



# Defining Terrorism in Pakistan

*The Supreme Court's Judgment – A way forward for Parliament*

Muhammad Amir Rana





# Contents

<b>Foreword .....</b>	<b>i</b>
<b>1. Introduction .....</b>	<b>1</b>
1.1 Definitional confusions .....	3
1.2 Political application of ATA 1997 .....	5
1.3 Misuse of terrorism-related laws .....	7
1.4 The public discourse on the definition .....	7
1.6 Is terrorism the only problem? .....	8
<b>2. Terminologies and narratives .....</b>	<b>11</b>
2.1 Political dissent and security-related legislations .....	12
2.2 Discourse on misconduct, disobedience, conspiracy, anti-national and enemy alien .....	13
2.3 Guerrillas, freedom fighters, pro-independence, separatists, Pararis and miscreants .....	16
2.4 Savior, patriot, mujahid, jihadi, Taliban, militant and terrorist .....	17
<b>3. The problem of defining terrorism.....</b>	<b>21</b>
3.1 Intellectual debate on definition of terrorism.....	21
3.2 Fluid nature of terrorist groups .....	22
3.3 International considerations and their repercussion for Pakistan .....	23
3.4 Legal perspective .....	25
3.5 Role of parliament .....	26
<b>4. Determining boundaries of terrorism .....</b>	<b>27</b>
4.1 In search of a universal definition.....	27
4.2 Defining nature of crime.....	28
4.3 Politics of definition .....	29
4.4 Scholarly discourse on definition .....	31
4.5 Typology of terrorism.....	35

4.6 Definition of terrorism in Pakistan ..... 37

**5. Pathways to working out a terrorism definition by parliament . 43**

5.1 Supreme Court guidelines ..... 44

5.2 UNSC resolutions and guidelines..... 45

5.3 The complicated regional context ..... 46

5.4 Terrorism in its entirety ..... 46

5.5 Broader context..... 48

5.6 The way forward ..... 48

**Conclusion ..... 51**

Table 1: Terminology used by various actors ..... 19

Table 2: Differentiating among key terminology ..... 34

## Foreword

In democratic countries the Parliament occupies the key role in politics. It is established by democratic elections, and is the most important instrument of a society to politically define its own rules and laws. Therefore, it is quite obvious that a Parliament (in the case of Pakistan the National Assembly jointly with the Senate) should be in control of the most important political decision making, and should faithfully fulfil its constitutional role of defining the political and social norms. Good Governance requires that the parliament will actually fulfil this role. Therefore, it was very positive and important that the Pakistani Supreme Court in the autumn of 2019 decided that the Parliament has to clarify the legal definition of “terrorism” in the legal code. This was a historic decision for at least three reasons:

- (1) In many countries and internationally the legal definition of the term “terrorism” is either unclear, ambiguous, or politically charged. There is no consensus on the definition of “terrorism” in academic research, in criminal law, nor internationally in politics or international law. Defining terrorism is extremely difficult because of its complex relationship to other forms of violence, because of the moral outrage it produces, and because of its political instrumentalization.
- (2) If academics cannot agree on a common definition of terrorism, how can lawyers, policemen, journalists, politicians, human rights activists, and the civil society agree on it? And if the term “terrorism” is not clearly defined in law, how can the courts and the security organizations enforce the laws on terrorism? Obviously, the fight against terrorism depends on knowing what terrorism actually is, and what it is not. Any vagueness or confusion will weaken the fight against terrorism.
- (3) On the other hand, in many countries the term “terrorism” has been broadened beyond any reason, and has been used to attack any political enemy or competitor. It too often has become a verbal weapon, instead a legal or intellectual category. The danger is that mixing up security analysis, law, and political rhetoric will open the door to the political instrumentalization of the term “terrorism”, much beyond its proper meaning.

The Supreme Court of Pakistan has very wisely decided to insist on clarity in regard to defining terrorism in the Pakistani legal context. And it has very properly tasked the Pakistani Parliament with defining it, noting that the current situation of vagueness opens the door to several negative effects.

The current paper by eminent Pakistani expert on violent conflict and violence, Muhammad Amir Rana, tries to support and facilitate the difficult task of parliament to clearly define terrorism by first analyzing the need to do so, then showing the problems such an endeavor will necessarily face, and finally by presenting a few suggestions on how to proceed. We can only congratulate the author for tackling the complex issue in such an inspiring and constructive way. Our earnest wish is that this paper will help Parliament to deal with the difficult task at hand even better. This would be an important contribution to strengthen rational and progressive Governance in Pakistan.

Finally, and as usual, please note that the ideas and opinions expressed in this paper are not necessarily those of the Friedrich Ebert Stiftung (FES), but exclusively of the author.

**Dr. Jochen Hippler**  
Country Director  
Friedrich-Ebert-Stiftung

**Abdullah Dayo &  
Hamayoun Khan**  
Program Coordinators  
Friedrich-Ebert-Stiftung  
December 2020

# 1. Introduction

Pakistan has been through the most turbulent and violent phase of its war against terrorism in recent years. Since 6 May 2018, when the Pakistan military cleared the last stronghold of terrorist groups in North Waziristan,<sup>1</sup> the number of terrorist attacks across the country has declined sharply. Statistically, terrorist attacks in Pakistan have decreased between 20 and 30 percent annually since 2009, with the exception of 2013, when a 19 percent increase in attacks was recorded compared to 2012.<sup>2</sup>

Despite the success on the battlefield, an issue that still looms large is that of the definition of terrorism. The Supreme Court of Pakistan (SCP) rendered a landmark judgment on the definition of terrorism on 30 October 2019, recommending that the parliament develop a new and comprehensive legal definition of terrorism.<sup>3</sup> The SCP, in its judgment, observed that the definition provided in Section 6 of the Anti-Terrorism Act (ATA) 1997 had failed to capture the essence of terrorism and had often been misused for multiple reasons.<sup>4</sup> The SCP was particularly concerned about the legality of the ATA definition. The legal community and law enforcement agencies (LEAs)<sup>5</sup> had been demanding amendment to the definition, but the state had been reluctant to touch it. This despite the fact that Pakistan has faced the critical challenge of religiously motivated terrorism over many decades, and the threat is far from over. Terrorism fueled insurgency in the erstwhile tribal regions of Pakistan (now merged with the Khyber Pakhtunkhwa province) bordering Afghanistan, triggered sectarian violence, sophisticated urban warfare and, at one stage, the militants' narrative seemed to have laid siege of the mindset of society. While nearly everybody agrees that Pakistan had and still has a serious terrorism challenge on its hands, it remains quite unclear what that actually means. Equally serious is the definitional challenge. In Pakistan's legal or policy lexicon, the term "terrorism" is still defined in a vague and contradictory manner, to the extent that it not fully

- 
1. Umer Farooq, Army declares North Waziristan fully under control, *The Express Tribune*, May 6, 2018
  2. Pakistan Security Report, 2019, *Conflict and Peace Studies*, a PIPS Research Journal, Jan-June 2020, Vol. 12, No. 1, Islamabad.
  3. Supreme Court of Pakistan judgement announced on October 30, 2019 on Criminal Appeals No. 95 and 96 of 2019, Civil Appeal No. 10-L of 2017 and Criminal Appeal No. 63 of 2013. Judgment available on the Supreme Court of Pakistan website: [https://www.supremecourt.gov.pk/downloads\\_judgements/crl.a.\\_95\\_2019.pdf](https://www.supremecourt.gov.pk/downloads_judgements/crl.a._95_2019.pdf)
  4. Ibid.
  5. In the context of countering terrorism, the LEAs comprise federal and provincial forces both civilian and paramilitary, including police, rangers, army, as well as civilian and military intelligence agencies.

clear what “terrorism” is and what distinguishes it from other forms of political violence.

The recent violent phase in the war against terrorism was not the first time that Pakistan had experienced a serious internal security threat. Since its inception in 1947, the country has encountered several waves of political agitation and violent movements, which have been ethnic, linguistic, sub-national, communal and religious in nature. Socio-economic disparities and identity issues have always been seen as a common thread in all these movements. The state-building efforts had proved counterproductive as the Bengali ethno-national movement in East Pakistan matured during 1959-1970, which eventually led to the disintegration of the country in the wake of the third Indo-Pakistan war in 1971.<sup>6</sup> Since then, the elites of the country see the ethno-national movements through the lens of ideology, real or imagined.<sup>7</sup> Renowned scholar Khaled Ahmed noted that the founders of Pakistan conceived and nurtured the nation as an ideological state and its enemies, whether external or internal, were always perceived as a threat to its ideology. The religious movements had further exposed the communal and sectarian divide in the newborn country and violence against religious minorities and small sectarian communities was related to the question of identity.<sup>8</sup> The state attitude towards the ethno-national and religious movements could be read in that context. The security institutions have often tended to perceive and label such political resistance not as political challenges or insurgencies, but as externally created and/or “terrorist” enterprises. Political resistance, including its violent forms, were thus portrayed as foreign backed, and as mere criminal activities.

Violent religious, political, and ethno-national movements continued posing security threats through the country’s history. Violent protests against religious communities, especially the violent campaign against the Ahmadiyya community in Punjab in 1954, insurgencies in Balochistan, ethnic and linguistic-based violence in Karachi, low-scale ethno-national violent agitations in Sindh and Khyber Pakhtunkhwa and sectarian conflict in Gilgit Baltistan shaped the security approach of the state.

Organized religious movements for the enforcement of Shariah and sectarian conflicts, which turned violent time and again, posed a more complex security

---

6. Tahir Amin, *Ethno-National Movements of Pakistan Domestic and International Factors*, Institute of Policy Studies, Islamabad, 1988, p. 3.

7. *Ibid*, p. 2.

8. Khaled Ahmed, *Sectarian War: Pakistan’s Sunni-Shia Violence and its Links to the Middle East*, Karachi: Oxford University Press, 2011, p. xv.

challenge for the state. Despite facing all these challenges, it took Pakistan 50 years to define terrorism in 1997, and even so the ambiguities still surrounding the definition have forced the SCP to weigh in.

All through the various legal measures that Pakistan has taken to deal with terrorism-related security challenges, the legal definition of terrorism has remained vague. It is far from comprehensive and criminalizes expressions of sectarian hatred and certain violent political acts, which are already listed as punishable offences under the Pakistan Penal Code. As indicated earlier, the ambiguities around the meaning of terrorism are rooted in the political history of Pakistan, and the following factors could also be seen as probable causes of the ambiguity.

## **1.1 Definitional confusions**

Violence is an integral part of terrorism, militancy or insurgency, whereas extremism may employ tactics of direct violence, incite violence, or prefer to simultaneously adopt both these approaches. Militant, terrorist and insurgent movements have political motives, which may correspond with those of their contemporary non-violent political movements. It is also possible that violent movements wish to remain part of non-violent political movements or individuals switch loyalties from one camp to the other. It is pertinent to assess whether both are treated in a similar manner on account of political and ideological commonalities. In Pakistan, the nationalist and religious movements have both violent and non-violent faces, but the legislation process differentiating between the two has always left grey areas, which is something that movements of both persuasions maneuver to draw advantage from. For example, the banned sectarian outfit Sipah-e-Sahabah Pakistan has consistently claimed to be a non-violent movement, but its leaders have often indulged in inciting violence against the opposing sect and yet got legal relief by virtue of not being found directly engaged in perpetuating violent acts.

The nationalist insurgents and religious militants use terrorism as a tactic to create chaos, disorder, fear and to undermine the state authority. They also employ other tactics to attract people and expand their support base, including via provision of social services for locals, offering alternative delivery systems, such as maintaining law and order and setting up informal courts, as the Taliban did in Afghanistan and the UNSC-designated terrorist group Tehrik-e-Taliban Pakistan (TTP) did in Pakistani tribal areas. They also run their propaganda campaign, and their activities other than violent actions have similar objectives, but can these too be described as terrorism? Section 6 (5) of the ATA does say

that any act done for the benefit of a proscribed organization also amounts to terrorism. When former TTP spokesperson Ehsan Ullah Ehsan surrendered to the security forces in 2017, he claimed amnesty on the ground that he had never been part of the TTP terrorist operations, rather his task was confined to running its media affairs.<sup>9</sup> Hence the question, who is a terrorist? Is it only the combatant units or the non-combatants ones as well? And is everything that a terrorist does, even if non-violent, automatically and always amount to terrorism? The confusion deepens when one tries to distinguish between terrorism and terrorists. Prior to his eventual indictment in a terrorism-financing case,<sup>10</sup> the legal advisors of Jamaatud Daawa chief Hafiz Muhammad Saeed had pleaded in the courts that he had never been found involved in any terrorist activity in Pakistan and he did get relief from the courts every time. There have been many other examples of this sort.

The political character of religious militancy in the tribal districts of Khyber Pakhtunkhwa province and that of nationalist insurgencies was largely the same, barring a few exceptions. The nationalist insurgents fought for independence and religious militants with the objective to establish their writ in their areas of influence and gradually expand that to other parts of the country. This distinction caused considerable ambiguity in Pakistan and, unlike the nationalist insurgents, the religious militants for a long time were not painted as anti-state elements in public discourse. The violent character of both can be categorized as political violence, which covers the phenomena variously labeled as rebellion, insurgency, terrorism and civil war. But the question remains, in which cases should the violence in a rebellion or insurgency be called “terrorism”?

The movements of religious militants and national insurgents have rebellious character in so far as they both challenge the existing order, although the former justifies the struggle to grab power as a means to replace the system with one in synch with their religious beliefs and the latter want separation or independence from a state. A definition that outlines the rebellious character of such movements is therefore essential.

On the other hand, the violent sectarian groups—which pursue narrower objectives of targeting their opponents through a variety of targeted or indiscriminate acts of violence—are entities whose characterization as terrorist

9. Asad Hashim, Exclusive: Pakistani Taliban down but not out, says ex-spokesman, Al-Jazeera April 3, 2020 <https://www.aljazeera.com/news/2020/04/exclusive-ehsanullah-ehsan-pakistan-taliban-spokesman-200403075526508.html>

10. Rana Bilal, Verdicts in 2 terror financing cases against Hafiz Saeed to be announced on Feb 8, Dawn, February 6, 2020 <https://www.dawn.com/news/1532831/verdicts-in-2-terror-financing-cases-against-hafiz-saeed-to-be-announced-on-feb-8>



groups is more straight forward. They have no other political objectives, except pushing their opponents over the edge.

## 1.2 Political application of ATA 1997

The federal government promulgated the Anti-Terrorism Act (ATA) in 1997 with the sole purpose of controlling sectarian violence. The preamble of the law also cited expeditious trial of heinous offences as one of its aims, which widened its scope. Section 6 of the ATA defines terrorism in these words: '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,' or 'does any act or thing by using bombs, dynamite or other explosive or inflammable substance, or fire-arms, or other lethal weapons or poisonous or noxious gases or chemicals or other substance 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'.<sup>11</sup>

It may not be too difficult to imagine that the definition can be applied to very many actions that are to be regulated under the regular criminal law. The SCP has rightly observed that the definition of terrorism has been a subject of controversy in the highest court in the land for some time, with different Supreme Court benches of varying strengths deciding different cases have differed with each other over the years and have understood and interpreted the term terrorism differently.<sup>12</sup>

The ATA was conceived in a particular political environment. On the one hand, the state was patronizing militant groups in Afghanistan and Indian Administrated Kashmir, but on the other it wanted to control the violent sectarian actors, which had close association with the state-patronized groups. From 1990 to March 2002, as many as 1,016 people had been killed in 1,342 sectarian terrorist attacks across Pakistan.<sup>13</sup> The casualties included doctors, diplomats, bureaucrats and political and religious leaders from the Shia and Sunni sects. Even after the promulgation of the ATA, it took time to find its

11. Aisha Tariq, *Defining Terrorism: Its(Mis) Application and Implications in Pakistan*, Policy Perspectives, Volume 16, Number 1, 2019. A journal of Institute of Policy Studies, Islamabad. p. 119.

12. The 2019 Supreme Court judgement on the meanings, scope and import of the term 'terrorism'.

13. Muhammad Amir Rana, *A to Z of Jihadi Organizations in Pakistan*, Mashal, Lahore, 2002, pp. 586-587.

utility. The Anti-Terrorism Courts (ATCs) established under the 1997 Act also did not prove to be effective for two major reasons. First, sectarian militants were powerful and so entrenched with the militant groups based in Afghanistan and Pakistan that the distinction between sectarian and non-sectarian groups had become difficult. The sectarian terrorists affiliated with the militant groups enjoying state patronage almost made these courts dysfunctional, killing and terrorizing the judges. Second, the scope of the definition of terrorism in the ATA was so wide that it could be easily manipulated for political purposes. Many politicians and political workers were tried under this law.<sup>14</sup> The architect of the law, former prime minister Nawaz Sharif, himself became a victim of the law, when on 2 December 1999, military ruler General Pervez Musharraf introduced two amendments and added conspiracy related clauses to the ATA to charge Nawaz Sharif under the law.<sup>15</sup> On the other hand, the trial of hardcore sectarian terrorists suffered long delays, and many of the accused operated from prisons, such as Malik Ishaq, one of the founders of sectarian terrorist organization Lashkar-e-Jhangvi (LeJ), who was released on bail in December 2014 after spending over 13 years behind bars on more than 70 charges of sectarian killings.<sup>16</sup> He was shot and killed in an encounter with law enforcement personnel on 28 July 2015.<sup>17</sup>

The ATCs also had capacity issues to hear terrorism-related cases and the ATA 1997 definition also did not support prosecution of the accused. In the absence of convictions in terrorism-related cases, the LEAs resorted to extra-judicial measures. Another notorious terrorist and founder of LeJ, Riaz Basra, who was wanted in 300 murder and terrorism cases including the assassination of Iranian diplomat Sadiq Ganji, was killed in a police encounter amid the ATCs failing to conclude the many trials that Basra faced.<sup>18</sup>

Apart from its political exploitation, the ATA 1997 definition of terrorism also caused problems in judicial proceedings, leading to the Supreme Court of Pakistan taking notice of it, and observing in its judgment:

“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

14. Charles Kennedy, The Creation and Development of Pakistan's Anti-terrorism Regime, 1997–2002 <https://apcss.org/wp-content/uploads/2011/03/PagesfromReligiousRadicalismandSecurityinSouthAsiach16.pdf>

15. Ibid.

16. Malik Ishaq: Pakistan Sunni militant chief killed by police, BBC News, 29 July, 2015 <https://www.bbc.com/news/world-asia-33699133>

17. Ibid.

18. Muhammad Amir Rana, A to Z of Jihadi Organizations in Pakistan, p. 206.

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.”<sup>19</sup>

### 1.3 Misuse of terrorism-related laws

As mentioned earlier, the ATA was used for political purposes and it certainly was not the first instance of a special law being utilized in the country in this manner. Pakistan has had a history of misusing security related laws to target politicians. This is one of the reasons for reluctance by the political parties to take the lead in terrorism-related legislation in parliament and usually endorsing the laws recommended or suggested by the security institutions of Pakistan. In January 2015 when the upper house of parliament voted in favor of the 21st Constitutional Amendment for setting up military courts in the country, Pakistan Peoples Party (PPP) Senator Raza Rabbani recorded his protest and stated that he was voting at the behest of his party, otherwise the amendment was against his conscience, and that he had never felt more ashamed in his life than while voting for setting up military courts.<sup>20</sup> Much security related legislation endorsed by the parliament, including the Protection of Pakistan Act (PPA) 2014 and Fair Trial Act (FTA) 2013, empowered the law enforcement agencies (LEAs), while many of the laws were criticized for being in violation of the human rights legal framework.<sup>21</sup> The LEAs remain eager for ever more extensive legal powers. Despite nearly two dozen amendments to ATA 1997 to date, and changes in FTA 2013 and PPA 2014, the last resort has been the establishment of military courts in the country for speedy trials of terrorism cases. However, all these legal measures have not addressed the high acquittal rate in terrorism-related cases, which remains a matter of serious concern for various perspectives.

### 1.4 The public discourse on the definition

The public discourse in Pakistan on the definition of terrorism has been one-dimensional and supportive of the militant ideologies and their political

19. The judgment is accessible on the Supreme Court of Pakistan website: [https://www.supremecourt.gov.pk/downloads\\_judgements/crl.a.\\_95\\_2019.pdf](https://www.supremecourt.gov.pk/downloads_judgements/crl.a._95_2019.pdf)

20. Raza Rabbani in tears: 'Ashamed to vote against conscience', Dawn, January 6, 2015, <https://www.dawn.com/news/1155293>

21. Reema Omer, Definition of terrorism, Dawn, November 4, 2019, <https://www.dawn.com/news/1514768>

objectives, but their violent actions have remained unpopular.<sup>22</sup> Once not too long ago, a common citizen was not ready to accept that the Taliban or militant groups could be involved in any act of terrorism inside Pakistan. Their actions outside the country were depicted as acts of jihad.<sup>23</sup> The confusion had a demoralizing effect on the security forces and before the military operation in Swat, the military demanded complete public support for the operation against the militants. That support came in the form of a resolution adopted by a joint parliamentary session on national security held on 22 October 2008 to support the military operation.<sup>24</sup>

Such support also became apparent in the legislation process and terminology; Protection of Pakistan Act 2014 declaring parts of such elements enemy aliens is one example of the same.<sup>25</sup> The political parties, especially the nationalist ones, were on the same page with the government regarding religiously motivated terrorists, but had a different view about nationalist separatist movements in Balochistan and were supportive of an engagement policy towards them. The Pakistan Peoples Party government announced the Aghaz-e-Huqooq-e-Balochistan package on 24 November 2009<sup>26</sup> in order to address longstanding grievances of the province and for the betterment of its people. The package supported political dialogue with the exiled Baloch leadership in order to bring them back into the mainstream. But the process was left unaccomplished after a few halfhearted attempts. Even in the National Action Plan (NAP), which was formulated as a counter-terrorism policy framework in 2015, political parties had agreed on a reconciliation process in Balochistan.<sup>27</sup> The stance of the security establishment remains strict towards separatist movements. The nationalist parties have remained apprehensive about terrorism-related legislations.

## 1.6 Is terrorism the only problem?

Pakistan's security matrix is quite broad, ranging from the ethno-nationalist conflicts and insurgencies to violent religious extremism. With the passage

---

22. Alex P. Schmid, Public Opinion Survey, Data to Measure Sympathy and Support for Islamist Terrorism: A Look at Muslim Opinions on Al-Qaeda and IS, ICCT Research Paper, February 2017, <https://icct.nl/wp-content/uploads/2017/02/ICCT-Schmid-Muslim-Opinion-Polls-Jan2017-1.pdf>

23. The militant print media.

24. Call for urgent review of war on terror: Joint session adopts resolution, Dawn, October 23, 2008, <https://www.dawn.com/news/326676>

25. <https://nacta.gov.pk/wp-content/uploads/2017/09/PROTECTION-OF-PAKISTAN-ORDINANCE.pdf>

26. Aghaz-e-Haqooq-e-Balochistan package, Business Recorder, December 3, 2009, <https://fp.brecorder.com/2009/12/20091203992486/>

27. NAP implementation, NACTA website, <https://nacta.gov.pk/nap-monitoring/>

of time, the specific legal and political terminology has also developed to encapsulate the threats posed by non-state actors. Religious extremism has made the terminologies complicated, especially when used in the context of terrorism. In the public discourse, extremism and radicalism are often perceived as being very close to terrorism, almost to the point where it may be difficult to tell them apart. In Pakistan's particular context the term refers to violent expressions of ethno-national movements. The security institutions choose the terminology that suits them best in a particular context.

For example, the Inter-Services Public Relations (ISPR), which is the media wing of Pakistan's armed forces, frequently equates Pashtun Tahaffuz Movement (PTM) with Tehrik-e-Taliban Pakistan (TTP), the banned terrorist group,<sup>28</sup> while the PTM leadership claims that their organization pursues a non-violent movement.<sup>29</sup> The same is the case with the Muttahida Qaumi Movement (MQM) Altaf group, which is referred to as a terrorist organization in press briefings by the LEAs.<sup>30</sup> If the use of violence is to be the only criterion in defining terrorism, the private militias raised, with or without the support or acquiescence of the authorities, in order to counter the militant groups in the tribal districts of Khyber Pakhtunkhwa and Balochistan could also fall in the same category. Yet these militias are considered 'legitimate', despite having no legal cover and despite an express prohibition in Pakistan's constitution on the formation of any private militias. Another question that is raised is about the political parties that indulge in violence for a limited timeframe or get involved in criminal tactics, and whether these should be declared terrorist groups. Only a comprehensive definition of terrorism can resolve the issue. However, the debate on the issue has not yet started in earnest, and the domains of political violence, insurgency, and religious militancy still require clarity.

This effort of clarifying the definition of terrorism would fall short unless important international perspectives become part of the debate, as Pakistan is a signatory to numerous international conventions, as well as the United Nations Security Council (UNSC) resolutions dealing with terrorism. Granted that Pakistan has its own political and ideological complexities, but the international community is also still searching for a universal definition of terrorism. The academic efforts in

28. Imran Mukhtar, Pak Army exposes PTM, *The Nation*, April 30, 2019, <https://nation.com.pk/30-Apr-2019/pak-army-exposes-ptm>

29. The header of the official page of PTM on twitter carried the message "PTM is advocating for the protection and rights of Pashtuns" [https://twitter.com/pashtuntm\\_offi?lang=en](https://twitter.com/pashtuntm_offi?lang=en)

30. For example, see the headline of a press briefing reported by *The Express Tribune* on April 14, 2017 'Rangers foil alleged MQM-London terror bid, seize arms' cache in Karachi', <https://tribune.com.pk/story/1383639/rangers-foil-alleged-mqm-london-terror-bid-seize-arms-cache-karachi/>

this respect have not been conclusive as yet, but the deliberations can provide better perspectives to Pakistan on how different political and intellectual discourses differ elsewhere in the world and how the country can better deal with the philosophical aspect of the definition.

## 2. Terminologies and narratives

Terminologies help with understanding the different phenomena that repeatedly catch attention and require action. Precise terminologies help clarify thinking and contribute to formulation of the required actions, while vague ones can lead to confusion and delayed or even improper actions. Cambridge Dictionary defines terminology as unique words or expressions used concerning a particular subject or activity.<sup>31</sup> In contrast, Merriam Webster Dictionary describes it in two ways; first, the technical or special terms used in a business, art, science, or particular subject; and, as nomenclature as a field of study.<sup>32</sup> In either case, terminologies are an outcome of systematic thinking, while a definition summarizes the complex thinking process into a brief statement to define the parameters of a particular phenomenon. They should also facilitate a clear distinction between related or similar terms. To sum up, a definition is a statement expressing the essential nature of something or the action or process of stating the meaning of a word or word group and a sharp demarcation of outlines or limits.<sup>33</sup>

A disagreement on any definition reflects that the thought process is yet to conclude, or that it is contradictory, and there are irritants that need to be resolved first. However, in real life contexts challenges can emerge quickly, which require immediate responses. The terminological questions are then postponed, and states and societies initially focus on their responses. Nevertheless, in some cases, the responses and philosophical processes can go hand in hand. The process of defining can be lengthy and challenging, especially when the political, social, economic, or ideological interests of a group get involved. The definition of terrorism is a major example in that context, both in the global and in many local contexts.

The next part will discuss the complexities involved in defining terrorism. It will focus only on the terminologies used by the state and non-state actors to describe the phenomenon of political violence and other ethno-national and religious conflicts in the country, which have ultimately shaped the discourse on terrorism in Pakistan, even though a comprehensive definition of terrorism is yet to be developed.

---

31. <https://dictionary.cambridge.org/dictionary/english/terminology>

32. <https://www.merriam-webster.com/dictionary/terminology>

33. <https://www.merriam-webster.com/dictionary/definition>

## 2.1 Political dissent and security-related legislations

The political scientists and constitutional experts in Pakistan are in agreement that laws aimed at countering political violence, insurgency, and terrorism have been linked with political dissent, which the authorities branded as anti-state tendencies.<sup>34</sup> Since the inception of Pakistan, political dissent has been considered an unpatriotic act by the state, and equated to misuse of authority, corruption, challenging public order, or all of the above. The discourse prevalent even today is the same that was started by the first prime minister of Pakistan, Liaquat Ali Khan, who introduced the Public and Representative Office (Disqualification) Act (PRODA) 1949 to clamp down on political freedom.<sup>35</sup> Military dictators and, to some degree, civilian rulers followed suit and introduced several ordinances, acts of parliament and other legislations which were used for multi-purpose political and internal security interests. Military dictator Ayub Khan invoked PRODA and Elective Bodies (Disqualification) Order (EBDO) for suppression of political opposition and nationalist parties in both East and West Pakistan. Zulfikar Ali Bhutto introduced Prevention of Anti-National Activities Act 1974 for the same purposes. Even the internal security related legislations introduced by civilian governments were used both against violent actors as well as political actors.

The political terminologies were nurtured in a specific political environment. The establishment and religious and political actors particularly employed these terms to stigmatize their opponents. These terminologies have been used so broadly in the policy, political, religious, and public discourses that analogies have been developed for each, and the motives and context have been easy to discern when these terms have been used. For example, the terminology for most of the laws introduced for public safety, maintaining law and order, curbing political dissent or ethno-nationalist tendencies systematically developed analogies with terms such as corruption, anti-social, disobedience, conspirator, anti-national, miscreant, militant, enemy or terrorist, etc.

Conceptually, the analogy seems very simple, but the deconstruction of the terms exposes structural issues related to politics, nationalism, identity, religion, and balance of power within the state institutions. For example, the pro-establishment media and opinion makers have frequently used the term “treason” to refer to the separatist movements in East Pakistan, Balochistan,

34. Khurshid Iqbal, Niaz A. Shah, *Defining Terrorism in Pakistani Anti-Terrorism Law*, *Global Journal of Comparative Law*, 2018, [https://brill.com/view/journals/gjcl/7/2/article-p272\\_272.xml?language=en](https://brill.com/view/journals/gjcl/7/2/article-p272_272.xml?language=en)

35. Shabana Fayyaz, *Responding to Terrorism: Pakistan's Anti-Terrorism Laws*, Vol. 2, No. 6, 2008, *Perspectives on Terrorism*, <http://www.terrorismanalysts.com/pt/index.php/pot/issue/view/12>



and ethno-national movements in Khyber Pakhtunkhwa and Sindh, attaching a stigma to them. People are acquainted with these terms in specific contexts, and when these are used out of that context, it takes time for them to contextualize these. For example, when a religious leader is called a traitor, it may sound unfamiliar to ears of the lay person. The public opinion in Pakistan took time to adjust to the different connotations regarding terms such as traitor, miscreant and enemy applied to religious militants after 9/11.

Before we venture deeper into the terminology, first, there is a need to briefly overview the popular terminologies, which are being used in the country to describe political dissent, political violence, insurgency, and terrorism. Since the term terrorism often is mixed up and confused with several related and unrelated terms, it is important to briefly review those. Several of these terms, often used to label and discredit political opponents, had nothing or very little to do with the use of violence, or indeed terrorism.

## **2.2 Discourse on misconduct, disobedience, conspiracy, anti-national and enemy alien**

**Misconduct:** The term “misconduct” has roots in Pakistan’s British colonial legacy. The colonizing British used the term frequently to allude to and suppress political dissent. After the creation of Pakistan, the term ‘misconduct’ was expanded to curb human rights. Iqbal and Shah explain that in the early years of Pakistan, the government was facing political upheaval and problems in East and West Pakistan and absence of a constitution was a major reason for lack of political structure and political stability. The Constituent Assembly of Pakistan in 1949 described ‘misconduct’ as an act of bribery, corruption, robbery, favoritism, nepotism, maladministration, or misuse of public money, money collection or abuse of official power or position.<sup>36</sup> Selective use has made the term controversial.<sup>37</sup>

**Disobedience:** During the inception years of Pakistan, the government employed the rules enacted in British India, mainly the Code of Criminal Procedure, to suppress anti-state activities.<sup>38</sup> Another popular term inherited from the colonial regime was ‘disobedience’, which was invoked to maintain law and order. Disobedience in that context was a heinous crime akin to treason. During the freedom struggle in the Indian subcontinent, disobedience movements were the ultimate choice of the political parties to agitate against colonial imperialism. All

---

36. Iqbal & Shah, *Defining Terrorism in Pakistani Anti-Terrorism Law*.

37. Shabana Fayyaz, *Responding to Terrorism: Pakistan’s Anti-Terrorism Laws*.

38. *Ibid*.

India Muslim League launched two famous disobedience movements in 1947 against the installation of governments in Punjab and the NWFP. The movement succeeded in Punjab and forced the Unionist Party-led Khizar government to resign, while in the NWFP the movement lasted until the announcement of 3 June 1947 Partition Plan under which a referendum was to be held in the NWFP in order to chalk out a course of action for its inclusion in Pakistan or India.<sup>39</sup>

In the state of Pakistan, disobedience remains as heinous a crime as it was during the colonel era. In 1952, the Security of Pakistan Act was promulgated, which gave wide-ranging powers to the government to restrict the movement of any suspected person, issue her or his detention orders, or release a person unconditionally or for a specified time. Any violation of this order was declared disobedience, which was an offense punishable with a six-month prison term or fine, or both.<sup>40</sup>

Conspirator: Soon after the creation of Pakistan, a few-left lining military officers were arrested on the charge of conspiring against the government. The case came to be known as the Rawalpindi Conspiracy case.<sup>41</sup> Although the conspiracy<sup>42</sup> referred to was never implemented, as the accused were arrested before the implementation, the case has had lasting consequences for Pakistan, as the term 'conspirator' attached stigma to political workers of the left-leaning parties. At that time, most of the left-leaning parties were concentrated in Balochistan, the NWFP, East Pakistan, and interior Sindh. These parties also pursued nationalist agendas as well, which makes it all the more convenient for the state and law-enforcement institutions to stigmatize them and equate left-leaning politics with conspiracy. Soon after its creation, Pakistan had also joined the anti-communist block and became an important US ally in the region. That influenced the power elites of the country to adopt a rigid stance towards the left-leaning parties.

Anti-national: In 1958, army chief Ayub Khan imposed martial law in the country. He established military courts and on 26 November 1958 enforced the Security of Pakistan Act, 1952. The Defense of Pakistan Ordinance, 1955, and Defense

---

39. Dr. Riaz Ahmed, *An Aspect of the Pakistan Movement: Muslim League's Civil Disobedience Movement against the NWFP Ministry of Dr. Khan Sahib (February 20 - June 4, 1947)* [http://www.nihcr.edu.pk/Latest\\_English\\_Journal/An\\_Aspect\\_of\\_the\\_Pakistan\\_Movement.pdf](http://www.nihcr.edu.pk/Latest_English_Journal/An_Aspect_of_the_Pakistan_Movement.pdf)

40. Iqbal & Shah, *Defining Terrorism in Pakistani Anti-Terrorism Law*.

41. The officers who planned the conspiracy gave three reasons for their attempted coup d'état: the economic plight of the country, weakness of the government in handling the war with India over Kashmir and incompetence of government in internal and external affairs.

42. Abdul Majeed Abid, *The Rawalpindi Conspiracy*, *The Friday Times*, December 12, 2014, <https://www.thefridaytimes.com/the-rawalpindi-conspiracy/>

of Pakistan Rules, 1965, were also used during his regime to target political activists.<sup>43</sup> These laws were meant to suppress supposed anti-national activities.

Subsequently, the Anti-National Activities Act 1974, introduced by Zulfikar Ali Bhutto, sought to criminalize activities which were intended to or supported any claim for secession of the country, disruption of sovereignty, territorial integrity, racial or linguistics consideration or propagated a view that the citizens of Pakistan comprised of more than one nationality. One can understand the context of the law as it was introduced after the secession of East Pakistan in 1971, but the real motives was seen to be suppression of the nationalist opposition parties in the NWFP and Balochistan.<sup>44</sup>

Terrorist: Iqbal and Shah explain that “the Suppression of Terrorist Activities (Special Courts) Act (STA) 1975 was the first law [in Pakistan] that used the word ‘terrorism.’ The STA was introduced in the background of political opposition spearheaded by nationalist political forces, particularly in Balochistan and the NWFP. Its purpose was two-fold: first, suppression of acts of sabotage, subversion and terrorism; and second, provision for speedy trial of these offences. None of the three offenses were defined by the law.”<sup>45</sup>

Terrorism: The term ‘terrorist’ entered Pakistan’s legal and political lexicon first and the term ‘terrorism’ followed soon after. The 1974 ordinance—which a few months later became the Suppression of Terrorist Activities (Special Court) Act of 1975—was the beginning of a new chapter in Pakistan’s legislative history wherein ‘special’ laws and courts dealing with ‘terrorism’ or ‘terrorist acts’ became the norm.<sup>46</sup> In 1997, the Anti-Terrorism Act for the first time introduced the definition of terrorism. The law was introduced against the backdrop of increasing sectarian violence in the country and the definition of terrorism in the ATA revolved around criminalization of acts of violence.

Enemy alien: The term ‘enemy alien’ gained currency after being introduced in the Protection of Pakistan Ordinance 2014.<sup>47</sup> The term was essentially borrowed from Clause 8 of Pakistan Army Act <sup>48</sup> and extended to civil legal jurisdictions. The text of the Act on the website of National Counter Terrorism Authority

---

43. Shabana Fayyaz, Responding to Terrorism: Pakistan’s Anti-Terrorism Laws.

44. Iqbal & Shah, Defining Terrorism in Pakistani Anti-Terrorism Law.

45. Ibid.

46. Shabana Fayyaz, Responding to Terrorism: Pakistan’s Anti-Terrorism Laws.

47. Ibid.

48. Ahmer Bilal Soofi, Legal aspects of operation, Dawn, July 12, 2014 <https://www.dawn.com/news/1118645>

Pakistan describes enemy alien as a person who fails to establish his citizenship of Pakistan and is suspected of involvement in waging of war or insurrection against Pakistan or depredation on its territory, by virtue of involvement in offences specified in the Schedule. The Schedule lists a long inventory of offenses, most of them covered under Schedule 6 of ATA 1997 and further includes offenses committed outside Pakistan against national interests, and cybercrimes to attack foreign interests in Pakistan.<sup>49</sup>

### **2.3 Guerrillas, freedom fighters, pro-independence, separatists, Pararis and miscreants**

All the terms being discussed in this section have frequently been used in the political discourse of Pakistan for divergent purposes.

Miscreant/ guerrilla/ separatist: In the early 1970s, Mukti Bahini, the separatist movement in East Pakistan (now Bangladesh), which had been trained in guerrilla tactics by India, was referred to as a rebel group or “miscreants” in statements of the political parties that believed in the political reconciliation process. The state and its security institutions continued to refer to them as traitors, conspirators, and militants. Many political parties, including the nationalist parties in Balochistan province, called the insurgents ‘angry youth’, misled violent actors or separatists. Their motive was to keep the options for dialogue and reconciliation open. However, hardcore nationalists use more appealing terminology for violent shades within their movements, like fighters, guerrillas, pro-independence cadres.

Violent separatists seek inspiration from these hardline nationalist parties, or have at one point or another remained part of these parties. The security institutions’ position is the same about the Baloch insurgent movement as it was about the separatists in East Pakistan. Political scientist Dr. Tahir Amin sums up the state’s inflexible attitude in these words: “Pakistani decision-makers, since the formation of the country in 1947, have continuously been preoccupied with the ethno-national movements. Their state building efforts proved counterproductive as the Bengali ethno-national movement in East Pakistan matured during 1959-1970 eventually leading to the disintegration of the country in the wake of third Indo-Pakistan war of 1971.”<sup>50</sup> Variant points of view of the state and about the violent actors could have political utility in reconciliation processes, but such differences can be problematic in building consensus on the meaning of terrorism.

49. <https://nacta.gov.pk/wp-content/uploads/2017/09/PROTECTION-OF-PAKISTAN-ORDINANCE.pdf>

50. Tahir Amin, *Ethno-National Movements of Pakistan Domestic and International Factors* (Islamabad: Institute of Policy Studies, 1988), pa. 3.

Parari: The violent actors, on the other hand, consider themselves the saviors of the nation and custodians of its interests and claim to be victims of government terror.<sup>51</sup> They have also coined terminologies for themselves or subscribe to historical and cultural contexts or likeminded movements operating elsewhere. For example, during the 1970s, Baloch separatists chose the Balochi word parari to describe their movement. Parari is a term used to describe a person or group with grievances that cannot be resolved through talk. Selig Harrison, who has done extensive research on Baloch movements in the 1970s and '80s, explains that for their model, Sher Muhammad and his followers looked to the experience of guerrilla struggles in China, Vietnam, Cuba, and Algeria. "Most of the group were attracted to Marxist-Leninist ideas and wanted to emulate successful leftist guerrilla movements in other countries,"<sup>52</sup> Harrison wrote, adding that the separatists "tried to find a Baloch synthesis rather than to rely on what had happened anywhere else."<sup>53</sup>

## **2.4 Savior, patriot, mujahid, jihadi, Taliban, militant and terrorist**

The following terms have been in vogue in Pakistan more with respect to violence associated with religiously motivated actors and contexts.

Mujahid: The Indian-subcontinent has a long history of religiously motivated uprisings and movements. Syed Ahmed Shaheed's Tehrik-ul Mujahideen—which, in the 18<sup>th</sup> century was one of the major armed uprisings against the Sikh rule in Punjab—was aimed at establishing an Islamic state. The movement became weaker after the defeat in the battle of Balakot in 1831 and transformed into an underground resistance movement against the British and remained active in Pakistani tribal areas until 1947. Over time, the Tehrik gained expertise in guerilla and sabotage activities, and led the tribesmen into Kashmir for its liberation from Indian rule in 1948.<sup>54</sup> The historical context and the use of the religious militant groups politically and militarily has garnered respect and even reverence for them in public imagination since then.

---

51. Brian M. Jenkins, *International Terrorism: A New Kind of Warfare*, The Rand Corporation, 1974, California.

52. Selig S. Harrison, *In Afghanistan's Shadow: Baluch Nationalism and Soviet Temptations* (New York & DC: Carnegie Endowment for International Peace, 1981), p. 30.

53. *Ibid*, p. 31.

54. Muhammad Amir Rana, *Evolution of the Militant Groups in Pakistan*, part 2, *Conflict and Peace Studies*, quarterly research journal by Pak Institute for Peace Studies, Islamabad, Vol; 4, No. 3, July-September 2011 .

Good / bad militants and miscreants: The 1964 uprising in Indian-held Kashmir was nationalist in its character, but it was also given favorable religious color as had been the case in East Pakistan when Al-Shams and Al-Badr<sup>55</sup> were created to counter the Bengali separatist group Mukti Bahini militarily. The state and the news media praised them as saviors and patriots, which not only enriched the terminologies but calling these private militias patriot fighters, saviors of the nation, and mujahid also encouraged the practices of private 'jihad'. These narratives were exploited well during the Soviet-Afghan war (1979-89) to encourage the people to support the jihad in Afghanistan. The terminology nurtured for the pro-Pakistan militant groups easily got extended to the warriors in Afghanistan. The sectarian violence eruption in Pakistan in the 1990s forced the state to review its approach towards the 'bad elements' in the militants' fold. This review resulted in a legal, security, and political response against sectarian militants. Under ATA 1997, they were declared terrorists and Lashkar-e-Jhangvi and Sipah-e-Muhammad became the first two organizations to be proscribed in Pakistan under that law on 14 August 2000. These two groups were involved the sectarian terrorism.<sup>56</sup> Before legal measures were taken against the sectarian terrorists the law enforcement agencies briefly referred to them as miscreants, subverters, but as the scale of the sectarian violence increased it removed all ambiguity about the perpetrators. However, it was not easy to separate the sectarian terrorists from the militants fighting in Afghanistan, and in Indian-held Kashmir because the last two were deeply entrenched with the former. This was the point when the distinction between the good and bad militants started to be made. The 'bad' were also tagged as foreign proxies and anti-Pakistan.

The perception persisted even after 9/11 when the militants among the erstwhile 'good' cadres took up arms against the state.<sup>57</sup> The security institutions took time to realize that even 'good' militants can pose a more significant security threat. Two quotes from military ruler General Pervez Musharraf can help understand the dichotomous threat perception of the policymakers at that time. The first statement was made before the 9/11 attacks and the other a couple of years later. General Musharraf made the first statement in a Newsweek interview in March 2000, in which he said: "I cannot pressurize the Taliban to arrest Osama bin Laden. The Taliban lead a free country." About Pakistani militants, he said, "No jihadi organization in Pakistan is involved in terrorism. They are now working against India in occupied Kashmir after completing their Jihad

55. These groups were part of religious-political party Jamaat-e-Islami's student wing Islami Jamiat-e-Taliba and fought against the Mukti Bahini.

56. Rana, A to Z of Jihadi Organizations.

57. Rana, Development of a Jihadist Character.

against Russia in Afghanistan.”<sup>58</sup> Nevertheless, on 12 December 2003, while answering a question in a BBC program, Musharraf claimed that up to that point his government had arrested or killed 500 terrorists in Pakistan.<sup>59</sup>

It was external pressure that forced Pakistan to join the international coalition against terrorism, which later led to transformation of its terminology related to terrorism and political violence.

Pakistani mujahid to Punjabi Taliban: As far as the term Taliban is concerned, during the Soviet-Afghan war, the Afghan Mujahideen used the term ‘Punjabi Mujahideen’ to refer to militants from mainland Pakistan. When Pakistani groups started contributing to the insurgency in Indian-held Kashmir, they were referred to as ‘Afghan Mujahideen,’ although most of the militants were from the Punjab and Khyber Pakhtunkhwa provinces. In this context, it is not surprising that after the Taliban emerged in Afghanistan in the mid-1990s, Pakistani groups there were tagged as Punjabi Taliban. Afghan and Pakistani tribal Taliban used the same term for them.<sup>60</sup>

**Table 1: Terminology used by various actors**

State	Nationalist parties	Mainstream political parties	Religious actors	Legal terms
Corrupt	Political victim	Political victim	Dishonest	Disobedient
Traitor	Suppression	Agitator	Rebel	Anti-national
Insurgents	Guerilla	Miscreant	Rebel	Traitor
Freedom fighter (Kashmir)	Miscreant	Mujahid	Mujahid	-
Militant (religious)	Terrorist	Militant	Misled	Terrorist
Separatist (nationalist)	Guerilla-fighter-misled	Separatists-misled	Terrorist	Enemy alien
Enemy (religious)	Terrorist	Militant	Militant	Terrorist/enemy

58. Muhammad Amir Rana, *The Seeds of Terrorism* (London: A New Millennium Publication, 2005), p. 17.

59. Ibid.

60. Muhammad Amir Rana, *Evolution of Militant Groups in Pakistan*, part 1, *Conflict and Peace Studies*, quarterly research journal by Pak Institute for Peace Studies, Islamabad, Volume 4, Number 2, -Jun 2 2011



The above comparison of the different perspectives, narratives, and terminologies can be understood in a context that has also contributed to shaping the threat perceptions in Pakistan. The above table reflects a complex analogy of different terminologies, which can be read both vertically and horizontally. Horizontally, the terms used reflect more synergy among the state, legal and religious actors' views on corruption, treason, unrest and the Kashmir freedom struggle, while the dominating political view develops synergy on the Kashmir freedom struggle and to some extent on religiously motivated terrorism and the dominating trend among nationalists is on religiously motivated terrorism. The state, political, and nationalist actors have more synergy of views on religiously motivated terrorism. However, the nationalist and mainstream political views are more compatible on non-religious forms of violence.

The vertical analogy presents a more unadorned picture and reflects somehow a synergy in views on forms of threat. The legal discourse is more precise and obviously supportive of the state, as state institutions form policies, but security institutions have more influence on the security related legislation process. That will be discussed later. Nevertheless, the Green Book 2020, an official publication of Pakistan Army, has published an updated security matrix<sup>61</sup> and depicted the separatist and subnational groups as a direct and indirect threat to national security, while the terrorist threat posed by groups like Tehrik-e-Taliban Pakistan (TTP) and sectarian groups as an indirect threat to national security. However, it differentiates between the TTP-related militant threat and the sectarian one. As stated earlier, the nature of the threat the TTP poses is seen as a sub-conventional one, while sectarian violence is considered a law and order problem. The militant groups affiliated with political parties are categorized as urban terrorists, who can pose an indirect threat to national security.

Next in the analogy matrix is the religious view, which is more in sync with the state's stance. The political actors have more reconciliatory approaches, except on corruption, and consider themselves victims of the terminology. Their views reflect in their statements and debates in parliament and on public forums.

This brief analogous description runs deep through the discussions on security related issues and points to one of the significant hurdles in developing a consensus definition of terrorism.

---

61. Farzana Shah, National Security, and Emerging Geopolitical Scenario: Post-Article 370 obliteration, Pakistan Army Green Book, 2020, Crystal Printers, Rawalpindi.



### 3. The problem of defining terrorism

Defining terrorism has not been a problem only in Pakistan, but many other nations have also faced the same dilemma. A universal definition of terrorism is still not in sight and international forums have not been able to build a consensus around the issue so far. The fundamental question that is still unresolved is what is it that defines terrorism?

Is it a kind of warfare, a tactical instrument, a revolutionary practice, a political tool, a weapon of the weak, violent crime, an ideology, or a foreign policy tool? These political, social, legal and security dimensions make terrorism a contested concept. As far as an academic definition is concerned, terrorism is a subject that touches many other disciplines, including security studies, political science, psychology, sociology and religious studies. The influences of other disciplines expand the domain of terrorism, but academics agree on specific elements that characterize terrorism.

#### 3.1 Intellectual debate on definition of terrorism

Dr. Alex P. Schmid, a historiographer of the definition of terrorism, has counted 15 reasons which hinder consensus building on an academic definition of terrorism. First, the political, legal, social science, and popular notions of terrorism are often diverging, and the definition question is linked to (de-) legitimization and criminalization. There are many 'terrorisms' with different forms and manifestations, and the term has undergone changes of meaning in the more than 200 years of its existence. Dr. Schmid points out that terrorist organizations are (semi-)clandestine, and the secrecy surrounding them makes objective analysis difficult, but the definition question is also linked to double standards and political priorities. The State, with its (claimed) monopoly of the use of force and its legal definition power, can exclude any of its activities (e.g., indiscriminate repression) from the definition. The boundaries with other forms of political violence (e.g., assassinations, [guerrilla] warfare) are hazy or unclear, and the conceptual and normative frameworks of the users of the term differ. However, importantly, the discussion on terrorism has been linked to issues regarding self-determination, armed resistance against foreign occupation and racist regimes as well. Those who engage in acts of terrorism often also engage in other, more legitimate forms of armed conflict or join political party politics. Dr. Schmid also lists as a factor the notion that the violence perpetrated by

the terrorists' opponent might be as indiscriminate, or worse, than any waged by the deemed 'terrorists', and lastly, the assessment of the terrorist act is intertwined with the discussion concerning the actor's goals and the status of the actor itself.<sup>62</sup>

Dr. Schmid has summed up the challenges that obstruct consensus formation on the definition of terrorism. However, international political, security and legal contexts are more complicated, and perhaps the term 'terrorism' is emotionally charged in that it is often used not as an analytical category, but as a label to discredit political adversaries.<sup>63</sup> Terrorism as a form of violence is by no means a new challenge; it has been with us for long and hundreds of its definitions can be found. Since 9/11, the emphasis on a consensus definition has increased. Dr. Schmid has noted that definitions generally reflect the interests of those who do the defining.<sup>64</sup> Robert Taber observed that in the same way as the guerrilla war had once become a political phenomenon in the mid-twentieth century, terrorism had become the same phenomenon in the post-9/11 world.<sup>65</sup> Nevertheless, separating terrorism from insurgency is not easy anymore. Insurgent movements use terrorism as a tool, but politically and ideologically motivated movements, which use terrorism as their strategic and primary choice of violence, transform into insurgencies, from insurgencies into de facto states, and when they lose territorial control, the movements convert into politico-ideological ones relying on terrorist tactics. Islamic State in Iraq and Syria is one example of such transformation, but Tehrik-e-Taliban Pakistan (TTP) has also completed a similar cycle in Pakistan. The fluid nature of the movements can be a contributing factor in the tricky process of defining terrorism.

### 3.2 Fluid nature of terrorist groups

The US and Taliban peace deal<sup>66</sup> signed in Doha on 28 February 2020 has added another angle to the debate on the definition. The US-led international coalition had treated the Taliban as a terrorist movement, before acknowledging it as an insurgent movement and major power stakeholder in Afghanistan. The Taliban

---

62. Alex Schmid, *Terrorism - The Definitional Problem*, Case Western Reserve Journal of International Law, Vol. 36 (2004), <https://scholarlycommons.law.case.edu/jil/vol36/iss2/8>

63. Hippler, Jochen, *Terrorism: Undefinable and Out-of-Context?— Reconceptualizing Terrorism as a Context-Specific Tactical Tool*. Duisburg: Institute for Development and Peace, University of Duisburg-Essen (INEF Report, 11/2016, Institute of Development and Peace

64. Alex Schmid, *Terrorism - The Definitional Problem*.

65. Robert Taber, *War of the Flea: the Classic Study of Guerrilla Warfare*, Potomac Books, Washington, DC, 2002. p. 2.

66. *Afghan conflict: US and Taliban sign deal to end the 18-year war*, BBC News, February 29, 2020, [www.bbc.com/news/world-asia-51689443](http://www.bbc.com/news/world-asia-51689443)

have used terrorism as a conventional military tool and also challenged the theories that terrorists do not seek to take and hold ground or physically destroy their opponents' forces.<sup>67</sup> This perception has also been challenged in other parts of the world—in Iraq and Syria, Yemen, Somalia, and Northern Mali—in recent history.

Perhaps, a loose definition suits the interests of some powers for their international security and political interests, but a consensus definition is still a demand of many political actors and academics. The absence of a universal definition of terrorism is counted among one of the factors that could encourage future terrorism.<sup>68</sup> For example, Lebanese academic and diplomat Abir Taha in her book 'Defining Terrorism: The End of Double Standards' advocates for a permanent and consistent definition of terrorism which should condemn any terrorist act wherever and whenever it occurs.<sup>69</sup> Basically, she demands that all forms of terrorism by states and non-state actors should be treated equally. Dr. Jochen Hippler, a specialist on the Middle East and conflict studies, divides such experts into two categories, the first is more politically driven, insofar as it aims at placing 'terrorist groups' and states or governments on the same political or moral plane and such tendencies could lead to intellectual shortcuts.<sup>70</sup> He argues that it should not be necessary to remind oneself that not everything wrong, illegal and against peace is necessarily a terrorist act, and such attitudes would make it difficult to define what qualifies as state terrorism, as a politicized process of defining insurgent terrorism makes the act of defining more challenging.

Nations craft the definitions of terrorism that best suit their approaches and practices, but the issue becomes complex when the states label as 'terrorism' all violent acts by their opponents.<sup>71</sup>

### **3.3 International considerations and their repercussion for Pakistan**

In 1972, measures to eliminate international terrorism were included in the agenda of the 27<sup>th</sup> session of the UN General Assembly (UNGA). The Assembly decided to establish an Ad Hoc Committee on International Terrorism that

---

67. Brian M. Jenkins, *International Terrorism: A New Kind of Warfare*, The Rand Corporation, California, 1974, p 3.

68. Dean C. Alexander and Yonah Alexander, *Terrorism, and Business*. Quoted by Alex Schmid, *Terrorism - The Definitional Problem*, <https://scholarlycommons.law.case.edu/jil/vol36/iss2/8>

69. Abir Taha, *Defining Terrorism: The End of Double Standards*, Arktos Media Ltd, 2014.

70. Hippler, *Terrorism: Undefinable and Out-of-Context?*

71. Jenkins, *International Terrorism: A New Kind of Warfare*.

year.<sup>72</sup> While the 1972 ad hoc committee remained inactive, the General Assembly constituted another ad hoc committee in 1996, which was tasked with proposing draft conventions on terrorist bombing, nuclear terrorism and then “further develop a comprehensive legal framework of conventions dealing with international terrorism”.<sup>73</sup>

Immediately after the 9/11 attacks, when the UNGA met for its 56<sup>th</sup> session, it considered the report of the ad hoc committee constituted by the UNGA in 1996 to develop a draft comprehensive convention on international terrorism. In the 56<sup>th</sup> UNGA session, the Organization of Islamic Conference (OIC) vigorously pushed to add the following provision to the definition proposed in the draft convention: “Peoples’ struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law shall not be considered a terrorist crime.”

Pakistan supported the OIC move at United Nations forums to highlight the political dimension of the definition of terrorism. For Pakistan, the Kashmir issue was central to its support for the OIC resolutions. However, human rights activists and nationalist political actors raise similar objections to Pakistan’s treatment of the insurgent movement in Balochistan.<sup>74</sup> Here the notion ‘one man’s terrorist is another man’s freedom fighter’ make the definitional process more complicated.

In the international context, the politics of the political dimension of the definition is another problem. Several examples that testify to the confusion and controversy surrounding the definition are mainly politically motivated.<sup>75</sup> This debate is also linked to differentiating between the anti-colonial insurgents and today’s terrorists. Usually, the debate sought to distinguish the anti-colonial struggles, which pursued international attention by acts of violence in the colonies themselves, but now terrorist violence is exported throughout the world.<sup>76</sup> The freedom fighter debate is more relevant in the Pakistan context, as Islamabad considers the Kashmir resistance movement a moral and legally justified freedom struggle, which it support morally and politically. To counter this, India uses the Balochistan card against Pakistan and calls insurgents in

---

72. UNGA Resolution 3034 (XXVII), December 18, 1972, 2114 plenary meeting.

73. UNGA Resolution A/51/210, January 16, 1997.

74. Balochistan: Neglected Still, Human Rights Commission of Pakistan, October 2, 2019 <http://hrcp-web.org/hrcpweb/balochistan-neglected-still/>

75. Abir Taha, *Defining Terrorism: The End of Double Standards*.

76. Jenkins, *International Terrorism: A New Kind of Warfare*, pp. 5-6.

the province freedom fighters.<sup>77</sup> For Pakistan, the resistance in Balochistan is a low-scale ethno-national insurgency in its character, which is confined only to pockets of the province, and is supported by hostile foreign powers.

Pakistan's position on supporting the Kashmir resistance movement has remained under scrutiny after the 9/11 attacks. The reason for that was that Pakistan-based militant groups had developed links with Al Qaeda and international militant groups and weakened the Kashmiri resistance groups. The Kashmir resistance was becoming part of the global jihad agenda for them.<sup>78</sup> The state institutions had put the strategic priorities at the top, which had benefitted the militants, who had availed the opportunity by earning sufficient moral, political, and ideological capital and gained acceptance in the Pakistani public discourse. In 2010, the then Punjab chief minister, Shahbaz Sharif, had called upon the Taliban not to launch attacks in the Punjab province,<sup>79</sup> and the incumbent Prime Minister Imran Khan's statements from past years are on record in which he was appeasing the Taliban. The prevalent religious and media narratives were also apologetic. They added more to the confusion while comparing the criminal and political violence in Karachi with the terrorism perpetrated by religiously motivated militants, with the aim of justifying violence by religious actors.<sup>80</sup>

### 3.4 Legal perspective

Apart from the political and ideological ambiguities, the whole legal terrorism framework in the country and particularly the definition have also remained confusing. Legal experts point to ambiguity in the text of the Anti-Terrorism Act 1997, and the law's arbitrary application has allowed it to be misused against political activists, human rights defenders and individuals exercising their constitutionally protected rights to the freedoms of assembly, expression, and association. It has also enabled prosecutors to circumvent the regular criminal

---

77. Suhasini Haidar, In a policy shift, Narendra Modi brings up Balochistan again, *The Hindu*, August 16, 2016, <https://www.thehindu.com/news/national/In-policy-shift-Narendra-Modi-brings-up-Balochistan-again/article14572650.ece>

78. Rana, A to Z of Jihadi Organizations.

79. CM Punjab Shahbaz Sharif in a statement on 14 March 2010 said that the Taliban and Pakistan Muslim League-Nawaz both opposed former military dictator Pervez Musharraf and, therefore, he was surprised that this common stance has failed to stop the Taliban from carrying out terror attacks in Punjab. *Dawn*, March 15, 2010- <https://www.dawn.com/news/857697/cm-shahbaz-wants-taliban-to-spare-punjab>

80. Safdar Sial, *Critical Ideologies: A Debate on Takfeer & Khurooj*, Pak Institute for Peace Studies, Islamabad, November 2017. The publication consists of dialogues with religious scholars on terrorism-related issues .

justice machinery and clog anti-terrorism courts with ordinary crimes.<sup>81</sup> Some experts blame the narrow boundaries of the conceptualization of terrorism, which is predominantly confined to security studies and the entire discourse on terrorism, according to one expert, has revolved around the legal necessities of the security forces to counter terrorism, whether it was sectarian violence of the 1990s or terrorist groups' terror campaign inside the country in subsequent years.<sup>82</sup> It has become an established notion that the threat can be dealt only through kinetic means.

### 3.5 Role of parliament

The national parliament had provided all the support needed for the military actions against terrorists from 2008 to 2018 through consensus resolutions, amending the ATA and introducing new laws. However, this was an emergency situation and little attention was paid to defining terrorism.<sup>83</sup>

The politicians were hesitant to take such an initiative themselves, especially in the absence of sufficient intellectual input or public demand, and all needed to support the kinetic measures of the security forces. The inadequate intellectual response could be linked to the power of the right-wing radical groups, including the 'good' militants. They captured that space, and ironically militant groups have become the custodian of the national ideology, which was nurtured by the state institutions over the last 70 years.<sup>84</sup>

At the peak of the war against terrorist networks in Pakistan, the question of misuse of power and human rights violations by the LEAs was reported by rights groups and a small segment of the news media, but it failed to create a significant impact. The courts were dealing with the critical part of the conflict as terrorism-related trials were creating complications and pressure on the courts was mounting because of the slow proceedings and low conviction rates in terrorism-related cases, which was linked to the ambiguities in the definition of terrorism in ATA 1997 and outside the legal jurisdiction there was no other precedent available to follow. The Supreme Court took the responsibility to play that role.

---

81. Reema Omer, Definition of terrorism, Dawn, November 4, 2019, <https://www.dawn.com/news/1514768>

82. Syed Manzar Zaidi, Terrorism Prosecution in Pakistan, Peaceworks, April 2016, NO. 113, United State Institute of Peace, Washington, DC, [https://www.usip.org/sites/default/files/PW113\\_Terrorism\\_Prosecution\\_in\\_Pakistan.pdf](https://www.usip.org/sites/default/files/PW113_Terrorism_Prosecution_in_Pakistan.pdf)

83. Ibid.

84. Muhammad Amir Rana, Anarchy of ideologies, Dawn, October 22, 2017, <https://www.dawn.com/news/1365448/anarchy-of-ideologies>

## 4. Determining boundaries of terrorism

### 4.1 In search of a universal definition

Would availability of a universal definition of terrorism have eased the problem for Pakistan? Perhaps it would have created a moral obligation for Pakistan to follow a standard definition. However, as mentioned earlier, arriving at a universal definition itself has faced multiple challenges.

There are several definitions available for legal, academic and political purposes, which would meet the international, regional and national needs. Most of the political and legal definitions of terrorism revolve around criminal acts, since the League of Nations defined terrorism in 1937 as: "All criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public."<sup>85</sup>

So far, 12 international conventions dealing with terrorism have come about, nine among them focus on punishments concerning specific criminal acts, while three subsequent conventions relate to specific acts which the states are obliged to prevent from being committed.<sup>86</sup> In all legal and political definitions, two important dichotomous elements are crime and political violence. A legal definitions stresses on the criminal nature of a terrorism act, and political actors focus more on its political motives.

A glance at the United Nations resolutions and conventions related to terrorism demonstrates that they were triggered by specific incidents. The UN Security Council approach has been to avoid a definition and to demand action against acts of terrorism, which could be politically motivated crimes. Second, incident-specific interventions come with contemporary security and political considerations, and the purpose of the resolutions and conventions remains to get maximum global support and to develop a certain framework of cooperation to counter the security threats. UNSC resolutions 1368 and 1373 specifically deal with the subject. Resolution 1368 condemned the 9/11 attacks in the US, while Resolution 1373 required states to refrain from supporting terrorism, prevent

85. Javier Ruperez, The United Nations in the fight against terrorism, [https://www.un.org/SCP/ctc/wp-content/uploads/2017/01/2006\\_01\\_26\\_cted\\_lecture.pdf](https://www.un.org/SCP/ctc/wp-content/uploads/2017/01/2006_01_26_cted_lecture.pdf)

86. Khurshid Iqbal & Niaz A. Shah, Defining Terrorism in Pakistani Anti-Terrorism Law, *Global Journal of Comparative Law*, 7 (2018) 272-302, [https://brill.com/view/journals/gjcl/7/2/article-p272\\_272.xml?language=en](https://brill.com/view/journals/gjcl/7/2/article-p272_272.xml?language=en)



terrorist acts, deny safe havens to those who support terrorism, prevent the use of their territory for terrorism, criminalize acts supportive of terrorism, bring to justice those who support terrorism, help each other in a criminal investigation or criminal proceedings and prevent cross-border movement of terrorists.<sup>87</sup>

While there is a wealth of international conventions, treaties and resolutions on how to deal with terrorism, international consensus on what actually is, and is not, terrorism is lacking. Most international documents on the topic have come about to serve specific needs at various times, not to clarify the concept of what terrorism includes and what its basic characteristics are.

## 4.2 Defining nature of crime

Dr. Alex P. Schmid has listed the various criminal acts identified in UN conventions and protocols against terrorism, and they are: acts of hijacking; acts of aviation sabotage; unlawful acts of violence at airports; unlawful acts against the safety of maritime navigation; unlawful acts against the safety of fixed platforms located on the continental shelf; crimes against internationally protected persons (such as the kidnapping of diplomats); acts of unlawful taking and use of nuclear material; acts of hostage taking; acts of terrorist bombings; and, acts of support for front organizations serving as financial conduits for terrorist organizations.<sup>88</sup> While this is highly useful, it also raises the question about the need to call such acts “terrorist” at all, since bombings and kidnappings are considered crimes and are illegal anyway. What advantage is gained by adding the term “terrorist” to such acts?

After the UN General Assembly passed a resolution in 1972 that established an ad hoc committee on international terrorism, the US also presented a draft convention for the Prevention and Punishment of Certain Acts of International Terrorism. Although it did not offer any definition of terrorism, it too emphasized criminalization of certain offences of international significance.<sup>89</sup> The US focus in its internal and external discourse on countering terrorism remains its internal security, specifically to prevent the threat from immigrants and asylum seekers. The US definition of terrorism is divided into ‘international terrorism’ activities and ‘domestic terrorism’ activities, and these feature separate definitions and three components: offenses, intention, and geographical scope. As per James C. Simeon, “the US federal definition of terrorism distinguishes between ‘international and domestic’ terrorism, which are virtually the same, except for

---

87. Iqbal & Shah, *Defining Terrorism*.

88. Alex Schmid, *Definitional problem*

89. Iqbal & Shah, *Defining Terrorism in Pakistani Anti-Terrorism Law*, p. 278.



the geographic scope, whereby 'domestic terrorism' is limited to the territorial boundaries or the jurisdiction of the United States. The reference to asylum seekers is also unique, although seemingly uncalled for in the United States, given the intense security screening processes for those who are seeking asylum or refugee protection there."<sup>90</sup>

This focus on perceiving terrorism as a form of criminal behavior and a matter of law enforcement was dramatically altered after 9/11, when the US government under President George H. W. Bush declared a "war on terrorism", which focused on military approaches and triggered the wars in both Afghanistan and Iraq.

Not only have the UNSC and influential states focused more on the criminal element of terrorism, but other international legal forums, such as the International Law Commission (ILC), have considered terrorism in its Draft Codes of Crimes in 1991 and 1996, and its Final Draft Code adopted in 1996 proposed the offense of terrorism as a category of war crimes, without defining terrorism.<sup>91</sup> The purpose of all the efforts was to develop an effective international strategy, international mobilization against terrorism, and to a certain extent, forcing terrorist organizations to shift from terrorist activities to alternative courses in order to attain their aims.<sup>92</sup> Iqbal and Shah conclude that the international conventions helped establish an international legal regime, but none of the conventions offer a definition of 'terrorism' as an offense.<sup>93</sup>

### 4.3 Politics of definition

Against this general backdrop, however, the regional approaches and political blocks emphasize the political sides of terrorism. For example, the Organization of Islamic Conference (OIC) is one entity that remains apprehensive about the political dimension of terrorism. After 9/11, as the UN General Assembly convened its 56<sup>th</sup> session to consider a report of the 1996 ad hoc committee on developing a comprehensive draft convention on international terrorism, the OIC strongly pushed for adding the following provision to the proposed definition in the draft convention: "Peoples' struggle including armed struggle against foreign

90. James C. Simeon, *The Evolving Common Law Jurisprudence Combatting the Threat of Terrorism in the United Kingdom, the United States, and Canada*, 2019, <https://www.mdpi.com/2075-471X/8/1/5/htm>

91. Draft Code of Crimes against the Peace and Security of Mankind with commentaries, 1996, [https://legal.un.org/ilc/texts/instruments/english/commentaries/7\\_4\\_1996.pdf](https://legal.un.org/ilc/texts/instruments/english/commentaries/7_4_1996.pdf)

92. Anthony C. E. Quinton, *Moral and Ethical Considerations in Defining a Counter-Terrorist Policy*, in *The Rationalization of Terrorism* (David C. Rapoport & Yonah Alexander eds., 1982).

93. Iqbal & Shah, *Defining Terrorism in Pakistani Anti-Terrorism Law*.

occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law shall not be considered a terrorist crime.”<sup>94</sup> Obviously, Pakistan was supportive of the proposal as it suited Islamabad’s stance on Kashmir, but Pakistan particularly supported the 9<sup>th</sup> preambular paragraph, which emphasized enhancing dialogue and broader understanding among civilizations.<sup>95</sup> Somehow the support was reflective of the thinking in Muslim societies that the war against terrorism was an echo of broader civilizational conflict in the world, which could be resolved only through dialogue. This approach was too broad and could not help in the process of defining the criminal nature of terrorism.

It is pertinent to note here that political resistance against occupation or tyranny, including violent resistance, might be both legal and legitimate, and does not by itself become terrorism – even if occupiers or tyrants would claim otherwise. But this also does not necessarily imply that any or all forms of violence in this context would be legal or legitimate: while violent resistance against occupation forces could be considered legitimate military or paramilitary operations, targeted violence (such as the use of bomb or gun attacks) against civilians would still meet the criteria to be called terrorist acts. In other words, even a legitimate and just cause cannot justify crimes and murder of civilians, which still should be termed terrorist, though the overall struggle might not be.

Another issue which is becoming important in terrorism discourses, including its definition, is the West’s sympathetic view of the ethnic and nationalist movements in Asia and Africa, like the Turk complain about Europe’s selective approach towards the PKK and Pakistan’s similar objection to treatment of the Baloch separatists movement, whose leadership resides in Europe.

Interestingly, Pakistan supported the South Asian Association for Regional Cooperation (SAARC) Convention on Suppression of Terrorism in 1987 and a Protocol in 2004, which emphasizes the criminalization aspect of terrorism. The convention includes a wide range of criminal acts, such as murder, manslaughter, assault, causing bodily harm, hostage-taking, and offenses relating to firearms, explosives, and dangerous substances when used as a means to perpetuate indiscriminate violence involving death or bodily injury to persons or serious damage to property.<sup>96</sup>

---

94. Ibid.

95. Ibid.

96. Ibid.

The outcome of the international efforts for a universal definition has not been conclusive yet, but the intellectual domain is no less complicated either. The focus of the intellectual discourse remains on the political motives, and their links with violence.

#### **4.4 Scholarly discourse on definition**

Until 1988, academics had consensus on 16 elements of terrorism, which varied from the political and criminal motives to tactical tools and propaganda purposes.<sup>97</sup> By 2011, academic reached consensus on at least 15 elements that defined terrorism. Dr. Schmid has gathered insights into an academic consensus definition and detailed that terrorism refers to a doctrine about the presumed effectiveness of a tactic to trigger fear, justifying political violence, and a tactic which is employed in illegal state repression, propagandistic agitations, and as an illicit tactic of irregular warfare employed by state and non-state actors. There is also consensus among academics that terrorism is a threat employed by terrorist actors involving single-phase to multi-phased acts of lethal violence, whose direct victims are civilians and non-combatants. However, they are not the ultimate target and serve as message generators. Sources of terrorist violence can be individual perpetrators, small groups, diffuse transnational networks as well as state actors or state-sponsored clandestine agents, and their methods would have similarities to those employed by organized crime or during war crimes. The motivations to engage in terrorism cover a broad range, including redress for alleged or presumed grievances, personal or vicarious revenge, collective punishment, revolution, national liberation, and the promotion of diverse ideological, political, social, national, or religious causes and objectives. Acts of terrorism rarely stand alone, and generally form part of a campaign of violence which can create a pervasive climate of fear that enables the terrorists to manipulate the political process.<sup>98</sup>

##### **4.4.1 Insurgency and terrorism**

The criminal and political elements in a definition help explain the terrorist action, its motives, and implications. As described in the earlier part, terrorism touches the boundaries of other terms as well. Brad O'Neill, the expert on insurgencies and terrorism, has mentioned that terms such as insurgency, guerrilla warfare, terrorism, and revolutionary have not only been defined in various ways but

97. Alex P. Schmid & Albert J Jongman, *Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories and Literature*, (2nd ed. 1988).

98. Alex P. Schmid, *The Revised Academic Consensus Definition of Terrorism*, (2011), reprinted from: *Handbook of Terrorism Research*. London, Routledge, 2011, pp. 86-88.

have often been used interchangeably.<sup>99</sup> In spelling out what terrorism is, he states: "Terrorism is herein defined as the threat or use of physical coercion, primarily against non-combatants, especially civilians, to create fear in order to achieve various political objectives. Achieving such objectives requires behavioral change on the part of specific audiences. The target audience whose behavioral modification is sought will vary from case to case and may involve individuals, selected groups, the general public, governments, or some combination thereof."<sup>100</sup>

#### 4.4.2 Extremism and terrorism

Terrorism has also developed proximity with the term extremism, which is a source of more confusion as extremism in itself is not an act, but deals with the mind and ideas. According to O'Neill, the confusion demands a conscious effort to set forth what the various terms mean and then to use them explicitly and consistently.<sup>101</sup> However, the proximity of extremism with terrorism has made it difficult to even define the boundaries of extremism. Extremism is not yet properly defined either in the public discourse or among professional and academic communities.<sup>102</sup> One common problem between the discourses on terrorism and extremism is that both have also developed a profile of a terrorist and an extremist, and usually, experts and practitioners have sets of reasons for the profiles that do not fully grasp the whole phenomena of terrorism and extremism. It is often said that terrorists need attention and try to achieve maximum publicity but extremists may not and work in the background. Against this backdrop, some experts also believe extremism to be a bigger issue than terrorism,<sup>103</sup> and argue that once the phenomenon of new trends of extremism is properly understood, discerning the boundaries of terrorism will become easier. The psychological aspect may be beneficial for understanding extremism, but associating the meaning of terrorism and extremism with the mindless or senseless use of violence expands the horizon of terrorism and makes testing such perceptions even more difficult. Even in Pakistan, such assumptions are common, for example, a group of psychologists assumed that as both mental

---

99. Bard E. O'Neill, *Insurgency & Terrorism from Revolution to Apocalypse*, New Delhi: Manas Publications, 2006, p. 13.

100. *Ibid*, p. 33.

101. *Ibid*, p. 13.

102. Berger, J.M., *Extremist Construction of Identity: How Escalating Demands for Legitimacy Shape and Define In-Group and Out-Group Dynamics*, The International Centre for Counter-Terrorism – The Hague 8, No. 7 (2017), <https://icct.nl/publication/extremist-construction-of-identity-how-escalating-demands-for-legitimacy-shape-and-define-in-group-and-out-group-dynamics/>

103. *Ibid*.

disorder and terrorism prevailed at the same time in Pakistan, it would be a fair assumption that the two may have a pivotal relationship.<sup>104</sup>

Terrorism does presuppose some form of extremism. But on the other hand, the two phenomena are not identical. It is not rare that some forms of extremism are non-violent, and mostly ideological or rhetorical, which implies that they cannot be considered terrorism in such cases.

In the Pakistani context, the discourses on terrorism and extremism run in parallel. Although Pakistan faced the most unnerving degree of terrorism from 2007 to 2016, public opinion remains divided over the meaning of terrorism and extremism. The political and social scientists in Pakistan mainly try to understand terrorism and extremism in the socio-psychological and politico-ideological perspectives. 'Radicalism' is another term used interchangeably with extremism, both in public and academic discourses in Pakistan. In this respect, interviews and deliberations with scholars organized by Pak Institute for Peace Studies (PIPS) endorse that view. A PIPS research on the definition of radicalism in Pakistan found that most of the scholars on politics, religion, society, and culture and security experts agreed that radicalization was not necessarily a religious phenomenon and that it could occur in any ideological or secular-leaning.<sup>105</sup> As pointed out earlier, most of these scholars considered radicalization, extremism and terrorism as interchangeable terms. They explained extremism as a process of acceptance or adoption of an untenable position about any issue, while terrorism as the forcible imposition of ideas, agendas or views, etc., on the unwilling.<sup>106</sup> A trajectory that their opinion missed out on was the term violent extremism, which is often encountered in the discourse on terrorism, since extremism on its own is insufficient to explain the trajectories of terrorism. The problem does not stop here; the trajectories of extremism and terrorism also touch the boundaries of nationalism. Scholars in Pakistan often tread cautiously while expanding the scope to nationalism, maybe because of their political views,<sup>107</sup> or it may be a reflection of the softer approach of Western scholars towards the nationalist movements in authoritarian states and controlled democracies. However, this segregation ignores the criminal element of terrorism. Second, religion as an ideological and political factor dominates the terrorism and extremism discourses

104. Asad Tamizuddin Nizami, Tariq Mahmood Hassan, Sadia Yasir, Mowaddat Hussain Rana and Fareed Aslam Minhas, *Terrorism in Pakistan: the psychosocial context and why it matters*, *British Journal of Psychiatry*, February 2018, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6020923/>

105. Muhammad Amir Rana & Safdar Sial, *Radicalization in Pakistan*, Narratives Publications, Islamabad, 2011.

106. Amir & Safdar, *Radicalization in Pakistan*.

107. *Ibid.*

in Pakistan, though in many cases, nationalism and religion converge in a movement. The Afghan Taliban is a prime example; while the religious militant groups operating across the Pakistan-Iran border, like Jaishul Adl, have strong nationalist and separatist tendencies.<sup>108</sup> Some scholarly work has been done on mixing trajectories of extremism, terrorism, and nationalism in Pakistan. The predominant attitude of the scholars and policymakers in Pakistan is to divide different tendencies of terrorism into categories. The international academic discourse on terrorism somehow encourages such approaches, but it has not solved the definitional issue.

Dr. Jochen Hippler suggests brief definitions of terrorism, militancy, extremism and other related terms, described in Table 2. These definitions can help differentiate among the key terms. He specifically elaborated terrorism as the use of violence for political purposes which is directed against non-combatants, often used by both small and isolated extremist groups, by insurgents, or, in the context of war, might also be used by governments.

**Table 2: Differentiating among key terminology**

political term	Suggestion of a short definition
radical, radicalism	political approach at the margin or outside of the mainstream which does eschew compromise and takes a concept or desire to its logical, "radical" end. By itself, the term refers to a mentality or ideology.
extreme, extremism	a political approach which takes "radicalism" a step further and implies a political break with the mainstream of politics. It might (or might not) connect to or be linked to several forms of political violence, but by itself still is less about action and more about a mentality or ideology.  "Radicalism" and especially "extremism" are terms mostly applied to non-state actors, but might also apply to governments (Red Khmer Cambodia, Nazi Germany, and milder forms).
militant, militants	a form of extremism which includes the willingness and capacity to use violent means.

108. Muhammad Amir Rana, Religion, Nationalism and Insurgency in Balochistan, Dawn, July 14, 2019 <https://www.dawn.com/news/1493929/religion-nationalism-and-insurgency-in-balochistan>

rebellious, rebellion, rebels	the use of force for political goals which remains somewhat spontaneous, unsystematic, based on limited goals and espousing an undeveloped ideology.
insurgent, insurgency	a systematic activity to achieve far-reaching political goals, like an overthrow of the government, autonomy, or an end of occupation, which combines different forms of political violence (mostly paramilitary) with non-violent elements of struggle. Difficult to sustain without support from relevant parts of society.
terrorist, terrorism	the use of violence for political purposes which is directed against non-combatants; often used by either small and isolated extremist groups, by insurgents, or in the context of war. Might also be used by governments.
<i>Copyright: Jochen Hippler</i>	

#### 4.5 Typology of terrorism

Many academics believe that lack of consensus on a single definition of terrorism is largely because there is no one type of terrorism, and terrorism as a tactic is constantly changing its means, motives, and actors. Heather S. Gregg, a counterterrorism analyst, divides terrorism into categories rooted in left, right, and ethnic tendencies: Right-wing terrorism refers to groups with racist, fascist, or nationalistic motives and goals. Ethnic-separatist terrorism she attributed to ethnic groups that used terrorism to strive for autonomy or independence from a state or military force. She emphasizes that it is important to distinguish ethnic-separatist terrorists, who contain religious elements but whose primary goals are non-religious, from terrorist groups that have religious goals. Kashmir is an example where many separatist groups have religious credentials, but their focus is on achieving the nationalistic objectives. As mentioned earlier, Jaishul Adl would be another example, fighting for a nationalistic cause, but having religious motives.<sup>109</sup>

The typology of terrorism has made it convenient to distinguish the religiously motivated groups, especially Al Qaeda and its associates or those sharing their ideology, which were the major target of the international campaign against terrorism launched after 9/11. These groups have been segregated, and labelled as 'new terrorism of the right'.<sup>110</sup>

109. Ibid.

110. Rana & Safdar, Radicalization in Pakistan.



David C. Rapoport, whose definition is mentioned in the Supreme Court of Pakistan's judgment on the definition of terrorism, further divided terrorism into two types, religious and secular, and argued that religious terrorists used sacred texts and historical examples that were not present in secular terrorism. Secular terrorism developed a culture of actions and boundaries that restrained the scope of violent acts.<sup>111</sup> Mark Sedgwick proposed certain categorization of religiously motivated terrorism. First, apocalyptic terrorism, which applied to the groups which have apocalyptic goals; their primary aim is to cause cataclysmic destruction to people, property, and the environment with the hope of fomenting the end of time and ushering in religious promises of a new world. Second, groups also use terrorism as a means for creating a religious government guided by Shariah law.<sup>112</sup>

Although the focus of all these typologies has been on providing a broader understanding of terrorism, but practically, these have supported segregation between dangerous and most dangerous types of terrorism. Such typologies could be manipulated for political purposes, and one type could be declared more dangerous than others, an example being white supremacist terrorism not being seen as a priority for most Western states compared to 'Islamist terrorism'.

Dr. Jochen Hippler argues that although 'terrorist' acts had been committed well before the 1970s, they had generally been perceived in a different and more restricted way, through the lens of criminality, such as murder, airplane hijackings, and political extremism, etc. Until then, there was no desire to bring all these and other highly diverse acts of political violence under a common heading and establish them as a universal category. That has changed dramatically since 1972, although several authors still tend to avoid the term 'terrorism' when discussing terrorist acts.<sup>113</sup> Dr. Hippler also expresses apprehension over the 'ism' in terrorism, which is also a source of confusion and sounds like a dogma. He argues that the term terrorism has been utilized far beyond its commonly understood meaning, to justify a diverse set of domestic and external policies that had little to do with terrorism.<sup>114</sup>

However, the international community's failure to develop a universal definition has also provided flexibility for a national definition of terrorism.<sup>115</sup> Pakistan's case has been a bit different because it already had a legal definition, albeit not

---

111. Alex Schmid, *Terrorism - The Definitional Problem*.

112. Alex Schmid, *Terrorism - The Definitional Problem*.

113. Hippler, *Terrorism: Undefinable and Out-of-Context?*

114. *Ibid.*

115. Iqbal & Shah, *Defining Terrorism in Pakistani Anti-Terrorism Law*.



a perfect or comprehensive one, as the Supreme Court of Pakistan has observed in its judgment on the definition of terrorism.

#### 4.6 Definition of terrorism in Pakistan

As mentioned earlier, the scholarship in Pakistan has not added much intellectual input to the endeavor to define terrorism either on the national or international level. The parliament of Pakistan has only acted in emergencies to fulfill the immediate legal requirements in the war against terrorism. While ATA 1997 deals with the acts and definition of terrorism, the Protection of Pakistan Ordinance defines an enemy alien, a term borrowed from Pakistan Army Act,<sup>116</sup> and extended to civil legal jurisdictions in 2013. It was an important development that the individuals and groups involved in terrorism were classified as enemy alien, but it also covered their ideologically motivated actions as the acts of an enemy. A copy of the act available on NACTA's website describes 'enemy alien' as a person who fails to establish his citizenship of Pakistan and is suspected of involvement in waging war or insurrection against Pakistan or depredation on its territory, by virtue of involvement in the offenses specified under the law, which includes a long inventory of offenses, most of them covered under Schedule 6 of ATA 1997, and further includes offences orchestrated outside Pakistan against national interests, and cybercrimes to attack foreign interests in Pakistan.<sup>117</sup> The purpose of the law was to disentitle an enemy alien from the protection of several fundamental rights in Pakistan. Though it was not spelled out in the ordinance, interpretations have been put forth that an individual who has denounced the Constitution, and is thus ideologically alienated from it, should also fall in the category of enemy alien.<sup>118</sup> The ordinance was not properly debated in Pakistan except by the human rights groups highlighting problematic issue on legal and humanitarian grounds. However, the law was adopted and later extended at critical times, and even the political parties have not initiated a debate on the issue, and the definition of enemy alien has not been appropriately unpacked. Nonetheless, the focus of law enforcement agencies remains on the ATA, where they see more utility for the purposes of prosecution.

Since its promulgation in 1997, the Anti-Terrorism Act has been amended 24 times. On each occasion, the changes had the effect of expanding all three

116. Ahmer Bilal Soofi, Legal aspects of operation, Dawn, July 12, 2014, <https://www.dawn.com/news/1118645>

117. <https://nacta.gov.pk/wp-content/uploads/2017/09/PROTECTION-OF-PAKISTAN-ORDINANCE.pdf>

118. Ahmer Bilal Soofi, Legal aspects of operation, Dawn, July 12, 2014, <https://www.dawn.com/news/1118645>

components of the definition—means, purpose, and consequences. For ease of reference and analysis, the amended definition as it stands today is being reproduced below in full:

#### Section 6. Terrorism.

(1) In this Act, “terrorism” means the use or threat of action where:-

- a) the action falls within the meaning of sub-section (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 a foreign government or population or an international organization] 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:]

(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 [including government premises, official installations, schools, hospitals, offices or any other public or private property including damaging property by ransacking, looting or arson or by any others means;]
- d) involves the doing of anything that is likely to cause death or endangers person’s life;
- e) involves kidnapping for ransom, hostage-taking or hijacking;
- f) 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]];
- g) incites hatred and contempt on religious, sectarian or ethnic basis to stir up violence or cause internal disturbance;
- h) 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;]

- i) involves firing on religious congregation, 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;
- j) 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;
- k) involves the burning of vehicles or any other serious form of arson;
- l) involves extortion of money ('bhatta') or property;
- m) is designed to seriously interfere with or seriously disrupt a communication system or public utility service;
- n) involves serious coercion or intimidation of a public servant in order to force him to discharge or to refrain from discharging his lawful duties;
- o) involves serious violence against a member of the police force, armed forces, civil armed forces, or a public servant;
- p) involves in acts as part of armed resistance by groups or individuals against law enforcement agencies; or
- q) 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 use of any action falling within sub-section (2) which involves the use of firearms, explosive or any other weapon is terrorism, whether or not sub-section (1) (c) is satisfied.

The ATA definition apparently covers all the forms and aspects of crimes that could be committed with terrorism intentions. The words 'grievous' and 'serious' are used in the definitions, without explaining their scope. The focus of the definition is too broad, and the wide range of offenses provided in the definition is problematic.<sup>119</sup> Law experts and security practitioners' apprehensions over the

119. Shahzada Sultan, Redefining terrorism, The News on Sunday, November 17, 2019, <https://www.thenews.com.pk/tns/detail/569766-redefining-terrorism>

term 'heinous offenses', which are not otherwise defined in the legislation, have widened the application of the ATA to include cases other than terrorism.<sup>120</sup> For example, in most of the homicide cases decided by regular criminal courts, the accused usually succeed in reaching a compromise under Section 309 or 310 of the Pakistan Penal Code (PPC), while no such compromise can occur under the ATA. Therefore, the legal heirs of the victim try their best to include provisions of the ATA in the report lodged with the police, so the culprit suffers and cannot escape the penalty.<sup>121</sup> It is recommended that the anti-terror regime must not be separated from other criminal matters in order to resolve the issue of determination of jurisdiction. The provisions related to anti-terrorism cases must be included in the PPC through a separate chapter instead of having full-fledge statutes to deal with such cases.<sup>122</sup>

Iqbal and Shah divide the ATA definition into three parts: purpose or motive of violence, means of violence, and consequence(s) of violence.<sup>123</sup>

Purpose: "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." Means: "does any act or thing by using bombs, dynamite or other explosive or inflammable substance, or firearms, or other lethal weapons or poisonous or noxious gases or chemicals or other substances of a hazardous nature in such a manner as."

Consequences: "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 firearms, or threatens with the use of force public servants in order to prevent them from discharging their lawful duties commits a terrorist act."<sup>124</sup>

Another objection to the ATA definition is that it has been causing human rights abuses and does not follow the guidelines issued by the 2006 UN Global Counter-Terrorism Strategy.<sup>125</sup> The implementation of laws needs political will

120. Tariq Parvez and Mehwish Rani, An Appraisal of Pakistan's Anti-Terrorism Act, Special Report 377, USIP, August 2015, <https://www.usip.org/sites/default/files/SR377-An-Appraisal-of-Pakistan%E2%80%99s-Anti-Terrorism-Act.pdf>

121. Aisha Tariq, Defining Terrorism: Its (mis)implication and implication in Pakistan, Policy Perspectives, a research journal of Institute of Policy Studies, Islamabad, Vol. 16, No. 1, 2019, pp. 133-135.

122. Ibid, p. 135.

123. Iqbal & Shah, Defining Terrorism in Pakistani Anti-Terrorism Law.

124. Ibid.

125. Ibid.

and institutional capacity,<sup>126</sup> but this derives from clear approaches, and a vague definition of terrorism cannot trigger such inspirations. The parliament, civil society, and intelligentsia have followed a firefighting approach as their reliance has entirely remained on kinetic responses by the security forces and political parties remain apprehensive about the misuse of the anti-terrorism laws against politicians and human rights activists.

The October 2019 Supreme Court judgment on the definition of terrorism that has been widely welcomed mainly advises bringing clarity in the scope of the definition and to confine it to actions with motives aimed at manifested terrorism. An offense, however terrible, will not be termed an act of terrorism unless it satisfies the 'design and purpose' test, that is the design to coerce, intimidate or compel a government, a community, a sect or a section of society, to achieve a political, ideological or religious purpose.<sup>127</sup> The SCP has recommended that the parliament should provide a succinct definition of 'terrorism', focusing on 'violent actions' aimed at achieving "political, ideological or religious objectives".<sup>128</sup>

The SCP has given a big task to the parliament to determine the criminal and political nature of terrorism. At the same time, the apex court has restricted the scope of the definition, while borrowing the waves-of-terrorism theory from David C. Rapoport, which divides modern terrorism into four waves: Anarchists (1880s-1920), Anti-Colonial (1920s-1960s), Left Wing (late 1960s-1990s) and Religious (1990 to date). As the academics struggle to develop a universal definition of terrorism, the typology approach presented by Rapoport is useful as an exercise to better understand the phenomenon but when mentioned in superior courts' judgments, it might confine the legislators to perceiving the scope within certain limits, especially when hundreds of definitions are already available. Inspiration can also be derived from international conventions and UN resolutions, but the parliament must have an extensive debate and look into the local, regional, and global practices and functional definitions adopted by other nations. The definitional challenge that confronts Pakistan is many fold, whether to tackle terrorism as:

- a problem in the criminal justice system context
- a matter to be fought militarily

126. Shabana Fayyaz, Responding to Terrorism: Pakistan's Anti-Terrorism Laws, Perspectives on Terrorism, Vol. 2, No. 6 (2008), <http://www.terrorismanalysts.com/pt/index.php/pot/article/view/39/html>

127. Shahzada Sultan, Redefying terrorism, The News on Sunday, November 17, 2019, <https://www.thenews.com.pk/tns/detail/569766-redefining-terrorism>

128. Zia Ullah Ranjha, Defining terrorism, The News, November 4, 2019, <https://www.thenews.com.pk/print/550346-defining-terrorism>

- how to deal with the political dimension of terrorism, without creating a tool for suffocating all political dissent?
- How to distinguish terrorism from other and related forms of political violence?

Pakistan needs a definition that criminalizes acts of hate, which incite violence and fear, while determining the political nature of terrorism. In that respect, it may be pertinent for the definition to take into account motives such as advancement of political, religious, or ideological aims as the outcome of the use or threat of action designed to influence the state, to intimidate the public or a section of the public.

The definition can, in compliance with the UNSC resolutions, include the terrorist actions that occur outside Pakistan.

## 5. Pathways to working out a terrorism definition by parliament

The Supreme Court of Pakistan's judgment has given the responsibility of defining terrorism to the parliament. The ruling and opposition parties in the parliament are yet to demonstrate any enthusiasm in taking up the task. It is an opportunity for the parliament to address all the political ambiguities and shut the door firmly on misuse of terrorism-related laws.

The focus of the SCP judgment is not only on tackling the legal ambiguities but also to address the political and ideological elements of the definition in Section 6 of the ATA. If the existing flaws are not addressed, the trials in terrorism-related cases cannot be conclusive, and the misuse of the 1997 law will continue. The SCP judgment observed 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 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 offenses in the Preamble and the Third Schedule to that Act for the trial of such offenses by an Anti-Terrorism Court when such other offenses do not qualify to be included in the definition of terrorism puts an extra and unnecessary burden on such courts and causes delay in the trial of actual cases of terrorism."<sup>129</sup>

A clear legal definition is important for terrorism-related trials. Defining terrorism is not a recent phenomenon in Pakistan, and the world too has been consuming energy in this endeavor for many decades. The silence of the political parties in Pakistan can be interpreted in several ways. A definition of terrorism may not be a priority to them, especially when the incidence of terrorism is already on the wane. The security-related legislation could be a sensitive issue for them as the counsel of the key security institutions is considered essential in such matters, and security institutions have not shown any interest in redefining terrorism as yet. The capacity issue would be another reason in addition to the political considerations. The apex court judgment has not set any deadline for the process, but any delay could be politicized as a weakness or failing of the current civilian regime. If the political parties inside and out of parliament

129. Supreme Court of Pakistan judgement on Criminal Appeals No. 95 and 96 of 2019, Civil Appeal No. 10-L of 2017 and Criminal Appeal No. 63 of 2013. October 30, 2019, [https://www.supremecourt.gov.pk/downloads\\_judgements/crl.a.\\_95\\_2019.pdf](https://www.supremecourt.gov.pk/downloads_judgements/crl.a._95_2019.pdf)

fail to fulfill the responsibility, it will be considered parliament's failure. The debate on the definition will also provide an opportunity to correct the country's political discourse as well, as the definitional issue is deeply rooted in Pakistan's political history. Various forms of political violence, insurgencies, and religiously motivated terrorism have haunted the country since its inception and clarity in the legal and political domains is direly needed. Ultimately, it is the parliament's responsibility to address the issue. It would have been appropriate for Pakistan to have a constitutional convention on the forms of political violence and their definitions, including terrorism. Such conventions and definitions would have been altered according to the constitutional needs with the passage of time. As discussed earlier, the intelligentsia has not developed the proper academic discourse on defining terrorism, and the political parties have their constraints in addition to the troubled history of victimhood by terrorism- and political violence-related legislation in the country.

Whenever the parliament takes up the task, it will encounter specific challenges along the path of defining terrorism. Understandably, the process would not be easy because different political, ideological, law, and security institutions have diverse views on terrorism and particularly on the political and criminal nature of terrorism. The parliament will also have external influences as being a member of the United Nations, Pakistan would have to respect the conventions and resolutions, which provide guidelines on defining terrorism. The parliament will have the following specific challenges to face while defining terrorism.

## 5.1 Supreme Court guidelines

The SCP judgment has recommended to the parliament that the new definition should be in line with the international perspectives on terrorism and focused on violent activities aimed at achieving political, ideological, or religious objectives. Also, this might not be sufficient, since all Armed Forces of all countries basically are created for "violent activities aimed at achieving political, ideological, or religious objectives", but it would not be helpful to include them all as terrorist actors.

The judgment says, "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."<sup>130</sup> Removing the Third Schedule of the ATA may not be a hard task, but a new listing of the offences of terrorism will undoubtedly be

---

130. Ibid.



a challenge. The process for preparing a list of violent actions and criminalizing these actions may not be much different from the process under the Third Schedule, but linking these criminal acts with political, ideological and religious intentions will be a real challenge for the parliament as this process has never been easy even at international forums. A law expert observed that “the political, ideological, moral, social, and emotional connotation of ‘terrorism’ makes its definition challenging in any legal system. Our legislature was also confronted with this difficulty. The definitions of terrorism under these laws [promulgated in Pakistan] either focused on the magnitude of an offence or its terrorizing effect on society or the nature of the weapon used while committing an offence. These shifting definitions resulted in conflicting judgments by our courts. The cases of terrorism kept on shuttling from one court to another due to the imprecise definition of terrorism.”<sup>131</sup>

The SCP also observed that the ATA had also been misused by the police and the subordinate courts and said: “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.”<sup>132</sup>

Parliament will have to give serious consideration to all these aspects to prevent potential misuse of the new definition.

## 5.2 UNSC resolutions and guidelines

The SCP judgment also advises the parliament that the new definition should be compatible with international standards, and as a member of the UN, Pakistan has to consider the United Nations Security Council (UNSC) recommendations in the process as well. UNSC Resolution 1373, adopted under Chapter 7 of the UN Charter, mainly listed several state obligations regarding prevention of terrorism. Iqbal and Shah sum up these obligations under Resolution 1373 thus: “It required states to refrain from supporting terrorism, prevent terrorist acts, deny safe havens to those who support terrorism, prevent the use of their territory for terrorism, criminalize acts supportive of terrorism, bring to justice those who support terrorism, help each other in the criminal investigation or criminal proceedings and prevent cross border movement of terrorists.”<sup>133</sup>

131. Zia Ullah Ranjah, Defining terrorism, The News, November 4, 2019, <https://www.thenews.com.pk/print/550346-defining-terrorism>

132. Supreme Court of Pakistan judgment of October 30, 2019, [https://www.supremecourt.gov.pk/downloads\\_judgements/crl.a.\\_95\\_2019.pdf](https://www.supremecourt.gov.pk/downloads_judgements/crl.a._95_2019.pdf)

133. Iqbal & Shah, Defining Terrorism in Pakistani Anti-Terrorism Law.

### 5.3 The complicated regional context

Another UNSC Resolution, 1566 (2004), also condemned several criminal acts termed as 'terrorism'. Paragraph 3 of the resolution includes a mention of criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitutes offenses within the scope of and as defined in the international conventions and protocols relating to terrorism. Paragraph 3 narrows down the scope of terrorism-related crimes and maintains that such acts "are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature".<sup>134</sup>

Criminalizing acts of terrorism would not be a significant issue in the domestic context, but a local definition will have a global context. As mentioned earlier, the Organization of Islamic Conference (OIC) and Pakistan have expressed apprehensions over the political dimension of terrorism at United Nations forums and defended the people's right to armed struggle against foreign occupation, aggression, colonialism, and hegemony. An internal definition containing all universal elements, which are not as receptive to freedom struggles, would be considered a compromise on the apprehensions raised by Pakistan at the international level. Pakistan's position on the right of self-determination of Kashmiris and the Taliban in Afghanistan could then be taken as being in contravention of its own definition of terrorism.

### 5.4 Terrorism in its entirety

The parliament would have to consult the global and regional academic perspectives on the definition of terrorism, which will help it to reach comprehension of terrorism in its entirety. Terrorism is a complex problem and requires systematic thinking tools for reaching this goal.<sup>135</sup> A compact definition can help avoid the political and ideological wilderness as well as any indiscriminate use of the term.<sup>136</sup> Most of the academic definitions based on the lowest common denominators of 73 academic journals agree somewhat that:

---

134. Ibid.

135. Lukas Schoenenberger, Andrea Schenker-Wicki and Mathias Beck, Analyzing Terrorism from a System Thinking Perspective, *Perspectives on Terrorism*, Vol. 8, Issue 1, February 2014, [https://www.researchgate.net/publication/262826171\\_Analysing\\_Terrorism\\_from\\_a\\_Systems\\_Thinking\\_Perspective](https://www.researchgate.net/publication/262826171_Analysing_Terrorism_from_a_Systems_Thinking_Perspective)

136. Hippler, Terrorism: Undefinable and Out-of-Context?

"Terrorism is a politically motivated tactic involving the threat or use of force or violence in which the pursuit of publicity plays a significant role."<sup>137</sup> However, a compact definition also mentions the following elements:<sup>138</sup>

- Reference to perpetrators or victims
- Mention of fear or terror
- Mention of a motive or goal (beyond political)
- Mention of noncombatant targets
- Mention of the criminal and immoral nature of the tactics utilized (hostage-taking, kidnapping, targeted or indiscriminate murder)

As it was mentioned earlier that terrorism can be define as the use of violence for political purposes which is directed against non-combatants; often used by both small and isolated extremist groups, by insurgents, or in the context of war.

In many contexts, clarifying the term 'terrorism' alone may not be sufficient, as Dr. Hippler pointed out There is need to distinguish it properly from the terms "terrorist act" and "terrorist organization": "While many organizations, both state and non-state, commit terrorist acts, not all of them should be called 'terrorist organizations' as this would broaden the term in a way, which would render it useless. Without clearly defining precisely what constitutes a 'terrorist organization', the term is hollow or polemical." He suggests that the "term 'terrorist organization' should be used only for groups who commit terrorist acts not merely occasionally, as a tactic or opportunistically, but as a strategy, and whose behavior is overwhelmingly characterized by their use." He recommends that the first step towards attempting a precise definition should be to postpone defining the 'ism' part of terrorism and instead first clarify what constitutes a 'terrorist act'.

In this regard, Dr. Hippler also suggests:

Only after defining terrorist 'acts,' the 'ism' part of 'terrorism' can be defined as the systematic or strategic use of terrorist acts over a medium or more extended time period (in contrast to tactical or instrumental use), not a single or a limited number of terrorist acts.

Defining 'terrorist organization' is also important, which should apply only to

---

137. Alex Schmid, *Terrorism - The Definitional Problem*.

138. Ibid.

organizations (or groups, movements, individual actors) that commit terrorist acts systematically and strategically over some time as their main activity, not just occasionally or opportunistically.

Avoid using the terms 'terrorist' or 'terrorism' in all cases when more precise and less ambiguous terminology is available. Very often terms such as 'political murder', 'massacre', 'assassination', 'politically motivated bomb attack', or 'genocide' will be more specific, and less politically or emotionally loaded.

## 5.5 Broader context

Before initiating the process of defining terrorism, the parliament should review the policies that produced terrorism in the first place and, if required, acknowledge the wrongs committed through any misguided policies. Fighting terrorism successfully requires not only knowing what the phenomenon is, how it is defined properly, but also to understand its causes. The causes can be political, social or ideological, and may be rooted in the policies and practices of the state institutions.

Parliament should also review all terrorism-related laws, both those still in practice and those that have lapsed, and assess these laws' failures and successes, especially the political use and misuse of these laws, which can help identify the gaps in the legislation process and identify how the misuse can be prevented.

Finally, reviewing the threat perceptions of the security institutions, and the process of deriving those perceptions will help grasp the human-rights-versus-national-security debate and how an accountability mechanism can be introduced to ensure the rule of law.

## 5.6 The way forward

The parliament and the government have to demonstrate both the urgency and the sagacity to tackle a host of challenges simultaneously if Pakistan is to benefit from the opportunity following the SCP judgement. Some of the key things that need urgent addressing are listed below.

### 5.6.1 The definition

To be precise, the parliament has to develop a clear definition of terrorism, which fulfills not only the domestic legal and political requirements but is also compatible with the minimum universal standards mentioned in United Nations resolutions and conventions.

Violence, political aims, deliberate nature of act, targeting of civilians, disturbing order (domestic, regional, global), threat and causing of fear by non-state actors are some common vital elements in every definition of terrorism. However, all these expressions need to be defined as well. The parliament should elaborate on these terms in their local and universal contexts. That will help restrict the meaning of terrorism within the jurisdictions of crime, and political/ideological motives, avoiding broad interpretation and political misuse.

To build political consensus, the parliament should clearly define the other forms of political violence and amend existing constitutional clauses, which widen the scope of treason to crush political dissent.

### **5.6.2 A convention on terrorism**

A definition of terrorism alone will not remove all the ambiguities surrounding terrorism and security related issues in Pakistan. A more holistic and comprehensive approach can be the parliament evolving a convention on terrorism, providing guidelines for the policymakers, political parties, media, and civil society to deal with terrorism-related policies, narratives, and propaganda.

Such a convention can also elaborate on the state's position on a legitimate struggle against any occupation, aggression, or domination by foreign forces, making actions in such a struggle exempt from criminal proceedings. Such precedents are available in the international context, such as the Arab Convention for the Suppression of Terrorism (adopted 22 April 1998, entered into force 7 May 1999). Article 2 (a) provides: "All cases of struggle by whatever means, including armed struggle, against foreign occupation and aggression for liberation and self-determination, following the principles of international law, shall not be regarded as an offense. This provision shall not apply to any act prejudicing the territorial integrity of any Arab State."<sup>139</sup>

The convention can also clearly define terrorism perpetrated by the state and condemn all of its forms and manifestations.

The parliament and its standing committees on Interior, Law and Justice, Human Rights, and Religious Affairs need to review existing mechanisms related to terrorism and extremism, with the aim to afford clarity in defining terrorism.

---

139. The Arab convention for the suppression of terrorism, League of Arab States, Translated from the Arabic by United Nations, May 29, 2000 [https://www.unodc.org/images/tldb-f/conv\\_arab\\_terrorism.en.pdf](https://www.unodc.org/images/tldb-f/conv_arab_terrorism.en.pdf)



## Conclusion

Pakistan has a legal definition of terrorism, provided in Section 6 of the Anti-Terrorism Act (ATA). However, the definition is limited in scope, has failed to capture the essence of terrorism, and has often been misused for multiple reasons. The federal government had promulgated the ATA in 1997 with the sole ambition of curbing sectarian violence. However, with the passage of time, the challenge of terrorism became multi-dimensional. The Supreme Court of Pakistan rendered a landmark judgment on the definition of terrorism on October 30, 2019, recommending that the parliament develop a new and comprehensive legal definition of terrorism. In its judgment, the Supreme Court expressed particular concern about the legality of the ATA definition. Legal complications aside, Pakistan has been facing a critical challenge of religiously motivated terrorism over many decades, and the threat is far from over. Terrorism fueled insurgency in the erstwhile tribal regions of Pakistan triggered sectarian violence, sophisticated urban warfare and, at one stage, the militants' narrative seemed to have the mindset of society under siege. While nearly everybody agrees that Pakistan had and still has a serious terrorism challenge, it remains quite unclear what the term "terrorism" actually means. Defined as it is in a vague and contradictory manner, it is not fully clear what "terrorism" is and what distinguishes it from other forms of political violence.

The academic and policy institutions on terrorism and internal security have not contributed much to bring clarity on the definition of terrorism. The Supreme Court of Pakistan's judgment has given the responsibility of defining terrorism to the parliament. The ruling and opposition parties in the parliament are yet to demonstrate any enthusiasm or urgency in taking up the task. It is an opportunity for the parliament to address all the political ambiguities and firmly shut the door on misuse of terrorism-related laws. It will increase the parliament's responsibility to deeply look into the global, regional and national debates on the definition of terrorism and understand the exact nature of the challenge.

The parliament has to now come up with a clear definition, which outlines the political and criminal motives of terrorism, elaborating the criminal nature of the tactics utilized (hostage-taking, kidnapping, targeted or indiscriminate attacks or killings) with regard to the perpetrators and victims, mentioning the goals of the perpetrators, noncombatant targets as well as the context whether its armed conflict or otherwise.

A holistic and comprehensive approach by the parliament can be evolving a convention on terrorism, providing guidelines for the policymakers, political parties, media, and civil society to deal with terrorism-related policies, narratives, and propaganda.





## About the author

Muhammad Amir Rana is the Founding Member and Director of Pak Institute for Peace Studies (PIPS) and had previously worked as a journalist with various Urdu and English daily newspapers. He has worked extensively on issues related to counter-terrorism, counter-extremism, regional security and politics.

He has authored/co-authored books. He secured the 2016 German Peace Prize for his book 'The Militant: Development of the Jihadi Character in Pakistan'. His work has been published widely in national and international journals, professional publications and magazines. He writes regularly for Dawn, Pakistan's leading English newspaper. He has also been invited to appear as an expert on the electronic media, including CNN, BBC World, Al Jazeera English, Voice of America, Al-Arabia and other Pakistani and international news channels.

He is also the editor of Pakistan Annual Security Report, PIPS' English research journal 'Conflict and Peace Studies' and Urdu monthly magazine "Tajziat". He also heads Narratives, a publishing and media production house engaged in the production and dissemination of alternative, or counter-extremism, arguments and narratives.

## Imprint

© 2020 Friedrich-Ebert-Stiftung (FES),  
Pakistan Office  
1st Floor, 66-W, Junaid Plaza, Jinnah Avenue,  
Blue Area, P.O Box 1289, Islamabad, Pakistan

## Responsible:

**Dr. Jochen Hippler** | Country Director  
**Abdullah Dayo** | Program Coordinator  
**Hamayoun Khan** | Program Coordinator

Phone: +92 51 2803391-4

Fax: +92 51 2803395

Website: <http://www.fes-pakistan.org>

Facebook: Friedrich-Ebert-Stiftung, Pakistan

Twitter: @FES\_PAK

## To order publication:

[info@fes-pakistan.org](mailto:info@fes-pakistan.org)

Commercial use of all media published by the Friedrich-Ebert-Stiftung (FES) is not permitted without the written consent of the FES.

Friedrich-Ebert-Stiftung (FES) is the oldest political foundation in Germany. The foundation is named after Friedrich Ebert, the first democratically elected president of Germany. The Friedrich Ebert Stiftung established its Pakistan Office in 1990. FES focuses on enhancing dialogue for mutual understanding and peaceful development in its international work. Social justice in politics, the economy and in the society is one of our leading principles worldwide. FES operates 107 offices in nearly as many countries. In Pakistan, FES has been carrying out various activities to strengthen the democratic culture through deliberative processes and informed public discourse; promoting and advocating social justice as an integral part of economic development through economic reforms and effective labor governance and enhancing regional cooperation for peace and development in recent years.

The views expressed in this publication are not necessarily those of the Friedrich-Ebert-Stiftung (FES).

ISBN: 978-969-9675-26-3