



Deconstructing the Judgment of Mirza Shaukat Baig Vs. Shahid Jamil: Legal and Social Ramifications

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ABSTRACT

Based on the principles of interpretation outlined in numerous Supreme Court rulings, the dispute over Section 6 of the Anti-Terrorism Act (ATA), 1997, depended on different interpretations of the law. The case involved multiple interpretations of the term "terrorism" to determine whether the alleged offense qualified as such. The research examined the rules of interpretation, including the word's plain meaning, legislative intent, the impact of the preamble, and the binding authority of apex courts over subordinate courts. It was emphasized that when construing an Act, the Court must consider the entire scheme of the Act as revealed by the language throughout the enactment. Further, it is the mandate of the Court to interpret the law, not to create it, according to the correct and true meaning of words. In this instance, the definition of "terrorism" as it appears in Section 6 of the Anti-Terrorism Act of 1997 was at issue. The Supreme Court found that the High Court did not accord sufficient weight to the various decisions of the Supreme Court, which have explored varying interpretations and principles surrounding the word "terrorism".

Keywords: Section 6, Anti-Terrorism Act 1997, Terrorism, Statutory Interpretation Principles, Legislative Intent, Binding Precedent (Supreme Court Authority), Judicial Role.

1. Introduction

Section 6 of the Anti-Terrorism Act, 1997 (the "ATA"), delineates terrorism with precise terminology, specifying particular activities and threats encompassed within this classification. Subsection 1 provides a general definition, while subsection 2 details seventeen specific acts, such as causing death, grievous violence, or property damage. Subsection 3 further classifies any use of firearms, explosives, or other weapons in these acts as terrorism, regardless of whether the conditions in subsection 1(c) are met. Additionally, violations of international conventions on terrorism signed by Pakistan are also considered acts of terrorism under the ATA. The Act's provisions are straightforward, leaving little room for scholarly interpretation. The law emphasizes that interpretation should not rely on selective wording; instead, the entire statute, including the preamble and legislative intent, should be considered. The preamble serves as a guide in cases of ambiguity, but it does not override the substantive provisions of the law. The phrase "designed to" in Section 6 is interpreted as intentional or deliberate, equating it with terms like "willful" or "knowingly." The Supreme Court has emphasized that the High Court should have considered the Act's preamble for interpretation if any doubt existed, although the language of Section 6 is clear. The Anti-Terrorism Act, the primary law for combating terrorism in Pakistan, has been amended multiple times since its enactment in 1997 to address evolving threats. Despite its broad definitions, the Act aims to provide a legal framework for counterterrorism, but its wide application, particularly regarding "heinous offenses," has

led to some judicial ambiguity on what constitutes a terrorist act.

2. Facts of the Case

The case's salient facts pertain to an occurrence in a congested bazaar at approximately 9:15 a.m., during which nine armed men discharged firearms indiscriminately, culminating in the fatalities of four individuals and the theft of two crores. The Supreme Court granted leave to appeal after an appeal was filed in response to the Lahore High Court's judgment. The petitioner's advocate argued that the legal and factual aspects of the case were not properly considered, leading to a serious miscarriage of justice. They argued that the alleged offense's brutal nature qualifies it as terrorism and is under the definition outlined in Section 6 of the Act. Furthermore, he claimed that the judge of the Anti-Terrorism Court in Faisalabad had already recorded the statements of roughly 20 witnesses and that the Anti-Terrorism Court, not the High Court, had the constitutional authority to decide whether the offense was covered by Section 6 of the Act. Finally, it was asserted that the contested ruling contradicts Supreme Court precedents that the High Court was bound by.

The advocate for the respondents argued that the alleged offense was not premeditated to instill terror, which is a prerequisite for implementing Section 6 of the Act's provisions. Emphasizing the phrase "designed to" in Section 6(1) (b) of the Act, they explained that it implies a deliberate and intentional act aimed at creating terror. The learned Advocate claims that no proof has been offered that the crime was done with the specific intent to instill fear or insecurity in the community. The innocence of the respondent was also asserted, with the argument that the respondent played no role in the offense.

3. Legal Issue

The court is dealing with the legal question of whether the accused offense is covered by Section 6 of the Act?

4. Supreme Court Interpretation

The Court was unable to concur with the Lahore High Court's view. Based on some rulings, the Supreme Court offered the following interpretations:

1. The language used in the section is clear and straightforward, requiring no complex interpretation, and is sufficient to address all forms of terrorism.
2. The provision is thorough and does not only concentrate on mens rea or the words "designed to" in provision 6 (1) (b) of the Act; rather, the key word is "action." When determining whether an alleged offense falls within the language of a criminal statute, the Court must ensure that the offense is properly categorized according to the statute's provisions.
3. The Court must ensure not only that the spirit of the legislative enactment is upheld but also that the language used by the legislature encompasses the offense in question and classifies it as criminal.
4. In interpreting a statute, the Court's role is confined to interpreting the words used by the legislature and does not extend to filling in any gaps. Doing so would encroach upon the legislative function.
5. When the words of a section in a statute are clear and unambiguous, the Court must apply them as written.
6. The Court has to discern and give effect to the legislature's intention. A literal interpretation should not take precedence if it contradicts the legislative intent.
7. A statute should be interpreted based on the plain meaning of its words and should not be extended beyond the scope of what the language explicitly conveys.

7. In interpreting an Act, the Court must consider the overall scheme of the Act as revealed by examining the language of the entire enactment.

8. The Court's role is not to create law but to interpret it as it is, based on the true meaning of the words used.

9. A Court cannot impose limitations on general words unless required by the context, purpose, or intent of the enactment. Additionally, no interpretation should permit a fraudulent evasion of the Act.

10. According to the strict construction rule, a statute's language must be construed to exclude circumstances that do not fall within the enactment's spirit and extent as well as its reasonable meaning.

11. One such rule is that the interpretation of words should be the one that best aligns with the context and most fully supports the policy and objectives of the Legislature.

12. When interpreting an Act of Parliament, the Court must determine the legislature's intention by examining the language of the entire enactment.

13. When the meaning of words in a statute is clear, the Court should not focus on presumed legislative intentions. The clear grammatical meaning of a section should be applied unless it results in an impractical or unworkable construction.

14. No provision of law should be interpreted by selectively choosing a few words. In cases of confusion, the relevant provisions must be read in their entirety, along with the statute's preamble and its objectives and reasons, to clarify any ambiguity. If these elements are not considered, the interpretation may be incomplete.

15. The term "terrorism" describes the use or threat of "action" that is covered by Section 6 of the Act's subsection (2). Civil life must be disrupted, the general public must be intimidated and prevented from engaging in lawful activities and daily business, or there must be a significant risk to public safety or a sector of the public. According to Section 6 of the Act, terrorism is defined by these standards.

16. The preamble of a piece of legislation offers insight into the lawmaker's intent. It is widely accepted that the preamble serves as a key to understanding the statute and clarifies its scope, especially when the words themselves could be interpreted in multiple ways. An interpretation that aligns with the Act's stated policy, as revealed by its title and preamble, is preferred over one that diverges from its intended objectives.

17. When interpreting a statute, the preamble should be considered by the Judge. If the statute's language allows for different interpretations, the Court should select the interpretation that aligns with the principles outlined in the preamble. However, this does not mean that the preamble or the statute's objectives should be prioritized over the statute's clear language; they are relevant primarily when the language is ambiguous.

18. It is well established that "criminal intention" refers to the purpose or design to commit an act prohibited by criminal law without lawful justification. An act is considered intentional if it is conceived as an idea before it is carried out, with the idea manifesting in reality due to the desire behind it. The term "intent" does not refer to the ultimate aim or objective, nor is it synonymous with motive.

19. Similar to other criminal laws, Section 6 of the Anti-Terrorism Act contains requirements that fall under the categories of "actus reus" (the act itself) and "mens rea" (the required mental condition). It is not required for a penal provision to include both elements; provisions that lack a mens rea component are classified as strict liability offenses. This aspect was overlooked by the learned High Court.

20. Section 6 of the Act's use of the word "designed to" does not call for the violation to be done specifically to cause insecurity, sensation, or terror. Instead, the determination of intent depends on the nature of the

offense and its effects, based on which the offender's intention can be assessed.

21. The phrase "designed to" in Section 6 of the Act is comparable to "willful," indicating an intention to achieve a specific result through deliberate and intentional action, rather than something incidental or unplanned.

22. Based on the discussion, the inescapable conclusion is that the phrase "designed to" equates to acting willfully, knowingly, and deliberately. Whether the terms "knowingly," "deliberately," and "willfully" are explicitly stated or not does not affect the meaning, aim, scope, or objectives of Section 6 of the Act.

5. Decision of the Court

Judicial consensus suggests that instilling terror is a prerequisite for applying the provisions outlined in Section 6.8 of the Act. This conclusion necessitates analyzing the F.I.R.'s contents, the claimed offense's type, seriousness, and heinousness, as well as the evidence that has been documented and its cumulative consequences on a group of people or society.

Without a doubt, an accused person's conduct is considered terrorism per Section 6 of the Act if it causes terror or creates panic, fear, sensation, insecurity, and helplessness in the population in a particular area. A Special Court that has been assigned to handle these issues has jurisdiction over such actions. Only the evidence that has been given can reveal the offender's genuine intent. Unquestionably, the legislators did not intend for the Anti-Terrorism Court to try all offenders, regardless of the type of violation or its social impact. The Anti-Terrorism Court has the original authority to decide whether or not such a trial should be held.

It is essential for such Courts to carefully consider the nature of the accusation and thoroughly review the entire record with diligent attention to determine whether the provisions of the Act are prima facie applicable. If, after taking cognizance of the offense, the Court finds that the alleged offense does not fall under the Act's provisions, it must promptly transfer the case to a regular Court.

It is not justified that the Lahore High Court's learned Division Bench has ignored established case law from a number of this Court's rulings. This oversight disregarded the requirement that the High Court follow the decisions of this highest court under Article 189 of the Islamic Republic of Pakistan's Constitution, which states, among other things, that the Lahore High Court and all other Pakistani courts must abide by any ruling made by the Supreme Court that resolves a legal issue or establishes a principle of law. A well-established legal concept states that the Supreme Court has the final say in how the law is interpreted. Consequently, its decisions on legal questions or principles must be adhered to by all other courts. When interpreting "terrorism" under the Act, the Supreme Court upheld its previous decisions. The court clarified that the term "designed to" should be interpreted as synonymous with "willfully," "knowingly," and "deliberately," concentrating on the accused's action rather than their motivation.

The judgment under appeal is overturned, and the appeal is granted.

6. Analysis of the Case

The Supreme Court ruled in the Mirza Shaukat Baig case that the section's wording is unambiguous, straightforward, and devoid of complex scholarly interpretation and that it adequately addresses all types of terrorism. Intentionally or inadvertently, the Court failed to recognize that the High Court had defined the definition of "terrorism" and, based on that definition, the scope and applicability of Section 6, as well as the particular acts that could be covered by it. The core issue was determining the extent to which the term 'terrorism' could be expanded within the context of Section 6. The Court emphasized that the focus should be on the 'action' itself rather than the 'intention behind that action,' which distinguishes terrorism from regular crime. As per the

Supreme Court, the language of the section is clear and does not require complex interpretation, asserting that Section 6 is comprehensive and revolves around the concept of 'action,' not the term "designed to" or mens rea. The Court criticized the High Court for its scholarly interpretation of 'terrorism,' arguing that it overlooked the broader significance of the term 'action' as outlined in Section 6. According to the Supreme Court, the High Court's approach failed to align with the provisions of Section 6, the real-world context, and established principles of criminal law interpretation. This 'action' focused approach was maintained for an extended period. When the Supreme Court heard an appeal against the ruling of the Lahore High Court in *Mirza Shaukat Baig v. Shahid Jamil*, it conducted its first thorough analysis of Section 6 of the ATA and the concept of terrorism. The court rejected the interpretation of the Lahore High Court. However, despite being comprehensive and detailed in many aspects, the judgment relied on a risky and somewhat weak foundation. The language in Section 6 is clear, straightforward, and does not require complex interpretation, being fully sufficient to address all forms of terrorism.¹⁵ This section is comprehensive and does not focus on the phrase "designed to" as used in Section 6(1)(b) of the Act, nor does it center on mens rea. Instead, the key aspect, in the court's view, is the action itself, which determines whether the alleged offense falls within the scope of Section 6 of the Act. The Supreme Court upheld its earlier decisions, applying them equally to the interpretation of the recently defined definition of terrorism, based on this justification. By downplaying the importance of "designed to," the court came to the more alarming conclusion that there is no mens rea requirement in Section 6 of the ATA. Rather, the court interpreted "designed to" as synonymous with "willfully, knowingly, and deliberately," linking the phrase to the accused's actions rather than their motive. It is crucial to stress that this essay is not intended to ascertain whether the Supreme Court or the Lahore High Court offered a superior interpretation, notwithstanding our worries about the Court's doctrinal reservations on the importance of mens rea. Rather, it is just concerned with assessing whether or not the interpretation has stayed consistent. Although some disagreements were anticipated with the first major revision to Section 6 of the ATA, the Supreme Court's extremely harsh rejection of the Lahore High Court's order has verified these worries.

7. Summary

The Supreme Court stated that the High Court had overlooked previous rulings of the Apex Court, which placed significant emphasis on defining and interpreting the term "terrorism" and should be binding. The apex court also criticized the Lahore court for not considering the preamble of the Act in making a proper interpretation. It noted that it is not necessary for a penal provision to include both intent and action, as some provisions, like those omitting mens rea, are classified as strict liability offenses—a point the High Court failed to address. Additionally, the High Court missed the fact that when a statute lacks explicit language regarding mens rea, it is important to consider the statute's objectives and terms, which the High Court did not do. The Superior Court emphasized that Section 6 of the Act creates a statutory offense, making the issue of knowledge or mens rea irrelevant. When the legislature omits a specific mental condition, it is presumed to be intentional, rendering the doctrine of mens rea inapplicable in such cases.

8. Conclusion

The court emphasized that what is essential to invoke Section 6 of the ATA is the object or purpose for which the act is designed, including the inevitable consequences of the act, regardless of personal enmity between the parties. Without delving into the merits of the court's solution, this judgment seemed like a step toward achieving clarity and finality. Although the court

accurately pointed out that criminal cases are contingent on their particular facts and circumstances, the lack of an unambiguous standard for later courts to follow—rather than the variety in outcomes—was the true problem. There were still unanswered questions, such as whether the accused must be held accountable for knowing about probable repercussions or whether they should be included in the list of inevitable outcomes. Unfortunately, the court did not address these issues in its effort to avoid a strict rule.

The question of whether the accused intended to cause alarm, fear, and insecurity in the public's psyche emerged as the primary issue in the interpretation of Section 6. Since the earlier ruling in *Kashif Ali's* case found that no rigorous norms had been created, the court felt no need to make a distinction. A three-member bench decided that the preamble of the ATA could be used to infer the mens rea for terrorism, which stipulates that the accused must have acted with the intent to frighten society, excluding acts driven by personal animosity or a personal grudge.

I had previously argued that the conflict within the Supreme Court's jurisprudence regarding Section 6 is deep-rooted and unlikely to be resolved soon. This overview of conflicting rulings supports my pessimism. In *Kashif Ali's* case, the Supreme Court had the best chance to elucidate Section 6, yet the court passed up the opportunity in favor of flexibility over clarity. It is unclear from the resultant range of court rulings whether terrorism can be shown in situations where the repercussions under Section 6(1) clauses (b) and (c) were probable yet likely unintended. Similarly, it is unclear how much personal animosity influences whether Section 6 applies or which outcomes are unavoidable corollaries of the accused's behavior. The makeup of the Supreme Court bench considering the case could have a significant impact on the decision given the controversy.

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