

Defining Terrorism; Designed & Purpose-Based vs. Consequence-Based Approaches: A Comprehensive Case study of Pakistan

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Abstract

The interpretation of the term ‘terrorism’ has been a subject of intense debate and controversy within the superior courts of Pakistan. Even various Benches of the Supreme Court of Pakistan (SCP) have consistently demonstrated different approaches. Within the SCP, the definition of terrorism is shaped by two key approaches known as actus-reus based approach (cumulative effect based approach) and mense-rea based approach (also known as design and purpose based approach). In the backdrop of this controversy, a Larger Bench comprised of seven members of the SCP was constituted in the year 2019 with the aims and objects to put an end to that controversy. The landmark ruling of the SCP in Ghulam Hussain case laid down criteria for determining the terrorism is provided. This decision marks a significant milestone in clarifying the legal definition of terrorism, providing greater importance to design and purpose upon the consequences of the act. It has rejected both effect-based theory (actus-reus) for defining terrorism and nexus-based theory for trial of scheduled offences. Whether the action qualifies terrorism or not? The determining factor is design and purpose (mense-rea) as settled by this seven member Bench. This Article provides detailed examination of effect-based theory and mense-rea-based theory for defining the term terrorism. It also investigates the nexus-based theory as it was applied to the trial of scheduled offenses. It explores various methods and factors used to discover the design and purpose or mens-rea of criminals.

Keywords: Approaches to define terrorism, design & purpose-based approach, effect-based approach, Terrorism, motivation, religious, political, ideological

1. INTRODUCTION

In Pakistan, the legislative journey in combating terrorism reflects a dynamic evolution. Over time, our laws have adapted to various criteria, from the severity of the act and the weaponry involved to the number of perpetrators, victims, and the societal impact, including the instigation of fear and insecurity. Initially, the focus of defining a "terrorist act" under section 6 of the Anti-Terrorism Act, (ATA) 1997, was primarily on the creation or potential of creation of fear and insecurity in society (ATA, 1997 prior 2001). However, subsequent legislative deliberations led to a reassessment of this definition. Consequently, the previous definition was repealed, and a comprehensive redefinition of "terrorism" was introduced by amending Section 6 of the ATA, in 2001 (ATA, Ordinance 2001). The previous definition emphasized the action and its outcome, whereas the current one highlights the motivation and objective rather than solely focusing on the result. This legislative update suggests a newfound recognition that merely inducing shock, horror, dread, or disgust within society does not categorize a private crime as terrorism. Instead, terrorism, as an ideology, signifies as deliberately committing a crime with the aim to destabilize the government or society pursuing objectives that are politically motivated in the broader sense of the term (*Ghulam Hussain case*, 2020).

The term 'design' is explicitly provided in amended section 6(1)(b), while the term 'purpose' is outlined in amended section 6(1)(c) of ATA underlying the act, aligning with international standards. Crucially, section 6(2)(a) to (n) outlines the specific acts constituting *actus reus*, ensuring precision in delineating terrorist activities. Furthermore, the requirement for *mens rea*, as outlined in section 6(1)(b) or (c), emphasized the deliberate intent necessary to qualify an action as 'terrorism.' In essence, this refined definition not only reflects a closer adherence to the true nature of terrorism but also harmonizes with global perspectives on the subject. By clarifying the elements and intent of terrorist acts, the amended legislation provides a robust framework for combating terrorism while safeguarding legal integrity (*Ghulam Hussain case*, 2020).

The determination of an act as terrorism is no longer solely based on the fear or insecurity it generates, whether intended or likely to create. Rather, it now hinges on the intent and motivation behind the action, regardless of whether fear and insecurity are actually induced. With the amendment in section 6, an act qualifies as terrorism if it aims to coerce, intimidate, or overawe the Government, public, or a specific community, sect, or section of society. Additionally, if the action is intended to cause fear or insecurity in society or to further a religious, sectarian, or ethnic agenda, it falls under the definition of terrorism. Merely creating of fear or insecurity due to commission of a criminal act is insufficient for an act to be labeled as terrorism; the crucial factor is whether the primary motive is to cause such feelings in society, as opposed to them being incidental outcomes of a private crime (Iqbal, 2023).

The approach aligns closely with the evolving global perspective on terrorism, which posits **that its fundamental motive is invariably political**. As mentioned earlier, the overarching objective revolves around achieving political goals such as altering governance structures, shifting those in power, or modifying social and economic policies. **Without a political objective, the actions under consideration would not be categorized as terrorism**. Instead, a violent act targeting civilians devoid of a political agenda would, at best, be labeled as criminal behavior, a serious offense, or merely an act of irrationality unrelated to terrorism. **Certain scholars also advocate for including ideological or religious objectives within the spectrum of political aims** (*Ghulam Hussian case*, 2020).

1.1. BACKGROUND

Since the creation of Pakistan, different phases of Anti-Terrorism jurisdiction have been witnessed. The journey from inception of Pakistan till 2023, unfolds some pivotal periods to determine the meaning and scope of terrorist acts and terrorism. For better understanding of anti-terrorism jurisdiction in Pakistan, we can divide in four phases; first phase relates the period from 1947 to 1970 regarding to control insurgencies and political violence. This phase was addressed through PPC, Pakistan Security Act, and Pakistan Maintenance Ordinance 1960, Protection of Pakistan Act (PRODA) 1970. Second phase relates to the period from 1975 to 1997 regarding countering terrorist activities. This phase is addressed through Special Courts Act o 1975. The third phase relates to the period from 1997 to 2001 regarding confronting sectarianism. The late 1990s witnessed a surge in sectarianism, leading to the replacement of the Suppression of Terrorist Activities Act with the more comprehensive ATA, 1997. The fourth phase relates to the period of confronting international terrorism. Responding to the challenges posed by international terrorism, Pakistan implemented various legal changes, amendments, and new policies. Special courts were introduced to expedite trials, strengthening the National Counter Terrorism Authority (NACTA) and combating hate speech and terrorism financing. So, from addressing local insurgencies to confront international terrorism, the jurisdiction of anti-terrorism cases in Pakistan reflects different approaches (Iqbal, 2023).

Spanning the period from 1997 to 2019, the SCP grappled with various approaches in delineating the jurisdiction of the Anti-terrorism Court (ATC). This journey reveals a dynamic evolution, marked by contrasting perspectives from the landmark judgment in *Mehram Ali Case* (1998) to the pivotal *Ghulam Hussain Case* (2020).

2. Approaches to Define Terrorism

The examination of case law of higher courts shows that different approaches have been adopted by the learned judges in defining terrorism. This article discusses the two prominent and famous approaches along-side

some particular issues related to the applicability of offence 7 ATA. Two primary approaches – actus reus-based and mens rea-based – shape terrorism cases. The former focuses on the act's external effects, while the latter examines intent and mental state. The SCP's varying approaches to ATC jurisdiction have complicated investigation, remand, bail, trial, appeal and overlapping offences (Iqbal, 2023).

2.1. Cumulative effect-based approach

The cumulative effect is also known as *actus-reus* based approach. In this approach, the severity of the offense, along with its actual, intended, or potential impact on the general public is used as the criterion to determine whether the act qualify the terrorism or not.

2.1.1. Precedents of Supreme Court on effect-based approach

There are numerous judgments of the SCP in which the act of terrorism is determined on the cumulative effects and consequences of the offence. In *Muhammad Amjad* case, the court held that the accused behaved in a brutal manner through indiscriminately firing at the complainant party and court staff upon entering the courtroom resulting death of two persons including *Naib Qasid* of the court as well as injuries to the court reader thereby spreading fear and insecurity among the people (*Muhammad Amjad* case, 2000). In *Mumtaz Ali Khan Rajban and another* case, a professor was fatally shot for preventing a candidate from using unfair means during an examination. The court classified the incident as an act of terrorism, determining that the accused's action had struck terror and instilled a sense of fear and insecurity among the general public, particularly among teachers and professors (*Mumtaz Ali* case, 2001). In *Muhammad Mushtaq* case, the court held that the cumulative impact of the occurrence in terms of time, place, and manner spread fear and insecurity in society. The Lahore High Court erred by focusing solely on the alleged enmity between the parties. It overlooked the terrorizing effect the incident had on the general public, including the local community and passerby who were unaware of the background or motives behind the crime (*Muhammad Mushtaq* case, 2002). In *Mst. Raheela Nasreen* case the court agreed with the findings of the High Court judges that if a Batman, a trusted aide of an army officer, conspires with the officer's wife to kill him, it is likely to cause terror or a feeling of insecurity among other army officers. This reasoning is based on relevant considerations, logically connected to the applicable law, and does not suffer from any legal infirmity (*Mst. Raheela Nasreen* case, 2002). In *Muhammad Amin* case, a murder occurred during a dacoity at a house, with another injured by the fleeing dacoits. The Court categorized the incident as terrorism, noting that the accused's actions –committing robbery, taking a life, and causing firearm injuries to another in broad daylight – clearly fall within the scope of terrorism u/s 6 of the ATA, 1997 (*Muhammad Amin* case,

2002). In *Zia Ullah* case, an advocate proceeding towards a court in his robes was tragically murdered by his adversaries, leading the court to classify the incident as an act of terrorism. The court noted the severity of the crime, emphasizing that the brutal murder occurred near the court premises, despite arguments that it did not happen within the exact confines. The incident, which also resulted in serious injury to an ASI of police, undoubtedly spread fear and panic, squarely falling within the ATA (*Zia Ullah* case, 2002).

In State through Advocate-General N.W.F.P, case, a person was murdered by being shot and doused with petrol, resulting in severe charring of the body and partial burning of bones. The court noted that the law does not require that murder must cause public panic and terror. Instead, it examines whether the act had the potential to cause fear or insecurity among people or insecurity among people or a specific community. The psychological impact on individuals is crucial. When the charred body was brought to the deceased's residence for burial, it undoubtedly caused shock, insecurity and fear among the local people. The gruesomely mutilated state of the body must have unsettled onlookers (State through AG, NWFP case, 2003). In *Mst. Najam-un-Nisa* case, seven individuals were tragically killed in a house at night due to private enmity. The court emphasized that the brutal killing of seven individuals in a residential house at night undoubtedly evokes fear and dread among the public as such crimes do not go unnoticed due to widespread media coverage (*Mst. Najam-un-Nisa* 2003). In *Abdul Ghafoor Bhatti* case, two minors were kidnapped for ransom who were safely recovered after payment of ransom amount. The court categorized the incident as an act of terrorism, emphasizing the profound impact of such crimes (*Abdul Ghafoor* case, 2003). In *Muhammad Farooq* case, an occurrence of firing took place with a mosque on Friday's prayer due to previous enmity; the court categorized it an act of terrorism due to broader impact of the incident (*Muhammad Farooq* case, 2004). In *Azizullah* case, the complainant's wife along-with children were invited for Quran reading ceremony, subsequently holding them hostage and demanding ransom for their release. Additionally when two persons attempted to rescue the hostage, they too had taken captive. During a police operation, gunfire erupted from accused side. In response, police fired back and caused the death of one of the kidnappers. The court categorized it act of terrorism as it caused significant fear in public and insecurity (*Azizullah* case, 2005).

In case of the *Mirza Shaukat Baig*, the court held the pivotal term is action which determines whether the alleged offense falls within the ambit of Section 6 of ATA (*Mirza Shaukat* case, 2005). In this case, after thoroughly examining the legal precedents established by this court across various cases, it is widely acknowledged that the essence of invoking section 6 of the ATA hinges on the infliction of terror. This determination necessitates a comprehensive evaluation of the offense's nature, severity, and impact on society or specific groups, along with the evidence presented

in the FIR. Evaluating the perpetrator's intent similarly requires a thorough review of all evidence, squarely falling within the jurisdiction of the specialized court under the Act. Constitutional jurisdiction cannot substitute this process without a thorough examination of all relevant circumstances. It is unequivocal that actions by an accused leading to fear, panic, helplessness, and insecurity within a community constitute terrorism, falling under the purview of a specially constituted Special Court. The true intent of the offenders can only be discerned from the evidence and not through constitutional jurisdiction. A Special Judge, typically a Senior Sessions Judge, oversees such matters and may transfer cases outside their jurisdiction as necessary. Legislative intent did not intend for every offender, regardless of the offense's societal impact, to face trial in the ATC. Initially ATC determines whether such trials are warranted, a decision not to be interfered with without lawful justification, which seems lacking in these instances. However, these courts are obligated to carefully scrutinize the allegations and the entire case record to determine the prima facie applicability of the Act. If it is determined by the Court that the alleged crime, prima facie does not fall under the Act, the case must be promptly transferred to a regular court (*Shaukat Ali case*, 2005).

In *Zahid Imran* case the court emphasized that the crucial term in section 6(1)(b) of the Act is 'action' rather than 'design to' or '*mense rea*'. The primary concern is whether the alleged offense aligns with the provisions of section 6 of the Act based on the actions taken. The court determined that 'terrorism' involves the use or threat of actions defined under sub-section 2 of section 6, which either pose a significant risk to public safety or are intended to instill fear, disrupt civil life, and hinder people from engaging in lawful activities. Such actions are classified as terrorism under section 6 of the Act. To apply Section 6 of the Act, judicial consensus emphasizes the necessity of striking the terror. This determination hinges on several factors, including the nature, gravity, and heinousness of the alleged offense, the details of the FIR, the overall impact on society and specific groups, and the evidence provided. Clearly, actions that incite terror, fear, panic, sensation, helplessness, or a sense of insecurity among the public within a particular area fall squarely under the scope of Section 6 of the ATA (*Zahid Imran case*, 2006).

In *Muhammad Idrees* case, The SCP observed that since it was not proven that the accused's action caused insecurity, fear and panic in the society, nor affected any specific section, community, or sect, and given that the incident occurred at night by a canal bank –which cannot be considered a public place by any measure – section 7 of the ATA does not apply to this case (*Muhammad Idrees case*, 2008). In *Nazeer Ahmed* case, the SCP upheld the decision of the high court while stating that the High Court, after a thorough examination of the evidence, correctly determined that actions of the accused caused a sense of insecurity among the villagers, thereby

disrupting public order. As a result, this conduct is rightly classified under the provisions of Section 6 of the ATA (*Nazeer Ahmed* case, 2012). In case *Shahid Zafar*, the court held that such a brutal murder by a law enforcement agency would inevitably caused terror, insecurity and panic among society generally and particularly among those who witnessed the occurrence at the scene and who watched the incident when it was broadcasted on DVD. Reference can be made to section 6(1)(b) which defines terrorism as any action or threat of action aimed at coercing, intimidating, or overwhelming the government, the public, or any segment thereof, with the intent to cause insecurity, panic within society. This definition can be divided into two parts. First part is related to the actions intended to overpower, coerce or intimidate the government, general public or any class or segment of it. Second part is related to the actions cause panic, fear or insecurity in the society. The grievous and heinous nature of the crime –shooting young boy who was empty handed and letting him to bleed till his death despite his request for taking him to hospital – certainly caused widespread fear and insecurity therefore, the accused were rightly convicted and sentenced after framing charge u/s 302(b) of the PPC and 7(a) of the ATA (*Shahid Zafar* case, 2014).

In *Kashif Ali* case, the court held that the term ‘design’ as now used in Section 6 of the ATA, 1997, has expanded its scope, substituting the term ‘motive’ and ‘intention’. This change aims to extend the jurisdiction of the ATC to acts intended to cause panic, insecurity or fear in the society. The definition of ‘design’ clearly implies a future plan formulated in the mind for execution. Determining whether an offense falls u/s 6 of the ATA requires a careful consideration of the allegations in the FIR, surrounding circumstances and evidence collected by the investigating officer. Determining whether an act constitutes terrorism, it is essential to evaluate the design, motivation, objective or purpose behind it. The term ‘design’ extends the jurisdiction of the ATC by excluding the motive and intention of the culprits. In essence, intention and motive are irrelevant under Sections 6(2) of the Act, what matters is the purpose for which the act is designed (*Kashif Ali* case, 2016). In *Shahbaz Khan* alias Tippu case, it was held that a textual analysis of the provisions of Sec. 6 of the ATA, 1997 indicates that an action listed in sub-section (2) qualifies as terrorism if, it is specifically ‘designed’ to overawe, intimidate the public, or create a sense of panic, insecurity or fear in society. Therefore, the three essential elements of the offense of terrorism mentioned in the provisions of Section 6(1)(a) and (b) of the ATA are; first, the commission of an act listed in Section 6(2); second, the action is carried out with a design perceived in mind having *mens-rea*, illegal objective and purpose and third, it results in causing awe, fear, intimidation and insecurity among the general public or in specific class of group of the society (*Shahbaz Khan*, 2016).

According to this theory, a criminal act designed with the intention to cause panic, insecurity or fear in the society; disrupting normal pace and peace of society should be considered a terrorist act. Even if there are only a few killings, whether random or targeted, the primary aim remains clear. The effect, however, is far-reaching, causing panic or fear among thousands. When the reckless action of an accused lead to severe consequences, the motive outlined in the FIR serves only as background context. The assumption that an accused intends foreseeable and natural consequences of their actions provides a dependable standard for assessing their *mens-rea*, intention or design u/s 6(1)(b) of the ATA.

2.2. Design and Purpose based approach

According to this approach, the acts listed in section 6(2) are considered acts of terrorism only when they are committed with ‘design’ or ‘purpose’ specified in clauses (b) and (c) of section 6(1) of the ATA. The SCP consistently upheld in numerous cases that acts of terrorism should not be confused with ordinary crimes driven by personal enmity or private vendetta. Furthermore, the severity of the offense, the horrific and distressing nature of the crime, or the insecurity, panic, or fear resulting from particularly gruesome, brutal, and heinous acts should not be the only factors considered in determining and evaluating terrorism.

Section 6 of the ATA assigns significant legal weight to the terms ‘design’ and ‘purpose’, necessitating careful examination. The SCP elaborated both the terms, referencing the Black’s Law Dictionary as the term ‘design’ usually refers to a ‘intention’ or a deliberate plan behind the action, indicating a strategic decision made to achieve specific outcomes. In the domain of ATA, such activities may include efforts designed to destabilize the society, create panic or fear or overawe or coerce governments for religious, political or ideological motives. When evaluating whether an act demonstrates a terrorist design, court should take into account factors like presence of a systematic plan, coordination and premeditation. Conversely, ‘purpose’ pertains to the fundamental reason or goal motivating the action. It involves achieving broader aims or objectives through the commission of a particular act. In the realm of ATA, this purpose might include advancing a political agenda, advocating a specific ideology or supporting the goals of a terrorist organization via violence or intimidation (*Imtiaz Latif case*, 2016).

The design and purpose based approach is also known as *mens-rea* approach. The concept of *mens- rea*, known as the intent and purpose behind an action, plays a crucial role in legal proceedings, particularly in cases involving terrorism. This principle was discussed in *Waris Ali and 5 others* case by three-member Bench. In jurisprudence, *mens-rea* is recognized as a fundamental aspect of criminal liability. However, in terrorism cases, *mens-rea* takes on a dual aspect: first, the intention to commit a crime; and second,

and the broader objective involving terrorist ideologies, aimed at instilling fear, insecurity, and social instability. This second facet of *mens-rea* seeks to create widespread chaos, instill fear in the public, and undermine the stability of the state through acts of terrorism. In such cases, *mens-rea* is focused on achieving acts of terrorism and carrying out activities designed to intimidate the state, its institutions, and the general public. These actions may include damaging public and private property, attacking law enforcement agencies, and instilling fear within the community. Unlike crimes driven by personal motives like revenge or enmity, terrorist acts aim to instill fear and insecurity on a societal scale (*Waris Ali case*, 2017).

2.2.1. Precedents of Supreme Court on ‘design’ and ‘purpose’ based approach

In *Mehram Ali* case, the SCP emphasized the necessity for offences listed in the Schedule to be directly related to the objectives of the Act, particularly sections 6, 7, and 8 of the Act. Any inclusion of an offence in the Schedule must align with these provisions; otherwise, such a notification would exceed lawful authority. The judgment further clarifies that if a government official or any other public servant is murdered due to their official position, without any enmity or discernible motive, such an act qualifies as terrorism under the Act and can rightfully be listed in the Schedule. Conversely, if the murder results solely from personal animosity, it lacks the necessary connection to the Act’s provisions and thus cannot be prosecuted under its purview (*Mehram Ali*, 1998). In *Jamat-i-Islami* Pakistan case, The SCP held that for an act to be punished under ATA, it must demonstrate a clear connection to sections 6, 7 and 8 (*Jamat-i-Islami*, 2017). In *Ch. Bashir Ahmad* case, the SCP acknowledged the gravity of the offence committed, yet concluded that it did not meet the criteria to be classified as a terrorist act under section 6 or the Schedule to the Act (*Bashir Ahmed* case, 2009). In *Muhammad Mushtaq* case, the SCP clarified that the ATA does not encompass ordinary crimes. The court emphasized that mere physical harm to the victim does not exclusively define terrorism (*Muhammad Mushtaq* case, 2002). In *Fazal Dad* case, the SCP held that the incident in question did not meet the criteria for classification as a terrorist act under Section 6 or the Schedule of the ATA (*Fazal Dad* case, 2007).

In *Mohabbat Ali* case, the SCP held that the determination of whether an act qualifies as terrorism hinges on its underlying motivations, objectives, design or purposes (*Mohabbat Ali*, 2007). In *Tariq Mahmood* case, the SCP observed that the respondent accused, who has a clean past, stand on a lower pedestal compared to terrorists and sectarian criminals who murder innocent individuals to destabilize the state or harm rival sects. These terrorists or sectarian killers act without personal grudge or motive against their victims. In contrast, this case is clearly distinguishable as it is admitted that a feud over a piece of land existed between the parties before the incident

(*Tariq Mahmood case*, 2008). In *Muhammad Yaqoob* case, the SCP held that to classify an act under section 7 of the ATA, it must be determined whether the act caused a sense of fear or insecurity within the public, a segment of the public, a community, or a sect. If the occurrence stemmed solely from prior enmity or personal vendetta, it would not fall within the scope of section 7 of ATA (*Muhammad Yaqoob*, 2009). In *Bashir Ahmed* case, the SCP stated that to determine whether an offence falls under the ambit of Section 6 of the ATA, it is essential to ascertain whether a particular act constituted terrorism, so, one must consider the motivation, purpose, and design behind it. Additionally, it should be assessed whether the act created a sense of fear and insecurity among the public or any community or sect. In the present case, the murders were committed due to a pre-existing feud between the groups, thus it does not meet the criteria of Section 6 ATA (*Bashir Ahmed*, 2009). In *Ahmad Jan* case, the SCP observed that the incident in question was not an act of terrorism nor it was motivated by sectarian conflict. Rather, the murders stemmed from a long-standing enmity between the two groups so section 7 of ATA is not applicable (*Ahmad Jan*, 2012). The SCP held that the provisions of Section 6(1)(b) of the ATA, clearly address the intention to create a sense of fear or insecurity within society as the motivation behind an action. Whether this intention was actually realized or not, and regardless of whether fear or insecurity was genuinely induced in society, is irrelevant. The focus is on the specific action combined with the requisite intention, design, or purpose. This combination constitutes the offence of terrorism under Section 6 of the ATA. The actual impact or consequences of the action do not influence the determination of the nature of the offence (*Mumtaz Qadri* case, 2017).

In *Khuda-e-Noor* case, the SCP observed that the High Court erroneously classified all cases of honor killing as acts of terrorism. The High Court's decision was primarily based on Section 6(2) of the ATA, without fully considering the requirements outlined in Section 6 of the same Act. The court further clarified that for an action to be deemed terrorism under Section 6 of the ATA, it must not fall within the categories specified in subsection (2) but also be accompanied by the specific 'design' or 'purpose' defined in section 6(1)(b) or (c). Section 6 of the ATA, which outlines the definition of 'terrorism' is divided into two main components. The first component, detailed in section 6(1)(b) and (c), addresses the *mens-rea*, specifying the 'design' or 'purpose' behind an action. The second component, described in section 6(2), lists the actions that, when coupled with the aforementioned *mens-rea*, would constitute the offence of terrorism (*Khuda-e-Noor* case, 2016). In *Sagheer Ahmed* case, material on record has demonstrated that the offence was committed due to an old enmity with a clear motive, thus accused's action did not exhibit any intent of terrorism (*Sagheer Ahmed* case, 2016). In *Ch. Shaukat Ali* case, the SCP observed that the altercation between the parties occurred suddenly. It was noted that the

conflict arose as the complainant's procession, celebrating an election victory, passed in front of the house of the accused. The court found no evidence of premeditated intent or design, thereby concluding that the offence of terrorism was not applicable (*Ch. Shaukat Ali* case, 2016).

In *Waris Ali* case, the SCP while distinguishing person crimes from acts of terrorism, observed that crimes committed for personal motives, even if executed in a gruesome or detestable manner, do not necessarily fall under the definition of terrorism or terrorist activities. Courts must recognize that terrorism involves actions by individuals, groups, or organizations aiming to destabilizing society and the state. The underlying intent and '*mens-rea*' of such activities are evident from the nature of the crimes, and courts must consider this with deep judicial thoughts. Unlike personal crimes, terrorist acts aim to incite alarm, dread, and a sense of insecurity in the public (*Waris Ali* case, 2017). In *Amjad Ali* case, the SCP observed that simply firing at a personal enemy due to a private vendetta does not automatically classify the action as terrorism u/s 6 of the ATA, in the present case, there was no design and purpose specified by Section 6 of the ATA. Additionally, according to item No. 4(ii) of the Third Schedule to the Act, cases involving the use of firearms or explosives in places of worship like mosques, *imambargahs*, churches, or temples are triable by ATC. However, such cases do not automatically qualify as terrorism u/s 6 and 7 of the ATA for the purpose of recording conviction and sentences (*Amjad Ali* case, 2017). In *Abdul Nabi* case, the SCP observed that it is clear from the record and arguments of the parties that the case in hand was not one of terrorism but rather a private offense committed in secrecy. The design or purpose outlined in section 6 of the ATA was absent in this case (*Abdul Nabi* case, 2017). In *Dilawar Mehmood* case, the SCP thoroughly assessed the situational elements such as time, place, manner and motive and highlighted that not all violent acts necessarily fall under terrorism. The court must distinguish between criminal acts arising from personal enmity and those intended to create broader societal terror ensuring appropriate legal provisions are applied (*Dilawar Mehmood* case, 2018).

3. Definition of Terrorism in the light of *Ghulam Hussain* case

A larger Bench (Seven-member Bench) of the SCP clarified the acts constituting an offence triable under 7 ATA after thorough deliberation on the conflicting precedents. The court ultimately held that for an action or threat to be considered terrorism under Section 6 of the ATA, 1997, it must meet the criteria outlined in subsection 2 of Section 6. Additionally, the action or threat must aim to achieve one of the objectives specified in clause (b) of subsection (1) or one of the purposes mentioned in clause (c) of subsection (1) of section 6 of the Act. It is important to note that any action, regardless of how grave, shocking, brutal, gruesome, or horrifying, does not

qualify as terrorism if it is not committed with the intention or purpose outlined in clause (b) or (c) of subsection (1) of section 6. Furthermore, actions specified in subsection (2) of section 6 cannot be labeled or characterized as terrorism if they are carried out due to personal enmity or private vendetta (*Ghulam Hussain*, 2020).

4. Offence of Terrorism and Ordinary offence

The terrorists operate on a distinct level compared to ordinary criminals. Their operations and tactics differ significantly, focusing more on the underlying objectives and designs rather than the actions themselves. The unique nature of terrorism prioritizes ideological or political goals over mere criminal activity whereas, ordinary crimes are typically motivated by personal gain or immediate outcomes. The terrorism involves strategic planning aimed at broader impact and influence. In *Ghulam Hussain* case, seven-member bench of the SCP has thoroughly elucidated the applicability of the provisions of the ATA. In summary, considering the latest definition of ‘terrorism’ in Section 6 of the ATA, the severity or brutal nature of an offence alone does not qualify it as terrorism. For an offence to be considered terrorism, its motivation must be political in a broad sense. As outlined in UK law, ‘the use or threat is made for the purpose of advancing a political, religious, or ideological cause’ and the act must aim to destabilize society. Throughout history, many horrifying crimes have shocked society, yet they were not classified as terrorism because their motivations were personal. Conversely, even an unsuccessful attempt to sabotage public supplies or services is readily accepted as terrorism due to its intent to destabilize society. Crimes such as petty theft, rape, murder, although they may create fear and insecurity, are distinguishable from terrorism because their motivations are personal. In contrast, terrorism aims to destabilize society at large. Therefore, relying on speculative and subjective assessments to determine whether an act is terrorism is unreliable (*Ghulam Hussain* case, 2020). In *Province of Punjab* case, the SCP observed that the amendment to the ATA, introduced the term ‘design’ in Section 6, significantly broadening its scope. The substitution of the word ‘design’ aimed to ensure that if an act is intended to create a sense of fear or insecurity in society, the ATC would have jurisdiction over such cases. The term ‘design’ implies the scheme and objective in the mind of the accused for subsequent execution. In determining whether the provisions of the Act, apply, the courts must consider the manner in which the incident occurred, including the time, and place. Additionally, they should assess whether the act was intended to create terror or insecurity among the general public. If the accused’s actions result in striking terror or creating fear, panic, and a sense of insecurity among people in a particular area, it constitutes terror within the ambit of Section 6 of the Act (*Province of Punjab*, 2018).

5. Personal Vendetta

In *Amjad Ali* case, the SCP observed that merely firing at a personal enemy during a private vendetta or with malicious intent does not automatically classify the case u/s 6 of the ATA thereby labeling the action as terrorism (*Amjad Ali* case, 2017). In *Ghulam Hussain* case, the SCP categorically held that crimes committed due to personal enmity or vendetta do not qualify as terrorism, regardless of their brutality or shocking nature. For an act to be labeled as terrorism, it must align with specific purposes outlined in Section 6 of the ATA or based on specific design, focusing on destabilizing society or the state. Courts must distinguish between crimes and acts of terrorism, as confusing the two could unjustly transfer cases from ordinary criminal courts to ATCs (*Ghulam Hussain* case, 2020).

6. Methods for ascertainment of Design, intention and mens-rea

Determining the acts of terrorism involves meticulous review of various components. The FIR and the case record provide the foundational allegations and factual background, while the surrounding circumstances offer contextual understanding. By comparing the elements of the alleged offense with the specific objectives stated in Sections 6, 7, and 8 of the ATA, one can determine if the offense meets the criteria for terrorism. The act's motivation, objective, design, or purpose are crucial in this assessment, as these factors help in understanding the intent behind the offense. An act is more likely to be classified as terrorism if it is intended to create fear and insecurity among the public, a specific community, or any sect. This aspect emphasized upon the broader impact of the offence on social peace and security, which is a central concern of the ATA (*Imtiaz Latif* case. 2016).

In *Shahbaz Khan* case, the SCP emphasized that determining an act's classification as terrorism requires assessing its mens-rea, intention and design as established in *Bashir Ahmed* case which draws on *Mehram Ali's* case. The court questioned whether the motive alleged in the FIR should be accepted at face value or if the court should evaluate other factors, such as the nature of the offence, its manner of execution, and surrounding circumstances. Private motives stated in the FIR may not always reveal the true intent. Mens-rea must be inferred from the actions and behavior of the accused, as it cannot directly prove.

In *Mangal* case, it was observed that an accused is presumed to have intended the natural consequences of their actions. Beyond overt acts, factors such as consequences, injuries caused and surrounding circumstances are crucial in determining mens-rea (the state v. Mangal, 1967). This principle was reinforced in *Zahid Imran* and *Pehlwan* cases. The rule that actions' natural consequences reflect intent, as seen in the *Jane Alam* case (1965), was further emphasized in *Muhammad Mushtaq* case where an act's inevitable outcome was considered its design.

In the *Mohabbat Ali* case (2007), the court stressed the need for a thorough review of the FIR, case records, and circumstance to determine if an offence falls under section 6 of the ATA. The assessment must evaluate whether the act aligns with the objectives of Section 6, 7, and 8 focusing on motivation, intent, and purpose. Additionally, it must consider if the act incites fear or insecurity among the public or a specific group. This principle was reaffirmed in the *Ch. Shoukat Ali* (2016) case and further emphasized in the province of Punjab case (2018).

7. Motivation in terrorism

Motivation political, religious or ideological plays crucial role in commission of terrorism. Determining whether an act qualifies as terrorism requires analyzing its design, objective, purpose and motivation. The key factor is whether the act was intended to cause fear, target a specific community, or overawe the government by promoting an ideological, political, or religious cause (*Imtiaz Latif* case, 2016). Under Section 6 of the ATA, terrorism now depends on the intent behind the act rather than the fear it creates. The emphasis has shifted to the act's underlying design and purpose, aimed at destabilizing society. (*Ghulam Hussain* case, 2020)

In *Ahmed Omar Sheikh* case, the SCP observed that the crime's motive went beyond personal motivation, aiming to intimidate both Pakistani and foreign governments, thus creating fear in society. The ransom and death threat email revealed a design and purpose aligned with terrorism under Section 6 of the ATA, 1997. The accused were found guilty of terrorism, as their actions met the criteria for 'abduction for ransom' and the intent specified in Section 6 of the ATA (the state v. *Ahmed Omar Sheikh*, 2021).

8. Scheduled offence and Nexus based theory

The distinction between cases of terrorism and other heinous offences emphasized that not all severe, brutal, gruesome, or shocking crimes automatically qualify as terrorism, which is a distinct category. An amendment to the Third Schedule allows for the inclusion of any heinous offense, not constituting terrorism, to be tried by an ATC. This is reflected in the Preamble to the Act, which states: "Whereas it is expedient to provide for the prevent of terrorism, sectarian violence, and for the speedy trial of heinous offenses" (*Ghulam Hussain* case, 2020). So, for the trial of scheduled offences, no need to apply

9. Reasons of narrowing the scope of Terrorism

The SCP examined the definitional aspects of Terrorism for two primary reasons. Firstly, the current criminal justice system grants police the power to control victims' entry by permitting or denying case registrations. This selective application of Anti-terrorism law results in excessive litigation and influences criminal proceedings, including longer remands and special trials. Secondly, during trials, ATCs focus on the societal impact of acts (*effect-based approach*) rather than motives (*Design & Purpose-Based approach*),

necessitating a clear definition of terrorism to avoid misapplications and ensure consistency (Adil, 2019). The court has ended the arbitrary use of the ATA 1997 by police, government, and the public, which was even applied to ordinary cases like property damage and personal enmity. In Punjab, from 2005 to 2010, less than 5% of ATA cases involved genuine terrorism. Over 95% of cases were unjustly tried as terrorism due to perceived severity. This misuse overburdened the system, causing inefficiencies. The new ruling requires a three-fold test for invoking ATA 1997: *actus-reus*, *mens-rea*, and intent to advance an ideological, political, or religious cause (Raza, 2021).

Conclusion

Based on the discussion above, it can be concluded that since the evolution of anti-terrorism in Pakistan, defining and adjudicating terrorism cases has undergone significant changes. Initially, anti-terrorism laws lacked a clear definition, focusing on the effects of terrorism acts. The SCP played a crucial role in interpreting terrorism, emphasizing the impact on public fear and insecurity and later on the design and purposes. Key amendments in 1999 and 2001 refined this definition, though divisions in interpretation persisted, however in 2019 controversy of interpretation has settled in *Ghulam Hussain* case. It has concluded that any act, regardless of how grave, shocking, brutal, gruesome, or horrifying, does not qualify as terrorism unless it is committed with the intent or purpose specified in clauses (b) or (c) of subsection (1) of section 6. Furthermore, actions listed in subsection (2) of section 6 cannot be labeled as terrorism if they are motivated by personal enmity or private vendetta. For an action or threat to be recognized as terrorism under Section 6 of the ATA, it must meet the criteria set out in subsection (2) of Section 6. Additionally, the action or threat must be intended to achieve the objectives specified in clause (b) of subsection (1) or the purposes outlined in clause (c) of subsection (1) of the same section.

The broad scope of Section 6 of the ATA, 1997 posed significant challenges by encompassing a wide range of actions and purposes under terrorism, diluting focus on genuine terrorist activities. This over breadth led to the misapplication and misuse of anti-terrorism laws, undermining their effectiveness and credibility. Consequently, a more precise legal framework was needed. The landmark *Ghulam Hussain* case, addressed this by establishing a narrow and conclusive definition of terrorism for criminal cases. The Court reached this decision after evaluating two earlier approaches: an effect-based approach and an object-based approach, ultimately ensuring a more targeted application of anti-terrorism laws.

The ATA needs significant refinement to ensure that its provisions accurately reflect the intent behind terrorism and that the courts tasked with handling such cases are not overburdened with non-terrorism related crimes. The definition of terrorism in Section 6 is problematic due to its broad and sometime contradictory nature. Subsection (3) extends terrorism to include

any violent act involving firearms or explosive, irrespective of the intent to create fear or achieve a political, ideological, or religious objective. The historical and evolving definitions of terrorism within the ATA highlight inconsistencies and a lack of clarity, impacting the law's application and effectiveness in addressing terrorism specifically.

Recommendations

Based on the above discussion and analysis, several recommendations emerge to improve the effectiveness and fairness of the law.

1. The Parliament should review and amend the ATA to address the discrepancies and inconsistencies highlighted.
2. **Redefine terrorism:** The ATA 1997 should be revised to provide a more precise definition of terrorism, focusing on acts that are motivated by ideological, political or religious goals. The current definition, which includes many offences that do not qualify as terrorism, causes confusion and misuse of the law. The new definition should be succinct, aligning with international standards excluding crimes that lack the specific motive to create societal fear or instability.
3. **Separate Heinous Crimes from Terrorism:** Parliament should remove non-terrorism-related heinous crimes from the Third Schedule of the ATA. While these crimes are serious, they should not be tried by ATCs unless they meet the criteria of terrorism, which includes the intent to further ideological or political causes. This would prevent overburdening the ATCs with cases that are not genuinely related to terrorism.
4. **Adopt a Design & Purpose-Based Approach in Trials:** During trials, the focus should be on the intent behind the crime (*mens-rea*) rather than solely on the societal impact of the act (effect-based approach). The SCP's three-fold test of *actus reus* (the criminal act), *mens-rea* (the criminal intent), and the purpose to advance an ideological, political or religious cause should guide the interpretation of whether a crime constitutes terrorism.
5. **Limit police Discretion in ATA Application:** The police currently have broad discretion in applying the ATA, which has led the misuse of the law in cases involving personal disputes or property damage. A more regulated framework should be established to ensure that only cases that genuinely involve terrorism are registered under the ATA. This could involve stricter oversight and cleared guidelines for law enforcement agencies to determine when the ATA should be applied.
6. **Improve Judicial Oversight:** to prevent misapplication of ATA, judicial oversight mechanism should be strengthened. ATC should be given the authority to assess whether the criteria for terrorism are

met before proceeding with trials. This would reduce the burden on the courts and ensure that cases not related to terrorism are tried in regular criminal courts.

7. **Training for law Enforcement and judiciary:** Law enforcement officers and the judicial officers should receive specialized training to understand the new legal definitions and the correct application of the ATA. This would help in preventing misuse and ensuring that the ATA is applied consistently and appropriately across all provinces.
8. **Reduce the Burden on ATCs:** By limiting the jurisdiction of ATCs to genuine terrorism cases, the system could become more efficient, leading to faster trials and reducing delays. This would ensure that serious terrorism cases receive the focus and resources they deserve, while other heinous crimes are dealt with in the regular judicial system.

These recommendations aim to create a more balanced, fair, and efficient criminal justice system while ensuring that terrorism laws are applied accurately and only to cases that genuinely warrant such treatment.

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