P L D 2020 Supreme Court 61

Present: Asif Saeed Khan Khosa, C.J., Mushir Alam, Manzoor Ahmad Malik, Sardar Tariq Masood, Ijaz ul Ahsan, Mazhar Alam Khan Miankhel

and Syed Mansoor Ali Shah, JJ

GHULAM HUSSAIN and others---Appellants

Versus

The STATE and others---Respondents

Criminal Appeals Nos. 95 and 96 of 2019, Civil Appeal No.10-L of 2017 and Criminal Appeal No.63 of 2013, decided on 30th October, 2019.

(Against the judgments dated 5-12-2007, 27-4-2017, 22-11-2016 and 24-9-2012 passed by the Lahore High Court, Lahore in Criminal Appeals Nos.397-J of 2006, 587-J of 2014 and 342-J of 2011 and Capital Sentence References Nos.1-T of 2006 and 40-T of 2014 and Writ Petition No.15608 of 2016).

(a) Anti-Terrorism Act (XXVII of 1997)---

----S. 6---"Terrorism"---Historical account of different acts, events, episodes and phenomena that have from time to time been perceived or understood in different parts of the world to be "terrorism", provided.

(b) Anti-Terrorism Act (XXVII of 1997)---

----S. 6 & Third Sched. Entry No.4---Anti-Terrorism Court, jurisdiction of---Scope---Heinous offences specified under Entry No.4 to Third Sched. of the Anti-Terrorism Act, 1997, that did not constitute terrorism---Such heinous offences did not per se constitute the offence of terrorism but were to be tried by an Anti-Terrorism Court because of their inclusion in the Third Sched.---In such cases an Anti-Terrorism Court could punish the person committing such specified heinous offences only for commission of those offences and not for committing terrorism because such offences did not constitute terrorism---Supreme Court observed that definition of 'terrorism' contained in S. 6 of the Anti-Terrorism Act, 1997 ('the Act') as it stood at present was too wide and the same included many actions, designs and purposes which had no nexus with the generally recognized concept of what terrorism was; that including some other heinous offences in the Preamble and the Third Sched. to that Act for trial of such offences by an Anti-Terrorism Court when such other offences did not qualify to be included in the definition of "terrorism" put an extra and unnecessary burden on such courts and caused delay in trial of actual cases of terrorism; that the Parliament may consider substituting the present definition of 'terrorism' by a more succinct definition bringing it in line with the international perspectives of that offence and focusing on violent activities aimed at achieving political, ideological or religious objectives and that the Parliament may also consider suitably amending the Preamble to the Act and removing all those

offences from the Third Sched. to the Act which offences had no nexus with the offence of terrorism.

Farooq Ahmed v. State and another 2020 SCMR 78; Amjad Ali and others v. The State PLD 2017 SC 661 and Muhammad Bilal v. The State and others 2019 SCMR 1362 ref.

(c) Anti-Terrorism Act (XXVII of 1997)---

----Ss. 6 & 7(e) & Third Sched. Entry No.4---Penal Code (XLV of 1860), S. 365-A---Explosive Substances Act (VI of 1908), Ss. 4(b), 5 & 6---Terrorism, kidnapping or abduction for ransom, possessing explosives---Offences mentioned under Entry No. 4 to Third Sched. of the Anti-Terrorism Act, 1997---Conviction for such offences under the Anti-Terrorism Act, 1997---Scope---Offence of abduction or kidnapping for ransom under S.365-A, P.P.C. was included in Entry No. 4 of the Third Sched. to the Anti-Terrorism Act, 1997 and kidnapping for ransom was also one of the actions specified in S.7(e) of the Anti-Terrorism Act, 1997---Abduction or kidnapping for ransom was a heinous offence but the scheme of the Anti-Terrorism Act, 1997 showed that an ordinary case of abduction or kidnapping for ransom under S.365-A, P.P.C. was merely triable by an Anti-Terrorism Court but if kidnapping for ransom was committed with the design or purpose mentioned in cl. (b) or cl. (c) of subsection (1) of S.6 of the Anti-Terrorism Act, 1997 then such offence amounted to terrorism attracting S.7(e) of that Act---In the former case the convicted person was to be convicted and sentenced only for the offence under S. 365-A, P.P.C. whereas in the latter case the convicted person was to be convicted both for the offence under S.365-A, P.P.C. as well as for the offence under S.7(e) of the Anti-Terrorism Act, 1997---Same rule may also be applied to the other offences mentioned in Entry No. 4 of the Third Sched. to the Act pertaining to "Use of firearms or explosives by any device, including bomb blast in a mosque, imambargah, church, temple or any other place of worship, whether or not any hurt or damage is caused thereby", "Firing or use of explosive by any device, including bomb blast in the court premises", "Hurt caused by corrosive substance or attempt to cause hurt by means of a corrosive substance" and "Unlawful possession of an explosive substance or abetment for such an offence under the Explosive Substances Act, 1908"---Such distinction between cases of terrorism and other heinous offences by itself explained and recognizes that all heinous offences, howsoever serious, grave, brutal, gruesome, macabre or shocking, did not ipso facto constitute terrorism which was a species apart.

(d) Anti-Terrorism Act (XXVII of 1997)---

----Ss. 6(1) & 6(2)---"Terrorism"---Acts constituting terrorism in terms of S.6 of the Anti-Terrorism Act, 1997 ('the Act')---Scope---'Actus reus' and 'mens rea' for terrorism---Scope---For an action or threat of action to be accepted as terrorism within the meanings of S.6 of the Anti-Terrorism Act, 1997 the action must fall in subsection (2) of S.6 of the said Act and the use or threat of such action must be designed to achieve any of the objectives specified in cl. (b) of subsection (1) of S.6 of Act or the use or threat of such action must be to achieve any of the purposes mentioned in cl. (c) of subsection (1) of S.6 of that Act---Requirements that needed

to be satisfied for invoking cl.(c) of subsection (1) of S.6 were that the use or threat of action should be for "the purpose of advancing areligious, sectarian or ethnic cause" or for the purpose of"intimidating and terrorizing the public, social sectors, media persons, business community" or for the purpose of "attacking the civilians, including damaging property by ransacking, looting, arson, or by any other means, government officials, installations, security forces or law enforcement agencies"---Clause (b) of subsection (1) of S.6 specified the 'design' and cl.(c) of subsection (1) of S.6 earmarked the 'purpose' which should be the motivation for the act and the actus reus had been clearly mentioned in subsection (2) of S.6---Only when the actus reus specified in subsection (2) of S.6 was accompanied by the requisite mens rea provided for in cl.(b) or cl.(c) of subsection (1) of S.6 that an action could be termed as 'terrorism'---Thus, it was not the fear or insecurity actually created or intended to be created or likely to be created which would determine whether the action qualified to be termed as terrorism or not but it was the intent and motivation behind the action which would be determinative of the issue irrespective of the fact whether any fear and insecurity was actually created or not---Any action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, did not qualify to be termed as terrorism if it was not committed with the design or purpose specified or mentioned in cls. (b) or cl.(c) of subsection (1) of S.6 of the Act---Action could be termed as terrorism if the use or threat of that action was designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect, etc. or if such action was designed to create a sense of fear or insecurity in the society or the use or threat was made for the purpose of advancing a religious, sectarian or ethnic cause, etc.---Creating fear or insecurity in the society was not by itself terrorism unless the motive itself was to create fear or insecurity in the society and not when fear or insecurity was just a by product, a fallout or an unintended consequence of a private crime---Mere shock, horror, dread or disgust created or likely to be created in the society did not transform a private crime into "terrorism"---"Terrorism" was a totally different concept which denoted commission of a crime with the design or purpose of destabilizing the government, disturbing the society or hurting a section of the society with a view to achieve objectives which were essentially political, ideological or religious---Violent activity against civilians that had no political, ideological or religious aims was just an act of criminal delinquency, a felony, or simply an act of insanity unrelated to "terrorism".

Muhammad Ajmal v. The State 2000 SCMR 1682; Mumtaz Ali Khan Rajban and another v. Federation of Pakistan and others PLD 2001 SC 169; Muhammad Mushtaq v. Muhammad Ashiq and others PLD 2002 SC 841; Mst. Raheela Nasreen v. The State and another 2002 SCMR 908; Muhammad Amin v. The State 2002 SCMR 1017; Zia Ullah v. Special Judge, Anti-Terrorist Court, Faisalabad and 7 others 2002 SCMR 1225; State through Advocate-General, N.-W.F.P., Peshawar v. Muhammad Shafiq PLD 2003 SC 224; Naeem Akhtar and others v. The State and others PLD 2003 SC 396; Sh.Muhammad Amjad v. The State PLD 2003 SC 704; Mst. Najam-un-Nisa v. Judge, Special Court constituted under Anti-Terrorism Act, 1997 2003 SCMR 1323; Abdul Ghafoor Bhatti v. Muhammad Saleem and others 2003 SCMR 1934; Muhammad Farooq v. Ibrar and 5 others PLD 2004 SC 917; Azizullah and another v. The State and another 2005 SCMR 802; Mirza Shaukat

Baig and others v. Shahid Jamil and others PLD 2005 SC 530; Zahid Imran and others v. The State and others PLD 2006 SC 109; Muhammad Idrees and others v. The State 2008 SCMR 1544; Nazeer Ahmed and others v. Nooruddin and another 2012 SCMR 517; Shahid Zafar and 3 others v. The State PLD 2014 SC 809; Kashif Ali v. The Judge, Anti-Terrorism, Court No.II, Lahore and others PLD 2016 SC 591 and Shahbaz Khan alias Tippu and others v. Special Judge, Anti-Terrorism, Court No.3, Lahore and others PLD 2016 SC 1 distinguished and held not to be followed.

Mehram Ali and others v. Federation of Pakistan and others PLD 1998 SC 1445; Jamat-i-Islami Pakistan through Syed Munawar Hassan, Secretary-General v. Federation of Pakistan through Secretary, Law, Justice and Parliamentary Affairs PLD 2000 SC 111; Ch. Bashir Ahmad v. Naveed Iqbal and 7 others PLD 2001 SC 521; Muhammad Mushtaq v. Muhammad Ashiq and others PLD 2002 SC 841; Fazal Dad v. Col. (Rtd.) Ghulam Muhammad Malik and others PLD 2007 SC 571; Mohabbat Ali and another v. State and another 2007 SCMR 142; Tariq Mahmood v. State 2008 SCMR 1631; Muhammad Yaqoob and others v. The State and others 2009 SCMR 527; Bashir Ahmed v. M. Siddique PLD 2009 SC 11; Ahmad Jan v. Nasrullah and others 2012 SCMR 59; Malik Muhammad Mumtaz Qadri v. The State and others PLD 2016 SC 17; Khuda-e-Noor v. The State PLD 2016 SC 195; Sagheer Ahmed v. The State and others 2016 SCMR 1754; Ch. Shaukat Ali v. Haji Jan Muhammad and others 2016 SCMR 533; Waris Ali and 5 others v. The State 2017 SCMR 1572; Sajid Rasheed Qureshi v. Munawar Ahmad 2017 SCMR 162; Amjad Ali and others v. The State PLD 2017 SC 661; Abdul Nabi v. The State 2017 SCMR 335; Province of Punjab through Secretary Punjab Public Prosecution Department and another v. The State PLD 2018 SC 178 and Dilwar Mehmood alias Dulli and another v. The State 2018 SCMR 593 ref.

(e) Anti-Terrorism Act (XXVII of 1997)---

----S. 6(3)---"Terrorism"---Section 6(3) of the Anti-Terrorism Act, 1997---Scope---Subsection (3) of S.6 of the Act, provided that "The use or threat of use of any action falling within subsection (2) which involves the use of firearms, explosive or any other weapon is "terrorism", whether or not subsection (1)(c) is satisfied" which meant that if for commission of the actions mentioned in subsection (2) of S.6, a firearm, an explosive substance or any other weapon was actually used or a threat regarding use of the same was extended then all such actions were to constitute the offence of terrorism even if the other requirements of cl.(c) of subsection (1) of S. 6 were not satisfied or fulfilled---Provisions of S.6(3) of the Act were quite problematic as they did not piece well with the remaining provisions of S. 6 as far as the matter of defining "terrorism" was concerned---If provisions of subsection (3) of S.6 of the Act, as they were worded, were to be given effect then the distinction between the peculiar offence of terrorism and most of the run of the mill offences committed in the society in routine would be obliterated---Supreme Court observed that the legislature may like to have another look at the provisions

of S.6(3) of the Act and to consider deleting or suitably amending the same so as to bring them in harmony with the remaining provisions of the Act.

(f) Anti-Terrorism Act (XXVII of 1997)---

----S. 6(2)---"Terrorism"---Offence committed due to personal enmity or vendetta---Actions specified in subsection (2) of S.6 of the Anti-Terrorism Act, 1997 did not qualify to be labeled or characterized as terrorism if such actions were taken in furtherance of personal enmity or private vendetta.

In attendance:

Shahid Azeem, Advocate Supreme Court.
Javed Iqbal Raja, Advocate Supreme Court.
Burhan Moazam Malik, Advocate Supreme Court.
Mian Pervaiz Hussain, Advocate Supreme Court.
Syed Tayyab Mehmood Jaffari, Advocate Supreme Court.
Muhammad Ishtiaq Ahmad Raja, Advocate Supreme Court.
Raja Abdul Ghafoor, Advocate-on-Record.
Malik Ghulam Mustafa Kandwal, Advocate Supreme Court.
Kamran Murtaza, Advocate Supreme Court.
Abid Hussain Saqi, Advocate Supreme Court.
Muhammad Sadiq Baloch, Advocate Supreme Court.
Ch. Munir Sadiq, Advocate Supreme Court.
Zulfiqar Khalid Maluka, Advocate Supreme Court.
Khadim H. Sandhu, Advocate Supreme Court.

On Court's Notice

Sajid Ilyas Bhatti, Deputy Attorney-General of Pakistan.
Tariq Mehmood Jehangiri, Advocate General, Islamabad.
Ahmed Awais, Advocate General, Punjab.
Ch. Faisal Farid, Additional Advocate-General, Punjab.
Ahmed Raza Gillani, Additional Prosecutor-General, Punjab.
Barrister Shabbir Hussain Shah, Additional Advocate-General, Sindh.
Salim Akhtar, Additional Prosecutor-General, Sindh.
Zahid Yousaf Qureshi, Additional Advocate-General, Khyber Pakhtunkhwa.
Syed Baqar Shah, State Counsel, Balochistan.
Ayaz Khan Swati, Additional Advocate-General, Balochistan.

Date of hearing: 2nd April, 2019.

JUDGMENT

ASIF SAEED KHAN KHOSA, C.J.---The meanings, scope and import of the term 'terrorism' defined in section 6 of the Anti-Terrorism Act 1997, as amended from time to time, have been a subject of controversy in this Court for some time and different Honourable Benches of varying strength deciding different cases have differed with each other in the past and have understood and interpreted the said

term differently. It is in this backdrop that the present Larger Bench has been constituted so as to put an end to that controversy.

2. The facts of the present appeals giving rise to the issue at hand are summed up as follows:

Ghulam Hussain v. The State
(Criminal Appeal No. 95 of 2019)

After a regular trial Ghulam Hussain appellant was convicted by the trial court on two counts of the charge under section 302(b), P.P.C. for killing two minors and was sentenced to death on each count. He was also convicted on two counts of the charge under section 7(a) of the Anti-Terrorism Act, 1997 and was sentenced to death on each such count. His appeal filed before the High Court was dismissed and all his convictions and sentences recorded by the trial court were upheld and confirmed. Leave to appeal was granted by this Court in order the reappraise the evidence and also to consider as to whether the provisions of the Anti-Terrorism Act, 1997 were applicable to the facts and circumstances of the case or not.

Muhammad Azeem and 3 others v. The State
(Criminal Appeal No. 96 of 2019)

The appellants were convicted by the trial court for offences under section 302(b), P.P.C. and section 7(a) of the Anti-Terrorism Act, 1997 and were sentenced to death each for committing the said offences besides having been convicted and sentenced for some other offences. The appellants filed a joint appeal before the High Court which was dismissed and all their convictions and sentences were upheld and maintained except their sentences of death on two counts of the charge which sentences of death were reduced by the High Court to imprisonment for life each on each of the relevant counts of the charge. Leave to appeal was granted by this Court in order to reappraise the evidence and also to consider as to whether the provisions of the Anti-Terrorism Act, 1997 were attracted to the facts and circumstances of the case or not.

Tanvir v. Prosecutor General Punjab, Lahore, etc.
(Civil Appeal No. 10-L of 2017)

In this case the investigating agency had deleted section 7 of the Anti-Terrorism Act, 1997 from the FIR and the Anti-Terrorism Court-II, Lahore had refused to treat the case as one of terrorism. A writ petition filed in that regard before the High Court succeeded and the case was ordered to be transferred to the Anti-Terrorism Court for trial. Leave to appeal was granted by this Court to determine as to whether the provisions of the Anti-Terrorism Act, 1997 were attracted to the case or not.

Sikandar Hayat v. The State
(Criminal Appeal No. 63 of 2013)

The appellant was convicted by the trial court for an offence under section 302(b), P.P.C. read with section 149, P.P.C. and was sentenced to imprisonment for life besides having been convicted and sentenced for an offence under section 148, P.P.C. read with section 149, P.P.C. The appellant's appeal was dismissed by the

High Court and leave to appeal was granted by this Court in order to reappraise the evidence.

3. Before making an attempt to understand as to what the term 'terrorism' defined in section 6 of the Anti-Terrorism Act, 1997 denotes it may be advantageous to recapitulate how different acts, events, episodes and phenomena have from time to time been perceived or understood in different parts of the world as terrorism and distinct from ordinary and usual crimes howsoever heinous in nature.

4. History is full of instances where likeminded groups of people have resorted to violence as a tool for achieving political, ideological and religious ends. Jewish sects Zealots and Sicarii (or Sicarris), using small daggers called sicae hidden in their cloaks to stab people in crowds and then melting away in the throng, attacking the Roman occupiers of Judea and their allies in public places between 2 B.C. and 70 A.D.; the Assassins of Persia and Syria, Muslims belonging to the Ismaili sect who were called the Assassins because they were given hashish (hashishin) before being launched for terrorist acts, killing their targets and threatening the governments of several states between the 11th and 13th centuries; suicidal attacks carried out by different groups against the colonial rule in India, Indonesia and Philippines in the 18th and 19th centuries; Russian anarchists attacking members and supporters of the Tsarist regime with explosives at the end of the 19th century; Japanese Kamikaze pilots launching suicide attacks against American ships in the Pacific ocean during World War II, particularly in the Battle of Okinawa in April 1945 wherein some 2,000 Kamikaze pilots rammed fully fuelled planes into more than 300 ships killing about 5,000 Americans and about 2000 Kamikaze; Hizbullah supporters launching devastating attacks against the American and French forces in Lebanon in the year 1983; the Liberation Tigers of Tamil Eelam (LTTE) using hundreds of suicide bombers and killing thousands of people including Indian Prime Minister Rajiv Gandhi in the year 1991 and Sri Lankan President Premadasa in the year 1993; and the Marxist-Nationalist Kurdistan Worker's Party (PKK) carrying out many suicide attacks in Turkey against a range of targets during the end of the last century and beginning of the current century have all been universally perceived and acknowledged as terrorists indulging in acts of terrorism.

5. There are also many other instances in history where some individual acts or collective activity were, and are, perceived and accepted as terrorism and not just commission of normal, though heinous, offences. In the year 1881 anarchists killed the Russian Tsar Alexander II and 21 bystanders; in the year 1901 anarchists killed the US President McKinley as well as King Humbert I of Italy; World War I started in the year 1914 when anarchists killed Archduke Ferdinand of Austria; the British Raj referred to Bhagat Singh, Chandrasekhar Azad and many other Indian freedom fighters as terrorists; guerrilla fighters from Mao Zedong to Ho Chi Minh and Fidel Castro killed civilians during their revolutionary campaigns and they too were called terrorists until they triumphed; after World War II some Jewish groups in Palestine, i.e. Haganah, Irgun and Stern Gang fought for the creation of a Jewish state, bombing hotels and installations and killing civilians and the British, who then governed Palestine, called those Jewish groups terrorists and many of those terrorists including Moshe Dayan, Yitzhak Rabin, Menachem Begin and Ariel

Sharon later became leaders of the independent state of Israel and, ironically, those former terrorists then derided terrorism, applying this label to the Arabs, including Yasser Arafat, fighting for the very same nationhood that the Jews had fought for earlier; in Germany in the years 1968 to 1992 the Baader-Meinhoff Gang killed dozens, including the head of Treuhand, the German privatization agency; in Italy the Red Brigades kidnapped and killed Aldo Moro, a former prime minister, and the Japanese Red Army was an Asian version of that; Japan was also the home of Aum Shinrikyo, a Buddhist cult that tried to kill thousands in the Tokyo metro system using nerve gas in the year 1995; in Europe the Irish Republican Army has been a Catholic terrorist organization for almost a century; Spain and France face a terrorist challenge from ETA and the Basque terrorist organization; Lord's Salvation Army in Uganda and Boko Haram in Nigeria are universally acknowledged as terrorist outfits; the Afghan freedom fighters were called the Mujahideen (holy warriors) by the West when they were fighting the Soviet occupying forces but they are now branded as terrorists when they are fighting to oust the American occupying forces; the Muslim freedom fighters in the Indian occupied Kashmir, the Sikhs led and inspired by Bhindranwale in Punjab, the United Liberation Front and Bodo of Assam, militant groups in Tripura, Christian Mizos mounting an insurrection for decades, Christian Nagas waging a freedom struggle and the Maoist groups operating in no less than 150 out of India 's 600 districts are all termed by India as terrorists; and the savagery perpetrated by Talibans of different shades in Afghanistan and Pakistan for the last many decades is generally accepted and treated as acts of terrorism.

6. The historical context of terrorism given above shows that at different times in history terrorism has been resorted to for achieving different political, ideological or religious objectives. There are many explanatory theories about terrorism in modern times but the one advanced by David C. Rapoport, Professor Emeritus of Political Science at the University of California, Los Angeles, in the year 2004 (published in his journal Terrorism and Political Violence) has received wide acceptance. The theory propounded by him is known as the 'waves of terrorism' theory and according to him modern terrorism can be divided into four waves which are Anarchists (1880s-1920s), Anti-Colonial (1920s-1960s), Left Wing (1960s-1990s) and Religious (1990 to date). He maintains that each wave came and died out and that these waves have at times overlapped also. The common factor in all those waves is that all the relevant acts of violence were and are universally recognized as terrorism because the unlawful use of violence was and is meant to achieve political, ideological or religious goals. By now the international community understands quite well that terrorism is a species quite distinct from all other usual and private crimes howsoever heinous or gruesomely executed.

7. In his book 21 Lessons for the 21st Century (published by Random House LLC, New York in 2018) the author Yuval Noah Harari has come up with a very

interesting, and quite apt, analysis of how terrorists operate and succeed in their objectives. The following part of his analysis is quite enlightening:

> "Though the challenges are unprecedented, and though the disagreements are intense, humankind can rise to the occasion if we keep our fears under control and be a bit more humble about our views.
>
> Terrorists are masters of mind control... terrorism is a military strategy that hopes to change the political situation by spreading fear rather than by causing material damage.
>
> In this respect, terrorists resemble a fly that tries to destroy a china shop. The fly is so weak that it cannot move even a single tea-cup. So how does a fly destroy a china shop? It finds a bull, gets inside its ear, and starts buzzing. The bull goes wild with fear and anger, and destroys the china shop. This is what happened after 9/11, as Islamic fundamentalists incited the American bull to destroy the Middle Eastern china shop. Now they flourish in the wreckage. And there is no shortage of short-tempered bulls in the world.
>
> Terrorism is a very unattractive military strategy, because it leaves all the important decisions in the hands of the enemy. Terrorists are so weak that they cannot wage war so they opt instead to produce a theatrical spectacle that they hope will provoke the enemy and cause him to overreact. By killing a handful of people the terrorists cause millions to fear for their lives.
>
> Terrorists don't think like army generals. Instead, they think like theatre producers. Because we intuitively understand that terrorism is theatre, we judge it by its emotional rather than material impact.
>
> Terrorists undertake an impossible mission: to change the political balance of power through violence, despite having no army.
>
> Every now and then a state loses its temper and reacts far too forcefully and publicly, thus playing into the hands of the terrorists. The legitimacy of the modern state is based on its promise to keep the public sphere free of political violence. Consequently, sporadic acts of political violence that kill a few dozen people are seen as a deadly threat to the legitimacy and even survival of the state. A small coin in a big empty jar makes a lot of noise.
>
> The theatre of terror generates visceral fear of anarchy, making people feel as if the social order is about to collapse. The state is driven to respond to the theatre of terror with its own theatre of security. So instead of acting quietly and efficiently, the state unleashes a mighty storm, which not infrequently fulfills the terrorists' most cherished dreams.
>
> How then should the state deal with terrorism? A successful counter-terrorism struggle should be conducted on three fronts: First, governments should focus on clandestine actions against the terrorist networks. Second, the media should keep things in perspective and avoid hysteria. The theatre of terror cannot succeed without publicity. The third front is the imagination of each and every one of us. The success or failure of terrorism therefore depends on us. If we allow our imagination to be captured by the terrorists

and then we overreact to our own fears, terrorism will succeed. If we free our imagination from the terrorists and then we react in a balanced and cool way, terrorism will fail."

This analysis also confirms that terrorists operate on a level different from that on which ordinary criminals operate, their operations and tactics are different and the offence of terrorism is more concerned with the object and design behind an action than with the action itself.

8. Since the year 1974 different laws have been introduced in our country in order to deal with the menace of terrorist activities and terrorism and the first serious attempt to understand the nature and scope of such an offence was made by a Division Bench of the Lahore High Court, Lahore in the case of Basharat Ali v Special Judge, Anti-Terrorism Court-II, Gujranwala and 2 others (PLD 2004 Lahore 199). In that case the history of terrorism was traced, different definitions of 'terrorism' adopted in the laws of different countries were mentioned, all the precedent cases available on the subject till then in Pakistan and India were referred to and all the relevant issues were exhaustively discussed.

As all the ensuing discussion in the judicial and legal circles that followed that decision generally revolved around the judgment rendered in that case, therefore, some parts of that judgment are being reproduced here in extenso:

"4. Terror and terrorism are concepts quite distinct from each other and the quintessence of the two notions is not difficult to distil. Terror as a manifestation of fright, dread, fear or insecurity is a consequential effect created by an act that may not necessarily be motivated to create such an effect whereas terrorism is an activity designed to create such an effect of terror. The critical difference between the two is the design and purpose understood in the criminal jurisprudence as mens rea. In the case of terror the act, or the actus reus, is not motivated to create fear and insecurity in the society at large but the same is actuated with a desire to commit a private crime against targeted individuals, etc. and the fear and insecurity created by the act in the society at large is only an unintended consequence or a fall out thereof whereas in the case of terrorism the main purpose is creation of fear and insecurity in the society at large and the actual victims are, by and large, not the real targets. Every crime, no matter what its magnitude or extent, creates some sort of fear and insecurity in some section of the society but every felony or misdemeanor cannot be branded or termed as terrorism. As against that an act of terrorism designed to create fear and insecurity in the society at large may or may not succeed in achieving the desired effect but nonetheless it can be accepted as nothing but terrorism because of the object or purpose behind such act. Thus, the real test to determine whether a particular act is terrorism or not is the motivation, object, design or purpose behind the act and not the consequential effect created by such act. In this context terrorism has to be understood as a species different and apart from terror, horror, shock, fear, insecurity, panic or disgust created by an ordinary crime. The history of recent terrorism in the world and an insight into how the world has understood and tried to define the same may be of significant

help and of critical importance in appreciating the true meanings and import of the term 'terrorism'.

5. The history of terrorism as it is known today has essentially a political tone and background.----

6. The question of a definition of terrorism has haunted the debate among States for decades.----

7. The discussion made above shows, and shows quite clearly, that out of the various facets of the world view about terrorism one factor is constant and that is that in order to qualify as terrorism an act must be designed to achieve a political and a larger objective and the same is not primarily directed against the actual victims themselves who are treated merely as 'collateral damage'. It is also quite evident that the extent of the actual damage caused or injuries inflicted by the act is not the determinative factor in this regard.

8. Like its counterparts in rest of the world Pakistan has also been groping for the last many decades to find a suitable and appropriate definition of terrorism. Eversince the introduction of anti-terrorism laws in our country our legislature has constantly been in search of an apt definition of terrorism and in the process different laws have been enacted from time to time and different definitions of terrorism have been introduced at different occasions. In such definitions emphasis has been placed upon different aspects at different times. Although Suppression of Terrorist Activities (Special Courts) Act, 1974, Special Courts for Speedy Trials Ordinance, 1987, Terrorist Affected Areas (Special Courts) Ordinance, 1990, Special Courts for Speedy Trials Ordinance, 1991, Special Courts for Speedy Trials Act, 1992 and many other laws were also enacted in this regard from time to time yet for the purposes of the present judgment we intend to focus mainly on the two major enactments in this field, i.e. the Suppression of Terrorist Activities (Special Courts) Act, 1975 and the Anti-Terrorism Act, 1997.

9. The first major piece of legislation introduced in Pakistan specifically in the context of terrorism was the Suppression of Terrorist Activities (Special Courts) Act, 1975 ----- It is of critical importance to point out here that although the word terrorism had been used in the Preamble of the said Act yet the same had not been defined in the Act at all and the Schedule of that

Act created an impression that the word terrorism was to be understood in the context of any offence of serious and grave nature.

10. The Anti-Terrorism Act, 1997 was a major step forward in Pakistan's quest for dealing with the menace of terrorism and its Preamble provided as follows:

"Whereas it is expedient to provide for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences and for matters connected therewith and incidental thereto."

Section 12 of the Act conferred jurisdiction to try the scheduled offences exclusively upon the Special Courts constituted under the said Act. Section 6 of that Act defined a 'terrorist act' in the following terms:

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

Section 7 of the Act specified various punishments for the terrorist acts mentioned in section 6, section 8 defined an offence regarding stirring up

sectarian hatred and section 9 of the said Act provided for punishment for the offence under section 8. The Schedule of the said Act read as follows:

"1. Any offence punishable under this Act.

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

(a) section 302, --

(i) if committed with a cannon, grenade, bomb, rocket or a light or heavy automatic weapon;

(ii) if the victim is a member of police, armed forces or civil armed forces or is a public servant;

(iii) if there is more than one victim; or

(iv) the victim was subjected to cruelty, brutality, torture or burning; and

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

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

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

The core and essence or the pith and substance of a 'terrorist act' defined by this Act was striking terror in the people or any section of the people or alienating any section of the people or adversely affecting harmony among different sections of the people. The emphasis appeared to be on the gravity of the offence and its effect upon the general populace rather than on the actual motivation behind the act.

11. The above mentioned definition of a 'terrorist act' contained in section 6 was subsequently amended through the Anti-Terrorism (Second Amendment) Ordinance, 1999 (Ordinance No. XIII of 1999) and the new definition read as follows:

"A person is said to commit a terrorist act if he -

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

threatens with the use of force public servants in order to prevent them from discharging their lawful duties; or

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

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

(d) commits an act of civil commotion as specified in section 7-A."

Through this amendment the focus on the effect of the action was extended to a potential or likely effect besides the actual effect of the action and the focal point still remained the effect of the action rather than the incentive or inspiration behind the same.

12. It is of vital importance to mention here that while providing in the amended section 6 that "in order to, or if the effect of his actions will be to, strike terror or create a sense of fear and insecurity in the people, or any section of the people, does any act or thing ---" the legislature never specified the motivation for that "act or thing" on the part of the perpetrator which propelled or prompted him to commit a terrorist act. Thus, the actus reus was itself considered to be determinative if the same was intended to create fear and insecurity, etc. in the public at large, had the effect of creating such fear and insecurity, etc. or had a potential for creating such fear and insecurity, etc. According to this definition what was of paramount consideration was the effect of the act, whether actual, intended or potential, and not the design or the purpose behind that act. It was in that context that the Hon'ble Supreme Court of Pakistan had interpreted the provisions of section 6 of this Act in many cases, to be discussed later on in this judgment, and had held that an act was to be considered a terrorist act if its effect, whether actual, intended or potential, was to create fear and insecurity, etc. in the society at large.

13. On August 15, 2001 the Anti-Terrorism Act, 1997 was drastically amended through the Anti-Terrorism (Amendment) Ordinance, 2001 (Ordinance No. XXXIX of 2001). Through the amending Ordinance the Schedule of the Act containing various offences to be tried under the said Act was done away with and the term 'terrorist act' with its definition contained in section 6 of

the Act was substituted and replaced by the term 'terrorism' with the following definition thereof:

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

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

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

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

(2) An "action" shall fall within the meaning of sub-section (1), if it:

(a) involves the doing of anything that causes death;

(b) involves grievous violence against a person or grievous bodily injury or harm to a person;

(c) involves grievous damage to property;

(d) involves the doing of anything that is likely to cause death or endangers a person's life;

(e) involves kidnapping for ransom, hostage-taking or hijacking;

(f) incites hatred and contempt on religious, sectarian or ethnic basis to stir up violence or cause internal disturbance;

(g) involves stoning, brick-batting or any other form of mischief to spread panic;

(h) involves firing on religious congregations, mosques, imambargahs, churches, temples and all other places of worship, or random firing to spread panic, or involves any forcible takeover of mosques or other places of worship;

(i) creates a serious risk to safety of the public or a section of the public, or is designed to frighten the general public and thereby prevent them from coming out and carrying on their lawful trade and daily business, and disrupts civic life;

(j) involves the burning of vehicles or any other serious form of arson;

(k) involves extortion of money ("bhatta") or property;

(l) is designed to seriously interfere with or seriously disrupt a communications system or public utility service;

(m) involves serious coercion or intimidation of a public servant in order to force him to discharge or to refrain from discharging his lawful duties; or

(n) involves serious violence against a member of the police force, armed forces, civil armed forces, or a public servant.

(3) The use or threat of use of any action falling within sub-section (2), which involves the use of fire-arms, explosives or any other weapon, is terrorism,

whether or not subsection 1(c) is satisfied.

(4) In this section "action" includes any act done for the benefit of a proscribed organization.

(5) In this Act, terrorism includes any act done for the benefit of a proscribed organization.

(6) A person who commits an offence under this section or any other provision of this Act, shall be guilty of an act of terrorism.

(7) In this Act, a "terrorist" means:

(a) a person who has committed an offence of terrorism under this Act, and is or has been concerned in the commission, preparation or instigation of acts of terrorism;

(b) a person who is or has been, whether before or after the coming into force of this Act, concerned in the commission, preparation or instigation of acts of terrorism, shall also be included in the meaning given in clause (a) above."

14. The resume of our legislative developments in the field of terrorism shows that with different laws and definitions of terrorist act or terrorism the emphasis has been shifting from one criterion to another including the gravity of the act, lethal nature of the weapon used, plurality of culprits, number of victims, impact created by the act and effect of fear and insecurity brought about or likely to be created in the society by the action. The last definition of a 'terrorist act' contained in section 6 of the Anti-Terrorism Act, 1997 squarely focused on the effect of fear and insecurity intended to be created by the act or actually created by the act or the act having the potential of creating such an effect of fear and insecurity in the society. It, however, appears that subsequently the legislature did not feel convinced of the aptness or correctness of that definition and resultantly the erstwhile definition of a 'terrorist act' contained in section 6 of the Anti-Terrorism Act, 1997 was repealed and a totally fresh and new definition of 'terrorism' was introduced through an amended section 6 of the Anti-Terrorism Act, 1997 and this was accomplished through the Anti-Terrorism (Amendment) Ordinance, 2001 (Ordinance No. XXXIX of 2001) promulgated on 15.08.2001. The legislature had probably realized by then that an effect of an act may not always be a correct indicator of the nature of such an act as every crime, especially of violence against person or property, does create some sense of fear and insecurity in some section of the society and a definition of terrorism based upon the magnitude or potential of an effect created or intended to be created or having a potential of creating would necessarily require a premature, speculative and imaginary quantification of the effect so as to determine the nature of the act in order to decide about the jurisdiction of a criminal court to try such an act. That surely was an unsure test and the result of such a premature, speculative and presumptive test could vary from court to court and from Judge to Judge reminding a legal scholar of the Star Chamber and the early days of a Court of Equity in England where equity was said to vary with the size of the

Chancellor's foot. The new definition of 'terrorism' introduced through the amended section 6 of the Anti-Terrorism Act, 1997 as it stands today appears to be the most comprehensive and the clearest definition of 'terrorism' introduced in our legal system thus far. It appears that in its quest for an apt and appropriate definition of terrorism and after stumbling through various approaches in that regard the legislature in our country has finally hit upon a definition of terrorism which is not only closest to its real meaning but the same is also in accord with the international perceptions about the same. The earlier emphasis on the speculative effect of the act has now given way to a clearly defined mens rea and actus reus. The amended section 6(1)(b) now specifies the 'design' and section 6(1)(c) earmarks the 'purpose' which should be the motivation for the act and the actus reus has been clearly mentioned in section 6(2)(a) to (n) and now it is only when the actus reus specified in section 6(2) is accompanied by the requisite mens rea provided for in section 6(1)(b) or (c) that an action can be termed as 'terrorism'. Thus, it is no longer the fear or insecurity actually created or intended to be created or likely to be created which would determine whether the action qualifies to be termed as terrorism or not but it is now the intent and motivation behind the action which would be determinative of the issue irrespective of the fact whether any fear and insecurity was actually created or not. After this amendment in section 6 an action can now be termed as terrorism if the use or threat of that action "is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect" or if such action is designed to "create a sense of fear or insecurity in society" or the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause. Now creating fear or insecurity in the society is not by itself terrorism unless the motive itself is to create fear or insecurity in the society and not when fear or insecurity is just a byproduct, a fall out or an unintended consequence of a private crime. In the last definition the focus was on the action and its result whereas in the present definition the emphasis appears to be on the motivation and objective and not on the result. Through this amendment the legislature seems to have finally appreciated that mere shock, horror, dread or disgust created or likely to be created in the society does not transform a private crime into terrorism but terrorism as an 'ism' is a totally different concept which denotes commission of a crime with the object and purpose of destabilizing the society or government with a view to achieve objectives which are political in the extended sense of the word. This approach appears to be in harmony with the emerging international perception about terrorism according to which, as referred to above, "the aim of the activity is always political, i.e. the goal is to attain political objectives like changing the regime, changing the people in power, changing social or economic policies, etc. In the absence of a political aim, the activity in quest will not be defined as terrorism. A violent activity against civilians that has no political aim is, at most, an act of criminal delinquency, a felony, or simply an act of insanity unrelated to terrorism. Some scholars tend to add ideological or religious aims to the list of political aims." This metamorphosis in the anti-terrorism law in our country has brought about a sea change in the whole concept as

we have understood it in the past and it is, therefore, of paramount importance for all concerned to understand this conceptual modification and transformation in its true perspective. In view of this conceptual transformation even the interpretations of a 'terrorist act' or 'terrorism' rendered by our courts in the past on the basis of the earlier law may, it is observed with great respect, require revisiting and reinterpretation so as to be in line with the newly introduced definition and concept of terrorism.

15. Adverting to the case-law on the subject we may straightaway observe with profound respect that, barring a few exceptions, the judgments rendered on the subject thus far by the Hon'ble Supreme Court of Pakistan appear to be heavily influenced by the erstwhile definition of a 'terrorist act' contained in the original Act and even the new definition of 'terrorism' contained in the amended Act has, by and large, been looked at with the same mindset. For instance in the case of -------

16. One cannot help noticing that all the cases referred to in the last paragraph pertained to offences committed for private purposes with no motivation to destabilize the society at large but they were all adjudged to be cases of terrorist acts or terrorism on the basis of a presumptive and speculative quantification of the effect that the relevant actions could have created in the society. In all such cases, it is observed with great deference, the change brought about by the new definition of 'terrorism' with its resultant shifting of focus from the effect of the action to the design or purpose behind the action had not been noticed and all those cases had been decided on the basis and on the yardstick of the principles provided for by the earlier definition of a 'terrorist act'. In the above mentioned cases the gravity of the offence with its resultant actual, intended or potential effect on the people at large was considered as the measure for determining whether the act constituted terrorism or not. We can appreciate that the mindset inherited by us in the background of the Summary Military Courts, Speedy Trial Courts and Special Courts for Suppression of Terrorist Activities, which were different courts constituted at different stages in the past for separate and special handling of offences of grave nature, may take some time to be dispelled and it may take us a while to appreciate and realize that an act of 'terrorism' is not just a grave offence but it is a class and species apart and this class or species has to be understood in its true and correct perception and perspective otherwise every serious offence may be found by one Judge or the other to involve terrorism depending upon a subjective assessment of the potential of the act to create some sense of fear or insecurity in some section of the society. Such an approach, it may be observed with great veneration, may not be wholesome as it may ultimately result in every case of a serious offence landing in a Special Court and thereby rendering the ordinary courts substantially redundant. It ought not to be lost sight of that the legislature's repeal of the Suppression of Terrorist Activities (Special Courts) Act, 1975, doing away with the Schedule of the Anti-Terrorism Act, 1997 and also its retraction from the 'effect' through the fresh definition of 'terrorism' cannot be without any significance or purpose. That drastic

change of the definition manifestly indicated a change of meanings and of focus and such a change has to be given its proper effect. After all if the newly introduced term 'terrorism' is still to be interpreted in the same manner as the erstwhile term 'terrorist act' then there was hardly any occasion or need for the legislature to amend the definition and to bring about any change in the existing law in that regard. The legacy and interpretations pertaining to the Suppression of Terrorist Activities (Special Courts) Act, 1975 and of the original provisions of the Anti-Terrorism Act, 1997 have now to be shrugged off so as to correctly understand the new definition of 'terrorism' introduced through the latest amendment in the latter Act. The Hon'ble Supreme Court of Pakistan had itself declared in the above mentioned case of Mumtaz Ali Khan Rajban and another v. Federation of Pakistan and others (PLD 2001 SC 169) that the subject matters of the Suppression of Terrorist Activities (Special Courts) Act, 1975 and the Anti-Terrorism Act, 1997 were "different" and their respective applicability was "governed by different criteria".

17. We understand, and we observe so with all the respect at our command, that in the above mentioned cases the Hon'ble Supreme Court of Pakistan had, wittingly or otherwise, detracted or moved away from the principle of nexus so painstakingly carved out by itself in the case of Mehram Ali and others v. Federation of Pakistan and others (PLD 1998 SC 1445). -----

18. It may be advantageous to mention here that the

definition of 'terrorism' introduced in Pakistan in 2001 through the latest amendment in the Anti-Terrorism Act, 1997 proceeds on lines somewhat similar, if not identical, to the corresponding definitions contained in the relevant laws of Northern Ireland, United Kingdom, United States of America, Australia and India. Section 58 of the Northern Ireland (Emergency Provisions) Act, 1996 defined terrorism in the following words: -----Section 1 of the United Kingdom's Terrorism Act, 2000 reads as follows:-----

Section 802 of the Uniting and Strengthening America Act by Providing Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 of the United States of America defines "domestic terrorism" as follows: --- In Australia Section 5 of the Terrorism (Emergency Powers) Act, 2003 defines a 'terrorist act' in the following words: --- In India the Terrorist and Disruptive Activities (Prevention) Act, 1987 (Act No. 28 of 1987) defined a 'terrorist act' in section 3(1) thereof as follows: -- The Terrorist and Disruptive Activities (Prevention) Act, 1987 was subsequently repealed in India and was substituted by the Prevention of Terrorism Act, 2002 (Act No. 15 of 2002) and section 3 of the said Act provides as follows:---

19. The similarities, nay resemblances, in the definitions of a 'terrorist act' or 'terrorism' enacted in Northern Ireland, United Kingdom, United States of America, Australia, India and Pakistan are too striking to be merely coincidental and, therefore, in the larger interests of global harmony and communion their interpretations ought also not be different. ---- In the case

of Niranjan Singh Karam Singh Punjabi, Advocate v. Jitendra Bhimraj Bijja and others (AIR 1990 SC 1962) ----This, to us, appears to be an approach which is not only in complete harmony with the change of focus brought about by the new definition of 'terrorism' through the amended section 6 of the Anti-Terrorism Act, 1997 in Pakistan but is also in perfect accord with the global perceptions about the true nature of terrorism according to which the determinative factor is the design or purpose behind the act and not the presumptive effect created by the act upon those who were not even the targets of the private act. ----- the Hon'ble Supreme Court of India had reiterated in the case of Niranjan Singh Karam Singh Punjabi, Advocate v. Jitendra Bhimraj Bijja and others (AIR 1990 SC 1962) that: ---- In the subsequent case of Kartar Singh v. State of Punjab ((1994) 3 Supreme Court Cases 569) the Hon'ble Supreme Court of India reproduced the above mentioned passages from the judgments in the cases of Niranjan Singh Karam Singh Punjabi, Advocate v. Jitendra Bhimraj Bijja and others (AIR 1990 SC 1962) and Usmanbhai Dawoodbhai Memon v. State of Gujarat ((1988) 2 SCC 271) and commented upon them with approval and reiteration. The later case of Hitendra Vishnu Thakur and others v. State of Maharashtra and others (AIR 1994 SC 2623) can truly be described as a milestone in the context of identifying the true meanings of terrorism and the Hon'ble Supreme Court of India had observed in its judgment in that case as follows: ---- A similar approach was adopted by the Hon'ble Supreme Court of Pakistan in 1998 in the above mentioned case of Mehram Ali and others v. Federation of Pakistan and others (PLD 1998 SC 1445) by carving out the principle of nexus with the objects of the Anti-Terrorism Act, 1997. However, it appears that in the last few years the said principle has either been side tracked or placed on the back burner in our country and the law is not only being stretched in a different direction but the same is also often being misapplied and misused by the police and the subordinate courts. An appropriate and correct restatement of the relevant law for its proper application is, therefore, not only necessary but also a crying need so that the relevant law may be saved from being derailed from its real objectives.

20. By way of summing up we may observe that, keeping in view the latest definition of 'terrorism' contained in section 6 of the Anti-Terrorism Act, 1997, mere gravity or brutal nature of an offence does not provide a valid yardstick for branding the same as terrorism. In order to qualify as terrorism the motivation behind the offence has to be political in the extended sense of the word and, as provided in the United Kingdom law, "the use or threat is made for the purpose of advancing a political, religious or ideological cause" and the act has to be designed to destabilize the society at large. The history of crimes in the human society is replete with macabre, gruesome and horrifying offences shocking the society at large yet such crimes were never treated or accepted as terrorism because the motivation was personal and private. As against that even an unsuccessful attempt at sabotage of public supplies or services has readily been accepted as terrorism because the purpose behind the act is to destabilize the society at large. Even a petty

theft in a house in a street is likely to create a sense of insecurity in the people living in that street, a rape of a young girl is bound to send jitters in every family having young girls living in the relevant locality, a murder in the vicinity surely creates a grave sense of fear in the inhabitants of the area, a bloodbath in furtherance of an on-going feud shocks the society as a whole, a massive fraud in a bank may send shockwaves throughout the banking and financial sectors and an offence committed against a member of any profession may render the other members of that profession feeling vulnerable and insecure. But all such offences are ordinary crimes distinguishable from terrorism because for the former the motivation is personal and private whereas for the latter the purpose has to be to destabilize the society at large. In this backdrop a premature, speculative, presumptive and imaginary quantification of the effect of an action so as to determine the nature of the act as terrorism or not appears to be an unsure and subjective test and it would be safer and consistent to revert to the principle of nexus carved out by the Hon'ble Supreme Court of Pakistan which is not only now a statutory requirement but the same is also consistent with the first major enunciation of the relevant law by our Supreme Court and that too by a Bench larger than any other Bench deciding any of the other cases mentioned above.

21. ---------

22. Judged on the basis of the requirements of the amended provisions of section 6 of the Anti-Terrorism Act, 1997 and examined on the touchstone of the principle of nexus propounded by the largest Bench of the Hon'ble Supreme Court of Pakistan in the case of Mehram Ali and others v. Federation of Pakistan and others (PLD 1998 SC 1445), reiterated by an equally large Bench of it in the case of Jamat-i-Islami Pakistan through Syed Munawar Hassan, Secretary-General v. Federation of Pakistan through Secretary, Law, Justice and Parliamentary Affairs (PLD 2000 SC 111) and applied by it in the case of Ch. Bashir Ahmad v. Naveed Iqbal and 7 others (PLD 2001 SC 521) the case in hand, despite the brutality displayed by the culprits and the consequent horror, shock, fear and insecurity likely to be created by the savagery perpetrated by the offenders, has not appeared to us to be a case of terrorism as the motive for the alleged offences was nothing but personal enmity and private vendetta and the motivation on the part of the accused party was not to overawe or intimidate the government, etc. or to destabilize the society at large or to advance any sectarian cause, etc.. The intention of the accused party did not depict or manifest any 'design' or 'purpose' as contemplated by the provisions of section 6(1)(b) or (c) of the Anti-Terrorism Act, 1997 and, thus, the actus reus attributed to it was not accompanied by the necessary mens rea so as to brand its actions as terrorism triable exclusively by a Special Court constituted under the Anti-Terrorism Act, 1997. The stand taken before us by the learned Assistant Advocate-General appearing for the State also proceeds on the same lines and it is for these very reasons that the State has chosen not to oppose this petition. This writ petition is, therefore, allowed, the impugned order passed

by the learned Judge, Anti-Terrorism Court-II, Gujranwala on 04.10.2003 is declared to be without lawful authority and of no legal effect and the same is set aside, the application filed by the petitioner before the said court under section 23 of the Anti-Terrorism Act, 1997 is accepted and the petitioner's case is declared to be triable by a court of ordinary jurisdiction. The learned Judge, Anti-Terrorism Court-II, Gujranwala is directed to transmit the record of the petitioner's case to the learned District and Sessions Judge, Gujranwala forthwith for further proceedings in the matter. There shall be no order as to costs."

The said judgment passed by the Lahore High Court, Lahore (authored by one of us, Asif Saeed Khan Khosa, CJ, in his capacity as a Judge of that Court at that time) was initially set aside by this Court in the case of Mirza Shaukat Baig and others v. Shahid Jamil and others (PLD 2005 SC 530) but subsequently in the cases of Bashir Ahmed v. M. Siddique (PLD 2009 SC 11), Ahmad Jan v. Nasrullah and others (2012 SCMR 59) and Farooq Ahmed v. State and another (2020 SCMR 78) it was not only referred to with approval and relied upon by this Court but it was also held to be laying down correct law regarding the scope and meanings of 'terrorism' as defined in section 6 of the Anti-Terrorism Act, 1997.

9. Section 6 of the Anti-Terrorism Act, 1997 has been amended from time to time and in its present shape it provides as follows:

6. Terrorism. - (1) In this Act, "terrorism" means the use or threat of action where:

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

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

(c) the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians, including damaging property by ransacking, looting, arson, or by any other means, government officials, installations, security forces or law enforcement agencies:

Provided that nothing herein contained shall apply to a democratic and religious rally or a peaceful demonstration in accordance with law.

(2) An "action" shall fall within the meaning of subsection (1), if it:

(a) involves the doing of anything that causes death;

(b) involves grievous violence against a person or grievous bodily injury or harm to a person;

(c) involves grievous damage to property including government premises, official installations, schools, hospitals, offices or any other public place or

private property including damaging property by ransacking, looting or arson or by any other means;

(d) involves the doing of anything that is likely to cause death or endangers a person's life;

(e) involves kidnapping for ransom, hostage-taking or hijacking;

(ee) involves use of explosive by any device including bomb blast or having any explosive substance without any lawful justification or having been unlawfully concerned with such explosive;

(f) incites hatred and contempt on religious, sectarian, or ethnic basis to stir up violence or cause internal disturbance;

(g) involves taking the law in own hand, award of any punishment by an organization, individual or group whatsoever, not recognized by the law, with a view to coerce, intimidate or terrorize public, individuals, groups, communities, government officials and institutions, including law enforcement agencies beyond the purview of the law of the land;

(h) involves firing on religious congregations, mosques, imambargahs, churches, temples and all other places of worship, or random firing to spread panic, or involves any forcible takeover of mosques or other places of worship;

(i) creates a serious risk to safety of the public or a section of the public, or is designed to frighten the general public and thereby prevent them from

coming out and carrying on their lawful trade and daily business, and disrupts civic life;

(j) involves the burning of vehicles or any other serious form of arson;

(k) involves extortion of money ("bhatta") or property;

(l) is designed to seriously interfere with or seriously disrupt a communication system or public utility service;

(m) involves serious coercion or intimidation of a public servant in order to force him to discharge or to refrain from discharging his lawful duties;

(n) involves serious violence against member of the police force, armed forces, civil armed forces, or a public servant;

(o) involves in acts as part of armed resistance by groups or individuals against law enforcements agencies; or

(p) involves in dissemination, preaching ideas, teachings and beliefs as per own interpretation on FM stations or through any other means of communication without explicit approval of the government or its concerned departments.

(3) The use or threat of any action falling within subsection (2) which involves the use of firearms, explosive or any other weapon is terrorism, whether or not subsection (1) (c) is satisfied.

(4) In this section "action" includes an act or a series of acts.

(5) In this Act, terrorism includes any act done for the benefit of a proscribed organisation.

(6) A person who commits an offence under this section or any other provision of this Act, shall be guilty of an act of terrorism.

(7) In this Act, a "terrorist" means:-

(a) an individual who has committed an offence of terrorism under this Act, and is or has been concerned in the commission, preparation, facilitation, funding or instigation of acts of terrorism;

(b) an individual who is or has been, whether before or after the coming into force of this Act, concerned in the commission, preparation, facilitation, funding or instigation of acts of terrorism, shall be included in the meaning given in clause (a) above.

On the basis of the said definition of 'terrorism' and the precedent cases available on the subject all the learned counsel for all the parties as well as all the learned law officers, except the learned Attorney-General for Pakistan, have argued before us in unison that an act of terrorism is not to be confused with an ordinary crime committed in the background of a personal enmity or private vendetta and gravity of an offence, shocking nature of the violence committed or mere fear and insecurity generated or likely to be generated by commission of a brutal, gruesome or heinous act are not to be treated as the yardsticks for determining whether an action is to be labeled as terrorism or not and only that action is to be accepted as terrorism which action falls within the purview of subsection (2) of section 6 and

such action is committed with a 'design' or 'purpose' specified in clauses (b) or (c) of subsection (1) of section 6 of the Anti-Terrorism Act, 1997. The learned Attorney-General for Pakistan has, however, submitted his written submissions and through the same he has maintained that "all "actions" that fall within the contemplation of sub-section (3) of section 6 would have to be registered as an act of terror, within the meaning of terrorism. However punishments contemplated by Sec 7 would be awarded, subject to subsequent evidence being led, that, the 'actions' where weapons are used and has caused fear/terror etc., it would be termed as 'terrorism', as defined in section 6(1), (2) and (3), else, the person could be acquitted to the extent of the charge of terrorism. In other cases not involving the contemplation of subsection (3) of section 6, the FIR cannot be lodged under the provisions of ATA, however, where during investigation and available evidence, any of the provision of sub section (2) of section 6 comes to surface, Anti-Terrorism Act can be included." The main thrust of the stand taken by the learned Attorney-General is that in terms of subsection (3) of section 6 of the Anti-Terrorism Act, 1997 use or threat of use of firearms, explosive or any other weapon for all the actions mentioned in subsection (2) of section 6 of that Act ipso facto constitutes terrorism and an FIR can be registered on that basis in respect of the offence of terrorism but conviction for committing the offence of terrorism can be recorded at the end of the trial only if the alleged action is proved through evidence to have been taken with the 'design' or 'purpose' specified in clauses (b) and (c) of subsection (1) of section 6 of the Anti-Terrorism Act, 1997. According to the learned Attorney-General subsections (1), (2) and (3) of section 6 of the said Act are to be read in conjunction and for determining whether an action constitutes terrorism or not it is the action with its actual or likely consequences which is relevant and not the intention behind the action which remains hidden in the mind of the perpetrator of the action. However, in the same written submissions the learned Attorney-General has also observed that "terrorism as a concept is not 'ordinary' in even the way that intention, guilt and dishonesty are. Nor is it a term belonging to some science; its natural home is in polemical, ideological, and propagandist contexts or, less alarmingly, highly political ones." The learned Additional Prosecutor-General, Punjab has added that the provisions of subsection (3) of section 6 of the Anti-Terrorism Act, 1997 are quite problematic as they do not piece well with the remaining provisions of the said section as far as the matter of defining terrorism is concerned. According to him if the provisions of subsection (3) of section 6 of the Anti-Terrorism Act, 1997, as they are worded, are to be given effect then almost every offence in commission of which firearms, explosive or any other weapon is used or threatened to be used would constitute terrorism and such an approach would obliterate any distinction between the peculiar offence of terrorism and most of the run of the mill offences committed in the society in routine.

10. We have heard the learned counsel for the parties at some length and have attended to the relevant statutory provisions and all the precedent cases available on the subject so far. As the opinion of this Court has remained divided on the issue as to what constitutes terrorism in the context of section 6 of the Anti-Terrorism Act, 1997, therefore, it is imperative to examine and scrutinize all the precedent cases available on either side of the divide with care. In the following cases this Court

has held that the actions specified in subsection (2) of section 6 of the Anti-Terrorism Act, 1997 are to constitute the offence of terrorism only if such actions are accompanied by the 'design' or 'purpose' specified in clauses (b) or (c) of subsection (1) of section 6 of the said Act and it has consistently been maintained in these cases that an act of terrorism is not to be confused with the usual and run of the mill crimes committed in the background of any personal enmity or private vendetta and also that gravity of an offence, shocking nature of the violence committed or mere fear and insecurity generated or likely to be generated by commission of a brutal, gruesome or heinous offence are not to be treated as the determining factors for deciding whether an action is to be labeled and accepted as terrorism or not.

Mehram Ali and others v. Federation of Pakistan and others (PLD 1998 SC 1445)

"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 that there was no enmity or plausible reason for commission of the above offence, such a killing is an act of terrorism within the ambit of the Act and can lawfully be included in the Schedule, but if the murder is committed solely on account of personal enmity, such murder will have no nexus with the above provisions of the Act and will not be triable under the Act."

Jamat-i-Islami Pakistan through Syed Munawar Hassan, Secretary-General v. Federation of Pakistan through Secretary, Law, Justice and Parliamentary Affairs
(PLD 2000 SC 111)

" ---- to make an act punishable under the Act, it must be shown that the act bears nexus to sections 6, 7 and 8 of the Act."

Ch. Bashir Ahmad v. Naveed Iqbal and 7 others
(PLD 2001 SC 521)

"A person would commit a terrorist act if in order to, or if the effect of his actions will be "to strike terror or create a sense of fear and insecurity in the people, or any section of the people---". In the instant case as the facts of the case reveal, the alleged sprinkling of the spirit on the person of the victim was within the boundary walls of the appellant's house. It was not in public and, therefore, the element of striking terror or creating sense of fear and insecurity in the people, or any section of the people is not made discernible in the FIR and for that matter on the record of the case as a whole. Similarly

the perusal of the Schedule to the Act also indicates that the element of striking terror or creation of sense of fear and insecurity in the people or any section of the people by doing an act or thing by using bombs, dynamite or other explosive or inflammable substances etc. is a sine qua non for the attraction of the provisions of section 6 of and the Schedule to the Act---. In the instant case no doubt the offence committed was certainly most heinous in nature but it does not mean that it does qualify to be a terrorist act within the contemplation of section 6 or the Schedule to the Act."

Muhammad Mushtaq v. Muhammad Ashiq and others
(PLD 2002 SC 841)

"It would thus appear that ordinary crimes are not to be dealt with under the Act. A physical harm to the victim is not the sole criterion to determine the question of terrorism."

Fazal Dad v. Col. (Rtd.) Ghulam Muhammad Malik and others
(PLD 2007 SC 571)

"In case the aforesaid provisions and contents of F.I.R. are put in a juxta position then section 6 of the said ordinance is not attracted. It is a settled law that preamble is always key to interpret the statute. The very object to promulgate the Anti-Terrorism Act, 1997 was to control the acts of terrorism, sectarian violence and other heinous offences as defined in section 6 of the Act and their speedy trial to bring the offence within the ambit of the act, it is essential to examine that the said offence should have nexus with the object of the act and offences covered by its relevant provisions such as section 6. It is a settled law that provisions of law must be read as a whole in order to determine its true nature, import and scope ---. It is abundantly clear that in case the provisions of act be read as a whole with the offence which creates a sense of fear or insecurity in society, causes of death or endangers a person's life commits an act of vehicle snatching or lifting, damage to or disturbance of, State or private property failing to create panic charging bhatta or criminal trespasser (Illegal qabza). As mentioned above, the ingredients of aforementioned offences have no nexus while reading the aforesaid provisions along with the contents of the impugned FIR It is pertinent to mention here that nothing was on record to show that occurrence created terror, panic or sense of insecurity among people by securing possession of the land in question by the respondent. The word illegal Qabza must be read with the previous words used by the legislature in clause (d) of section 6 of the Anti-Terrorism Act, 1997 on well-known principle that statutory provisions ought not to be construed in isolation and courts always to lean towards reasonable interpretation of statute. The learned High Court was justified to examine the scope of terrorism at the time of deciding the constitutional petition with regard to the transfer of case from special court to ordinarily court on the well known maxim that legislative intent as a guide to interpretation of statute should be gathered primarily from words used in statute. The case in hand did not qualify to be a terrorist act within the contemplation of section 6 or schedule

of Anti-Terrorism Act and the learned High Court was justified to transfer the case to the ordinary court. It is settled law that promulgation of special law by itself is not sufficient to supersede provisions of law contained in Cr.P.C. In case, the offence has no nexus with the parameters of special law, then general law will apply. The judgment of the learned High Court is in consonance with the law laid down by this court in various pronouncements. See Mehram Ali's case PLD 1998 SC 1445 and Jamat-e-Islami Pakistan's case PLD 2000 SC 111."

Mohabbat Ali and another v State and another
(2007 SCMR 142)

"In order to determine as to whether an offence would fall within the ambit of section 6 of the Act, it would be essential to have a glance over the allegations made in the FIR, record of the case and surrounding circumstances. It is also necessary to examine that the ingredients of alleged offence has any nexus with the object of the case as contemplated under sections 6, 7 and 8 thereof. Whether a particular act is an act of terrorism or not, the motivation, object, design or purpose behind the said Act is to be seen. It is also to be seen as to whether the said Act has created a sense of fear and insecurity in the public or any section of the public or community or in any sect. Examining the case in hand on the above touchstone, it is manifest on the face of it that the alleged offence took place because of previous enmity and private vendetta. The incident admittedly took place inside the fields of sugarcane and Banana cultivated in jungle about 14/15 miles away from the main road. Motive as defined in the FIR is also to be given a specific attention which indicates that there was a personal enmity between the parties over the land and murder case of Haries of complainant."

"From the entire resume, it is manifest on record that intention of the petitioner was not at all to create sense of insecurity or in destabilize the public-at-large or to advance any sectarian cause. Thus, we are of the view that the design or purpose of the offence as contemplated by the provisions of section 6 of the Act is not attracted. Reference can be made to the case of this Court reported as Bashir Ahmad v. Naveed Iqbal PLD 2001 SC 521 whereby sprinkling of spirit on the person of victim was made within the boundary walls of the house of appellant which was not a public place and accordingly the element of a striking terror or creating sense of fear and insecurity in the people or any section of the people was found missing, therefore, the order of transferring the case to the Court of learned Sessions Judge passed by the High Court was upheld."

Tariq Mahmood v. State
(2008 SCMR 1631)

"In our opinion, the case of the respondent accused, who have clean past, rests on a lower pedestal than that on terrorists and sectarian criminals who killed innocent persons either to weaken the State or to cause damage to the parties of the rival sect. The terrorist or the sectarian killers do not have any

personal grudge or motive against the innocent victims. The instant case is clearly distinguishable as admittedly a feud existed between the parties over a piece of land prior to the occurrence."

Muhammad Yaqoob and others v. The State and others
(2009 SCMR 527)

"Though learned counsel for the appellants has not specifically challenged convictions of the appellants under section 7 of the Anti-Terrorism Act, 1997 and occurrence in the case allegedly took place in Samoote Bazaar, opposite U.B.L. Branch, wherein three persons were done to death and another sustained grievous injuries yet, in the absence of any stipulation in the FIR to the effect that the incident had struck terror or panic in the public and in the absence of any evidence to the effect that the incident had created sense of fear or insecurity in the public or any section of public or community or any sect, it could not have been contended that section 7 of the Anti-Terrorism Act, 1997 was attracted in the instant case. It would be pertinent to mention here that in order to bring a particular act within the ambit of section 7, it is to be seen as to whether the said act had created sense of fear or insecurity in public or in any section of public or community or any sect, or the occurrence was simply the result of previous enmity or personal vendetta.

Since in the instant case it has been established that motive behind the incident was previously strained relations between the parties and an iota of evidence has not been brought on record to show that object was not to kill the deceased but also to strike terror or create sense of fear or insecurity in the general public or community or any sect thereof, therefore, in our view section 7 of the Anti-Terrorism Act was not attracted. In the case of Tariq Mahmood v. The State 2008 SCMR 1631, the occurrence had allegedly taken place in a Bazaar which was heavily populated and it was claimed that due to firing there was stampede in the traversers yet, since it was found that there was no evidence that the act of respondents/accused struck terror amongst the masses and the place of occurrence was not a busy populated area rather it took place on a service road, therefore, the provisions of Anti-Terrorism Act were not attracted. In the case of Muhammad Idrees and others v. The State 2008 SCMR 1544, occurrence took place on the bank of canal. It was not established on record that the act done by the accused persons had created sense of fear or insecurity in public, therefore, it was held that section 7 of the Anti-Terrorism Act was not attracted. In the case of Mohabbat Ali v. The State 2007 SCMR 142, the alleged incident took place because of previous enmity and private vendetta inside the fields of sugarcane and banana, about 14/15 miles away from main road, it was held that intention of the accused was not at all to create sense of fear or insecurity or to destabilize public at large or to advance any sectarian cause and design or purpose of offence as contemplated by provisions of section 6 of Anti-Terrorism Act, 1997 was not attracted. In the case of Fazal Dad v. Col. (Retd.) Ghulam Muhammad Malik PLD 2007 SC 571, since nothing was brought on record to show that the occurrence created terror, panic or

sense of insecurity among people by securing possession of land in question by the accused persons, therefore, the case did not qualify to be a terrorist act within the contemplation of section 6 of the Anti-Terrorism Act or its schedule. Convictions and sentences recorded against the appellants under section 7 of the Anti-Terrorism Act, are, therefore, set aside."

Bashir Ahmed v. M. Siddique
(PLD 2009 SC 11)

"In order to determine as to whether an offence would fall within the ambit of section 6 of the Anti- Terrorism Act, 1997, it would be essential to have a glance over the allegations made in the FIR record of the case and surrounding circumstances. It is also necessary to examine that the ingredients of alleged offence have any nexus with the object of the case as contemplated under sections 6, 7 and 8 thereof. Whether a particular act is an act of terrorism or not, the motivation, object, design or purpose behind the said act is to be seen. It is also to be seen as to whether the said act has created a sense of fear and insecurity in the public or any section of the public or community or in any sect. Examining the case in hand on the above touchstone, it is manifest on the face of it that the alleged offence took place because of previous enmity and private vendetta. A perusal of the record would reveal, that occurrence has taken place in front of the `haveli' of the respondents, situated in village 'Fatoowala'. The motive for the occurrence is enmity inter-se the parties on account of some previous murders. In this view of the matter, we are of the opinion that since motive was enmity inter-se the parties, the application of section 7 of the Act, which primarily requires the spread of sense of insecurity and fear in the common mind is lacking in the present case. The occurrence neither reflects any act of terrorism nor it was a sectarian matter instead the murders in question were committed owing to previous enmity between the two groups. The present case, as observed above, does not fulfil the requirements laid down in the judgment titled as "Basharat Ali v. Special Judge Anti-Terrorism Court-II, Gujranwala (PLD 2004 Lah.199), wherein it was held that fear or insecurity must not be a by-product, fall out or unintended consequence of a private crime. As such, creation of fear and insecurity in the society is not itself terrorism unless the same is coupled with the motive. The gist of the citation is that act of terrorism desires to be determined from the yardstick and scale of motive and object, instead of its result or after effect. From the facts of case, the definition of terrorism is not attracted as the said offence has neither created any threat to coerce or intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society. Reference in this regard can be made on Ch. Bashir Ahmad v. Naveed Iqbal and 7 others (PLD 2001 SC 521), Muhammad Mushtaq v. Muhammad Ashiq and others (PLD 2002 SC

841) and Basharat Ali v. Special Judge, Anti-Terrorism Court-II, Gujranwala (PLD 2004 Lah. 199) ."

Ahmad Jan v. Nasrullah and others
(2012 SCMR 59)

"In Bashir Ahmed v. State (PLD 2009 SC 11) by considering the law laid down in Basharat Ali v. Special Judge, Anti-Terrorism Court-II (PLD 2004 Lahore 199), a judgment authored by one of us (Asif Saeed Khan Khosa, J), Bashir Ahmed v. Naveed Iqbal and others (PLD 2001 SC 521) and Muhammad Mushtaq v. Muhammad Ashiq and others (PLD 2002 SC 841), the case in question was held not to be triable by a Special Court established under the Anti-Terrorism Act, 1997 because "The motive for the occurrence is enmity inter se the parties on account of some previous murders. In this view of the matter, we are of the opinion that since motive was enmity inter se the parties, the application of section 7 of the Act, which primarily requires the spread of sense of insecurity and fear in the common mind is lacking in the present case. The occurrence neither reflects any act of terrorism nor it was a sectarian matter instead the murders in question were committed owing to previous enmity between the two groups.""

Malik Muhammad Mumtaz Qadri v. The State and others
(PLD 2016 SC 17)

"The next question to be considered is as to whether by committing the murder of Mr. Salman Taseer, the then Governor of the Province of the Punjab, the appellant had also committed the offence of 'terrorism' as defined by section 6 of the Anti-Terrorism Act, 1997 or not which offence is punishable under section 7(a) of the said Act. A plain reading of section 6 of the Anti-Terrorism Act, 1997 shows that while defining 'terrorism' the said section bifurcates the same into two parts, the mens rea for the offence falling in section 6(1)(b) or (c) and the actus reus of the offence falling in section 6(2) of the Act and in order to attract the definition of terrorism in a given case the requisite mens rea and actus reus must coincide and coexist. The provisions of section 6(5), (6) and (7) of the Act also indicate that there may be some other actions of a person which may also be declared or recognized as acts of terrorism by some other provisions of the same Act. Restricting ourselves to the provisions of section 6 of the Anti-Terrorism Act, 1997 for the present purposes we note that in a case where the action involves the doing of anything that causes death [section 6(2)(a)] and such causing of death 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 [section 6(1)(b)] or such causing of death is for the purpose of advancing a religious, sectarian or ethnic cause [section 6(1)(c)] there the causing of death of the victim is to be accepted and treated as terrorism triable exclusively by an Anti-Terrorism Court. As far as the case in hand is concerned the action of Malik Muhammad Mumtaz Qadri appellant involved firing at Mr. Salman Taseer and thereby causing his death and, thus, his actus reus fell within the ambit of section 6(2)(a) of the Anti-

Terrorism Act, 1997. As regards the appellant's mens rea he had himself stated in his statement recorded by the trial court under section 342, Cr.P.C. that the murder of Mr. Salman Taseer committed by him was "a lesson for all the apostates, as finally they have to meet the same fate". That statement of the appellant clearly established that he not only wanted to punish Mr. Salman Taseer privately for the perceived or imagined blasphemy committed by him but the appellant also wanted to send a message or teach a lesson to all others in the society at large who dared to follow Mr. Salman Taseer's suit. In this view of the matter the causing of death of Mr. Salman Taseer by the appellant was surely designed to intimidate or overawe the public or a section of the public or to create a sense of fear or insecurity in the society so as to attract the requisite mens rea contemplated by section 6(1)(b) of the Anti-Terrorism Act, 1997. Apart from that it cannot be seriously contested that the appellant had committed the murder of Mr. Salman Taseer for the purpose of advancing a religious cause and, thus, even the mens rea contemplated by section 6(1)(c) of the Anti- Terrorism Act, 1997 stood fully attracted to the case of the appellant. In these circumstances we have entertained no manner of doubt that the action of the appellant and the intention, design or purpose behind such action fully attracted the definition of terrorism contained in section 6 of the Anti-Terrorism Act, 1997 and, therefore, he was correctly and justifiably punished by the trial court under section 7(a) of the said Act for committing the offence of terrorism. In paragraph No. 44 of the impugned judgment the Islamabad High Court, Islamabad had set aside the appellant's conviction and sentence recorded by the trial court under section 7(a) of the Anti-Terrorism Act, 1997 on the sole ground that sufficient evidence had not been brought on the record by the prosecution to establish that the murder committed by the appellant had in fact created any sense of fear or insecurity in the society. We have found such an approach adopted by the Islamabad High Court, Islamabad vis-a-vis the offence of terrorism to be utterly misconceived. The provisions of section 6(1)(b) of the Anti-Terrorism Act, 1997 quite clearly contemplate creation of a sense of fear or insecurity in the society as a design behind the action and it is immaterial whether that design was actually fulfilled or not and any sense of fear or insecurity was in fact created in the society as a result of the action or not. It is the specified action accompanied by the requisite intention, design or purpose which constitutes the offence of terrorism under section 6 of the Anti-Terrorism Act, 1997 and the actual fallout of the action has nothing to do with determination of the nature of offence. In this view of the matter we find ourselves in agreement with the learned Advocate-General, Islamabad that Malik Muhammad Mumtaz Qadri appellant's acquittal by the Islamabad High Court, Islamabad from the charge under section 7(a) of the Anti-Terrorism Act, 1997 is liable to be set aside and consequently his conviction for the said offence recorded by the trial court needs to be restored."

Khuda-e-Noor v. The State
(PLD 2016 SC 195)

"The crucial question involved in this appeal is as to whether the learned Sessions Judge, Mastung was justified in holding that the case in hand was one of honour killing and, thus, it was a case of "terrorism" attracting the exclusive jurisdiction of an Anti-Terrorism Court or not. It also needs to be examined as to whether the High Court of Balochistan, Quetta was justified in declaring in the case of Gul Muhammad (supra) that by virtue of the provisions of section 6(2)(g) of the Anti-Terrorism Act, 1997 all cases of honour killing are to be tried by an Anti-Terrorism Court. We have minutely gone through the said judgment passed by the High Court of Balochistan, Quetta and have found that for holding that all cases of honour killing attracted the definition of "terrorism" the High Court had only relied upon the provisions of section 6(2)(g) of the Anti-Terrorism Act, 1997 without appreciating that by virtue of the provisions of section 6 of the Anti-Terrorism Act, 1997 any action falling within any of the categories of cases mentioned in subsection (2) of section 6 of the Anti-Terrorism Act, 1997 could not be accepted or termed as "terrorism" unless the said action was accompanied by a "design" or "purpose" specified in section 6(1)(b) or (c) of the said Act. If the interpretation of section 6(2)(g) of the Anti-Terrorism Act, 1997 advanced by the High Court of Balochistan, Quetta in the said judgment were to be accepted as correct then all cases of a person taking the law in his own hands are to be declared or accepted as cases of terrorism but that surely was not the intention of the legislature. The provisions of section 6 of the Anti-Terrorism Act, 1997 which define "terrorism" clearly show that the said section is divided into two main parts, i.e. the first part contained in section 6(1) (b) and (c) of the said Act dealing with the mens rea mentioning the "design" or the "purpose" behind an action and the second part falling in section 6(2) of the said Act specifying the actions which, if coupled with the mens rea mentioned above, would constitute the offence of "terrorism". This scheme of section 6 of the Anti-Terrorism Act, 1997 had unfortunately not been considered by the High Court of Balochistan, Quetta while rendering the judgment mentioned above and, thus, we have every reason to declare that the said judgment passed by the High Court of Balochistan, Quetta had not laid down the law correctly and had in fact misconceived the legal position contemplated by section 6 of the Anti-Terrorism Act, 1997."

"The case in hand was a case of a private motive set up in the FIR and during the trial the motive set up in the FIR was changed by the prosecution and an element of honour killing was introduced but even that did not change the character of the offence which was nothing but a private offence committed in the privacy of a home with no design or purpose contemplated by section 6(1)(b) or (c) of the Anti-Terrorism Act, 1997. We have thus, entertained no manner of doubt that the allegations levelled against the appellant and his co-accused in the present criminal case did not attract the jurisdiction of an Anti-Terrorism Court, the learned Sessions Judge, Mastung was not justified

in transferring the case to an Anti-Terrorism Court and the High Court was also not legally correct in dismissing the appellant's revision petition."

Sagheer Ahmed v. The State and others
(2016 SCMR 1754)

"High Court in the impugned judgment has observed as follows:

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

11. Cumulative effect of the averments of FIR, surrounding circumstances and other material available on record have replicated that offence having been committed on account of previous old enmity with a definite motive. The alleged offence occurred at Faiz Wah bridge, which is not situated in any populated area, consequently, the allegations of aerial firing have not appeared to us to be a case of terrorism as the motive for the alleged offence was nothing but personal enmity and private vendetta. The intention of the accused party did not depict or manifest any act of terrorism as contemplated by the provisions of the Anti-Terrorism Act, 1997. Consequently, we are of the considered view that complainant has failed to produce any material before the Investigating Officer that at the time of occurrence sense of fear, panic, terror and insecurity spread in the area, nevertheless it was a simple case of murder due to previous enmity, thus, alleged offence does not fall within purview of any of the provisions of Anti-Terrorism Act, 1997."

4. We note that observation made by the High Court is based upon the record of the case and no misreading in this respect was pointed out before us."

Ch. Shaukat Ali v. Haji Jan Muhammad and others
(2016 SCMR 533)

"In view of the discussion in Para 7 above and the report of police under section 173, Code of Criminal Procedure, prima facie it appears that altercation between the parties occurred all of a sudden when the procession of the

complainant side on winning the election was passing in front of house of Haji Jan Muhammad accused and there was no prior 'object/ design.'

10. During the course of arguments, we have observed that basic premise of the arguments of learned counsel for the petitioner pivots around the judgment of a Five Member Bench of this Court in Kashif Ali v. The Judge, Anti-Terrorism Court No.II, Lahore and others (PLD 2016 SC 951), wherein the issue of jurisdiction has been dealt with. It is appropriate to reproduce the relevant portion of Para 12 of the said judgment for ready reference:

"12. In order to determine whether an offence falls within the ambit of Section 6 of the Act, it would be essential to have a glance over the allegations levelled in the FIR, the material collected by the investigating agency and the surrounding circumstances, depicting the commission of offence. Whether a particular act is an act of terrorism or not, the motivation, object, design or purpose behind the said Act has to be seen "

11. We have gone through the allegations levelled in the FIR, the material collected by the investigating agency during course of investigation and other surrounding circumstances as discussed above and are of the considered view that present case is not triable by a Court established under the provisions of Anti-Terrorism Act, 1997."

Waris Ali and 5 others v. The State
(2017 SCMR 1572)

"Under the jurisprudence, "mens rea" is an essential ingredient of every crime, needs to be attended first by the Courts of law however, in cases of terrorism or terrorist activities the "mens rea" becomes twofold, i.e. the first object is to commit a crime, while the primary object of "mens rea" in the second fold speaks of terrorism related ideology, purpose and object, the most nefarious and detestable designs to commit crimes, creating sense of fear, insecurity and instability in the society and community with the ultimate object to destabilize the State as a whole. The true and perceivable object of this second "mens rea" is to create chaos, large scale disturbances, widespread sense of insecurity in the society/public and to intimidate and destabilize the State as a whole by means of terrorist activities.

10. In cases of this nature, "mens rea" is essentially with an object to accomplish the act of terrorism and carrying out terrorist activities to overawe the State, the State Institutions, the public at large, destruction of public and private properties, make assault on the law enforcing agencies and even at the public at large. The ultimate object and purpose of such acts is to terrorize the society or to put it under constant fear while in ordinary crimes committed due to personal vengeance/blood feud or enmity, the element to create fear or sense of insecurity in the society, public by means of terrorism is always missing.

11. True, that the offences contained in the Schedule to the Anti-Terrorism Act would fall within the definition of terrorism and terrorist activities but the

crimes committed due to private revenge or to say traditional crimes, cannot be dragged into the fold of terrorism and terrorists activities.

12. The mere fact that the crimes for personal motive are committed in a gruesome or detestable manner, by itself would not be sufficient to bring the acts within the meaning of terrorism or terrorist activities. The Courts of law should not lose sight of the fact that terrorism and terrorist activities are committed and are carried out by a person, group of persons and well equipped organizations, whose primary aim and object is to destabilize the society and the State as a whole through such activities. The object and "mens rea" behind such activities is clearly spelled out from the nature of the crime committed, which must be attended to by the Courts with a deep judicial thought, as in the latter category the sole object/purpose in committing different crimes is to cause alarm, dread, fright inducing sense of insecurity in the mind of the people.

13. The acts of terrorism and terrorist activities are committed and carried out in a wolfish manner by terrorists and terrorist groups, to whom training and skills are imparted, their brainwash is made in a planned manner so that, while committing gruesome and sickening crimes, they have to act in cruel manner and in pursuance of creating terror, the prime and ultimate object to be accomplished. The suicidal attacks and blasts in busy markets/business places, hospitals, mosques, other religious and educational institutions where peoples are slaughtered/butchered and their limbs are blown apart through bomb blast, are some of the instances of such activities, conveying dreadful message to the community/ society at large of terror, for no motive other than the one to create fear and sense of insecurity.

14. Albeit, murder, attempted murder, causing bodily harm or hurt and damage to property and some other offences have been included in the Third Schedule, appended to the Anti-Terrorism Act however, on plain reading, it becomes apparent that these offences are triable by the Special Courts, constituted under the Special Act but, there is no reference either expressed or implied in the Schedule that the Special Court shall award punishment under section 7 read with section 6 of the Act to accused persons charged for such crimes. There is another category of offences, which are squarely mentioned in the substantive provision of section 7 read with section 6 of the Special Act, which are specifically described to be acts of terrorism and shall fall within that definition however, the qualifying words, attached thereto, create a subtle distinction between the ordinary crimes, committed out of personal revenge, enmity or private motive and those committed for the object of creating terror. This aspect needs to be interpreted and construed in a meaningful and objective manner so that the two categories of crimes i.e. ordinary crimes and those related to terrorism, are neither mixed up nor intermingled because construction placed on it at random without judicial thoughts, the cardinal principle relating to construction of Statute, would be defeated and ordinary crimes having no nexus with terrorism or terrorist activities would be incorrectly or wrongly placed in the grey category of crimes, which is not the object and intent of the

Legislature. If ordinary crimes committed due to personal revenge or motive are given the colour of terrorism or terrorist activities, hundreds and hundreds of Criminal Courts (Sessions Courts) and other Courts would be rendered inoperative and their vested jurisdiction would be taken away for no justifiable reason. The Prosecution and disgruntled complainants have been noticed making crude attempts to paint an ordinary crime as an act of terrorism so that the rival/opposite party is put to maximum mental agony. Here, it becomes the duty of the Court of law to draw a fine distinction between two kinds of crimes, which are definitely pole apart."

"19. Keeping in view the above narrative, it is thus essential to look at the legislation and the new enactments, as to how these were introduced and what was the purpose and object of the same. The conventional and ordinary crimes of murder, hurt, etc. were being committed due to personal motives however, in committing these crimes unlike in the past, where the same were being committed through clubs, sharp weapons, shotguns or non-automatic rifles, the old crime weapons were substituted by sophisticated weapons, fully or semi automatic which fell in the hands of the majority of the peoples. Now invariably these crimes are committed with modern weapons, which has no doubt a devastating effect. However, this category of crimes is committed due to longstanding blood feud and is the result of personal motive. There is no intention (mens rea) in committing these crimes to create fear, terrorize the society/ community at large or to put it under constant fear and terror. In terrorism cases, evil elements are always persuasive factor and integral parts of it, therefore, due care and caution shall have to be observed by the Courts so that ordinary crimes might not be pushed to the grey area of terrorism or terrorist activities to be dealt with under the law, meant for a particular class of peoples, group of persons/organizations, which are to be treated altogether differently under the special law. The careful reading of all the relevant provisions of Anti-Terrorism Act, 1997 would show that the sole and primary object of the same is to curb and eliminate terrorism and terrorist activities and also the groups involved in the same, besides to eliminate the sectarian and factional violence committed with the same object therefore, ordinary crimes due to personal motive or revenge shall not be taken at par with acts of terrorism or terrorist activities, the sole object of which is nothing but to terrorize the society/community and the State as a whole. There is a sky high difference between the crimes of the old category and the new one, for which special law has been enacted."

"30. In the present case, besides many infirmities highlighted in the earlier paras of the judgment, it appears that the noose was thrown wider, the act/acts, the crimes committed and executed were the consequence of personal motive and in the course of the transaction no element of terrorism defined by Legislature was involved, although it was gruesome in nature, however, the punishment provided under section 302(a) and (b), P.P.C. is also death sentence besides compensation too was awardable under section 544-A, Cr.P.C. Therefore, in the matter of punishment there is no marked

distinction, if the penal provision of P.P.C. is applied. The parties are having a blood feud since long and the object to be achieved was to take revenge for the previous murder and attempted murder, therefore, in our considered view, both the Courts below have not taken due care by applying correct provision of law to the established facts of the case. The construction on the provisions of Anti-Terrorism Act and the principle laid down in the cases cited at the bar i.e. Shahbaz Khan alias Tippu v. Special Judge Anti-Terrorism Court (PLD 2016 SC 1) and Kashif Ali v. The Judge Anti-Terrorism Court, No.II, Lahore (PLD 2016 SC 951) proceeds on different premises, both legal and factual and are not attracted to the facts and circumstances of the present case."

Sajid Rasheed Qureshi v. Munawar Ahmad
2017 SCMR 162)

Amjad Ali and others v. The State
(PLD 2017 SC 661)

"The last aspect of this case highlighted in the leave granting order is as to whether the courts below were justified in convicting and sentencing the appellants for an offence under section 7(a) of the Anti-Terrorism Act, 1997 or not. We note in that context that a mere firing at one's personal enemy in the backdrop of a private vendetta or design does not ipso facto bring the case within the purview of section 6 of the Anti-Terrorism Act, 1997 so as to brand the action as terrorism. There was no 'design' or 'object' contemplated by section 6 of the Anti-Terrorism Act, 1997 involved in the case in hand. We further note that by virtue of item No. 4(ii) of the Third Schedule to the Anti-Terrorism Act, 1997 a case becomes triable by an Anti-Terrorism Court if use of firearms or explosives, etc. in a mosque, imambargah, church, temple or any other place of worship is involved in the case. That entry in the Third Schedule only makes such a case triable by an Anti-Terrorism Court but such a case does not ipso facto become a case of terrorism for the purposes of recording convictions and sentences under section 6 read with section 7 of the Anti-Terrorism Act, 1997. The case in hand had, thus, rightly been tried by an Anti-Terrorism Court but the said Court could not have convicted and sentenced the appellants for an offence under section 7(a) of the Anti-Terrorism Act, 1997 as it had separately convicted and sentenced the appellants for the offences of murder, etc. committed as ordinary crimes."

Abdul Nabi v. The State
(2017 SCMR 335)

"After hearing the learned counsel for the parties and going through the record we have observed that the case in hand was not a case of terrorism but was a case of a private offence committed in secrecy. The "design" or "purpose" provided for by section 6 of the Anti-Terrorism Act, 1997 were non-existent in the present case and apparently there was no intention on the part of the appellant to create a sense of fear or insecurity in the public at large. Apart from that in view of the conclusions which are to follow in the later part of this judgment the case in hand was not a case of a gang-rape and, thus, even

from that angle the Schedule to the Anti-Terrorism Act, 1997 did not stand attracted to the present case. In this view of the matter we are of the considered opinion that the courts below were not justified in convicting and sentencing the appellant for the offence under section 7(a) of the Anti-Terrorism Act, 1997."

Province of Punjab through Secretary Punjab Public Prosecution Department and another v. The State

(PLD 2018 SC 178)

"The preamble of the Act, 1997 clearly indicates that the Act, 1997 was promulgated for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences. So, in the cases of the terrorism, the mens-rea should be with an object to accomplish the act of terrorism and carrying out terrorist activities to overawe the state, the state institutions, the public at large, destruction of public and private properties, make assault on the law enforcing agency and even at the public at large in sectarian matters. The ultimate object and purpose of such act is to terrorize the society but in ordinary crimes committed due to personal vendetta or enmity, such elements are always missing so the crime committed only due to personal revenge cannot be dragged into the fold of terrorism and terrorist activities. The same was the view in the case of Mehram Ali v. Federation of Pakistan (PLD 1998 SC 1445) passed by a full bench (five members bench) of this Court.

After the amendment the term "design" was used in Section 6 of the Act, which has widened the scope of the Act. The word "design" was substituted to see that if the act is designed to create sense of fear or insecurity in the society then the Anti-Terrorism Court will have the jurisdiction to try the same. The word "design" can be considered the scheme and object in the mind of accused for its subsequent execution. So the Courts while deciding the question of attraction of the provisions of the Act, has to see the manners in which the incident had taken place including the time and place and should also take note of the fact of the act as to create terror or insecurity in the general public where the action of the accused results in striking terror or creating fear, panic and sense of insecurity among the people in a particular vicinity, it amounts to terror within the ambit of Section 6 of the Act. The Courts are required to see whether the terrorist act was such that it would have the tendency to create the sense of fear or insecurity in the mind of general public as well as psychological impact created in the mind of the society. The Courts can form opinion after going through the facts, circumstances and material so collected by the police in the case under discussion because the facts are varies from case to case."

Dilawar Mehmood alias Dulli and another v. The State

(2018 SCMR 593)

"During the course of arguments, learned counsel for the petitioner vehemently contended that the learned Courts below have also convicted the petitioner under the provisions of Anti-Terrorism Act, 1997 without adverting to the

fact that the said provisions are not attracted in the circumstances of the present case. Therefore, we have undertaken a detailed scrutiny of the evidence available on record in order to see whether the provisions of the Anti-Terrorism Act, 1997 are attracted to the present case or not. The occurrence in this case took place at cattle Market, Kundian. It is alleged by the prosecution that petitioner along with his co-accused Muhammad Arshad (P.O.) armed with Kalashnikovs came at the spot and made straight firing at deceased Muhammad Afzal, as a result whereof the latter succumbed to the injuries. The motive behind the occurrence as stated in the FIR was previous enmity. Having a look at the time of occurrence, place of occurrence, the mode and manner of the occurrence and the alleged motive between the parties coupled with other circumstances, we are of the considered view that provisions of Anti-Terrorism Act, 1997 are not attracted in this case and the learned Courts below have erred in law in convicting/sentencing the petitioner under the said provisions of the Anti-Terrorism Act, 1997."

11. As against the above mentioned cases there are many other cases decided by this Court wherein the fallout, consequences or effect of an action were held to determine as to whether the action amounted to terrorism or not. The following cases may be referred to in this category of cases:

Muhammad Ajmal v. The State
(2000 SCMR 1682)

"On the face of it this seems to be an act of terrorism fully falling within the ambit of section 6 of the Act. Admittedly, the petitioner has behaved in an inhuman manner who while entering inside the Court-room made indiscriminate firing at the complainant party and the personnel of the Court staff and killed complainant's brother namely, Abdul Ghafoor and Muhammad Munir Naib Qasid and severely injured Reader of the Court namely, Umar Draz, thus created a sense of fear and insecurity among the people. All the witnesses examined at trial have fully supported the case of prosecution against the petitioner on the score that he fired indiscriminately in the Court-room on the abovementioned persons and that he was apprehended there and then along with his .30 bore pistol the crime weapon. Not only this but 5 crime empties with lead bullets were recovered from the Courtroom which were sealed and sent for expert opinion along with crime weapon and the same were opined to have been fired from the said weapon."

Mumtaz Ali Khan Rajban and another v. Federation of Pakistan and others
(PLD 2001 SC 169)

In this case a Professor was gunned down because he did not allow a candidate appearing in an examination to adopt unfair means and this Court held that the act of the accused "struck terror and also created sense of fear and insecurity amongst people in general and Teachers/ Professors in particular" and, therefore, the case was adjudged as one of a terrorist act. It was observed by this Court as follows:

"It is contended with reference to Petition No. 1675 that the act of the petitioner does not fall within the ambit of "Terrorism Act" as defined in above-quoted

section. Precisely stated the contention is that Professor Abdul Latif, deceased only prevented the petitioner from copying in the examination hall and immediately thereafter nothing happened and that the threat, as contemplated in above section, shall precede before a public servant is prevented from discharging his lawful duties. Learned counsel argued that at the time of occurrence the deceased was not performing any official duty, as such, alleged threat in the examination hall did not bring the case within the purview of above-quoted section. The contention is devoid of any force. The threat was translated into reality, and the deceased was killed. It is not necessary that the force must have been used immediate after the threat. The act of the petitioner squarely fell within the scope of "terrorist act", for the reasons that as a consequences of said threat the deceased was killed. Besides in the examination hall, as well as, in the college every body knew about it. It struck terror and also created sense of fear and insecurity amongst people in general and Teachers/ Professors in particular."

Muhammad Mushtaq v. Muhammad Ashiq and others
(PLD 2002 SC 841)

In this case four persons were murdered by their adversaries when they were proceeding to the premises of the District Courts, Lahore to attend a hearing of a case and this Court held that to be a terrorist act because:

"The cumulative fall-out of the occurrence as to the time, place and manner of the act created a sense of the fear and insecurity in society. . The Lahore High Court fell in error by taking into consideration only the element of the alleged enmity existing between the parties. The High Court failed to advert to the terrorizing effect of the occurrence created on the minds of the people at large and of the concerned locality and passer-by who had no means to ascertain the background or motive for the crime or the enmity of the parties inter se."

Mst. Raheela Nasreen v. The State and another
(2002 SCMR 908)

In the said case a Batman of a Major serving in the Pakistan Army had allegedly murdered the Major in connivance with the Major's wife and this Court held that to be a case of terrorism by observing that:

"From a bare reading of section 6(b) of the Act, it is manifest that it is not necessary that the offence as alleged had in fact, caused terror as the requirement of the said provision of law could be adequately satisfied if the same was likely to strike terror or sense of fear and insecurity in the people.--- The learned Judges of the High Court came to the conclusion that a Batman who was a trusted person of an army officer if he kills as alleged his master in connivance with his (master's) wife, the same was likely to strike terror or feeling of insecurity among the army officers which reasonings in

our view are based on relevant consideration having logical nexus with the relevant law and do not suffer from any legal infirmity."

Muhammad Amin v. The State
(2002 SCMR 1017)

A person had been murdered in this case during a dacoity at a house and another person had been shot at and injured by the fleeing dacoits and this Court found the case to be of terrorism by observing that:

"The accused entered in the Baithak of the house of complainant armed with pistol with the purposes to commit robbery and in consequence to the resistance put by the father of complainant he was killed by the petitioner and further the petitioner with a view to create terror also fired at Nasir Ahmed in the street when he along with others, made an attempt to apprehend the petitioner and thus, the manner in which the petitioner while committing robbery took the life of deceased and caused fire-arm injuries to Nasir Ahmed in the broad daylight would squarely bring the case with the ambit of "terrorism" in term of section 6 of the Anti-Terrorism Act, 1997."

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

In this case an Advocate proceeding towards a court in his robes was done to death by his enemies and this Court decided that the case was one of terrorism. It was observed that:

"The alleged murder was committed in wanton, reckless and brutal manner and resultantly learned Advocate who was in his robe was done to death in Court vicinity. The gravity of the offence could not be diminished or minimized merely on the ground that alleged murder was not committed exactly within the Court premises as pressed time and again by the learned counsel for the respondents. It is to be noted that one Assistant Sub-Inspector of Police was seriously injured by means of fire-arms. We are not having the slightest doubt while holding that the alleged occurrence must have caused fear, panic and wave of sensation and thus the matter squarely falls within the ambit and jurisdiction of Special Court."

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

A person was murdered in this case by firing at and sprinkling petrol on him and resultantly his body was charred and some of his bones were also burnt. The said murder had been committed at a deserted place and was a consequence of an on-going personal enmity. Apparently this Court was not properly assisted in that case and the newly introduced definition of 'terrorism' had not been brought to the notice of the Court and in that background, while reproducing and expressly referring to the deleted and inapplicable

definition of a 'terrorist act' contained in the unamended section 6 of the Anti-Terrorism Act, 1997, this Court observed that:

"A reading of the above provision of the Act demonstrates that it is not necessary that the commission of murder must have created panic and terror among the people. The Courts have only to see whether the terrorist act was such which would have the tendency to create sense of fear or insecurity in the minds of the people or any section of the society. We have to see the psychological impact created upon the minds of the people. ---The moment such a charred dead body was brought for its funeral rites within the area of the deceased's residence, it would had certainly caused shock, fear and insecurity among the people of the vicinity. The body was completely charred and the onlookers must have felt fear and insecurity on seeing the barbaric and callous manner in which the human body was mutilated."

Naeem Akhtar and others v. The State and others
(PLD 2003 SC 396)

In this case an accused person's mother was medically treated by a doctor for an accidental fracture of her leg but the accused party felt dissatisfied with her treatment by the doctor and with that motive the said doctor was abducted by the accused party and was murdered. This Court found the case to be of a terrorist act as:

"The motive for the occurrence no doubt related to the personal grievance of the appellant who held the deceased responsible for imputation of leg of his mother but murder of the doctor after his abduction for such a motive would be an alarming situation for all doctors and would be a direct source of creating panic and terror in the medical profession."

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

Sh. Muhammad Amjad v. The State
(PLD 2003 SC 704)

A young Barrister was abducted for ransom and was killed in this case. This Court held the case to be one of terrorism by observing that:

"Even if by act of terrorism actual terror is not created, yet, above quoted subsection (b) [of section 6(1) of the Anti-Terrorism Act, 1997] will be applicable if it was likely to do any harm contemplated in the said

subsection. It is the cumulative effect of all the attending circumstances which provide tangible guidelines to determine the applicability or otherwise of said subsection. It is noted that about 300/400 people gathered at the house of the complainant and they would have destroyed the house of the appellant, if the police would not have intervened. Lawyer community was also annoyed over the murder of a member of their community and had passed a resolution in this regard.

Under the circumstances, the case was rightly assigned to Anti-Terrorism Court for trial."

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

In this case seven persons had been killed in a house at night in furtherance of a private enmity and this Court held the case to be one of terrorism. It was observed that:

"The venue of the commission of a crime, the time of occurrence, the motive which had led to the commission of a crime and the fact whether the said crime had or had not been witnessed by the public at large are not the only factors determining the issue whether a case did or did not fall within the parameters of the ATA of 1997. The crucial question is whether the said crime had or had not the effect of striking terror or creating a sense of fear and insecurity in the people or any section of the people. Needless to mention here that a crime of the kind in hand committed even in a remote corner does not remain unnoticed in the area in which is committed or even in the country on account of the print and electronic media. Seven persons being butchered in a house at night is not the kind of occurrence which would not create terror and horror in the people or any section of the people."

Abdul Ghafoor Bhatti v. Muhammad Saleem and others
(2003 SCMR 1934)

In this case after a dacoity in a house the dacoits kidnapped two minors for ransom who were subsequently retrieved after payment of the demanded ransom. This Court found the case to be that of terrorism and observed that:

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

points would not create terror among reasonable and prudent persons of the society."

Muhammad Farooq v. Ibrar and 5 others
(PLD 2004 SC 917)

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

9. In the case in the hand, though the motive is shown to be a previous enmity, yet paramount consideration to be taken note of is the culminative fall out of the occurrence. The incident having taken place in Mosque a public place particularly during Jumma prayer, where a large number of people usually assemble to offer prayer is sufficient to attract the provisions of section 6 of the Act. In such cases, the time, place and, manner of the act is of eminence importance."

Azizullah and another v. The State and another

(2005 SCMR 802)

"The main object to promulgate the Act was to prevent and control the acts of terrorism, sectarian violence, hijacking, hostages taking and kidnapping or abduction for ransom. It was for this purpose that the offences falling within the ambit of the Act were to be disposed of expeditiously by way of speedy trial. In the instant case, it is alleged that wife and children of the complainant were called by the petitioners in their house on the pretext of Qura'n Khani and were made hostages and demand of ransom for their release was made. Not only this but also the brothers and grand-daughter of complainant who went to the house of petitioners to rescue the above mentioned detenus were also made hostages. It is revealed from the investigation that police in order to rescue the hostages when arrived at the house of petitioners, firing was made upon them and in retaliation police also fired at the abductors resulting in the death of one of the abductors namely Rahimullah. As discussed above, the material available with the prosecution prima facie shows that the abductees were kidnapped and ransom of Rs. 5 lacs was paid and further demand of ransom was also made and that the abductees were made hostages by the petitioners in their house.

The above act created sense of fear or insecurity in the public as such the ingredients of sections 6 and 7 of the Act are attracted."

Mirza Shaukat Baig and others v. Shahid Jamil and others

(PLD 2005 SC 530)

"The language as employed in the section is unambiguous, plain and simple which hardly requires any scholarly interpretation and is capable enough to meet all kinds of terrorism. It is an exhaustive section and does not revolve around the word "designed to" as used in section 6(1)(b) of the Act or mens rea but the key word, in our opinion is "action" on the basis whereof it can be adjudged as to whether the alleged offence falls within the scope of section 6 of the Act or otherwise? The significance and the import of word "action" cannot be minimized and requires interpretation in a broader prospective which aspect of the matter has been ignored by the learned High Court and the scholarly interpretation as made in the judgment impugned has no nexus with the provisions as contained in section 6 of the Act, the ground realities, objects and reasons, the dictums laid down by this Court and is also not inconsonance with the well-entrenched principles of interpretation of criminal statutes..."

"Where a criminal act is designed to create a sense of fear or insecurity in the mind of the general public that can only be adjudged by keeping in view the impact of the alleged offence and manner of the commission of alleged offence. A farfetched interpretation of the words "designed to" as used in section 6 of the Act has been made by the learned High Court which we are afraid is not correct as the impact of the alleged offence and the manner in which it is committed has been ignored on the basis whereof the design of the alleged offence can be unveiled. There is absolutely no doubt in our mind that the Act was brought into force for the prevention and elimination of terrorism, sectarian violence and for expeditious dispensation of justice in the heinous offences as stipulated in Act itself. We have also surveyed the case law on the subject. It is, however, to be noted here at this juncture that so far as the concept of "terrorism" is concerned there is no substantial change between the Suppression of Terrorism Activities (Special Courts) Act (XV of 1975) and the Anti-Terrorism Act (XXVII of 1997) except a few minor changes having no bearing on the meaning and scope of terrorism."

"After having gone through the entire law as enunciated by this Court in different cases the judicial consensus seems to be that striking of terror is sine qua non for the application of the provisions as contained in section 6 of the Act which cannot be determined without examining the nature, gravity and heinousness of the alleged offence, contents of FIR, its cumulative effects on the society or a group of persons and the evidence which has come on record. In so far as the factum of intention is concerned that cannot be evaluated without examining the entire evidence which aspect of the matter squarely falls within the jurisdictional domain of the Court constituted under the Act and such questions cannot be decided by

invocation of Constitutional jurisdiction without scrutinizing all the circumstances in a broader prospect by keeping in view the ground realities in mind. There could be no second opinion that where the action of an accused results in striking terror or creating fear, panic, sensation, helplessness and sense of insecurity among the people in a particular vicinity it amounts to terror and such an action squarely falls within the ambit of section 6 of the Act and shall be triable by a Special Court constituted for such purpose. What was the real intention of the offender could only be adjudged on the basis of evidence which cannot be determined by invocation of Constitutional jurisdiction and learned Special Judge who is usually a Senior Sessions Judge can take care of the matter which can be transferred by him if it does not fall within his jurisdictional domain. There is no denying the fact that it was never the intention of legislature that every offender irrespective of the nature of the offence and its overall impact on the society or a section of society must be tried by the Anti-Terrorist Court but the question as to whether such trial shall be conducted or not initially falls within the jurisdictional domain of Anti-Terrorist Court which cannot be interfered with in the absence of sufficient lawful justification which appears to be lacking in these cases. It is, however, obligatory for such Courts to watch carefully the nature of accusation and examine the entire record with diligent application of mind to determine as to whether the provisions as contained in the Act would prima facie be attracted or otherwise? Where such Courts are of the view after taking cognizance of the offence that the alleged offence does not fall prima facie under the provisions of the Act it must transfer the same to regular Court without loss of time."

Zahid Imran and others v. The State and others
(PLD 2006 SC 109)

"The language as employed in the section is unambiguous, plain

and simple which hardly requires any scholarly interpretation

and is capable enough to meet all kinds of terrorism. It is an exhaustive section and does not revolve around the word "designed to" as used in section 6(1)(b) of the Act or mens rea but the key word, in our opinion, is "action" on the basis whereof it can be adjudged as to whether the alleged offence falls within the scope of section 6 of the Act or otherwise? After having gone through the provisions as contained in section 6 of the Act we are of the firm opinion that "terrorism" means the use or threat of "action" where the "action" falls within the meaning of subsection (2) of section 6 of the Act and creates a serious risk to safety of the public or a section of the public, or is designed to frighten the general public and thereby prevent them from coming out and carrying on their lawful trade and daily business, and disrupts civil life shall amount to terrorism as enumerated in section 6 of the Act."

"The judicial consensus seems to be that striking of terror is sine qua non for the application of the provisions as contained in section 6 of the Act 1997 which

cannot be determined without examining the nature, gravity and heinousness of the alleged offence, contents of the FIR, its cumulative effects on the society and a class of persons and the evidence which has come on record. There could be no second opinion that where the action of an accused person results in striking terror or creating fear, panic, sensation, helplessness and sense of insecurity among the people in a particular vicinity it amounts to terror and such an action squarely falls within the ambit of section 6 of the Act 1997."

Muhammad Idrees and others v. The State
(2008 SCMR 1544)

"However, since it was not established on record that the acts done by the accused had created sense of fear or insecurity in public, nor any section of public or community or any sect was shown to have been affected, as the incident had taken place at night on a bank of canal which by no stretch of imagination could be termed as a public place, therefore, in our view, section 7 of the Anti-Terrorism Act, 1997, was not attracted in the instant case."

Nazeer Ahmed and others v. Nooruddin and another
(2012 SCMR 517)

"We have heard the learned Advocate Supreme Court and have perused the record. The learned High Court has examined the material at length and has rightly concluded that the act of the petitioners created sense of insecurity amongst the villagers and did destabilize the public at large and, therefore, attracts the provisions of section 6 of the Anti-Terrorism Act. The learned Advocate Supreme Court in support of his contentions has relied upon the Judgments reported in the case of Mohabat Ali v. The State reported in 2007 SCMR 142 and the case of Bashir Ahmed v. Muhammad Siddiq, reported in PLD 2009 SC 11, which are distinguishable on facts. Neither the motive nor intent for commission of the offence is relevant for the purpose of conferring jurisdiction on the Anti-Terrorism Court. It is the act which is designed to create sense of insecurity and or to destabilize the public at large, which attract the provisions of section 6 of the AT Act, which in the case in hand was designed to create sense of insecurity amongst the co-villagers."

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

"As to learned Advocate Supreme Court's contention that the incident could not be defined as an act of terrorism, we are quite clear in our minds that such a gruesome murder at the hands of a law enforcing agency would certainly create a sense of terror, insecurity and panic in the minds and hearts of those who were available at the scene and the entire public who had watched this DVD on air. In this regard a reference may be made to the definition of terrorism in Section 6(1)(b) of the Anti-Terrorism Act according to which this is the use or threat of action where the use or threat is designed to

coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society. In our opinion therefore such definition can be bifurcated into two i.e. where the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or where it creates a sense of fear or insecurity in society. Although the offence under consideration may not have been designed to coerce and intimidate or overawe the Government or a section of the public or community or sect but it certainly created a sense of fear or insecurity in the society. What could be a more grievous and heinous crime then to shoot an unarmed young boy who was begging for his life and thereafter let him bleed to death despite his pleading that he should be taken to the hospital. This certainly did create a sense of fear and insecurity in the public at large and hence we are of the opinion that the appellants were correctly charged, tried, convicted and sentenced under Section 302(b), P.P.C. and section 7(a) of the Anti-Terrorism Act, 1997."

Kashif Ali v. The Judge, Anti-Terrorism, Court No.II, Lahore and others
(PLD 2016 SC 591)

"12. The term "design" now used in Section 6 of the Act has widened the scope of the Act and the terms "intention" and "motive" previously used have been substituted with the sole object that if the act is designed to create a sense of fear or insecurity in society, then the Anti-Terrorism Court will have the jurisdiction. From the above definition of the term "design" it is clear that it means a plan or scheme conceived in mind and intended for subsequent execution. In order to determine whether an offence falls within the ambit of Section 6 of the Act, it would be essential to have a glance over the allegations levelled in the FIR, the material collected by the investigating agency and the surrounding circumstances, depicting the commission of offence. Whether a particular act is an act of terrorism or not, the motivation, object, design or purpose behind the said Act has to be seen. The term "design", which has given a wider scope to the jurisdiction of the Anti-Terrorism Courts excludes the intent or motive of the accused. In other words, the motive and intent have lost their relevance in a case under Section 6(2) of the Act. What is essential to attract the mischief of this Section is the object for which the act is designed."

"17. The judgment relied upon by the learned High Court in the case of Basharat Ali v. Special Judge, Anti-Terrorism Court-II, Gujranwala (PLD 2004 Lahore 199) was overruled by this Court in the case of Mirza Shaukat Baig and others v. Shahid Jamil and others (PLD 2005 SC 530), which is the correct law. It was held by this Court in the case of Mirza Shoukat Baig (supra) that there could be no second opinion that where the action of an accused results in striking terror, or creating fear, panic sensation, helplessness and sense of insecurity among the people in a particular vicinity it amounts to terror and such an action squarely falls within the ambit of Section 6 of the Act and shall be tried by a Special Court constituted for such a purpose. Moreover, in State through Advocate General

v. Muhammad Shafiq (PLD 2003 SC 224) it was held by this Court that the Courts are only required to see whether the terrorist act was such that it would have the tendency to create sense of fear or insecurity in the minds of the people or any section of the society, as well as the psychological impact created on the minds of the society. Whereas a strictly narrow interpretation of the term "design" in Section 6 of the Act is undoubtedly one where a premeditated plan to create terror is the object behind the said act, we cannot simply rule out from the ambit of Section 6 an individual's action which is implemented in a setting where a creation of feeling of fear in the society was an inevitable consequence of the said act."

Shahbaz Khan alias Tippu and others v. Special Judge, Anti-Terrorism, Court No.3, Lahore and others
(PLD 2016 SC 1)

"7. It is clear from a textual reading of Section 6 of ATA that

an action categorized in subsection (2) thereof constitutes the offence of terrorism when according to Section 6(1)(b) ibid it is "designed" to, inter alia, intimidate or overawe the public or to create a sense of fear or insecurity in society. Therefore, the three ingredients of the offence of terrorism under Section 6(1)(a) and (b) of ATA are firstly, taking of action specified in Section 6(2) of ATA; secondly, that action is committed with design, intention and mens rea; and thirdly, it has the impact of causing intimidation, awe, fear and insecurity in the public or society."

8. There is no doubt that the brutal killing of five unarmed

persons on a public street would have stricken panic, fear and insecurity among the residents in the locality. However, because of the motive of a family dispute given in the FIR, there is a challenge that the required third element of "design," intention or mens rea to commit terrorism is lacking in the present case. This element of the offence of terrorism has been treated as the pivotal criterion for ascertaining the jurisdiction of a learned ATC in the two judgments referred in the leave granting order: namely Bashir Ahmed v. Muhammad Siddique (PLD 2009 SC 11) and Ahmed Jan v. Nasrullah (2012 SCMR 59). The judgment in Ahmed Jan's case ibid endorses the law enunciated in Bashir Ahmed's case ibid to the effect that under Section 6(1)(b) of ATA a design that is intention or mens rea of an accused to cause the prescribed public or social reaction to an action specified in Section 6(2) of ATA is essential for the commission of the offence of terrorism."

"11. Primarily, the rule laid down in Bashir Ahmed's case ibid requiring the ascertainment of the design, intention and mens rea of an act for establishing the jurisdiction of a learned ATC rests on dicta given in Mehram Ali's case ibid. However, Bashir Ahmed's case ibid does not consider the ways and means by which the design, intention or mens rea, for an act of terrorism, requiring in essence the proof of an assailant's state of mind, should be ascertained by a Court of law. Whether the Court should mechanically consider the motive alleged by a complainant in the FIR to be decisive or

should it also scrutinize other aspects of an occurrence to assess if the culprits had any design, intention or mens rea to commit a terrorist act?

12. In most cases, the nature of the offences, the manner of their commission and the surrounding circumstances demonstrate the motive given in the FIR. However, that is not always the case. When offences are committed by persons with impunity disregarding the consequence or impact of their overt action, the private motive or enmity disclosed in the FIR cannot be presumed to capture their true intent and purpose. In such cases, it is plain that action taken and offences committed are not instigated "solely" by the private motive alleged in the FIR. It is settled law that intention, motive or mens rea refer to the state of mind of an offender. It is equally well established that a state of mind cannot be proven by positive evidence or by direct proof. The intention of an accused for committing an offence is to be gathered from his overt acts and expression. It has been held in the case of State v. Ataullah Khan Mangal (PLD 1967 SC 78) that an accused person "must be deemed to have intended the natural and inevitable consequences of his action." Thus apart from the overt acts of the accused, the injuries caused by him or consequences ensuing from his actions and the surrounding circumstances of the case are all relevant to ascertain the design intention or mens rea that instigated the offences committed. These principles are enunciated in Zahid Imran v. The State (PLD 2006 SC 109) and Pehlwan v. Crown (1969 SCMR 641). Intention is presumed when the nature of the act committed and the circumstances in which it is committed are reasonably susceptible to one interpretation. In such event, the rule of evidence that the natural and inevitable consequences of a person's act are deemed to have been intended by him is applicable: Jane Alam v. The State (PLD 1965 SC 640). In Muhammad Mushtaq v. The State (PLD 2002 SC 841) the inevitable consequence of an act was considered as its design. Four persons were killed to settle a blood feud while they were on their way for a Court hearing at the nearby District Courts, Lahore. This Court observed that the learned ATC was the competent trial forum in the case:

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

8. In the present case, we, prima facie, find that the occurrence took place during the peak hours of the day on the busy Court Road near the District Courts, Lahore, wherein four persons while on their way to attend the Court were

allegedly murdered by the use of kalashnikovs. The cumulative fall-out of the occurrence as to the time, place and manner of the act created a sense of the fear and insecurity in society. The case was, therefore, triable by the Anti-Terrorism court established under the said Act ..."

13. When wanton overt acts committed by an accused lead to horrendous consequences then the motive given in the FIR merely indicates the background. The presumption that the natural and inevitable consequences of the acts of an accused are deemed to be intended, provides a reliable touchstone for gathering the design, intention or mens rea of an assailant in the context of Section 6(1)(b) of ATA.

14. Indeed neither Mehram Ali's case nor Bashir Ahmed's case ibid have confined judicial recourse solely to the motive disclosed in the FIR for ascertaining the mens rea for the offence of terrorism. For the existence or otherwise of mens rea of the said offence, a Court of law may rightfully interpret the different aspects of a prosecution case noted above in order to ascertain the design behind the acts committed by an assailant. In the present case the assailants who committed the brutal acts of causing the death of five persons had no personal grouse against their victims. Prima facie, they executed the instructions given by the other accused. This was done with impunity because doing the job was material and not the consequence and impact of their overt action. A dispute about the possession of a family house thus exploded disproportionately to a scale depicting wanton ruthlessness and impunity in the multiple killing of victims in a public place inhabited by public residents. To our minds, the motive of a domestic family property dispute is merely the spark that triggered the occurrence, or metaphorically, the fire. The rule that the accused in the present case are deemed to intend the natural and inevitable consequences of action taken is apt and accurate in depicting their design, intention and mens rea. The three ingredients under Section 6 of ATA that constitute the offence of terrorism are prima facie available in the present case.

15. Therefore, the approach in the impugned judgment to interpret overt acts of the accused and the surrounding circumstances of the case in order to ascertain whether the case falls within the ambit of the ATA, is justified. Equally, the reliance placed by the learned ATC solely on the motive disclosed in the FIR No. 247 of 2014 lodged by the complainant in the case adopts a course meant for simple cases wherein the motive disclosed in the FIR is duly demonstrated by the other criteria for ascertainment of mens rea."

12. One cannot help noticing that all the cases referred to in the last paragraph and falling in the second category pertained to offences committed for private purposes with no motivation to destabilize the State or the society at large but they were all adjudged to be cases of terrorist acts or terrorism on the basis of a presumptive and speculative quantification of the effect that the relevant actions could have created in the society. In all such cases, it is observed with great deference, the changed definition of 'terrorism' with its resultant shifting of focus

from the effect of the action to the design or purpose behind the action had not been noticed and all those cases had been decided on the basis and on the yardstick of the principles provided for by the earlier definition of a 'terrorist act'. In the above mentioned cases the gravity of the offence with its resultant actual, intended or potential effect on the people at large was considered as the measure for determining whether the act constituted terrorism or not. We can appreciate that the mindset inherited by us in the background of the Summary Military Courts, Speedy Trial Courts and Special Courts for Suppression of Terrorist Activities, which were different courts constituted at different stages in the past for separate and special handling of offences of grave nature, may take some time to be dispelled and it may take us a while to appreciate and realize that an act of 'terrorism' is not just a grave offence but it is a class and species apart and this class or species has to be understood in its true and correct perception and perspective otherwise every serious offence may be found by one Judge or the other to involve terrorism depending upon a subjective assessment of the potential of the act to create some sense of fear or insecurity in some section of the society. Such an approach, it may be observed with great veneration, may not be wholesome as it may ultimately result in every case of a serious offence landing in a Special Court and thereby rendering the ordinary courts substantially redundant. It ought not to be lost sight of that the legislature's repeal of the Suppression of Terrorist Activities (Special Courts) Act, 1975, doing away with the Schedule of the Anti-Terrorism Act, 1997 at one stage and also its retraction from the 'effect' through the fresh definition of 'terrorism' cannot be without any significance or purpose. That drastic change of the definition manifestly indicated a change of meanings and of focus and such a change has to be given its proper effect. After all if the term 'terrorism' as defined today is still to be interpreted in the same manner as the erstwhile term 'terrorist act' then there was hardly any occasion or need for the legislature to amend the definition and to bring about any change in the existing law in that regard. The legacy and interpretations pertaining to the Suppression of Terrorist Activities (Special Courts) Act, 1975 and of the original provisions of the Anti-Terrorism Act, 1997 have now to be shaken or shrugged off so as to correctly understand the definition of 'terrorism' introduced through the later Act and its amendments. This Court had itself declared in the above mentioned case of Mumtaz Ali Khan Rajban and another v.Federation of Pakistan and others (PLD 2001 SC 169) that the subject matters of the Suppression of Terrorist Activities (Special Courts) Act, 1975 and the Anti-Terrorism Act, 1997 were "different" and their respective applicability was "governed by different criteria".

13. We understand, and we observe so with all the respect at our command, that in the above mentioned cases falling in the second category this Court had, wittingly or otherwise, detracted or moved away from the principle of nexus so painstakingly carved out by it in the case of Mehram Ali and others v. Federation of Pakistan and others (PLD 1998 SC 1445). As already noticed above, one of the reasons for such drifting away from the principle of nexus was the effect-based definition of "terrorist act" provided in the repealed Suppression of Terrorist Activities (Special Courts) Act, 1975. Another reason for the lack of clarity in this respect was an incorrect understanding of the words "speedy trial of heinous offences" contained in the Preamble to the Anti-Terrorism Act, 1997. In many of

the judgments referred to above those words appearing in the Preamble were mentioned and relied upon for holding that commission of heinous offences also amounted to terrorism even if the 'design' or 'purpose' mentioned in clauses (b) and (c) of subsection (1) of section 6 of the Anti-Terrorism Act, 1997 did not stand attracted to a case. For removal of any confusion in that respect the scheme of the Anti-Terrorism Act, 1997 needs to be understood and appreciated in its correct perspective. The Preamble to the said Act reads as follows:

"An act to provide for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences;

Whereas it is expedient to provide for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences and for matters connected therewith and incidental thereto;

It is hereby enacted as follows:---"

Section 12 of that Act provides as under:

12. Jurisdiction of Anti-terrorism Court.- (1) Notwithstanding anything contained in the Code or in any other law, a scheduled offence committed in an area in a Province or the Islamabad Capital Territory shall be triable only

by the Anti-Terrorism Court exercising territorial jurisdiction in relation to such area."

Section 2(t) of the Act defines a scheduled offence in the following terms:

" "Scheduled offence" means an offence as set out in the Third Schedule."

The Third Schedule to the Act reads as under:

THE THIRD SCHEDULE

(Scheduled Offences)

[See section 2(t)]

1. Any act of terrorism within the meaning of this Act including those offences which may be added or amended in accordance with the provisions of section 34 of this Act.

2. Any other offence punishable under this Act.

3. Any attempt to commit, or aid or abetment of, or any conspiracy to commit, any of the aforesaid offences.

4. Without prejudice to the generality of the above paragraphs, the Anti-Terrorism Court to the exclusion of any other Court shall try the offences relating to the following, namely:-

(i) Abduction or kidnapping for ransom;

(ii) Use of firearms or explosives by any device, including bomb blast in a mosque, imambargah, church, temple or any other place of worship, whether or not any hurt or damage is caused thereby; or

(iii) Firing or use of explosive by any device, including bomb blast in the court premises; or

(iv) Hurt caused by corrosive substance or attempt to cause hurt by means of a corrosive substance; and

(v) Unlawful possession of an explosive substance or abetment for such an offence under the Explosive Substances Act, 1908 (VI of 1908).

A careful reading of the Third Schedule shows that an Anti-Terrorism Court has been conferred jurisdiction not only to try all those offences which attract the definition of terrorism provided by the Act but also some other specified cases involving heinous offences which do not fall in the said definition of terrorism. For such latter category of cases it was provided that although those offences may not constitute terrorism yet such offences may be tried by an Anti-Terrorism Court for speedy trial of such heinous offences. This distinction between cases of terrorism and cases of specified heinous offences not amounting to terrorism but triable by an Anti-Terrorism Court has already been recognized by this Court in the cases of Farooq Ahmed v. State and another (2020 SCMR 78), Amjad Ali and others v. The State (PLD 2017 SC 661) and Muhammad Bilal v. The State and others (2019 SCMR 1362). It has been clarified by this Court in those cases that such specified

heinous offences are only to be tried by an Anti-Terrorism Court and that court can punish the person committing such specified heinous offences only for commission of those offences and not for committing terrorism because such offences do not constitute terrorism. For the purposes of further clarity on this issue it is explained for the benefit of all concerned that the cases of the offences specified in entry No. 4 of the Third Schedule to the Anti-Terrorism Act, 1997 are cases of those heinous offences which do not per se constitute the offence of terrorism but such cases are to be tried by an Anti-Terrorism Court because of their inclusion in the Third Schedule. It is also clarified that in such cases of heinous offences mentioned in entry No. 4 of the said Schedule an Anti-Terrorism Court can pass a punishment for the said offence and not for committing the offence of terrorism. It may be pertinent to mention here that the offence of abduction or kidnapping for ransom under section 365-A, P.P.C. is included in entry No. 4 of the Third Schedule and kidnapping for ransom is also one of the actions specified in section 7(e) of the Anti-Terrorism Act, 1997. Abduction or kidnapping for ransom is a heinous offence but the scheme of the Anti-Terrorism Act, 1997 shows that an ordinary case of abduction or kidnapping for ransom under section 365-A, P.P.C. is merely triable by an Anti-Terrorism Court but if kidnapping for ransom is committed with the design or purpose mentioned in clauses (b) or (c) of subsection (1) of section 6 of the Anti-Terrorism Act, 1997 then such offence amounts to terrorism attracting section 7(e) of that Act. In the former case the convicted person is to be convicted and sentenced only for the offence under section 365-A, P.P.C. whereas in the latter case the convicted person is to be convicted both for the offence under section 365-A, P.P.C. as well as for the offence under section 7(e) of the Anti-Terrorism Act, 1997. The same may also be said about the other offences mentioned in entry No. 4 of the Third Schedule to the Act pertaining to "Use of firearms or explosives by any device, including bomb blast in a mosque, imambargah, church, temple or any other place of worship, whether or not any hurt or damage is caused thereby", "Firing or use of explosive by any device, including bomb blast in the court premises", "Hurt caused by corrosive substance or attempt to cause hurt by means of a corrosive substance" and "Unlawful possession of an explosive substance or abetment for such an offence under the Explosive Substances Act, 1908 (VI of 1908)". Such distinction between cases of terrorism and other heinous offences by itself explains and recognizes that all heinous offences, howsoever serious, grave, brutal, gruesome, macabre or shocking, do not ipso facto constitute terrorism which is a species apart. Through an amendment of the Third Schedule any heinous offence not constituting terrorism may be added to the list of offences which may be tried by an Anti-Terrorism Court and it was in this context that the Preamble to the Act had mentioned "Whereas it is expedient to provide for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences".

14. Adverting now to the written submissions of the learned

Attorney-General based upon the provisions of subsection (3) of

section 6 of the Anti-Terrorism Act, 1997 we may straightaway observe that we have felt nothing but sympathy for the learned Attorney-General because he had to make some effort to make some sense of the said provisions which, with respect,

make no sense to us. He has urged that subsections (1), (2) and (3) of section 6 of the said Act are to be read in conjunction. The said provisions read as follows:

> 6. Terrorism. - (1) In this Act, "terrorism" means the use or threat of action where:
>
> (a) the action falls within the meaning of subsection (2), and
>
> (b) the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society; or
>
> (c) the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians, including damaging property by ransacking, looting, arson, or by any other means, government officials, installations, security forces or law enforcement agencies:
>
> Provided that nothing herein contained shall apply to a democratic and religious rally or a peaceful demonstration in accordance with law.
>
> (2) An "action" shall fall within the meaning of subsection (1), if it:
>
> (3) The use or threat of any action falling within subsection (2) which involves the use of firearms, explosive or any other weapon is terrorism, whether or not subsection (1) (c) is satisfied.

Reading of subsections (1) and (2) of the said section together makes good sense, i.e. all the actions specified in subsection (2) shall constitute terrorism if they are committed with the 'design' mentioned in clause (b) of subsection (1) or are committed for the 'purpose' referred to in clause (c) of subsection (1) of that section. Subsection (3) of that section, however, provides that "The use or threat of any action falling within subsection (2) which involves the use of firearms, explosive or any other weapon is terrorism, whether or not subsection (1) (c) is satisfied" which means that if for commission of the actions mentioned in subsection (2) a firearm, an explosive substance or any other weapon is actually used or a threat regarding use of the same is extended then all such actions are to constitute the offence of terrorism even if the other requirements of clause (c) of subsection (1) of section 6 are not satisfied or fulfilled. The requirements that need to be satisfied for invoking clause (c) of subsection (1) of section 6 are that the use or threat of action should be for "the purpose of advancing a religious, sectarian or ethnic cause" or for the purpose of "intimidating and terrorizing the public, social sectors, media persons, business community" or for the purpose of "attacking the civilians, including damaging property by ransacking, looting, arson, or by any other means, government officials, installations, security forces or law enforcement agencies". If the said requirements and purposes mentioned in clause (c) of subsection (1) of section 6 do not need to be satisfied and if mere use or threat of use of a firearm, an explosive substance or any other weapon for commission of the actions mentioned in subsection (2) of section 6 is to ipso facto constitute the offence of terrorism then every murder committed (action under clause (a) of

subsection (2) of section 6), every grievous bodily injury or harm caused (action under clause (b) of subsection (2) of section 6), every grievous damage to private property (action under clause (c) of subsection of section 6), doing anything that is likely to cause death or endangers a person's life (action under clause (d) of subsection (2) of section 6) or creating a serious risk to safety of the public or a section of the public (action under clause (i) of subsection (2) of section 6) even if committed with an ordinary stick, a brickbat or a stone when used as a weapon would constitute the offence of terrorism! Such trivializing of the diabolical offence of terrorism surely could not be the intention of the legislature when framing a law for the offence of terrorism which is a class apart and a species different from any other ordinary crime. In this context we have found the learned Additional Prosecutor-General, Punjab to be quite justified in maintaining that the provisions of subsection (3) of section 6 of the Anti-Terrorism Act, 1997 are quite problematic as they do not piece well with the remaining provisions of the said section as far as the matter of defining terrorism is concerned. He has also been found by us to be correct in submitting that if the provisions of subsection (3) of section 6 of the Anti-Terrorism Act, 1997, as they are worded, are to be given effect then the distinction between the peculiar offence of terrorism and most of the run of the mill offences committed in the society in routine would be obliterated. In this backdrop his submission that the provisions of subsection (3) of section 6 may be read down in order to save the main Act and its purposes has been found by us to be meriting serious consideration. We may add here that the Anti-Terrorism Act, 1997 was introduced about twenty-two years ago but in all these years, to the best of our knowledge, the provisions of subsection (3) of section 6 of that Act have never before been pressed into service in any reported case in the country. It appears that the Judges and lawyers in the country have found the said provisions to be so confusing and incentive-incompatible that they have kept themselves away from the same so far. It is about time that the legislature may like to have another look at the said provisions and to consider deleting or suitably amending the same so as to bring them in harmony with the remaining provisions of the Act.

15. The resume of our legislative developments in the field of terrorism shows, as already observed in the case of Basharat Ali (supra), that with different laws and definitions of terrorist act or terrorism the emphasis has been shifting from one criterion to another including the gravity of the act, lethal nature of the weapon used, plurality of culprits, number of victims, impact created by the act and effect of fear and insecurity brought about or likely to be created in the society by the action. The last definition of a 'terrorist act' contained in section 6 of the Anti-Terrorism Act, 1997 squarely focused on the effect of fear and insecurity intended to be created by the act or actually created by the act or the act having the potential of creating such an effect of fear and insecurity in the society. It, however, appears that subsequently the legislature did not feel convinced of the aptness or correctness of that definition and resultantly the erstwhile definition of a 'terrorist act' contained in section 6 of the Anti-Terrorism Act, 1997 was repealed and a totally fresh and new definition of 'terrorism' was introduced through an amended section 6 of the Anti-Terrorism Act, 1997. The legislature had probably realized by then that an effect of an act may not always be a correct indicator of the nature of such an act as every crime, especially of violence against person or property, does

create some sense of fear and insecurity in some section of the society and a definition of terrorism based upon the magnitude or potential of an effect created or intended to be created or having a potential of creating would necessarily require a premature, speculative and imaginary quantification of the effect so as to determine the nature of the act in order to decide about the jurisdiction of a criminal court to try such an act. That surely was an unsure test and the result of such a premature, speculative and presumptive test could vary from court to court and from Judge to Judge reminding a legal scholar of the Star Chamber and the early days of a Court of Equity in England where equity was said to vary with the size of the Chancellor's foot. The new definition of 'terrorism' introduced through the amended section 6 of the Anti-Terrorism Act, 1997 as it stands today appears to be closer to the universally understood concept of terrorism besides being easier to understand and apply. The earlier emphasis on the speculative effect of the act has now given way to a clearly defined mens rea and actus reus. The amended clause (b) of subsection (1) of section 6 now specifies the 'design' and clause (c) of subsection (1) of section 6 earmarks the 'purpose' which should be the motivation for the act and the actus reus has been clearly mentioned in subsection (2) of section 6 and now it is only when the actus reus specified in subsection (2) of section 6 is accompanied by the requisite mens rea provided for in clause (b) or clause (c) of subsection (1) of section 6 that an action can be termed as 'terrorism'. Thus, it is no longer the fear or insecurity actually created or intended to be created or likely to be created which would determine whether the action qualifies to be termed as terrorism or not but it is now the intent and motivation behind the action which would be determinative of the issue irrespective of the fact whether any fear and insecurity was actually created or not. After this amendment in section 6 an action can now be termed as terrorism if the use or threat of that action is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect, etc. or if such action is designed to create a sense of fear or insecurity in the society or the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause, etc. Now creating fear or insecurity in the society is not by itself terrorism unless the motive itself is to create fear or insecurity in the society and not when fear or insecurity is just a byproduct, a fallout or an unintended consequence of a private crime. In the last definition the focus was on the action and its result whereas in the present definition the emphasis appears to be on the motivation and objective and not on the result. Through this amendment the legislature seems to have finally appreciated that mere shock, horror, dread or disgust created or likely to be created in the society does not transform a private crime into terrorism but terrorism as an 'ism' is a totally different concept which denotes commission of a crime with the design or purpose of destabilizing the government, disturbing the society or hurting a section of the society with a view to achieve objectives which are essentially political, ideological or religious. This approach also appears to be in harmony with the emerging international perspective and perception about terrorism. The international perception is also becoming clearer on the point that a violent activity against civilians that has no political, ideological or religious aims is just an act of criminal delinquency, a felony, or simply an act of insanity unrelated to terrorism. This metamorphosis in the anti-terrorism law in our country has brought about a sea change in the whole concept as we have understood it in the past and it is, therefore, of paramount importance

for all concerned to understand this conceptual modification and transformation in its true perspective.

16. For what has been discussed above it is concluded and declared that for an action or threat of action to be accepted as terrorism within the meanings of section 6 of the Anti-Terrorism Act, 1997 the action must fall in subsection (2) of section 6 of the said Act and the use or threat of such action must be designed to achieve any of the objectives specified in clause (b) of subsection (1) of section 6 of that Act or the use or threat of such action must be to achieve any of the purposes mentioned in clause (c) of subsection (1) of section 6 of that Act. It is clarified that any action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, does not qualify to be termed as terrorism if it is not committed with the design or purpose specified or mentioned in clauses (b) or (c) of subsection (1) of section 6 of the said Act. It is further clarified that the actions specified in subsection (2) of section 6 of that Act do not qualify to be labeled or characterized as terrorism if such actions are taken in furtherance of personal enmity or private vendetta.

17. Before parting with this judgment we may observe that the definition of 'terrorism' contained in section 6 of the Anti-Terrorism Act, 1997 as it stands at present is too wide and the same includes so many actions, designs and purposes which have no nexus with the generally recognized concept of what terrorism is. Apart from that including some other heinous offences in the Preamble and the Third Schedule to that Act for trial of such offences by an Anti-Terrorism Court when such other offences do not qualify to be included in the definition of terrorism puts an extra and unnecessary burden on such courts and causes delay in trial of actual cases of terrorism. It is, therefore, recommended that the Parliament may consider substituting the present definition of 'terrorism' by a more succinct definition bringing it in line with the international perspectives of that offence and focusing on violent activities aimed at achieving political, ideological or religious objectives. We further recommend that the Parliament may also consider suitably amending the Preamble to the Act and removing all those offences from the Third Schedule to the Act which offences have no nexus with the offence of terrorism.

18. The office is directed to fix the captioned appeals for hearing before appropriate Benches of this Court for their decision in terms of the legal position declared through the present judgment.

MWA/G-6/S Order accordingly.

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