

## Anti-Terrorism Law and Policy in Pakistan

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### ABSTRACT

*The Anti-Terrorism Act of 1997 in Pakistan and the Supreme Court's interpretation of it in light of the principle of legality in criminal and human rights law are analysed critically. As a result, we concluded that the Anti-Terrorism Act's definition of terrorism does not meet legal requirements, and the precedents of the Supreme Court of Pakistan have only contributed to further confuse the situation. If Pakistan does not modify its definition of terrorism in conformity with legality and human rights principles, overly broad definitions of terrorism may result in violations of human rights..*

**Keywords:** Terrorism, Anti-Terrorism Act of 1997, human rights

### INTRODUCTION

A more quick, persistent, and strict response to terrorism by the criminal justice system has been necessitated as a result of the September 11th attacks and their aftermath. International cooperation is urgently needed "to bring the perpetrators, organisers, and supporters of these terrorist atrocities to account" in accordance with Resolution 1368 (2001) of the Security Council. Those who helped and supported the perpetrators of these crimes will also be held accountable, it was made clear. In 2001, a coalition led by the United States launched an attack on Afghanistan after viewing this as an order to use force against terrorists and states that supported or harboured them. State governments are required by UN Security Council Resolution 1373 to make "willful provision or collection, by any means, directly or indirectly, of funds by their inhabitants or on their territory with a view to their being used for terrorist actions" a criminal offence (2001). To tackle the threat of terrorism, nations should strengthen their criminal justice systems, in addition to international measures such as the use of force under the un Charter (Kennedy & Asia, 2004; Parvez & Rani, 2015). A criminal justice response to terrorist acts and threats may be promoted by post-9/11 Security Council resolutions, but there is no agreed-upon definition of the crime of "terrorism" by the international community. Even yet, this isn't a new occurrence.

Terrorism has been difficult to describe since the early 20th century. There were 1095 meanings of "terrorism" found in 1988, while 212 definitions were found in a 1994 research. The scholarly literature on this definition has expanded considerably since September 11, 2001, elevating its importance even further (K. Iqbal & Shah, 2018).

Research on Pakistan's criminal justice system problems receives little importance, despite Pakistan's increasing involvement in the fight against terrorism. Pakistan has made significant attempts to enhance the legal and policy responses to terrorism in its criminal justice system. As mandated by the National Counter Terrorism Authority Act of 2013, the Pakistani government has established a National Counter Terrorism Authority (NACTA). This agency's key responsibilities include "receiving and collating data or information or intelligence, as well as disseminating and coordinating among all relevant federal agencies," Establishing open channels of communication between the government and its citizens is a top priority. Other top priorities include cutting off the terrorists' sources of supply and improving the security apparatus's deterrent and capability to deal with potential internal security threats to Pakistan. The Investigation for Fair Trial Act of 2013 and the Protection of Pakistan Act of 2014 are two important pieces of law in Pakistan (PPA). Anti-terrorist legislation is made easier to apply by these regulations, which aim to increase the conviction rate by ensuring that cases of terrorism are adequately examined (Rehman, 2018).

In Pakistan, the 4% conviction rate in terrorism-related prosecutions is worrisome because of the high acquittal percentage. "Effective measures" in the prosecution of terrorism-related crimes were urged by Pakistan's Chief Justice beginning in 2013. To put it into perspective, the US Department of State reported in 2011 that 85% of the terror suspects tried in Pakistan had their cases acquitted by juries. More people in other countries, such as the United States (89%) and the United Kingdom (64%) are convicted. Over two-dozen terror suspects in Australia have been convicted of terror-related crimes (68 percent). An increase in the use of cell photocell data records as evidence in Pakistan's anti-terrorist law has resulted in only a 4% conviction rate. The fact that security does not come at the expense of human rights is equally critical.

Courts dealing with terrorist trials saw a significant increase in efforts to protect witnesses and enhance security measures and processes in 2014. During a trip to the United Kingdom in March of 2014, five notable judges were able to learn from the country's expertise prosecuting terrorists in criminal court. Pakistan's Law and Justice Commission, in conjunction with the British High Commission, organised a conference on witness security in June of this year. The PHC stepped up its efforts to analyse and address the issues faced by anti-terrorism courts in the third issue. The phc was determined to maintain touch with all key provincial government ministries in order to build relationships. On December 16, 2014, a school shooting claimed the lives of more than 140 people, forcing the creation of a National Action Plan (nap). Others have solutions for the criminal justice system in mind. Prior to implementing any nap-based criminal justice reforms, the reasons for the low conviction rate in terrorism cases must be thoroughly explored. Prosecution efficiency is hampered by a lack of adequate security and regular, outcome-based coordination among all justice system actors. Furthermore, Pakistan's jurisprudence regarding "terrorism" and its legal definition is a major issue. These issues must be addressed to ensure a successful prosecution (K. Iqbal & Shah, 2018).

The Anti-Terrorism Act (ATA) of 1997 and its interpretation by Pakistan's Supreme Court will be examined in this research. The problem in defining "terrorist" is analysed on the basis of the legality principle and human rights standards. This article is broken up into four main sections. It is explained in Section I what is being done to reach agreement on a common definition of terrorism. With this background knowledge, we may better understand Pakistan's concept of terrorism. Terrorism in Pakistan is defined in section ii on the basis of Pakistan's understanding of legality. For the purposes of this section, legality and respect for human rights are used to define terrorism in Pakistani law. Section iv of the Terrorism Act provides a legality principle for defining terrorism, and these conclusions and recommendations are offered (K. Iqbal & Shah, 2018).

### **As defined by international law**

We believe that because the world community is unable to agree on a definition of terrorism, countries can define terrorism as they see fit, and so it is imperative to present a comprehensive study of international efforts to define terrorism. "

Since the French Revolution, the term "terrorism" has been used to describe acts of violence. Reign of Terror was coined by a group of revolutionaries (known as the Jacobins) in 1793–94, during a time of intense violence in which around 40,000 people were killed. The rebels said that "horror is nothing more than swift, austere, and severe justice" as justification for their conduct. Because of this, terrorism was seen as a way to accomplish political objectives. By saying "Osama bin Laden was a freedom fighter for Reagan and a terrorist for Bush," Nielsen shows that the problem is political. It is SETO's contention that the Jewish "Terrorism" (as it was referred to at the time by mainstream Jews) pushed the British from Palestine, allowing Israel to be established. In the current definition of terrorism in the United States, the Boston Tea Party's attack on Harper's Ferry during the American Revolution and the anti-slavery movement's attack during the anti-slavery struggle are included. The definition of terrorism has been rendered meaningless by this event (Khan, Khan, & Soc'y, 2016).

Pakistan's anti-terrorist laws and jurisprudence will be placed in a broader framework in this part, strengthening an efficient and effective criminal justice response to terrorism, satisfying international law commitments and playing a positive role in global anti-terrorism policy.

### **A Summary of the Past**

For the first time, the International Law Commission (ILC) discussed terrorism. The ILC's Draft Codes of Crimes have included terrorism since 1982. It was proposed in the 1991 Draft Code, which excluded the participation of private individuals from the concept of "terrorism," that a new item on "International Terrorist" be included.

Individuals, groups, or the general public can be made to commit acts of terrorism against another state by participating in, organizing, supporting, sponsoring, instigating, or tolerating such acts (Commission, 1978). Terrorism was listed as a "war crime" in the 1996 ILC Final Draft Code.<sup>26</sup> No mention is made of "terrorism" in this definition (Rayfuse, 1997) Member states' concerns about international terrorist threats led the UN General Assembly in 1972, when it established an ad hoc committee to examine the issue. Convention for Prevention and Punishment of Certain International Terrorism Acts was also given to the United Nations Security Council. Terrorism was not defined in the document. Because of this, it advocates

criminalising certain "internationally significant" crimes. An act that leads in the death, serious physical injury, or slavery of another person and is not done by or against a member of the armed forces during a conflict was required: to harm or extort a state, international organisation, or non-state body. With a worldwide flavor, they're all unique (Young & Rev., 2006).

Since 1985, the Security Council has labelled specific actions and patterns of violence perpetrated by diverse groups as terrorism.<sup>29</sup> many people became aware of and supported the UN Security Council's position on several issues during this decade. Al-Qaeda was the target of many Afghan resolutions from 1998 to 2002. Resolutions 1368 and 1373 were enacted shortly after the terrorist attacks on September 11, 2001, and both were extremely significant. The attacks were denounced in UN Security Council Resolution 1368. Many responsibilities of the federal government are laid out in Resolution 1373, adopted under Chapter VII of the Charter. It was stipulated in the agreement that states would refrain from supporting terrorism and prevent terrorist acts, deny safe haven to those who support terrorism, prevent the use of their territory for terrorist activities, criminalise acts that aid terrorists, bring those who aid terrorists to justice, and prevent the cross-border movement of terrorists. Resolution 1373's implementation has also been monitored by a Committee. States are allowed to define "terrorism" as they see fit because neither the Council nor the Committee has done so. It is Saul's contention that the lack of a definition was deliberate in order to maintain the consensus of the 1373 resolution. Domestic terrorism laws should be broadened to include international terrorism, says the Committee. <sup>32</sup> According to Council Resolution 1566, a number of criminal acts may be considered an attempt to define "terrorism" (2004). An international agreement or protocol defines a crime as "violence against civilians," including kidnappings for the purpose of inducing a state of fear in the general public or a specific group of people, or to frighten an entire population (K. Iqbal & Shah, 2018).

"The above criminal acts 'are under no circumstances justifiable by considerations of a racial, racialized, ethnic, or religious nature, and calls on all States to prevent such acts and, if not prevented, to ensure that such acts are punished with penalties commensurate with their gravity," reads paragraph 3 (K. Iqbal & Shah, 2018).

There is no legal definition in paragraph 3. But it might serve as a de facto guide for countries "on the idea of terrorism," which could break the stalemate in the General Assembly and have a substantial impact on the international community. Commentators have also remarked that the Council's definition of "terrorism" appears to represent the sum total of all international definitions. The UN High-Level Panel agreed with the Council's definition of terrorism. The Council Resolution's ninth preambular paragraph on establishing discussion and a better mutual understanding amongst cultures was welcomed by Pakistan (K. Iqbal & Shah, 2018).

United Nations General Assembly issued a resolution in 1994 outlining measures to fight international terrorism.

As stated in paragraph 2, terrorist operations, techniques, and practises have a negative impact on the UN system of friendly relations, human rights and fundamental freedoms. 'Terrorism' is defined in paragraph 3 as:

Laws prohibiting illegal activities intended to create fear on the general populace regardless of whether the perpetrators claim to have political, ideological, religious, or racial/ethnic motives are strictly enforced. When the General Assembly's 1996 ad hoc

committee met for the first time after the 9/11 attacks for its 56th session, it was contemplating a draught comprehensive agreement against international terrorism. No agreement could be reached by the ad hoc committee with regards to a definition of "terrorism," the scope of the draught convention, the exclusion of military activities during armed conflicts, or the relationship between the draught convention and earlier sectoral and regional anti-terrorist conventions. While most topics were coming to a consensus, definitions remained a point of contention. People's struggle, including armed resistance against foreign occupation, imperialism, colonialism and hegemony is not a crime under international law, according to the Organization for Islamic Cooperation (OIC). This recommendation was made in the draught treaty's definition (K. Iqbal & Shah, 2018).

In their view, citizens exercising their freedom to self-determination are not terrorists. The International Convention against the Taking of Hostages, which was signed in 1979, was also used to buttress their argument. According to those opposed to the OIC plan, other international human rights agreements already handle the concept of self-determination. In Subedi's view, the term "aggression" can only be applied to two states, and not to a state on one side and an independent organisation on the other. 'Hegemony', on the other hand, can only be applied to two countries. According to him, "hegemony" is a "fluid political notion" that is hard to define in the context of a definition for "terrorism." Subedi has the same opinion. This text should be included to Article 18 in the Draught Convention in order to avoid a deadlock, says Subedi (Subedi, 2002).

In accordance with international law, military personnel engaged in official duties are exempt from the rules that govern their conduct during times of armed conflict (Subedi, 2002).

Terrorism has a universal definition in international law, according to the United Nations Special Tribunal for Lebanon (STL), a more recent and significant development. International treaties, UN resolutions, and other countries' legal and judicial practises were all used by the court to determine each nation's jurisprudence. A crime (such as murder, kidnapping, or hostage-taking) must be committed or threatened in order to incite fear in the public (which usually entails creating public danger); or to force a national authority or an international authority to act or refrain from acting in any way, directly or indirectly; or to incorporate a transnational element into the act.

A number of anti-terrorist agreements have already come into effect at the global and regional levels while the UN General Assembly works to reach agreement on a draught convention. United Nations Security Council-ratified international treaties addressing nuclear terrorism, terrorist bombing, producing plastic bombs for detection, attacks on marine navigation, and acts of violence at international airports are all covered (1998). (1963) (K. Iqbal & Shah, 2018).

### **Regional Efforts**

The European Convention for the Suppression of Terrorism was ratified by the member countries in 1977. A variety of offences were exempted from extradition under Article 1 of the pact. In 2003, a Protocol to amend it was ratified by the international community (K. Iqbal & Shah, 2018). As a result of the amended provision, a total of eight of the thirteen international counter-terrorism treaties adopted between 1973 and 1999 were criminalised. Furthermore, even if the crimes

stated above aren't protected by the conventions listed above, the culprit or an accomplice who does or attempts to commit these heinous acts will face the same penalties. The EU's Framework Decision on Terrorism was adopted in 2002 and stipulated that terrorism included two components. Morbidity and wanton destruction of human life or property, kidnapping or hostage-taking, destruction of public property resulting in significant monetary loss, seizure of aircraft or ships or other modes of public transportation, the production or possession of explosives or nuclear weapons or other dangerous substances, and interference with or disruption of water or other natural resources are just some examples. As a result of previous acts of coercion, intimidation, or instability, a country's or an international organization's most important political, constitutional, economic, and social institutions may be seriously challenged or destabilised. An organisation for regional cooperation in South Asia is known as SAARC.

The South Asian Association for Regional Cooperation (SAARC) Convention and Protocol on Terrorism Suppression were adopted in 1987 and ratified in 2004 respectively. It is possible to break down the SAARC Convention into three parts. It should be noted that the Convention covers all offences covered by the 1970, 1971 and 1973 treaties as well as all other treaties to which South Asian countries are parties. Assault, physical harm, hostage taking and offences involving weapons, explosives and dangerous chemicals when used to carry out acts of violent indiscriminate violence that result in death or bodily harm to persons or severe property damage are also included in the definition of armed robbery. An effort to conduct any of those crimes listed in the term's definition is a third potential. By adopting a protocol in 2004, the SAARC countries reaffirmed their support for the Security Council decision 1373. Any act intended to cause death or serious bodily injury, to intimidate a population, or to coerce a government, an organisation, or parties to a Convention to which they are parties and which requires the parties to prosecute; and (c) an offence falling under the scope of a Convention with SAARC Member states an offence (K. Iqbal & Shah, 2018).

### **In consequence of international cooperation**

Terrorism is not defined as a crime in any of the 12 international accords that make up the international legal system. Nine of the articles discuss sanctions, while the other three concentrate on prevention. As an example, previous agreements have dealt with behaviours that could have an impact on an aircraft's safety but did not (the 1963 Convention). Under accordance with international treaties, each state must recognise certain offences recognised in domestic law. Nations are obligated to forbid specific behaviours in subsequent accords (e.g. the 1999 Financing Convention). Conventional international law does not recognize "terrorism" as a specific crime, hence these agreements are ignored (Jabeen & Choudhry, 2020). Regional conferences tend to be plagued by more serious concerns than the ones discussed here. The SAARC convention seeks extradition and law enforcement cooperation rather than to instigate offence. 53 In accordance with the 2004 SAARC Protocol, there are no political goals. Despite its best efforts since the terrorist attacks on September 11, 2001, the international community has been unable to define the term "terrorism." National military participation in conflict and the use of violence by people under foreign occupation are two major obstacles to achieving an agreement on a definition. Terrorists are, by definition, criminals. Terrorism is a crime committed for political reasons. This justification was used by the French Jacobins to justify their reign of terror. Despite this, there appears to be little scepticism that international

humanitarian law can appropriately respond to the first problem. In the second problem, there is broad agreement that other legal tools, such as international human rights legislation, can realise the right to self-determination. This stance, on the other hand, ignores the reality of global law. In international law, the United States has long had special privileges due to its position as one of the world's leading powers. 'The Bush Administration directly solicited other countries' support,' Markopoulos claims, the United States used its influence to influence the passage of Council Resolution 1373. The wording of the resolution was heavily inspired by Bush's Executive Order on Terrorist Financing. Hostilities like the Israeli-Palestinian conflict, as well as the Kashmir issue between India and Pakistan, are just two examples that have been exacerbated by violations of United Nations resolutions (K. Iqbal & Shah, 2018).

Since the international world cannot agree on a definition of "terrorism," country definitions have been permitted to differ. Terrorist attacks against foreign governments and international organisations are illegal in many countries, as are violations of anti-terrorism treaties signed by those governments and organisations. The notion, however, appears to be dominated by internal security concerns in its design and implementation. Because of the ambiguity and imprecision of domestic legislation, powerful political elites, particularly in emerging countries abuse religious minorities, immigration, political opponents and retaliation against them personally.

### **The Legality Presupposition**

No crime can be committed and no punishment can be imposed in the absence of law. This Latin proverb explains the criminal law idea of legality. The legality premise has three fundamental components. It is crucial that the intent of a statute be crystal obvious, so that a jury will rule in favour of the accused in the event of ambiguity. Second, non-retroactivity, or the limitation of retroactively applicable criminal restrictions. The third rule is non-extension by analogy, or "the restriction against extending the scope of criminal prohibition by analogy beyond that established by law in advance (Hall, 1937). According to the 1893 works of the eminent German lawyer Franz von Liszt, the following are the fundamental principles:

These individuals serve as a counterbalance to the omnipotence of government; they protect citizens from their own harsh majority. Despite how bizarre it may seem, the Criminal Code is the [Magna Carta] of criminals. His right to be punished solely in conformity with the law and within the boundaries of the law is assured (K. Iqbal & Shah, 2018).

Several human rights accords involve the legality premise. Article 11(2) of the 1948 Universal Declaration of Human Rights summarises the principle as follows:

Under national or international law, any act or omission that did not constitute a criminal offence at the time it was committed shall not be considered a crime. In addition, no greater penalty may be imposed than was in place at the time the violation was committed.

The Supreme Court of Pakistan has determined that the Universal Declaration of Human Rights is country-wide customary law that must be observed.

Article 15(1) of the 1966 International Covenant on Civil and Political Rights uses same language.

No one shall be convicted of a criminal offence based on conduct or omissions that did not meet the definition of a crime at the time they were committed. Not only that,

but the punishment for the offence should not be harsher than it was at the time it was committed. The culprit stands to benefit if, after committing the crime, legislation allows for a reduced penalty.

Fundamental to the rule of law is the concept that all future laws must be legal, universal, certain, consistent, and easy to understand. Several international organizations have determined that numerous national definitions of terrorism violate the norm of legality because they are extremely wide and imprecise. Hardy and Williams offer three methods for resolving the issue. First, it must be determined whether the local definition encompasses more activity than the definitions provided by authorised international authorities (such as those found in the Convention on the Financing of Terrorism<sup>62</sup> and United Nations Security Council Resolution 1566/2004). It is also possible to mix national definitions from other nations to determine if they are excessively broad. <sup>63</sup> Additionally, it is essential to assess if the concept of terrorism performs its intended function (K. Iqbal & Shah, 2018). Three criteria have been established: clarity, breadth, and consistency.

### **The Anti-Terrorism Act of 1997 provides the definition of "terrorism."**

This section is devoted to the ATA's definition of terrorism. We examine the historical reasons for the establishment of the ATA and how they have muddled the definition of terrorism. The interpretation of the A.T.A.'s definition of terrorism by the Supreme Court of Pakistan is compared to the standard of legality provided in section ii.

### **A Look at the Past**

Terrorism was not defined in Pakistani law until the Anti-Terrorism Act of 1997. However, the history of Pakistan's anti-terrorism legislation is essential to understand how the phrase was perceived in the lack of its definition, why the term was not defined and what causes ultimately forced its definition. Two things stand out when looking at Pakistan's anti-terror legislation. Pakistan's anti-terrorism legislation has its roots in political resistance, which is considered as an act of enmity toward the state there. Since the country gained its independence on August 14, 1947, its laws and enforcement have worked to reduce judicial oversight and elevate the executive to a more powerful position than it was before. The Public and Representative Officers Act of 1949 (PRODA) can be seen in a variety of ways from this perspective. The Defense of Pakistan Ordinance (DPO) of 1955, the Security of Pakistan Act (SPA) of 1952, and the Electoral Bodies (Disqualification) Order (EBDO) of 1959 all contributed to Pakistan's legal framework. For example, anyone accused of committing a crime might be detained, released, or released at any moment, and the government had the power to withdraw the release orders at any time. The Spa also provided the government broad jurisdiction over anyone suspected of committing a crime. Breaching a court order could result in a fine or up to six months in jail. This is dependent on the circumstances. In 1898, the Code of Criminal Procedure (CRPC) authorized governments to prevent crimes under Sections 107 (securing the peace) and 144 (preventing crimes) (passing of temporary executive order in urgent cases of nuisance or danger to public). The law was met with outrage and mockery from the general people (Noor & Studies, 2008). Ayub Khan's PRODA and EBDO governments were no new to using techniques to justify the suppression of domestic dissent in order to combat terrorism, according to Kennedy. An introduction to the terms "PRODA" and "EBO" (Limaye, Wirsing, & Malik, 2004). Shabana Fayyaz argues that political protest has clouded the definition of "terrorism," making it



difficult to pin down. There was, however, no mention of "terrorism" in any of these legislations. A more overtly political act, the Anti-National Activities Prevention Act of 1974, was passed. Supporters of Pakistan's independence, attacks on its sovereignty, violations of its territorial integrity, or beliefs regarding its multiethnic people were specifically targeted by this statute.

The term "terrorism" was first used in a passage of legislation in 1975, the Suppression of Terrorist Activities Act (Special Courts). Nationalism led political opposition to the STA when it was implemented in Baluchistan and Khyber Pakhtunkhwa (then called the North West Frontier Province). Initially, it was designed to thwart acts of sabotage, subversion, and terrorism, and later, it was used to hasten their arrests. The laws of the land did not define any of the three violations. The Pakistan Penal Code (PPC) of 1860 established four sets of offences and nine additional statutes (for example, the laws relating to explosive substances, arms, telegraph, aircraft, defence of Pakistan and anti-national activities). "Any attempt, conspiracy, or facilitation of any of these offences" is likewise a felony, according to the legislation. Speedy trials were required for special courts, which could take immediate cognizance of planned offences, refuse adjournment until justice demanded it, and enable trial by default if the defendants could not appear (K. Iqbal & Shah, 2018). It was also stated in the statute that if an accused person was found in possession of "any article or thing" that may be reasonably suspected of being used in the commission of a crime, they would be deemed guilty of the crime. In contrast to the long-established principle of criminal law's presumed innocence, this is a radical shift. Activists for civil liberties were opposed to this part of the bill (K. Iqbal & Shah, 2018). Many laws were passed in an attempt to discredit Khan Abdul Wali Khan and the National Awami Party (NAP). At the time, Khan was a well-known politician and the leader of the opposition in the National Assembly of Pakistan. Khan was put on trial for alleged high treason and subversion of state power. Dissolution of the party led to him being tried as an individual. Expedited trials were in place until 1997 following the sta. As a result of this, the 1987 Speedy Trial Ordinance and the 1990 Terrorist-Affected Areas (Special Courts) Ordinance were enacted (the latter enacted as an Act in 1992).

Pre-9/11 law in Pakistan, like those in the UK and India, was designed to prevent internal terrorism and sectarian strife. There was a stark disparity between the terrorist threats faced by Pakistan and those faced by the United Kingdom and India. India was threatened by separatist movements in East Punjab and Nagaland (K. Iqbal & Shah, 2018). The United Kingdom, like India, had to deal with a separatist movement in Northern Ireland. In addition to political dangers, the UK also represents a religious one (the separatist being Catholic nationalists). Unlike the United Kingdom and India, Pakistan has not established a definition of terrorism. The STA, on the other hand, did not classify terrorism as a separate or unique crime. The PPC, for example, was presented in an appendix as a schedule of important criminal statutes. No definition-specific case law has been created after 22 years of case law on the subject being gathered by the courts (K. Iqbal & Shah, 2018).

### **Definition of terrorism: historical context**

The criminal justice reaction to anti-terrorism legislation has become more difficult and complex from the first introduction of anti-terrorism legislation. Understanding these additional issues, such as the concept of "terrorism," is critical before introducing the ATA. Since the country's independence in 1947, Pakistan has wrestled

with the issue of drafting a constitution. Two of the most significant influences were the development of a federal structure with a degree of autonomy for the provinces based on the Islamic vision of the state. These two challenges dictate the trajectory of political dynamics, which include religion, ethnicity, and the state of the economy. Despite their 1947 independence, Pakistan and India's political, administrative, and judicial frameworks remained colonial (Kalhan, Conroy, Kaushal, & Miller, 2006). Efforts to abolish colonialism and reform the structures that support it were lacking. By indoctrinating people with a worldview and institutional institutions, political dictatorship was achieved. In the legislative and on the streets, constitutional battles raged over the Islamic concept of state. Until the military took over in 1977, provinces of Pakistan had a degree of autonomy, first in East Pakistan and then in Baluchistan and Khyber Pakhtunkhwa. The reign of General Zia ul Haq (1977–1988) was marked by three notable events: Pakistan International Airlines Flight Al-Zulfikar was hijacked by a political party of Urdu-speaking Indian migrants based in Karachi and other significant cities in Sind;<sup>74</sup> and a substantial Islamization of the law took place.... Several foreign influences on Pakistan's internal political dynamics may be traced back to the Russian invasion of Afghanistan in 1979 and the Iranian Islamic Revolution in 1979. It wasn't long until the gulf between Shias and Sunnis appeared to widen further than it already had (e.g. the Shia community asked for exemption from the Zakat and Ushr Ordinance 1980). Because to the MQM's rise to popularity, ethnic and linguistic strife arose in Karachi, resulting in the persistent presence of terrorists. In order to destabilise and defeat Russia in Afghanistan, Western nations led by the United States used Pakistan's Islamic sympathies by portraying the Afghan struggle as jihad. Pakistan's Shia-Sunni sectarian conflict was exacerbated by Arab countries' support (K. Iqbal & Shah, 2018). Zia kept tight ties with the United States and other Western nations to keep his power. In any case, even if the Afghan battle was a sham, the Kalashnikov (gun) culture exploitation sowed the roots of what is now known as global terrorism. Terrorist groups were able to establish because of the country's significant sectarian divisions. Anti-terrorist legislation was passed by successive administrations in the early 1990s to combat terrorism on a national level.

### **Definition of "Terrorism" in the A.T.A. and Subsequent Amendments**

As the threat of terrorism grew, Pakistan thought a new law was necessary. Thus, on August 16, 1997, the President of Pakistan enacted the ATA by signing it into law. Ata's objectives include preventing terrorism and sectarian conflict and accelerating the trials of those responsible for the most heinous crimes. Section 6 of the A.T.A. contains the definition of terrorism. According to the definition, violence can be divided into three categories: intent or motive, weaponry, and consequence (s)

To frighten the public or a section of the public, to alienate a portion of the public, or to otherwise upset the delicate balance that exists between the various segments of the population, what does it mean to employ explosive or flammable substances to cause harm to others, such as explosives, dynamite, or fire-arms? What does it mean to utilise hazardous materials like deadly gas?

To cause, or be likely to cause, the death or injury of any person or persons, or damage or destruction of property, or disruption of any supplies essential to the life of the community, or to display firearms, or to threaten with force public servants to prevent them from carrying out their lawful duties, is a terrorist act.

Five modifications were made to the ATA between 1997 and 2000.<sup>75</sup> Three amendments altered the definition. Between 2002 and 2013, the ATA was changed

nine times, and its definition was amended five times: in 2004, 2009, 2010, and twice in 2013 (K. Iqbal & Shah, 2018). On each occasion, the definition's three components — methods, objectives, and outcomes — were described in greater depth. The current and revised definition is offered in its entirety for your review and convenience:

The term "terrorism" refers to the use or threat of action when: (a) the action meets the definition of subsection (2); and (b) the use or threat is intended to coerce and intimidate or overawe the government, or a section of the public or community, or sect 5[or a foreign government or population, or an international organisation]; or (c) the use or threat is made to advance relativism.

Nothing in this clause applies to a properly authorised democratic or religious rally or peaceful demonstration.

- (a) Instances in which a person is subjected to a violent attack or serious bodily harm;
- (b) causes significant property damage [including ransacking, looting, arson, or any other means of injuring public or private property, including government buildings, official installations, schools, hospitals, and offices;
- (c) involves the commission of any act that may result in death or endanger the life of another person.

Abduction or hijacking for ransom or hostages are examples (e).

In this context, "ee" refers to any device that uses an explosive, including explosives, possesses an explosive substance without a good reason, or is illegally involved with an explosive substance.

- (f) incites violence or internal disorder; (g) promotes religious, ethnic, or racial hatred and contempt;

To coerce, frighten, or terrorise the general populace as well as government officials and institutions (especially law enforcement agencies), [(g) entails taking the law into one's own hands and enforcing illegal sanctions.] [(g) demands the use of physical force.

Muslim houses of worship, such as mosques and other places of worship such as imambargahs, as well as churches, temples, and other places of worship; or random firing to generate fear; or forceful seizure of mosques;

Is meant to frighten the public and prevent them from living their normal lives and performing lawful business, so disrupting civic life and posing a substantial threat to public safety or a section of the public's safety;

- (j) Embraces all types of arson, including car burnings;
- (k) constitutes extortion of money or property; (k) constitutes extortion of money or property.
- (It) is designed to inflict severe damage or interruption to a communications or public utility infrastructure;

The use of strong coercion or intimidation to force a public official to do or refrain from performing his legal duty.

Violence against a police officer, soldier, or member of the civil armed forces; or a public servant; Participates in armed resistance against law enforcement as a group or as an individual; or

On FM stations or by any other means of communication without the government's official approval, [p] engages in the promotion or preaching of ideas, teachings, and beliefs based on one's own interpretation.

Even if the requirements of subsection (1) (c) are met, any action or threat of action using firearms, explosives, or any other weapon constitutes terrorism.

### **Legality and the Term "Terrorism"**

There is a lot of discussion about terrorism and legality here, so this section focuses on the Pakistani Supreme Court's interpretation of both concepts. Original legislation adopted in 1997 as well as later amendments will be evaluated using the three-pronged standard of Hardy and Williams (clarity, breadth, and consistency).

At least one aspect of the previous term was unclear, according to a 2001 definition. It is said that terrorism "harmonises disparate elements of the public," among other things. Anti-terrorism legislation in India defines a terrorist act as one that harms the country's unity, integrity, or safety. This is a similar way of putting it. It's difficult to pin down what exactly is meant by the term "harmony." As a result, the definition found in a standard dictionary can be used instead. According to the 2010 Oxford English Dictionary, harmony is "a state of peaceful life and collaboration; to live together in perfect harmony." Another type of harmony is "social/racial harmony" (Stevenson, 2010). Harmony is defined by Chambers Dictionary as "a fitting together of parts to form a linked whole; agreement in relation"; "a normal and gratifying condition of completion and order in relations between objects". A clear and precise wording is necessary to ensure that criminal law legislation is understood in accordance with its meaning. It is impossible to define or describe harmony in any other way. As a result, there are a plethora of possible interpretations. As a result, it can be used and abused in a prosecution of terrorists. As a result, the phrase has a wide range of applications. There's no need to use words like "injury" or "damage" when expressing your concern. Private and public "property," in this context, are interchangeable. Legally, "the disruption of any delivery of key services important to the community" is defined as "terrorism." 79 Commentators have pointed out that even cutting a phone connection would be considered terrorism in India, according to them (K. Iqbal & Shah, 2018). Because the law must be obvious, prospective, and certain, the original definition's wording does not meet this broader understanding of rule of law.

As previously mentioned, there were significant changes made to the original definition. The following two amendments were made in 1998: To describe the techniques of violence, "any other weapon" was used, and "on a vast scale" was added after "property damage" to describe the terrorist act's repercussions. The definition is widened by including these terms. In addition to rape, the list of terrorist offences now includes gang rape, child molestation, and robbery with rape. Because of their severity, these crimes do not qualify as acts of terrorism. Furthermore, these infractions go beyond what the statute was intended to accomplish.

After 2001, the definition was revised. In this article, the origins, strategies, and consequences of the violence are explained. However, the Mehram Ali v. Federation of Pakistan (Mehram Ali) ruling stands out because it tackled a wide variety of concerns, including the term 'terrorism' Personal animosity was not enough to justify the killing of a public official, according to the court. The prosecution argued, and the court agreed, that the murder of a public employee was an act of terrorism because it

was done with the intention of intimidating other public employees and preventing them from doing their official duties. The following was noted by the court:

The offences listed in the Schedule and those addressed in Sections 6, 7, and 8 must be connected (which define and punish "terrorism").

If you report an offence not listed in the Schedule or not related to the prior section, you're breaking the law.

When it comes to terrorist acts, Mehram Ali may have been adamant about the importance of "nexus," but later case law shows that he did not live up to that notion. It has been argued that terror is characterised as the instillation of fear and insecurity, as evidenced by case law cited below. "Not just in the community of the general public, but also in the community of Advocates," the Supreme Court said in the case of Ziaullah, when two lawyers and a police officer were gunned down on court premises. 82 Mst. Najam-un-home, Nisa's and the Supreme Court stated that "the main point for decision was whether [the crime] struck dread or instilled a sense of security in the community." Anxiety and a sense of unease are other side effects that might result after committing a violent crime. For example, the court found that the "cumulative ramifications of the incident" (four individuals were killed in broad daylight on a busy city street in a large metropolitan area) produced "fear and insecurity among the community." A murder committed by spraying petrol on a victim and then shooting him or her was often taken into consideration by the courts when it came to crimes such as the killing of two people in a mosque during Friday prayers or the murder of a college professor who was trying to stop one of his students cheating on an exam (K. Iqbal & Shah, 2018).

The majority of Supreme Court cases analysed made no reference of Mehram Ali. Several courts have relied on Mehram Ali's views and opinions. This was a case of terrorism, in which a college lecturer was shot and killed for disciplining a student for cheating. As a result of his job responsibilities, the instructor, according to Mehram Ali, had the authority to detain the youngster. Court records show the accused's actions "created anxiety, worry and terror among the entire class." The suspects in Akhtar have been charged with the murder of a doctor. Shortly before he died, he had operated on the woman he was suspected of murdering's own mother. She was compelled to amputate her mother's leg as her condition deteriorated following the procedure. Alleged perpetrators are seeking compensation and reimbursement of medical costs on an individual basis. They killed the surgeon because he refused to comply with their demands. Even if the doctor's kidnapping and murder were motivated by "personal grievance," the Supreme Court ruled that it was a "terrifying situation for all doctors and a direct source of alarm and terror in the medical profession."

Terrorism has been characterised by the Supreme Court in a few cases. It was found that a 2007 incident involving criminal trespass and damage of property by fire or explosive substance was not a terrorist incident (K. J. W. R. P. Iqbal, Khyber Pakhtunkhwa Judicial Academy, Peshawar, August, 2015). According to the court, there was no 'nexus' between the two cases. Three people were killed and another was attempted to be killed in a fight over land, but the original report did not indicate widespread fear or panic. According to the judge, the incident was the result of personal hatred. As previously stated, the court ruled that in some cases of personal animosity, terrorist acts were committed. Mohabbat Ali was at the courtroom when it was realised that terrorism is not caused by personal rage. One person was killed and

another was injured in this incident. In part, this was because the complainant had previously killed two tenants of the defendant in a land dispute with the defendant's permission.<sup>96</sup> According to the court, the offence committed out of personal hatred did not meet the previously held criteria of inducing fear and worry (K. Iqbal & Shah, 2018). In a 2009 judgment regarding a private criminal matter, the court ruled:

An unintended consequence of a private offence should not be the spread of fear or anxiety. Fear and insecurity in society do not, then, create terrorism on their own. Terrorism should be evaluated based on its motivations and goals, not its actions or consequences. To be excluded from the umbrella term of terrorism, an act must not constitute a threat to the government or the general public (or a subset thereof), coerce or intimidate the public (or a particular community or sect), or cause widespread public alarm (K. Iqbal & Shah, 2018).

This case is notable for two unique aspects. A major objective of the law is to eliminate the assumption that a criminal conduct is not terrorism unless it is meant to force and intimidate "the government or the public, or a portion of the public, or a sect..." It also maintains the thesis by emphasising the necessity of instilling "a sense of fear or unease" in individuals. The first reason has never been indicated in any of the cases we've examined up to this point. Even though the second rationale for the judgement speaks to the court's typical perspective. The Supreme Court's jurisprudence is notoriously incoherent, but the definition's wording is to fault for its ambiguity and (over)broadness. Even the Mehram Ali court's emphasis on 'nexus' appears to have had no impact on the development of law. Sections 6, 7, and 8 of the A.T.A. stipulate that there must be a connection between the illegal act and the intended victim. In the absence of a better term, the legislation's language is unclear and excessive. And the rule doesn't simply apply to threatening and coercing the government, but to threatening and coercing a 'part of the public [or] community [or] sect [or] a foreign government or an international organisation' When interpreting the phrase "create fear or insecurity in society," courts have considered both the phrase's application to the entire community and to a specified subset of the population. In nearly all of the incidents described, it is applied to private disputes including claims of assault. As described in the definition, they have nothing to do with the terrorist attacks on hotels and cricket teams in Lahore and Peshawar and the Army Public School in Peshawar (Batool, Zulfiqar, & Bajwa, 2019).

Due to the ambiguity of Pakistan's definition of terrorism, the ATA has been misapplied and abused, resulting in unwarranted prosecutions. In recent publications, Pakistan's Human Rights Commission (HRCP) has identified numerous incidences. A 2011 HRCP report on Sind province, for instance, stated that 390 people, including three legislators, had been arrested for requesting that the government allow water into a rural district's river system in order to address the problem of unsafe drinking water. In the same study, further incidents were documented. Six labour leaders were sentenced to a total of 490 years in prison by the Punjab Anti-Terrorism Court, while 100 female health care employees were arrested as they demanded regularisation of their contract job. In 2013, the Supreme Court addressed the case of 11 missing prisoners held in Rawalpindi's Adiyala Jail after their acquittal on terrorism-related charges; four of them died in detention. (K. Iqbal & Shah, 2018)

Since at least 1997, governments in Pakistan have utilised anti-terrorism legislation as a means of political repression, according to the results. Pakistani politicians are enraged over two fundamental issues: the influence of religion on politics and the

absence of a strong federation. Political dissatisfaction has manifested itself through 'sectarianism, racial nationalism, ethno-linguistic, and religious' conflicts. International and regional conflicts have contributed to and exacerbated the predicament. As a result of the increasing terrorist danger, the original anti-terrorism law (ATA) was changed in two phases. The first phase of change began in 1998 and continued through August 2001. The second phase began with the events of September 11 and is still ongoing. Clearly, the second phase is primarily driven by the international environment. Despite its efforts to improve and establish its criminal justice system, Pakistan has yet to make any significant strides in its fight against terrorism. Pakistan and other nations confront the same difficulty in defining terrorism; in fact, it is an international issue (K. Iqbal & Shah, 2018).

### **Conclusions and Suggestions**

The definition of terrorism in Pakistan's ATA is vague and overly broad. According to a number of studies, the statute has been linked to human rights violations. Despite the fact that terrorism is a form of organised crime, there has been an increase in international concern for the protection of human rights. The guidelines of the 2006 UN Global Counter-Terrorism Strategy can serve as guidelines for national counterterrorism efforts. It is possible to modify Section 6 of the ATA to make it more precise and prevent the definition from being misapplied. This may assist the courts in their interpretation of the concept. 'The courts must recognise, however, that the ATA is a criminal code that can be interpreted extremely narrowly. Lastly, an effective independent review system would aid in ensuring that the law is not misapplied or abused, on the one hand, and that the law's promise and perils are routinely examined, on the other.

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