US Code

The term 'terrorism' means premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents”.<sup>377</sup>

definitions of domestic terrorism also given Section 802 of the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act” commonly known as USA PATRIOT Act of 2001

Section 2331 of title 18,

“United States Code, is amended— (1) in paragraph (1)(B)(iii), by striking “by assassination or kidnapping” and inserting “by mass destruction, assassination, or kidnapping”;

(2) in paragraph (3), by striking “and”;

(3) in paragraph (4), by striking the period at the end

and inserting “; and”; and

(4) by adding at the end the following:

“(5) the term ‘domestic terrorism’ means activities that— “(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State; “(B) appear to be intended—

“(i) to intimidate or coerce a civilian population;

“(ii) to influence the policy of a government by intimidation or coercion; or

“(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping;

and

“(C) occur primarily within the territorial jurisdiction of the United States.”<sup>378</sup>

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<sup>377</sup>Definition Clause 2(4) 22 U.S. Code § 2656f - Annual country reports on terrorism

<sup>378</sup> Section 5 of 2331 of title 18 Available at <https://www.law.cornell.edu/uscode/text/18/2331>

(b) CONFORMING AMENDMENT.—Section 3077(1) of title 18, United States Code, is amended to read as follows:

“(1) ‘act of terrorism’ means an act of domestic or international terrorism as defined in section 2331;”

We have no standalone criminal offense that outlaws domestic terrorism, per se,” Thomas Brzozowski, “There is a considerable amount of ambiguity over domestic terrorism, what it means precisely, how it’s charged.”<sup>379</sup>

A 2017 Government Accountability Office report<sup>380</sup> after 9/11, 2001, the USA faced different attacks there have been 225 deaths in 85 distinct attacks by all violent extremists, regardless of ideology. Since the first arrests in March 2014, 166 people have been charged in the United States with crimes related to the Islamic State.,

Since September 11, 2001, within the last decade in USA international terrorism by extremists has been the focus of counterterrorism policy and legislation following and U.S. leadership has started to reconceptualize the terrorist threats that the nation faces as the nature of threat has evolved.<sup>381</sup>

FBI has issued a statement In June 2019, that there have been “*more domestic terrorism subjects disrupted by arrest and more deaths caused by domestic terrorists than international terrorists in recent years.*”<sup>382</sup> With the notable increase in incidents of domestic terrorism over the past decade<sup>383</sup>, The US government has become increasingly aware of the need to fight domestic terrorism, a threat that has resulted in terrible deaths of American citizens and

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<sup>379</sup><https://www.hstoday.us/subject-matter-areas/counterterrorism/no-domestic-terror-charge-for-domestic-terrorism-lack-of-law-reflects-considerable-ambiguity-says-doj-official/>

<sup>380</sup>Ibid

<sup>381</sup> Confronting the Rise of Domestic Terrorism in the Homeland: Hearing Before the H. Comm. on Homeland Sec., 116th Cong. (2019) 1

<sup>382</sup> Ibid

<sup>383</sup> Ron Nixon, Homeland Security Looked Past Antigovernment Movement, Ex-Analyst Says, NY TIMES (Jan. 8, 2016), 1



extensive property damage across the country in a way considerably exceeding that of international terrorism.

The FBI generally relies on a second definition of domestic terrorism the Code of Federal Regulations,

“Terrorism is defined as "the unlawful use of force and violence against persons or property to frighten or coerce a government, the civilian population, or any component thereof, in support of political or social objectives," according to the Code of Federal Regulations.”<sup>384</sup>. Terrorism whether domestic or international is always based upon origin as well as objectives of the terrorist organization. FBI uses the following definitions for the purpose of terrorism,

“Domestic terrorism is the offence or its attempt of offence which is committed against persons as well as property with intention to intimidate and threaten a government as well as the civilian population of within the United States or in Puerto Rico in which no foreign element or command is present while International terrorism is any violent acts prohibited by legislation of USA or law of any other state which are dangerous toward life committed within United States or any other state with the object envisioned to threaten as well as coerce a public and it has a influence on the the policy of a government and other hand International terrorist acts are controlled by outside the United States having foreign element”<sup>385</sup>

which characterizes terrorism as including “the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.”<sup>386</sup> Although this definition is

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<sup>384</sup>28 C.F.R. Section 0.85

<sup>385</sup>Terrorism 2002-2005 available at <https://www.fbi.gov/stats-services/publications/terrorism-2002-2005#:~:text=Terrorism%20is%20defined%20in%20the,Section%200.85>).

<sup>386</sup> Ibid

less widely used, it is more useful because it specifies that the conduct must be illegal in nature. It also includes activities that aren't "hazardous to human life," as defined by the prior definition. Non - violence yet criminal actions, which are frequently important to the conduct of terrorist acts, are not taken into consideration.

#### **4.14.3 U.S. ARMY MANUAL 2001**

U.S. Army Manual definition terrorism is the "calculated use of unlawful violence or threat of unlawful violence to inculcate fear. It is intended to coerce or intimidate governments or societies ... to attain political, religious, or ideological goals."<sup>387</sup> Which means that the deliberate or willful criminal act or its threat to cause element of fear. Its purpose is to force as well as frighten governments or society... [in order to achieve] political, along with religious, and ideological targets.

Word terrorism is also defined in manual of department of defense as “The calculated use of unlawful violence or threat of unlawful violence to inculcate fear intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political or religious or ideological”

There was another element which was discussed as “state terrorism” and it defined as

Any acts of terrorism which is supported by government itself directly or indirectly by way of support to international terrorism by encouraging and funding terrorism whether it is with support of its people or not. “State terrorism” is a complex concept as compare to terrorism.

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<sup>387</sup> U.S. Army Field Manual No. FM 3-0, (2001) section 37

So there are four characteristics of term state terrorism in as defined in United State firstly it use of force or violence secondly it should based upon some sort of political object thirdly it must create fear among the public and lastly it should target civilian but this definition to the extent of civilian is problematic when one tries to distinguish state terrorism from other forms of state violence.”<sup>388</sup> As one scholar articulates it “the lack of social or legal definition creates problems and agencies charged with countering domestic terrorism often have no idea what they are looking for”<sup>389</sup>

As per data, which includes 1,040 cases of terrorist plots and attacks in the United States between January 1, 1994, and December 31, 2021. The data set is divided into such categories as the incident date, perpetrator, location, motivation, number of individuals wounded or killed, target, and weapons used. The years 2020 and 2021 had the highest numbers of domestic terrorist attacks and plots in our data set. In 2021, there were 73 terrorist attacks and plots in the United States. the number of fatalities increased from 5 in 2020 to 30 in 2021. This level was roughly comparable to 2019, in which there were 35 fatalities from terrorism in the United States.<sup>390</sup>

The latest available data from the Justice Department show that during the first eleven months of FY 2017 the government reported 166 terrorism-related prosecutions had been filed. Of these 38, or less than one in four (22.9%), were classified as international terrorism. Even through defendants born in the United States are counted as international terrorists when they act in support of a foreign terrorist organization, there are still many more cases of domestic as compared

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<sup>388</sup> Available at <https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/dictionary.pdf>

<sup>389</sup> White, 1991: 163 cited in Hewitt, (2003: 13

<sup>390</sup> Dr. Seth G. Jones, “The Evolution of Domestic Terrorism” A Testimony. Center for Strategic and International Studies, 1 available at [https://csis-website-prod.s3.amazonaws.com/s3fs-public/congressional\\_testimony/ts\\_220217\\_SethJones\\_The\\_Evolution\\_of\\_Domestic\\_Terrorism.pdf?VersionId=7\\_SDqXJgpRrZ5IFUc7J0e81kX\\_gRTT69](https://csis-website-prod.s3.amazonaws.com/s3fs-public/congressional_testimony/ts_220217_SethJones_The_Evolution_of_Domestic_Terrorism.pdf?VersionId=7_SDqXJgpRrZ5IFUc7J0e81kX_gRTT69)

with international terrorism prosecuted each year. So far during FY 2017, for example, there have been 61 domestic terrorism prosecutions. Over the last five years government documents recorded 404 prosecutions for domestic terrorism as compared with just 223 for international terrorism.<sup>391</sup>

**Table 1. Terrorism-Related Prosecutions by Type, FY 2013 - FY 2017\***

Type	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017*	5-Year Total
Domestic terrorism	101	78	62	102	61	404
International terrorism	38	20	59	68	38	223
Critical infrastructure protection	50	35	39	19	16	159
Terrorism-related export enforcement	9	21	8	29	16	83
Terrorism-related financing	16	7	2	10	9	44
Terrorism-related hoaxes	23	31	37	22	15	128
Other internal security offenses	32	20	13	9	11	85
Total	269	212	220	259	166	1,126

So as per report the domestic terrorism is increasing day by day and more than 50% relates to domestic terrorism in USA and

The top lead charges recorded in the prosecutions of terrorism matters filed in U.S. District Court during the first eleven months of FY 2017. Leading the list of charges is providing material support to a foreign terrorist organization under Title 18 Section 2339B of the U.S. Code. During FY 2016 it was the second most frequent charge, while five years ago it ranked

<sup>391</sup> Domestic Terrorism Prosecutions Outnumber International, available at <https://trac.syr.edu/tracreports/crim/481/>

only in sixth place. Ranked second in frequency were offenses for the illegal importation and storage of explosives under 18 U.S.C. 844, while in third place was prosecutions involving interstate communications - an offense under 18 U.S.C. 875. Among the top ten lead charges, the one showing the sharpest projected decline in prosecutions compared to one year ago-down 59 percent-was "Harboring or Concealing Terrorists " (Title 18 U.S.C Section 2339). This was the same statute that also had the largest decrease when compared with five years ago.<sup>392</sup>

<b>Lead Charge</b>	<b>Count</b>	<b>Rank</b>	<b>1 yr ago</b>	<b>5 yrs ago</b>	<b>10 yrs ago</b>	<b>20 yrs ago</b>
18 USC 2339B - Provide material support to foreign terrorist orgs	23	1	2	6	19	-
18 USC 844 - Explosives - Importation and storage of explosives	20	2	4	1	7	3
18 USC 875 - Interstate Communications	12	3	6	2	12	11
50 USC 1701 - War and National Defense - Unusual and extraordinary threat	12	3	52	34	41	29
Other US Code Section	10	5	10	15	15	2
18 USC 922 - Firearms; Unlawful acts	7	6	22	46	33	11
18 USC 1831 - Economic Espionage	7	6	52	71	41	29
18 USC 1001 - Fraud/false statements or entries generally	6	8	28	12	15	11
18 USC 2339 - Harboring or Concealing Terrorists	6	8	5	27	24	29
18 USC 371 - Conspiracy to commit offense or to defraud US	5	10	28	5	5	1
18 USC 876 - Mailing threatening communications	5	10	17	4	22	4

<sup>392</sup> Ibid p.2

#### **4.15 LEGISLATION OF TERRORISM IN INDIA**

Just like Pakistan, initially there was Indian Penal code which was covering almost all kinds of offences which were against the state, including heinous offences as well as religious and political offences in Indian Penal code, 1860 India brought first legislation in 1986 in the form of The Indian National Security Guard Act, 1986 in which word terrorist was defined.

##### **4.15.1 THE INDIAN NATIONAL SECURITY GUARD ACT, 1986,**

In initial legislation word terrorism is not defined however word terrorist explained act of terrorism in Indian legislation and element of striking fear and terror was also part of Indian legislation and it is defined in section 2(1) act 1986.

“Terrorist means any person who with intent to overawe the Government as by law established or to strike terror in the people or any section of the people does any act or thing by using bomb dynamite or other explosive substance or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other substances whether biological or otherwise of a hazardous nature in such a manner as to cause or as is likely to cause death or injuries to any person or persons or damage to or destruction of property or disruption of any supplies or services essential to the life of community”<sup>393</sup>

As per definition clause Terrorist is any person who, has clear the intent to bring element of fear in the people and overthrow the government which was established by the law, this definition covers use of a dynamite ,bomb ,explosive substance or any inflammable substances it also covers firearms weapon and also covers lethal weapons and their use this definition was

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<sup>393</sup> Section 2(1) of The Indian National Security Guard Act, 1986 available at <https://indiankanoon.org/doc/191508797/>

also giving protection with poisons or noxious gases as well as and hazardous nutrients. So any act which cause death and serious injury to any person and destruction of property is common element in all above mentioned definitions, it also covers the disruption of any supplies and services which are essential to the life but there was no special procedures was laid down in India. So far two specific anti-terrorism legislations were introduced in india, "Terrorists and Disruptive Activities (Prevention) Act" 1985, 1987, (TADA) and "Prevention of Terrorism Act, 2002" (POTA).

#### **4.15.2 THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1985**

The Terrorist and Disruptive Activities (Prevention) Act of 1985 (TADA) was passed against the terrorist activities across the country.

Section 3(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1985, (TADA) does not define word terrorisms but it defines a "terrorist":

"Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of people or alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or any other substances (whether biological or otherwise) of a hazardous nature in such manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or damage to, or destruction of property

or disruption of any supplies or services essential to the life of the community, commits a terrorist act"<sup>394</sup>

It was not only similar but we can say repetition of definition mentioned in definition clause of Section [2(1) y] of “The Indian National Security Guard Act”, 1986 however in this legislation punishments were provided in sub clause 2 to 4 of section.

the Supreme Court of India observed in “Hitendra Vishnu Thakur Vs State of Maharashtra”<sup>395</sup>

"Terrorism has not been defined under TADA nor is it possible to give a precise definition of `terrorism' or lay down what constitutes `terrorism'. It may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but *the prolonged psychological effect it produces or has the potential of producing on the society as a whole*. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land *and its main objective is to overawe the Government or disturb harmony of the society or `terrorise' people and the society and not only those directly assaulted, with a view to disturb even tempo, peace and tranquillity of the society and create a sense of fear and insecurity*. A terrorist activity does not merely arise by causing disturbance of law and order or of public order. The fallout of the intended

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<sup>394</sup> Section 3 of Section 3(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1985 available at <http://hrlibrary.umn.edu/research/terroristpreventionact-1987.html>

<sup>395</sup> (1994) 4 SCC 602



activity must be such that it travels beyond the capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law.”<sup>396</sup>

"Experience shows that `terrorism' is generally an attempt to acquire or maintain power or control by intimidation, and causing fear and helplessness in the minds of the people at large or any section thereof and is a totally abnormal phenomenon. What distinguishes `terrorism' from other forms of violence therefore appears to be the deliberate and systematic use of coercive intimidation,"

### **4.15.3 PREVENTION OF TERRORIST ACT (POTA) IN 2002**

Indian government introduced another enactment in shape of Prevention of Terrorist Act (POTA) in 2002, but it was short-lived and was repealed in 2004. In this legislation word Terrorism was not defined however definition of terrorist act was in POTA was almost similar to section 3 of TADA,

Terrorist acts.-

“Whoever with intent to threaten the unity integrity security or sovereignty of India or to strike terror in the people or any section of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances whether biological or otherwise of a hazardous nature or by any other means whatsoever, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services

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<sup>396</sup> Ibid

essential to the life of the community or causes damage or destruction of any property or equipment used or intended to be used for the defense of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act”<sup>397</sup>

So any act threatening unity as well as integrity of state and act targeting the security or sovereignty of India and it strike terror and fear in the people or any section of the people is definition of terrorism.

(k) “terrorist act” has the meaning assigned to it in section 15 of Unlawful Activities (Prevention) Act, 1967 amended 2008 carries similar definition which was mentioned in section 3 of Prevention of Terrorist Act (POTA,

Indian courts emphasized on the effect of act “...Where international **terrorists** are operating globally and committing acts designed to **terrorize** the population in one country, that can have implications which threaten the life of another. This is why a collective approach to **terrorism** is important.”<sup>398</sup> In india courts are observing element of effects. This was a case where the detenu threatened to shoot shopkeepers of locality if they failed to give him money and terror stricken shopkeepers closed their shops. Act was treated as terrorism<sup>399</sup> in another case it was held that If the act is restricted to particular

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<sup>397</sup> Section 3(1), Prevention of Terrorism Act, 2002. Available at [https://www.imolin.org/imolin/amlid/data/mar/document/the\\_prevention\\_of\\_terrorism\\_act\\_2002\\_.html](https://www.imolin.org/imolin/amlid/data/mar/document/the_prevention_of_terrorism_act_2002_.html)

<sup>398</sup> Lord Woolf CJ in A, X and Y, and another V. Secretary of the State for the Home Department (Neutral Citation Number: [2002] EWCA Civ. 1502)

<sup>399</sup> Sharad Kumar Tyagi v. State of U.P., AIR 1989 SC 764 : (1989 Cri LJ 830).

individuals or a group of individuals it breaches the law and order problem but if the effect and reach and potentiality of the act is so deep as to affect the community at large and/or the even tempo of the community then it becomes a breach of the public order." <sup>400</sup>even firing on police party was not treated as the act of terrorism. According to the petitioner this is also a case of firing on a police party and panic created in the people, yet it was held that it was a case of law and order and not public order<sup>401</sup>

Dealing with a case under the TADA, a Constitution Bench of the Supreme Court in *Prakash Kumar @ Prakash Bhutto v. State of Gujarat* (AIR 2005 SC 1075) held that the term 'terrorism' has not been defined under the Act and relying on the decision of the Supreme Court in *Hitendra Vishnu Thakur and others v. State of Maharashtra and others* ((1994) 4 SCC 602), the Constitution Bench held thus:

"11. The term 'terrorism' has not been defined under the Act. This Court in *Hitendra Vishnu Thakur v. State of Maharashtra* (1994) 4 SCC 602 held in paragraph 7 (SCC p.618) as under:--

"7. 'Terrorism' is one of the manifestations of increased lawlessness and cult of violence. Violence and crime constitute a threat to an established order and are a revolt against a civilised society. 'Terrorism' has not been defined under TADA nor is it possible to give a precise definition of 'terrorism' or lay down what constitutes 'terrorism'. It may be possible to describe it as use of violence when its most important result is not merely the physical

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<sup>400</sup> *Gulab Mehra v. State of U.P.*, AIR 1987 Supreme Court 2332

<sup>401</sup> *Zaki Ahmad v. State of U.P.*, 1988 All Cri C 172 :

and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole.

it was observed as follows:

"Menace of terrorism is not restricted to one country, and it has become a matter of international concern....Whether the criminal act was committed with an intention to strike terror in the people or section of people would depend upon the facts of each case".<sup>402</sup>

In other words, this act does not disturb public tranquillity nor does it create any terror or panic in the minds of the people of the locality nor does it affect in any manner the even tempo of the life of the community.<sup>403</sup> In *Seeni Nainar Mohammed Vs State* the Supreme Court had occasion to consider the issue as to whether the act of the accused was such that it created terror in the minds of the public at large. In such circumstances, the Supreme Court held that the aftermath of the happenings in and around the vicinity of the incident has a bearing upon the nature of the act to term it as a terror act<sup>404</sup> exploding of bombs and attempt at extortion or pain of death has been construed to be cause of disturbing public order<sup>405</sup>

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<sup>402</sup> In *Devender Pal Singh v. State*. (AIR 2002 SC 1661),

<sup>403</sup> *Ibid*

<sup>404</sup> *Seeni Nainar Mohammed Vs State* (2017 (13) SCC 685

<sup>405</sup> *Ram Ranjan Chatterjee Vs. State of West Bengal* [AIR 1975 SC 609

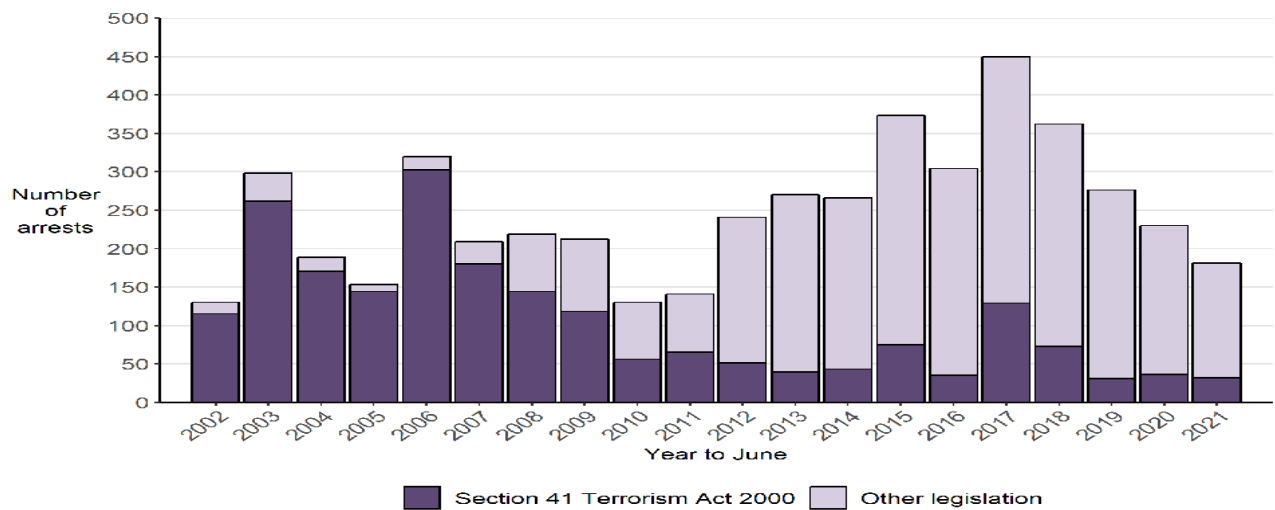
SUCCESS RATE OF ENGLAND YEAR 2020 AND 2021<sup>406</sup>

<b>Total prosecuted</b>	<b>Conviction</b>		<b>Acquittal</b>	<b>Not proceeded</b>	<b>Pending</b>
	<b>Conviction in terrorism</b>	<b>Conviction in non terrorism</b>			
<b>45</b>	<b>15</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>32</b>
<b>58</b>	<b>47</b>	<b>0</b>	<b>6</b>	<b>0</b>	<b>5</b>

“In the year ending 31 March 2021, there were 4,915 referrals to Prevent. This is a decrease of 22% compared to the previous year (6,287) and the lowest number of referrals received since comparable data are available (year ending March 2016)<sup>407</sup> There were 181 arrests for terrorism-related activity in the year ending 30 June 2021, 49 fewer than in the previous 12-month period (a fall of 21%). This was mainly due to a reduction in arrests under non-terrorism legislation.”

<sup>406</sup> Annex A: Arrests and outcomes, year ending 30 September 2021, Available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1039275/annex-a-flow-chart-sep2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1039275/annex-a-flow-chart-sep2021.pdf)

<sup>407</sup> <https://www.gov.uk/government/statistics/individuals-referred-to-and-supported-through-the-prevent-programme-april-2020-to-march-2021/individuals-referred-to-and-supported-through-the-prevent-programme-england-and-wales-april-2020-to-march-2021>



At the time of data provision, of the 181 arrests for terrorist-related activity: “54 (30%) resulted in a charge, of which 46 were for terrorism-related offences. 80 (44%) persons were released pending further investigation 43 people (24%) were released without charge 4 (2%) faced alternative action, for example receiving a caution or recalled to prison”

#### 4.16 CONCLUSION

Concept of terrorism become more critical in twentieth century because changes were brought in world politic by disintegration of old colonial empires and the stalemate between the two superpowers. The word terrorism was defined in 1934 by league of nation and that was based upon consequences-based theory, so initially in the definition of terrorism there was an element of fear and insecurity among the public. At very initial level there was only political involvement of states, however with the passage of time actual involvement of state started. Since 1936 to 2020 more than hundred definitions of terrorism were provide and motive was irrelevant and they were focused upon the actions because to strike terror and element of fear and insecurity are commons elements in all definitions and secondly USA introduced concept of International and domestic terrorism. Terrorism in which foreign elements like states and

international organization involves while domestic terrorism is dealing person who is national or citizen of the state. Different theories and approaches were adopted in world while defining legal definition of terrorism and some were giving action should give effect of terror. International community made number of efforts for defining of terrorism. There were number of instruments which were relating to prevention of international terrorism, Today terrorism is travelling from concept of Air Line Hijacking, Maritime Piracy, Politically Motivated Violence, and State Sponsored Terrorism to modern hard core terrorism. Furthermore, Power Gaining Economy is accelerating the modern terrorism in the world. Modern terrorism is the result of cold war policies making it an instrument of foreign policy. In European countries, USA and UK only states decide whether it is case of terrorism or not and there is no concept of frequent change of jurisdiction of terrorism by the courts.

## **CHAPTER FIVE**

### **SUPERIMPOSING OF OFFENCES IN ATA AND IN OTHER PENAL LEGISLATIONS**

#### **5.1 INTRODUCTION**

Initially, offences dealing with insurgencies and political violence were controlled through different enactments as discussed in chapter-ii. The Suppression Act was replaced by Anti-Terrorism Act, 1997 for combating sectarianism in Pakistan. The amendments were made in Anti-terrorism Act 1997 to combat with modern form of terrorism. The overlapping is the result of these different kinds of legislations enacted in Pakistan which have become the bone of contention between the Ordinary Courts and The Special Courts as far as matter of jurisdiction is concerned. Offences mentioned in Special Laws are also the part of General Penal laws having different jurisdictions. so over lapping of offences in Pakistan remained serious problem consistently in legislative history. Thus the jurisdictional issues remained unsettled in Pakistan.

#### **5.2 OEVERLAPPING OF OFFENCES IN DIFFERENT LEGISLATIONS**

No doubt overlapping of offences in ATA and other statutes is one of major problem and even courts are unable to differentiate them properly and due to overlapping not only hampering and impeding investigation but prosecution is also facing serious multi-dimensional problems.. Interestingly, the punishment provided in those offences are similar in nature and the purpose was to provide expeditious justice to the victims. In anti- terrorism cases as mentioned earlier in chapter iii, prosecution has to established the 'Terrorist Intent'. It is very difficult to establish



all the parameters for such intent due to overlapping of offences. Whereas in international practice, there is no such hurdle in establishing required intent. There is need to bring these issues under the consideration of legislatures for developing of mechanism.

### **5.3 Difference of Offence of ATA As Well As Offences of Ordinary Court**

Detail of provisions in anti-terrorism act 1997 and other general and special law are given below in which point of difference has been discussed.

#### **5.3.1 MURDER DEFINED IN ATA AND IN PAKISTAN PENAL CODE, 1860**

In ATA murder involves the doing of anything that causes death<sup>408</sup> and Punishment of murder is provided in ATA, which is death or with imprisonment for life, and with fine;<sup>409</sup> and on other hand definition of murder is also provided in Pakistan Penal Code 1860 where it is known as Qatl e Amad and “Whoever, with the intention of causing death or with the intention of causing bodily injury to a person, by doing an act which in the ordinary course of nature is likely to cause death, or with-the knowledge that his act is so imminently dangerous that it must in all probability cause death, causes the death of such person, is said to commit qatl-i-Amd”<sup>410</sup>.and its punishment is provided in u/s 302 of PPC which Punished “with death as qisas or punished with death for imprisonment for life as Ta’zir having regard to the facts and circumstances of the case, if the proof in either of the forms specified in Section 304 is not available or Punished with imprisonment of either description for a term which may extend to twenty-five years,

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<sup>408</sup>section 6(2)(a) of Anti-terrorism Act 1997

<sup>409</sup>section 7(a) of Anti-terrorism Act 1997

<sup>410</sup> Section 300 of Pakistan Penal Code, 1860

where according to the Injunctions of Islam the punishment of qisas is not applicable and Provided that nothing in this clause shall apply to the offence of qatl-i-amd if committed in the name or on the pretext of honour and the same shall fall within the ambit of clause (a) or clause (b), as the case may be.”<sup>411</sup>

### **5.3..2 POINT OF DIFFERENCE**

For the application of murder under ATA laws, There is need to establish the terrorist intent under section 6 (1)(b) of Anti-terrorism act 1997 <sup>412</sup> or section 6 (1)(c) of Anti-terrorism act 1997 <sup>413</sup> along with basic or specific intent requirements in the definition of a murder under ATA. It means that the action or its threat which is designed to threaten and intimidate government, and the section of public, and to cause element of fear or insecurity in society; or the use of violence or force for religious, and sectarian, as well as ethnic cause. Then murder will be charged under section 6 (2) (a) read with 7(1) (a) of ATA. The main distinction between an offence under section 302 PPC and section 6(2)(a) is the presence of terrorist intent, and now a days , for the anti terrorism cases an act of murder with terrorist intent is charged under both section 7(1)(a) assssnd section 302 The case will be referred to a regular ordinary court if there is insufficient proof of terrorist intent it will be deal under section 302 of Pakistan Penal code, 1860. The supreme court of Pakistan held that “Action of accused involved firing at the deceased is case of Anti-Terrorism Act, 1997, and mens rea stated under S.342, Cr.P.C. that it was "a lesson for all the apostates, as finally they have to meet the same fate" and court held that “Such statement of the accused clearly established that he not only wanted to punish the deceased privately for the perceived or imagined blasphemy committed by him but also wanted

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<sup>411</sup> The Pakistan Penal Code, 1860, Section 302.

<sup>412</sup> The Anti-terrorism act, 1997 section 6 (1)(b) of “the use or threat is designed to coerce and intimidate or overawe the Government or he public or a section of the public or community or sect or create a sense of fear or insecurity in society” or

<sup>413</sup> section 6 (1) (c) “the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause”

to send a message or teach a lesson to all others in the society at large who dared to follow the deceased, so murder has all ingredients mentioned in section 6 of anti-terrorism and object was create a sense of fear or insecurity in the society and threaten the government”<sup>414</sup> in another case Prosecution alleged that nine nominated accused along with 5/6 other persons resorted to indiscriminate firing as a result whereof nine persons from the complainant side sustained multiple firearm injuries-Investigating officer, however, stated that only 11 empties of two different bores i.e. .30 bore and .12 bore were recovered during inspection of the spot—but court held that “it appeared from the facts of the case that altercation between the parties occurred all of a sudden when the procession of the complainant side on winning the election was passing in front of house of accused party and there was no prior 'object/design', Allegations levelled in the FIR, the material collected by the investigating agency during course of investigation and other surrounding circumstances showed that present case was not triable by the Anti-Terrorism Court- because it was also to be seen as to whether such act had created a sense of fear and insecurity in public or any section of public or community or in any sect”<sup>415</sup> Act falls in ambit of terrorism or not, the object, design or purpose behind such act was to be seen and Design or purpose of offence as contemplated by provisions of S.6 of Anti-Terrorism Act, 1997,

### **5.3..3 PERSONAL ENMITY**

Personal enmity has no scope in anti- terrorism case it was held in number of judgements that any action on the basis of personal vendata will not amount terrorism as discussed in chapter 3 of this thesis. Supreme Court of Pakistan held that “ Prosecution case was that an altercation had taken place between two groups over the dispute pertaining to seating of passengers from

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<sup>414</sup> Malik Muhammad Mumtaz Qadrivs StatePLD2016 Supreme Court 17

<sup>415</sup>Ch. Shaukat ali vs Haji Jan Muhammad 2017 SCMR 533

the bus stand which resulted in exchange of fires with each other resulting into death of three persons and injuries to others. Old feud between the parties has always been considered as one of the circumstances to bring a case out of the scope of "terrorism" because normally in such like matters the prime object is always to settle personal score rather than creating a sense of terrorism.<sup>416</sup> In an other case there was Personal enmity over property it was held that “Admittedly there was a dispute of a plot where the occurrence took place---Prosecution's own case was that the complainant had filed a civil suit and on his application for initiation of contempt proceedings against the accused persons, a bailiff of the Court was appointed--- Application of contempt of court and appointment of bailiff triggered the enmity which resulted in the present occurrence---Allegedly five persons fired specifically at complainant's wife (deceased) hitting on her legs, but till that time there was no allegation of creating terror and insecurity in the general public---Subsequently, it was alleged that 26 persons, in order to create terror and insecurity in the general public, made indiscriminate firing, but, such allegation was not supported from any source as neither any crime empty was recovered from the place of occurrence nor anybody else received even a scratch on his person due to said indiscriminate firing”<sup>417</sup> but in *Kashif Ali Vs The Judge, Anti-Terrorism, Court No.Ii, Lahore* Target killing was aimed to give a message to the voters and supporters of the deceased, the court held that “the effect of which was to create a sense of fear or insecurity in the voters and general public, as provided in S. 6 of the Anti-Terrorism Act, 1997”---Place of occurrence was a public place and supporters and voters were around with their cars. Furthermore, the contents of the FIR reflected that the crowd present during the occurrence started fleeing from the place

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<sup>416</sup>Abdul Rasheed Alias Somi vs State, PCrLJ 2020Lahore 714,

<sup>417</sup>Province of Punjab Through Secretary Punjab Public Prosecution Department Vs Muhammad Rafique, PLD2018 Supreme Court 178

due to the terror created by indiscriminate firing. Contention of the accused party that the occurrence was due to personal enmity would not exclude the case from the mischief of S. 6(2) of the Anti-Terrorism Act, 1997, because the manner of occurrence and the time of occurrence should be taken note of, the effect of which was to strike terror in the supporters/voters and general public---Personal enmity between the deceased and the accused side could have been settled on any day and it was intriguing as to why the accused persons chose the particular night before the dawn of the day of elections to settle their score with a popular running candidate/deceased in the elections by eliminating him<sup>418</sup>

In year 2021 to 2019 total number of cases of murder which were registered in different heads transferred from ATA to ordinary jurisdiction are following ransom with murder in 2021, 3 cases were transferred from ordinary to ATA out of 4 cases, in 2020, 5 cases were transferred out of 10 cases while in 2019, 11 cases were transferred out of 13 cases,

In year 2021 to 2019 total number of cases of simple murder cases transferred from ATA to ordinary jurisdiction are following in 2021, 17 cases were transferred from ATA out of 66 cases submitted by prosecution to ordinary court, in 2020 cases were transferred were 26 out of 97 cases submitted by prosecution cases while in 2019 53 cases were transferred out of 111 cases, In year 2021 to 2019, Total number of cases of murder with target killing were 3 and one case was transferred. In year 2021 to 2019, Total number of cases of murder with acid throwing were 43cases and 21 cases were transferred under section 23 of ATA there was no element of designed and this data is clearly shows that offences were of serious nature and as

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<sup>418</sup>Kashif Ali vs The Judge, Anti-Terrorism, Court No.1, Lahore, PLD2016 Supreme Court 951

per preamble were also triable under ATA, and ATA court has jurisdiction to try cases and award sentences under ordinary court jurisdiction.

“This is made worse still by the fact that the ATA provides the death penalty for a broad range of offences including kidnapping for ransom, murder and hijacking. Moreover, those convicted under the ATA are more likely to be awarded the death penalty than those tried under the criminal justice system. Since the lifting of the moratorium over 76<sup>8</sup> executions were carried out for suspects charged under the ATA. According to Amnesty International’s 2016 Death Penalty report, in 2016 out of a total of 277 death sentences, 31 death sentences were handed out by the ATCs<sup>9</sup>.<sup>419</sup>

**TERRORISM death execution <sup>420</sup>**

<b>Year</b>	<b>MURDER OVER</b>	<b>PERSONAL ENMITY</b>	<b>MURDER DURING ROBBERY</b>	<b>OTHER</b>
<b>2015</b>	24	18	09	14
<b>2016</b>	01	01	03	0
<b>2017</b>	02	01	03	0

Secondly, it is very difficult to establish terrorist intent in such cases, creation of element of fear and insecurity in one part and extension of this fear and insecurity among large section of people is another reason, which hardly can be prove in acid throwing, ransom and murder on the personal vendetta,

<sup>419</sup>[https://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/Terrorism/JusticeProjectPakistan\\_2.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/Terrorism/JusticeProjectPakistan_2.pdf)Amnesty International. “Death Sentences and Executions 2016”. 2017. p.24

<sup>420</sup> Ibid

The second issue discussed in the paragraph is the legal system's complexities in Pakistan, particularly regarding the compounding of offenses. Under the ATA, offenses are not compoundable, which means that they cannot be settled out of court through a financial settlement or other means. This is different from murder cases that fall under ordinary jurisdiction, which are compoundable. If a case is charged under the ATA, it cannot be acquitted through compounding, which can make it more challenging to resolve cases quickly.

Initially, there was a law that allowed for acquittal in ATA cases if there was compounding in murder cases under Section 302 of the Pakistan Penal Code. However, this was later amended, and now acquittal in murder cases does not allow for acquittal in ATA cases. This means that once a case is charged under the ATA, it cannot be settled out of court through compounding. Recent judgments by the Supreme Court of Pakistan have established that compounding of ordinary offenses can be considered a mitigating circumstance in ATA cases. This means that if a defendant is charged under the ATA and can demonstrate that they have settled ordinary offenses through compounding, it may be considered a mitigating factor in sentencing. This complexities involved in prosecuting terrorism cases in Pakistan, particularly regarding establishing intent and navigating the legal system's intricacies. It demonstrates that even when the intent of a crime is difficult to establish, if it meets the legal definition of terrorism, it must be prosecuted accordingly. Additionally, it shows that the legal system's intricacies can impact the outcome of cases and create challenges for both the prosecution and defense.

Regenerate responseIt was held in Moinuddin case that “Offence which the law declared to be non-compoundable remained non-compoundable even if in a coordinate compoundable offence a compounding took place between the relevant parties and, therefore, despite any compounding of the coordinate compoundable offence an acquittal could not be recorded in the non-compoundable offence on that sole basis”<sup>421</sup>

Appeal was dismissed in Muhammad Nawaz case and court discussed effect of compromise between convict and legal heirs of deceased and it was held that Death sentence under S.7 of Anti-Terrorism Act, 1997 had its own implications and was not compoundable under Ss.354(5)

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<sup>421</sup> Moinuddin vs State PLD 2019 Supreme Court 749

& (7), Cr.P.C<sup>422</sup> however as per recent law it one of ground of mitigating circumstance. Offence under S. 7(a) of the Anti-Terrorism Act, 1997 was an independent one, which was non-compoundable, thus the sentence awarded under said provision of law was independent to other sentences under S. 302(b), P.P.C. etc., which may be compoundable in nature-In view of the bar contained in S. 345(7), Cr.P.C, conviction of an accused under the Anti-Terrorism Act, 1997 would remain intact despite compromise in other sentences in compoundable offence.<sup>423</sup> Further it was Held, that a valid and accepted compromise in the coordinate offence was valid ground for reduction of sentence of death to imprisonment for life on the charge of terrorism or of a non-compoundable offence.<sup>424</sup>

On other hand offence under section 311 PPC dealing with *Fasad Filarz* is also compoundable strangely this is one reason why they are getting the benefit of ordinary jurisdiction which is not available in ATA jurisdiction.

#### **5.4 GRIEVOUS VIOLENCE AGAINST A PERSON IN ATA**

In anti-terrorism act another offence which is known as Grievous violence against a person or body as mentioned in section 6(2)b of ATA, 1997 The offence is committed if “the act involves grievous in ATA is applicable inly when it has intent specified in section 6(1)(b)<sup>425</sup> which means The use or threat is intended to compel, intimidate, or overpower the government, the general public, a segment of the general public, a community, or a sect, or to bring fear or insecurity in society; or means or 6(1)(c)<sup>426</sup> which means the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause based upon Terrorist Intent and the offence will be charged under section 6 (2) (b) and 7(1) (c) read with either with 6(1)(b) or

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<sup>422</sup> Muhammad Nawaz Vs State PLD 2014 Supreme Court 383 see also Shahid Zafar Vs State PLD 2014 Supreme Court 809

<sup>423</sup> Kareem Nawaz Khan Vs The State Through PGP 2016 SCMR 291

<sup>424</sup> 2019 SCMR 1741

<sup>425</sup> Ibid

<sup>426</sup> Ibid



6(1) (c) of ATA. In Anti-terrorism laws, There are two types of actions envisioned under this section first against person and second grievous body.

#### **5.4.1 GRIEVOUS VIOLENCE AGAINST A PERSON:**

Violence against person the conduct should be based upon grievous or serious violence towards a person. The law considers only element serious violence. There is no requirement of serious injury. Because intent of legislature is very clear act should be motivated by a major or terrible act of violence against a person. Only acts of serious violence are considered by the law. There is no necessity for an injury to occur as a result of the action. For instance, use of the a petrol bomb towards a law enforcement agencies and police officer to intimidate him, the offence will be committed under this section.

#### **5.4.2 GRIEVOUS BODILY INJURY OR HARM TO A PERSON.**

Bodily injury includes any hurt calculated to interfere in the comfort and health of a person. Any harm that is meant to interfere with a person's comfort and health is considered a bodily injury. The word "grievous" connotes graveness. As a result, injuries that are minor or fleeting would be excluded. It was decided that "simply putting a person in dread of danger or grievous harm is enough to conduct extortion. It would therefore exclude injuries, which are of trifle or transient nature. it was held that in order to commit extortion just putting a person in fear of injury or Grievous hurt it is act of terrorism"<sup>427</sup> and Section 2 J of ATA defines grievous injury as Mutilation, Emasculation, , Incapacitation, along with Disfigurement and Severe harm or hurt are examples of grievous injury. Emasculation, means to deprive of virility or procreative power<sup>428</sup> or it act in which sex organ removed, and Mutilation is "an act or instance of

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<sup>427</sup> Danish niazi vs Stste YLR 2020 Karachi 968

<sup>428</sup> <https://www.merriam-webster.com/dictionary/emasculate>

destroying, removing, or severely damaging a limb or other body part of a person or animal”<sup>429</sup> it was held in Mst Parveen Bibi Vs the state<sup>430</sup> “Complainant lodged F.I.R. for qatl-i-amd of her son and Mutilation of his dead body with acid---Trial Court transferred case to court of ordinary jurisdiction as it did not attract provisions of Anti-Terrorism Act, 1997 and even then, case did not fall within jurisdiction of special court constituted under Anti-Terrorism Act, 1997”<sup>431</sup>- and Incapacitation means Injured got permanent paralyzation and Incapacitation due to Injury inflicted by accused person, Trial Court while awarding conviction and sentence to accused under S.324 PPC, it was held that “provisions of Ss. 334 & 337-R, P.P.C. are also applicable and offender would be liable to payment of Arsh, which was half of Diyat amount”<sup>432</sup> so there number of examples of sever harm and hurt like, Injuries resulting like broken or displaced limbs as well as bones of person event it include broken cheekbones, jaw, ribs, and all those Injuries which causes extensive blood loss, or Psychiatric injury it simply to prove grievous injury is not sufficient court must keep some of the factors for determination of whether grievous violence was committed like The nature of the conduct or act whether it was gruesome and brutal,; a scuffle causing bruises will fall out of the ambit of this section. Similarly If the victim suffered serious injury as a result of the conduct. On which part of body, he is suffering this injury like injury is on head of victim although he suffers minor injuries, the act will still be considered seriously violent. In section 6 (b)defines grievous violence against a person or grievous bodily injury or harm to a person; “he does anything likely to cause death or endangers life, but death or hurt is not caused, shall be punishable, with not less than ten years and maximum imprisonments for life and with fine”

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<sup>429</sup> <https://www.merriam-webster.com/dictionary/mutilation>

<sup>430</sup> Mst Parveen Bibi Vs the state, PLD 2020 Lahore 332

<sup>431</sup> Ibid

<sup>432</sup> Jan Alam vs Muntazir Alias Mutazir PCRLJ 2003 Peshawar 1574

**5.4.3 HURT OR INJURY PAKISTAN PENAL CODE 1860** Section 44 of PPC defines Injury as The "injury denotes any harm whatever illegally caused to any person, in body, mind, reputation or property".<sup>433</sup> and chapter XVI of Pakistan Penal Code, 1860 deals "offences affecting human body of the offences affecting life," section 332 defines hurt while section 333 to 336 deals to Itlaf-i-udw and Itlaf-i-salahiyat-i-udw, while section 337 deals shajjah and jurh with all kinds of other hurts. As per definition of Hurt in section 332 which means Hurt is defined as if someone is causing or injury to another person, or any act of person and impairing, disabling or it is disfiguring, dismembering any organ or portion of the body without causing death. Section 337 defines shajjah and its classifications, if any injury on the head of person or face of person, and which is not Itlaf-i-udw or Itlaf-i-salahiyat-i-udw, is called Shajjah, having different kinds Shajjah-i-Khafifah is simple in nature where bone is not exposed with punishment of daman and with imprisonment may extend to two years as Tazir and in Shajjah-i-mudihah the bone exposed without fractured is punishable with Arsh imprisonment may extend to five years as Tazir these two injuries are considered as minor injuries however Shajjah-i-Hashimah, Shajjah-i-Munaqqilah, Shajjah-i-Ammah, and Shajjah-i-Damighah are considered as serious injuries are also known as grievous injuries, Shajjah-i-Hashimah deals fracturing the bone of the victim, without dislocating and Shajjah-i-Munaqqilah is not only fracture of the bone but also dislocate and Shajjah-i-Ammah which touches the membrane of the brain, and Shajjah-i-Damighah, which ruptures the membrane of the brain deals to injuries on head which are more serious in nature with maximum punishment of 10 to 14 years are considered more serious injuries.

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<sup>433</sup> Pakistan Penal Code, 1860, Section 44.

#### **5.4.4 Point of difference regarding application of ATA, offences**

In order to charge a hurt case under Anti-terrorism offences, it is necessary to prove the object clause of ATA as mentioned in 6(1)(b) and 6(1)(c) of the Anti-terrorism act. Section 6(1)(b) states that the use or threat is intended to compel, intimidate, or overpower the government, the general public, or a segment of the general public to bring an element of fear as well as insecurity in society. Section 6(1)(c) means the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause based upon terrorist intent. If there is evidence to prove the above elements, the accused can be charged under 6(2)(b) of the ATA along with the charge of hurt or injury. Therefore, it is important to establish terrorist intent. In cases where there is hurt or injury, but no evidence of terrorist intent, the accused cannot be charged under the ATA. For example, in a case where one person lost their life and another was seriously injured, it was held that the necessary ingredient required for forming an offence under S.6 of Anti-Terrorism Act, 1997, which was intimidation or overawe, either the government or section of large public, was not present. Therefore, even though there was a serious injury, the accused could not be charged under the ATA as there was no evidence of terrorist intent

#### **5.5 ATTEMPT TO CAUSE DEATH**

Section 6(1) (d) defines Involves the doing of anything that is likely to cause death or endangers person's life. Grievous damage to property having minimum punishment of ten year and maximum of imprisonment for life and both. So attempting to cause death or endangering a person's life under section 6(2)(d) terrorist intention is required as mentioned in section 6(1)(b) or (c) of the ATA, 1997 so act is intended

to compel, intimidate, or overpower the government, the general, or to bring element of fear as well as insecurity in society; or 6(1)(c) which means the act is made for the purpose of advancing a religious, sectarian or ethnic cause based upon Terrorist Intent are also charged along with hurt or injury under 6 (2) (b) so there is need to prove terrorist intent. so the offence is committed when an act likely to cause death or endanger a person's life is committed with Terrorist intent then it will be charged under section 6 (2) (d) & 7(1) (b) read with 7(1)(c) of ATA The specific intent (terrorist intent) requirement should be satisfied under section 6(1)(b) and (c) in case of absence of this intention it will be charged under section 324 PPC. So charge under 6(2)(d) it is necessary to establish that the conduct is more likely than not to result in death. The factors that will indicate the required intent include- for determination of terrorist intention there is need to see factors like nature of weapon used, repetition of offence, duration of attack so in case of absence of terrorist intent the offence will be charged under section 324, and very small number of cases under this section reported in year 2019 to 202.

### **5.5.1 KIDNAPPING FOR RANSOM, HOSTAGE TAKING OR HIJACKING**

Kidnapping for ransom, hostage taking or hijacking are offences of ATA as mentioned in section 2(n), 2(m), and 2(l) Anti-terrorism Act, 1997 section 2(m) is dealing "hostage-taking" which "means the holding of a person captive with threats made to kill or harm that person if demand are not met"<sup>434</sup> while "kidnapping for ransom" is defined in section 2(m) of Anti terrorism, Act 1997 which means "the action of conveying any person from any place, without his consent, or by force compelling or by any deceitful means inducing him, to go from any place, and unlawfully detaining him and demanding or attempting to demand, money,

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<sup>434</sup> Section 2(m), Anti -terrorism Act, 1997

pecuniary or other benefit from him or from another person, as a condition of his release”<sup>435</sup> and for the application of this section intention of terrorism as mentioned in section 6(1)(b) or 6(1)(c) is necessary. It means that so act is intended to compel, intimidate, or overpower the government and the general public, and to create element of fear or insecurity in society; or for advancing a religious, sectarian or ethnic purpose based upon Terrorist Intent Although Kidnapping for ransom is defined in Pakistan Penal Code, 1860 in section 365-A definition of Kidnaping for ransom is “snaps or abducts any person for the purpose of extorting from the person kidnapped or abducted, or from any person interested in the person kidnapped or abducted any property, whether movable or immovable, or valuable security, or to compel any person to comply with any other demand, whether in cash or otherwise, for obtaining release of the person kidnapped or abducted, shall be punished with death or imprisonment for life and shall also be liable to forfeiture of property”<sup>436</sup> and The definition for kidnapping for ransom as defined in section 2(n) of the ATA. Is similar as required under section 365-A of PPC, following are it elements are

- the action to move a person from one to another place
- it should be without his consent
- there should be use of criminal force
- it should be unlawfully detention
- there should be demand and attempt of demand of money or any other pecuniary
- it should be a condition precedent for of his release.

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<sup>435</sup> Section 2(n), Anti -terrorism Act,1997

<sup>436</sup> Section 365-A, Pakistan Penal Code,1860

## **5.5.2 DIFFERENCE BETWEEN KIDNAPPING FOR RANSOM AND BHATTA**

Kidnapping for ransom is distinct from extortion or Bhatta, while abduction for a specific demand is a fundamental component of kidnapping for ransom. When a person is kidnapped for bhatta, a charge of abduction for ransom, rather than extortion (Bhatta), will be applicable under section 6 (2) (k).

## **5.5.3 DIFFERENCE BETWEEN KIDNAPPING FOR RANSOM DEFINED IN ATA AND 365-A OF PPC**

This offence under anti-terrorism act and kidnapping for ransom under section 365-A of the PPC may have some overlap. The main difference in both of these is one of intent. Moreover, ATA offence of kidnapping for ransom covers demand a benefit, other than pecuniary one; for instance, releasing a prisoner. “Thus the 'design' and 'purpose' of the accused and co-accused to carry out the abduction of deceased for ransom, brought the commission of the crime within the mischief of the term "terrorism", “Prosecution had been able to prove beyond reasonable doubt that the accused and co-accused had committed the offences under Ss. 365-A & 120-B, P.P.C., and S. 7 of the Anti-Terrorism Act, 1997, thus, they were convicted for the said offences and sentenced to imprisonment for life on each count.”<sup>437</sup> similarly

“Terrorism, kidnapping or abduction for ransom, Conviction for such offences under the Anti-Terrorism Act, 1997, so abduction or kidnapping for ransom which is offence in section 365-A P.P.C. was included in Entry No. 4 of the Third Sched. of ATC, 1997 and kidnapping for ransom was also one of the actions specified in S.7(e) of the Anti-Terrorism Act, 1997---although kidnapping for ransom is one of heinous

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<sup>437</sup>: State vs Ahmed Umer 2021 SCMR 873: State vs Ahmed Umer

offence and so it is triable in ATA court but he will be convicted under section 365-A, P.P.C however if the object behind is to cause fear and insecurity in public or designed mentioned in section 6(1) b and 6(1)(c) of act he will be convicted both offence under section 365-A, P.P.C as well as for the offence under S.7(e) of the Anti-Terrorism Act, 1997 and this principle is applicable on Entry No. 4 of the Third Schedule”<sup>438</sup>

In another case there was an allegation against accused and co-accused persons was that they disguised in police uniforms ostensibly arrested and handcuffed the respondent, where after they attempted to transfer the respondent and his wife to another city by kidnapping them; they also snatched valuables including cash and gold ornaments from the respondent and his wife, and when a contingent of Highway Patrolling Police was attracted to the scene and rescued the family, the accused managed to escape with the loot, “High Court by transferring the case to an Anti-Terrorism Court had discreetly attended the controversy leaving the fate of the case to be finally decided after recording statements of the prosecution witnesses, which course was correct in the face of accusations leveled by the respondent and his wife who allegedly endured the ordeal, with an option to the accused to re-agitate the issue afresh on the basis thereof before the Anti-Terrorism Court, if need be, View taken by the High Court did not suffer from any jurisdictional error or flaw and, thus, called for no interference”<sup>439</sup> similarly in another case accused were charged for demanding bhatta from the complainant by showing Kalashnikov and other weapons and on his refusal, they extended threat to kill him and his family, it was held that “Record showed that undoubtedly the offence so charged fell within the purview of S. 6(2) Anti-Terrorism Act, 1997, being the offence involving the extortion of money (bhatta)

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<sup>438</sup> Ghulam Hussain vs State PLD 2020 SC 61:

<sup>439</sup> Jahngir khan vs Khalid Latif 2021 SCMR 136,



or property as was clear from the FIR, Complainant, in the FIR, had stated that he did not tell anyone about the bhatta demands and as such demands remained personal and private to him and the act of demanding bhatta from the complainant was not designed to coerce and intimidate the public and as such the required mens rea for the case to fall within the purview of the Anti-Terrorism Act, 1997 had not been made out by the prosecution and application was allowed and the provisions of Anti-Terrorism Act, 1997<sup>440</sup>

#### **5.5.4 Data of kidnaping for ransom**

So in year 2021 total 63 cases were registered under ransom and 6 cases were transferred, and while in year 2020 total 117 cases were registered under ransom while 16 cases were transferred to ordinary court, and in year 2019 total 111 cases were registered under ransom while 5 cases were transferred to ordinary court. this transfer of cases were based upon ground that this offence has nexus with object clause as mentioned in 6(1) (b) and 6(1) (c), which means act is intended to compel, intimidate, or overpower the government, and the general public, or a sect, or to bring fear or insecurity in society; or for the purpose of advancing a religious, sectarian or ethnic cause based upon Terrorist Intent.

### **5.6 Hijacking in ATC and PPC**

Hijacking is defined under section 402- A and its punishment is provided in section 402-B and 402-C of Pakistan Penal Code 1860, but we must remember that for the application of section 6 (2) (e) of ATA, the object mentioned in section 6(1)(b) or 6(1)(c) is compulsory,

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<sup>440</sup> Ali Nawaz vs State PCr LJ 2021 Karachi 909,

### **5.6.1 The definition of hijacking in section 2(l) of the ATA.**

Section 2(l) of Anti-terrorism act defines word “hijacking” and its means “any unlawful seizure or exercise of control, or any attempt at unlawful seizure or exercise of control, of an aircraft, by force, violence, threat or any form of obstruction, directly or through any other person, from within or outside the aircraft”<sup>441</sup> and it also offence under section 6 (2) (e) and its punishment is provided in section 7(1)(f) of the ATA which is death or life imprisonment and fine. For the application of Section 2(l) anti- terrorism act,1997 firstly it should be unlawful seizure or exercise of control which also include any attempt at unlawful seizure or exercise of control, secondly this section deals to extent of an aircraft, and control is taken by force or violent or by use of threat, hijacking also include any form of obstruction, whether it is directly or through another person, within or outside the aircraft.

Hijacking is also an offence under 401- B of PPC. In addition, Harboring hijackers or person attempting to commit hijacking is an offence under section 402-C of PPC, The offence of hijacking in PPC is defined as ‘whoever unlawfully, by the use or show of force or by threats of any kind, seizes or exercises control of an aircraft is said to commit hijacking’<sup>442</sup>

### **5.6.2 Difference Between Hijacking Defined In PPC and ATA**

There is a slight difference between the two offences of hijacking under these laws. The action of “seizure or control from outside the aircraft” is expressly stated in the definition of the offence under ATA. Moreover, “attempt to commit the offence “is made part of the substantive offence under ATA and is not dealt with separately. So The offence of hijacking under ATA

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<sup>441</sup> Section 2(l) of Anti-terrorism Act, 1997

<sup>442</sup> Section, 402-A Pakistan Penal code,1860

is charged under section 6(2) (e) &7(1)(f) of the ATA 8 (xiv) and The penalty for hijacking is death or life imprisonment and fine.

The jurisdiction for this offence extends to aircraft within the boundaries or airspace of Pakistan or is bound to land in Pakistan whether the aircraft is registered in Pakistan or not. If the allegation pertains to an attempt, the prosecution should have evidence that the person took a step, in furtherance of preparation. The ATA, 1997, section 2(m) defines hostage kidnapping. Its components include keeping someone hostage and threatening to murder or damage them if certain demands are not satisfied. Hostage taking can happen at the same time as hijacking or kidnapping for ransom. However, hostage kidnapping can occur on its own. Similarly if Hostage taking is the part of hijacking or kidnapping for ransom under anti-terrorism , there is no need to be charged separately. A basic difference between kidnapping for ransom and hostage taking and is that Hostage taking can happen at the same time as hijacking or kidnapping for ransom. However, hostage kidnapping can occur on its own. The main distinction between the charges under section 402B, 402C PPC (for hijacking) and this section is one of terrorist intent. it means that this offence has nexus with object clause as mentioned in 6(1) (b) and 6(1) (c), which means act is intended to compel, intimidate, or overpower the government, the general public, a segment of the general public, a community, or a sect, or to bring fear or insecurity in society; or 6(1)(c) which means the act is made for the purpose of advancing a religious, sectarian or ethnic cause based upon Terrorist Intent.

### **5.6.3 Kidnapping for ransom or hostage taking;**

Kidnapping for ransom or hostage taking is offence under section 6(e) of ATA 1997 and it has three different offences first is kidnapping for ransom, second one is hostage-taking and third one is hijacking and in its definition clause 2(m) is “the holding of a person captive with threats

made to kill or harm that person if demand are not met”<sup>443</sup> similarly kidnapping for ransom means “the action of conveying any person from any place without his consent or by force compelling or by any deceitful means inducing him to go from any place and unlawfully detaining him and demanding or attempting to demand money pecuniary or other benefit from him or from another person as a condition of his release”<sup>444</sup> Punishment is provided in section 7(e) of ATA for all three offences is be punishable, or conviction, with death or imprisonment for life. Section 6(2)(e) involves kidnapping for ransom, hostage-taking or hijacking and section 2(1) defines “hijacking” its means “any unlawful seizure or exercise of control, or any attempt at unlawful seizure or exercise of control, of an aircraft, by force, violence, threat or any form of obstruction, directly or through any other person, from within or outside the aircraft”<sup>445</sup> and its punishment provided is death or imprisonment for life

“Punishment for hijacking. Whoever commits, or conspire or attempts to commit, or abets the commission of, hijacking shall be punished with death or imprisonment for life, and shall also be liable to forfeiture of property and fine.”<sup>446</sup>

Contention of the prosecution was that offence of hijack ing punishable under S.402-B though having not been included in the Schedule to Anti-Terrorism Act, 1997 at the time of its promulgation but was inserted at a later stage by way of an amendment after the commission of the offence in the present case constituted a "terrorist act" and was triable by Anti-Terrorism Act, 1997 It was held in Mian Muhammad Nawaz Sharif case that “hijacking in the manner committed in the present case was by itself likely to create a sense of fear and insecurity not

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<sup>443</sup> Section 2(m), Anti-terrorism Act,1997

<sup>444</sup> Section 2(n), Anti-terrorism Act,1997

<sup>445</sup> Section 6(2)(e) , Anti-terrorism Act 1999.

<sup>446</sup> 402 -B Pakistan Penal Code 1860

only in the inmates of the plane but also in the people generally, Word likely as used in S.6(b) of the Anti-Terrorism Act, 1997 in essence brought the act committed by the accused within the fold of definition of terrorist act, Offence of committing terrorist act having been made out, separate sentence of such offence was not called for in view of S.7(ii) of the Anti-Terrorism Act, 1997<sup>447</sup> in another case Trial Court as well as the Appellate Court had awarded sentence of death to the accused persons keeping in view the facts and circumstances of the case as well as evidence available on record but Superior Courts had shown indulgence in question of sentence very rarely that too, it was held that “keeping in view the peculiar circumstances of the case namely when the case of grave injustice or failure of justice or miscarriage of justice was put up before the Court Where, however, Trial Court as well as High Court had rightly awarded sentence of death to the accused persons in view of facts and circumstances as well as evidence available on record and no case had been made out for the interference of the Supreme Court, Supreme Court declined to grant leave to appeal against the quantum of sentence passed by two Courts below.”<sup>448</sup>

## **5.7 USING EXPLOSIVES OR HAVING EXPLOSIVES SUBSTANCES.**

Using explosives or having explosives substances as mentioned in section 6(2) (ee) must be read with section 6(1)(b) or (c) of the ATA, 1997. According to this section offence is committed when a person uses explosives substance by any device including even the bomb blast or he has possession of any explosive substance without any lawful justification or any permission or licence, or it is unlawfully concerned with such explosives, in such cases so terrorist intent is necessary for this offence and the offence is charged under section 6 (2) (ee)

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<sup>447</sup> Mian Muhammad Nawaz Sharif vs State .PLD 2002 Kar 152

<sup>448</sup> Shahsawar vs State 2000 SCMR 1331

read with 7(1) (ff) of ATA (iv) The term ‘explosive’ is defined in section 2(f) of ATA and means “any bomb, grenade, dynamite, or explosive substance capable of causing an injury to any person or damage to any property and includes any explosive substance as defined in the Explosives Act, 1884. The term ‘explosive substance’ is defined in section 2 of the Explosive Substances Act”, 1908 and includes “any materials for making an explosive substance; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or any explosive substance; also any part of any such apparatus, machine or implement”<sup>449</sup> When explosive substance is used in committing an offence under ATA” there is need of separate charges for that offences and the offence under this section will be preferred so in this section word “Having” means to have a possession of substance secondly most important ingredient for application of explosive is to have it “Without lawful justification” means to lack of reasonable excuse or without any licence or permission,“ and word Concerned in such explosive as mentioned in this section means to involvement in the use or possession of explosives substance like Carrying it ,or Repairing it , and buying or selling including Concealing or Harboring while Similar nature of offences include in section 3, 4, 5 or 6 of the Explosive Substances Act, 1908 and use of explosive is also mentioned in 3<sup>rd</sup> Schedule as well as in section 6 of ATA and in section 6 it is mentioned in 6(2)(ee) as well as 6(3) of Anti-terrorism act,1997 there is need to prove element of designed as mentioned in 6(1)(b) which means act is intended to compel, intimidate, or overpower the government, the general public, a segment of the general public, a community, or a sect, or to bring fear or insecurity in society; or 6(1)(c) which means the act is made for the purpose of

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<sup>449</sup> Section 2; explosive substance Act 1908

advancing a religious, sectarian or ethnic cause based upon Terrorist Intent as given in 6(1)(b) and 6(1)(c) of anti-terrorism Act. It was held in case titled as Afzul-Ur-Rehman vs State

“Accused's abstinence, seemingly actuated by a variety of possible factors, did not cast away culpability of his undertaking so as to make out a case for an unqualified reprieve without any punishment, however, it certainly extenuated, enormity of the charge and in retrospect entitled him to the benefit of lenient treatment, permissible by law, While maintaining his conviction under S. 5 of the explosive Substances Act, 1908, sentence of accused was reduced to the lowest mandated period of seven years' R.I, pre-trial period inclusive, the directions regarding forfeiture of accused's property as well as case property, including the impounded truck, were kept intact, however, his conviction under S. 7 of the Anti-Terrorism Act, 1997 and sentence thereunder, were set aside”<sup>450</sup> it was also held in Muhammad Yaqoob vs state that “Making or keeping explosive s with intend to endanger life or property, connections with a terrorist organization”<sup>451</sup>

in case of Ghulam Hussain vs State the Supreme Court of Pakistan held that

“Same rule may also be applied to the other offences mentioned in Entry No. 4 of the Third Sched. to the Act pertaining to "Use of firearms or explosive s by any device, including bomb blast in a mosque, imambargah, church, temple or any other place of worship, whether or not any hurt or damage is caused thereby", "Firing or use of explosive by any device, including bomb blast in the court premises", "Hurt caused by corrosive substance or attempt to cause hurt by means of a corrosive substance" and "Unlawful possession of an explosive

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<sup>450</sup> Afzul-Ur-Rehman vs State 2021 SCMR 359,

<sup>451</sup> Muhammad Yaqoob vs state 2020 SCMR 853,

substance or abetment for such an offence under the explosive Substances Act, 1908"---Such distinction between cases of terrorism and other heinous offences by itself explained and recognizes that all heinous offences, which are brutal and gruesome in nature”<sup>452</sup>

Interestingly, in anti terrorism act .1997 its Punishment is only not less than 14 year and may extend to life imprisonment while in explosive substance Act 1908 section 3 has maximum sentence of death “Any person who unlawfully and maliciously causes by any explosive substance and explosion of nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with 3 death or imprisonment for life”<sup>453</sup> so there is need to amend punishment of explosive substance in Anti- terrorism laws. In year 2021 total cases registered under explosive substance act were 51 and 1 case was transferred to ordinary jurisdiction while in year 2020 total cases registered under explosive substance act were 63 and 1 case was transferred to ordinary jurisdiction and in year 2019 total cases registered under explosive substance act were 100 and only 1 case was transferred to ordinary jurisdiction although it is mentioned in 3<sup>rd</sup> Schedule these cases are exclusively triable by ATA for Punishment if satisfied the terrorist intent as mentioned in 6(1)(b) which means act is intended to compel, intimidate, or overpower the government, the general public, a segment of the general public, a community, or a sect, or to bring fear or insecurity in society;

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<sup>452</sup>, Ghulam Hussain case

<sup>453</sup> Section 3, the Explosive Substances Act, 1908



or 6(1)(c) which means the act is made for the purpose of advancing a religious, sectarian or ethnic causes-

## **5.8 ACTION AGAINST POLICE PARTY**

In anti terrorism act 1997 section 6 also deals to act against law enforcement agencies says that act Involves serious violence against law enforcement agencies and public servant. section 6 (m) is dealing not to the extent of forces but also all public servant. Its punishment is given in 7 (h) of ATA 1997, “the act of terrorism committed falls under clauses (h) to (n) of subsection (2) of Section 6 shall be punishable, on conviction to imprisonment of not less than one year and not more than ten years and with fine”<sup>454</sup> however court considered it only on the basis of serious threat or any kind of serious injury.

## **5.9 IN PAKISTAN PENAL CODE SECTION 141 UNLAWFUL ASSEMBLY:**

First condition of unlawful assembly as mentioned in section 141 is to intimidate and overawe the government whether by use of criminal force or by the show of criminal force, and even to any public servant who is performing his lawful function as public servant<sup>455</sup>

## **5.10 OBSTRUCTING PUBLIC SERVANT IN DISCHARGE OF PUBLIC FUNCTIONS**

Similarly section 186 of PPC dealing obstruction against performance of public officer and same is punishable with three month imprisonment.

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<sup>454</sup> 7 (h) of ATA 1997

<sup>455</sup> Section,141 Pakistan Penal Code,1860

“Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to [one thousand five hundred rupees or with both”<sup>456</sup>

### **5.11 THREAT OF INJURY TO PUBLIC SERVANT**

“Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”<sup>457</sup>

### **5.12 THREAT OF INJURY TO INDUCE PERSON TO REFRAIN FROM APPLYING FOR PROTECTION TO PUBLIC SERVANT:**

“Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both”<sup>458</sup>

### **5.13 INTENTIONAL INSULT OR INTERRUPTION TO PUBLIC SERVANT SITTING IN JUDICIAL PROCEEDING**

“Whoever intentionally offers any insult or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with

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<sup>456</sup> Section186; Pakistan Penal Code,1860

<sup>457</sup> Section189; Pakistan Penal Code,1860

<sup>458</sup> Section190; Pakistan Penal Code,1860

simple imprisonment for a term which may extend to six months, or with fine which may extend to [three thousand rupees] or with both”<sup>459</sup>

All section of Pakistan penal code 1860 are general in nature and there was no specific offence which was dealing violence against police or other armed forces however superior courts have settled new principle regarding application of 6 (m) of ATA

It was held that action was taken by accused against police officials are required any design, intention and mens rea of causing "terrorism" for the provision of m and n of ATA serious injury couple with designe is basic requirement it was held Area of incident was a secluded area and it did not have impact of causing intimidation, awe, fear and insecurity in public or society---No members of public were around to witness or even hear the action---When police officials were confined in a room and were made to be photographed in the company of ladies, such incident also took place in closed room---Actions against police were though of very serious nature and were to be discouraged and dealt with iron hand as in effect such were the attacks on society as a whole, yet such attacks could only be dealt with under the relevant and applicable law---Actions allegedly taken by accused against police did not fall within the ambit of Anti-Terrorism Act, 1997---Material/evidence did not meet the requirements of S. 6(1)(b) or (c) of Anti-Terrorism Act, 1997 <sup>460</sup>

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<sup>459</sup> Section228; Pakistan Penal Code,1860

<sup>460</sup> Murad Ali Bangalanivs State PCrLJ2019 Karachi 95

## **5.14 BURNING OF VEHICLES OR AN OTHER SERIOUS FORM OF ARSON;**

Section 6(2)J of anti terrorism act 1997 deals to acts Involves in the burning of vehicles or an other serious form of arson and , “the act of terrorism falling under section (h) to (n) are punishable, with not less than one year imprisonment and not more than ten years imprisonment along with fine; and in Pakistan penal code there was no offence dealing burring of vehicle or other serious form of arson however section 123B<sup>461</sup> PPC deals to Burning of Flag with punishment of three years, or with fine, or with both.

Section 285 of PPC deals Negligent conduct of any person with respect to fire or combustible matter and section 286 of PPC dealing negligent conduct with respect to explosive substance.

Section 285 PPC deals acts with fire or any combustible matter which likely to cause hurt or injury to human life with punishment extend to six months, or with fine.<sup>462</sup> There is an element of negligence and it was held that any harm illegally caused to the property of any person due to negligence of person comes with in term injury used in this section <sup>463</sup>

“Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished with imprisonment of either description for a term which may extend to six months,

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<sup>461</sup> [123B. Defiling or unauthorisedly removing the National Flag of Pakistan from Government building, etc. \_\_\_ “Whoever deliberately defiles [or puts on fire]2 the National Flag of Pakistan, or unauthorisedly removes it from any building, premises, vehicle or other property of Government, shall be punished with imprisonment of either description for a term which may extend to cc]”

<sup>462</sup> Section 285 Pakistan Penal Code,1860

<sup>463</sup> 5Bom.HC.R.67(DB)

or with fine which may extend to 1 [three thousand rupees], or with both”<sup>464</sup>. Similarly for the application of section 286 of PPC element of negligence is required.

In Pakistan penal code section another section 435 deals the Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.<sup>465</sup>

*“Whoever commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards or where the property is agricultural produce) ten rupees or upwards shall be punished with imprisonment of either description for a term which shall not be less than two years nor more than seven years and shall also be liable to fine”*<sup>466</sup>

and its punishment is shall not be less than two years nor more than] seven years and shall also be liable to fine. This section is general in nature and section 436 of PPC about “mischief by fire or explosive substance with intent to destroy house, etc. which is punished with 3 [imprisonment for life], or with imprisonment of either description for a term which 4 [shall not be less than three years nor more than] ten years, and shall also be liable to fine this section deals only to the extent of building and human dwelling”<sup>467</sup> so there is no specific distinction regarding burning of vehicle which belong to Public servant or government officials and private person similarly section 437 is only to the extent of mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden. Supreme court of Pakistan held in case where a coaster DG-9732 at night was set ablaze and burning to death of Murad Ali

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<sup>464</sup> Section 286 Pakistan Penal Code, 1860

<sup>465</sup> Section 435 Pakistan Penal Code, 1860

<sup>466</sup> Ibid

<sup>467</sup> Section 436, Pakistan Penal Code, 1860

conductor who had been sleeping inside the vehicle accused was convicted under section 436 of PPC<sup>468</sup>

It is fact that only two cases were registered since 2019 to 2021 and only one case was considered case of ATA and one was transferred to ordinary court.

### **5.15 EXTORTION OF MONEY (BHATTA)**

Section 6(2) in its clause (k) deals act money extortion or commonly known as bhatta while its punishment is provided in section 7(h) of ATA 1997 with minimum one year and maximum ten years however for application of these provisions required mens rea for the case to fall within the ATC is whether purpose of act was to press and intimidate the public.<sup>469</sup>

Word Extortion is defined in section 383 of PPC in which just puts any person in fear of any injury and dishonestly tempts the person for any property or valuable security or anything is extortion and its punishment is provided 384 PPC which is may extend to three years, or with fine, or with both and if a person putting person in fear of injury in order to commit extortion as mentioned in 385 its punishment is two years, or with fine, or with both, now section 386 PPC having key importance as per this section 386 of PPC If someone is making extortion by putting a person in fear of death or grievous hurt then its punishment may extend to ten years and fine

It was held that “murder carried out in a brutal manner which had behind it the object, design and intent to send a signal to all businessmen that if they refused to pay bhatta , they would meet the same fate as the deceased. So act committed by accused was to create insecurity, fear and terror within the business community”.<sup>470</sup> Knowledge of Bhatta should be in knowledge

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<sup>468</sup> Ayaz Ahmed vs Allah Wasya 2004 S C M R 1808;

<sup>469</sup> Ali Nawaz vs state, PCrLJ 2021 Karachi 909

<sup>470</sup> Abdul Rehman vs State PLD 2020 Karachi 473:

of other person Bhatta should be in knowledge of others persons in case if it is absent then it will not complete requirements of this provision. Sindh High Court held in *Ali Nawaz vs state*<sup>471</sup> “the offence so charged fell within the purview of S. 6(2) Anti-Terrorism Act, 1997, being the offence involving the extortion of money (bhatta ) or property as was clear from the FIR-- -Complainant, in the FIR, had stated that he did not tell anyone about the bhatta demands and as such demands remained personal and private to him and the act of demanding bhatta from the complainant was not designed to coerce and intimidate the public and as such the required mens rea for the case to fall within the purview of the Anti-Terrorism Act, 1997 had not been made out by the prosecution”<sup>472</sup>

Even if accused made firing for demand of Bahatta then again it is not fulfilling requirements of these provisions because just firing at place does not complete Bhatta as in case *Muhammad Aslam Vs State*<sup>473</sup> it was held that “Trial Court could not have convicted and sentenced an accused for offense under S. 7(h) of Anti-Terrorism Act, 1997 as mere firing in area for bhatta did not ipso facto bring case within purview of S. 6 of Anti-Terrorism Act, 1997 so as to brand action as terrorism.”<sup>474</sup> The offence of kidnapping for ransom is different from the offence of extorting money i.e. Bhatta in so far as a completed act of abduction is a necessary ingredient of the offence of kidnapping for ransom. Where a person is abducted for bhatta, a charge of kidnapping for ransom instead of the charge of extortion (Bhatta) under section 6 (2) (k) will be appropriate

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<sup>471</sup> *Ali Nawaz vs State* PCrLJ 2021 Karachi 909

<sup>472</sup> *Ibid*

<sup>473</sup> YLR 2018 Karachi 1584

<sup>474</sup> *Ibid*

## **5.16 DATA ANALYSIS OF EXTORTION CASES UNDER ATA CASES.**

So in year 2021 total 22 cases were registered under extortion and 11 cases were transferred, and while in year 2020 total 52 cases were registered under extortion while 17 cases were transferred to ordinary court, and in year 2019 total 91 cases were registered under extortion while 42 cases were transferred to ordinary court. this transfer of cases were based on one ground that this offence has nexus with object clause as mentioned in 6(1) (b) and 6(1) (c), which means act designed to create fear and insecurity in society or advancing a religious and sectarian cause based upon Terrorist Intent.

## **5.17 THIRD SCHEDULE OF ANTI-TERRORISM ACT, 1997 AND OFFENCES.**

Third Schedule of Anti-terrorism act, 1997 is dealing offences of heinous nature and it also remained point of controversy regarding its jurisdiction and it was firstly inserted in 1997, and word scheduled offences is defined section 2(t) of Anti-terrorism act, 1997. Section (t) “Scheduled offence means an offence as set out in the Third Schedule”<sup>475</sup> and in clause 1 of there schedule of Anti-terrorism act, 1997 deals with “Any act of terrorism within the meaning of this Act including those offences which may be added or amended in accordance with the provisions of section 34 of this Act” it means that Any act of terrorism, as defined by this Act, including such offences that may be added or altered in accordance with section 34 of this Act. It is using any act of terrorism which is defined in section 6 of Anti-terrorism act, 1997 and secondly section 34 of this Act empowered Government to amend this schedule as section 34 of Act says that Power to amend the Schedule lies to Government. According to this the Government may, at any time through notification, can amend the Schedules its means it is

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<sup>475</sup> Section 2(t) of Anti terrorism Act: 1997



complete discretion of Government to which act should place in anti-terrorism act and add any entry or modify or omit any entry from these schedule. Similarly clause 2 and 3 narrates that “Any other offence punishable under this Act or Any attempt to commit, or any aid or abetment of, or any conspiracy to commit, any of the aforesaid offences are part of this schedule.in section 4 of schedule it is mentioned that ‘cases of abduction or kidnapping for ransom along with use of fire arms or explosives by any device, including bomb blast in a mosque, imambargah, church, temple or any other place of worship, and firing or use of explosive by any device, including bomb blast in the court premises are exclusively triable by Anti-terrorism Court’<sup>476</sup>. It restricted the ordinary court from trial of above-mentioned cases. the offences mentioned in schedule are already part of anti-terrorism legislation in section 6(2) (e) all act involves act kidnapping for ransom, and section 6(2) (ee) though it was inserted in 2013 through Anti-terrorism (Second Amdt.) Act. 2013 (XX of 2013), which act involves use of explosive substance by e including bomb blast or any devic or having without any lawful justification, any explosive substance or and have no legal concerned with such explosive and in 2002 above said amendment was not part of Ant-terrorism act;1997. The government of Punjab brought an amendment regarding hurt through corrective substance shall be deal as triable by terrorism court including unlawful possession of explosive substance we must remember that very first schedule which was amended by Notification no. S.R.O. 1237 (1)/97, dated 13.12.1998 that “Any offence punishable under any of the following sections of the Pakistan Penal Code (Act XLV of t860), under section Section 302 if it is committed with a cannon, grenade, bomb of rocket and secondly if Public servant including armed forces, member of police, or civil armed forces. And any act if committed during or while committing

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<sup>476</sup> Third schedule of Anti -terrorism act, 1997

the offence of robbery or dacoit and committed .thirdly it as mentioned that Sections 109, 120A, 120B, 121, 121A, 122, 123] 295A, 365, 365A, 402A, 402B and 402C; and (c) Sections 392 to 395, 397 to 398, if in committing the offence, the offender or any of the offenders commits the offence of murder or Zina-bil-jabr punishable under section 6, 7, 8 or 10 of the Offence of Zina (enforcement of Hudood) Ordinance, 1979 (VII of 1979) and committed after the commencement of this Act”<sup>477</sup> there were serious and heinous offences were part of anti-terrorism laws and that time section 6 define act of terrorism as –“Whoever, to strike in the people, or any section of the people, or to alienate any section of the people or adversely affect harmony among different sections of the people, does may act or thing by using bombs, dynamite or other explosive or inflammable substances, or fire-arms, or other lethal weapons or poisons or noxious gases or chemicals or other substances of a hazardous nature in such a manner as to cause, or to be likely to cause the death of, or injury to, any person or persons, or damage to or destruction of, property or disruption of any supplies of services, essential to the life of the community or displays fire-arms, or threatens with the use off force public servants in order to prevent them from discharging their lawful duties commits a terrorist act”<sup>478</sup> and object was striking terror because there was no element of designed at that time. In case it was decided that at time of the murder if victim was a public official it would be enough to trigger the Anti-Terrorism Act's provisions (1997 and It would be irrelevant that the victim was not on duty at the time of the alleged murder and that the alleged murder had nothing to do with the victim's performance of responsibilities as a public worker”<sup>479</sup> The Supreme Court upheld the High Court's decision and denied the petitioner's request for leave to appeal, and held “that

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<sup>477</sup> Third schedule of Anti terrorism act,1997 available

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/81777/88943/F435058093/PAK81777.pdf>

<sup>478</sup> Section 6, Ant- terrorism Act, 1997(initial enactment) available at

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/81777/88943/F435058093/PAK81777.pdf>

<sup>479</sup> NLR 2000 Criminal Lah.

It was held that the Presiding Officer of the Anti-Terrorism Court has jurisdiction to decide whether a particular case falls or does not fall within the purview of the judge under the Anti-Terrorism Act, and that such a question can be re-agitated before the concerned Anti-Terrorist Court, which would pass appropriate orders uninhibited by the observations of the High Court in its order”<sup>480</sup> it was held in Tahir Hussain Vs Khaliq Dar “Cases triable by Courts under Anti-Terrorism Act, 1997 must have nexus with Ss.6, 7 & 8 of the said Act and Anti-Terrorism Act, 1997 being a Special Law, private complainant or legal heirs of deceased had no right to compound scheduled offences' as said offences were mainly against the State 'and not against individuals’<sup>481</sup> similarly in Amanullah vs state<sup>482</sup>, it has no nexus with object however in Mazher vs state<sup>483</sup> PLD 2003 Lahore 267 it was held that Special Court constituted under the Anti-Terrorism Act, 1997, at the time when such a Court used to have jurisdiction with reference to certain scheduled offences, but subsequently the said Act was amended and through an amendment in its S 6 jurisdiction of the Special Court was made determinable not with reference to any schedule of offences but with reference to the mens rea and the actus reus specified in the amended S, 6 Definition of a ‘terrorist act’ was subsequently amended in section 6 through the Anti-Terrorism (Second Amendment) Ordinance, 1999 (Ordinance No. XIII of 1999) .. and “element of effect was introduced element of effect any act “in order to, or if the effect of his actions will be to, strike terror or create a sense of fear and insecurity in the people, or any section of the people, does any act or thing by using bombs, dynamite or other explosive or inflammable substances, or such fire-arms or other lethal weapons as may be notified, or poisons or noxious gases or chemicals, in such a manner as to cause, or be likely

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<sup>480</sup> NLR 2000 Criminal SC 35

<sup>481</sup> Tahir Hussain Vs Khaliq Dar MLD 2003 Lah1401 Tahir Hussain Vs Khaliq Dar

<sup>482</sup> Amanullah vs state PLD 2003 Quetta 11 :

<sup>483</sup> Mazher vs state PLD 2003 Lahore 267

to cause, the death of, or injury to, any person or persons, or damage to, or destruction of, property on a large scale, or a widespread disruption of supplies of services essential to the life of the community, or threatens with the use of force public servants in order to prevent them from discharging their lawful duties” it was further held that “offences mentioned in scheduled offence were also included if the effect of which will be or be likely to be, to strike terror, or create a sense of fear and insecurity in the people, or any section of the people or to adversely affect harmony among different sections of the people it also include any offence commits an act of gang rape, child molestation, or robbery coupled with rape as specified in the Schedule to this Act”<sup>484</sup> but it was in Anti-Terrorism (Amendment) Ordinance, 2001 (Ordinance No. XXXIX of 2001 word of schedule was not placed In section 6, thorough reading of the Third Schedule reveals that an Anti-Terrorism Court has been given jurisdiction to try not just those crimes that fall under the Act's definition of terrorism, but also some other specific instances involving terrible crimes that do not fit under that description, and it deals also some other specified cases involving heinous offences which do not fall in the said definition of terrorism. Although such offences may not constitute terrorism, they may be prosecuted by an Anti-Terrorism Court to provide a rapid trial of such grave crimes. The supreme court of Pakistan has decided in Farooq Ahmed v State and another<sup>485</sup> (PLJ 2017 SC 408), Amjad Ali and others v The State<sup>486</sup> (PLD 2017 SC 661) and Muhammad Bilal v The State and others<sup>487</sup> (2019 SCMR 1362) and distinction between cases of terrorism and cases of specified heinous offences not amounting to terrorism but triable by an Anti-Terrorism Court has already been recognized by this Court in above mentioned cases.

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<sup>484</sup> Schedule 3<sup>rd</sup> of Anti-Terrorism (Second Amendment) Ordinance, 1999 (Ordinance No. XIII of 1999)

<sup>485</sup> PLJ 2017 Supreme Court 408

<sup>486</sup> PLD 2017 Supreme Court 661

<sup>487</sup> 2019 SCMR 1362

In year 2017 Amjad Ali vs the state Supreme Court of Pakistan held that “In the present case there was no 'design' or 'object' contemplated by S.6 of the Anti-Terrorism Act, 1997 and By virtue of Item No.4(ii) of the Third schedule to the Anti-Terrorism Act, 1997 a case became triable by an Anti-Terrorism Court if use of firearms or explosives, etc. in a mosque, imambargah, church, temple or any other place of worship was involved in the case, Said entry in the Third schedule only made such a case triable by an Anti-Terrorism Court but such a case did not ipso facto become a case of terrorism for the purposes of recording convictions and sentences under S.6 read with S.7 of the Anti-Terrorism Act, 1997, Present case had, thus, rightly been tried by an Anti-Terrorism Court but the said Court could not have convicted and sentenced the accused persons for an offence under S 7(a) of the Anti-Terrorism Act, 1997 as it had separately convicted and sentenced the accused persons (under S.302(b), P.P.C) for the offences of murder, etc. committed as ordinary crime”<sup>488</sup>

## **5.18 SCHEDULE FIFTH OF ANTI-TERRORISM ACT,1997 DEALS INTERNATIONAL CONVENTIONS**

Schedule fifth of Anti-terrorism act,1997 deals international conventions to which Pakistan is also signatories it was inserted in 2013, through Anti-terrorism amendment and it deals only international conventions in which Pakistan signatories it includes “Hague Convention for the Suppression of Unlawful Seizure of Aircraft,1970” in which article 4 says that, each Contracting State must take all necessary means to deal offence violence against passengers or crew within their jurisdiction, when committed aboard a plane which one is registered in that country, or when the plane on which the crime was committed lands in its territory with the suspected criminal still aboard, even when the crime is committed aboard a plane registered in

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<sup>488</sup> Amjad Ali Vs State PLD 2017 SC 661 ;Amjad Ali Vs State

that country, or when the offence is committed on board of leased aircraft which one is without crew at any place in a state. or In the event that the accused perpetrator is present on its territory and it does not extradite the alleged offender, each Contracting State should take whatever procedures are required to establish its jurisdiction over the offence,<sup>489</sup> but this convention is not applicable on military, police or custom services. Pakistan has jurisdiction over the offence if falling in category of article 4 and trialble under terrorism court. Similarly, the “United Nations convention by the General Assembly for the Suppression of Unlawful Acts against the Safety Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents” 1973 in its article 3 define the offences and where it is mentioned that Article 2 1. Clause 1 of article 2of convention deals murder cases, kidnapping or other attack upon the person or liberty of an internationally protected person as defined in article 1 of the convention include “Whenever any such person is in a foreign State, a Head of State, including any member of a collegial body performing the functions of a Head of State under the constitution of the State concerned, a Head of Government, or a Minister for Foreign Affairs, as well as members of his family who accompany him and Any representative or official of a State, or any official or other agent of an international organization of an intergovernmental character” So each State Party to make them offences in its domestic laws and they shll be punishable with maximum sentences .it will be an obligations of States Parties under international law to take all possible measures for protection of protected person<sup>490</sup>. In Pakistan law again targeting of such protected person shall fall in ambit of Anti-terrorism laws.

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<sup>489</sup> Article 4 of Convention for the Suppression of Unlawful Seizure of Aircraft [Hijacking Convention], 860 U.N.T.S. 105, entered into force Oct. 14, 1971. Available at, <http://hrlibrary.umn.edu/instree/hague1970.html>

<sup>490</sup> Article 2, “Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, Annexed to General Assembly resolution 3166 (XVIII) of 14 December 1973” available at [https://legal.un.org/ilc/texts/instruments/english/conventions/9\\_4\\_1973.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/9_4_1973.pdf)

An other convention known as taking of Hostages, 1979 which “The International Convention against the Taking of Hostages (the Convention)” aims to foster international collaboration among states in developing and implementing effective measures to prevent, prosecute, and punish all acts of taking hostages as manifestations of international terrorism. This United Nations convention adopted by the General Assembly against Taking of Hostages, 1979 where keys element were that each state shall take immediate step for the release of person who has been hostage and make offence punishable in their own domestic laws, Anyone who attempts to conduct an offence as described above or acts as an accomplice of someone who commits or seeks to commit a hostage-taking act commits such an offence.<sup>491</sup> In the fifth schedule of Anti-terrorism Act, 1997 next convention is about violence and unlawful at Airport also known as “Montreal Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the suppression of Unlawful Acts against the Safety of Civil Aviation, 1988” and The Protocol follows the Convention's design and techniques. Whereas Article 2 of the Convention, in particular, expands the scope of the offences or charges listed in Article 1 ('the Convention offences') by adding certain additional ones also known as the Protocol offences, while its Article 3 establishes jurisdiction over the Protocol offences. According to protocol it is offence if a person commits an act of violence against a person who is part of civil aviation it should be part of offences mentioned at domestic level. Now Anti-terrorism act has mentioned in section 6 (2) (a),if involves the any thing that causes death, 6 (2) (b)if act involves grievous violence against a bodily injury or harm while 6 (2)(c) involves grievous damage to property which include government premises, official installations, schools, hospitals, offices and public or

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<sup>491</sup> “International Convention against the Taking of Hostages (New York, 17 December 1979)”; <https://www.unodc.org/documents/treaties/Special/1979%20International%20Convention%20against%20the%20Taking%20of%20Hostages.pdf>

private property it also include damaging property by ransacking, looting or arson or by any others means so this convention offences falls in realm of anti-terrorism laws. “Rome Convention for the suppression of Unlawful Acts against the Safety of Maritime, sNavigation, 1988” is also part of fifthe schedule of anti-terrorism act 1997 so in this “Convention for the suppression of unlawful acts against the safety of maritime navigation 1988, offence deals seizes or exercises control over a ship by force, or it destroys or seriously damages maritime navigational facilities while clause b deals abetment of this offences while ARTICLE 5 of convention compels the government that offences mentioned In article 3, State or Party shall make them punishable by appropriate penalties which take into account the grave nature of those offences.<sup>492</sup> International conventions /Treaties convention could be relied upon and enforceable as long as it was not in conflict with the law enacted in Pakistan or treaty,<sup>493</sup> and supreme court of Pakistan held Government of Punjab Vs Aamir Zahoor-UI-Haq,<sup>494</sup> that that International conventions and treaties are enforceable domestically or in a country if these are incorporated in the municipal law.

## **5.19 OFFENCES RELATING TO RELIGIOUS NATURE**

Although section 295 to 298 of PPC is dealing with the offence relating to religious and Blasphemy nature cases. section 295-A was inserted by British with the purpose to protect religious sentiments of Muslim minority in 1927. And in 1982 section 295-B was inserted in dealing defiling of Holy Quran and offence is cognizable not bailable and non-compoundable. And act is done consciously and deliberately with or without intentions damage and destroy the honour respect and greatness of person in the eyes of public in general or with the purpose to satisfy one’s own feeling shall be lawful act bringing the case within in the purview of this

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<sup>492</sup> Article 5; “Convention for the suppression of unlawful acts against the safety of maritime navigation 1988”  
<https://treaties.un.org/doc/Publication/UNTS/Volume%201678/v1678.pdf>

<sup>493</sup> PLD 2020 Islamabad 268, Khadim Hussain Vs Secretary, Ministry of Human Rights, Islamabad

<sup>494</sup> Government of Punjab Vs Aamir Zahoor-UI-Haq PLD 2016 SC 421 ;



section 295-B PPC<sup>495</sup> Public unrest and outrage amongst Muslim majority is increasing due to Publication/circulation on social media (facebook) and Caricatures, text and pictures. Lahore High Court directed that

“Government should establish a cell under Pakistan Telecommunication Authority (PTA) including I.T. Experts and Islamic Scholars as members to keep an eye on websites and social media programs, and to take adequate steps for blockage thereof, and initiating legal proceedings, if found content objectionable, defamatory, violating any provision of law, against the beliefs of the Muslims, and against the integrity of State”<sup>496</sup>

It was also held that that “government should, for awareness of the general public, establish: firstly, an official website/portal containing authentic copy of Qur'an with translation, Ahadith books, all laws relating to Khata m-e-Nabuwat, articles written on the subject and decisions of the superior courts on this specific issue and secondly, a window/portal for answering the queries about the injunctions of Islam and Khata m-e-Nabuwat by the known Islamic scholars. and thirdly, a specific portal on the said website detailing all authentic Islamic websites/pages; that It was duty of the Authorities to initiate proceedings at their own motion without requiring complaint under Ss.5(2) and 5(3) of Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards) Rules, 2020”,<sup>497</sup> but unfortunately, no proper work practically done by the government. section 295-C was inserted through criminal Law amendment act III of 1986 dealing use of derogatory remarks against Holy Prophet Hazrat Muhammad (PBUH) in PPC. in case Javed Iqbal Vs State, PLD 2017 SC 147 allegation 295-C was considered as case of terrorism and even it was mentioned that “Bar of taking cognizance provided under S.196, Cr.P.C. did not apply to proceedings before the Anti-

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<sup>495</sup> 1994MLD 15

<sup>496</sup> Luqman Habib Vs Federation Of Pakistan MLD 2021 Lahore 1633

<sup>497</sup> Ibid

Terrorism Court” and trial was conducted in terrorism court while in case title Adnan Prince vs State 2016 SCMR 787, conducted in ordinary court although section 6 is also dealing religious sentiment and section 6(1)(c) that the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause” originally 1997 offence 295-A was schedule offence.

(b) offences under sections 295-A, 298-A, 364, 364-A, 365, 365-A, 392 to 402 of the Pakistan Penal Code (Act No. XLV of 1860)<sup>498</sup>.

It also remain part of schedule after the Anti-Terrorism (Second Amendment) Ordinance, 1999 (Ordinance No. XIII of 1999 however After the removal of this schedule through The Anti-Terrorism Act of 1997 was on August 15, 2001 by the Anti-Terrorism (Amendment) Ordinance, 2001 and dramatically changed word inserted in section 6(1)(c) that the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause” and supported with general terms like based upon section 6(2)(f) that is “incites hatred and contempt on religious, sectarian or ethnic basis to strip up violence or cause internal disturbance” and punishment of section 6(2)(f) is provided into section 7(g) which is not more than 5 years and less than 2 years. Similarly, section 8 is dealing Prohibition of acts intended or likely to stir up sectarian hatred through any manners provided in section 8 of enactment and its punishment is five year as provided into section 9 of act and section 11 deals proscribed organizations. This complete chapter was inserted 1997 and purpose of enactment was only to provide protection from sectarianism in Pakistan which was raised due to the slogan of Islamization in Pakistan in period of 1980s. this enactment empowered the government to declare any

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<sup>498</sup> Schedule Anti-terrorism Act 1997;

organization as proscribed organization and section 11 E provide measurements which can be taken by the government and 11EE deals proscription of person and provide detention mechanism of person in 4<sup>th</sup> schedule under section 11EEEE. When organization is concerned in terrorism if it commits act of terrorism or it promotes and support the terrorism. But unfortunately, the courts have not clear definition of terrorism for proper application of these sections.

## **5.20 CONCLUSION**

The above mentioned discussion describes a major problem with overlapping offenses in the Anti-terrorism Act (ATA) and other statutes. Courts are having difficulty differentiating between these offenses, which not only hinders and impedes investigations but also affects prosecutions. Interestingly, the punishments provided for these offenses are similar in nature, indicating that their purpose was to provide expeditious justice to victims. However, establishing criminal intent in these cases is very challenging, and international practice does not face such hurdles. So it emphasizes the need to bring these issues to the attention of legislators and develop mechanisms to address them. Most cases transferred from ATA to ordinary courts involve murder or kidnapping, making it difficult to establish terrorist intent when there is a personal relationship among parties. However, no cases have been transferred that involve explosive substances or elements of foreign funding and support from proscribed organizations or terrorist organizations. No doubt overlapping of offences in ATA and other statutes is one of major problem and even courts are unable to differentiate them properly and due to overlapping not only hampering and impeding investigation but prosecution also suffers. Interestingly punishment provided in those offences are similar in nature so purpose was only

to provide expeditious justice to the victims but to establish criminal intent as mentioned above is very difficult in such cases while at international practice there is no such hurdle so there is need to bring these issues under the consideration of legislatures and to develop mechanism to check these issue. Mostly case transferred from ATA to ordinary court are of murder case and kidnaping so difficult to establish terrorist intent where there is personal relation among parties but no case was transferred in which there is element of explosive substance and element of foreign funding and support from proscribed organizations and terrorist organizations etc

## **CHAPTER SIX**

# **REASON OF ACQUITTAL IN ANTI-TERRORISM CASES IN PAKISTAN**

### **6.1 INTRODUCTION;**

One of the serious problem Pakistan is facing with increasing terrorism cases over the past decade is the failure of law enforcement agencies to successfully prosecute the accused in court. Syed Manzar Abbas Zaidi's article "Terrorism Prosecution in Pakistan" attributes this failure to the slow and flawed processes for producing evidence, leading to a high acquittal rate when cases are finally brought to court<sup>499</sup>. However, that solely blaming defective investigations is not fair and that the roles of all pillars of the criminal justice system need to be discussed to find answers. The passage emphasizes the need for a comprehensive analysis of the criminal justice system, including the role of the courts and the prosecution. So there is dire need to address the challenges faced by the criminal justice system in effectively prosecuting terrorism cases in Pakistan. This requires a comprehensive approach that addresses the various issues and involves all pillars of the criminal justice system. Pakistan has been facing the menace of terrorism for several years, and the country has suffered greatly due to this threat. Despite the establishment of special anti-terrorism courts and strict laws to combat terrorism, there have been instances of defective investigation in terrorism cases. Defective

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<sup>499</sup> Syed Manzar Abbas Zaidi, TERRORISM PROSECUTION IN PAKISTAN available [https://www.usip.org/sites/default/files/PW113\\_Terrorism\\_Prosecution\\_in\\_Pakistan.pdf](https://www.usip.org/sites/default/files/PW113_Terrorism_Prosecution_in_Pakistan.pdf) last accessed

investigation is a major issue that has led to the acquittal of many accused persons, and it is a serious challenge for the criminal justice system in Pakistan. One of the major reasons for defective investigation is the lack of proper training and resources for the investigators. In many cases, the investigators do not have the necessary expertise and knowledge to handle terrorism cases, which require specialized investigation techniques. Moreover, the investigators often do not have the necessary resources, such as forensic labs, to collect and analyze evidence. As a result, the investigation is not carried out effectively, and vital evidence is often overlooked. Defective investigation and the role of prosecution in terrorism cases in Pakistan are major issues that need to be addressed urgently. The lack of resources, training, and accountability for investigating agencies and prosecutors, coupled with political interference and the broader structural issues within the criminal justice system, have resulted in numerous flaws in the judicial process, including flawed investigations, delayed trials, and poor case preparation. These issues not only violate the basic rights of the accused but also undermine public confidence in the judicial system and fail to deliver justice to the victims. To address these issues, there needs to be a concerted effort to improve the capacity of investigating agencies and prosecutors, ensure greater accountability and transparency, and reform the broader criminal justice system to better handle terrorism cases. The role of the prosecution is crucial in ensuring that justice is served in terrorism cases. However, the prosecutors in Pakistan are often not provided with the necessary support and resources to carry out their duties effectively. This lack of support not only hinders their ability to present the case in court, but it can also result in cases being delayed for years, causing further suffering for the victims and their families. Furthermore, there is often a lack of coordination between the investigation and prosecution teams, leading to poor case preparation and missed opportunities for the prosecution to present a strong case in court. This is particularly

problematic in terrorism cases, where the evidence must be gathered and presented in a timely and efficient manner to ensure that justice is served.

## **6.2 POLICE AND INVESTIGATION**

Police reports u/s 173 of Cr.P.C is the result of a investigation. In particular, police reports is always based upon the evidence which one is gathered or collected by the police, and request of police whether to charge a particular person on the basis evidence. Police reports are forwarded to the prosecutor for formulation of his opinion whether to prosecute or not. Investigation is an objective process aimed at identifying the actual offender. The police has right to confirms the involvement of a particular accused, The investigation process entails the collection, recording and retention of all relevant evidence such as statement of witnesses, results of forensic and other evidence. Sec 4 (l) & Chapter XIV (Sec 154 to 176) of the Code of Criminal Procedure, 1898, High Court (Lahore) Rules and Orders Vol.III, Chap. 11, Part-A Volume 3, Chapter 25, of Police Rules 1934 and Investigation includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf. Investigation means collection of evidence helping to form an opinion by the Investigating Officer for submission of final report under section 173, Cr.P.C. before the Court of competent jurisdiction<sup>500</sup>.

Investigation, therefore, means nothing more than collection of evidence<sup>501</sup>. A bare perusal of section 4(1) of the Cr.P.C. should have been sufficient to acquaint us with the fact that the investigation only meant collection of evidence and no more.<sup>502</sup> The purpose of investigation is always to bring truth on surface by collecting material.<sup>503</sup>

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<sup>500</sup> 2015 P.Cr.LJ 1551

<sup>501</sup> PLD 2010 Supreme Court 1109

<sup>502</sup> PLD 2006 Supreme Court 316

<sup>503</sup> 2015 YLR 1015

following are main Steps which are following<sup>504</sup> included in investigation

- i. Proceeding to the spot,
- ii. Ascertainment of the facts and circumstances of the case,
- iii. Discovery and arrest of the suspected offender,
- iv. Collection of evidence relating to the commission of the offence which may consist of:
  - a. examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit,
  - b. the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and
- v. formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial, and if so, taking the necessary steps for the same by the filing of a charge sheet under

“The investigative process is a progression of activities or steps moving from evidence gathering tasks, to information analysis, to theory development and validation, to forming reasonable ground to believe, and finally to the arrest and charge of a suspect”<sup>505</sup>

Word investigation is defined in criminal procedure code 1898 "Investigation". "Investigation" includes “all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf”<sup>506</sup> this definition of investigation is not exhaustive in nature<sup>507</sup>. Objective of investigation is laid down in case Muhammad Nawaz khan vs Noor Muhammad<sup>508</sup>;it was held

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<sup>504</sup> 1999 P.Cr.LJ 1357

<sup>505</sup>Introduction to Criminal Investigation: Processes, Practices and Thinking by Rod Gehl “The Process of Investigation” Chapter 4 available at <https://pressbooks.bccampus.ca/criminalinvestigation/chapter/chapter-4-the-process-of-investigation/>

<sup>506</sup> Criminal .Procedure Code, 1898, section 4(1)

<sup>507</sup> Access to justice in Pakistan by Justice retired Fazal Karim, 176

<sup>508</sup> PLD 1976 Lahore 176.



that No one is put on trial unless there is a good case against him; to enquire into allegation of the offence ....and to find out whether allegation is true or not. It is duty of police to collect evidence. By using powers which are given to police under section 155,156, of cr.p.c dealing arrest and detention section 47,49 51 and 165 regarding search and seizure, power to examine witness under section 160,161,162 of Cr.P.C and many other powers given Cr.p.c and special statutes and combined effect of all powers to Police is to bring only a guilty person before the court of law and submit charge sheet in the form of challan u/s 173 of cr.p.c before the court.

### **6.3 ROLE OF PROSECUTOR;**

Whether to commence an investigation or not after registration of FIR or whether to direct the police to collect evidence for or against a person there is no role of prosecutor , even not in position to direct police to act according to line of enquiry. Section 12 of prosecution act describes responsibilities of Police towards Prosecutors and one of them is it is duty of police that incharge of a police station or the investigation officer shall send the copy of the FIR immediately to the office of District Public Prosecutor however its objective is not mentioned in this act because similar provision in section 8(2) of Khyber Pakhtunkhwa] Prosecution Service Act.

“On registration of the First Investigation Report the Station House Officer of police station concerned shall send a copy of the First Investigation Report to the District Public .Prosecutor/Public Prosecutor of the District who on receipt shall inspect the same and issue necessary directions to the Head of Investigation, and

shall also inspect, scrutinize and supervise the whole Investigation process of various cases so registered in the District.”<sup>509</sup>

The section 12 of the prosecution act is dealing coordination between the police and prosecution which is describing the duties of police towards the prosecutors

Responsibilities of Police towards Prosecutors.– (1) An officer incharge of a police station or the investigation officer shall–

(a) immediately report to the District Public Prosecutor, the registration of each criminal case by sending a copy of the first information report;<sup>510</sup>

As mentioned above this section is silent about any coordination after registration of FIR although the code of conducts issued under section 17 of prosecution provide coordination mechanism through guidelines and standard operating procedures and MOUs between the police and prosecution. the As it is mentioned above provision the prosecutor are not only in position to issues directions to the Head of Investigation but also inspect, scrutinizes and supervise whole investigation. This power to supervise the investigation is one of major power and survey was conducted in Italy and countries like China, Brazil, Japan, Cameron, Central African Republic, Croatia , Egypt, France, Phillipine, Italy, Taiwan, Netherlands, Montenegro, Rwanda, where prosecutor can investigate criminal case and even prosecutor can issues direction during investigation China, Brasil, USA, Tanzania , France, Japan, Cameron, Central African Republic, Croatia, Egypt, IceLand, Canada, Phillipine, Kenya, Italy, Taiwan, Fiji, Netherlands, Uganda, Montenegro, Maldives, Rawanda, and in following countries

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<sup>509</sup> Section 8(2), Khyber Pakhtunkhwa] Prosecution Service (Constitution. Functions and Powers) Act. 2005

<sup>510</sup> Punjab Criminal Prosecution Service Act,2006, Section 12,

prosecutor was in position in supervise investigation China, Brasil, USA, Italy Netherlands Japan, Australia Cameron, Central African ,Republic, Egypt, Philippine, IceLand, Canada, Finland, France, Tanzania Cyprus, Kenya, Taiwan, Fiji, Maldives, Rawanda, However in other provinces prosecutors are not empowered to direct investigating officers , now on the basis of guidelines , SOPs and a prosecutor in a position to contact the I.O and to issue the guidelines and advice him during the investigation to make it fit for the prosecution. The guidelines and Standard Operation Procedures are not mandatory and have not any legal effect so no one can compel them to take advice in every case. So actual work of prosecutor starts after receiving report U/S 173 of Cr.P.C section 9(4) of prosecution Act says that report shall be submitted trough the Public Prosecutor

“A police report under section 173 of the Code including a report of cancellation of the first information report or a request for discharge of a suspect or an accused shall be submitted to a Court through the Prosecutor appointed under this Act”.<sup>511</sup>

On other hand section 19 of the ATA provides that The investigating officer to the JIT, shall complete the investigation not only in thirty days but The report under section 173 of the Code shall be signed and forwarded directly to the court and word through the public prosecutor was not used in said provision however in 2014 amendment was introduced and role of prosecutor regarding scrutinize was assigned to him in form of section 19-B as pre trial Scrutiny.

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<sup>511</sup> Section 9(4) Punjab criminal prosecution act 2006

Pre-trial scrutiny. “Before commencement of the trial, the prosecute shall scrutinize the case file to ensure that all pre-trial formalities have been completed so that the actual trial proceeds uninterrupted from day-to-day.”

Now section 19 of ATA read with section 173 Cr.P.C and section 9(4) of prosecution act collectively compel the police officer to submit report through Public Prosecutor shall scrutinize the case under section 9(5) and make assessment under section 9(7) of prosecution act.

Now this stage for the prosecutor is late stage and unable to rectify defects which were non curable due to poor investigation and he can only make assessment under section 9(7) of prosecution act and declares this case is not fit case for the prosecution. As it is mentioned in section 9(5) Prosecution Act 2006 that if case is fit send it to court otherwise send it to the investigating officer for the rectification but there is no provision dealing defective report even after sending back for rectification in which investigating agencies failed to rectify. As mentioned in section 9 of prosecution Act is mentioned that

“The Prosecutor shall scrutinize the report or the request and may–

- (a) return the same within three days to the officer incharge of police station or investigation officer, as the case may be, if he finds the same to be defective, for removal of such defects as may be identified by him; or
- (b) if it is fit for submission, file it before the Court of competent jurisdiction.....”<sup>512</sup>

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<sup>512</sup> Section 9(5) Prosecution Act, 2006

So there is no second option for the Punjab Criminal Prosecution Service to send the report u/s 173 Cr.P.C to the court because if it is not fit he shall sent back to Investigating officer for the rectification but if he failed to rectify then law is silent and prosecutor can not hold the report for indefinite time period.

#### **6.4 DEFECTS WHICH ARE NON-CURABLE AT TIME OF REGISTRATION**

##### **FIRST INFORMATION REPORT**

There are different kinds of defects even at the time of registration of First Information Report which are non-curable and prosecutors are unable to do any thing which are ultimately reasons of acquittal. Following defects are given in detail.

##### **6.4.1 ACCUSED ARE UNKNOWN**

It is settled principle of law if accused are unknown then their role along with features should be mentioned Lahore High court held in case that In absence of description of features in the FIR and the statements under S. 161, Cr.P.C., the accused could not be incriminated on the basis of conclusion of test identification parade<sup>513</sup> and supreme court one step more and mentioned that In the FIR the physical features of unknown accused persons had been given by the complainant, however, in the inquest report, which as per complainant, was drafted by him in the hospital soon after the occurrence, no physical features of the assailants had been given in it<sup>514</sup> and similarly supreme court by acquitting the accused held in Javed Khan@ bacha vs State<sup>515</sup>

“Complainant had not mentioned any features of the assailants either in the FIR or in his statement recorded under S. 161, Cr.P.C., therefore there was no benchmark against which to

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<sup>513</sup> Lal sher vs State PCrLJ 2021 Lahore 93:

<sup>514</sup> : Muhammad Amin vs State 2019 SCMR 2057

<sup>515</sup> 2017 SCMR 524

test whether the accused persons, who he had identified after over a year of the crime, and who he had fleetingly seen, were in fact the actual culprits”

Even when if role of accused not mentioned in FIR it is fatal for prosecution case , Supreme court of Pakistan held in Majeed @lias Majeedi vs State<sup>516</sup> during identification parade the complainant and eye-witnesses they had not attributed role to the accused regarding murder of the deceased although it was mentioned the accused had only searched the complainant although eye-witness belonging to the complainant party had maintained that the accused had also fired at the said witness causing an injury on his lip but Supreme court of Pakistan acquitted accused by giving benefit of doubt. And in other case Kamal Din vs State<sup>517</sup> supreme Court acquitting accused because no description of the culprits had been recorded in the FIR and was already under arrest in connection with some other criminal case then no value of identification of Parade and in an other case Hakeem vs the State<sup>518</sup>; it was held that there was of no evidentiary value of identification parade, if the accused was identified without reference to any role played by him in the incident, Whether prosecutor can rectify this defect after submission of report absolutely not in position to rectify this defect. It is defect of initial stage and only the complainant was person who can remove it with proper guidance. So presentation of complaint is solely domain of the complainant and at that time only proper guidance to the complainant was the key to resolve this defect. He can only identify this issue to Higher authorities but cannot defend this defect. But if prosecutor is engaged from very first day, he can guide Police after receiving Copy of FIR which is mandatory under Section 12 of Punjab criminal prosecution service Act and take supplementary statement regarding features

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<sup>516</sup> 2019 SCMR 301

<sup>517</sup> 2018 SCMR 577

<sup>518</sup> 2017 SCMR 1546

of the accused along with their roles very next day of FIR. Provision of receiving Copy of FIR is not only on KPK but also incorporated in section 10(a) of Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009.

Issue of identification Parade are not limited to this extent that role is not mentioned, other reason are also fatal towards prosecution like joint identification parade, delay in identification can be resolve by giving proper training to police and even judges Art. 22 of Qanoon Shahadat, rule 26.32 of Police Rules, 1934,and

In Qanoon -e-shahadat order 1984 identification parade is just corroborative piece of evidence and admissible evidence as it is mentioned that

“Facts necessary to explain or introduce relevant facts: Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue, or relevant fact happened, or Which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose”

This article in not only dealing the identification of parade but also identification of this like recoveries made from accused and later on identified by the victim or complainant. This is corroborative piece of evidence. Secondly high court rules magistrate is in charge of these proceeding.

High Court (Lahore) Rules and Orders, Vol. III, Part-C dealing identification parade clearly indication

..... The Magistrate in charge of an identification parade should prepare a list of all persons, including the accused, who form part of the parade.....<sup>519</sup>

It is clearly indication that Magistrate in charge of an identification parade so he must be careful regarding any lacunas in identification because complainant and Witnesses are laymen does not know complexity of legal procedures and police rules 1943 rule 26.32 dealing Identification of suspects in which Magistrate in charge of an identification parade then it is duty of Investigating officer to guide witnesses regarding legal issues of identification. Although its proviso is clearly indicating that it is extra judicial proceeding however it is duty of the officer or Magistrate to be careful while conducting the identification parade.

Recently Mr Justice Qazi Muhammad Amin Ahmed in Supreme Court of Pakistan in case Muhammad Hayat And Another Versus The State-<sup>520</sup>--

“ held that that the law did not designate any specific place to undertake the exercise of test identification parade---Combined reading of R. 26.32 of the Police Rules, 1934 with Art. 22 of the Qanun-e-Shahadat, 1984, did not restrict the prosecution to necessarily undertake the exercise of test identification parade within the jail precincts.” So training of all stake holders are required to meet such challenges and to avoid such kind of lacuna other wise law is well settled on this point

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<sup>519</sup> High Court (Lahore) Rules and Orders, Vol. III, Chapter 11 Part-C

<sup>520</sup> 2021 S C M R 92



and any doubt and advantage will be given to the accused. Whether it is Joint identification issue or without mentioning any face feature in FIR, delay in identification prade, identification held in police station benefit shall be given to the accused person.

#### **6.4.2 FALSE IMPLICATION**

False implication of other person accused along with actual real culprit due to some enmity, due to close relation or due to head of family or some other reason for example If two accused persons were alleged to have committed offence and one of them had been acquitted of the charge on the basis of same evidence due to investigation or on the basis of material evidence or any reason , then said evidence should not be believed to the extent of other accused for the reason that principle of "falsus in uno falsus in omnibus " would be applicable for deciding the case- according to the traditions of the Holy Prophet Muhammad (Peace Be Upon Him), "false testimony is one of the greater sins"<sup>521</sup>. "Truth is the foundation of justice and justice is the core and bedrock of a civilized society and, thus, any compromise on truth amounts to a compromise on a society's future as a just, fair and civilised society. Our judicial system has suffered a lot as a consequence of the permissible deviation from the truth and it is about time that such a colossal wrong may be rectified in all earnestness."

*Falsus in uno, falsus in omnibus* is a Latin term which means "false in one thing, false in everything." It in fact is a legal principle in common law that a witness who testifies falsely about one matter is not at all credible to testify about any other matter.<sup>522</sup> Basic reason of the "presumption that the witness will declare the truth ceases as soon as it manifestly appears

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<sup>521</sup> Anas ibn Malik reported: The Prophet, peace and blessings be upon him, said regarding the major sins, "They are associating idols with Allah, disobedience to parents, killing a person, and false testimony." Şahîḥ al-Bukhārī 5632, Şahîḥ Muslim 88

<sup>522</sup> <https://www.lawinsider.com/dictionary/falsus-in-uno-falsus-in-omnibus> last accessed

that he is capable of perjury" and that "Faith in a witness's testimony cannot be partial or fractional...."<sup>2</sup>

“Superior Courts felt that generally witnesses testifying in criminal cases did not speak the whole truth and had a tendency to exaggerate or economise with the real facts, thus, there was a danger of miscarriage of justice in the sense that a real culprit may go scot free if a court disbelieved the whole testimony on account of reaching the conclusion that the testimony was false in some respect---Such an approach, which involved extraneous and practical considerations, was arbitrary besides being subjective and the same could have drastic consequences for the rule of law and dispensation of justice in criminal matters---Court of law could not grant a licence to a witness to tell lies or to mix truth with falsehood and then take it upon itself to sift grain from chaff when the law of the land made perjury or testifyin g falsely a culpable offence”<sup>523</sup>

However, keeping circumstance Pakistan and investigation techniques recently supreme court of Pakistan in case Munir Ahmed vs State<sup>524</sup> that maxim 'Falsus in uno falsus in omnibus' was not applicable in Pakistan's system because our system is designed for dispensation of justice in criminal cases and courts were required to sift grain from the chaff in order to reach at a just conclusion of the case. Now for this problem there is need to educate society that such fact regarding tendency to exaggerate or economies with the real facts will provide benefit to real accused.

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<sup>523</sup> P L D 2019 Supreme Court 527 Notice To Police Constble Khizar Hayat Son Of Hadait Ullah on account of his false statement:

<sup>524</sup> Munir Ahmed vs State 2019 SCMR 19:

Prosecutor is empowered to decline the case to the extent of that accused because object of prosecutions is “No innocent shall be persecuted but no culprit shall go scot-free” and for achieving this target prosecutor should follow guidelines and code of conduct and although section 27AA. provided the punishment for defective as well as dishonestly and falsely involvement of any person and make the arrests a person with allegation that committed any offence under ATA shall be punishable with imprisonment of two years or with fine. Now question is this that whether it is applicable in Pakistan legal system where whole system is based upon adversarial system as “Falsus in uno, falsus in omnibus” is a Latin term which means "false in one thing, false in everything." It in fact is a legal principle in common law that a witness who testifies falsely about one matter is not at all credible to testify about any other matter. “Though this doctrine has been rejected by many common law jurisdictions, but it has survived in some American Courts. The reason behind abandonment of the said doctrine as a formal rule of evidence is that it has no relevance. It is now applied as a rule of permissible inference which is basically dependent upon the jury to decide. But many Courts still apply this doctrine. Therefore, a witness who willfully gives false statements or testimony, then he or she cannot be credible in any other matter”<sup>525</sup>

## **6.5 DEFECTIVE INVESTIGATION**

Defective investigation is another key element at time of acquittal of accused in ATA cases and special mechanisms for investigation is designed under this act. for the control of terrorist activity the ATA gave the police and investigating agencies ample discretionary powers to pre-empt and prevent suspected. They has power to “arrest, without warrant” not only any person

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<sup>525</sup> The Doctrine of FALSUS IN UNO, FALSUS IN OMNIBUS & Its Applicability in India” Dr. Rita Pawan Bansal, 2018 IJLMH | Volume 1, Issue 2 page 1

who has committed an act of terrorism or a scheduled offence, but also one who is “about to commit” any such act under section, S 5(2)(ii) of ATA and also equipped with power to “enter and search, without warrant any premises” to arrest or take possession of any “fire-arm” or “weapon” used or “likely to be used under section, S 5(2)(ii) of ATA. The Anti-Terrorism (Amendment) Act 2013 empowered government agencies to seize, freeze and detain property or money of anyone person or suspected to be using it for financing terrorism. Despite of all these powers they are conducting poor investigation

In Terrorism cases or most of heinous cases and, occurrences are unseen but physical evidence is always present on the crime scene which may connect the accused with the commission of offences circumstantial evidence but due to poor investigation or simply lack of knowledge they fail to collect such evidence for example fail to collect spot recoveries like crime empties and recovery become inconsequential at time of evidence, Joint recoveries are usually made by the Investigation Officers and it is settled principle that joint recovery has no effect and not bear any significance in the eyes of law in various case laws Muhammad Farooq vs state<sup>526</sup>Raheel Anwar vs State<sup>527</sup>and Muhammad Mushtaq Vs Mustansar Hussain<sup>528</sup> and other settled principle that if relevant entries are not made in register no.19. Daily *roznamcha* does not contain respective entries to establish that the accused were taken from the police station to the place of recoveries on a specific date and time. Recoveries become doubtful because of the following reasons, (a.) Recoveries are jointly made (b.) The recovered samples are not properly sealed (c.) The empties and the recovered weapon are jointly send to the Punjab Forensic Science Agency. (d.) Recovered material is kept in Police Station for a long time and

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<sup>526</sup> PCrLJ 2019 Lahore 609

<sup>527</sup> YLR 2019 Lahore 1385

<sup>528</sup> 2016 SCMR 2123

send to the PFSA after long delays. These defects are repeatedly committed due to the negligence/lack of capacity of the Investigation Officers. It was held in *Sajjan Solangi vs the State*<sup>529</sup> that “Weapon was not sent to the forensic expert for comparison or to determine whether it was in working condition or not so due to the absence of any positive report of Forensic Science Laboratory, the recovery of the weapon was inconsequential. Similarly in another case when crime empties are dispatched after arrest of accused the supreme Court of Pakistan held in *Haroon Shafique vs the State*<sup>530</sup> that

“the alleged recovery of a pistol from the accused's custody during the investigation was legally inconsequential because the crime-empties had been sent to the Forensic Science Laboratory after the alleged recovery of a pistol from the accused's possession-“

In another case of Two blasts on April 3, 2010, at the shrine in Dera Ghazi Khan had claimed 52 lives and injuries to 172 people. Umar Fidai was one of three suicide bombers present at the time of the attack. His jacket did not detonate and he was arrested in a critical condition. Fidai was reportedly 13 years old at that time. The trial court had awarded 125-time life imprisonment to convict Umar Fidai, along with co accused Sufi Baba @ Bahram was accused of preparing the suicide bomb for the attack. Lahore High Court bench had upheld the sentence awarded by the trial. The supreme Court of Pakistan declared a death penalty sentence awarded to a second accused sufi Baba in the same case as null and void due to non-sufficient evidence.

In another case accused were getting benefit of doubt because alleged no crime-empty had been secured from the place of occurrence so as to connect the recovered weapon with the alleged murder and due to this recovery of a firearm from the accused's custody during the

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<sup>529</sup> 2019 SCMR 872

<sup>530</sup> 2018 SCMR 2118

investigation was legally inconsequential and secondly surprisingly No blood-stained earth had been secured from the tea stall where at the occurrence had taken place<sup>531</sup> in an other case Ulfat Hussain vs the Sate<sup>532</sup> supreme court of Pakistan held that recovery of firearm on the pointation of accused was also inconsequential because no empty was secured from the spot by the investigating agency

Secondly delay of Postmortem report is another reason of acquittal in ATA cases. As per high court rules volumw III it id Duty of Medical Officer to conduct post-mortem examination when nothing is known about causes.

“In each case, the circumstances, so far as they are known, respecting the death and the discovery of the body, which are communicated by the Police, will enable the Medical officer to form an opinion as to whether it would be possible by a post-mortem examination to throw any light on the cause of death; and wherever such possibility exists, or whenever nothing is known, it is his duty to make as full an examination as possible”.<sup>533</sup>

Police rules and Medical legal Surgeon based upon single notification and most of medical delay is due to absence of legal frame work of medical practitioner who conduct medical examination and Post martem, It is settled principle that delayed Post mortem examination is source of deliberations with local police and party and reason of false implication

The supreme court of Pakistan held in Safdar Mahmood Vs Tanveer Hussain <sup>534</sup>that Post mortem examination of deceased was conducted after about 19 hours of occurrence and gave

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<sup>531</sup> 2018 SCMR 506: GM.Niaz vs The State

<sup>532</sup> 2018 SCMR 313

<sup>533</sup>High court Rule volume iii Rule 1 Chapter 18,Medico-Legal Work Part A -- Post-Mortem Examinations

<sup>534</sup> 2019 SCMR 1978

inference that time had been consumed by complainant party and local police for deliberations and for spreading of net wide so as to falsely implicate their adversaries. In another case Muhammad Rafique Alias Feeqa vs the State<sup>535</sup>

“post -mortem was carried out after a delay of nearly 22 hours on the next day---Such unexplained delay in the post -mortem of a deceased would surely put a prudent mind on guard to very cautiously assess and scrutinize the prosecution's evidence---In such circumstances, the most natural inference would be that the delay so caused was for preliminary investigation and prior consultation to nominate the accused and plant eyewitnesses of the crime”

Similarly in in other case Mian Sohail Ahmed Vs The State<sup>536</sup> it was held that “after the body of the deceased received to the hospital, post -mortem examination was conducted by doctor 15 hours was brought it was held that Such delay in the post -mortem examination, when the occurrence was promptly reported and formal FIR was registered within 15 minutes gave rise to an inference that the incident was not reported as stated by the prosecution”For the improvement in management of high profile offences and collection of physical evidence and its proper analysis, Investigating Officers must be trained in preservation of crime scene, its collection, packaging, sealing and dispatching to the Forensic Lab.

Capacity of Police Officers specially attached with CTD needs to be enhanced and proper supervision of cases by the superior officers must be adhered to. Police personals in ordinary Police Stations must be trained and facilitated in preservation of crime scene and they should have capacity to retain the crime scene undisturbed till its taking over by the Forensic Crime

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<sup>535</sup> 2019 SCMR 1068

<sup>536</sup> 2019 SCMR 956

Scene Unit. Police Prosecutor liaison on these issues needs to be enhanced to convey the requirements of Courts to the Investigation Officers.

## **6.6 EXTRA JUDICIAL CONFESSION**

Extra judicial confession has no value Such practice of recording extra Judicial confession by the police officials in presence of police officers was nullity in the eye of law and no credence could be extended to such piece of evidence apex court has repeatedly discouraged this practice but all in vain. In appeal against acquittal Sindh High Court held in Shrimati Ghori Vs 9th Civil Judge/Judicial Magistrate<sup>537</sup>

“Whole case was based on extra Judicial confession of accused before petitioner/complainant on mobile phone---No allegation of demand of ransom amount from complainant party---Petitioner, did not co-operate with the Investigating Officer in collecting the DATA of mobile phone or of her allegedly abducted son”

Interestingly in an other case Haris Nasim Alias Khalid vs The State<sup>538</sup> there was a ditto copies of statements of the accused recorded by the Investigating Officer under S. 161, Cr.P.C.---confession al statements of both the accused were also the same with slight variation of names, recorded by the Judicial Magistrate and accused persons, in their confession , had not specifically disclosed the date, day and time of the occurrence and even no crime weapon had been recovered on the opinion of the accused persons-According to the Mehram Ali case reported as PLD 1988 SC 1445 the confession before the superintendent of Police is inadmissible in evidence and the apex Court directed to follow the procedure provided in 164

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<sup>537</sup> 2016 MLD 1155

<sup>538</sup> PCrLJ 2019 Peshawar 535



Cr.P.C. The confession of the accused must be voluntary and the mode mentioned in S.364 Cr.P.C. s

and High Court rule and Order Volume III. should be strictly followed. Capacity of Judicial Officers and Police Officers in this regard needs to be enhanced.

## **6.7 STATEMENT OF CHANCE WITNESSES**

Statement of Chance Witnesses is one of major reason of acquittal in ATA and Heinous Offences and there is only one requirement that is to establish their presence at the spot and it is duty of to record reason their presence at place of occurrence in their 161 statement and collect evidence this regard 60 % cases were acquitted and recently Supreme Court of Pakistan held in number of cases Mst. Mir Zalai vs Ghazi khan<sup>539</sup>

“eye-witnesses produced by the prosecution before the Trial Court were admittedly chance witnesses who had failed to establish the stated reason for their presence with the deceased at the relevant time---In order to fill such lacuna the prosecution had relied upon the statement of a prosecution witness but the reason provided by him was not supported by the reason statedly found by the investigating officer during the investigation”

And repeatedly in Muhammad Ashraf Alias Acchu vs the State<sup>540</sup> Solat Ali Khan vs the State<sup>541</sup> Nazeer Ahmed Vs The State<sup>542</sup>, Shah fasil vs the state<sup>543</sup> the supreme court of Pakistan held Nasir Iqbal @ Nasra Vs The State that -Testimony of both the eye-witnesses was confidence

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<sup>539</sup> 2020 SCMR 319

<sup>540</sup> 2019 SCMR 652

<sup>541</sup> 2001 SCMR 2005

<sup>542</sup> 2019 SCMR 594

<sup>543</sup> YLR 2021 Karachi 244

inspiring and could not be considered chance witnesses solely on the ground that they are close relative they have established reason of presence at spot.

Supreme court of Pakistan defined interested witnesses in *Nazir and other vs The State*<sup>544</sup>

"Interested witness" is one who has a motive to falsely implicate an accused. "There cannot be an inflexible rule that the statement of an interested witness can never be accepted without corroboration". What corroboration is necessary? The corroboration found in the case was: (a) The number of culprits mentioned was such as was required for the job. (b) The persons mentioned were such as would be expected to join in the attack.

## **6.8 DELAYED STATEMENTS OF WITNESSES**

The Statements of witnesses was recorded by the Investigating Officers with considerable delay during investigations and sometime statement are usually inconsistent and non-supportive of each other. Delay and the contradictory statements of witnesses recorded by the I.O.s makes the case of the prosecution weak and doubtful. It was held in *Wali Muhammd Rahimoon vs the State*<sup>545</sup> that after FIR statement under S.161, Cr.P.C of witnesses was recorded with delay of seventeen days and it was entirely unexplained and Such delay is fatal for the prosecution. Similarly, Supreme Court of Pakistan acquitted accused because statement of eye-witness was recorded with a delay of four months<sup>546</sup> even on one day delay is also fatal it was held in *Abdul Waheed Vs the State*<sup>547</sup> in this case witnesses was recorded after one day and without explanation, it was held that recording the statements of witnesses was fatal for the prosecution and not worthy of reliance. another reason major reason is contradictory

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<sup>544</sup> PLD 1962 SC 269

<sup>545</sup> YLR 2021 Karachi 288

<sup>546</sup> 2007 SCMR 162 :Shafqat Abbas And Another vs the state

<sup>547</sup> 2021 YLR Quetta 913

statement of witnesses due to which large number of accused are acquitting. In case Hafiz Saeed Ghani vs the State<sup>548</sup> Investigating Officer and Moharrir had contradicted each other as both had claimed that they had given the samples to the sample-bearer for transmission to Forensic Laboratory due to which chain of custody was broken, therefore, forensic report had lost its credibility. It was held by the Supreme court of Pakistan in Nawab Siraj Ali vs the state<sup>549</sup> in which there were material contradictions by the eye-witnesses on ocular account. This principle was settled in many other cases like Javed Qbal vs the State<sup>550</sup> Shahbaz Masih vs the State<sup>551</sup>, state vs Sajjad Ahmed<sup>552</sup> now remedy for this lacuna that Capacity of the Investigation Officers needs to be enhanced and the wrong practice needs to be discouraged through departmental checks and balances and secondly prosecutor should play important role he may check record at time of 167 Cr.P.C at remand stage he can ask investigating officer to record reason of delay of statement of witnesses and rectify defects regarding contradiction if there is contradiction in the statement of witnesses.

In Anti-Terrorism cases the time for submission of complete and interim police report under S.173 Cr.P.C. is 30 days and the Police do not submit the report within the stipulated time. The reason for delay could be because the accused are usually untraceable. 90 Days period for the completion of investigation and submission of Police Report is proper in Anti-Terrorism cases and statutory amendment is required. The role of Joint Investigation Team needs to be made more effective. Judicial Officers should exercise the powers conferred to them under S.19 (2) ATA, 1997 in Anti-Terrorism cases where investigations are delayed and the Police Reports

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<sup>548</sup> MLD 2020 Lahore 1193,

<sup>549</sup> 2020 SCMR 119

<sup>550</sup> 2016 SCMR 787

<sup>551</sup> 2007 SCMR 1631

<sup>552</sup> MLD 2020 FSC 1908

are submitted with delay, the delinquent Investigation Officers should be liable to be punished for contempt of Court.

## **6.9 NON SUBMISSION OF PARCELS FOR FORENSIC AGENCY;**

The non-submission of parcel regarding spot recoveries like crime empties secured at spot and non-submission of parcel to forensic science agency is fatal and causes on of reason of acquittal, not only non submission of parcels but also delay in submission of parcel is an other ground of acquittal, and accused are getting benefits from these negligence's and delinquencies on the part of investigating officer, most of time it is one of the ground of Mitigating circumstances in criminal case due to which other accused also get benefit.

## **6.10 DEFECTIVE INVESTIGATION AND ROLE OF PROSECUTOR:**

The Prosecutor is empowered to return police report at time of scrutinizing the report U/S 173 Cr.P.C. or the request under section 9(5) of prosecution Act

“(a) return the same within three days to the officer incharge of police station or investigation officer, as the case may be, if he finds the same to be defective, for removal of such defects as may be identified by him; or In Anti-terrorism Act provisions”<sup>553</sup>

and under section 12(2) of Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006 it is duty of incharge of police station or investigation officer toward the prosecution to comply directions of public prosecutor regarding defects. However prosecutor is unable to rectify non curable defect, then it is obligatory duty of prosecutor under section 10 (2) of Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006,

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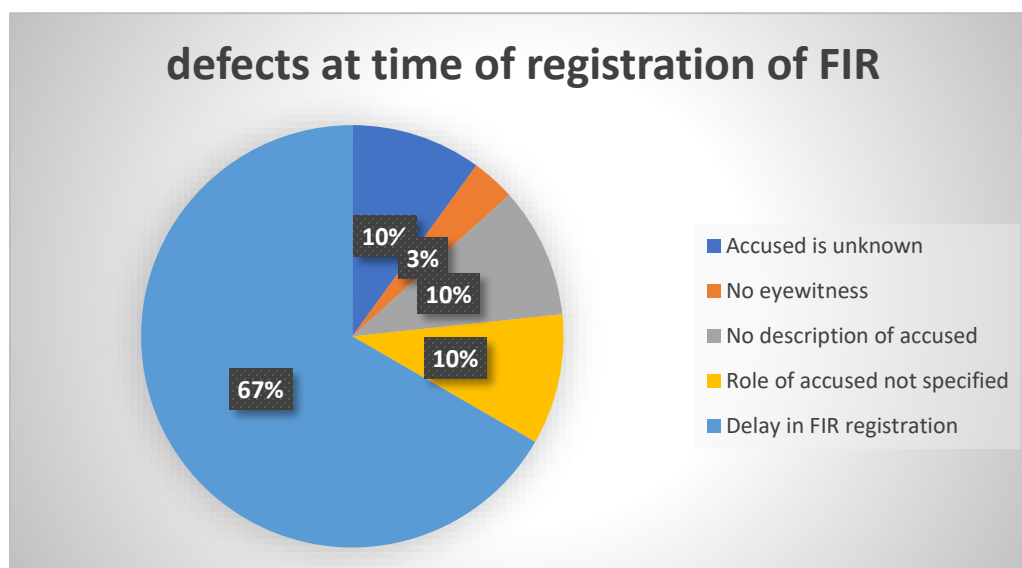
<sup>553</sup> Section 9(5) Prosecution Act 2006

refer matter to Prosecutor General Punjab and District Public Prosecutor for disciplinary proceedings against delinquent and section 10(2) empowered The Prosecutor General Punjab or the District Public Prosecutor may, refer matter to the authority, to take disciplinary action against any public servant working in connection with investigation or prosecution, for any act committed by him and is prejudicial to the prosecution. Similarly, under section 13 subsection 9(d) duty of prosecutor to inform Prosecutor General Punjab and District Public Prosecutor for action against any violation.

Similarly section 27 of Anti-terrorism Act is dealing with punishment for defective investigation in Anti-terrorism cases and dealing with reward for successful investigation. This power is given to the court to decide at time of during trial and at the conclusion of the trial that if court is of conclusion that the investigating officer, or other concerned officers has been failed then The trial court and High Court is empowered to punish the delinquent officers with imprisonment which may extend to two years, or with fine, or with both by resort to summary proceedings. But unfortunately there was no case which was punished by court of laws, Punjab criminal prosecution service has written number of letter to Investigating agencies regarding delinquent and poor investigation but in response only few action was taken against any officer.

## REASONS OF ACQUITTALS IN TERRORISM CASES

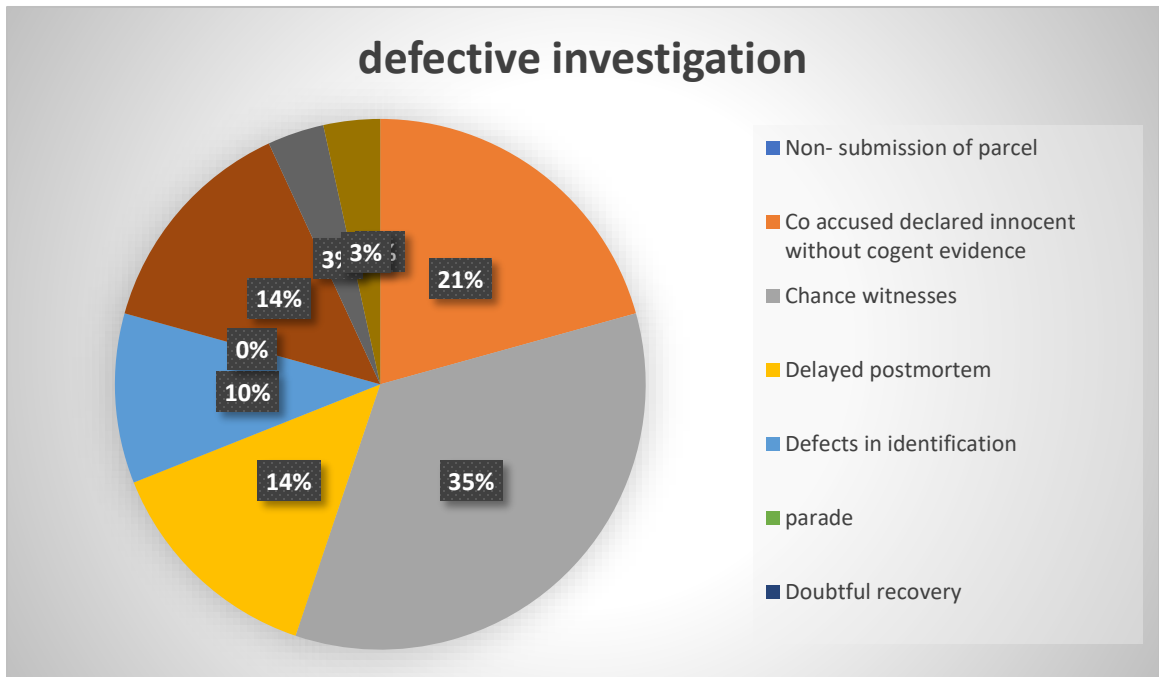
<b>DEFECTS IN REGISTRATION OF CASES</b>	Data analysis Reason of acquittal <sup>554</sup> 2015-2029
Accused is unknown	03%
No eyewitness	1%
No description of accused	3%
Role of accused not specified	3%
Delay in FIR registration	20%



<b>Defective investigation</b>	
Non- submission of parcel	5% mitigating 40%
Co accused declared innocent without cogent evidence	30%
Chance witnesses	50%
Delayed postmortem	20%

<sup>554</sup> Analysis of reason of acquittal in PGP office by me

Defects in identification	15%
parade	
Doubtful recovery	40% One of mitigating element
Defects in confessional statements	20%
Late submission of challans	5%
Defective statement u/s 161 Cr.P.C.	5%
Defective medico legal report & material evidence	15%



<b>Defects at prosecution stage</b>	
Witnesses become hostile	30%
Witnesses do not appear for evidence	10%
Contradiction in witness statements	30%
Contradiction in medico legal and ocular witnesses	20%

## 6.11 Data of Anti terrorism cases from year 2010 to 2020 of Punjab Prosecution

Service<sup>555</sup>

Year	Acquittal on merit	Acquittal due to resiling	Defective investigation	Convicted	Transferred	Consigned to record	Total decided	Success rate
2010	112	392	-	268	219	-	991	34%
2011	105	295	-	163	103	-	661	28.90%
2012	124	291	-	145	120	-	680	25%
2013	160	181	-	165	167	150	823	32%
2014	238	300	46	196	178	232	1190	25.10%
2015	441	340	-	380	249	311	1721	32.70%
2016	244	197	-	206	290	334	1271	31.83%
2017	244	187	34	288	151	307	1211	38.24%
2018	263	172	56	383	230	210	1314	43.80%
2019	255	193	65	371	266	201	1351	41.90%
2020	112	106	59	218	219	92	806	44%

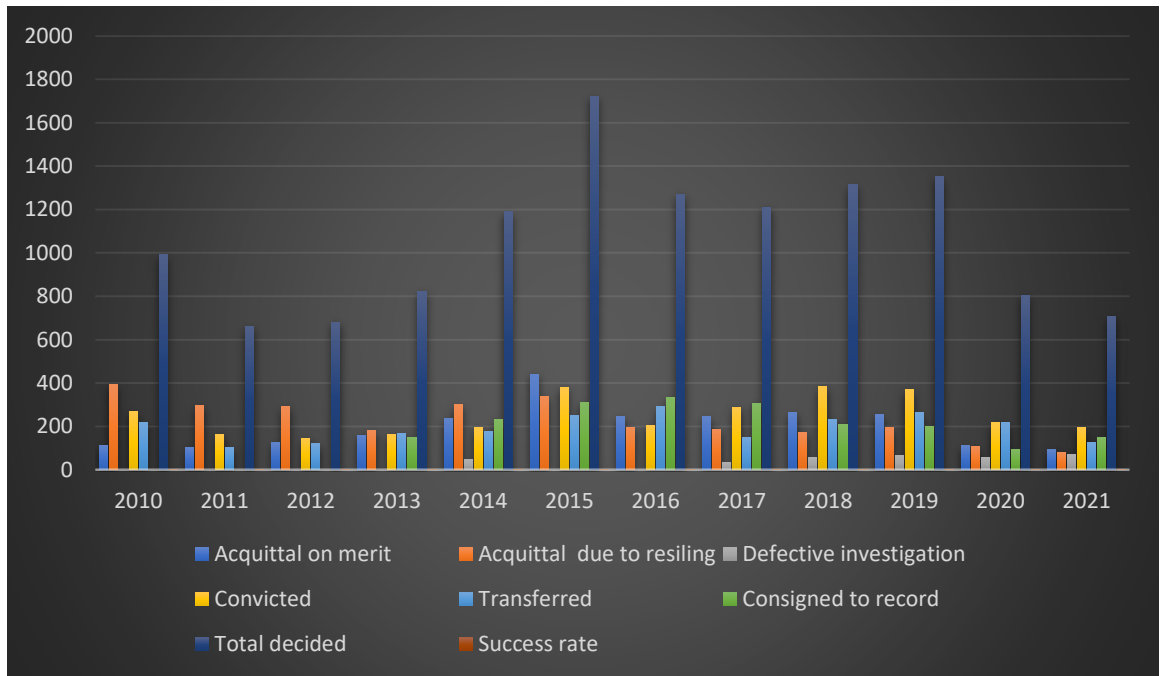
<sup>555</sup> Data received from Punjab criminal prosecution service year 2020



2021	92	82	69	194	124	148	709	44%
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Since 2010 to 2021 transferred case are 2316 similarly 2736 acquittal are due to resiling of witnesses which is more than acquittal on merit, which are 2390 and total conviction are 2977 and data of year 2010 to 2021, and from 2013 to 2021 total cases consigned to record are 1985 cases.

From year 2017 to 2019 acquittal due to insufficient evidence are 282 and previous data was not available. Now conviction rate in anti-terrorism cases is below 50 % from year 2010 to 2020



### KPK year 2016 available record<sup>556</sup>

<sup>556</sup> <https://www.pakp.gov.pk/2013/annual-report-of-the-khyber-pakhtunkhwa-prosecution-service-for-the-year-2016/>

Year	Total conducted	Convicted	Acquittal Lack of evidence	Acquittal Benefit of doubt	Acquittal Witnesses hostile	Consigned to record
2016	240	67 which is 28%	14	107	3	49

Despite of wider definitions anti-terrorism another thing is pressure from, political and police leadership for application the ATA to criminal cases although cases that do not fall under ambit of it.<sup>557</sup> This tendency is fairly widespread in all the provinces and constitutes a serious hurdle to speedy and fair trial of terrorist offenses, diminishing the deterrence value of the criminal justice system. However there are many other factors due to which accused are getting benefit. there are different stages of trial like pre-trial , during trial and post-trial stages. In Pre-trial stages starts from registration of FIR to submission of report u/s 173 Cr.p.C to Prosecution is completely under control of investigating agencies and here some non curable defects in the investigation can not be cure by prosecution during trial.

## **6.12 DEFECTS AT TIME OF REGISTRATION OF CASE:**

There are number of defects at time of registration of criminal cases i.e accused are unknown ,no eyewitness at place of Occurrence, No description of accused not mentioned when accused are unknown,Role of accused not specified in FIR and Delay in FIR registration and no reason of such delay, although Registration of FIR is mandatory for the police officer u/S. 154 Cr.P.C.

<sup>557</sup> Tariq Parvez and Mehwish Rani An Appraisal of Pakistan's Anti-Terrorism Act available at <https://www.usip.org/sites/default/files/SR377-An-Appraisal-of-Pakistan%E2%80%99s-Anti-Terrorism-Act.pdf>

in a cognizable offence.<sup>558</sup> and object of S. 154 Cr.P.C. is simply that law is set in motion in cognizable cases when an information regarding cognizable offence is given to police officer of Police Station concerned it was held that FIR is not substantive evidence. Receipt and recording of FIR is not a condition precedent for setting in motion of criminal investigation.<sup>559</sup>.. The receipt and recording of an information report is not a condition precedent to the setting motion of a criminal investigation. An FIR is only a mode of recording or preserving an information. In *Emperor vs Khawaja Nazir Ahmad*<sup>560</sup> , it has been held “their Lordships see no reason why the police, if in possession through their own knowledge or by means of credible though informal intelligence which genuinely leads them to the belief that a cognizable offence has been committed should not on their motion under take an investigation into the truth of matters alleged.” However with passage of FIR is getting Key Importance in our judicial system if names of witnesses not mentioned in F.I.R. but subsequently mentioned in supplementary statement. It was held by Lahore High Court in *Muzaffar Ali vs State*<sup>561</sup> that testimony is suspicious and excluded from consideration. Case cannot be acquitted solely on the ground that accused are not nominated in the FIR as analyzed in Report. Especially the Anti-Terrorism cases which are circumstantial in nature and nomination of the accused in such cases is not possible. Now at this prosecutor can Play Vital role because in prosecution act police is duty bound to submit copy of FIR in the office of District Public Prosecutor and section 12 of Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006. An officer incharge of a police station or the investigation officer shall–(a) immediately report to the District Public Prosecutor, the registration of each criminal case by sending a copy of the

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<sup>558</sup> 1993 SCMR (SAC) 550, *Syed Saeed Muhammad Shah vs State*

<sup>559</sup> 1996 SCMR 1855 *Khadim Ali vs State*

<sup>560</sup> AIR 1945 PC 18

<sup>561</sup> PLD 1964 Lah. 32(DB)

first information report although this section is silent regarding purpose of this provision however section 8(2) of Khyber Pakhtunkhwa] Prosecution Service (Constitution. Functions and Powers) Act. 2005. “On registration of the First Investigation Report the Station House Officer of police station concerned shall send a copy of the First Investigation Report to the District Public .Prosecutor/Public Prosecutor of the District who on receipt shall inspect the same and issue necessary directions to the Head of Investigation, and shall also inspect, scrutinize and supervise the whole Investigation process of various cases so registered in the District.” This section is providing three powers to the prosecutor firstly he can inspect, scrutinize and supervise the whole investigation. Power to supervise investigation is key element other provinces are trying to get this purpose by guidelines and Sops between Police and prosecutors.it true that Eye witnesses are generally reluctant to become witness against the terrorist due to fear of life and threats to them and their family and Police do not inquire from the First Informants about the feature description of unknown accused. Police should ensure the feature description of unknown accused at the time of registration of case so prosecutor at pre trial stage can issue line of Inquiry to investigating officers. He can ask io regarding reason of delay in FIR, and also explain role of accused in case of unknown explain their role with their features. Role of the accused as per decisions of the higher courts is required to be mentioned in the FIR but simply non-mentioning of specific role of accused by the witnesses should not be interpreted as their absence from the crime scene by the Courts.

### **6.13 ROLE OF THE PROSECUTION IS CENTRAL TO THE CRIMINAL JUSTICE SYSTEM**

Prosecution Service being integral institution of the Judiciary and important pillar so role of the prosecution has key importance in administration of justice in criminal system. No doubt

prosecutor make pivotal decision regarding prosecution. Criminal courts also rely upon their decision through which they contribute an important role in the criminal justice system. Punjab Criminal Prosecution Service was established on April 08, 2006 under the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006.<sup>562</sup> And object of prosecution is crystal clear in its preamble which reflects that "Whereas it is expedient to establish an independent, effective and efficient service for prosecution of criminal cases, to ensure prosecutorial independence, for better coordination in the criminal justice system of the province and matters incidental."<sup>563</sup>

"Whereas prosecutors play a crucial role in the administration of justice, and rules concerning the performance of their important responsibilities should promote their respect for and compliance with the above-mentioned principles, thus contributing to fair and equitable criminal justice and the effective protection of citizens against crime,"<sup>564</sup> similarly it was held by Peshawar-High-Court in *Syed Maqbool Shah vs state*<sup>565</sup> that prosecutor has pivotal and important role in the criminal administration of justice it was held that

, "the role of the Public prosecutor commences on the completion of investigation by Investigation Agency and presenting the case to District Public prosecutor and putting the challan in the court--Foremost objective of the Public prosecutor is to ensure a fair trial of the accused by assisting Trial Courts in the disposal of cases with an aim to deliver a prompt, efficient and speedy service to the

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<sup>562</sup> Annual report of prosecution act ,2012 page no 6.available  
<https://pg.punjab.gov.pk/system/files/Annual%20Report%202013.pdf> .

<sup>563</sup> Preamble of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006. Available at  
<http://punjablaws.gov.pk/laws/483.html>

<sup>564</sup> Guidelines on the Role of Prosecutors; Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 available at  
<https://www.ohchr.org/en/professionalinterest/pages/roleofprosecutors.aspx>

<sup>565</sup> 2021 YLR 1517

litigants for achieving the ends of justice, ensuring judiciousness and speedy legal remedies<sup>566</sup>

In 2013 Supreme Court Of Pakistan held that –“Although a prosecutor who acted or professed to act independently was not supposed to create evidence in support of prosecution but he should at least bring that evidence which was available and necessary for the proof of the charge<sup>567</sup>

Now main objective of the criminal trial is to determine whether an accused person has violated the penal law and were found guilty, to prescribe the appropriate sanction.

Vision of Punjab criminal prosecution service is very clear “No innocent shall be persecuted but no culprit shall go scot-free”<sup>568</sup>so basic function of prosecutor is to assist and conduct trial of accused fairly now question of questions whether prosecutor is playing important role or working as rubber stamp, as per laws at time of scrutiny prosecutor can raise only objections in the case because section 9 (5) of criminal prosecution act empowered prosecutor that He shall scrutinize the report under section 173 of Cr.P.C and return the same if defective within three days to investigation officer, for removal of such defects. Now infact number of lacunas in criminal law are non-curable in nature and even delay in such lacuna are not curable in nature which may cause reason of acquittal like delayed FIR, delayed Postmortem etc and words in second clause are

“ (b) if it is fit for submission, file it before the Court of competent jurisdiction”<sup>569</sup>.

Condition is if FIT then submit to court its means prosecutor can not with held or stop this challan and law regarding this salient

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<sup>566</sup> Ibid P,1517

<sup>567</sup> 2013 SCMR 161

<sup>568</sup> Annual report 2013, page 6 available at <https://pg.punjab.gov.pk/system/files/Annual%20Report%202013.pdf>

<sup>569</sup>See section 9(5)b of Punjab Criminal Prosecution Act, 2006

In punjab criminal prosecution act section 12. Explain the responsibilities of Police towards Prosecutors and it is mentioned that in charge of a police station or the investigation officer shall “(a) immediately report to the District Public Prosecutor, the registration of each criminal case by sending a copy of the first information report;”<sup>570</sup> In Punjab and Sindh prosecution section 12(1(a)) and 10(1(a)) of deals immediately submit the copy of FIR to District Public Prosecutor but with what purpose laws is silent however in KPK section 8(2) explains real purpose of this section

*“On registration of the First Information Report the Station House officer of Police Station concerned shall resend a copy of the First Information Report to the District Public Prosecutor/Public Prosecutor of the District who on receipt shall inspect the same and issue necessary directions to the Head of Investigation, and shall also inspect, scrutinize and supervise the whole investigation process of various cases so registered in the District.”<sup>571</sup>*

So in KPK on the receipt of FIR prosecutor can not only issue necessary directions but also *inspect, scrutinize and supervise the whole investigation process of various cases. This explains basic object of the case. This power to supervise investigation is number of countries like England in crown prosecution, in USA as well as in European countries etc.*

Through which we can avoid not only non curable defects of criminal case ,In most systems, “the core functions of prosecutors are the decision to prosecute and representation of the

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<sup>570</sup> 12(1(a)) of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006. Available at <http://punjablaws.gov.pk/laws/483.html>

<sup>571</sup> See section 8(2) Of North-West Frontier Province Prosecution Service (Constitution, Functions and Powers) Act, 2005

prosecution in court. Core functions in some jurisdictions may also encompass investigating crime, supervision of investigators”<sup>572</sup>

but also in Russia, the prosecutor carries out criminal prosecution in the course of criminal proceedings on behalf of the state, as well as supervises the procedural activities of the inquiry bodies and preliminary investigation bodies (part 1 of article 37 of the CPC of the Russia<sup>573</sup> in America Prosecutors are the most powerful officials in the American criminal justice system. The decisions they make, particularly the charging and plea-bargaining decisions, control the operation of the system and often predetermine the outcome of criminal cases”<sup>574</sup> And stan Fourth Edition (2017) of The Criminal Justice Standards For The Prosecution Function in its para explaining scope and Function of prosecutor.

“As used in these standards, prosecutor means any attorney, regardless of agency, title, or full or part-time assignment, who acts as an attorney to investigate or prosecute criminal cases or who provides legal advice regarding a criminal matter to government lawyers, agents, or offices participating in the investigation or prosecution of criminal cases”<sup>575</sup>

IAP Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors also empowered prosecutor in its para 4

#### “4. Role in criminal proceedings

##### 4.1 Prosecutors shall perform their duties fairly, consistently and expeditiously.

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<sup>572</sup> See The Status and Role of Prosecutors A United Nations Office on Drugs and Crime and International Association of Prosecutors Guide page 1 available [https://www.unodc.org/documents/justice-and-prison-reform/14-07304\\_ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/14-07304_ebook.pdf)

<sup>573</sup> Prosecutor’s Supervision in Criminal Proceedings in the Context of the Leading Development of Digital Relations Kseniia Tabolina available at <file:///C:/Users/Usman/Downloads/125940960.pdf>

<sup>574</sup> The Power and Discretion of the American Prosecutor” Angela J. Davis available at <https://journals.openedition.org/droitcultures/1580?lang=en>

<sup>575</sup> Available at [https://www.americanbar.org/groups/criminal\\_justice/standards/ProsecutionFunctionFourthEdition/](https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/)



4.2 Prosecutors shall perform an active role in criminal proceedings as follows:

(b) When supervising the investigation of crime, they should ensure that the investigating services respect legal precepts and fundamental human rights; (c) When giving advice, they will take care to remain impartial and objective.<sup>576</sup>

Empowered prosecutor to discharge the accused on insufficient evidence.

Secondly if the case is not fit then whether prosecutor can stop or withheld challan there is question mark as per provision of 173 Cr.P.C says report shall be submitted to trial court. there is need to introduce provision regarding discharge of accused by the prosecution because discharge of accused does not amount acquittal so if there is no evidence, prosecutor should discharge the case. Although code of conduct issued by prosecutor General Punjab empowered prosecutor to decline the prosecution but provision of criminal procedure code does not have such application so there should be amendment in criminal procedure code regarding drop of criminal case by the prosecutor.

## **6.14 RESILING OF WITNESSES**

One of serious problem the prosecution service is facing is resiling of witnesses and number as mentioned in table; in 2736 from 2010 to 2021 were acquitted in Anti- terrorism cases, which is more than acquittal on merit in same period which is 20390 cases. Although provision for protection of witnesses was provided in Anti terrorism act. No doubt witnesses plays important role in criminal law and for the fair trial there is need to protect the witnesses and it is also demand of international law. International Convention for the Protection of All Persons from Enforced Disappearance and it article 12 deals state will ensue protection of witnesses even

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<sup>576</sup> Ibid page 47

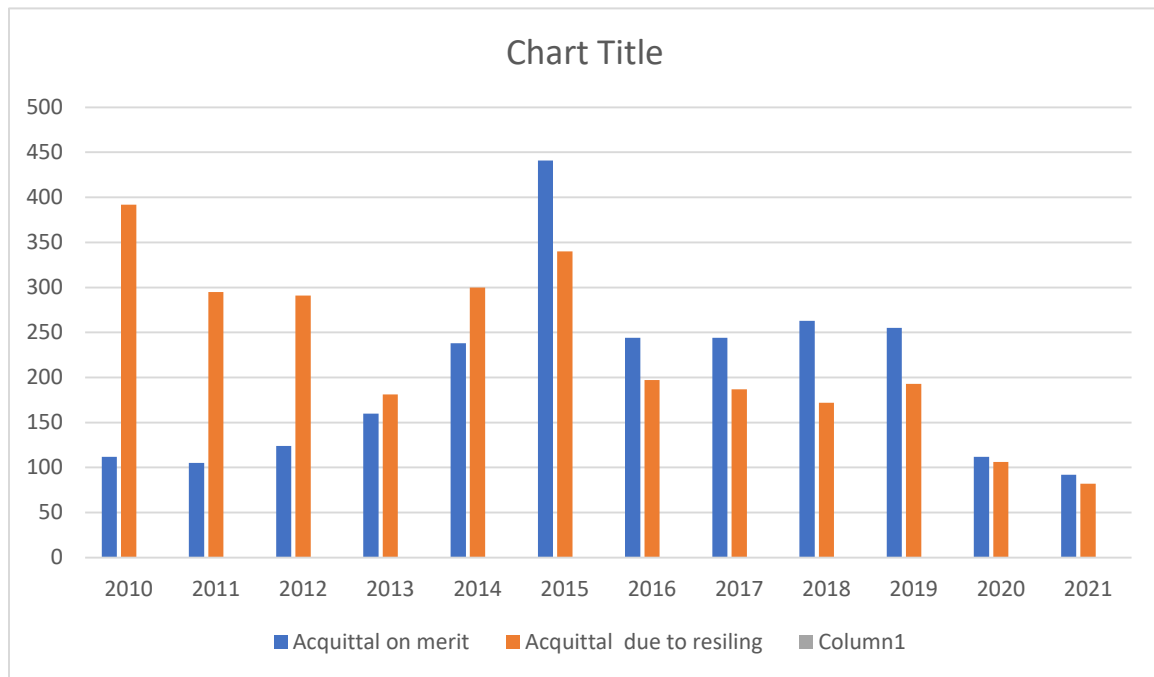
their relatives even this principle is present in article 24 of United Nations Convention against Transnational Organised Crime (UNTOC), and article 32 and 33 of United Nations Convention against Corruption (UNCAC) also imposed duties on the state to ensure the protection of the witnesses. But in Pakistan prior to witness protection act 2018 there was no specific law in Criminal procedure code, 1898 and Pakistani Penal code, 1860 on this point although provision of Anti terrorism law dealing protection of witnesses even of council was provided but there was no real application we can see large number of cases were acquitted due to absence of practical application of witnesses. Pakistan introduced very first enactment on this subject as The Witness Protection, Security and Benefit Act, 2017 for the protection of witnesses as protected person and provision were introduced for protection and assistance. So supreme Court held in *Watan Party v. The federation of Pakistan* “It is for the legislature to provide processes for the protection of witnesses policemen and judges and for the executive or government to fully implement these reforms. In view of the acute law and order situation prevailing in Karachi, a change in the mindset for improving the investigation and introducing the witness protection system is called for. no witness protection program is available in Pakistan”<sup>577</sup> so the Sindh Assembly introduced “the Sindh Witness Protection Act, 2013 The Balochistan Witness Protection Act, 2016 was enacted in April 2016, and Punjab enacted the Punjab Witness Protection Act, 2018 but in Punjab since 2018 to 2020 large number of witnesses were resiled there was no real application of this enactment and in Punjab only there were two cases in which non court measurement were taken and there was no single case regarding special measurements as provided in section 8 which include section 9 dealing Screening a witness section 10 relating to Video link trial and section 11 about Restricted entry

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<sup>577</sup> PLD 2011 SC 997

to the court room and section 12 is about special Rules regarding cross-examination of witnesses and its section13 impose the restriction upon reporting criminal proceedings and section 14 about concealment of identity it is anonymity of persons involved in proceedings while section 15 deals to trial in jail although jail trial was allowed in criminal procedure code as well as high court rules as protection but unfortunately courts and prosecutors are not using these provision properly even witness protection board are not working properly in provinces. There is need to conduct capacity building programs of the all stake holders on this subject

Graph is showing number of witnesses resiling each years.



From year 2010 to 2014 acquittal on merit was lesser than acquittal on resiling of witnesses only in Anti terrorism cases and from year 2019 to 2021 both were almost same numbers. This large number of acquittal can be reduce through proper application of witness protection act. All the stake holder should take necessary steps for the proper implementation of this enactment.

Another aspect regarding resiling of witnesses we can see from year 2019 to 2021 offence wise acquittal is more in murder .... Because offences under ATA are not compoundable so there is only one option for the people to give resiling statement. We can combat this issue by recording of statement of witnesses u/s 164 which will reduce chances of resiling and court can take actions against such resiling statements.

### **6.15 DELAYED IN TRIAL**

Another reason of acquittal and resiling of witnesses is delayed in trial, although section 19(7) empowered the trial court with in seven days and in case of failure they must brought the matter in the knowledge of High Court for directions and for the adjournment court will not grant more than two adjournment and if defense counsel does not appear the court is empowered under section 19(8) to appoint state counsel but unfortunately there is no implementation of this laws and there are large number of cases which are pending in courts more than one year. Courts showing hesitation regarding appointment of defense counsel due to this lethargy of trial witnesses does not appear in courts on day today basis case of FIR no 510/14 and 696 /14 just one witnesses has been recorded in only private complaint and .even summoning of accused petition is till pending in Supreme Court since 2018 and matter of formulation of fresh JIT is pending in Lahore High Court since 22.03.2019 cases were not decided by courts. Even in normal proceeding Data from LHC obtained in 2018 which is reflecting pendency of cases last ten years in High Court. Delay in trial ATC due to pendency of application is another reasons and large number of cases delayed due to these application after decision order is challengeable in High Court and Supreme Court due to which trial courts postponed the criminal proceeding in trial even application in FIR 510/14 and 694/14 are pending in High court since 2018. Litigants are facing serious issue because it is becoming tool for delay of

trial. Secondly there is no mechanism of return of cases from the session court to ordinary court because there is no legal provision in criminal procedure code dealing return of case from the ordinary court to court of Anti-terrorism. After taking cognizance u/s 190 Cr.P.C the court cannot return the case to police. However practically court of ordinary jurisdiction return the case to the session judge and then he returned the case to concerned office secondly court taking cognizance return the case to the prosecution department and prosecution return the case to the police. So there is no provision in cr.p.c and in prosecution act and even police rules 1934 regarding return of the criminal cases and thirdly there is no bar regarding stage of return of cases from the court of ordinary jurisdiction to ATC in cr.p.c as well as any other enactment which is also creating the problem for the litigants. Another thing which is important to discuss that transfer of case is considered as unit. The district judiciary has set the target units regarding disposal of cases due to which they are deciding the application only for the purposes of completing the unit.so there is need to check because it directly effecting the investigating process because in ATC and ordinary court having different process.<sup>578</sup>

#### **PENDENCY OF CASES OF ATC IN HIGH COURT LAHORE**

Year	Principle seat LHC	Bahwalpur Bench	Multan Bench	Rawalpindi
1999-2000	1	-	-	-
2001-2005	1		2	
2006-2010	59		8	8

<sup>578</sup> Sadiq Ullah Vs the Sate 2020 SCMR 1422

2011-2015	380	38	155	84
2016	105	9	79	19
2017	130	70	57	40
2018	217	101	60	57
Total	893	218	361	208

So we can see that even in Lahore High Court 1680 cases are pending and even more than one thousand cases were pending more than one year and one case of year 1999 is still pending, 3 from year 2001 to 2005 are pending. This is problem not only at trial stage as well as at the appellate stage so there is need to introduce mechanism for the application of section 25(5) which empowered the appellate court to decide appeal within seven working days. There is need to address this issue with consultation of all stake holders like judiciary, prosecutor and bar otherwise it is serious issue. Total pendency of cases in every year is almost more than 1000 cases and only 11-9 courts are working in district properly so need to increase number of judges there. The issue of delay in anti-terrorism cases is a significant concern in Pakistan. The country has been facing terrorism for several years, and the government has introduced a range of measures to tackle the problem. However, the legal system's slow pace has often resulted in delayed justice for victims of terrorist attacks. There are several reasons for the delay in anti-terrorism cases. One of the primary reasons is the inefficient and outdated legal system, which is overwhelmed by the volume of cases. This results in delays in the disposal of cases, which can take years to resolve. The lack of proper training and resources for law enforcement

agencies is also a significant factor contributing to the delay. Another issue is the poor investigation and collection of evidence by law enforcement agencies. The police often rely on outdated methods of investigation, such as torture, instead of using modern forensic techniques. This leads to the collection of unreliable evidence, which is often inadmissible in court, causing further delays in the trial process. Moreover, there is a lack of coordination between different law enforcement agencies and departments, which often leads to confusion and delays in the investigation process. In addition, the frequent transfers of investigating officers and judges also add to the delay in the trial process. Furthermore, the shortage of judges and prosecutors also results in a backlog of cases, contributing to delays in the legal system. The inadequate number of judges and prosecutors is often attributed to the low salaries and poor working conditions in the legal profession, which discourages many qualified individuals from pursuing a career in law. The delay in anti-terrorism cases also has severe consequences for victims and their families. Many victims of terrorist attacks are left waiting for years for justice, and their lives are often disrupted by the legal process. Moreover, the delays in the legal system also result in a lack of deterrence, as perpetrators of terrorist attacks often go unpunished for years, which emboldens them to continue their activities. To address the issue of delay in anti-terrorism cases, the government needs to take several measures. One of the primary steps should be to invest in modernizing the legal system and equipping law enforcement agencies with modern forensic techniques. This will improve the quality of investigation and evidence collection, which will help expedite the legal process. Furthermore, the government should increase the number of judges and prosecutors and provide them with better working conditions and salaries. This will attract more qualified individuals to pursue a career in law, which will help reduce the backlog of cases and expedite the legal process. In addition, the government should encourage coordination between different law enforcement

agencies and departments to ensure a smooth investigation process. The government should also establish specialized courts for anti-terrorism cases to expedite the trial process. Moreover, the government should introduce reforms to ensure that the legal system is transparent and efficient. The introduction of electronic case management systems and video conferencing facilities will help reduce delays in the legal system.

#### **6.16 PROBLEMS DUE TO APPLICATION OF SECTION 23 OF ATA**

One of the main reasons for the acquittal of ATA cases due to transfer is the lack of coordination and cooperation between the two jurisdictions. When a case is transferred from one jurisdiction to another, it can be difficult to establish communication and cooperation between the two jurisdictions. This can lead to delays in the trial and can make it difficult to obtain evidence and witnesses. In some cases, the prosecution team may not be able to travel to the new jurisdiction, which can result in an incomplete case. Another reason for the acquittal of ATA cases due to transfer is the lack of expertise in the new jurisdiction. ATA cases require special expertise in handling the evidence and witnesses. When a case is transferred to a new jurisdiction, it may not have the same level of expertise in handling ATA cases. This can result in a weak prosecution case, which can lead to an acquittal. There have been cases where the transfer of ATA cases has been influenced by political or personal reasons. In these cases, the transfer may be made to a jurisdiction where the accused has more influence or where there is less likelihood of a conviction. This can undermine the credibility of the ATA and weaken the fight against terrorism.

To address the issue of the transfer of ATA cases and its impact on acquittals, there is a need for better coordination and communication between the different jurisdictions. There should be a mechanism in place to ensure that the prosecution



team can travel to the new jurisdiction and that there is adequate expertise available to handle ATA cases. The transfer of ATA cases should be made for legitimate reasons and not influenced by political or personal reasons. The transfer of ATA cases from one jurisdiction to another can be a legitimate administrative or security measure. However, when it is influenced by political or personal reasons, it can result in the acquittal of the accused and weaken the fight against terrorism. There is a need for better coordination and communication between the different jurisdictions to address this issue and ensure that the ATA is implemented effectively.

Section 23 of ATA empowered the court to transfer the case to court of ordinary jurisdiction however there is one bar that is court will exercise this power after taking cognizance of the case and prior to that court will not use this power. Wording of section 23 is little ambiguous because section 23 says that

‘Where, after taking cognizance of an offence, a Special Court is of opinion that the offence is not a scheduled offence, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any Court having jurisdiction under the Code, and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence’

If the offence is not mentioned in schedule, then trial court of ATA has no jurisdiction to try offence and may be transferred to the court of ordinary jurisdiction. Although its preamble is mentioning that heinous offences are also falls under the jurisdiction of ATC. This section is only to the extent of scheduled offences secondly transfer stage is after taking the cognizance of an offence and taking of cognizance

is little conflicted and no express time limit was provided for the exercise of such authority by ATC Court after it had taken cognizance of the case<sup>579</sup> this stage started from first day from receiving of challan to day of decision, secondly who will transfer the case whether administrative judge or assigned trial court of ATC and it was held that same case that “Both, the Administrative Judge and any other ATC Court to whom the case was assigned by the Administrative Judge, after taking cognizance of the case, had the authority to transfer the case under S.23 of the Act to an ordinary criminal court for trial under Cr.P.C”<sup>580</sup>.whether it can be taken at bail stage the Islamabad High court held in Ishtiaq Ur Rehman case that bail stage does not mean court has taken cognizance <sup>581</sup> and even at the remand stage court is not empowered to transfer the case being premature stage.<sup>582</sup>

Further it was held in Tahir Javed Khan vs State<sup>583</sup> “In view of S. 23 of the Act, where, after taking cognizance of an offence, Anti-Terrorism Court was of the opinion that the offence was not a scheduled offence, the Court, notwithstanding that it had no jurisdiction in view of S. 193, Cr.P.C to try such offence, would transfer the case for trial of such offence to any court having jurisdiction under Cr.P.C; but there would be definite conclusion and reasons for transferring the case and if it was not a scheduled offence” and further held that “Anti-Terrorism Court not only had the exclusive jurisdiction of trial of offences committed under any provision of the Act, but the court also had to try all other scheduled offences, Offences mentioned

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<sup>579</sup> Ali Gohar Vs Pervaiz Ahmed: PLD 2020 SC 427

<sup>580</sup> Ibid

<sup>581</sup> Ishtiaq Ur Rehman vs Special Judge Anti-Terrorism Court-I, Islamabad: 2019 PCrLJ 800 Islamabad

<sup>582</sup> Umar Hameed vs Presiding Officer MLD 2019 Lhc 328

<sup>583</sup> Tahir Javed Khan vs State : MLD 2016 Peshawar 1840

in item 4 of Third Schedule of the Act, being heinous offences, would also be exclusively triable by the Anti-Terrorism Court”<sup>584</sup> it has overriding effect “Special Court constituted under the Anti-Terrorism Act, 1997, after having taken cognizance of a case, is competent to transfer the same to any other Court having jurisdiction under the Code of Criminal Procedure---Similarly Court of Session is competent to transfer such case to any other Court of competent jurisdiction, even if the same has not been sent up to that Court under S.190(3), Cr.P.C. as provisions of S.23 of the Anti-Terrorism Act, 1997 have overriding effect as per S.32 of the said Act.”<sup>585</sup> Now whether recording of evidence is requirement courts have conflicted views. Scheme of law in terms of S.23 of Anti-Terrorism Act, 1997, appeared to have enjoined upon the court to minutely examine all the material presented at the time of challan”

The words "cognizance of the case" has been mentioned in section 23 of the Act. And surprisingly this word "cognizance" has not been defined in code and special enactment “As the word themselves alone do in such a case best declare the intention of the lawgiver”<sup>21</sup>. In doing so, one must be careful not to seek reference from very limited or outdated sources, as it may not provide the clear meaning of the word intended by the legislature. In this regard, some of the dictionary meaning of the word "cognizance" are stated herein below for review and consideration: So taking cognizance and to try a case are different things with different consequence and literal meaning of cognizance is to take notice or getting knowledge or awareness of the offence<sup>586</sup>:

“Hearing and determining a cause of action or a matter. 2. The right of a court, tribunal

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<sup>584</sup> Ibid

<sup>585</sup> Muhammad Sharif Dogar Vs State: YLR 1999 LHR 2146

or other body to deal with a matter legally. 3. Judicial notice is taken of a fact by a court.  
4. Admission or acknowledgement of a fact alleged.”<sup>587</sup>

“A court's right and power to try and to determine cases; Jurisdiction. 2. The taking of  
judicial or authoritative notice. 3. Acknowledgment or admission of an alleged fact;  
esp. (hist) acknowledgment of a fine. 4. Common law pleading”.<sup>588</sup>

There can be no contest that, ATC is a "criminal court", within the contemplation of  
section 6 of the Cr.P.C. As far as ATC being "inferior" to High Court, the fact that the  
competent High Court is the appellate forum against the orders of ATC under section  
25 of the Act, would surely render the ATC "judicially inferior"<sup>589</sup> to the competent  
High Court. More so, when in the Act, the legislature has not expressly barred the High  
Court from exercising its revisional jurisdiction, as has been rendered in other special  
enactments<sup>590</sup>.

### **6.17 BRIEF PROCEDURE OF TRIAL IN ATA**

commencing from the stage the challan is submitted till the framing of the charge, would  
highlight the extent of jurisdictional facts or the condition precedent for ATC to transfer  
the case under section 23 of the Act. The same is as follows:

Under section 13 of the Act, After completion of the investigation, the challan of ATC, ,  
forwarded in the court of the Administrative Judge of the ATC unlike other cases of

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<sup>587</sup> LexisNexis, Australian Legal Dictionary, 2nd Edition

<sup>588</sup> Black's Law Dictionary, 8th Edition

<sup>589</sup> Nobin Kristo Mookerjee v. Russick Lallaha (ILR 10 Cal. 269), and also endorsed by this court in Abdul Hafeez v. The State" (PLD 1981 Supreme Court 352).

<sup>590</sup> Section 32 C National Accountability Bureau Ordinance (XVIII of 1999).

ordinary court, it will not be is not sent by a Magistrate under section 190 of Cr.P.C.

On receipt of the challan, Administrative Judge, may proceed trial himself or assign a trial to any other ATC. However, it is before framing of charge, as provided under subsection (2) of section 13 of the Act. Administrative Judge also has power to transfer the trial from one ATC already assigned the case to another under subsection (4) of section 13 of the Act.

If he decides to proceeds with trial himself, and not assign the same to the other ATC, then the he will proceeds with the case as judge appointed as an ATC under subsection (1) of section 13 of the Act.

Under section 16 of the Act, the Judge ATC he will make an oath to the effect that “he shall decide the case honestly, faithfully and considering himself accountable to Almighty Allah”.

“In cases where ATC, on receipt and consideration of the challan and the material placed therewith, forms an opinion that the offences mentioned therein do not come within the scope of offences triable under the Act, transfers the case under section 23 to an ordinary criminal court to proceed with the trial under Cr.P.C. The judicial precedents endorse the view that challan and the material placed therewith by the prosecution would suffice for the ATC to decide whether to proceed with the case or to transfer the same under section 23 of the Act”<sup>591</sup>.

## **6.18 RESTRICTION WHEN TAKEN COGNIZANCE OF THE CASE.**

The conjunctive reading of section 23 with subsection (2) of section 13 of the Act,

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<sup>591</sup> Shahbaz Khan alias Tappu and others v. Special Judge Anti-Terrorism Court No. 3, Lahore and others (PLD 2016 Supreme Court 1) and Nasir Abdul Qadir and others v. The State (2003 SCMR 472) and Allah Din v. The State (1994 SCMR 717)

reveals that the only restriction on the authority of the Administrative Judge to transfer the case to an ordinary criminal court is that it must have taken cognizance of the case. Secondly “There is no specific and express time limit for the exercise of right of transfer after he has taken cognizance of the case. Hence, it can safely be stated that ATC may after taking cognizance, transfer the case to an ordinary criminal court and this authority to transfer can be exercised during the entire proceeding of the trial”<sup>592</sup>. This authority can be use at any stage which is brings question mark for whole proceeding and application of laws.

Now word cognizance is itself a disputed term in legislation, court has made different interpretation in different time period A full bench of the Lahore High Court in Wazir v. The State (PLD 1962 (W.P.) Lahore 405) has after an extensive deliberation on the legal purport of the term "cognizance" and held that:

" ..... “In other words, the police report by itself, when received by the Magistrate, does not constitute the taking of cognizance, and it is reasonable to expect that something more will be done to show that the Magistrate intends to start the proceeding..... He may keep the case waiting until the sanction arrives and then pass some order to show that he intends to hold a trial.”<sup>593</sup>"

The ratio of Wazir's case (supra) has been consistently followed by the precedents that followed. One of the defining decisions in this regard is Alam Din v. The State (PLD 1973 Lahore 304), wherein it was the earlier opinion of the full bench was

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<sup>592</sup> Ibid

<sup>593</sup> Wazir v. The State (PLD 1962 (W.P.) Lahore 405)

reconfirmed and refined in terms that:

"A Court takes cognizance by a judicial action which need not necessarily involve any formal act, but occurs as soon as the Court applies its mind to the suspected commission of the offence, as disclosed in the police report or the private complaint, for the purpose of proceeding in a particular way in accordance with the provisions contained in the Code for holding an enquiry or a trial, as the case may be;<sup>594</sup>"

Given the above discussed, ordinary meaning of "cognizance of the case" and the judicial opinion rendered thereon, it can plainly be stated that ATC would be said to take "cognizance of the case" when on the receipt of the challan along with the material placed therewith by the prosecution, it takes judicial notice thereon by the conscious application of mind and takes positive steps to indicate that the trial of the case is to follow. These steps need not necessarily be recorded as judicial orders. What is essential is that the orders so passed or steps taken reflect that ATC is to proceed with the trial.

So question whether both judges can transfer the case is disputed, however practically both the judges have the authority to transfer the case under section 23 to an ordinary criminal court. Secondly time period for transfer of case is still disputed one even before pronouncement of Judgement

On other hand there is no mechanism for the transfer of case from the district to ATC and there is no legal; provision in Cr.P.C dealing cases sent back to police or prosecution after taking the cognizance. However there are two routes for this. Firstly ordinary court sent back to prosecution office and prosecution office sent back to police for proper

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<sup>594</sup> Alam Din v. The State : PLD 1973 Lahore 304

submission and secondly ordinary court submit it to the session judge who sent the case to concerned court. So there is need of proper legislation over it. Recoding of evidence is another disputed area although it mentioned in section 23 and 28 of ATA trial court may proceed the case from the same stage and supreme court also has given the direction in a case at time of transfer of case to Sessions Judge, to conclude the trial in jail premises by recording evidence of the remaining witnesses.

## **6.19 CONCLUSION**

As mentioned above there are number of reason of acquittal in Anti-terrorism cases just due lacunas in legislation of terrorism and due to these lacunas hardcore terrorist are getting the benefits from the courts so defective investigation can be controlled by proper scrutiny of prosecutor and through active role of prosecutor by way of supervising of criminal case timely, defects at time of registration of criminal cases can be controlled by proper training of police and public awareness and also there is need to introduced mechanism to check delay of ATC proceedings. Defective investigation and registration of criminal cases are major factors that contribute to weak prosecution cases and acquittals. To address these issues, there needs to be better training for law enforcement officials, especially in investigating and prosecuting terrorism cases. There should also be increased public awareness about the importance of reporting terrorist activities and providing evidence to support prosecution. Another way to address these issues is through the proper scrutiny and supervision of criminal cases by prosecutors. Prosecutors play a vital role in ensuring that cases are properly investigated, evidence is collected and presented in court, and that justice is served. Proper supervision of criminal cases by prosecutors can help



to prevent defects in investigation and registration of criminal cases. Another issue that needs to be addressed is the delay in ATC proceedings. Delay in proceedings can be detrimental to the prosecution case, as it can lead to witnesses forgetting important details or evidence becoming stale. There is a need to introduce mechanisms to ensure that ATC proceedings are conducted in a timely manner. This could include setting timelines for the completion of each stage of the trial, providing adequate resources to the courts to expedite the trial process, and implementing measures to prevent unnecessary delays. Another reason for the acquittal of ATA cases due to transfer is the lack of expertise in the new jurisdiction. ATA cases require special expertise in handling the evidence and witnesses. When a case is transferred to a new jurisdiction, it may not have the same level of expertise in handling ATA cases. This can result in a weak prosecution case, which can lead to an acquittal.

## CONCLUSION

As previously discussed, the jurisdiction of anti-terrorism cases in Pakistan has evolved over time, and can be divided into three phases. The first phase, from 1947 to 1970, dealt with insurgencies and political violence and was controlled by the Pakistan Penal Code, Pakistan Security Act, and Pakistan Maintenance Ordinance 1960. In the 1970s, a parallel legal system was introduced due to the failure of the ordinary criminal justice system. "Special courts" were created under The Suppression of Terrorist Activities (Special Courts) Act of 1975 to counter terrorist activities in Pakistan. The second phase, from 1997, dealt with sectarianism and saw the Suppression Act replaced by the Anti-Terrorism Act of 1997. The third phase deals with international terrorism or hardcore terrorism. Pakistan has introduced many changes through different laws, amendments, and policies, including the activation of the National Counter Terrorism Authority and the introduction of speedy trials in the form of special courts. The Anti-Terrorism Act, 1997 underwent several amendments, leading to a new era of conflict regarding the definition of terrorism, which can be divided into three phases. This conflict led to a tug of war between the benches of The Supreme Court of Pakistan from 1998 to 2019. The Supreme Court was divided into two approaches - cumulative effect-based and design-based approaches - in terms of jurisdiction and definition of Anti-terrorism cases. The Actus reus-based or effect-based approach refers to an offense that immediately causes fear and insecurity among the public, regardless of any motive or design. On the other hand, the designed-based approach refers to an offense that is designed to cause fear and insecurity among the public.

The first phase of the legislation of anti-terrorism spanned from 1997 to 2001, and initially, there was no definition of terrorism in the enactment. Later on, amendments were made to the Act to include the definition of terrorism. The second phase, which was from 2002 to 2007, reflected an effect-based or consequences-based theory. The interpretation of the definition of terrorism was determined by the consequences of the act, whether it caused a sense of fear and insecurity among the people. The third and most critical phase was from 2011 to 2020. During this phase, there was a tug of war between the judges of The Supreme Court of Pakistan regarding the jurisdiction of ATC courts. The need for a comprehensive approach to address the issues that lead to acquittals in ATA cases was highlighted. This approach should involve better training for law enforcement officials, increased public awareness, proper scrutiny and supervision of criminal cases by prosecutors, and mechanisms to prevent delay in ATC proceedings. Addressing these issues can strengthen the fight against terrorism, and justice can be served for the victims of terrorism. The purpose of these changes is to counter hate speech, regulate madrasas, and reform the criminal justice system. To further improve the legal framework, Pakistan should consider introducing the concept of domestic and international terrorism, similar to that of the United States. Any Pakistani citizen involved in such heinous offenses that cause fear and insecurity among the people should be dealt with under domestic terrorism within ordinary jurisdiction. However, any foreign activities, whether committed by a Pakistani citizen or a foreigner, should be dealt with under international terrorism. To prevent acquittals in ATA cases, there is a need for a comprehensive approach. This should involve better training for law enforcement officials, increased public awareness, proper scrutiny and supervision of criminal cases by prosecutors, and mechanisms to prevent delay in ATC proceedings. By addressing these issues, the fight against terrorism can be strengthened, and justice can be served for the victims of terrorism. Like USA Pakistan should also introduced

concept Domestic and international terrorism, if any Pakistani citizen is involved in such heinous offence which effect is ultimately is causing fear and insecurity among the people it should be dealt by domestic terrorism with in ordinary jurisdiction and it any foreign activities whether it done by Pakistani citizen or foreigner it should be deal with domestic terrorism. There is a need for a comprehensive approach to addressing the issues that lead to acquittals in ATA cases. This approach should involve better training for law enforcement officials, increased public awareness, proper scrutiny and supervision of criminal cases by prosecutors, and mechanisms to prevent delay in ATC proceedings. By addressing these issues, the fight against terrorism can be strengthened, and justice can be served for the victims of terrorism.

## **SUGGESTIONS**

**1** Section 23 of the Anti-terrorism Act grants the federal government of Pakistan the power to transfer cases from one Anti-terrorism Court (ATC) to another. However, this section should be deleted from the Act because it causes several issues. Firstly, Section 17 of the same Act already grants the ATC judges the power to try any offense other than the scheduled offense with which the accused may be charged under the Criminal Procedure Code. Hence, Section 23 is redundant, and its existence causes unnecessary complications. Furthermore, the transfer of cases under Section 23 has a detrimental impact on the investigation process. When cases are transferred from one ATC to another, it creates a rolling stone effect that delays the trial and investigation process. The prosecution has to start the investigation from scratch, causing significant waste of resources, time, and money. Additionally, the transfer of cases also leads to the loss of important evidence, and witnesses may not be available to testify in court. Moreover, the dual power granted to the ATC judges under Section 17 and Section 23 makes the cases more complicated and less efficient. This dual power system divides the

attention of judges, making it difficult for them to effectively and efficiently handle the cases. Therefore, deleting Section 23 from the Anti-terrorism Act is necessary to avoid further complications and delays in the investigation and trial of cases.

**2** Need to rephrase definition of Anti-terrorism act and introduced effect base theory which more successful in Pakistani judicial system as it was given in Anti-Terrorism (Second Amendment) Ordinance, 1999 (Ordinance No. XIII of 1999) “(a) *in order to, or if the effect of his actions will be to, strike terror or create a sense of fear and insecurity in the people, or any section of the people*”, .....<sup>595</sup> Word designed of the provision of section 6 (1(b)) of the anti-terrorism act should remove

Recommended definition is

“(1) In this Act “terrorism” means the use or threat of action where:

- (a) the action falls within the meaning of subsection (2) and schedule,
- (b) effect of action is to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society; or
- (c) is made for the purpose of advancing a religious, sectarian or ethnic cause.
- (d) offences mentioned in schedule

Because when word use or threat o action is already mentioned in sub-section (1) then no need to repeat it again in 1(b) and 1(c) and insertion of effect will solve the problem of Jurisdiction

**3** The ATA Schedule lists a number of offences that are related to terrorism and which should be treated as ATA offences. However, in practice, many of these offences are not

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<sup>595</sup> See section 6 of Anti-Terrorism (Second Amendment) Ordinance, 1999 (Ordinance No. XIII of 1999)

always treated as ATA offences. This leads to jurisdictional issues and defective investigations, which can result in the acquittal of hardcore terrorists. In order to avoid these issues, it is important to ensure that all offences mentioned in the ATA Schedule are treated as ATA offences. This would ensure that all cases related to terrorism are investigated and prosecuted under the ATA, and not under other laws that may be less effective in dealing with terrorism. By treating all offences mentioned in the ATA Schedule as ATA offences, the jurisdictional issues that often arise in terrorism cases can be avoided. This would ensure that the investigation and prosecution of terrorism cases is conducted in a consistent and effective manner, and that terrorists are held accountable for their actions. Another important benefit of treating all offences mentioned in the ATA Schedule as ATA offences is that it would help to address the issue of defective investigations. When offences related to terrorism are not treated as ATA offences, investigations may be conducted by officials who are not properly trained in investigating terrorism cases. This can lead to defective investigations, which may result in the acquittal of terrorists. By ensuring that all offences related to terrorism are treated as ATA offences, the investigations of such cases can be conducted by officials who are trained in investigating terrorism cases. This would help to ensure that investigations are conducted in a thorough and professional manner, and that terrorists are held accountable for their actions. In addition to treating all offences mentioned in the ATA Schedule as ATA offences, it is also important to ensure that there is proper coordination and cooperation between different law enforcement agencies in investigating and prosecuting terrorism cases. This would help to ensure that investigations are conducted in a comprehensive and effective manner, and that terrorists are held accountable for their actions.

**4** The punishment for ATA offenses should be increased to provide a strong deterrent against terrorist activities. Currently, the punishment for ATA offenses is almost equal to ordinary criminal offenses mentioned in the Pakistan Penal Code. Increasing the punishment for ATA offenses would not only help deter potential terrorists from engaging in such activities, but it would also ensure that those who are found guilty of committing such crimes face appropriate consequences for their actions. Moreover, it is important to ensure that the punishment for ATA offenses is proportional to the severity of the crime committed. For example, those who are found guilty of planning or carrying out a major terrorist attack should face more severe punishment than those who are found guilty of less severe offenses, such as providing support or financing for terrorist activities. In addition to increasing the punishment for ATA offenses, it is important to ensure that the legal system is capable of effectively prosecuting those who are accused of committing such crimes. This includes ensuring that law enforcement officials are well-trained and have the necessary resources to conduct effective investigations, and that prosecutors are able to present strong cases in court. By enhancing the punishment for ATA offenses and improving the effectiveness of the legal system, we can take important steps towards combating terrorism in Pakistan and would send a strong message to those who are already involved in terrorism. In addition, enhancing the punishment for ATA offenses would also help to align Pakistan's legal framework with international standards. The international community has called for states to strengthen their legal frameworks to combat terrorism, including enhancing the punishment for terrorist offenses.

**5** There is a need to develop a permanent mechanism of communication between police and prosecutor in anti-terrorism cases although SOPs are signed between police, counter-terrorism department, and prosecution it has no force of law and is based upon the life cycle

of the criminal case comprising of pretrial trial, appeal process as well as a prison till completion of the sentence it should be introduced under section 12 of prosecution enactment and the involvement of prosecutor from very early days of investigation shall reduce chances of incurable defects in a criminal case. It shall not be amount interference in the performance of the police because there is a mindset in the police that any kind of involvement of prosecutor is interference in it. It is nothing more than attitude problem from both side and other hand prosecutor has also ego problem, because they think that investigating officer has no knowledge of law and its application due to which they do not bother to give proper advice without asking police and prosecutors have dominant attitude and approach towards the police.

**6** Prosecution file is an important element in the prosecution of criminal cases in Pakistan. Section 13(7) of the Punjab Criminal Prosecution act, 2006 empowers the Prosecutor to maintain an independent file of each case assigned to him for prosecution, which is a mandatory requirement. The Administrative or Prosecution file contains all the documents and evidence related to a particular case, including witness statements, medical reports, forensic reports, and other relevant documents. It is essential that the Prosecutor maintains this file properly and keeps it up to date, as it serves as the primary record of the case and is critical to the successful prosecution of the case. However, as per records, it is observed that Prosecutors do not maintain their files properly, which can create problems in the prosecution of criminal cases. Due to rapid transfers of prosecutors, the successor prosecutor may not have access to the Administrative or Prosecution file, and may not be aware of the lacunas that were already pointed out by the predecessor prosecutor. This can lead to delays in the trial and can also result in the accused being acquitted due to lack of evidence. Therefore, it is essential that Prosecutors maintain their Administrative or Prosecution files properly and keep them up to



date. This will ensure that the successor prosecutor has access to all the relevant documents and evidence, and can continue the prosecution of the case without any delays or setbacks. It will also ensure that the accused is not acquitted due to lack of evidence or any other procedural lacunas.

7 Large number of cases were acquitted due to the poor medico legal work of the doctors and basic problem is delayed postmortem and examination of injured person although the Supreme Court of Pakistan has repeated in many cases that delay of postmortem or examination is due to the connivance with police and complainant party and chance of manipulation at time of registration of case however we have to see whether this delay is only due to the complaint or police party? we must remember one more factor and that is the working of medico legal work, and this medico legal work is based upon just one single notification issued in 1959 and notification number is S.O.I.-3/9-56 which was issued on 2<sup>nd</sup> April 1959. Its para 3 and 4 says that Provincial Police Surgeon will conduct postmortem and examination of the person and re postmortem and re -examination of injured person and that time there was no legal provision regarding conduct of medico legal work and in 1961 designation of Police Surgeon was replaced by surgeon medico legal Punjab and Section 509 of criminal procedure code 1898 was dealing evidence of medical officer while section 174 of criminal procedure code is giving the power to make inquest report to police in case of suicide, accidental cases. There was no law regarding examination of injured person and re-examination of postmortem there was no law in field which was regulating work and conduct of medical officers in hospitals at district level as well as tehsil level. Surgeon Medico Legal Punjab under the head of health department it was controlling their functions surprisingly it was under control of primary and secondary health department as well as specialized Death

department due to these defects Doctors as well as their nursing staff is not performing it's duties properly and delay is one of reason this lacuna similarly due to above mentioned reasons accused are getting benefit not only taking in possession confidential document but also issuance of fake medicals and bogus reports without any check in balance the supreme court as well as Lahore High Court has discussed this issue in Mohammed Khalid versus state<sup>596</sup> Mohammad Rizwan versus state<sup>597</sup> Abdul Rashid versus additional session judge<sup>598</sup> but unfortunately there was no work which was done by the government and one effort was made in 2016 when a proposed draft was submitted in assembly however due to the change of government this draft was not approved now it is time to introduce law on this issue because we can see accused are getting benefits from this practice.

**8** Scientific and modern techniques-based program modules compulsory for ATC investigating officers although section 510 of Criminal procedure Code 1898 narrates that evidence of expert is as per se admissible its importance Scientific and modern techniques-based program modules compulsory for ATC investigating officers although section 510 of Criminal procedure Code 1898 narrates that evidence of expert is as per se admissible its importance was laid down as

“For the law to serve people in today's technologically complex society, courts needed to understand and be open to science and its principles, tools and techniques. Legal decisions of the courts must fall within the boundaries of scientifically sound knowledge. A judge and more so a trial judge, acted as a gatekeeper of the scientific evidence and must, therefore, enjoy a good sense and

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<sup>596</sup> 2018 YLR 2433

<sup>597</sup> 2017 MLD 1828

<sup>598</sup> 2018 YLRN 58

understanding of science. As science grows so will the forensic techniques, tools and devices; therefore, courts must be open to developments in forensic science and embrace new techniques and devices to resolve a dispute, provided the said technique and device was well established and widely accepted in the scientific community as a credible and reliable technique or device”<sup>599</sup> in case Ali Haider Alias Papu Versus Jameel Hussain And Others,P L D 2021 Supreme Court 362 while comprising of four Judges including Manzoor Ahmad Malik, Mazhar Alam Khan Miankhel and Syed Mansoor Ali Shah, JJ the Supreme Court of Pakistan Held that “DNA report like any other opinion of an expert under Article 59 of the Qanun-e-Shahadat, 1984 ('QSO') was relevant and thus admissible. Article 164 of the QSO further underlined the admissibility, reliability and weightage of modern scientific forensic evidence, including the DNA test, as the said Article provided that convictions may be based on modern techniques and devices”<sup>600</sup>

In case “Qaiser Javed Khan vs State through Prosecutor General Punjab, Lahore” the SC held that

“Trial Court must also be mindful of the legal position that the per se admissibility of the report it mean without examining the Analyst expert did not vouch for its evidentiary value and courts were free to examine the contents of the report and to assess its evidentiary value (weight), a matter distinct from its admissibility”<sup>601</sup>

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<sup>599</sup> Third Edition, Federal Judicial Centre, National Research Council of the National Academies, Washington, DC and see also Ali Haider Alias Papu Versus Jameel Hussain And Others;P L D 2021 Supreme Court 362

<sup>600</sup> P L D 2021 SC 362

<sup>601</sup> PLD 2020 SC 57: Qaiser Javed Khan vs State through Prosecutor General Punjab, Lahore

However Supreme Court of Pakistan in many cases like *Asim vs state*<sup>602</sup>, *azim vs mujahid Khan vs state*<sup>603</sup>, *Iftikhar Khan alias KHARI vs state*<sup>604</sup> and *Liaqat Ali vs state*<sup>605</sup> held that forensic and evidence through modern devices will be used as corroborative piece of evidence but in anti-terrorism law provision 27 -B says that accused can be convicted on the basis of electronic or forensic evidence or such other evidence available because of modern devices or techniques under Article 164 of the Qanun-e-Shahadat, 1984 but Anti- terrorism courts are showing hesitation and treating it only as corroborative piece of evidence.

In number of cases especially money laundering and funding cases of terrorism the investigating officer fails to collect forensic evidence even the assassination of Benazir Bhutto former Prime Minister remained a cobweb of mysteries. Official investigation of the crime was very poor, no post mortem examination and evidence destroyed by hasty washing of the scene and both UN Commission as well as Scotland Yard team showed element of dissatisfaction. "The UN Commission report said: "Hosing of the crime scene and the failure to collect and preserve evidence inflicted irreparable damage to the investigation". The Scotland Yard reported that "the opportunity of a thorough forensic examination was lost" so it was worst example of destruction of important forensic evidence.

It demands capacity building training of investigating officer along with prosecutors and there is need to train all stakeholders regarding importance of forensic evidence and its importance and most of investigating officers are not well educated and

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<sup>602</sup> 2005 SCMR 417; *Asim vs state*,

<sup>603</sup> 2016 SCMR 274

<sup>604</sup> PCrLJN 2021SC 45

<sup>605</sup> 2021 SCMR 455

trained. The prosecutor should play important role and to give instruction and guideline immediately after receiving information of occurrence

**9** Section 27 of the Anti-Terrorism Act, 1997 provides punishment for law enforcement officials who fail to properly investigate and prosecute cases under the ATA. However, despite the existence of this provision, it has not been fully implemented in practice. There has not been a single case where this section has been applied, which raises concerns about the accountability of law enforcement officials and their commitment to combating terrorism. The non-implementation of section 27 undermines the effectiveness of the ATA in combating terrorism. If law enforcement officials are not held accountable for their poor investigation and prosecution, it sends a message to potential terrorists that they may be able to evade punishment due to the weaknesses in the system. This can embolden terrorists and make it more difficult to prevent and deter terrorist activities. Therefore, there is a need for the proper implementation of section 27 of the ATA. Law enforcement officials must be held accountable for their actions or inactions in investigating and prosecuting ATA cases. This will not only enhance the effectiveness of the ATA in combating terrorism but also increase public trust in the criminal justice system.

**10** Public awareness is crucial when it comes to false implications of accused individuals, and it is necessary to enhance the sentences regarding false evidence and false involvements of accused individuals to deter such acts. False implications and false evidence not only harm the innocent accused individual, but they also weaken the justice system and waste valuable resources. Therefore, it is important to educate the public about the severity of these acts and the consequences that come with them. This awareness can be spread through various mediums,

including seminars, workshops, and public service announcements. Seminars can be particularly effective in educating the public and stakeholders about the issue of false implications and false evidence. These seminars can be organized by the judiciary or civil society organizations and can involve speakers from various fields, including lawyers, judges, law enforcement agencies, and human rights activists. The seminars can cover topics such as the consequences of false implications, the importance of credible evidence, and the legal ramifications of filing false cases. In addition to public awareness, there is a need to enhance the sentences for those who file false cases or provide false evidence. This will discourage individuals from engaging in such acts and will serve as a deterrent for future offenders. The judiciary can play a crucial role in this regard by imposing strict penalties and by taking a strong stance against those who engage in such acts. Overall, it is important to work towards creating a system that is fair and just for all individuals involved, and public awareness and strict sentencing policies are critical in achieving this goal.

- 11** One way to ensure that the extension of time limit for trial is done fairly and with proper reasoning is to adopt a provision similar to the Juvenile Justice Act. Under this provision, the court would be required to seek permission from the higher court after the expiration of the statutory time limit for the trial. The court would be required to provide a valid reason for the delay and seek an extension with proper justification. This provision would ensure that the extension of time limit is not granted arbitrarily or without proper reasoning. It would also help to prevent the misuse of this provision by the prosecution or defense to delay the trial unnecessarily. Additionally, this provision would ensure that the right to a speedy trial is not unduly violated and that justice is served in a timely manner. Overall, the adoption of a provision similar to the Juvenile Justice Act would help to ensure that the trial process is fair

and just, and that the right to a speedy trial is upheld. Data reveals that cases are pending in not only in district courts even in High court for more than 10 years. There is need to address this issue with consultation of all stake holdes and there is need to introduce heavy compensation on the adjournment in trail court as well as High court.

- 12** The Witness Protection Act 2018 was a significant step towards ensuring the safety and security of witnesses in Pakistan. However, the lack of proper implementation of the act has led to its failure in achieving its objectives. As mentioned, there were only three cases in which prosecutors requested non-court protection, and no party requested the implementation of Section 6 for non-court measures. This lack of utilization of the Witness Protection Act highlights the need for better implementation strategies and measures to ensure that the act is used effectively.

One of the reasons for the low utilization of the Witness Protection Act could be attributed to the lack of awareness about the act among prosecutors, judges, and the public at large. There is a need to create awareness and educate people about the importance of witness protection and the provisions of the Witness Protection Act.

Another reason for the lack of implementation could be the absence of an effective implementation mechanism. There is a need to establish a proper implementation mechanism with trained personnel who can oversee the implementation of the act and ensure that witnesses are protected. Furthermore, there is a need for the government to provide adequate resources and funding to implement the Witness Protection Act effectively. The government must also ensure that the law enforcement agencies are trained and equipped to provide the necessary protection to witnesses. Witnesses protection act 2018 was introduced but unfortunately there was no

proper implementation over it and there were only three cases in which prosecutor asked for non court protection and no single case in which parties asked for the implementation of section 6 for non court measurements for, lodging in a safe house, temporary or permanent relocation at a safe place, change of identity, and include concealment of identity of the persons involved in the criminal proceedings, providing financial assistance to a protected person but unfortunately, and for special measurements no case was reported in all over the Punjab even no risk officer are working in the Punjab under section 4 and 5 of witness protection Act 2018 for the assessment of risk.

**13** There is need to establish National Data center for ATC cases on consolidated reports from all provinces and record of cases should be monitor by the government periodically for effectiveness. There no cell which is supervising the procedure work as well as data in the country.

**14** There is need to work on the process serving agency although it is processes under section large number of cases were consigned to record there should be implementation of section 14 of Punjab criminal prosecution service, as per record since 2013 ,1985 cases of Anti-terrorism were consigned to record and 2401 cases were acquitted. These cases were consigned due to non availability of accused and witnesses which was based upon single report of process server normally a constable who is unable to make proper report due to non-availablity of sources. So there is need to check this area and need to develop process serving agency under section 14 of prosecution act.

**15** There should be balanced approach of all stake holders between accuses and victim also balanced approach between the other stake holders of criminal justice system like judiciary and executive as well as legislatures.



**16** FIR, or First Information Report, is indeed an important tool in the criminal justice system. It serves as the basis for initiating an investigation into a criminal offense. However, it is important to ensure that FIRs are not misused or filed maliciously. Therefore, proper scrutiny of FIRs by the prosecution is crucial. The prosecution must ensure that the FIRs are based on credible and reliable information, and that there is sufficient evidence to support the allegations made in the FIR. This will help to prevent wrongful arrests and convictions, and ensure that justice is served in a fair and impartial manner

**17** The appointment of a qualified and experienced investigating officer is crucial to ensure that investigations in Anti-Terrorism Act (ATA) cases are conducted professionally and efficiently. The investigating officer should have a law qualification and expertise in modern investigation techniques to effectively handle complex ATA cases. Additionally, having only one investigation team for all ATA cases would ensure consistency and uniformity in the investigative process. This would help to prevent any inconsistencies or biases in the investigation process, which could potentially compromise the integrity of the investigation and the outcome of the trial. Moreover, having a single investigation team would also ensure that investigations are conducted in a timely and efficient manner, and that the team has the necessary resources and expertise to handle complex ATA cases.

**18** An alignment of criminal law, including investigating, prosecution, and judiciary, is necessary to ensure that the criminal justice system operates effectively and efficiently. All stakeholders, including law enforcement agencies, prosecutors, and the judiciary, must work in unison to ensure that justice is served fairly and efficiently. One of the ways to achieve this alignment is through joint seminars and programs on modern forensic techniques. Training programs that focus on the latest investigative techniques and forensic tools can help to

improve the quality of evidence and expedite the investigation process. Such training programs would equip law enforcement agencies, prosecutors, and judges with the necessary skills and knowledge to handle complex criminal cases effectively. Moreover, the training programs can also facilitate the exchange of ideas and best practices among stakeholders in the criminal justice system. This can lead to the development of standardized procedures and protocols, which would ensure consistency in the investigation, prosecution, and adjudication of criminal cases.

**19** Prosecutor should be empowered to drop the criminal case of anti-terrorism if there is no sufficient evidence then he should stop or decline the prosecution of criminal case.

**20** Power of remand should be given to the public prosecutor because it is executive power and prosecutor should take responsibility of the seeking custody of accused. So remand should be forwarded through the public prosecutor

**21** Giving of false evidence is an offence but unfortunately this section was not applicable however courts should play its role for the proper implementations of this section secondly there is need to develop mechanism for discovering the truth from the false story.

**22** For the speedy justice there is need to introduce new mechanism to check adjournments in anti-terrorism cases and state councils should be provided to the parties on frequent adjournments. Defense council on the state expenses should be given to the parties under umbrella of Free legal Aid program.

**24** The incorporation of special rules of evidence in Anti-Terrorism Act (ATA) cases is crucial to ensure that justice is served fairly and efficiently. These special rules of evidence should consider the unique circumstances of ATA cases and provide maximum protection to

witnesses. In addition, maximum burden should be shifted upon the accused in ATA cases. This means that the accused should be required to prove their innocence, rather than the prosecution having to prove their guilt. This would help to ensure that only those who are truly innocent are acquitted, while those who are guilty are convicted. To introduce these provisions, amendments to the Qanoon Shahadat Order 1984 may be necessary. The amendments should include provisions similar to the Witness Protection Act 2018, which provide comprehensive protection to witnesses, including their identity and location. Additionally, the amendments should provide guidelines for the admissibility of evidence in ATA cases, taking into account the unique circumstances of such cases.

**25** Medico legal work should be under the independent agency because it is working like rolling stone between the both health department due to which there is no job description of medico legal officer.

**26** Offences of religious nature mentioned in PPC from section 295 to 298-A should be offences of schedule because these offences are of serious nature.

**27** one more reason behind this over burden of Investigating and police officers because duty hours of police officers are twenty four hours in week and prosecutor are not available every time so there is need to establish cell comprising of senior prosecutor and senior investigating officers who have worked at High court and supreme court level to combat this issue and make sure availability at any time in twenty four hours in week. We can combat this issue.

# Bibliography:

## Books and Articles

- Ahmed, Naveed "Terrorism: Reality of Invisible Balance of Power" Ferozsons, 60 Shahrah-i-Quaid-i-Azam, Lahore, Pakistan 2005
- Ahmed, Naeem. "Combating Terrorism: Pakistan's Anti-Terrorism Legislation in the Post-9/11 Scenario." *Journal of the Research Society of Pakistan* 52, 2015.
- Bassiouni, M. Cherif. "The new wars and the crisis of compliance with the law of armed conflict by non-state actors." *J. Crim. L. & Criminology* 2007:
- Bjelopera, Jerome P. "Sifting domestic terrorism from hate crime and homegrown violent extremism." Library of Congress, Congressional Research Service, 2016..
- Bokhari, Sitwat Waqar. *Pakistan's Challenges in Anti-terror Legislation*. Center for Research and Security Studies, 2013.
- Byrnes, Andrew. "Apocalyptic visions and the law: the legacy of September 11." 2002
- Carlile, Lord. "The Definition of Terrorism: A Report by Lord Carlile of Berriew QC." London: Independent Reviewer of Terrorism Legislation 2007.
- Chehtman, Alejandro. *A Theory of Asymmetric Warfare: Normative, Legal, and Conceptual Issues*. Oxford University Press, 2022.
- Cunningham, David E., Kristian Skrede Gleditsch, and Idean Salehyan. "Non-state actors in civil wars: A new dataset." *Conflict management and peace science* 30, no. 5 (2013)
- Fayyaz, Shabana. "Responding to terrorism: Pakistan's anti-terrorism laws." *Perspectives on Terrorism* 2008.
- Franck, Thomas M., and Bert B. Lockwood. "Preliminary thoughts towards an international convention on terrorism." *American Journal of International Law* 68, no. 1 (1974)
- Freilich, Joshua D., and Gary LaFree, eds. *Criminology theory and terrorism: New applications and approaches*. Routledge, 2017.
- Gehl, Rod, and Darryl Plecas. *Introduction to criminal investigation: Processes, practices and thinking*. Justice Institute of British Columbia, 2017.
- Gunaratna, Rohan, and Khuram Iqbal. *Pakistan: Terrorism ground zero*. Reaktion Books, 2012.
- Heller, David E. *Designating domestic terrorist individuals or groups*. Naval postgraduate school monterey ca, 2010.
- Hopkins, John. "What is a Political Offence?." *The Cambridge Law Journal* 55, no. 3 1996
- Hussain, Rai Akhtar. "Defining Terrorism In Pakistan." 1793)
- Hussain, Syed Ejaz. *Terrorism in Pakistan: Incident patterns, terrorists' characteristics, and the impact of terrorist arrests on terrorism*. University of Pennsylvania, 2010.
- Irshad, Muhammad. "Terrorism in Pakistan: Causes & Remedies." *Dialogue (Pakistan)* 6, no. 3 2011.
- Khan, Aarish Ullah. *The terrorist threat and the policy response in Pakistan*. Stockholm: Stockholm International Peace Research Institute, 2005.
- Kronstadt, K. Alan. "Pakistan and terrorism: A summary." Congressional Research Service, Library of Congress, 2007.

Mahmood, Shoukat "Pakistan penal code,1860"

Manzar, A. Taliban in Pakistan: A chronicle of resurgence. Nova Science Publishers, 2010.

McGarrity, M. "Confronting the rise of domestic terrorism in the homeland." 2019.

McGarrity, Michael C., and Calvin A. Shivers. "Confronting white supremacy." (2019).

Murphy, Eamon. The making of terrorism in Pakistan: historical and social roots of extremism. Routledge, 2012.

Nacos, Brigitte. Terrorism and counterterrorism. Routledge, 2016.

Nawaz, Shuja. Countering Militancy and Terrorism in Pakistan: The Civil-Military Nexus. United States Institute of Peace, 2016.

Nixon, Ron. "Homeland security looked past antigovernment movement, ex-analyst says." The New York Times (2016).

Parvez, Tariq, and Mehwish Rani. An Appraisal of Pakistan's Anti-Terrorism Act. United States Institute of Peace, 2015.

Riedel, Bruce. "The grave new world: Terrorism in the 21st century." 2011.

Rona, Gabor. "Interesting Times for International Humanitarian Law: Challenges from the" War on Terror, The Fletcher School of Law and Diplomacy, 2003.

Rupérez, Javier. "The United Nations in the fight against terrorism." United Nations Counter-Terrorism Committee Executive Directorate 2006

Shah, Sabir Steps against corruption remained futile in Pakistan's history

Sterba, James P. "Terrorism and international justice." 2003.

Tellidis, Ioannis, and Harmonie Toros, eds. Researching terrorism, peace and conflict studies: Interaction, synthesis and opposition. Routledge, 2015.

Townshend, Charles. "Terrorism: A Very Short Introduction By Charles Townshend."

Zaidi, Syed Manzar Abbas. Terrorism prosecution in Pakistan. Washington, DC: United States Institute of Peace, 2016.

## Internet sources

The Suppression of Terrorist Activities (Special Courts) Act of 1975 available at <https://www.ma-law.org.pk/pdflaw/SUPPRESSION%20OF%20TERRORIST%20ACTIVITIES.pdf>

“Negative effects of terrorism on the enjoyment of human rights” report of the Human Rights Council Advisory Committee available at [https://www.ohchr.org/A\\_HRC\\_AC\\_24\\_CRP1](https://www.ohchr.org/A_HRC_AC_24_CRP1)

available at <https://www.legal-tools.org/doc/502186/pdf> . on

Convention for the Prevention and Punishment of Terrorism available at <https://www.wdl.org/en/item/11579/> .

League Convention (1937). Convention for the Prevention and Punishment of Terrorism. Article 2 (1) available <https://www.legal-tools.org/doc/502186/pdf> and available at

<https://www.wdl.org/en/item/11579/view/1/7/>

See “The United Nations In The Fight Against Terrorism” Javier Ruperez\* Executive Director page 2 available at “[https://www.un.org/sc/ctc/wp-content/uploads/2017/01/2006\\_01\\_26\\_cted\\_lecture.pdf](https://www.un.org/sc/ctc/wp-content/uploads/2017/01/2006_01_26_cted_lecture.pdf)”

Cambridge University Press

See “<https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/preliminary-thoughts-towards-an-international-convention-on-terrorism/979E75E889B11821A967405939968AFB>”

See <https://legal.un.org/avl/ha/dot/dot.html> “

Article 2(2) of The Arab Convention for the Suppression of Terrorism 1998, available at [https://www.unodc.org/images/tldb-f/conv\\_arab\\_terrorism.en.pdf](https://www.unodc.org/images/tldb-f/conv_arab_terrorism.en.pdf) . on 7/01/201

Resolution 1566 (2004) “Adopted by the Security Council at its 505” 3rd meeting, on 8 October 2004, Paragraph 3 of declaration available at <https://www.un.org/ruleoflaw/files/n0454282.pdf>

See A more secure world: Our shared responsibility (United Nations publication, Sales N° E.05.I.5)

“Fifty-ninth session Agenda item 55 Follow-up to the outcome of the Millennium Summit Note by the secretary-General” file:///C:/Users/Usman/Downloads/A\_59\_565-EN.pdf

Resolution 1624 (2005) Adopted by the Security Council at its 5261st meeting, on 14 September 2005 para 2 [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/1624%282005%29](https://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1624%282005%29)

International terrorism: the changing threat the Eu’s Response by Paul Wilkinson at page 29 available at <https://www.iss.europa.eu/sites/default/files/EUISSFiles/cp084.pdf> laste . dated 5.12.2021.

Article 1 of “European Convention on the Suppression of Terrorism 1977” available at <https://rm.coe.int/16800771b2>

The Schtraks Case, Defining Political Offences And Extradition available at <https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1468-2230.1965.tb01044.x>

ANNEX 3: Terrorism, La Gomera Declaration 1995 available at

[https://www.europarl.europa.eu/summits/mad2\\_en.htm#annex3](https://www.europarl.europa.eu/summits/mad2_en.htm#annex3)

TAMPERE EUROPEAN COUNCIL 15 AND 16 OCTOBER 1999, available at

[https://www.europarl.europa.eu/summits/tam\\_en.htm](https://www.europarl.europa.eu/summits/tam_en.htm)

Council Framework Decision, of 13 June 2002 on combating terrorism (2002/475/JHA) available at

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32002F0475>

THE COUNCIL OF THE EUROPEAN UNION,

**Council Framework Decision of 13 June 2002 on combating terrorism’ available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32002F0475>**

General Assembly Resolution 3034 (XXVII) available at [https://undocs.org/A/RES/3034\(XXVII\)](https://undocs.org/A/RES/3034(XXVII))

**General Assembly resolution 49/60 A/RES/49/60** 17 February 1995 available at

<https://undocs.org/en/A/RES/49/60>

Article 421-1 of the Criminal Code (CC) available

[https://www.jcs.mil/Portals/36/Documents/Doctrine/Other\\_Pubs/aap6.pdf](https://www.jcs.mil/Portals/36/Documents/Doctrine/Other_Pubs/aap6.pdf)

[https://www.google.com/search?safe=strict&ei=1cs4YMy5HreAhbIP7Om\\_6AM&q=FTOs+usa&oq=FTOs+usa&gs\\_lcp=Cgdnd3Mtd2l6EAMyBggAEBYQHjIICAAQFhAKEB4yCAgAEBYQChAeOgQIABBD0gIIAFDaDFinEWCnHGgAcAJ4AIAbzA2IAe0jkgEFNy0xLjKYAQCgAQGqAQQnd3Mtd2l6wAEB&sclient=gws-wiz&ved=0ahUKEwiM-ImiqofvAhU3QEEAHez0Dz0Q4dUDCA0&uact=5](https://www.google.com/search?safe=strict&ei=1cs4YMy5HreAhbIP7Om_6AM&q=FTOs+usa&oq=FTOs+usa&gs_lcp=Cgdnd3Mtd2l6EAMyBggAEBYQHjIICAAQFhAKEB4yCAgAEBYQChAeOgQIABBD0gIIAFDaDFinEWCnHGgAcAJ4AIAbzA2IAe0jkgEFNy0xLjKYAQCgAQGqAQQnd3Mtd2l6wAEB&sclient=gws-wiz&ved=0ahUKEwiM-ImiqofvAhU3QEEAHez0Dz0Q4dUDCA0&uact=5)  
Definition Clause 2(4) 22 U.S. Code § 2656f - Annual country reports on terrorism  
Section 5 of 2331 of title 18 Available at <https://www.law.cornell.edu/uscode/text/18/2331>  
<https://www.hstoday.us/subject-matter-areas/counterterrorism/no-domestic-terror-charge-for-domestic-terrorism-lack-of-law-reflects-considerable-ambiguity-says-doj-official/>  
[https://www.nytimes.com/2016/01/09/us/politics/homeland-security-looked-past-militia-movementex-analyst-says.html?smid=tw-nytimes&smtyp=cur&referer=&\\_r=0](https://www.nytimes.com/2016/01/09/us/politics/homeland-security-looked-past-militia-movementex-analyst-says.html?smid=tw-nytimes&smtyp=cur&referer=&_r=0).  
<https://www.fbi.gov/stats-services/publications/terrorism-2002-2005#:~:text=Terorism%20is%20defined%20in%20the,Section%200.85>).  
Available at <https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/dictionary.pdf>  
Section 3 of Section 3(1) of the Terrorist and Disruptive Activities (Prevention) Act, 1985 available at <http://hrlibrary.umn.edu/research/terroristpreventionact-1987.html>  
Section 2(1)y of The Indian National Security Guard Act, 1986 available at <https://indiankanoon.org/doc/191508797/>  
Annex A: Arrests and outcomes, year ending 30 September 2021, Available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1039275/annex-a-flow-chart-sep2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1039275/annex-a-flow-chart-sep2021.pdf)  
Section 3(1), Prevention of Terrorism Act, 2002. Available at [https://www.imolin.org/imolin/amlid/data/mar/document/the\\_prevention\\_of\\_terrorism\\_act\\_2002.html](https://www.imolin.org/imolin/amlid/data/mar/document/the_prevention_of_terrorism_act_2002.html)  
<https://www.gov.uk/government/statistics/individuals-referred-to-and-supported-through-the-prevent-programme-april-2020-to-march-2021/individuals-referred-to-and-supported-through-the-prevent-programme-england-and-wales-april-2020-to-march-2021>  
[https://www.un.org/sc/ctc/wp-content/uploads/2017/01/2006\\_01\\_26\\_cted\\_lecture.pdf](https://www.un.org/sc/ctc/wp-content/uploads/2017/01/2006_01_26_cted_lecture.pdf) . on 07/01/2020  
<http://lawtimesjournal.in/elements-of-crime/>  
<https://2012books.lardbucket.org/pdfs/introduction-to-criminal-law/s08-the-elements-of-a-crime.pdf>  
Available at <https://www.merriam-webster.com/legal/actus%20reus#:~:text=Legal%20Definition%20of%20actus%20reus,also%20crime%20%E2%80%94%20compare%20mens%20rea>  
<https://www.merriam-webster.com/dictionary/emasculate>  
<https://www.merriam-webster.com/dictionary/mutilation> .  
available at <https://pdfs.semanticscholar.org/920a/65261fd67e0760745f8bf4708de38b3a9fd5.pdf>  
<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/81777/88943/F435058093/PAK81777.pdf>  
<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/81777/88943/F435058093/PAK81777.pdf>  
International Convention for the Suppression of Terrorist Bombings  
New York, 15 December 1997  
[https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XVIII-9&chapter=18&clang=en#EndDec](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-9&chapter=18&clang=en#EndDec)  
TERRORISM PROSECUTION IN PAKISTAN available  
[https://www.usip.org/sites/default/files/PW113\\_Terrorism\\_Prosecution\\_in\\_Pakistan.pdf](https://www.usip.org/sites/default/files/PW113_Terrorism_Prosecution_in_Pakistan.pdf)  
<https://www.pakp.gov.pk/2013/annual-report-of-the-khyber-pakhtunkhwa-prosecution-service-for-the-year-2016/>

# Case Law

Abdul Aziz Alias Labha vs Province Of West Pakistan PLD 1958 SC 499:  
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Faqir Muhammad and others---vs The State. MLD 2006 Pesh 867:  
Farooq versus. Ibrar PLD2004 SC 917).  
Fayyaz Hussain Shah Versus The State 2002 SCMR 1848  
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Jan Alam vs Muntazir Alias Mutazir PCRLJ 2003 Peshawar 1574  
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Malik Muhammad MumtazQadri v The State and others PLD 2016 SC 17:  
 Mehram Ali and others v Federation of Pakistan and others:PLD 1998 SC 1445  
 Mian Muhammad Nawaz Sharif vs State.PLD 2002 Kar 152  
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 Muhammad Hayat vs Crown PLD 1951 FC 15:  
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 Muhammad Ihsan Vs The State: PLD 2004 SC 376,  
 Muhammad Mushtaq v. Muhammad Ashiq PLD 2002 SC 841  
 Muhammad Sajid vs the State 2006 SCMR 1727,  
 Muhammad Yaqoob vs state 2020 SCMR 853,  
 Mumtaz Ali Khan Rajban and another v Federation of Pakistan and others:PLD 2001 SC 169  
 Munir Ahmed vs State 2019 SCMR 19:  
 Murad Ali Bangalanivs StatePCrLJ2019 Kar 95  
 Mushtaq Hussain Alias Mushtaqi and another vs State; PLD 2006 SC 519  
 Naeem Akhtar vs The State : PLD 2003 SC 396)  
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 Nasreen vs ASJ Attock : PLD 1998 Lahore 275  
 Nazeer Ahmed and others v Nooruddin and another :2012 SCMR 517  
 Nazir Ahmed Vs Muhammad Arif: 2006 SCMR 1842 ,  
 Nuzhat Fatime vs the state ; PLD 1996 Karachi 559  
 People v. Molineux, 168 N. Y. 204, 61 N. E. 286, 62 L.  
 Province of Punjab Through Secretary Punjab Public Prosecution Department Vs Muhammad Rafique, PLD2018 SC 178  
 Province of Sindh v. Ghulam Hussain (2002 SCMR 908),  
 Qalandro vs the state ; MLD 1997 Karachi 1632  
 Rasab Khan Vs The State; 2003 SCMR 1385,  
 Raza vs state, PLD 2020 SC 523  
 Riaz Masih Vs State PLD 2006 SC 263,  
 Sagheer Ahmed v The State and others :2016 SCMR 1754)  
 Sh. Muhammad Amjad v The State :PLD 2003 SC 704  
 Shadman and others Convict Appellants vs The State P L D 1959 (W. P.) Lahore 405:  
 Shafqat Abbas And Another vs the state 2007 SCMR 162 :  
 Shahbaz Khan @ Tippu v. Special Judge Anti-Terrorism Court; PLD 2016 SC 1

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Shahsawar vs State 2000 SCMR 1331  
Shahzad Alias Shaddu Vs The State, 2002 SCMR 1009  
Sheikh Liaqat Hussain Vs. Federation of Pakistan: PLD 1999 SC 504:  
State through Advocate-General, N.-W.F.P., Peshawar v Muhammad Shafiq (PLD 2003 SC 224)  
State Vs Muhammad Shafiq: PLD 2003 SC 224;  
State vs Ahmed Umer 2021 SCMR 873  
Suleman Vs State: 2006 SCMR 366;  
Syed Saeed Muhammad Shah vs State 1993 SCMR (SAC) 550,  
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