2020 P Cr. L J 395
[Sindh]
Before Salahuddin Panhwar and Shamsuddin Abbasi, JJ
AHMED SAEED alias BHARAM alias NAGORI---Petitioner
Versus
INSPECTOR GENERAL OF POLICE (SINDH) and 3 others---Respondents
C.P. No. D-5759 of 2019, decided on 20th September, 2019.
(a) Criminal Procedure Code (V of 1898)---
----S. 164--- Constitution of Pakistan, Art. 199--- Constitutional petition---Confessional statement---Adjudication---Petitioner sought confessional statement adjudged through Constitutional petition in connection with criminal case wherein he was convicted and even appeal was declined---Validity---Status of such piece of evidence could not be sought to be adjudged in Constitutional petition.
(b) Anti-Terrorism Act (XXVII of 1997)---
----Ss. 7 & 11-EEEE--- Constitution of Pakistan, Art. 199---Constitutional petition---Blind FIR---Investigation---No Objection Certificate---Petitioner was detained by Rangers Force for over 90 days and was being interrogated in blind FIRs whereafter, Rangers Authorities had issued "No Objection Certificate" regarding non-involvement of petitioner in other cases---Petitioner apprehended that he would be falsely involved in other criminal cases---Validity---For purposes of investigation "No Objection Certificate" was not requirement of law rather such right would always be available to investigate a suspect---No person would be a suspect unless there were some circumstances which could make him a suspect---Where circumstances justified arrest of suspect/accused in some other case/crime, same would not require "No Objection Certificate" from other Law Enforcement Agency---Investigating officer of other case/crime could proceed further with request of formal arrest of suspect and even could proceed for obtaining body (remand) of such suspect---If during course of investigation there had come facts of commission of another cognizable offence then police was under obligation to resort to such course (S. 154, Cr.P.C.) even without permission/No Objection of anybody unless registration of such FIR demanded so---Petitioner could not seek restraining order from High Court that no investigation could be carried out in all cases referred by petitioner---No investigation could be stopped by writ of Certiorari and writ of Mandamus which stated that authorities would act strictly in accordance with law---What law provided to adjudicate FIRs in question which were disposed of in 'A' Class, authorities were bound to investigate all such FIRs and to ensure that all culprits were arrested and arraigned---Constitutional petition was dismissed in circumstances.

Sughran Bibi's case PLD 2018 SC 595 ref.

Raj Ali Wahid Kunwar for Petitioner.

ORDER

Through instant constitutional petition, the petitioner has prayed that:-

"1. Restrain the respondents from falsely implicating the Petitioner in any further FIR based on his retracted judicial confession;

2. Declare the "No Objection Certificate" that allows/grants authority to institutions to further falsely implicate the Petitioner as illegal and void ab initio;
3. Direct the Respondents to place before this Court a list of criminal cases against the accused in the province of Sindh.
4. Declare the alleged confession as false, fabricated and unbelievable.
5. Any other and further additional relief; which this Hon'ble Court may deem fit and proper suitable in the interest of justice."

2. Precisely the relevant facts, as set out in the present petition, is that:-

"That the petitioner was detained by Rangers (Sindh) for over ninety days under section 11-EEEE, A.T.A., 1997, prior to 25.06.2006. During. This period, the petitioner was tortured, beaten, abused and coerced and it is alleged that the petitioner confessed to committing crime being subject matter of FIR 330 of 2009 P.S Nabi Bux for which he later got charged. Afterwards, the petitioner allegedly took the police party to the place of incident on 25.06.2016 which was already in the knowledge of the Police via FIR 330 of 2009 through the report of the then Investigation Officer. After that, the petitioner allegedly went on to give a voluntary confession in front of a Judicial Magistrate on 27.06.2016 under section 164, Cr.P.C., the Judicial Magistrate sent the petitioner back to the Police custody and recorded his confession after calling him again on 28.06.2016.

That the confession in its original form dated 28.06.2016 is placed as Annexure-A along with its English translation which is placed as Annexure A-1.

That it is categorically mentioned that the Petitioner, rescinded from his confession as soon as the trial began which is evident from the charge framed in Spl. Case No.1444 of 2016 on 23.12.2016. Copy of the Charge is placed as Annexure-B.

That on basis of the aforementioned retracted alleged confession of the petitioner, several BLIND FIR's which were originally registered against unknown people, were declared to be inculpating the petitioner in them and a "No Objection Certificate" dated 21.06.2016 (placed as Annexure F) was given by the investigative agency HQ Sector Abdullah Shah Ghazi Rangers Karachi-29 to allow for the arrest and physical remand of the petitioner in Police Custody for the 22 FIR's that can now be registered against the petitioner based on his retracted judicial confession either as Fresh or continued FIRs.

That the petitioner fears that he will be falsely involved in as many as the 22 FIR's based on his retracted confessional statement in which he can be apprehended. From the above mentioned list of FIRs produced in Annexure F, the petitioner has already been charged for FIR No.170/2003 under sections 302/34 (Annexure F-1), another FIR not mentioned in the list being FIR No.78/2008 under sections 147/148/ 149/324/302 read with 7, A.T.A. (Annexure F-2), FIR No.47/2006 supplementary challan under sections 302/324/34 (Annexure F-3) and FIR No.301/1995 (Annexure F-4).

3. At the outset, learned counsel for the petitioner contends that petitioner was arrested on his 164, Cr.P.C., statement (confessional statement was recorded) and he was tried in that FIR;

at the culmination of trial, trial Court convicted and sentenced him to death sentence. He preferred the appeal that is also dismissed, hence at present, the appeal is pending before the apex Court for adjudication. According to counsel, on the basis of confessional statement wherein he is allegedly admitted, at least twenty five offenses relating to more than hundred cases, "No Objection Certificate" was issued by the Senior, Sector Commander Officer of the Rangers and thus the petitioner is apprehending that he will be implicated in those cases as well, on his confessional statement; that this is a case certiorari as well mandamus, to direct officials that they shall not act on the basis of 'No Objection Certificate' and confessional statement and they shall be refrained from implicating the petitioner in other cases as mentioned in the alleged confessional statement. Further he has emphasized over pages-511 and 515, which pertains to travel history of the petitioner (accused) by taking plea of alibi with regard two murders as allegedly confessed in that period he was aboard.

4. What is not disputed is the fact that confessional statement, so sought to be adjudged through this writ petition, was in connection with a case crime wherein the petitioner was convicted and even appeal was declined. We are unable to understand how the status of a piece of evidence (confessional statement) can be sought to be adjudicated in writ petition?. Let us add that a piece of evidence of alike nature can never be adjudicated by any other court except that of Trial Court. All questions with regard to legality or otherwise of such like document (piece of evidence) can only be raised before the trial Court. Like documents would mean those documents only which are collected/recorded as piece of evidence in proof or disproof of a criminal liability and creates no other liability or consequence in civil nature actions. Thus, such prayer, being entirely misconceived, cannot be entertained. It may well be added that since petition against conviction is pending before honourable apex Court where the petitioner may raise questions with regard to legality or otherwise of confessional statement, if the law so permits. Needless to mention that writ of certiorari is applicable against the decisions of the sub ordinate Courts, where remedy of appeal is not available. Here situation is not same. In present case, issue is pending before the apex Court with regard to conviction of petitioner in those cases.

5. Petitioner, who further seeks restraining order from this Court under the writ of mandamus, on use of confessional statement and NO OBJECTION CERTIFICATE, in matter of investigations, it would suffice to say that investigation is right of the investigating agency hence it (investigation) normally should not be hampered/interfered even by Court(s). The purpose of investigation is never meant to book one but to bring the real culprits under light and to send him up to face the trial. This has been the reason that investigating officer is obliged to investigate every suspect as well to examine every suspicion while conducting an investigation. Every citizen, therefore, must cooperate with investigation officer unless he feels the authority is being abused by the investigating officer for some other purpose than that of 'bringing the truth on surface'. The suspect does have a right to bring on surface all his pleas which, the investigating officer is obliged to appreciate, therefore, petitioner is not legally justified in seeking a restraint over such right of investigating officers, if they find the

petitioner linked in crimes even as suspect. The view is based on guidelines, so chalked out in the case of Sughran Bibi (PLD 2018 SC 595). At Rel. P-628 it is observed as:-

"(3) It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person"

This Rule should suffice to dispel any impression that investigation of a case is to be restricted to the version of the incident narrated in the FIR or the allegations levelled therein. It is quite evident from this Rule that once an FIR is registered then the investigating officer embarking upon investigation may not restrict himself to the story narrated or the allegations levelled in the FIR and he may entertain any fresh information becoming available from any other source regarding how the offence was committed and by whom it was committed and he may arrive at his own conclusions in that regard. The final report to be submitted under section 173, Cr.P.C. is to be based upon his final opinion and such opinion is not to be guided by what the first information had stated or alleged in the FIR. It is not unheard of that sometimes the final report submitted under section 173, Cr.P.C. the first information is put up before the court as the actual culprit.

(Under lining is mine)

15..........All subsequent or divergent versions of the same occurrence or the persons involved therein are to be received, recorded and investigated by the investigating officer in the same "case" which is based upon the one and only FIR registered in respect of the relevant "offence" in the prescribed book kept at the local police station.

With regard to NO OBJECTION CERTIFICATE, it would be appropriate to reproduce the same, which is that

"NO OBJECTION CERTIFICATE

1. Reference order No.1430/Prosec/600/2016 dated 22 March 2016 Saeed Ahmed @ Bharam @ Nagori son of Muhammad Ismail was ordered to be detained for the period of 3 months under section 11-EEEE of A.T.A., 1997.
2. Now in the light of Reports, Recommendations of inquiry/investigation Team, the above said suspect has been found involved in following FIRs as per his admission.

a. FIR No.125/1994 under sections 302/34, PS Nabi Bukhsh.
b. FIR No.55/1995 under sections 302/324/147/148 PS Pak Colony.
c. FIR No.61/1994 under sections 302/34 PS Nabi Bukhsh.
d. FIR No.68/1995 under sections 302/34 PS Nabi Bukhsh.
e. FIR No.170/03/324/34 under sections 302/34 PS Aziz Abad.
f. FIR No.166/03 under sections 302/34 PS Liaquatabad.
g. FIR No.467/2004 under sections 302/34 PS Korangi.
h. FIR No.559/2004 under sections 302/34 PS Korangi.
i. FIR No.41/2006 under sections 302/34 PS Zaman Town.
j. FIR No.43/2005 under sections 302/34 PS KIA.

k. FIR No.120/2008 under sections 302/34 PS Ibrahim Hyderi.
l. FIR No.186/2008 under sections 302/34 PS Landhi.
m. FIR No.169/2007 under sections 302/34 PS Ibrahim Hyderi.
n. FIR No.120/2008 under sections 302/34 PS Sharafi Goth.
o. FIR No.326/2008 under sections 302/34 PS KIA.
p. FIR No.179/2009 under sections 302/34 PS Landhi.
q. FIR No.552/2010 under sections 302/34 PS Orangi Town.
r. FIR No.21/2010 under sections 302/34 PS Awami Colony.
s. FIR No.23/2010 under sections 302/34 PS Korangi.
t. FIR No.76/2011 under sections 302/34 PS Eidgah.
u. FIR No.69/2012 under sections 302/34 PS Landhi.
v. FIR No.330/2009 under sections 302/34 PS Nabi Bukhsh.

3. Therefore, this Sector has "No Objection" if the said persons is arrested and remanded into Police custody, for investigation in concerned FIRs or launch fresh FIR as per his admission during JIT session before Team.

Sd/-
Colonel
Sector Commander
(Amjad Jamil Iqbal
SECTOR HQ ABDULLAH SHAH GHAZI RANGERS KARACHI-29
No.1430/Prosec/1279 /2016 dated 21 June 2016

a. Administrative Judge ATC Karachi for information/record.
b. Secretary Home Department, Government of Sindh.
c. HQ Pakistan Rangers (Sindh).
d. CCPO Karachi.
e. SSP Investigation Karachi o/o DIG (East/West/South).
f. Superintendent Central Prison Karachi.
g. Filed Security Sector.
h. SHO PS Nabi Bukhsh.
i. Sub Jail Mitha Rain Hotel Karachi o/o Wing ASGR.

Here, it would be advantageous to clarify that for purpose of investigating a suspect 'NO OBJECTION CERTIFICATE' is not the requirement of law rather such right shall always be available to investigate a suspect. No person would be a suspect unless there are some circumstances which make him a suspect. Further, it is clarified that where the circumstances justify arrest of a suspect/accused in some other case crime the same shall also not require 'NO OBJECTION FROM OTHER LAW ENFORCING AGENCY' rather the investigation officer of other case crime may proceed further with request of formal arrest of suspect and even may proceed for obtaining the body (remand) of such suspect. It is also needless to clarify that if during course of an investigation there comes facts of commission of another cognizable offence then police shall be under an obligation to resort to such course (section 154, Cr.P.C.) even without permission/no objection of anybody unless lodgment of such FIR demands so.

Such legal position is ssufficient to make the prayer, made in petition, with reference to NO OBJECTION CERTIFICATE, as redundant.

6. In short, the petitioner is seeking restraining order from this Court that no investigation be carried out in all murder cases which, as observed above, legally can't be granted. No investigation can be stopped in the writ of certiorari and in writ of mandamus. On the contrary writ of mandamus states that official respondents shall act strictly in accordance with the law. What law provides to hear these FIRs, which according to learned counsel were disposed of in 'A' Class, hence, official respondents are bound to investigate all FIR(s) and ensure that all culprits are arrested and arraigned.

Accordingly, instant petition is dismissed along with listed applications.

MH/A-165/Sindh Petition dismissed.

P L D 2020 Sindh 158

Before Muhammad Iqbal Kalhoro, Mohammad Karim Khan Agha and Shamsuddin Abbasi, JJ

JUNAID REHMAN ANSARI and others---Petitioners

Versus

The STATE and others---Respondents

C.Ps. Nos. D-584 of 2009, D-206 of 2010, D-3950 of 2012 and D-2784 of 2014, decided on 16th September, 2019.

(a) Interpretation of statutes---

----Court, role of---Scope---Legislative intent---If a statute has expressly provided for something without any ambiguity then there is no question of the Court interpreting the same as legislative intent is clear and Act / Ordinance must be given effect to unless it is deemed to be contrary to the Constitution---Judiciary's role of interpretation of statute only arises when statute is to a certain extent either unclear or ambiguous or is prima facie in violation of the Constitution and in such cases it is for the judiciary to interpret that piece of legislation by trying to ascertain intent of Parliament in passing such legislation--- Courts have absolutely no authority or power to substitute their views for those intended by legislature simply because they may disapprove of a particular and the way in which that law is being applied.

Justice Khurshid Anwar Bhinder v. Federation of Pakistan PLD 2010 SC 483 rel.

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

----S. 21F---Constitution of Pakistan, Arts. 4, 12, 13 & 25---Remissions---Amendment in law---Violation of Constitutional guarantees---Petitioners assailed insertion of S. 21F in Anti-Terrorism Act, 1997, and sought the same to be struck down from the statute as the same was harsh for convicts--- Validity---Rise in terrorist acts in Pakistan from year 1997 up to 15-8-2001 when S.21 F was incorporated in Anti-Terrorism Act, 1997, prompted the legislature to make the amendment for deterrent purposes---Whether or not denial of remission was harsh for convicts under Anti-Terrorism Act, 1997, was not for High Court to pass judgment on such issue and was within the domain of legislature; it was the legislature in its own wisdom, reasons, aims and objectives in inserting S. 21F in Anti-Terrorism Act, 1997---Despite insertion of S. 21F in Anti-Terrorism Act, 1997, over 18 years ago, none of the three successive

democratically elected legislatures deemed it fit to remove S. 21F from Anti-Terrorism Act, 1997, which was an indication that successive legislature were satisfied that S. 21F was justified in Anti-Terrorism Act, 1997---Provision of S. 21F of Anti-Terrorism Act, 1997, did not violate Arts. 4, 12, 13 or 25 of the Constitution and High Court upheld the provision of S. 21F of Anti-Terrorism Act, 1997---High Court, however, directed Anti-Terrorism Courts to exercise great care and caution in determining whether cases before them fell under Anti-Terrorism Act,1997, based on the requirements of S. 6 of Anti-Terrorism Act, 1997, as remissions were not applicable in cases under Anti-Terrorism Act, 1997 which concerned heinous offences having a special object and intent aimed at destabilizing the State and its institutions and cowering it citizens through installing in them a sense of fear and insecurity---In absence of ingredients of S. 6(1)(b) & (c) of Anti-Terrorism Act, 1997, cases were to be tried under ordinary criminal law---Provisions of S.6(1)(b) & (c) Anti-Terrorism Act, 1997, were pre-conditions which needed to be satisfied before S. 6 of Anti-Terrorism Act, 1997, could be attracted by virtue of the offences set out in S.6(2) of Anti-Terrorism Act, 1997---Constitutional petition was dismissed in circumstances.

Saleem Raza v. The State PLD 2007 Kar. 216; Nazar Hussain and another v. The State PLD 2010 SC 1021; Mujeebur Rehman v. The State 2014 PCr.LJ 1761; Abdul Aziz Memon and others v. The State PLD 2013 SC 594; State of Haryana and another v. Jai Singh Supreme Court of India Appeal (Crl.) 661 of 2002; Jameel Ahmed v. State of Rajasthan and others 2007 Cri.LJ 2009; Justice Khurshid Anwar Bhinder v. Federation of Pakistan PLD 2010 SC 483;Government of Balochistan v. Azzizullah Memon PLD 1993 SC 341 and Shah Hussain v. State PLD 2009 SC 460 rel.

Hammad Abbasi v. Superintendent, Central Adyala Jail, Rawalpindi PLD 2010 Lah. 428; Superintendent, Central Adyala Jail, Rawalpindi v. Hammad Abbasi PLD 2013 SC 223; Muhammad alias Khuda Bakhsh v. ATC Makran at Turbat and 2 others 2018 PCr.LJ 148; Mazhar Iftikhar v. Shahbaz Latif PLD 2015 SC 1; Ex. Brigadier Ali Khan v. Secretary, Home Department, Government of Punjab PLD 2016 Lah.509; Muhammad Ali v. The State 2018 YLR Note 191; Muhammad Nawaz and another v. The State 1987 SCMR 1399; Habib-ul-Wahab Alkhairi and others v. Federation of Pakistan PLD 1991 Federal Shariat Court 236; Muhammad Ismaeel v. Secretary Home Department, Government of Punjab PLD 2018 Lah. 114; Ghulam Asghar Gadehi v. Sr. Superintendent of Police, Dadu and 4 others PLD 2018 Sindh 169; I.A. Sherwani v. Government of Pakistan 1991 SCMR 104; National Commission on Status of Women through Chairperson and others v. Government of Pakistan through Secretary Law and Justice and others PLD 2019 SC 2018; Baz Muhamamd Kakar and others v. Federation of Pakistan through Ministry of Law and Justice, Islamabad and others PLD 2012 SC 870; Smith Kline and French of Pakistan Ltd. Karachi v. A. Rashid Pai and another PLD 1979 Kar. 212; Government of Pakistan through Director-General, Ministry of Interior, Islamabad and others v. Farheen Rashid 2011 SCMR 1; Tariq Aziz-ud-Din and others: in re Human Rights Cases Nos.8340, 9504-G, 13936-G, 13635-P and 14306-G to 143309-G of 2009, 2010 SCMR 1301; Abdul Jabbar v. The Chairman NAB through Director General National Accountability Bureau and 3 others PLD 2016 Pesh. 298; Syed Wajih-ul-Hassan

Zaidi v. Government of Punjab through D.C. Jhelum and 2 others 1996 SCMR 558; Javed Jabbar and 14 others v. Federation of Pakistan and others PLD 2003 SC 955; Dr. Mobashir Hassan and others v. Federation of Pakistan and others PLD 2010 SC 265 and State of Haryana and others v. Mohinder Sindh (2000) (3 SCC 394) ref.

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

----S. 21F---Constitution of Pakistan, Art.4---Remissions---Right to be dealt with in accordance with law---Applicability---Every one convicted under Anti-Terrorism Act, 1997, is dealt in the same way in accordance with the law as provided in Anti-Terrorism Act, 1997, including its S.21-F---Provision of S.21F of Anti-Terrorism Act, 1997, is not violative of Art. 4 of the Constitution.

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

----S. 21F---Constitution of Pakistan, Art.12 (b)---Remissions---Protection against punishment---Applicability---Provision of Art.12(b) of the Constitution has no relevance in cases where a person is given a sentence prescribed under the law at the time when he committed the offence and whether remission was available or not under the statute for the offence which he committed---Provision of S.21F of Anti-Terrorism Act, 1997, is not violative of Art.12 of the Constitution.

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

----S. 21F---Constitution of Pakistan, Art.13---Remissions---Protection against double punishment---Applicability---Act of refusing remission to an accused does not amount to punish him for the same offence more than once---Such accused is only punished for one offence and question of availability of remission is governed by law and is a matter of concession not as of right---Issue of self-incrimination is not relevant in circumstances.

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

----S. 21F---Constitution of Pakistan, Art.25---Remissions---Discrimination---Applicability---Only Anti-Terrorism Act, 1997 deals with offences of "terrorism"---Unlike offences of corruption where there are numerous laws dealing with offences of corruption, it cannot be said that persons are treated differently in terms of remission if they are convicted for offences of terrorism since there is only one act namely Anti-Terrorism Act, 1997, for which an accused can be proceeded with if his offence meets the definition of "terrorism"---Persons who are convicted of acts of terrorism are of the same class and are treated the same in terms of remission---No remission is allowed to such accused and there is no question of any person who is convicted for an offence of terrorism under Anti-Terrorism Act, 1997, and is treated differently.

(g) Convention on the Prevention and Punishment of Crime of Genocide---

----Art. II---United Nations General Assembly Resolution 260A (III), dated 9-12-1948---Genocide---Scope---Murdering a large number of people does not amount to offence of genocide (although it may amount to extermination or mass murder) unless any of the following acts are committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of

life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births with the group; and (e) forcibly transferring children of the group to another group.

Raj Ali Wahid Kunwar, Ravi Pinjani and Haq Nawaz Talpur for Petitioners.

Ali Haider, Additional P.G. Sindh for the State.

Salman Talibuddin, Advocate General Sindh on Court Notice.

Kashif Paracha, Deputy Attorney General and Mukesh Kumar Khatri, Assistant Attorney General on Court Notice.

Dates of hearing: 10th, 17th December, 2018, 8th April, 6th, 20th May, 24th, 26th, August and 2nd September, 2019.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J.---All the petitioners have been convicted for various offenses under the Anti Terrorism Act 1997(ATA) and have been awarded various sentences on conviction. These petitions involve the same single question of law and as such we intend to dispose of the same through this one common judgment.

2. The question of law is whether Section 21F of the ATA which in essence provides that no person convicted and sentenced under the ATA shall be entitled to remission is in violation of Articles 4 ,12, 13 and 25 of the Constitution and as such it should be struck down as having no legal effect.

3. It has already been held by this court in C.P. D-5724,2006 that Section 21 F of the ATA which was incorporated as an amendment in the ATA on 15-08-2001 shall not have retrospective effect.

4. Since the petitions in hand questioned the validity of a section of a piece of legislation in terms of its constitutionality the Advocate General of Sindh and Attorney General of Pakistan were put on notice to assist this court under Order XXVII-A, C.P.C.

5. Learned counsel for the petitioners firstly submitted that some offenses under the ATA were also covered under the P.P.C. especially in terms of those offenses listed in Section 6(2) of the ATA.

6. The petitioner's argument was that there was a two limb test for the offense to fall under the ATA. Firstly, that before an act could be deemed to be an act of terrorism for the purposes of the ATA it had to be an act which fell within the purview of Section 6(2)(a) to (g) for instance at (a) involves the doing of anything that causes death which was equivalent to the offense of murder under section 302 P.P.C. and that in both cases of an offense under Section 6(2)(a) to (g) being committed both the actus reus and mens rea of the offense had to be proved. However for the act under section Section 6(2)(a) of doing of anything that causes death to amount to an offense under the ATA there was an additional mens rea requirement. Namely either Section 6(1)(b) or (c) also had to be proven. He also pointed out that for similar offenses purely under the P.P.C. such as murder under Section 302 remission was allowed but if the offense also satisfied Section 6(1)(b) or (c) and fell within the ATA then no remission was permissible. He submitted that in many cases convictions under Section 6(2)(a) to (g) of the ATA lead to higher sentences than the base sentence under the P.P.C.;, for example under

section 6(2) (b) ATA which was the offense of causing grievous bodily injury to a person under Section 7(c) ATA the conviction was higher than the similar offense under Section 337-L(a) P.P.C. and that to some extent this enhanced sentence was justified as a double mens rea had to be proved under the ATA which lead to an enhanced sentence but could not justify the exclusion of remission under the ATA, bearing in mind that an enhanced sentence had already been given under the ATA as compared with some offenses under the P.P.C. which would lead to a further enhancement of the sentence which was unjustified and was a violation of Articles 4, 12, 13 and 25 of the Constitution.

7. In this respect the petitioners produced the following table of offenses under the ATA and P.P.C. setting out the sentences in respect of each for similar offenses.

SCHEDULE/COMPARISON BETWEEN SENTENCES
PROVIDED UNDER ATA 1997 AND P.P.C. 1860

Sr. No	ATC SECTION	PUNISHMENT	PPC SECTION	PUNISHMENT
1.	7(1) (a) Death of any person is caused	Death or with imprisonment of life and with fine	S.302 Qatl-e-Amd S.315 Act done with intent to prevent a child being alive, or to cause it to die after its birth	Death, imprisonment of life or Imprisonment up to 25 years [but shall not less than 10 years] Imprisonment of either description for 10 years, or fine, or
2.	(b) Does anything likely to cause death or endangers life, but death or hurt is not caused	Conviction with imprisonment shall be not less than 10 years but extend to imprisonment of life and with fine.	S.324 Attempt to Qatl-e-Amd	Imprisonment of either description for 10 years and fine
3.	(c) Grievous bodily harm or injury is caused	Conviction with imprisonment shall not be less than 10 years but extend to imprisonment of life and liable to fine or	S.337 L (a)	Daman and Imprisonment either description for 7 years.
4.	(d) Grievous damage to	Conviction with imprisonment not	S.427 Mischief and thereby causing	Imprisonment of either description for

	property is caused	less than 10 years but extend to imprisonment of life and with fine or	damage to the amount to 50 rupees or upwards	2 years or fine or both.
5.	(d) Kidnapping for ransom or hostage-taking has been committed	Conviction with death or imprisonment of life and shall also liable to forfeiture of property	S.365-A Kidnapping or abduction for extorting any property or valuable security,	Imprisonment of life and forfeiture of property.
6.	(f) Hijacking	Conviction with death or imprisonment of life and fine	Not Applicable	Not Applicable
7.	(ff) Terrorism falls under section 6(2)(ee) The Use of Explosives	Shall not be less than 14 years but extend to imprisonment of life.	S.285 Dealing with fire of any combustible matter so as to endanger human life, etc. S.286 So dealing with any explosive substance	Imprisonment of either description for 3 years and fine, ' Ditto
8.	(g) Terrorism falls under section 6(2)(f and g) Inciting Hatred, Religious Contempt, etc./ Vigilantism	Conviction with imprisonment Not less than 2 years and not more than 5 years and with fine or.	S.295 Destroying, damaging or defiling a place of worship or sacred object with intent to insult the religion of any class of person S.295 Malicious insulting the religion or the religious beliefs of any class.	Imprisonment of either description for 2 years, or fine, or both. Imprisonment of either description for 2 years, or fine, or both.
9.	(h) Terrorism falls under sectin (h) to (n) sub-section (2) of Section 6	Conviction to imprisonment of not less than 5 years but may extend to imprisonment of	(h)=S.296 Causing a disturbance to an assembly engaged in religious worship. (i)=S.148 Rioting, armed with a deadly	Imprisonment of either description for 1 year, or fine, or both. Imprisonment of either description for 3 years, or fine, or

		life and with fine or	weapon. (j)=S.437. Mischief with intent to	both. Imprisonment of either description for 10 years and fine.
			destroy or make unsafe a decked vessel or a vessel of 20 tons burden or a vessel of (k)=S.384 Extortion (i)= N/A (m)=S. 353 Assault or use of criminal force to deter a public servant from discharge of duty. (n)=S.152 Assault or obstructing public servant when suppressing riot, etc.	Imprisonment of either description for 3 years or fine or both. Imprisonment of either description for 2 years or fine a both. Imprisonment of either description for 3 years or fine, or both
10.	(i) Act of terrorism not falling under section (a) to (h) above.	Conviction to imprisonment of not less than 5 years and not more than 10 years with fine or both.	Example S.120-C Any other criminal conspiracy. S. 124-A Section S.144 Joining an unlawful assembly armed with any deadly weapon. S.189. S.385. Putting or attempt to put in fear of injury, in order to commit extortion.	Imprisonment of either description for six months and fine or both. Transportation for or for any term and fine imprisonment of either description for 3 years and fine, or fine. Imprisonment of either description for 2 years or fine, or both. Threatening a public servant with injury to him, or one of whom he is interested to induce him to do any official act. Imprisonment of either description for 2 years or both.,

11.	7(2) Convicted under this Act	Shall be punishable with imprisonment of 10 years or more, including offences of kidnapping for ransom and hijacking shall also be liable to forfeiture of Property	Not Applicable	Not applicable

8. The petitioners next submitted that the purpose of someone being imprisoned was essentially reformation whereby after completing his prison term the convict would come out of jail as a reformed person who would no longer engage in criminal conduct and would be an asset to society and if a convict was denied remission this would just make the convict more bitter and resentful to the State and turn him into a hardened criminal who on release would commit more crimes and thus as a matter of policy all convicts should be entitled to remission.

9. The petitioners main argument however was that not allowing remission to persons convicted under the ATA was contrary to Article 25 of the Constitution where all persons were entitled to equal treatment under the law. In that in all other laws in Pakistan (whether general or special) the convict was entitled to remission on his sentence.

10. In this regard, in particular the petitioners placed reliance on the fact that both this court and the Supreme Court had held that the denial of remissions to convicts under the National Accountability Ordinance 1999 (NAO) by virtue of Section 10(d) NAO was unconstitutional being in violation of Article 25 of the Constitution and drew a comparison with Section 21F ATA which by the same reasoning was also in violation of Article 25 of the constitution.

11. In this respect the petitioners relied heavily on the fact that there was no reasonable classification in excluding ATA convicts from remission as there was no intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out.

12. The petitioners even submitted that Section 6(1)(b) and (c) ATA could not co-exist with S.21F as in essence Section 6(1)(b) and (c) ATA were different mens rea requirements and as such under Section 21F remission should be allowed depending on whether the mens rea was proved in either Section 6(1)(b) or (c) ATA.

13. The petitioners stressed that in respect of the subject issue no intelligible differentia existed which distinguishes persons or things that are grouped together (ATA convicts) from those who have been left out so as provide a reasonable classification for treating people in the same class differently which was evident from the fact that when the ATA was amended in 2001 by amongst other things inserting Section 21F which denied remission to ATA convicts no reason was given in so doing and as such the amendment was without intelligible differentia criteria and was absolutely arbitrary and as such the addition of Section 21F in the ATA

through the amendment Act in 2001 was also violative of Article 4 of the Constitution. The petitioners further contended that Nazar Hussain's case (Supra) was not applicable as it did not consider the issue of the constitutionality of Section 21F ATA on merits but merely referred to it in passing.

14. In the alternate the petitioners submitted that if this court were to find Section 21F ATA not to be in violation of Article 25 of the Constitution then remissions may be allowed in convictions for those offenses under the ATA which imposed greater sentences than under the P.P.C. Another alternate submission was that if this court were to find Section 21F ATA not to be in violation of the Constitution then at least the convicts under the ATA should be entitled to the earned remissions. In this regard they drew this court's attention to the fact that some remissions were regarded as general remissions whilst others were regarded as special remissions under the Prison Rules and some remissions were earned by the convict for example, by giving blood, completing the fast during the holy month of Ramazan, passing examinations as laid down in the Pakistan Prison Rules 1978 as amended from time to time and at least convicts under the ATA should be given the benefit of earned remissions and that in any event remissions were a right and not a privilege.

15. In support of their contentions the petitioners placed reliance on Saleem Raza v. The State (PLD 2007 Karachi 216), Hammad Abbasi v. Superintendent, Central Adyala Jail, Rawalpindi (PLD 2013 Lahore 428), Superintendent, Central Adyala Jail, Rawalpindi v. Hammad Abbasi (PLD 2013 SC 223) Muhammad alias Khuda Bakhsh v. ATC Makran at Turbat and 2 others (2018 PCr.LJ 148) Mazhar Iftikhar v Shahbaz Latif (PLD 2015 SC 1), Nazar Hussain and another v. The State (PLD 2010 SC 1021), Mujeebur Rehman v. The State (2014 PCr.LJ 1761), Ex. Brigadier Ali Khan v. Secretary, Home Department, Government of Punjab (PLD 2016 Lahore 509), Muhammad Ali v. The State (2018 YLR Note 191), Muhammad Nawaz and another v. The State (1987 SCMR 1399), Habib-ul-Wahab Alkhairi and others v. Federation of Pakistan (PLD 1991 Federal Shariat Court 236), Muhammad Ismaeel v. Secretary Home Department, Government of Punjab (PLD 2018 Lahore 114), Abdul Aziz Memon and others v. The State (PLD 2013 SC 594),Ghulam Asghar - Gadehi v. Sr. Superintendent of Police, Dadu and 4 others (PLD 2018 Sindh 169), I.A. Sherwani v. Government of Pakistan (1991 SCMR 1041) 1047), National Commission on Status of Women through Chairperson and others v. Government of Pakistan through Secretary Law and Justice and others (PLD 2019 SC 2018), Baz Muhamamd Kakar and others v. Federation of Paldstan through Ministry of Law and Justice, Islamabad and others (PLD 2012 SC 870), Smith Kline and French of Pakistan Ltd. Karachi v. A. Rashid Pai and another (PLD 1979 Karachi 212), Government of Pakistan through Director-General, Ministry of Interior, Islamabad and others v. Farheen Rashid (2011 SCMR 1), Tariq Aziz-ud-Din and others: in re Human Rights Cases Nos.8340, 9504-G, 13936-G, 13635-P and 14306-G to 143309-G of 2009, (2010 SCMR 1301), Abdul Jabbar v. The Chairman NAB through Director General National Accountability Bureau and 3 others (PLD 2016 Peshawar 298), Syed Wajih-ul-Hassan Zaidi v. Government of Punjab through D.C. Jhelum and 2 others (1996 SCMR 558), Javed Jabbar and 14 others v. Federation of Pakistan and others (PLD 2003 SC 955), Dr. Mobashir Hassan and others v. Federation of

Pakistan and others (PLD 2010 SC 265) and Ordinance XXXIX of 2001 Anti-Terrorism (Amendment) Ordinance, 2001.

16. Learned Deputy and Assistant Attorney Generals submitted that the cases cited by the petitioner had no relevance to the instant petition in that Saleem Raza's case (supra) concerned the striking down the exclusion of remission under Section 10 (d) in the NAO as was upheld by the Supreme Court in Mazhar Iftikhar's case (Supra) and not Section 21F ATA which also excluded remission for those convicts who were convicted under the ATA which was a distinct piece of legislation dealing with heinous crimes as opposed to corruption and that both statutes had distinct objectives; that although the Balochistan case of Muhammad alias Khuda Bakhsh (supra) had upheld the striking down of Section 21F ATA and had reached finality as it had not been appealed to the Supreme court that case was not binding on this court and was only of persuasive value and in addition it appeared that the Court may not have been properly assisted as the Supreme Court case of Nazar Hussain (PLD 2010 SC 1021) which had dealt with the issue of the constitutionality of Section 21F ATA had not been brought to the courts attention. Likewise the case from Lahore being Hammad Abbasi (supra) which was decided by a single judge again did not have the benefit of Nazar Hussain's case (Supra) and in any event was remanded back by the Supreme Court in the case of Superintendent, Central Adyala Jail, Rawalpindi v. Hammad Abbasi (Supra) to be decided afresh by the Lahore High Court and the case still remained pending before the Lahore High Court. In conclusion he contended that the Federal Government had already issued guidelines of remission and in these there was an intelligible differentia which ensured that Section 21F ATA was not discriminatory in terms of Article 25 of the Constitution and since Section 21F ATA did not violate any provision of the Constitution it should be upheld and the petitions dismissed. In support of his contentions he placed reliance on Nazar Hussain's case (Supra) and the remission policy of the President of 2002 which remained unchanged to date and had been relied upon and reproduced in Nazar Hussain's case (Supra)

17. Learned Advocate General, Sindh submitted that firstly the issue had been settled by the Supreme Court in Nazar Hussain's case (Supra) that there was an intelligible differentia and sufficient distinction had been made for different classes of person to not receive remission under the ATA. He secondly submitted that in any event remission was not a right but rather a privilege extended by Statute and thus it could not be claimed as such as of right. That Section 21 F ATA did not violate any Article of the Constitution and that these appeals should be dismissed. In support of his contentions he placed reliance on the Indian authorities of State of Haryana and others v. Mohinder Singh (2000) (3 Supreme Court Cases 394), State of Haryana and another v. Jai Singh (Supreme Court of India Appeal (Crl.) 661 of 2002) and Jameel Ahmed v. State of Rajasthan and others (2007 Cri.LJ 2009) and a summary approved by the Chief Minister of Sindh dated 09-08-2019 allowing special remission to prisoners on the occasion of Eid-Ul-Azha and Independence day 2019 except for, amongst others, those convicted under the ATA .

18. Learned Additional PG submitted that there had been no violation of Article 12(b) of the Constitution as it was perfectly legal for different laws to impose different sentences; that

there had been no violation of Article 13 of the Constitution as it was not a case of double jeopardy ; that there had been no violation of Article 25 as the exclusion of remission was not discriminatory as the ATA dealt with heinous offenses against society whereas the NAO where Section 10(d) of the NAO had been struck down as being discriminatory only dealt with financial crimes which were not heinous crimes which were intended to frighten and intimidate society whereas offenses under the ATA were heinous crimes the intention of which was to frighten and intimidate society and ordinary citizens whether men , women or children and as such the ATA was not on the same footing as the NAO and was a distinct statute which had a different objective to the NAO and as such the two could not be compared for purposes of discrimination under Article 25 of the Constitution in terms of whether remission should be allowed or not and as such since there had been no violation of any of the Articles of the Constitution Section 21F ATA should remain in the field and the petitions be dismissed. In support of his contentions he placed reliance on Nazar Hussain's case (PLD 2010 SC 1021).

19. We have heard the arguments of the learned counsel for the parties, gone through the record and have considered the relevant law including that cited at the bar with their able assistance.

The trichotomy powers.

20. Our Constitution is based on the trichotomy of powers shared between the legislature, the excutive and the judiciary each of whom has its distinct and separate role to play in our system of governance and each of which is supposed to act as a check and balance on the other organs of state operating within its own defined sphere of power as provided in the law and the Constitution.

21. Within the trichotomy of powers it is the role of the legislature to make laws and the role of the judiciary to interpret those laws if such interpretation is necessary. It is well settled law that if a statute has expressly provided for something without any ambiguity then there is no question of the courts interpreting the same as the legislative intent is clear and the Act/Ordinance must be given effect to unless it is deemed to be contrary to the constitution. The judiciary's role of interpretation of the statute only arises when the statute is to a certain extent either unclear or ambiguous or is prima facie in violation of the Constitution and in such cases it is for the judiciary to interpret that piece of legislation by trying to ascertain the intent of Parliament in passing that legislation. The Courts have absolutely no authority or power to substitute their views for those intended by the legislature simply because they may disapprove of a particular law and the way in which that law is being applied.

22. In this respect reliance is placed on the case of Justice Khurshid Anwar Bhinder v. Federation of Pakistan (2010 PLD SC 483.P.493) whereby a larger Bench of the Supreme Court held as follows:

"A fundamental principle of Constitutional construction has always been to give effect to the intent of the framers of the organic law and of the people adopting it. The pole star in the construction of a Constitution is the intention of its makers and adopters. When the language of the statute is not only plain but admits of but one meaning the task of interpretation can hardly be said to arise. It is not allowable to interpret what has no

need of interpretation. Such language beside declares, without more, the intention of the law givers and is decisive on it. The rule of construction is "to intend the Legislature to have meant what they have actually expressed". It matters not, in such a case, what the consequences may be. Therefore if the meaning of the language used in a statute is unambiguous and is in accord with justice and convenience, the courts cannot busy themselves with supposed intentions, however admirable the same may be because, in that event they would be travelling beyond their province and legislating for themselves. But if the context of the provision itself shows that the meaning intended was somewhat less than the words plainly seem to mean then the court must interpret that language in accordance with the indication of the intention of the Legislature so plainly given. The first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the court to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act." (bold added)

23. Section 21F of the ATA is set out as under:

" 21F. Remissions.- (1) Notwithstanding anything contained in any law or prison rules for the time being in force, no remission in any sentence shall be allowed to a person, who is convicted and sentenced for any offence under this Act,

Provided that in case of a child convicted and sentenced for an offence under this Act, on satisfaction of government, may be granted remission, as deemed appropriate" (bold added).

24. In our view the wording used in Section 21F of the ATA on a plain reading is absolutely clear and requires no interpretation by the courts. Namely, that that the legislature intended that no remission would be applicable to persons convicted for offenses under the ATA. The legislature would have known the effect of such a section and would have provided it in the ATA after much thought and consideration especially as it was added by way of an amendment to the ATA four years after the ATA was promulgated by Ordinance No.XXXIX of 2001 dated 15.08.2001. The fact that the amendment was made four years after the promulgation of the ATA in our view suggests that the legislature after debating the issue must have had good reasons for inserting Section 21F into the ATA since as a general rule the legislature does not pass legislation or amend existing legislation for the sake of it. In most such cases new legislation and proposed amendments to existing legislation before being passed into law by the legislature are very often sent for discussion and debate before the concerned standing parliamentary committee in this case , law, for debate and considering the reasons, pros and cons for passing new legislation or amending existing legislation. Perhaps in this case a rise in terrorist acts in Pakistan from 1997 up to 15.08.2001 when S.21F was incorporated in the ATA prompted the legislature to make this amendment for deterrent purposes. Whether or not the denial of remission is harsh for convicts under the ATA is not for us to pass judgment on as this issue lies within the domain of the legislature which as we discussed above would have had in its wisdom its own reasons, aims and objectives in inserting Section 21F in the ATA in

2001.lt is also significant to note that despite the insertion of Section 21F in the ATA over 18 years ago none of the three successive democratically elected legislatures have deemed it fit to remove Section 21F from the ATA which is an indication that successive legislatures are satisfied that Section 21F is justified in ATA case.

25. We would, at this stage, like to make it clear that in our view policy and the purpose behind sentences which the legislature deems appropriate for certain offenses under the law whether reformative/deterrent/punitive or otherwise and the time convicts spend in jail on their conviction as provided under the law for a certain offense is outside our domain to consider/determine as judges. This is for the legislature to consider and decide upon in its wisdom being the chosen representatives of the people as a matter of policy. Whether we agree or disagree with this policy as judges whose role is to interpret law or test its constitutionality is outside our domain. If the legislature is of the view that the people whom it represents no longer agree with its policy to deny remissions to persons convicted under the ATA then it has the ability to repeal Section 21F ATA. We, as judges since the language of Section 21F is clear and unambiguous are only concerned with the issue whether Section 21F ATA is in violation of the Constitution or not.

26. As such most of the authorities cited by the petitioners which concern the rationale of allowing remissions are of little, if any, assistance to them. Likewise the authorities cited by the petitioners concerning the release of a convict on parole/license or probation prior to the expiration of his sentence since such release on parole/license or probation is specifically permitted under the relevant legislation dealing with the same unlike remission under the ATA which is specifically excluded under the ATA.

27. The ATA is a special law and it is well settled by now that it will take preference over a general law and even other special laws such as the Prison Act since the ATA has been passed later in time with the legislature being well aware of the system of remissions provided in the Prison Rules and yet deliberately chose to exclude them by specific intent by inserting Section 21F into the ATA. Section 21F as noted above also contains a non obstante clause which specifically states that," Notwithstanding anything contained in any law or prison rules for the time being in force .."and as such will also override the sections in The Pakistan Prison Rules (Jail Manual) under section 59 of the Prisons Act 1894 in so far as they relate to remission.

28. In our view, therefore, the only question that needs to be answered in this case is whether Section 21F ATA as contended by the petitioners is in contravention/violation of the Constitution and in particular Articles 4, 12, 13 and 25 as would justify the aforesaid section being struck down by this court.

29. We have already set out Section 21F and since the petitioners have contended that the aforesaid provision is in violation of Articles 4, 12, 13 and 25 of the Constitution we by way of assistance set out Articles 4, 12, 13 and 25 of the Constitution below and shall consider the petitioner's arguments in respect of the same.

The Article 4 of the Constitution Argument.

30. Article 4 of the Constitution reads as under;

"4. Right of individuals to be dealt with in accordance with law, etc.

(1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular -

(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

(b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and

(c) no person shall be compelled to do that which the law does not require him to do."

31. We do not consider Article 4 to be of particular relevance to these petitions on a stand alone basis as in our view Section 21F ATA is in accordance with law, no person is prevented from or being hindered in doing that which is not prohibited by law and nor does it compel any person to do something which the law does not require. In short every one convicted under the ATA will be dealt in the same way in accordance with the law as provided in the ATA including Section 21F and as such Section 21F is not in violation of Article 4 of the Constitution.

The Article 12 of the Constitution Argument.

32. Article 12 of the Constitution reads as under;

"12. Protection against retrospective punishment.- (1) No law shall authorize the punishment of a person -

(a) For an act or omission that was not punishable by law at the time of the act or omission; or

(b) for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.

(2) Nothing in clause (1) or in Article 270 shall apply to any law making acts of abrogation or subversion of a Constitution in force in Pakistan at any time since the twenty-third day of March, one thousand nine hundred and fifty-six, an offence".

33. In our view Article 12 (b) is the only part of Article 12 which may be of some relevance. We are of the view however, that Article 12(b) is meant to apply to situations where someone had committed a crime and at the time of committing the crime the sentence was 5 years but after he committed the crime the law is amended to enhance the sentence for that same crime to 7 years and as such under Article 12(b) it is ensured that the accused's maximum sentence on conviction is only 5 years which was the only sentence which was available when he committed the crime and not 7 years which was the sentence which was imposed for the same offense after he committed the crime which would prevent a blatant unfairness befalling the accused and would shield him from such eventuality. In our view Article 12(b) has no relevance in cases where a person is given a sentence prescribed under the law at the time when he commits the offense and whether remission is available or not under the statute for the offense which he committed. As such we do not find Section 21F ATA to be in violation of Article 12 of the Constitution

The Article 13 of the Constitution argument.

34. Article 13 of the Constitution reads as under;

Article 13. Protection against double punishment and self-incrimination. - No person -

(a) shall be prosecuted or punished for the same offence more than once; or

(b) shall, when accused of an offence, be compelled to be a witness against himself.

35. In our view we find this argument to be without substance. A plain reading of Article 13 of the Constitution clearly shows that it only (a) excludes prosecution and punishment for the same offense more than once and (b) excludes self incrimination. Article 13 has in our view nothing to do with remissions. This is because under the ATA the accused on conviction for an offense under the ATA is only sentenced/ punished as provided for under the law. The act of refusing him remission in our view does not amount to him being punished for the same offense more than once. He is only punished for one offense and the question of availability of remissions is governed by the law and is a matter of concession not as of right. Similarly the issue of self incrimination is not relevant to the issue in hand.

36. The fact that a convict can be given a higher sentence if convicted under the ATA for a similar offense committed under the P.P.C. is in our view fully justified by the heinousness of the offense namely terrorism and the additional mens rea/other aspects of the offense which need to be proved. For example, in a simple murder case under Section 302 P.P.C. the actus reus and mens rea will need to be proved. In some cases the murder is on account of enmity or disputes over property or other grievances between two parties. This cannot be equated with an offense the motivation, design and intention of which is to cause terror to the public and destabilize state institutions and governments which elevates the offense to a different level. It is perhaps this distinction being the sheer heinousness of the crime which is motivated to terrorize the general public that has led to the legislature deliberately and consciously excluding remission as a deterrent.

The Article 25 of the Constitution Argument.

37. Article 25 of the Constitution reads as under:

25. Equality of citizens. - (1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex [**]

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

38. We note that learned counsel for the petitioners in respect of their arguments in respect of Article 25 have relied on the cases of Hammad Abbasi (Supra) and Muhammad alias Khuda Bakhsh (Supra) decided by the Lahore High Court and Balochistan High Court respectively which both struck down Section 21F ATA on account of it being in violation of Article 25 of the Constitution. The case of Hammad Abbasi (Supra) however was set aside and remanded back to the Lahore High Court for a fresh decision by the Supreme Court in the case of Superintendent Central Jail Adyala v. Hammad Abbasi (PLD 2013 SC 223) since the law officers had not been put on notice to assist the court under Order XXVII-A R.1 C.P.C. which was a mandatory requirement of the law when the constitutionality of any provision of a Statute is under challenge and thus it is no longer in the field and so far as we are aware has yet to be

decided a fresh. The case of Muhammad alias Khuda Bakhsh (Supra) decided by the Balochistan High Court in 2018 relied on the case of Hammad Abbasi (Supra) which was no longer in the field and the case of Saleem Raza (Supra) which concerned a 3 member Bench of the Sindh High Court holding as unconstitutional Section 10 (d) of the NAO which also did not permit remissions to persons convicted under the NAO on account Section 10(d) NAO being in violation of Article 25 of the Constitution which decision reached finality and was in effect upheld by the Supreme Court in the case of Mazhar Iftikhar (Supra) on the same reasoning namely that the exclusion of remissions for persons convicted under Section 10(d) NAO was in violation of Article 25 of the Constitution and was as such struck down.

39. It would appear that a brief analysis of these cases tends to show that the case of Hamniad Abbasi (Supra) although remanded by the Supreme Court for re-hearing tended to rely upon Saleem Raza's (Supra) whereby Section 10(d) NAO which excluded remissions to persons convicted under the NAO was found in violation of Article 25 of the Constitution without a particularly in depth analysis of how the Court reached this decision in Saleem Raza's case (Supra) as upheld by the Supreme Court in Nazar Hussain's case (Supra).Likewise the decision of the Balochistan High Court in the case of Muhammad alias Khuda Bakhsh (Supra) which also relied upon the case of Hammad Abbasi" (Supra)

40. Thus, for all intents and purposes we need to carefully consider both the cases of Saleem Raza (Supra) and Nazar Hiissain (Supra) to see if we can find any judicial guidance in terms of whether Section 21F ATA is in violation of Article 25 of the Constitution as was found to be the case in respect of Section 10(d) NAO which also excluded remissions for those persons convicted under the NAO.

41. The law regarding discrimination under Article 25 of the Constitution is settled and was well set out in the classic case of I.A. Sherwani (Supra) which held as under:

---Art 25(1)---All citizens are equal before law and entitled to equal protection of law---State, however, is not prohibited to treat its citizens on the basis of a reasonable classification-Reasonable classification-Basis or criterion for classification as to avert violation of Art. 25(I).

Clause (1) of Article 25 of the Constitution of Pakistan (1973) enshrines the basic concept of religion of Islam. However, this is now known as the golden principle of modern Jurisprudence, which enjoins that all citizens are equal before law and are entitled to equal protection of law (p. 1081)

Following are the principles with regard to equal protection of law and reasonableness of classification:

(i) that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike;

(ii) that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;

(iii) that different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standings, and persons accused of heinous crimes;

(iv) that no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances may be unreasonable in the other set of circumstances;

(v) that a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant from the mischief of Article 25;

(vi) that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;

(vii) that in order to make a classification reasonable, it should be based -

(a) on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;

(b) that the differentia must have rational nexus to the object sought to be achieved by such classification (p. 1086)

Principles as to classification are as under-

(a) A law may be constitutional even though it relates to a single individual if, on account of some special circumstances, or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself.

(b) There is always a presumption in favour of the constitutionally of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. The person, therefore, who pleads that Article 25, has been violated, must make out that not only has he been treated differently from others but he has been so treated from persons similarly circumstanced without any reasonable basis and such differential treatment has been unjustifiably made. However, it is extremely hazardous to decide the question of the constitutional validity of a provision on the basis of the supposed existence of facts by raising a presumption. Presumptions are resorted to when the matter does not admit of direct proof or when there is some practical difficulty to produce evidence to prove a particular fact;

(c) it must be presumed that the Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based on adequate grounds;

(d) the legislature is free to recognize the degrees of harm and may confine its restriction to those cases where the need is deemed to be the clearest;

(e) in order to sustain the presumption of constitutionality, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation;

(f) while good faith and knowledge of the existing conditions on

the part of the Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of the constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation;

(g) a classification need not be scientifically perfect or logically complete;

(h) the validity of a rule has to be judged by assessing its overall effect and not by picking up exceptional cases. What the Court has to see is whether the classification made is just one taking all aspects into consideration (p. 1086) (bold added)

42. Sherwani's case (Supra) has remained good law ever since and was followed in the cases of Government of Balochistan v. Azzizullah Memon (PLD 1993 SC 341) and more recently by a full bench of the Hon'ble Supreme Court in the case of Dr. Mubashir Hasan v. Federation of Pakistan (PLD 2010 SC 265).

43.Indeed it was the interpretation of I.A. Sherwani's case (Supra) vis a vis Article 25 of the Constitution which laid the foundation for Section 10(d) of the NAO being found to be in violation of Article 25 of the Constitution and led to that provision being struck down in Saleem Raza's case (Supra).

44. In our view one of the key elements in determining discrimination so as to lead to a violation of Article 25 of the Constitution as set out in Sherwani's case (Supra) are the following principles which have already been reproduced above but for ready reference are again set out below;

Following are the principles with regard to equal protection of law and reasonableness of classification.

(viii) that in order to make a classification reasonable, it should be based -

(a) on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;

(b) that the differentia must have rational nexus to the object sought to be achieved by such classification (p. 1086) (bold added)

Principles as to classification are as under:-

(c) There is always a presumption in favour of the constitutionally of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. The person, therefore, who pleads that Article 25, has been violated, must make out that not only has he been treated differently from others but he has been so treated from persons similarly circumstanced without any reasonable basis and such differential treatment has been unjustifiable made. However, it is extremely hazardous to decide the question of the constitutional validity of a provision on the basis of the supposed existence of facts by raising a presumption. Presumptions are resorted to when the matter does not admit of direct proof or when there is some practical difficulty to produce evidence to prove a particular fact;

(bold added)

45. According to these principles Section 21F ATA has a presumption of constitutionality and the burden lies on the petitioners to prove otherwise. Now if we apply these principles to Section 10(d) NAO which excluded remissions to those persons who were convicted under the NAO as was discussed in the case of Saleem Raza (Supra) it becomes apparent why Section 10(d) NAO fell foul of these principles. In short, this was because in Pakistan there are a number of laws dealing with corruption like the NAO. For example, the Prevention of Corruption Act (II) 1947, certain sections of the P.P.C., Offenses in Respect of Banks (Special Courts) Ordinance 1984, Provincial ACE etc. Now it is quite possible that similar offenses of corruption as contained in the NAO can be tried under these other Acts/Ordinances dealing with corruption instead of under the NAO. The upshot of this is that a person convicted under say, the Prevention of Corruption Act (II) 1947 for a similar offense which exists under the NAO and is subject to a similar sentence would be entitled to remission whereas a person convicted under the NAO for the similar offense having the similar sentence will not be entitled to remission. Thus, it was apparent that persons who had been convicted of similar offenses of corruption but under different law's dealing with corruption would be treated differently in terms of whether or not they were entitled to remission. Thus, by the insertion of Section 10(d) in the NAO whereby person's tried under that law were excluded from benefiting from remission and whilst those tried under other laws dealing with corruption in respect of similar offenses for which they received similar sentences under the NAO and were entitled to remission made an unreasonable classification since in respect of offenses under various corruption laws there was no intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out. Hence Section 10(d) NAO was rightly held to be discriminatory and in violation of Article 25 of the Constitution based on the principles laid down in Sherwani's case (Supra) because in all cases the persons were tried under different corruption laws but in some cases remission was allowable and not in other cases. The common feature is that all the accused were tried under different corruption laws for similar offenses but which each had a different legal consequence in respect of entitlement to remission.

46. In the case of Saleem Raza (Supra) which was largely based on Sherwani's case (Supra) regarding discrimination in terms of Article 25 of the Constitution the court at P.152 Para 15 summarized the position as under:

> "This brings us to the principles governing the provisions pertaining to fundamental rights guaranteed under Article 25 of the Constitution relating to the equal protection of law. This Article enjoins that all citizens are equal before law and are entitled to equal protection of law, i.e., all persons subjected to law should be treated alike under all circumstances and conditions both in privileges conferred and in the liabilities imposed. It must be amongst equals. The equality has to be between persons who are placed in the same set of circumstances. The guarantee of equal protection of the law requires that all persons shall be treated alike, under like circumstances and conditions. The Phrase "equal protection of law" envisaged by Article 25 of the Constitution means that no person or class of persons would be denied the same protection of law which is

enjoyed by persons or other class of persons in like circumstances in respect of their life, liberty, property or pursuit of happiness. Persons similarly situated or in similar circumstances are to be treated in the same manner. In the application of these principles, however, it has always been recognized that classification of persons or things is in no way repugnant to the equality doctrine, provided, the classification is not arbitrary or capricious, is natural and reasonable and bears a fair and substantial relation to the object of legislation. It means that two sets of similar circumstances shall not have different legal effects unless there is a difference of circumstances and the difference between the two sets is material enough to support the discrimination." (bold added)

47. Likewise in summarizing the relevant case law the Supreme Court in the case of Government of Balochistan v. Azzizullah Memon (PLD 1993 SC 341) whilst summarizing both the Pakistani and Indian law on this point agreed with/approved the above summarization referred to in Sherwani's case (Supra) and Saleem Raza's case (Supra) in the following terms at P.359

"As the judgments from Indian jurisdiction have been considered in the aforestated judgments of this Court, we would not refer to them here. In all these authorities there seems to be unanimity of view that although class legislation has been forbidden, it permits reasonable classification for the purpose of legislation. Permissible classification is allowed provided the classification is founded on intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group and such classification and differentia must bear a relationship to the objects sought to be achieved by the Act. There should be a nexus between the classification and the objects of the Act. This principle symbolizes that persons or things similarly situated cannot be distinguished or discriminated while making or applying the law. It has to be applied equally to persons situated similarly and in the same situation. Any law made or action taken in violation of these principles is liable to be struck down. lf the law clothes any statutory authority or functionary with unguided and arbitrary power enabling it to administer in a discriminatory manner, such law will violate equality clause. Thus, the substantive and procedural law and action taken under it can be challenged as violative of Articles 8 and 25."

48. This conclusion was in essence reached by the court in Saleem Raza's case (Supra) at P.169 Paras 27 and 37 in the following terms:

"27. As in respect of public servants found involved in corruption or criminal misconduct, the offences punishable under sections 218 and 219 P.P.C., which are ordinarily triable by the Courts specified in the Second Schedule to the Criminal Procedure Code are also triable by NAB Court. The punishment and the nature of offence are still same. Similarly the offences punishable under Sections 468, 471, 472, 477-A P.P.C. are triable ordinarily by the Court specified in Second Schedule to Criminal Procedure Code, in appropriate cases by Special Courts under the offences in Respect of Banks (Special Courts) Ordinance, 1984 and Special Judges appointed under Pakistan

Criminal Law Amendment Act 1958, as well as by the NAB Court by virtue of schedule 10(b) of the NAB Ordinance. The nature of offences are same and the punishments provided are also the same. The special rules of evidence contained in NAB Ordinance, Prevention of Corruption Act 1947, Pakistan Criminal Law Amendment Act 1958 and Offences in Respect of Banks (Special Courts) Ordinance, 1984, also similar. However, merely on account of change of forum one set of convicts under the same class not convicted by Accountability Court shall be entitled to remission and thus shall serve out their sentence, much earlier than the other set of convicts in the same category or class convicted by the Accountability Court. Result is too obvious that there is no intelligible differentia, distinguishing one group of persons from other group of persons and thus, there is no reasonable classification permissible for such purpose. Merely on the basis of change of forum the classification cannot be held to be permissible as reasonable because such classification shall not be based on any real and substantial distinction." (bold added)

"37. The entire discussion above, leads to the conclusion that section 10(d) of the NAB Ordinance denying remission to the NAB convicts has the effect of enhancing the punishment awarded to the NAB convicts and further is discriminatory as it is not based on any reasonable and rational classification. It is arbitrary in nature and as argued by the learned D.A.G. is merely based on the basis of the forum of trial is a reasonable and rational classification based on intelligible differentia. The denial of remission to NAB convicts under section 10(d) of the NAB Ordinance has no nexus with the object of the legislation and consequently, we hold that it is violative of and repugnant to the provisions contained in Articles 12 and 25 of the Constitution. We are of the considered opinion that such provision of law is not permissible and cannot be saved being patently violative of the fundamental right guaranteed in the Constitution."(bold added)

49. Interestingly in Saleem Raza's case (Supra) at P.171 Para 32 the Court stated as under in respect of no remissions being permissible under Section 21F ATA when dealing with the exclusion of remissions under the NAO.

"We would not like to make any observation in respect of this provision for the reason that the possibility of assailing the above provision before any Superior Court, cannot be ruled out and any observation made by us in this judgment may adversely affect any subsequent proceedings. However, we would like to observe that merely because a similar provision is contained in the Anti-Terrorism Act, 1997, it will not provide any justification for upholding the provision under challenge. We will make a tentative observation to the effect that the object of enacting Anti-Terrorism Act, 1997 is entirely different from the object sought to be achieved through the enactment on its own merits with reference to the particular law under consideration." (bold added)

50. So having considered the rationale as to why Section 10(d) NAO excluding remissions was declared unconstitutional under Article 25 of the Constitution keeping in view Sherwani's case (Supra), Azizullah Memon's case (Supra), Saleem Raza's case (Supra) and Mazhar

lftikhar's case (Supra). Let us now turn specifically to the ATA which deals as its name implies with acts of terrorism.

51. S.6 of the ATA defines "terrorism" in the following terms:

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

(a) the action falls within the meaning of subsection (2);

and

(b) the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or 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:

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

(2) An "action" shall fall within the meaning of 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 other means;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3A) Notwithstanding anything contained in subsection (1), an action in violation of a convention specified in the Fifth Schedule shall be an act of terrorism under this Act.

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

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

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

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

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

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

52. In our view there is only one law which deals with offenses of terrorism in Pakistan and that is the ATA. As such unlike offenses of corruption where there are numerous laws dealing with offenses of corruption it cannot be said that persons are treated differently in terms of remission if they are convicted for offenses of terrorism since there is only one Act namely the ATA for which you can be proceeded with if your offense meets the definition of terrorism. As such all persons who are convicted of acts of terrorism in Pakistan are of the same class and are treated the same in terms of remission. Namely, no remission is allowed to them and as such there is no question of any person who is convicted for an act of terrorism under the ATA being treated any differently. As such the denial of remission under the ATA is

distinguishable from the facts and circumstances which lead to Section 10(d) NAO being struck down where an accused could be tried under different corruption laws for the same offense and receive the same sentence but be entitled to remission in all such cases unless he was convicted under the NAO where no remission was applicable especially keeping in view that it was the sole discretion of the Chairman NAB whether a case of corruption was to be proceeded with under the NAO and if not left to be dealt with under other corruption related laws. In the case of offenses under the ATA no single person has any discretion whether an offense is tried under the ATA or the ordinary law. The only issue is whether as a matter of law based on the facts and circumstances of the particular cases the offense in question falls within the purview/meets the ingredients of being an offense under the ATA. If it does then the offense will proceed under the ATA whereas if it does not it will proceed under any other applicable law

53. It is apparent from the definition of terrorism in Section 6 ATA as reproduced above that the offenses mentioned in Section 6(2) also in some cases fall under other laws. However it is only when such offenses have the additional requirement of design and intent as mentioned in Section 6(1)(b) and (c) that they will fall within the purview of the ATA and will be decided by the ATC courts and as such, although this point is not in issue in this case, this additional requirement in our view justifies the higher sentence which may be awarded in such cases and also the denial of remission as an additional mens rea is required which elevates the crime to one of the most heinous known to any civilized society whereby innocent civilians being men, women and even young children are deliberately and intentionally targeted with the intent to cause and spread terror within the State. The fact that there are two possible mens rea required in terms of either 6(1)(b) or (c) we consider to be inconsequential.

54. The next issue, in our view, is whether to deny remission in terrorism cases falling under the ATA is in violation of Article 25 of the Constitution having distinguished the case of Section 10(d) NAO when for many other criminal offenses remission is allowed. Namely, that in order to make a classification reasonable, it should be based on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out and (b) that the differentia must have rational nexus to the object sought to be achieved by such classification (as per Sherwani's case (Supra) and that such discrimination is not arbitrary

55. In this respect it is of assistance to consider apart from the Prison Rules (which are excluded from the ATA in terms of remission) the policy on remissions.

56. This is found in the policy framed by the Government of Pakistan, Ministry of Interior in August 2009 in consonance with the judgment in the case of Shah Hussain v. State (PLD 2009 SC 460) whereby a larger bench of the Hon'ble Supreme Court held that it was unconstitutional not to allow remissions to under trial prisoners for the period they had spent in jail once they were convicted. For ease of reference these guidelines are set out as under;

""MOST IMMEDIATE

No. D. 2792/2009-DS (Admn.)

Government of Pakistan Ministry of Interior

From: Islamabad, the August, 2009

Mehir Malik Khattak,
Deputy Secretary (Law),
To:
The Registrar,
Supreme Court of Pakistan,
Islamabad.
Subject: GRANT OF REMISSION TO CONVICTS.
Dear Sir,
Kindly refer to Additional Prosecutor General Punjab letter dated 28-7-2009 on the subject noted above.

2. The President has, in exercise of his power, under Article 45 of the Constitution, granted special remission in sentences on auspicious occasions of Eidain and Pakistan and Independence Days. However, in the past special remission under Article 45 of the Constitution had been granted at liberal scale. In one case, remission of 1/5th sentence was approved in one go which in case of lifers meant 5 years remission. The duration of remission in sentences was also increased arbitrarily from 2, 3 or 6 months to one year.

3. In 2002, the then Government keeping in view the fluctuating discretionary behaviour during different years directed Ministry of Interior to formulate a policy limiting the discretion. Accordingly, the MOI in consultation with Law and Justice Division and Chief Justice of Pakistan and with the approval of the President formulated the policy comprising of guidelines and remissions as under:--

Guideline

a. The present restrictive policy may continue. Those who indulge in heinous crimes should not benefit from these remissions, (bold added)

b. Solemn occasions on which this remission may be granted should be specified and there should be no deviation from that. Such remissions may be awarded on four occasions during a year i.e. Eid-ul-Fitr, Eid Milad-un-Nabi, 23rd March and 14th August.

c. Mercy petitions against death sentence may be dealt with on individual basis and there should be no general clemency.

d. Overcrowding in jails should not be considered a valid ground for special remissions. The indiscriminate practice in the past has at times encouraged crimes, crowding the jails further subsequently.

e. Federal and Provincial Governments may continue to exercise their power under the Pakistan Penal Code/The Code of Criminal Procedure/Pakistan Prison Rules 1978 in exercise of their best judgment that genuinely repentant and occasional criminals, who are victim of circumstances, benefit more from these remissions.

Remission

i. Special remission of 90 days to the prisoners convicted for life Imprisonment except those convicted for murder, espionage, anti-State activities, sectarianism, Zina (Sec.10 Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (also under Sec. 377,

P.P.C.), robbery (Sec. 394, P.P.C.), dacoity (Sec. 395-396 P.P.C.), kidnapping/abduction (Section 364-A and 365-A), and terrorist acts (as defined in the Anti-Terrorism (Second Amendment) Ordinance, 1999 (No. XIII of 1999). (bold added).

ii. Special remission for 45 days to all other convicts except the condemned prisoners and also except those convicted of murder, espionage, subversion, anti-State activities, terrorist act (as defined in the Anti-Terrorism (Second Amendment) Ordinance, 1999 (No.XIII of 1999), Zina (Sec. 10 Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (also under Sec. 377 P.P.C.), kidnapping/abduction (Sec. 364-A and 365-A); robbery (Sec. 394, P.P.C.), dacoity (Sec. 395-396, P.P.C.), and those undergoing sentences under the Foreigners Act, 1946.(bold added)

iii. Special remission at sub-paras. i & ii above will be admissible provided that the convicts have undergone 2/3rd of their substantive sentence of imprisonment.

iv. Total remission to male prisoners who are 65 years of age or above and have undergone at least 1/3rd of their substantive sentence of imprisonment, except those involved in culpable homicide.

v. Total remission to female prisoners who are 60 years of age or above and have undergone at least 1/3rd of their sentence of imprisonment except those involved in culpable homicide.

vi. Special remission of one year to female prisoners who have accompanying children and are serving sentence of imprisonment for crimes other than culpable homicide.

vii. Total remission to juvenile convicts (under 18 years of age) who have served 1/3rd of their substantive sentence except those involved in culpable homicide, terrorist act, as defined in the Anti Terrorism (Second Amendment) Ordinance, 1999 (No.XIII of 1999), Zina (Sec. 10 Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (also under section 377, P.P.C.) robbery (Sec. 394, P.P.C.), dacoity (Sections 395-396, P.P.C.), kidnapping/abduction (Secs. 364-A and 365-A) and anti-State activities.(bold added)

viii. Those convicted in cases processed by NAB will not be entitled to any remission. (NB as already noted in this judgment this (sub-clause (viii) is no longer applicable having been struck down by the Hon'ble Supreme Court)

4. Since then the above policy has been enforced. However, in 2007, on the direction of honourable Sindh High Court provisions regarding remission at sub-para. viii above were deleted.

Yours faithfully,
(Mehir Malik Khattak)
Deputy Secretary
Tele:9203851"

57. Whether this policy is in violation of Article 25 of the Constitution in terms of Sherwan's case (Supra) has in our view been answered by the Hon'ble Supreme Court in the case of Nazar Hussain (Supra) at P.1037 Para's 25 and 26 which are set out below for ease of reference.

"25. The moot point in Shah Hussain's case (supra) was the judgment of the High Court wherein certain convicts/prisoners though granted the benefit of section 382-B, Cr.P.C., but were refused remissions for the period preceding their date of conviction. (The High Court had relied on a judgment of this Court in Haji Abdul Ali v. Haji Bismillah (PLD 2005 SC 163)]. This Court in Shah Hussain (supra) case partly endorsed the policy and the classification made therein insofar as it was backed by law by observing, "However the same (remissions) shall not be available to the convicts of offences under the National Accountability Bureau Ordinance, 1999, Anti-Terrorism Act, 1997, the offence of Karo Kari, etc., where the law itself prohibits that." It was not brought to the notice of this Court in Shah Hussain's case (PLD 2009 SC 460) that section 10(d) of the NAB Ordinance had been declared ultra vires by a full Bench of the Karachi High Court (PLD 2007 Kar. 139). So the observation made qua inclusion of convicts under the NAB Ordinance be treated as per incuriam. In terms of the policy framed by the Ministry of Interior, Government of Pakistan, certain parameters/guidelines have been laid down for the grant of remissions under Article 45 of the Constitution. A class of convicts/prisoners have been excluded who are accused of "heinous offences" in the paragraph of "remissions" in the policy letter reproduced in paragraph 24 above. The expression "heinous,, offences" has further been elaborated in the succeeding para i.e. that such remission would be available to those prisoners convicted for life imprisonment except those convicted for murder, espionage, anti-State activities, sectarianism, Zina (Sec. 10 Offence of Zina (Enforcement of Hudood) Ordinance,1979 (also under Sec. 377, P.P.C.), robbery (Sec. 394, P.P.C.), dacoity (Sec. 395-396, P.P.C.), kidnapping/ abduction (Sec.364-A and 365-A), and terrorist acts (as defined in the Anti-Terrorism (Second Amendment) Ordinance, 1999 (No. XIII of 1999)). An analysis of the afore referred exclusions and the classification would show that the same are based on reasonable differentia and it is neither individual specific nor arbitrary. The classification made and denial of remissions to a class of convicts/prisoners is either backed by law or rule or there is an objective criterion. A breakup of the classification, the law or rules which may back this classification or the nature of heinousness of offence is given as follows ;(bold added)

Sr.No.	Class of prisoners /convicts excluded	Reason
1.	Murder	It is a heinous offence
2. 3.	Espionage,) Anti-State) Activities)	Rule 214-A of the Prisons Rules mandates as follows: 214.A.-No person who is convicted for espionage or anti-State activities shall be entitled to ordinary or special remission unless otherwise directed by the Provincial Government.
4.	Secretarianism	21F. Remission. - Notwithstanding anything contained in any law or prison rule for the time being in force, no remission in any sentence shall be allowed to person who is convicted and sentenced for any offence under this Act (bold added).

5.	Zina/Rape	Section 10(3) of Offence of Zina (Enforcement of Hudood) Ordinance, 1979. Though this provision has since been repealed (by Act VI of 2006), but a similar provision has been inserted through sections 375 and 376 in P.P.C. It 's a heinous offence.
6.	Dacoity (See 395-396, P.P.C. Kidnapping abduction	These are heinous offences.
7.	Anti-Terrorism Act.	21F. Remission. - Notwithstanding anything contained in any law or Prison Rule for the time being in force, no remission in any sentence shall be allowed to person who is convicted and sentenced for any offence under his Act. (bold added)

26. The afore-referred chart indicates that the policy of remissions under consideration is neither arbitrary nor discriminatory and is rather based on an intelligible differentia which is permissible and is therefore, not violative of Article 25 of the Constitution and the law laid down by this Court".(bold added)"

58. The above policy remains in force as of today without any alterations or additions.

59. We are in full agreement with the, above findings of the Hon'ble Supreme Court in the case of Nazar Hussain (Supra) in finding that Section 21F ATA does not violate Article 25 of the Constitution.

60. It may be recalled that even in Sherwani's case (Supra) it laid down the following principles with regard to equal protection of law and reasonableness of classification at (iii):

(i)

(ii)

(iii) that different laws can validly be enacted for different sexes, persons in different age groups, persons having different financial standings, and persons accused of heinous crimes;

61. It is clear that in denying remissions to a certain category of offenses these are regarded as heinous or as acts against the state. There can be no doubt, in our view, that acts of terrorism are heinous offenses as indicated by the preamble to the ATA which reads as under:

"ACT NO.XXVII OF 1997

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

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

62. In Saleem Raza's case (Supra) it was also noted that another test for permissible classification is that the differentia must have rational nexus to the object sought to be achieved by such classification at P.170 Para 30 in the following terms;

"30. Another test for permissible classification is that the differentia must have rational nexus to the object sought to be achieved by such classification. For this purpose the object of the law creating differentia is to be examined. As rightly stated by the learned D.P.G.A. the object and purpose of enacting NAB Ordinance is not to keep the accused persons in custody for longer periods but the main purpose is to recover the outstanding amounts and State money misappropriated by the persons prosecuted. The entire scheme of plea bargain, power to freeze the property, holding the transfer of property void, voluntary return, constitution of Conciliation Committees for payment of loans, reference of the cases to the Governor State Bank of Pakistan and prior approval of State Bank, are directed in this behalf. The Hon'ble Supreme Court while examining various provisions of the NAB Ordinance in the case of Khan Asfandyar Wali v. Federation of Pakistan PLD 2001 SC 607, held that one of the purpose and object of the law was to recover the ill-gotten money. This object of the law has no nexus with the classification pleaded by the learned D.A.G. under section 10(d) of the NAB Ordinance."

63. Thus, there is no doubt in our minds that the denial of remission in cases under ATA is in conformity with the object and purposes of the ATA which Preamble was set out earlier and which is to give no concession to those persons who commit heinous offenses which strike at the very foundations of the State. A reading of the ATA in its totality shows that in effect its primary objective is punitive and to act as a deterrent to those who commit heinous crimes as opposed to the NAO which although penal in nature its primary object is the recovery of looted money of the State which is illustrated by the novel provisions of voluntary return and plea bargain which are found in the NAO where the accused can be released if in effect he returns the looted money which provisions still apply after conviction for an offense under the NAO which facilitates accused/convicts early release on that basis. Perhaps to a certain extent this legislation is reformative since usually a voluntary return and a plea bargain is only allowed in addition to the return of the plundered money if the accused/convict admits his guilt and under-takes not to engage in criminal activities in the future.

64. The fact that offenses of terrorism are heinous is also shown by the fact that they require a specific/special intent in addition to the usual elements of a criminal offense being the actus reus and mens rea. Before an act can fall within the purview of the ATA not only do you have to have committed the actus reus and have the mens rea for the offense under Section 6(2) but you also need to have the additional intent under Section 6(1)(b) and (c) as under;

(a) "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

(b) 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" (bold added)

65. In essence offenses of terrorism through barbarous/heinous acts have the design and intent in effect of destabilizing the State which offenses are of the most heinous nature at the national level of any nation state.

66. As discussed earlier it is this requirement of special/specific intent in addition to the usual actus reus and mens rea of murder which leads to the crime of crimes known as genocide. Murdering a large number of people will not amount to the offense of genocide (although it may amount to extermination or mass murder) unless any of the following acts are committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group. (Article II Convention on the Prevention and Punishment of the Crime of Genocide Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948 Entry into force: 12 January 1951, in accordance with Article XIII))

67. Such criminal offenses which in addition to the usual requirement of actus reus and mens rea also require specific/special intent (as with offenses under the ATA) are usually confined to the most heinous of crimes such as terrorism and genocide since there is a need to provide an additional specific/special intent which is usually of a very heinous nature and such acts are often carried out with the specific/special intent of destabilizing a State or trying to eliminate a certain class of people and as such legislatures in their wisdom may want to impose the highest, penalties and restrictions on the perpetrators of such acts as a deterrent to others.

68. Even in Saleem Raza's case (Supra) which was approved by the Supreme Court in Mazhar lftikhar's case (Supra) it accepted that certain offenses for which remission had been excluded were based on a reasonable classification based on intelligible differentia was available based on the nature of the offense such as Karo Kari, Siah Kari or similar other customs and practices, Espionage and other Anti State Activities even if in some of these cases remission can be granted with the permission of the Federal or Provincial Government.

69. We are further fortified in our view that the heinousness of the offense under the ATA is based on an intelligible differentia which is permissible by considering some Indian case law on this point.

70. In the case of State of Haryana and another v. Jai Singh dated 17-02-2003 (SC India):(Indian Kanoon http:/indiakanoon. org/doc/ 1841133/ where the Indian Supreme Court also considered whether denying remission for those convicted for heinous crimes was discriminatory and violated Articles 14 and 21 of the Indian Constitution (similar to Articles 4 and 25 of our constitution) it was held as under;

"We will first take up for consideration the argument accepted by the High Court in the impugned judgment that the impugned classification is arbitrary, unreasonable and violate of Article 14 of the Constitution. While considering the challenge based on

Article 14 as to the arbitrariness in the impugned classification, the court has to examine whether the impugned classification satisfied certain constitutional mandates or not. They are (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; (ii) that the differentia must have a rational relationship with the objects sought to be achieved by the Act. (See Kathi Raning Rawat v. The State of Saurashtra (1952 SCR 435]).

In the instant case, the State Government under the impugned notification granted the benefit of remission to all convicts except those excluded in the said notification. Though the notification in question does not give any specific reason for exclusion of such convicts, from the pleadings of the State Government, it is clear that this exclusion was done based on the nature of offence committed by the said convicts and taking into consideration the effect of such offence on the society as also the integrity of the State. The question then is whether such classification of convicts based on the nature of offence committed by them, would be an arbitrary classification having no nexus with the object of the Code.

The answer to the said question, in our opinion, should be in the negative This Court in a catena of decisions has recognized that the gravity of an offence and the quantum of sentence prescribed in the Code could be a reasonable basis for a classification. This Court in State of Haryana and others v. Mohinder Singh etc. (2000 (3) SCC 394) held "Prisoners have no absolute right for remission or special remission shall not apply to a prisoner convicted of a particular offence can certainly be a relevant consideration for the State Government not to exercise power of remission in that case." (emphasis supplied) In Maru etc. etc. v. Union of India and another (1981 (1) SCR 1196), THIS Court while repelling an argument of discrimination in regard to the sentence to be imposed in murder cases, held:

"The logic is lucid although its wisdom, in the light of penological thought, is open to doubt. We have earlier stated the parameters of judicial restraint and, as at present advised, we are not satisfied that the classification is based on an irrational differentia unrelated to the punitive end of social defence. Suffice it to say here, the classification, if due respect to Parliament's choice is given cannot be castigated as a capricious enough to attract the lethal consequence of Art. 13 read with Art. 14."

In Sunil Batra v. Delhi Administration and others (AIR 1978 SC 1675), this Court upheld the validity of a classification based on the gravity of the offence.

From the above observations of this Court, it is clear that the gravity of the offence can form the basis of a valid classification if the object of such classification is to grant or not to grant remission.

Having come to the conclusion that the gravity of the offence can be the basis for a valid classification, we will not consider whether the offences excluded from the impugned notification can be said to be such offences which have been wrongly excluded from the benefit of remission. We notice that the convicts who have been excluded from the

benefit of said notification, are those convicts who have been sentenced for offences of rape, dowry death, abduction and murder of a child below 14 years, offences coming under Sections 121 to 130 IPC, dacoity, robbery, etc. These are the offences for which the Code has prescribed the sentence of rigorous imprisonment extending upto life, therefore, from the very nature of the sentence which the offence entails, the said offences can be categorized as grave offences, therefore, they can be aptly classified as grave offences, which classification will be a valid classification for the purpose of deciding whether the persons who have committed such offences should be granted remission or not. On this basis, we are of the opinion that the State Government having decided not to grant remission to these offenders/offences which carry life imprisonment, should not be granted remission, is justified in doing so.

Similarly, the offences under the NDPS and the TADA Acts, apart from carrying heavy penal sentences are offences which could be termed as offences having serious adverse effect on the society, cognizance of which is required to be taken by the State while granting remission, therefore, they can also be classified as offences which should be kept out of the purview of remission". (bold added)

71. TADA is the Terrorist and Disruptive Activities (Prevention) Act which remained in force in India from 1985 to 1995 to deal with a particular internal insurgency and rising terrorism and even some of its provisions were regarded as draconian and contrary to human rights and the NDPS is the Narcotic Drugs and Substances Act 1985 under Indian law which Statutes were respectively enacted to prevent terrorism and dealings in narcotic substances in India like the ATA and the Control of Narcotic Substances Act, 1997 in Pakistan

72. In the Indian case of Jameel Ahmed v. State of Rajasthan and others dated 01-01-2007): (Indian Kanoon - http//indiakanoon. org/doe/ 1264082/ before the Rajasthan High Court it was held as under when dealing with the withholding of remission to certain categories of convicts;

"Remission and parole are not vested rights of the prisoners. In fact, they are privileges granted by the State to the convicted prisoners. Therefore, a convicted prisoner cannot claim these two privileges as their vested rights. Jurisprudentially, there is a difference between right and privilege. Rights are classified under two categories of either being a fundamental right under the Constitution, or a statutory right granted by a Statute. On the other hand, a privilege is granted by the State under certain conditions and privilege by their very nature can equally be taken away by the State. Whereas rights are universal in nature, privileges can be given to certain specific groups and need not necessarily be universal in its application. Remission and parole are part of the reformative theory of punishment. Since they are privileges granted by the State, it is not necessary that all the convicted prisoners must have the privilege extended to them. Certain categories of prisoners can be refused these privileges. In case the refusal is based on intelligent differentia and has a nexus to the object of the Rules, the refusal is not violative or Article 14 of the Constitution of India. Since a privilege can be denied under the law, it is procedure established by law, therefore, such a denial would not be violative of Article 21 of the Constitution of India. Undoubtedly, the freedom of

movement is cribbed, cabined and confined by the very act of imprisoning a prisoner. Therefore, the personal liberty is curtailed by judicial order under a procedure established by law. It is a policy decision of the State to decide the category of prisoners who are entitled to the privilege of remission and parole and those who are disentitled for such a privilege. Considering the fact that TADA was a law enacted for the purpose of controlling the terrorist activities in India, considering the fact that terrorist activities shake the very foundation of the nation, considering the fact that such activities are an attack on the integrity and unity of the nation, considering the fact that such activities entail the killing of innocent women and children, considering the fact that such activities post a serious threat to the survival of the nation as a whole, the State has rightly deprived prisoners convicted under TADA of the privilege of remission and parole and Open Camp. Those who conspire and threaten the nation do not deserve any mercy from the law or from the State". (bold added)

73. It also notably observed that the Government of Punjab had

excluded remission in Narcotics related cases in the following terms at P.172 Para 36 in Saleem Raza's case (Supra) as under;

"Again in this provision there is a reasonable and rational classification specifying a class of persons and still leaving the discretion with Federal or the Provincial Government and competent authority. A similar provision has been inserted by the Punjab Government through Rule 214-A of the Prison Rules. The Punjab Government has deprived all the convicted persons for special remission or on premature release on parole if they are sentenced for drug/narcotics offences vide Home Department letter No.14/1/93/MP, dated 27.1.1993. In this case also a classification has been made which is based on intelligible differentia. The remission has not been denied on account of mere forum of trial but on account of commission of offences pertaining to drugs and narcotics." (bold added)

74. Even in Sherwani's case (Supra) when dealing with principles regarding equal protection and reasonableness of classification it was noted at (iii) that different laws can validly be enacted for person's accused of heinous crimes.

75. We would also like to observe that the legislature in considering

the kind of law which it needs to pass in order to deter such offenses like terrorism also needs to consider the current environment prevailing in the country which was again emphasized in Sherwani's case (Supra) when enunciating Principles as to classification at (c), (d) and (e) as set out below for ease of reference:.

(a) ..

(b) ..

(c) it must be presumed that the Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based on adequate grounds;

(d) the legislature is free to recognize the degrees of harm and may confine its restriction to those cases where the need is deemed to be the clearest;

(e) in order to sustain the presumption of constitutionality, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation;

76. Pakistan unlike many other countries in recent times has been grappling with the problem of internal terrorism with deliberate design and intent is to adversely effect the stability of the State through acts which undermine the government and its institutions and create fear and insecurity in the minds of the general public and as such it is the duty of Parliament to respond to such situations by passing the appropriate legislation in order to protect the State and its citizens which it has done by passing the ATA. In recent times in order to attempt to combat this menace of terrorism the legislature by a two thirds majority even amended the constitution for a limited period to allow certain so called black terrorism cases to be tried by military courts. As mentioned earlier in this judgment Parliament being elected by the people and therefore reflecting the will of the people can promulgate any legislation, with any sentences and restrictions, which it deems necessary/ appropriate and the courts will only interfere with the same by way of interpretation if the legislative intent is unclear or if such legislation or parts thereof are in violation of the Constitution which approach is in conformity with the sovereignty of Parliament and the doctrine of the trichotomy of powers on which our constitution is based in a Parliamentary democracy.

77. We have also deliberately avoided considering too many rules regarding remission in most other countries since in our view each country through its duly elected legislative body passes such laws as are relevant to its own particular environment and circumstances pertaining in that country. As such we have confined ourselves to the Indian sub-continent which has also grappled with the menace of terrorism and is a similar environment to ours to some extent in terms of social and economic development. For example, in some countries which face a lesser threat from terrorism and a lesser threat to their internal stability on account of terrorism at this point in time not only might their Anti-Terrorism laws be much less stringent than the provisions in the ATA but they may also provide lesser penalties, remission etc. It is for each country to respond to its own particular challenges and pass effective laws in respect of such challenges through its own legislatures. Our role in this case as alluded to earlier in this judgment was only to consider whether under the Pakistani ATA 1997 the exclusion of remission was in violation of Articles 4, 12, 13 and 25 of the Constitution

78. In answering this question for the reasons and discussion mentioned above we find that Section 21F ATA 1997 does not violate Articles 4, 12, 13 or 25 or any other Article of the Constitution and as such we uphold Section 21F ATA with the result that the petitions stand dismissed.

79. Before parting with this judgment however we would like to emphasize that since remissions are not applicable in cases under the ATA which concern heinous offenses having a special object and intent aimed at destabilizing the State and its institutions and cowering it citizens through instilling in them a sense of fear and insecurity the Anti Terrorism Courts must exercise great care and caution in determining whether the cases before them fall under the ATA based on the requirements of Section 6 and in the absence of the ingredients of Section 6(1)(b) and (c) being made out amount to cases to be tried under the ordinary criminal law. Without belaboring the point we set out once again below Section 6(1)(b) and (c) ATA which

are a pre condition which needs to be satisfied before Section 6 ATA might be attracted by virtue of the offenses set out in Section 6(2) ATA:

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

(a) the action falls within the meaning of subsection (2);

and

(b) the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or 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. (bold added)

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

80. We would also like to place on record our appreciation of all the learned counsel who have appeared before us in these petitions and provided us with their most valuable assistance.

81. These petitions stand disposed of in the above terms.

MH/J-17/Sindh Order accordingly.