

Charging Standards for Anti-Terrorism Offences

Introduction

Charging refer to the process of formulation and delivery of charges. In our criminal process the term is used in the following contexts:

- a. The identification of charges by the police from the complaint or amended complaint
- b. The formulation of charges by the police on the basis of evidence contained in the challan
- c. The recommendation of the prosecutor to the court regarding charging
- d. The delivery of charges by the court. This last process is called the framing of charges.

When reviewing police files or assisting the court in framing charges, prosecutors should make sure that the charges are supported by facts. This guidance helps them in carrying out this function.

General Principles

Capturing full extent of offending

The charges should reflect the seriousness and extent of the involvement of a suspect in the criminal activity to determine his liability

Adequate sentencing

The selection of right charge should allow the court to pass appropriate sentence. Therefore, prosecutors should be aware of the full range of offences available to charge a person and that an omission or inappropriate charging may lead to acquittal or inability of court to award appropriate punishment.

Avoid Over charging

Prosecutors should avoid filing charges, which though justified by law, may lead to inflicting disproportionate punishment. For instance, the act of receiving property and of assisting in concealing it, are separate offences and may be charged if the criminal conduct attracts both. However, it may not be appropriate to charge both where the offender received the property in order to conceal it since the act of concealment will have involved the act of reception.

If a single criminal act amounts to an offence under one statute, charging is straightforward. However, if an act attracts more than one offence, it could be difficult. Legally, a person can be charged with all such offences at the same trial. Similarly, if a person has committed offences of the kind in the course of a period of one year or has committed offences in the course of same transaction, he can be tried for each of such offences simultaneously.

Apart from individualized assessment of facts and evidence, it would be important to consider the procedural and evidential requirements for proving the different offences as well as punishments prescribed under those offences for making a charging decision.

A good way of charging is to avoid those charges, which are covered by the lead charge. Another way is to charge offences, which have a high probability of success. The best way is to recommend charges that help in "telling a story sequentially and logically" and which bring out the aggravating features

Jurisdictional matters

A charge should not be imposed merely to invoke the jurisdiction of a particular court. For instance the jurisdiction of terrorism court will be attracted if prosecution brings a charge of terrorism offence.

Availability of evidence

The charges should be selected on the basis of facts of an individual case, the nature of allegations and the matters in dispute including a defense plea. It is important for the prosecution to note that that they should take into account available facts and not those that may come into the possession of

prosecution during the trial. Secondly, the prosecution should make a realistic assessment of the probability of proving each charge against each accused person.

Clear, Effective and timely presentation of prosecution case

If charges are weak, arbitrary, inconsistent and non-sustainable they will complicate and prolong the trial as well as distort the presentation of the prosecution case. Those charges will consume the time of court and prosecution, cause unnecessary burden on the parties and weaken the prosecution case.

Purpose of the standards

The standard contained in this chapter is designed to assist prosecutors in selecting and recommending to the court the most appropriate charges, in light of facts that can be proved at the earliest possible opportunity.

The charging standards set below;

- Are not intended to apply to investigatory decisions by police (decision of arrest etc.)
- Do not override the code of conduct issued by the Prosecutor General
- Do not override the need for consideration to be given in every case whether the charge is in the public interest
- Do not override the consideration that each case is to be considered on its individual merits

1. ATA offences

- (i) Ant-Terrorism Act (ATA) offences are exclusively triable by Anti-Terrorism Courts. ATA offences are of two types:
 - Acts of Terrorism as defined by the Anti-Terrorism Act, 1997
 - Offences included in the second schedule of the ATA
- (ii) An Act of Terrorism (Terrorist Act) is an act declared to be an offence under section 6 of the Act or any other provision of the ATA. An Act of Terrorism under section 6 is punishable under section 7 of the Act.
- (iii) An Act of Terrorism under section 6 of the ATA means the use or threat of action where
 - a) the action falls within the meaning of subsection (2) of section 6(section 6(1)(a))
 - b) The use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society (section 6(1)(b)); or
 - c) The use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause (section 6(1)(c)).
- (iv) An action falls within the meaning of section 6(1)(a) if it
 - a) Involves the doing of anything that causes death;
 - b) Involves grievous violence against a person or grievous body injury or harm to person;
 - c) Involves grievous damage to property;
 - d) Involves the doing of anything that is likely to cause death or endangers a person's life;
 - e) Involves kidnapping for ransom, hostage-taking or hijacking;
 - f) Incites hatred and contempt on religious, sectarian or ethnic basis to stir up violence or cause internal disturbance;
 - g) Involve stoning, brick-batting or any other form of mischief to spread panic;
 - h) Involves firing on religious congregations, mosques, imambargahs, churches, temples and all other places of worship, or random firing to spread panic, or involves any forcible takeover o mosques or other places of worship;
 - i) Creates a serious risk to safety of public or a section of the public, or is designed to frighten the general public and thereby prevent them from coming out and carrying on their lawful trade and daily business, and disrupts civil (civic) life;

- j) Involves the burning of vehicles or another serious form of arson;
 - k) Involves extortion of money (bhatta) or property;
 - l) Is designed to seriously interfere with or seriously disrupt a communications system or public utility service;
 - m) Involves serious coercion or intimidation of a public servant in order to force him to discharge or to refrain from discharging his lawful duties; or
 - n) Involves serious violence against a member of the police force, armed forces, civil armed forces, or a public servant.
- (v) Where the use or threat of action mentioned above involves the use of fire-arms, explosives or any other weapon, it is not material whether the requirements under section 6 (1) (c) are satisfied or not. □
- (vi) Schedule 1 to ATA further lists down offences other than terrorist acts which are triable under ATA
- (vii) The terms used in section 6 of the Anti- Terrorism Act have the following meanings

(ix)

| Term | Meaning |
|---|--|
| Coercion | Includes acts of threat, abuse, humiliation in order to frighten, harm or punish |
| Government | Includes federal, provincial government or local government. |
| Sect | Sub group of a larger religious belief system |
| Population | Inhabitants of a particular town, city or country |
| Foreign Government | Government of a foreign country recognized by Government of Pakistan |
| International Organization | Organizations with an international membership, scope and presence |
| Religion | Set of beliefs or disbeliefs |
| Ethnic | A group of people who have common national or cultural traditions |
| Terrorizing | Frighten by threats of violence. It is interchangeable with intimidation |
| Unlawfully | “Unlawfully” refers to acts not authorized by law. |
| Create a fear on society or insecurity in society | The conduct must cause a fear or insecurity in the minds of public. The perception of fear should not be limited to the victims, his/her families or the people in the surrounding. The impact should be on the public; It should be more than a concern; The people other than the one against whom the offence is directed should feel unsafe. There ought to apply a test of reasonable person. |
| Advancing a religious, ethnic and sectarian cause | Advancement implies supporting a cause by intimidation. |

- (i) The terrorist intent under section 6 (1) (b) or (c) must be proved apart from establishing the basic or specific intent requirements in the definition of a particular offence under ATA. In certain cases, the manner of commission of the offence itself is sufficient to show intent. In

such cases terrorist intent is not required to be proven in section 6(1)(c).

2. General Charging practice

Prosecutors should always have in mind the following general principles while selecting the appropriate charges:

- (i) The charges should accurately reflect the extent of the accused's alleged involvement and culpability, thereby allowing the courts to sentence appropriately
- (ii) The choice of charges should ensure the clear and simple presentation of the case
- (iii) There should be no overloading of charges by selecting more charges than necessary
- (iv) There should be no overcharging by selecting a charge that is not supported by evidence in order to show resolve and/or seriousness in dealing with criminal conduct
- (v) The Prosecutor should call upon the court to convict an offender under alternative PPC offences where terrorist intent has not been proved at the conclusion of the trial

3. Conduct contrary to section 6 of the ATA, 1997

a. Causing death contrary to section 6(2)(a) read with section 6(1)(b) or (c) of the ATA, 1997

- (i) It is defined in s 6 (2) (a) and means doing of anything that causes death with the intent specified in section 6(1)(b) or (c) [Terrorist Intent]
- (ii) The offence is charged under section 6 (2) (a) read with 7(1) (a) of ATA
 - (i) Intent to cause death or serious bodily injury must be proved.
 - (ii) Terrorist intent should also be proved
 - (iii) Where the offence is committed with firearms, explosives or any other weapon, there is no requirement to prove intent under s 6 (1) (c). However, the intent under s 6 (1) (b) should still be proved.
- (iv) The evidence of intention to kill or cause bodily injury and/ or *terrorist intent* will be inferred from the relevant facts including the conduct of the offender itself. Examples of such conduct includes-
 - Repeated attacks
 - Use of firearms
 - Use of explosives
 - Use of any other weapon
 - Previous threats to kill
 - Pre-meditated acts
- (v) The offence of murder under ordinary law is called Qatl-e-Amd. It is defined as causing death with intent to cause death or bodily injury by doing an act, which is likely to cause death in the ordinary circumstances, or with the knowledge that the act is so imminently dangerous that it will cause death in all probability. Qatl-e-Amd is punishable under s 302 PPC.
- (vi) The main distinction between an offence under section 302 PPC and section 6(2)(a) is the presence of terrorist intent. Under the current practice, an act of murder with terrorist intent is charged under both section 7(1)(a) and section 302.
- (vii) Where there is insufficient evidence of terrorist intent but the conduct amounts to an offence under s 302, the case will be transferred to an ordinary court
- (viii) Alternative charges include section 302 PPC

b. Causing grievous violence or grievous bodily injury or harm to a person contrary to section 6(2)(b) read with section 6(1)(b) or (c) of the ATA, 1997

- (i) The offence is committed if the act involves grievous violence against a person or causes grievous bodily injury or harm to a person with the intent specified in section 6(1)(b) or 6(1)(c) [Terrorist Intent]
- (ii) The offence is charged under section 6 (2) (b) read with 7(1) (c) of ATA
- (iii) There are two types of actions envisaged under this section:
 - a. Grievous violence against a person: Violence against person refers to a violent conduct towards a person. The law contemplates serious violence. There is no requirement of resulting injury. For instance, if a person throws a petrol bomb towards a police officer to intimidate him, the offence will be committed under this section.
 - b. Grievous bodily injury or harm to a person. Bodily injury includes any hurt calculated to interfere in the comfort and health of a person. The term grievous implies seriousness. It would therefore exclude injuries, which are of trifle or transient nature. Section 2 J of ATA defines grievous injury as -
 - Emasculation
 - Mutilation
 - Incapacitation
 - Disfigurement
 - Severe harm or hurt
- (iv) Examples of severe harm or hurt are
 - Injuries resulting in more than minor permanent visible disfigurement; broken or displaced limbs or bones; broken cheekbones, jaw, ribs
 - Injuries which causes substantial loss of blood, usually necessitating transfusion of blood
 - Psychiatric injury
- (v) The following are some of the factors to determine whether grievous violence was committed-
 - a. The nature of the conduct i.e. whether it was brutal; a scuffle causing bruises will fall out of the ambit of this section.
 - b. If the victim suffered serious injury as a result of the conduct. For instance, if a victim is hit in the head although he suffers minor injuries, the act will still be considered seriously violent.
- (vi) Intention to cause some harm or injury must be established. It is not necessary to provide proof of the intention of the injury or harm that is actually caused.
- (vii) Under the current practice, corresponding hurt offences are also charged along with hurt or injury under 6 (2) (b),
- (viii) Where the evidence of terrorist intent is insufficient the case should be transferred to the ordinary court,
- (ix) Alternative hurt offences include section 334, 336B, 337A, 337D, 337F

c. Causing grievous damage to property contrary to section 6(2)(c) read with section 6(1)(b) or (c) of the ATA, 1997

- (i) The offence is committed when grievous damage to property is caused by a person with the intent specified in section 6(1)(b) or 6(1)(c) [Terrorist Intent]
- (ii) The offence is charged under section 6 (2) (c) read with 7(1) (d) of ATA
- (iii) Section 2 J of ATA defines grievous in relation to property as severe loss, damage or destruction.
- (iv) An act of damage occurs when it causes destruction or any alteration to property or situation, which reduces or affects its value or utility.
- (v) Property includes movable and immovable property.
- (vi) The offence is committed even if the offender is the joint owner of the property damaged.
- (vii) The offence embraces all means of inflicting damage except arson which is an offence under section 6(2)(j).

- (viii) Arson means destruction of property by fire. It is a separate offence under section 6(2) (j). It covers destruction of vehicles by fire. Therefore, all forms of arson should be charged under section 6(2)(j) rather than 6(2)(c)
- (ix) There should be an intention to destroy or damage the property
- (x) Grievous damage to property occurs when the value of property is reduced. The factors to be taken into consideration in assessing whether the damage was grievous include-
 - Value of the property- the greater the value, the more serious will be the damage
 - The costs of repair or replacement
 - Whether the loss is irreparable
 - The manner of causing damage
- (xi) If a place of worship is damaged for the purpose of insulting a religion, a charge under section 295 PPC and 6 (2) (c) can be made.
- (xii) When it is not clear whether the damage was caused for the terrorist intent or insulting the religion, it would be advisable to charge both in the alternative.
- (xiii) Alternative charges include section 295, 427, 430, 431, 432, 433, 434, 435, 436, 437, 438, 440 PPC

d. Attempting to cause death or endangering a person's life contrary to section 6(2)(d) read with section 6(1)(b) or (c) of the ATA, 1997

- (i) The offence is committed when an act likely to cause death or endanger a person's life is committed with Terrorist intent
- (ii) The offence is charged under section 6 (2) (d) & 7(1) (b) read with 7(1)(c) of ATA
- (iii) The penalty for this offence may extend to life imprisonment but is not less than 10 years and fine
- (iv) The acts should be more than mere preparations or threats.
- (v) Intention to cause death or endangering a person's life must be present
- (vi) The specific intent (terrorist intent) requirement should be satisfied under section 6(1)(b) and (c)
- (vii) The offence amounts to attempt to cause Qatl-e-Amd (under section 324 PPC) with terrorist intent
- (viii) In charging attempt to murder, the proof of intention to commit murder is necessary.
- (ix) To prove charge under 6(2)(d) it is necessary to establish that the conduct is more likely than not to result in death. It is an objective test. It is not enough that death was possible as a result of the conduct.
- (x) Where the conduct falls below the required standard, but results in grievous bodily injury, violence or harm, a charge under s 6 (2) (b), should be preferred.
- (xi) Where only damage to property is caused as a consequence of an attempt to murder it would be appropriate to charge under section 6(2)(d) [for attempt to murder], 6(2)(b) [for grievous violence not entailing bodily injury] and 6(2)(c) [for causing serious damage to property]. This will ensure that entire criminality is covered.
- (xii) Where the conduct was not likely to cause death but there is evidence of terrorist intent the proper charge is section 6(2)(b)
- (xiii) If a number of separate offences are committed in the same transaction and there is sufficient evidence to support each, all of them will be charged. For instance, where a building is set on fire that kills and endangers the life of its residents, separate charges of arson, endangering life and causing death could be preferred.
- (xiv) The factors that will indicate the required intent include-
 - repeated attacks
 - use of deadly weapons
 - duration of attacks

- conspiracy or planning of attack
- (xv) Alternative charges include section 324 PPC
- e. Committing kidnapping for ransom, hostage-taking or hijacking contrary to section 6(2)(e) read with section 6(1)(b) or (c) of the ATA, 1997**
- (i) Kidnapping for ransom, hostage taking or hijacking is committed when conduct defined in section 2(n), 2(m), and 2(l)ATA occurs with the intent specified in section 6(1)(b) or 6(1)(c) [Terrorist Intent]
- (ii) The offence is charged under section 6 (2) (e) read with read with 7(1)(e) of ATA
- (iii) The definition for kidnapping for ransom is contained in section 2(n) of the ATA. Its elements are-
- the action of conveying a person from any place
 - without his consent, or
 - by force compelling or
 - by any deceitful means inducing him,
 - to go from any place, and
 - unlawfully detaining him and
 - demanding or attempting to demand, money, pecuniary or other benefit from him or from any other person,
 - as a condition of his release.
- (iv) The offence of kidnapping for ransom is different from the offence of extorting money.i.e. Bhatta in so far as a completed act of abduction is a necessary ingredient of the offence of kidnapping for ransom.
- (v) Where a person is abducted for bhatta, a charge of kidnapping for ransom instead of the charge of extortion (Bhatta) under section 6 (2) (k) will be appropriate.
- (vi) There may be some overlap between this offence and the offence of kidnapping for ransom under s 365-Aof PPC. The main distinction between these is one of intent. Moreover, ATA offence of kidnapping for ransom covers demand a benefit, other than pecuniary one; for instance, releasing a prisoner.
- (vii) Actual payment of money is not a necessary ingredient for the offence (2011 SC 1135)
- (viii)The definition of hijacking is contained in section 2(l) of the ATA. The elements of Section 2(l) are:
- unlawful seizure or exercise of control or any attempt at unlawful seizure or
 - exercise of control,
 - of an aircraft,
 - by force, violence, threat or
 - any form of obstruction,
 - directly or through another person,
 - from within or outside the aircraft.
- (ix) The penalty for hijacking within the meaning of section 6 (2) (e) is contained in section 7(1)(f) of the ATA which is death or life imprisonment and fine.
- (x) Hijacking is also an offence under 401- B of PPC. In addition, Harboring hijackers or person attempting to commit hijacking is an offence under section 402-C of PPC.
- (xi) The offence of hijacking in PPC is defined as ‘whoever unlawfully, by the use or show of force or by threats of any kind, seizes or exercises control of an aircraft is said to commit hijacking’
- (xii) There is a slight difference between the two offences of hijacking under these laws. The action of“ seizure or control from outside the aircraft” is expressly stated in the definition of the offence under ATA. Moreover, “attempt to commit the offence “is made part of the substantive offence under ATA and is not dealt with separately.
- (xiii)The offence of hijacking under ATA is charged under section 6(2) (e) &7(1)(f) of the ATA

- (xiv) The penalty for hijacking is death or life imprisonment and fine.
- (xv) The jurisdiction for this offence extends to aircraft within the boundaries or airspace of Pakistan or is bound to land in Pakistan whether the aircraft is registered in Pakistan or not.
- (xvi) If the allegation pertains to an attempt, the prosecution should have evidence that the person took a step, in furtherance of preparation. By way of example the following actions would amount to hijacking:
 - Stood up from his seat to execute threats
 - Use of force to enter the door of the pilot
- (xvii) Threats to cabin crew or assault on any issue of service do not constitute attempts to hijacking or hijacking
- (xviii) An act of planning to commit hijacking will not constitute an attempt of hijacking under the ATA.
- (xix) By way of example the following actions will not constitute an attempt to hijacking under ATA
 - Learning techniques on hijacking
 - doing mock exercises for hijacking
- (xx) The definition of hostage taking is contained in section 2(m) of the ATA, 1997. Its elements are
 - holding of a person captive
 - with threats made to kill or harm that person
 - if demands are not met.
- (xxi) Hostage taking may occur simultaneously with hijacking or kidnapping for ransom. However, hostage taking may happen independently. By way of example, hostage taking may happen alone in the following cases:
 - Entering a building and holding occupants captive
- (xxii) If hostage taking is part of hijacking or kidnapping for ransom, it may not need to be charged separately.
- (xxiii) A key difference between hostage taking and kidnapping for ransom is that an attempt to make a demand is sufficient for kidnapping for ransom whereas an actual demand needs to be made in hostage taking
- (xxiv) The main distinction between the charges under section 402B, 402C PPC (for hijacking) and this section is one of terrorist intent.
- (xxv) Alternative charges include section 402B, 402C PPC (for hijacking) and section 365-A PPC (for kidnapping for ransom)

ee. Using explosives or having explosives substances in a manner contrary to section 6(2) (ee) read with section 6(1)(b) or (c) of the ATA, 1997

- (i) The offence is committed when a person
 - a. Use explosives by any device including bomb blast
 - b. Has any explosive substance without any lawful justification, or is unlawfully concerned with such explosives
- (ii) Terrorist intent is necessary for this offence
- (iii) The offence is charged under section 6 (2) (ee) read with 7(1) (ff) of ATA
- (iv) The term 'explosive' is defined in section 2(f) of ATA and means any bomb, grenade, dynamite, or explosive substance capable of causing an injury to any person or damage to any property and includes any explosive substance as defined in the Explosives Act, 1884.
- (v) The term 'explosive substance' is defined in section 2 of the Explosive Substances Act, 1908 and includes 'any materials for making an explosive substance; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or any explosive substance; also any part of any such apparatus, machine or implement

- (vi) When explosives are used in committing an offence under ATA, separate charges for that offences and the offence under this section will be preferred.
- (vii) "Having" means possession. It could be immediate or custodial.
- (viii) "Without lawful justification" refers to lack of reasonable excuse;
- (ix) "Concerned in such explosive" refers to involvement in the use or possession of explosives; typical examples include
 - Carrying,
 - Repairing,
 - Buying or selling,
 - Concealing
 - Harboring
- (x) Similar offences include section 3, 4, 5 or 6 of the Explosive Substances Act, 1908

f. Inciting hatred and contempt to stir up violence contrary to section 6(2) (f) read with section 6(1)(b) or (c) of the ATA, 1997

- (i) The offence is committed when a person Incites hatred and contempt on religious, sectarian or ethnic basis to stir up violence or cause internal disturbance with terrorist Intent
- (ii) Sectarian means pertaining to, devoted to, peculiar to, or one which promotes the interests of a religious sect, or sects, in a bigoted or prejudicial manner (section 2u)
- (iii) 'Sectarian hatred' means hatred against a group of persons defined by reference to religion, religious sect, religious persuasion, or religious belief (section 2v)
- (iv) This offence is one of the many terrorist offences with religious motive. The similar offences include section 9, 6(2)(h)
- (v) The offence is charged under section 6 (2) (f) read with 7(1)(g) of ATA, 1997
- (vi) Religion related offence in the Pakistan Penal Code are sections 295, 295A, 295B, 295C, 296, 297, 298, 298A, 298B, 298C.
- (vii) The term "hatred" and "contempt" should be read disjunctively.
- (viii) There has to be evidence of words or action to establish an act of incitement.
- (ix) The audience may consist of one or more persons.
- (x) The offence can still be committed even if the offender is not familiar with the audience or has not communicated directly with it.
- (xi) Whether the hatred or contempt was intentionally incited to stir violence will depend on a number of factors including-
 - Whether the behavior of the offender i.e. words, gestures and sign capable of inciting hatred or contempt were of a kind that could stir violence in the circumstances; for instance, a call to burn the place of worships of a sect because of their beliefs?
 - Whether a particular group of people was targeted?
 - Whether the offender knew that the audience were amenable to use violence because of their background i.e. education, age, association with an extremist group and tendency to commit acts of aggression. Thus, an academic discussion on religion or sect with enlightened audience may fall outside the scope of this offence
 - Tendency of the audience to use violence
 - Religious affiliation of the audience
 - Purpose of the communication between the offender and the audience
- (xii) This offence may be charged together with an offence under section 6(2)(h).
- (xiii) Actual occurrence of violence is not necessary to constitute this offence but there should be a realistic likelihood that violence may take place as a result of incitement.
- (xiv) The following are the typical examples of the conduct under section 6(2)(f)
 - Declaring a member of a Muslim sect Kafir
- (xv) Alternative charges include section 295 PPC, 295-A PPC, section 6(2)(p) ATA, 1997

g. Taking the law in own hand contrary to section 6(2) (g) read with section 6(1)(b) or (c) of the ATA, 1997

- (i) The offence is committed when a punishment is awarded by any person, individual or organization not recognized by law with a view to intimidate to coerce, intimidate or terrorize public, individuals, groups, communities and government officials.
- (ii) The offence is charged under section 6 (2) (g) read with 7(1)(g)
- (iii) The punishment contemplated under this section covers physical as well financial penalty. The punishment may not need to be of rigorous nature and even a minimum intervention with any rights of the victim would be sufficient to constitute this offence.
- (iv) .The kinds of punishment includes penalty that may be awarded legally as well as those, which are not recognized under law i.e. rape.
- (v) The punishment could be given in any civil or criminal matter.
- (vi) The award of Punishment may be pronounced orally or given in writing.
- (vii) An act of purported award of punishment by a government or judicial official in his/her official capacity, without jurisdiction or against law, does not fall within this offence
- (viii) The sole act of pronouncing punishment will be sufficient to constitute this offence whether or not it is implemented or implementable
- (ix) There is not requirement that the person awarding the punishment also execute it.
- (x) If the person who execute the punishment is different from the one who awarded it, he will be charged under section 21-I ATA for abetting the offence.
- (xi) There has to be proof of the specific intent i.e. to coerce, intimidate or terrorize and therefore the mere desire to dispense justice will not be sufficient of itself to meet the requirements of mens rea under this offence
- (xii) If the requirement of proof of specific intent of this offence is satisfied there is no need to establish the terrorist intent since both of them are the same
- (xiii) The factors for determining specific intent include
 - Nature of the punishment
 - The impact of the punishment on public
 - Motive of the offender
 - Allegations against the victim
 - Nature of the proceedings
 - Whether the judgment is passed in purported exercise of lawful jurisdiction
- (xiv) Typical examples of this conduct include
 - Self-proclaimed courts awarding punishments
 - Panchayat dispensing punishments by usurping the powers of the court
- (xv) Alternative charges include section 310A PPC

h. Firing on religious gatherings or place of worship contrary to section 6(2) (h) read with section 6(1)(b) or (c) of the ATA, 1997

- (i) The offence is committed if there is
 - a. firing on religious congregations, mosques, imambargahs, churches, temples and other places of worship
 - b. random firing to spread panic
 - c. forcible takeover of mosques or other places of worship
- (ii) The offence is charged under section 6(2) (h) read with 7 (1)(h) of ATA
- (iii) This offence may be charged together with section 6(2)(h). For instance, if a place of worship belonging to one's own sect is destroyed to cause hatred against a person of another sect or another sect, it will amount to inciting hatred.
- (iv) It will be sufficient to prove that the place of worship was established although it was not declared, approved or notified as such by the competent authority

- (v) The taking over of places of worship may be temporary.
- (vi) The illegal taking over of a place of worship will not necessarily imply forceful takeover.
- (vii) Firing on place of worship may comprise a single or multiple acts. However, a separate charge for each act is not to be preferred.
- (viii) Where an act of firing is accompanied with takeover, a single charge will be preferred as both the acts will be covered under this offence

i. Creating risk to the safety of public or frightening general public contrary to section 6(2) (i) read with section 6(1)(b) or (c) of the ATA, 1997

- (i) The offence is committed when
 - a. a serious risk is created to the safety of the public or a section of the public
 - b. an act 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
- (ii) The offence is charged under section 6(2) (i)read with7(1)(h) of ATA
- (iii) There must be proof of the intention to create the risk
- (iv) The risk must be significant and realistic. A mere breach of a technical requirement not resulting in real harm will be insufficient to charge under this section
- (v) Where there is proof of an act designed to frighten the general public, there will be no need to separately establish the terrorist intent under s 6 (1) (b) or (c), as intent requirements under both these provisions are the same.
- (vi) Whether or not the public is frightened will depend on a number of factors including-
 - The loss or inconvenience likely to be suffered
 - The likelihood of further acts
 - Remedies available to redress the loss
- (vii) The examples of the type of conduct appropriate for the charge under this section includes-
 - Disabling medical equipment in public hospitals
 - Destroying public record of significant value
 - Poisoning private water filtering systems

j. Causing arson contrary to section 6(2) (j) read with section 6(1)(b) or (c) of the ATA, 1997

- (i) The offence is committed when a vehicle is burned or any form of arson is committed with terrorist intent
- (ii) Arson is not defined in ATA. It is defined in legal parlance as damage caused by fire
- (iii) The definition of vehicle is not provided in the ATA. It is defined in the dictionary as a mechanically propelled vehicle intended or adapted for use on roads
- (iv) The offence is charged under section 6 (2) (j) read with7(1)(h) of ATA
- (v) Where property is destroyed by arson, it should be charged under this section rather than under section 6 (2) (c)
- (vi) If several acts of arson are committed in a single transaction, it will not be necessary to charge each act of arson separately.
- (vii) Where property is damaged partly by arson and by partly by other act such as explosives, the act will be charged both under this section and section 6 (2) (c)
- (viii)It is not material to determine the value of the property for charging arson. However higher the value of the property the more serious the offence will be
- (ix) There is no requirement that life should be endangered by arson

k. Involves extortion of money (bhatta) or property contrary to section 6(2) (k) read with section 6(1)(b) or (c) of the ATA, 1997

- (i) The offence is committed when money or property is extorted with terrorist intent
- (ii) The offence is charged under section 6 (2) (k) and 7(1)(h) of ATA
- (iii) The main distinction between the offence of extortion under section 383 PPC and this section is one of intention.
- (iv) The term “bhatta” is a kind of extortion covered by this section. It refers to an organized form of extortion committed against members of public or business community. The victims are put in fear of death or injury and are forced to deliver property.
- (v) This charge should not be used for acts of ordinary and individual acts of extortion although such acts invariably cause fear in the victim and the frequency of such acts cause fear in society.
- (vi) It should be reserved for the acts, which are carried out in an organized manner with the motive of terrorism.

I. Causing disruption of communications or public utility services contrary to section 6(2) (l) read with section 6(1)(b) or (c) of the ATA, 1997

- (i) The offence is committed when an act causes serious interference or disruption of a communication system or public utility service and the act in question is committed with terrorist intent
- (ii) The offence is charged under section 6 (2) (l) read with 7(1)(h) of ATA
- (iii) The word communications is not defined in ATA. It refers to telecommunications, television, broadcasting and postal services.
- (iv) Public utilities are not defined in the ATA. It refers to services including water, electricity, natural gas, and telephone supplied by government or a private organization to public.
- (v) Where damage is caused to public utility or communication system, a charge under this section instead of section 6 (2) (c) should be considered.
- (vi) The examples of typical conduct appropriate for charge under this section include-
 - Unauthorized use of decoders for decoding encrypted transmissions
 - Unlawful disruption of messages on private or public telecommunication systems
 - Interception of mail in the postal services
 - Theft, Destruction, obstruction, pollution or interference in the supply of water
 - Theft, Destruction, obstruction and interference in the supply of gas and electricity

m. Coercing or intimidating public servants' contrary to section 6(2) (m) read with section 6(1)(b) or (c) of the ATA, 1997

- (i) The offence is committed when
 - serious coercion or intimidation to a public servant is caused
 - in order to force him to discharge or to refrain from discharging his lawful duties
- (ii) The offence is charged under section 6 (2) (m) read with 7(1)(h) of ATA
- (iii) Serious coercion means any one or more of the following acts
 - threaten, abuse, humiliate, to frighten, harm or punish) or intimidation (threaten or persuade) to discharge or refrain from discharging his duties
- (iv) Serious intimidation means any one or more of the following acts
 - threaten or persuade to discharge or refrain from discharging his duties
- (v) It is not necessary to prove that the official submitted to the threats. However, the evidence of his submission will be relevant to prove the offence.
- (vi) Threats may be made orally or in writing
- (vii) The conduct of threatening private witnesses does not fall within the definition of s 6(2)(m) but that of threatening police witnesses, prosecutors and court officials falls within this section

(viii) The typical examples of the conduct appropriate for charging under this section include-

- Intimidating a police officer to evade an arrest
- Threatening to kill if the prosecutor produces evidence in a case
- Threatening to kill a judge if he does not pass a favorable verdict.
- Forcing a police officer to register a false case
- Forcing an officer of Forensic science agency to issue a report
- Hindering trial or investigation process

(ix) The offences which overlap with this offence include section 506 PPC

n. Causing serious violence against a member of the police force, armed forces, civil armed forces or a public servant contrary to section 6(2) (n) read with section 6(1)(b) or (c) of the ATA, 1997

(i) The offence is committed

- if an act of serious violence is committed
- against a member of the police force, armed forces, civil armed forces or public servants

(ii) The offence is charged under section 6(1) (n) read with 7(1)(h) of the ATA

(iii) The act of violence needs to be proved.

(iv) The motive for causing violence should not be personal.

(v) It is not necessary to prove that the violence was caused to the officer in the course of carrying out his duties.

(vi) Where the conduct also amounts to an offence of attempt to kill, prosecutor should consider a further charge under section 6 (2)(d).

(vii) Alternative charges include charges under section 324 PPC, section 13(a) Arms Ordinance, 1965

o. Undertaking armed resistance against law enforcement agencies contrary to section 6(2) (o) read with section 6(1)(b) or (c) of the ATA, 1997

(i) The offence is committed if an action is part of armed resistance by groups or individuals against law enforcement agencies.

(ii) The offence is charged under section 6 (2) (o) read with 7(1)(i) of ATA, 1997

(iii) Armed resistance is not defined in ATA. It refers to use of weapons for preventing law enforcement agencies from carrying out their duties

(iv) It could be committed against a member or members of the law enforcement agencies

(v) Law enforcement agencies include police, civil armed forces and armed forces engaged on law enforcement duty

p. Dissemination of ideas and beliefs as per own interpretation on FM radio stations or other means of communication contrary to section 6(2) (p) read with section 6(1)(b) or (c) of the ATA, 1997

(i) The offence is committed if

- an action involves dissemination, preaching ideas, teaching and beliefs
- as per own interpretation
- on FM stations or through any other means of communication without explicit approval of the government.

(ii) The offence is charged under sections 6 (2) (p) read with 7(1)(i) of ATA, 1997

(iii) The offence may be co-terminus with an offence under section 6(2)(f) or section 8 of the ATA, 1997

- (iv) Where there is evidence that the offender incited hatred or contempt on religious, sectarian or ethnic basis to stir violence by using lawfully established FM stations, it would be suitable to charge under section 6 (2) (f)
- (v) In order to charge under this section, it is necessary that the FM stations and other means of communication used should be operating without explicit government approval
- (vi) The typical examples of the conduct appropriate for charging under this section includes-
 - Delivering a lecture on an unapproved radio station in which religious beliefs are presented
 - Propounding a religious view contrary to the established and authentic work without any established or known basis
 - insulting religious figures through caricatures

q. Taking any action in violation of a convention specified in the Fifth schedule contrary to section 6(3A) of the ATA, 1997

- (i) The offence is committed if any action is taken in violation of any convention included in fifth schedule of the ATA
- (ii) The offence is charged under section 6 (2) (q) read with 7(1)(i) of ATA, 1997