

Jurisdiction of Anti-terrorism Courts in Pakistan: Conflict of Design-Based Approach and Cumulative Effect-Based Approach

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Abstract

This paper delves into the persistent challenge faced by the Supreme Court of Pakistan from 1998 to 2020 - its inability to establish a definitive demarcation between the jurisdiction of anti-terrorism and ordinary court cases. A significant focal point is the interpretive struggle surrounding the definition of terrorism, as stipulated in section 6 of the Anti-Terrorism Act, 1997. This interpretation has given rise to two fundamental categories of approaches- the *actus reus*-based and *mens rea*-based approaches. The former approach emphasizes the tangible effects of an alleged terrorist act, focusing on its external manifestations and consequences. Conversely, the latter approach delves into the intentions, motives, and mental state of the perpetrator when assessing the gravity of the offence. Various approaches taken by the Supreme Court of Pakistan in deciding the jurisdiction of anti-terrorism courts have engendered multifaceted issues across the stages of investigation, remand, bail, trial, and appeal. This complexity is compounded by the distinct procedural framework of Anti-Terrorism courts in comparison to regular courts. Furthermore, the intricate matter of overlapping offences adds another layer of complexity to the existing predicament. Whether Article 23 of the Anti-Terrorism Act adequately addresses the prevailing concerns and a comparison with international approaches to terrorism-related cases. Notably, this paper identifies the coexistence of two contrasting approaches within the Supreme Court's jurisprudence in Anti-Terrorism cases, revealing the intricate dynamics that contribute to the ongoing jurisdictional predicament.

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1. Introduction

The overall administration of criminal justice in Pakistan revolves around various legal instruments, including the Pakistan Penal Code 1860 (PPC), Criminal Procedure Code 1898 (Cr. PC), Qanoon Shahadat Order 1984 (QSO), Police Order 2002, Police Rules 1934, and High Court Rules and Orders. The criminal justice system in Pakistan operates based on both procedural and substantive laws, each holding its significance in society. The PPC serves as a general substantive law, while the Cr.PC functions as a general procedural law. In terms of differentiating between procedural and substantive law, Salmond has expounded on their significant distinctions. The procedural law governs the process of litigation while all the residue is substantive law.¹ Procedural laws are remedial statutes and for the effective implementation of substantive laws, there is a need for effective procedural laws.²

Anti-Terrorism Act (ATA) 1997, is another legislation to combat acts of terrorism in Pakistan. It is a combination of both substantive as well as of procedural laws. It provides not only penal provisions but also carries procedural provisions. Pakistan introduced numerous enactments of this kind, since 1949. The first phase dealt with insurgencies and political violence and different statutes like ‘The West Punjab Safety Act of 1949, and Public Representative Officer (Disqualification Act), of 1949, the Security of Pakistan Act, of 1952, along the West Pakistan Maintenance

¹ John Salmond, *Salmond on Jurisprudence*. (London: Sweet & Maxwell Press, 1966), 128.

² 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.

of Public Order, Ordinance 1960, were promulgated by the government. In the second phase, “The Suppression of Terrorist Activities (Special Courts) Act” of 1975 was promulgated for speedy trial. The second Phase was focused on dealing with sectarianism in Pakistan. In 1997, the Suppression Act was replaced by ATA, 1997.

The new legislation is ambiguous on the jurisdiction of anti-terrorism courts, eventually requiring a clear interpretation from judicial machinery. However, from 1998 to 2020, the Supreme Court of Pakistan was unable to draw a clear-cut distinction between the jurisdiction of anti-terrorism and ordinary court cases. The definition of terrorism and interpretation of section 6 of the ATA, 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 offence 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 offence was designed in such a manner as to cause fear and insecurity among the public. Various approaches taken by the Supreme Court of Pakistan in deciding the jurisdiction of anti-terrorism courts have engendered multifaceted issues across the stages of investigation, remand, bail, trial, and appeal. This complexity is compounded by the distinct procedural framework of Anti-Terrorism courts in comparison to regular courts. Furthermore, the intricate matter of overlapping offences adds another layer of complexity to the existing predicament. This paper analyzes whether Article 23 of the ATA adequately addresses the prevailing concerns in comparison with international approaches to terrorism-related cases.

2. Jurisdiction of Anti-Terrorism Courts in Pakistani Jurisprudence

We come across varying numbers of approaches of the Supreme Court of Pakistan while deciding the jurisdiction of anti-terrorism courts. Eventually,

it gives rise to multiple problems at various stages including, investigation, remand, bail, trial and appeal because the entire procedure is different from ordinary courts. Moreover, the issue of overlapping of offences is a serious issue. As mentioned earlier, two different approaches of the Supreme Court are existing in ATA cases. These approaches are analyzed in this study phase-wise; accordingly, three prominent phases are discussed. The first phase, which occurred between 1997 and 2001, marked the initial development of anti-terrorism laws. At that time, the legislation lacked a clear and explicit definition of terrorism, but subsequent amendments addressed this gap. In the second phase, spanning from 2002 to 2007, a theory based on the effects or consequences of terrorism was adopted. The Supreme Court of Pakistan played a crucial role in interpreting the definition of terrorism during this period. The focus was on assessing the impact and aftermath of the criminal act, particularly whether it instilled fear and insecurity among the population or not. The third phase, spanning from 2011 to 2020, was the most pivotal stage. It involved a contentious struggle among Supreme Court judges to determine the jurisdiction of Anti-Terrorism Courts (ATC). Eventually, amendments were made to in ATA,1997 to combat hard-core terrorist activities. A detailed analysis of these phases is given below.

2.1 First Phase- Initial Development of Anti-Terrorism Laws and Supreme Court's Adoption of a Consequential Perspective

Initially from 1997 to 2001, after the ATA, 1997 was enacted, courts relied on a sole criterion to determine territorial jurisdiction: that whether the offence was listed within the provisions of the legislation or not. The Lahore High Court Lahore while deciding Writ Petition No; 2103/1997 titled *Nasreen v. ASJ Attock*, held that the scheduled offences are triable by

Special Court.³ The Supreme Court of Pakistan in *Mehram Ali and others v. Federation of Pakistan and others*⁴ 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 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 there was no enmity or plausible reason for the 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*

³ *Nasreen v. ASJ Attock*: PLD 1998 Lahore 275

⁴ *Mehram Ali and others v. Federation of Pakistan and others*: PLD 1998 SC 1445.

*no nexus with the above provisions of the Act and will not be triable under the Act.*⁵ [emphasis in italics mine]

This petition was decided in 1998, The moot question arises What was the law of Section 6 of ATA, 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,⁶

All the offences mentioned in the schedule were triable under ATA,1997, in addition to the 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 a serious nature and almost similar to the schedule given in The Suppression of Terrorist Activities Act,1975. Thus, during the infancy of this enactment from 1997 to 2000, there was only one criterion, that is, whether the offence was falling in the schedule of enactment coupled with causing an element of fear and terror among the society.

In 1998, the Mehram Ali case brought major developments not only in the prevailing enactment but also left a forceful impact on the next

⁵ Ibid.

⁶ The Anti -terrorism Act 1997, sec 6.

legislation on terrorism. In the Mehram Ali case, the Supreme Court of Pakistan raised the question of nexus with Section 6 of the Anti-terrorism Act, 1997. Despite the case being a simple bomb blast, the court ruled that the offences mentioned in the Schedule should be connected to the objectives of the Act and the offences covered by Section 6. The key criterion to determine terrorism was the creation of fear and insecurity among the public or specific sections of society, as well as the disruption of peace and tranquillity among different segments of the Public. The legislation at the time did not mention intent, as the case did not involve personal enmity. However, these incidental remarks by the court that if the murder is done merely because of personal animosity and hostility, such a murder will have no nexus with the ATA's above-mentioned provisions and will not be triable under the same Act.⁷ These remarks unintentionally opened the door for future legislative developments in Pakistan, leading to unforeseen consequences. Then, from 1998 to 2000, subordinate courts started to observe the principle laid down by the Supreme Court of Pakistan. In the 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”⁸ held that; “to make an act punishable under the Act, it must be shown that the act bears

⁷ Mehram Ali and others v. Federation of Pakistan and others: PLD 1998 SC 1445.

⁸ Munawar Hassan, Secretary-General v Federation of Pakistan through Secretary, Law, Justice and Parliamentary Affairs PLD 2000 SC 111.

nexus to sections 6, 7 and 8 of the Act.”⁹ To the extent of section 6 after amendment in 1999 through the Anti-terrorism ordinance section 6 defines terrorist acts as

...the effect of his actions was key to determining the nature of the act whether it will strike terror or create a sense of fear and insecurity in the people, or in the section of the people, this act may be caused by Physical act or by using explosive substances which may be bombs, dynamite or other or inflammable, or any other notified firearms weapons, even it includes the 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 ...¹⁰

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

In the year 2001, a case titled *Ch. Bashir v. Naveed Iqbal*¹¹ was brought before the Supreme Court of Pakistan wherein the complainant Bashir reported the incident of burning of his daughter by the accused Naveed Iqbal in which it was held that “if the effect of act of accused caused terror or

⁹Ibid.

¹⁰ Anti-terrorism (second Amendment) ordinance, 1999 (Ordinance No. XIII of 1999).

¹¹ “*Ch. Bashir Ahmad v. Naveed Iqbal and 7 others*, PLD 2001 SC 52”.

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.”¹² In both above-mentioned cases there was no question on the effect but the ‘range of effect’ was in question. Similarly, in another case titled *Muhammad Ajmal v. The State*.¹³ The Supreme Court of Pakistan held that this action had created an element of fear and insecurity among the people. Although this action was based upon the personal vendetta of the accused and the other party its effect caused an element of fear and insecurity among the people. Similarly, in 2002, the Supreme Court of Pakistan again in a case titled *Muhammad Mushtaq v. Muhammad Ashiq and others*¹⁴ held: “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 tranquillity, may be classified as a terrorist attack.”¹⁵

The word designed was used in this case however it was used to strengthen the effect of the case although it was murder of personal vendetta. Similarly, in many other cases in which the Supreme Court of Pakistan adopted the same parameter including *Shahsawar v. State*¹⁶, The

¹² Ibid.

¹³ “*Muhammad Ajmal v. The State*; 2000 SCMR 1682”

¹⁴ *Muhammad Mushtaq v. Muhammad Ashiq and others*: PLD 2002 SC 841;

¹⁵ Ibid

¹⁶ *Shahsawar v. State*: 2000 SCMR 1331

State v. Javed Ahmed Siddiqui,¹⁷ and Solat Ali Khan v. The State,¹⁸ even convicted the accused in section 7 of anti-terrorism cases.

In the year 2001, a newly amended ordinance replaced the term ‘terrorist act’ with the 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 to advance a religious, sectarian or ethnic cause. (2) An “action” shall fall within the meaning of subsection (1), if it:¹⁹

Although the Word design was inserted Supreme Court of Pakistan observed the cumulative effect of the act. Similarly, in the case titled “Mumtaz Ali Khan Rajban and another v Federation of Pakistan and others”²⁰ and Mst. Raheela Nasreen v The State and another”²¹, the supreme court adopted the cumulative effect approach and even in the dacoity case titled Muhammad Amin v The State; in which the Accused caused murder during a dacoity, it was held regarding the application of terrorism in this case “because the murder was committed at the time of dacoity and it was daylight occurrence and brutal murder through firearm shots so it is a case of terrorism.”²²

¹⁷The State v. Javed Ahmed Siddiqui, 2001 SCMR 612

¹⁸Solat Ali Khan v. The State: 2001 SCMR 2005

¹⁹Anti-Terrorism (Amendment) Ordinance, 2001 (Ordinance No. XXXIX of 2001)”.

²⁰ Mumtaz Ali Khan Rajban and another v. Federation of Pakistan and others; PLD 2001

SC 169

²¹Mst. Raheela Nasreen v. The State and another; 2002 SCMR 908”

²² Ibid

In the year 2002 The Supreme Court of Pakistan while deciding the case “Zia Ullah v Special Judge, Anti-Terrorist Court, Faisalabad and 7 others”²³ 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 do not have 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 the Special Court. The gravity of the offence could not be diminished or minimized merely on the ground that the alleged murder was not committed exactly within the Court premises

2.2 Second Phase - While the legislation incorporated the term "designed," the Supreme Court embraced a consequential approach

In 2002, The Supreme Court of Pakistan adopted the same theory in some other cases and convicted the accused in Muhammad Ashfaq v. The State, Fayyaz Hussain Shah v. The State²⁴ and Amjad Javed v. The State;²⁵ and Shahzad Alias Shaddu v. The State²⁶, Year 2003 in another case Naeem Akhtar v. The State.²⁷ In this case mother of the accused was a patient of the doctor, The accused was dissatisfied with her treatment and the accused not only abducted the doctor but also caused his murder and court held that it would be a direct source of creating panic and terror in the medical profession”²⁸ Year 2003 the supreme court introduced term Actual Terror

²³ Zia Ullah v. Special Judge, Anti-Terrorist Court, Faisalabad and 7 others ;2002 SCMR 1225

²⁴ Fayyaz Hussain Shah v. The State; 2002 SCMR 1848.

²⁵ Amjad Javed v. The State; 2002 SCMR 1247.

²⁶ Shahzad Alias Shaddu v. The State; 2002 SCMR 1009.

²⁷ Naeem Akhtar v. The State; PLD 2003 SC 396.

²⁸ Ibid.

and in *Muhammad Amjad v The State*²⁹ accused abducted young Barrister for ransom and subsequently he was murdered in this occurrence, in this case the Supreme Court of Pakistan held that:

Even if by an act of terrorism actual terror is not created, yet, the 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.³⁰

Year 2003 another case titled '*Mst. Najam-un-Nisa v Judge, Special Court*³¹' constituted under Anti-Terrorism Act, 1997 Mr Justice Tanvir Ahmed Khan and Mr Justice Khalil-ur-Rehman Ramday, observing the application of ATA, in this case, accused slaughtered seven persons at night time in a house and question before the court was whether ATA was applicable or not it was held that act was not of such nature which creates any terror any other element of horror in the section of the people secondly, act was in furtherance of a private enmity. The year 2004, was an interesting year regarding the development of case laws on this issue when the Supreme Court of Pakistan in a case titled *Muhammad Farooq v Ibrar and 5 others*³² defined the basic object of the Anti-terrorism Act 1997 although it was based upon the previous enmity but court 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 their speedy trials."³³

²⁹ *Muhammad Amjad v. The State*: PLD 2003 SC 704.

³⁰ *Ibid.*

³¹ *Mst. Najam-un-Nisa v. Judge, Special Court constituted under Anti-Terrorism Act, 1997*; 2003 SCMR 1323.

³² *Muhammad Farooq v. Ibrar and 5 others*; PLD 2004 SC 917.

³³ *Ibid.*

In a year, 2005 decided by The Supreme Court of Pakistan titled *Mirza Shaukat Baig and others v Shahid Jamil and others*³⁴ Honorable Chief Justice of Pakistan, Nazim Hussain Siddiqui, held:

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 the alleged offence” ... it is to be noted that at this point the concept of terrorism is concerned there is no big substantial and fundamental change between 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.

The word designed was used in this case however it was used to strengthen the effect of the case although it was murder of personal vendetta. In the year 2004 designed base basic Judgment was given by the High Court, in a case titled “*Basharat Ali v. Judge, ATC*”³⁵ in which a Bench comprising of Mr Justice Asif Saeed and Justice M. Shahid, This fact of the case 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 the previous enmity, the question was whether it was an 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 an ordinary court with the argument that the case has no element of terrorism as it is defined in its section 6 however the application was

³⁴ *Mirza Shaukat Baig and others v. Shahid Jamil and others*; PLD 2005 SC 530.

³⁵ *Basharat Ali v. Special Judge, Anti-Terrorism Court-II, Gujranwala and 2 others*; PLD 2004 Lahore 199

dismissed by the lower court and same has been assailed by the petitioner before High Court.

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* to brand its actions as terrorism triable exclusively by a Special Court constituted under the Anti-Terrorism Act, 1997.³⁶

At this stage, the Lahore High Court diverted principles of the Supreme Court laid down in the above cases mentioned in Phase Two from 2002 to 2007, Despite this different approach of the Lahore High Court Lahore the Supreme Court of Pakistan was following the principle of fear and insecurity due to effect of action as given in *Naeem Akhtar v. The State and others*,³⁷ *M Amjad v. The State*,³⁸ *Mst. Najam-un-Nisa v. Judge, ATC*³⁹ *Abdul Ghafoor v. Muhammad Saleem*,⁴⁰ *M Farooq v. Ibrar*⁴¹, *Azizullah and another v. The State and another*⁴², *Mirza Shaukat Baig and others v. Shahid Jamil and others*⁴³, *Zahid Imran and others v. The State and others* but in the year 2007 Supreme Court of Pakistan, in case *Fazal Dad v. Ghulam Muhammad*⁴⁴ very first time relied upon judgement of Lahore High Court Lahore, *Basharat Ali v. Special Judge, ATC*⁴⁵ the Supreme court of Pakistan giving reference of Bashir case and ignoring principles laid down by apex

³⁶ Ibid.

³⁷ *Naeem Akhtar v. The State and others*; PLD 2003 SC 396.

³⁸ *M Amjad v. The State*; PLD 2003 SC 704.

³⁹ *Mst. Najam-un-Nisa v. Judge, ATC* 2003 SCMR 1323.

⁴⁰ *Abdul Ghafoor v. Muhammad Saleem*; 2003 SCMR 1934.

⁴¹ *M Farooq v. Ibrar*; PLD 2004 SC 917.

⁴² *Azizullah and another v. The State and another*; 2005 SCMR 802.

⁴³ *Mirza Shaukat Baig and others v Shahid Jamil and others*; PLD 2005 SC 530.

⁴⁴ *Fazal Dad v. Ghulam Muhammad*; PLD 2007 SC 571.

⁴⁵ *Basharat Ali v. Special Judge, ATC* PLD 2004 Lahore 199.

court in *Naeem Akhtar and others v. The State and others*⁴⁶ *Sh. Muhammad Amjad v The State*⁴⁷ *Mst. Najam-un-Nisa v. Judge, Special Court constituted under Anti-Terrorism Act, 1997*⁴⁸ *Abdul Ghafoor Bhatti v Muhammad Saleem and others*⁴⁹ *Muhammad Farooq v. Ibrar and 5 others*⁵⁰, *Azizullah and another v. The State and another*⁵¹, *Mirza Shaukat Baig and others v. Shahid Jamil and others*⁵², so in the year 2007 Supreme Court of Pakistan also convicted accused in *Ranjha v. State: 2007 SCMR 455* (a case of murder of Four persons on previous enmity) *Fateh Muhammad v. State: 2007 SCMR 1819* (a case of Murder of wife case of personal vendetta and *Ghulam Husain Soomro v. The State: PLD 2007 SC 71* (a case of ransom) based on 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*⁵³, the court after observation there was no element of fear and insecurity in public nor any section because the occurrence took place at night on a bank of canal and same was not be termed as a public at large. Similarly, in the *Tariq Mahmood v State*,⁵⁴ this case accused who were armed with deadly weapons like rifles, repeaters, 12-bore guns and rifles resembling Kalashnikovs due to the firing of the respondent-accused *Shahid Mahmood* lost their lives while *Sardar Asghar* and *Azram P.Ws.* received injuries on the complainant side. *Ghazanfar Shah*, a passerby also received injuries.

⁴⁶ *Naeem Akhtar and others v. The State and others* PLD 2003 SC 396.

⁴⁷ *Sh. Muhammad Amjad v. The State* PLD 2003 SC 704.

⁴⁸ *Mst. Najam-un-Nisa v. Judge, Special Court* 2003 SCMR 1323.

⁴⁹ *Abdul Ghafoor Bhatti v. Muhammad Saleem and others* 2003 SCMR 1934.

⁵⁰ *Muhammad Farooq v. Ibrar and 5 others* PLD 2004 SC 917.

⁵¹ *Azizullah and another v. The State and another* 2005 SCMR 802.

⁵² *Mirza Shaukat Baig and others v. Shahid Jamil and others* PLD 2005 SC 530.

⁵³ *Muhammad Idrees and others v. The State: 2008 SCMR 1544.*

⁵⁴ *Tariq Mahmood v. State* 2008 SCMR 1631.

In our opinion, The terrorist or the sectarian killers do not have any personal grudge or motive against the innocent victims. The instant case is distinguishable as admittedly a feud existed between the parties over a piece of land before the occurrence.⁵⁵

2.3 Third Phase - The Supreme Court's Approach: Oscillating Between Consequential and Design-Based Perspectives

From year 2007 to 2011 Supreme Court held the principle that terrorist acts should be designed with the object of causing fear and insecurity among a large section of people. but in Supreme Court of Pakistan also convicted the accused in *Ranjha v. State*: 2007 SCMR 455 (a case of murder of Four persons on previous enmity) *Fateh Muhammad v. State*: 2007 SCMR 1819 (a case of Murder of wife case of personal vendetta and *Ghulam Husain Soomro v. The State*: PLD 2007 SC 71 (a case of ransom) and *Abdul Rehman v. State*: 2010 SCMR 1758 based on consequences-based theory although cases were of personal vendetta but accused were convicted. So, this tenure was based upon a designed approach and held that whether act was designed in the light of sections 6(2)(b) and 6(2)(c) of the anti-terrorism Act,1997. However, in 2010 and 2011 Supreme Court Pakistan also convicted the accused based on consequences and effect-based theory in *Abdul Rehman v. State*: 2010 SCMR 1758 and in *State V. Abdul Khaliq*; PLD 2011 SC 554; *Khan Muhammad v. state*: 2011 SCMR 705, *Junaid Rehman v. State*: PLD 2011 SC 1135. So, we can see different approaches of the Supreme Court of Pakistan.

But the year 2012 to 2014 law of the land was laid down in light of the cases *Nazeer Ahmed v. Nooruddin*,2012 SCMR 517 and *Shahid Zafar v. The State*, Supreme Court of Pakistan again adopted the approach of the cumulative effect of action whether it is creating an element of fear and

⁵⁵Ibid.

insecurity. The Supreme Court held in another case *Shahid Zafar and 3 others v The State* “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.”⁵⁶ So in this, there was no motive or any design on the part of the accused person but the cumulative effect of action was a falling case in the ambit of terrorism. Other cases in which convictions were given based on consequences of effect were *Zeeshan Afzal Alias Shani v. State*; 2013 SCMR 1602 *Hakim Khan v. State*; 2013 SCMR 777, *Hamid Mahmood v. State*; 2013 SCMR 1314, *Muhammad Nawaz v. State*; PLD 2014 SC 383, *Shahid Zafar v. State*; PLD 2014 SC 809, *Zafar Iqbal v. State* PLD 2015 SC 307, *Abdul Haq v. State*; 2015 SCMR 1326, *Nasir Mehmood v. State*; 2015 SCMR 423, *Dadullah v. State*; 2015 SCMR 856.

Significantly, in the year 2016 lot of developments were made by the court while observing *Malik Muhammad Mumtaz Qadri v The State and others*, *Khuda-e-Noor v.State*, and *Sagheer v. The State*, *Shaukat Ali v. Haji Jan Muhammad* were decided by the supreme court of Pakistan on the basis designed based approach and while in *Kashif Ali v. The Judge*, PLD 2016 SC951 and *Shahbaz Khan @ Tippu v. Special Judge ATC*, (PLD 2016 SC 1) and *Kashif Ali v. Judge ATC* (PLD 2016 SC 951) court adopted effect-based approach or the cumulative effect of action approach. The supreme court also stated in the *Province of Punjab through the Secretary Punjab Public Prosecution Department and another v The State* PLD 2018 SC 178 that “The preamble of the Act, 1997 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 terrorism, the mens-rea should be with an object to accomplish the act of terrorism and carrying out

⁵⁶*Shahid Zafar and 3 others v. The State* (PLD 2014 SC 809).

terrorist activities to overawe the state, the state institutions, and the public at large, destruction of public and private properties, assault the law enforcing agency and even at the public at large in sectarian matters. The ultimate object and purpose of such an act is to terrorize society but in ordinary crimes committed due to personal vendetta or enmity, such elements are always missing so the crime committed only due to personal revenge cannot be dragged into the fold of terrorism and terrorist activities.”⁵⁷

The Supreme Court of Pakistan, led by Chief Justice Mr Asif Saeed Khosa, recently delivered a judgment in the Ghulam Hussin case. The court analyzed various judgments of the Supreme Court of Pakistan and concluded that actions under the Anti-terrorism Act should be closely linked to its intended objective. Chief Justice Asif Saeed Khosa, who authored the judgment, presided over a larger bench of seven judges. The bench deliberated on terrorism cases and discussed the jurisdiction of such cases. It is worth noting that Chief Justice Khosa had previously expressed his views on a similar subject in the case of "Basharat Ali v. Special Judge, Anti-Terrorism Court II, Gujranwala, PLD 2004 Lah 199. Although he discussed judgements from 1998 to 2018 along with the legal provision and made 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 an element of fear and insecurity, among the Public, the court also discussed element of *men's rea* as guilty mind and *actus-reus* as a guilty act to constitute an offence. In this judgement court is focusing on the *mens-rea-based* approach rather than its effect-based approach. Scheduled offences should not be treated as ATA offences, ATC court will conduct a trial of these offences as heinous offences and penalise these offences under

⁵⁷ Province of Punjab through Secretary Punjab Public Prosecution Department and another v The State PLD 2018 SC 178.

ordinary law. The court also recommends proper. In Ganda Singh cases in district Kasur, 17 sodomy cases were tried under ordinary laws while 14 cases were tried under ATC courts. Recently *Jahangir Khan v. Khalid Latif* was a case of Kidnapping or abduction for ransom, accused who disguised in police uniforms ostensibly not only arrested and handcuffed the respondent, but they kidnapped the person and his wife however they were rescued by Highway Patrolling Police, accused moved an application for transfer of case which was dismissed then he approached High Court and the high court decided that let the trial court to decide the 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. Thus, the cases mentioned above clearly indicate that our superior courts are unable to provide a uniform interpretation of the definition of terrorism.

3. Conclusion

Since the evolution of Anti-terrorism, the challenge of defining and adjudicating terrorism-related cases in Pakistan went through distinct phases that shaped the legal landscape and jurisdictional boundaries of Anti-Terrorism Courts (ATCs). The initial phase was characterized by the introduction of anti-terrorism laws without a precise definition of terrorism. The legislative framework lacked clarity in its terminology. This period marked the nascent stage of anti-terrorism legislation in Pakistan. initially, the approach shifted towards focusing on the effects or consequences of terrorist acts. The Supreme Court of Pakistan emerged as a key player in interpreting the definition of terrorism. The emphasis was placed on evaluating the impact of terrorist acts, particularly in terms of inducing fear and insecurity among the population. So, in the year 1999, clauses 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 ATA, 1997. In the year 2001, a new amended ordinance replaced the term 'terrorist act' with the new term 'Terrorism' Although the Word designed was inserted the Supreme Court was observing whether the element of striking terror or creating fear and insecurity among the people while deciding the jurisdiction of ATA. This period was marked by an attempt to bring more specificity to the understanding of terrorism through its observable outcomes. From 2011-2020 there was a critical juncture in the evolution of the jurisdictional predicament. Amendments were introduced to the ATA 1997 during this phase, to combat hardcore terrorism. However, these amendments brought about divisions in the interpretation of the definition of terrorism within the Pakistani legal system. The struggle among Supreme Court judges to determine the jurisdiction of ATCs reached a contentious point during this phase. This period saw the culmination of different approaches to interpreting the definition of terrorism, contributing to a complex and multifaceted legal landscape. Throughout these phases, the Supreme Court of Pakistan, legislative amendments, and shifting interpretive paradigms played crucial roles in shaping the jurisdictional boundaries and defining the scope of ATCs. The evolution of the legal understanding of terrorism in Pakistan is marked by an intricate interplay of legal developments, judicial decisions, and legislative changes, culminating in the ongoing struggle to establish a clear and consistent demarcation between terrorism-related cases and ordinary criminal cases. As Pakistan's legal system continues to grapple with these challenges, Further examination and potential reforms are imperative to establish cohesiveness and efficacy in tackling terrorism within the nation's legal framework. More advanced nations have already

incorporated the terms "domestic" and "international" terrorism to effectively tackle this challenge. Moreover, once a situation is classified as terrorism by the state, there should be no necessity for the introduction of mechanisms to transfer cases. The jurisdiction of Anti-Terrorism Act (ATA) courts encompasses the handling of cases that would otherwise fall under the jurisdiction of regular courts. Hence, the present juncture is suitable for contemplating the removal of Section 23 from the ATA.
