

# JURISDICTIONAL AMBIGUITY BETWEEN ATCs AND SESSION COURTS: CAUSES, CONSEQUENCES AND RECOMMENDATIONS

AITZAZ WASEEM ABBASI

| [aitzazabbasi10@gmail.com](mailto:aitzazabbasi10@gmail.com)

*Aitzaz W. Abbasi* is a legal practitioner, a graduate with Magna Cum Laude distinction, an IMI Accredited Mediator, and a Tax Consultant with extensive experience in advocacy, research, and dispute resolution. He is a three-term Special Advisor to the Executive Council of BULMS, and he has taken part in 30+ moot courts in different capacities. He has also completed five internships, including one at the Office of the Advocate General Islamabad, and is currently working with Cornelius Lane & Mufti.

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## ABSTRACT

The jurisdictional boundary between Anti-Terrorism Courts (ATCs) and ordinary Sessions Courts has been one of the most persistently contested questions in Pakistan's criminal justice system since the enactment of the Anti-Terrorism Act 1997 (ATA). This article argues that this ambiguity primarily stems from the Supreme Court of Pakistan's persistent inconsistency between two competing interpretive approaches to Section 6 of the ATA: the actus reus based cumulative effect approach and the mens rea based design approach. The article traces the evolution of this interpretive conflict across three decades of ATA jurisprudence, examines its consequences, namely, the overcrowding of ATCs, erosion of legal certainty, and procedural prejudice to accused persons, and advances recommendations for structural reform, including judicial consistency, a higher jurisdictional threshold, and compulsory pre-trial screening.

**Keywords:** Anti-Terrorism Courts, Sessions Courts, Jurisdictional Ambiguity, Section 6 of the Anti-Terrorism Act 1997, Interpretive Inconsistency, Mens Rea, Legal Certainty

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## 1. INTRODUCTION

The jurisdictional boundary between Anti-Terrorism Courts (ATCs) and ordinary Sessions Courts has remained one of the most contested questions in Pakistan's criminal justice system.<sup>1</sup> The Anti-Terrorism Act, 1997, provided special Anti-Terrorism Courts to deal with the cases related to terrorist acts, crimes aimed to intimidate the population or disrupt the state.<sup>2</sup> Conversely, regular Sessions Courts retained jurisdiction over general criminal cases.

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<sup>1</sup> Research Society of International Law, *Counter-Terrorism and Human Rights: A Review of Anti-Terrorism Trial Procedure in Pakistan* (2018) [https://rsilpak.org/wp-content/uploads/2018/12/2ndABAReport\\_Counter-Terrorism-and-Human-Rights-A-Review-of-Anti-Terrorism-Trial-Procedure.pdf](https://rsilpak.org/wp-content/uploads/2018/12/2ndABAReport_Counter-Terrorism-and-Human-Rights-A-Review-of-Anti-Terrorism-Trial-Procedure.pdf) accessed 3 April 2026.

<sup>2</sup> Anti-Terrorism Act 1997, s 6.

However, there has always been a critical uncertainty regarding the definition of what in fact qualifies as an act of ‘terrorism’, since the inception of the ATA.<sup>3</sup> This brings about confusion as to which court should adjudicate on a specific case. In some instances, the same form of crime is handled as terrorism in one instance and as ordinary crime in another.<sup>4</sup> Such a discrepancy implies that accused persons, investigators and judges cannot depend on the discrepancy to reliably predict the category in which a case falls; an Anti-Terrorism Court or a Sessions Court. This chapter/thesis discusses the reasons why this jurisdictional uncertainty exists and the impact of this jurisdictional uncertainty on the Pakistani criminal justice system.

## 2. INCONSISTENT INTERPRETIVE APPROACHES TO SECTION 6 OF ATA, 1997

The main reason behind this inconsistency is the fact that over the last twenty years the Supreme Court of Pakistan has failed to adopt a consistent interpretive approach to Section 6 of the Anti-Terrorism Act (ATA), 1997.<sup>5</sup> Instead, two competing approaches have alternately dominated judicial reasoning: the actus reus-based (cumulative effect approach), which focuses on whether an act caused the public fear and insecurity regardless of intent, and the mens rea-based (design-based approach), which requires that the act be deliberately designed to terrorize the populace or overawe the state.<sup>6</sup> The Supreme Court’s oscillation between these two approaches has created profound jurisdictional uncertainty, effectively blurring the line between ATC and Sessions Court’s jurisdiction.<sup>7</sup>

### 2.1. Actus Reus / Cumulative Effect Approach.

The initial stage of ATA jurisprudence, 1997-2001, was dominated by a simple criterion, whether the offence was listed in the Schedule of the ATA or not. In *Nasreen v. ASJ Attock*, the Lahore High Court ruled that Special Courts could try scheduled offences.<sup>8</sup> The Supreme Court in *Mehram Ali and others vs. Federation of Pakistan and others* added the requirement of a nexus with Section 6, but crucially introduced the notion (in obiter) that personal enmity murders would not fall within the scope of ATA (This remark deviates from the general approach taken by Courts under Effect based approach).<sup>9</sup> Thus, this remark inadvertently opened interpretive space for future uncertainty which will be evident in 1.1.2.<sup>10</sup>

In 1999, the amendments added clauses (b), (c), and (d) to the Section 6, including the word ‘*effect*’.<sup>11</sup> Courts thereafter focused almost entirely on consequences. In *Muhammad Ajmal v.*

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<sup>3</sup> Reema Omer, ‘Defining Terrorism’ (*Dawn*, 21 August 2017) <https://www.dawn.com/news/1352821> accessed 1 May 2026.

<sup>4</sup> Khurshid Iqbal and Niaz A Shah, ‘Defining Terrorism in Pakistani Anti-Terrorism Law’ (2018) 7(2) *Global Journal of Comparative Law* 255 <https://hull-repository.worktribe.com/output/597297> accessed 9 May 2026.

<sup>5</sup> Usman Iqbal, ‘Jurisdiction of Anti-terrorism Courts in Pakistan: Conflict of Design-Based Approach and Cumulative Effect-Based Approach’ (2023) 7(1) *Islamabad LR* 1, 16 <http://irigs.iiu.edu.pk:64447/ojs/index.php/ilt/article/view/3899/1779> accessed 1 May 2026.

<sup>6</sup> *ibid* 1.

<sup>7</sup> *ibid* 20.

<sup>8</sup> *Nasreen v ASJ Attock* PLD 1998 Lahore 275.

<sup>9</sup> *Mehram Ali v Federation of Pakistan* PLD 1998 SC 1445.

<sup>10</sup> *ibid*.

<sup>11</sup> Anti-Terrorism (Amendment) Ordinance 1999, s 6.

The State, *even a personal vendetta killing was found to be under ATA* since its impact caused fear among the people.<sup>12</sup> In a similar case, *Muhammad Mushtaq v. Muhammad Ashiq* (PLD 2002 SC 841), the Supreme Court ruled that acts which instill fear in the people and disrupt the tranquility of the society were considered acts of terrorism.<sup>13</sup> In *Zia Ullah v. Special Judge ATC Faisalabad* (2002 SCMR 1225), the *murder of an advocate enroute to court, a pure personal enmity case* was classified as terrorism on the basis of the fear it generated in the legal community.<sup>14</sup>

This effect-based logic continued to be aggressive during the second phase (2002-2007). In *Naeem Akhtar v. The State*, case of the abduction and murder of a doctor by a relative of a patient who was not satisfied with the treatment was referred to as terrorism since it would cause panic in the medical profession.<sup>15</sup> *Muhammad Amjad v. The State* (PLD 2003 SC 704), held that even in the event where actual terror was not created, jurisdiction under Section 6(1)(b) would nevertheless be attracted *in the event of terror likely*.<sup>16</sup> This "cumulative effect" standard was further extended in *Mirza Shaukat Baig v. Shahid Jamil* (PLD 2005 SC 530)<sup>17</sup> and in personal vendetta cases like *Ranjha v. State* (2007 SCMR 455),<sup>18</sup> *Fateh Muhammad v. State* (2007 SCMR 1819),<sup>19</sup> and *Ghulam Hussain Soomro v. The State* (PLD 2007 SC 71).<sup>20</sup> Even into the third phase (2011-2020), the Supreme Court returned to this approach in *State v. Abdul Khaliq* (PLD 2011 SC 554),<sup>21</sup> *Khan Muhammad v. State* (2011 SCMR 705),<sup>22</sup> *Abdul Rehman v. State* (2010 SCMR 1758),<sup>23</sup> *Junaid Rehman v. State* (PLD 2011 SC 1135)<sup>24</sup> and a string of 2013-2015 cases including *Zeeshan Afzal v. State* (2013 SCMR 1602),<sup>25</sup> *Hakim Khan v. State* (2013 SCMR 777),<sup>26</sup> *Hamid Mahmood v. State* (2013 SCMR 1314),<sup>27</sup> *Zafar Iqbal v. State* (PLD 2015 SC 307),<sup>28</sup> *Abdul Haq v. State* (2015 SCMR 1326),<sup>29</sup> and *Dadullah v. State* (2015 SCMR 850).<sup>30</sup>

## 2.2. The Mens Rea / Design-Based Approach.

Despite this prevailing trend, a parallel Mens rea (or design-based) approach started to assert itself. The landmark shift came through *Basharat Ali v. Special Judge ATC* (PLD 2004 Lahore 199): where a court led by Justice Asif Saeed Khosa held the intent of the accused to be the

<sup>12</sup> *Muhammad Ajmal v The State* 2000 SCMR 1682.

<sup>13</sup> *Muhammad Mushtaq v Muhammad Ashiq* PLD 2002 SC 841.

<sup>14</sup> *Zia Ullah v Special Judge ATC Faisalabad* 2002 SCMR 1225.

<sup>15</sup> *Naeem Akhtar v The State* PLD 2003 SC 396.

<sup>16</sup> *Muhammad Amjad v The State* PLD 2003 SC 704.

<sup>17</sup> *Mirza Shaukat Baig v Shahid Jamil* PLD 2005 SC 530.

<sup>18</sup> *Ranjha v State* 2007 SCMR 455.

<sup>19</sup> *Fateh Muhammad v State* 2007 SCMR 1819.

<sup>20</sup> *Ghulam Hussain Soomro v The State* PLD 2007 SC 71.

<sup>21</sup> *State v Abdul Khaliq* PLD 2011 SC 554.

<sup>22</sup> *Khan Muhammad v State* 2011 SCMR 705.

<sup>23</sup> *Abdul Rehman v State* 2010 SCMR 1758.

<sup>24</sup> *Junaid Rehman v State* PLD 2011 SC 1135.

<sup>25</sup> *Zeeshan Afzal v State* 2013 SCMR 1602.

<sup>26</sup> *Hakim Khan v State* 2013 SCMR 777.

<sup>27</sup> *Hamid Mahmood v State* 2013 SCMR 1314.

<sup>28</sup> *Zafar Iqbal v State* PLD 2015 SC 307.

<sup>29</sup> *Abdul Haq v State* 2015 SCMR 1326.

<sup>30</sup> *Dadullah v State* 2015 SCMR 850.

design or purpose contemplated by Section 6(1)(b) and (c) that actus reus alone, without the requisite mens rea, could not brand an act as terrorism.<sup>31</sup> In *Mst. Najam-un-Nisa v. Judge Special Court* (2003 SCMR 1323), the court refused to apply ATA to a case where seven persons were slaughtered at night, holding that the act did not create a sense of terror in the society, but rather it was an act of personal hatred.<sup>32</sup> Even the Supreme Court in *Muhammad Idrees v. The State* (2008 SCMR 1544)<sup>33</sup> and *Tariq Mahmood v. State* (2008 SCMR 1631) refused to apply ATA when personal feuds were the driving force behind the offence, as terrorism does not have a personal motive against the victims.<sup>34</sup>

In 2016/17, *Muhammad Sadiq v. The State* (PLD 2016 SC 872),<sup>35</sup> *Shahbaz Masih v. The State* (2017 SCMR 1797),<sup>36</sup> *Malik Muhammad Mumtaz Qadri v. The State*, *Khuda-e-Noor v. State*, *Sagheer v. The State*, and *Shaukat Ali v. Haji Jan Muhammad* were all decided on the design-based approach.<sup>37</sup> The *Province of Punjab v. The State* (PLD 2018 SC 178) categorically declared that the ***'crimes based on personal vendetta cannot be dragged into the fold of terrorism'***.<sup>38</sup> The decision of Chief Justice Khosa in the case of *Ghulam Hussain* ultimately solidified the mens rea-based approach, which focuses on the fact that ATA jurisdiction requires a nexus with the objectives in Section 6(1)(b) and (c).<sup>39</sup>

### 2.3. The Resultant Jurisdictional Ambiguity

As evident from the above-mentioned analysis, primary cause of jurisdictional overlap between ATCs and Sessions Courts, is the simultaneous existence and Higher Courts' oscillation between the two competing approaches. When the effect-based approach prevails, the ordinary crimes of personal enmity which squarely belong before a Sessions Court are diverted into ATCs, and accused persons are subjected to an entirely different procedural framework with different rules on remand, bail and trial timelines<sup>40</sup> (which will be discussed in detail in Chapter 3). On the other hand, when the design-based approach prevails, cases rightly filed in ATCs risk to be transferred to Sessions Courts under Section 23 of the ATA, creating disruption in every procedural step.<sup>41</sup> In *Jahangir Khan v. Khalid Latif*, the Supreme Court endorsed the High Court's direction to let the trial court determine jurisdiction after recording prosecution evidence, effectively deferring the foundational jurisdictional question to the merits stage.<sup>42</sup> Thus, the resultant overlap between ATCs and Sessions Courts is not an accident, but a consequence of failure of the Supreme Court to articulate a consistent and unified standard of

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<sup>31</sup> *Basharat Ali v Special Judge Anti-Terrorism Court II Gujranwala* PLD 2004 Lahore 199.

<sup>32</sup> *Mst Najam-un-Nisa v Judge Special Court* 2003 SCMR 1323.

<sup>33</sup> *Muhammad Idrees v The State* 2008 SCMR 1544.

<sup>34</sup> *Tariq Mahmood v State* 2008 SCMR 1631.

<sup>35</sup> *Muhammad Sadiq v The State* PLD 2016 SC 872.

<sup>36</sup> *Shahbaz Masih v The State* 2017 SCMR 1797.

<sup>37</sup> *Usman Iqbal* (n 5) 17.

<sup>38</sup> *Province of Punjab v The State* PLD 2018 SC 178.

<sup>39</sup> *Ghulam Hussain v The State* PLD 2020 SC 61.

<sup>40</sup> *Usman Iqbal* (n 5) 1, 4.

<sup>41</sup> *ibid.*

<sup>42</sup> *Jahangir Khan v Khalid Latif* 2021 SCMR 136.

determining what constitutes an act of ‘terrorism’ under section 6 of the Anti-Terrorism Act, 1997.<sup>43</sup>

### 3. LEGAL AND SYSTEMIC CONSEQUENCES OF JURISDICTIONAL AMBIGUITY

#### 3.1. Overcrowding of Anti-Terrorism Courts

The main legislative goal of ATA was to ensure the speedy trial of the cases related to terrorism.<sup>44</sup> Jurisdictional ambiguity has thoroughly undermined this goal.<sup>45</sup> Section 6 has never been consistently applied and ordinary criminal cases have been coming in to the ATCs in large numbers.<sup>46</sup> As noted in the literature on the prosecution of terrorism offences in Pakistan, the prosecution authorities often do not contest decisions of the police and the judiciary regarding the exercise of jurisdiction, and cases with no real terrorism nexus often end up absorbing ATC resources.<sup>47</sup> The result is an overburdened ATC system, in which real cases of terrorism have to wait for a hearing against cases of mere personal vendetta murders, dacoity cases, and abductions for ransom,<sup>48</sup> as in *Muhammad Amjad v. The State* (PLD 2003 SC 704)<sup>49</sup> and *Ghulam Hussain Soomro v. The State* (PLD 2007 SC 71).<sup>50</sup> The ATC thus becomes neither a specialized court nor an effective extension of the already overloaded Sessions Court system.

Moreover, this accumulation of non-terror cases in ATCs, has also led to huge backlogs, delays and low conviction rate.<sup>51</sup> 80-83% of the ATC cases have been of “heinous” crimes (not terroristic),<sup>52</sup> and only a small number of the alleged ‘terrorists’ have been actually convicted.<sup>53</sup> This over-inclusion has resulted in postponements of trials, intimidation of witnesses and deterioration of evidence, resulting in very high acquittal rates.<sup>54</sup> Analysts note that prosecutors and police have incentives to “shop” cases into ATCs by misapplying ATA charges (e.g. inserting Section 7 on FIRs).<sup>55</sup> On the other hand, when courts later dismiss the terrorism

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<sup>43</sup> Anti-Terrorism Act 1997, s 6.

<sup>44</sup> Anti-Terrorism Act 1997, Preamble.

<sup>45</sup> Aisha Tariq, ‘Defining Terrorism: Its (Mis)Application and Implications in Pakistan’ (2019) 16(1) *Policy Perspectives* 117 <https://www.scienceopen.com/hosted-document?doi=10.13169/polipers.16.1.0117> accessed 3 May 2026.

<sup>46</sup> *ibid*, p 122.

<sup>47</sup> Research Society of International Law (n 1).

<sup>48</sup> Aisha Tariq (n 45) 122-123.

<sup>49</sup> *Muhammad Amjad v The State* PLD 2003 SC 704.

<sup>50</sup> *Ghulam Hussain v The State* PLD 2020 SC 61.

<sup>51</sup> Ayesha Jawad, ‘An evaluation of Anti-Terrorism laws in Pakistan: Lessons from the past and challenges for the future’ (2022) 9(1) *Security and Defence Quarterly* 1 <https://doi.org/10.35467/sdq/144192> accessed 23 April 2026.

<sup>52</sup> Tariq Parvez and Mehwish Rani, *An Appraisal of Pakistan’s Anti-Terrorism Act* (United States Institute of Peace 2015) 3 <https://www.usip.org/sites/default/files/SR377-An-Appraisal-of-Pakistan%E2%80%99s-Anti-Terrorism-Act.pdf> accessed 25 April 2026.

<sup>53</sup> Justice Project Pakistan, ‘Submission to the United Nations Human Rights Council Advisory Committee on the Effects of Terrorism on the Enjoyment of Human Rights’ (Justice Project Pakistan) 12 [https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/Terrorism/JusticeProjectPakistan\\_2.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/Terrorism/JusticeProjectPakistan_2.pdf) accessed 01 May 2026.

<sup>54</sup> Research Society of International Law (n 1) 98.

<sup>55</sup> Research Society of International Law (n 1) 19.

cases, the cases are then transferred under Section 23 ATA, leading to further disruption.<sup>56</sup> Official meeting minutes and media reports indicate that thousands of cases are pending in ATCs (e.g. 2,273 cases nationwide as of late 2024),<sup>57</sup> and one study (2020-23) demonstrated that only 11% of 6,550 accused were convicted.<sup>58</sup> To sum up, all sources state that the overlapping of jurisdictions has created a “judicial paralysis” with trials lasting for years, many accused going free on technicalities, and forums being selected on tactical grounds. Over-broad definition, poor case management and misuse by police/prosecutors are the key criticisms that are repeated in studies and that contribute to delays, transfer of litigation, and mistrust of the justice system.

### 3.2. Inconsistent Outcomes and Erosion of Legal Certainty

The most harmful effect of jurisdictional uncertainty may be its corrosive effect on legal certainty and predictability of outcomes.<sup>59</sup> If the Supreme Court uses the cumulative effect approach in one case and the design-based approach in another with materially similar facts, then the accused, investigators and prosecutors can no longer know which approach will be used in their case. In *Mst. Najam-un-Nisa v. Judge Special Court* (2003 SCMR 1323), the slaughter of seven persons did not attract ATA jurisdiction,<sup>60</sup> whereas in *Naeem Akhtar v. The State* (PLD 2003 SC 396), a single murder did.<sup>61</sup> In *Tariq Mahmood v. State* (2008 SCMR 1631), a land feud resulting in multiple deaths was excluded from ATA,<sup>62</sup> while similar factual matrices in *Ranjha v. State* (2007 SCMR 455) attracted ATA conviction.<sup>63</sup> In Ganda Singh cases in district Kasur, 17 sodomy cases were tried under ordinary laws while 14 cases were tried under ATC courts.<sup>64</sup> Human Rights Watch has also reported that the use of vague and overly broad definitions of terrorism carries significant risks of violations of civil liberties, and that the application of such definitions by courts is inconsistent and thus exacerbates these risks.<sup>65</sup> This lack of legal certainty ultimately undermines public trust in the criminal justice system and raises doubts about the rule of law, which requires that like cases be treated alike, in Pakistan's anti-terrorism jurisprudence.<sup>66</sup>

### 3.3. Procedural Consequences in Cases of Wrongful Addition Under the ATA

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<sup>56</sup> Usman Iqbal (n 5).

<sup>57</sup> Sabih Ul Hussain, ‘Supreme Court’s Anti-Terrorism Courts Performance Review Sidesteps May 9 Cases’ *The Friday Times* (8 November 2024) <https://www.thefridaytimes.com/08-Nov-2024/supreme-court-s-anti-terrorism-courts-performance-review-sidesteps-may-9-cases> accessed 01 May 2026.

<sup>58</sup> Waleed Sami, ‘Pakistan’s Judicial Paralysis: The Battle Against Terrorism and the Need for Reform’ *Eurasia Review* (8 October 2024) <https://www.eurasiareview.com/08102024-pakistans-judicial-paralysis-the-battle-against-terrorism-and-the-need-for-reform-oped/> accessed 01 May 2026.

<sup>59</sup> *Ghulam Hussain v The State* PLD 2020 SC 61.

<sup>60</sup> *Mst Najam-un-Nisa v Judge Special Court* 2003 SCMR 1323.

<sup>61</sup> *Naeem Akhtar v The State* PLD 2003 SC 396.

<sup>62</sup> *Tariq Mahmood v State* 2008 SCMR 1631.

<sup>63</sup> *Ranjha v State* 2007 SCMR 455.

<sup>64</sup> Usman Iqbal (n 5) 19.

<sup>65</sup> Human Rights Watch, ‘Pakistan: Events of 2023’ in *World Report 2024* (Human Rights Watch 2024) <https://www.hrw.org/world-report/2024/country-chapters/pakistan> accessed 10 April 2026.

<sup>66</sup> Khalid Nazir, ‘Definition of Terrorism and its impact on Criminal Justice System: A Critical Review’ (2022) 1(1) *Journal of Public Policy Practitioners* 1 <https://doi.org/10.32350/jppp.12.04> accessed 10 April 2026.

One direct effect of this ambiguity is that those accused of ordinary offences are treated under the much stricter procedures of the ATA, and are denied the protections that they would normally receive under the Code of Criminal Procedure, 1898. The most important of these deprivations start at the remand stage: while the Sec. 167 of Cr.P.C allows the police to keep a person in custody for a maximum of 15 days,<sup>67</sup> the ATA Sec. 19(1-B) allows remand for up to 90 days,<sup>68</sup> which means that a wrongly implicated accused can be kept in custody for a long period of time, with limited scope to challenge the detention, as the court grants remands almost routinely without any clear guidelines or hearing from the defence.<sup>69</sup>

This vulnerability is exacerbated by the fact that access to bail is severely limited: As per section 21-D(1), ‘Only an ATC, the High Court or the Supreme Court can grant bail’,<sup>70</sup> thus bail is a practically and financially impossible remedy for most accused.<sup>71</sup> The report also notes that trials in absentia, where an accused can be tried and convicted without his presence,<sup>72</sup> is a grave violation of the Cr.P.C principle that evidence must be recorded in his presence as guaranteed by Section 353 of Cr.P.C.<sup>73</sup> Also, those wrongfully convicted under the ATA are not entitled to remissions that are granted to convicts under general law, which RSIL says may be a violation of Article 9 of the Constitution.<sup>74 75</sup> All of this is exacerbated by the fact that legal representation is rarely provided at the initial and most critical stages of arrest, remand and investigation, and the accused is unable to challenge jurisdiction at all.<sup>76</sup> All these procedural consequences are a testament to the fact that the designation of an ordinary crime as terror is not simply a technical jurisdictional mistake, but a direct and serious violation of an accused's constitutional rights.

#### 4. RECOMMENDATIONS

The jurisdictional overlap between Anti-Terrorism Courts and Sessions Courts, as examined throughout this thesis, is not an incidental flaw but a structural consequence of interpretive inconsistency at the highest judicial level. The recommendations outlined below are not intended to prescribe Superior Judiciary adopt a specific interpretation in the future. That is a constitutional and judicial matter, which is ultimately discretion of the court. But what this thesis argues is that the present oscillation between the cumulative effect approach and the design-based approach is the cause of the jurisdictional ambiguity<sup>77</sup> and that a degree of judicial restraint and consistency is both necessary and overdue; to consistently stick with a single approach.

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<sup>67</sup> Code of Criminal Procedure 1898, s 167.

<sup>68</sup> Anti-Terrorism Act 1997, s 19(1B).

<sup>69</sup> Research Society of International Law (n 1)

<sup>70</sup> Anti-Terrorism Act 1997, s 21-D(1).

<sup>71</sup> Research Society of International Law (n 1) 111.

<sup>72</sup> Research Society of International Law (n 1) 87-88.

<sup>73</sup> Code of Criminal Procedure 1898, s 353.

<sup>74</sup> Constitution of the Islamic Republic of Pakistan 1973, art 9.

<sup>75</sup> Research Society of International Law (n 1) 104.

<sup>76</sup> Research Society of International Law (n 1) 8-11.

<sup>77</sup> Usman Iqbal (n 5) 17.

With that being said, it is recommended that a mens rea-based approach is better suited to the ATA's legislative objectives. A case based on nothing more than personal vendetta, private enmity or personal grievance does not have any of the characteristics of terrorism, as envisioned by Section 6 of the ATA.<sup>78</sup> If the accused is sent to ATCs only because of the public fear generated by the effects of his actions, then he is facing an extremely tough procedure which takes him away from the rights he would have under general criminal procedure. The mens rea approach sets a higher threshold for ATC jurisdiction, and is more precise and constitutionally responsible in that it requires an act be designed to intimidate the public or overawe the state.

The more critical recommendation, however, is this: whatever approach the Superior Judiciary decides to take, it shall stay consistent with it. Mature legal systems around the world, once they have settled on the meaning of a statutory provision, they accept that meaning as binding and do not deviate from it without a strong constitutional basis. This is something that the superior courts of Pakistan have not shown in ATA cases and the effects, as seen in the chapter 3, have been devastating. People have been wrongfully subjected to extended remands, inaccessible bail, trials in absentia, and denial of remissions simply because the court that heard their case on a given day happened to prefer the effect-based approach.<sup>79</sup>

A further recommendation relates to the misuse of ATA provisions by the police and prosecutors during the pre-trial phase. Investigating officers often use the ATA provisions without adequate understanding of the legal definition of terrorism under Section 6, and in certain instances, do so to subject accused persons to the harsher ATC procedural framework as a tool of coercion.<sup>80</sup> This is a misclassification at the FIR stage which triggers a series of procedural prejudice which is difficult to be set right once cognizance has been taken by ATC.<sup>81</sup> Therefore, it is recommended that all investigating officers undergo compulsory legal training on the definition of terrorism and the limits of jurisdiction of the ATA, and that a compulsory senior prosecutorial review be introduced as a prerequisite before registration of any FIR under the ATA; this would make prosecutors the first point of contact with the police, and act as a filter to ensure that the procedural rigour of ATA proceedings is restricted only to situations which are constitutionally warranted.

Henceforth, therefore, the cases that enter the ATCs should be faced with a robust pre-trial screening mechanism which should assess, at the earliest stage, whether the alleged conduct actually meets the mens rea requirement under Section 6.

## 5. CONCLUSION

The jurisdictional ambiguity between ATCs and Sessions Courts in Pakistan is traceable to a single, identifiable cause: the Supreme Court's failure, over nearly three decades, to settle on a consistent interpretive approach to Section 6 of the ATA. The oscillation between the

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<sup>78</sup> Anti-Terrorism Act 1997, s 6.

<sup>79</sup> Research Society of International Law (n 1) 8-11.

<sup>80</sup> *ibid.*

<sup>81</sup> *ibid.*

cumulative effect and design-based approaches has produced overcrowded courts, unpredictable outcomes, and serious procedural violations against accused persons, many of whom had no business before an ATC in the first place. The path to reform requires, above all, judicial consistency. The rule of law demands no less.

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