

Defining of Terrorism in Pakistan's Anti-Terrorism Law

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Abstract



Many disciplines, of social science have researched on terrorism. The criminal justice reaction on terrorism plays important role to countering terrorism. The rule of law and human rights has grabbed attention on the 1997 Act of Anti-Terrorism, terrorism definition because it has controversial issue since 20th century. In Pakistan current definition of anti-terrorism law is against human rights standard. It is concluded like other countries practice on human rights and principle of legality examined in Pakistan. It is recommended that Pakistan also follow UN guidelines 2006, and bring amendment in definition clause of anti-terrorism law.

Keywords: Terrorism, Pakistan, Definition of Terrorism, Human Rights.

Introduction

The 9/11 incidents bring change in the world criminal justice system to take action threats of terrorism. Due to this event United Nations (UN) Security Council passed resolution i.e. 1368 and 1373 joined with other states to take necessary steps against terrorist financing, planning and give punishment according to the domestic laws. This UN resolutions and international community failed to give unanimous definition of terrorism. Science 20th century terrorism definition has been challenged for all. The definition of terrorism is found in 1988 study is 109 times and 1994 study identified 212 times. Pakistan in front line state against terrorism has also ignored the definition of terrorism.

Why definition of Terrorism is Important?

Terrorism offence has defined under anti-terrorism law 1997 section 6. Under this section any act or use of threat amount terrorism if it is made to coerce or intimidate the government, public, foreign government or international organization or made insecurity or fear in society'. The definition of terrorism specified the activities i.e. kidnapping for ransom, grievous bodily injury, act causing of death, general public intimidation and extortion etc. come in terrorism. Terrorism definition in section 6 is very wide many amendments has made in law to broaden the scope of terrorism offence. Some critics argue the definition of terrorism should be specific and also general. In general it specify intention and motive of criminal law and in specific it point out particular crime such as, hijacking, kidnapping.

Historical Perspective of Anti-Terrorism Legislation

Terrorism has been not defined until 1997. There are two points appeared an anti-terrorism legislation, first anti-terrorism legislation started at the political will and second since the starting days of the independence law making aimed is to introduce such law that elbowing judicial review. Thus in 1949 Public Representative Officers Disqualification Act (PRODA) had used as weapon against positions. In 1952 Security of Pakistan (SPA), in 1955 the Defence of Pakistan Ordinance (DPO) and in 1959 Electoral Bodies Disqualification Act was introduced. Under SPA government has empowered to confine the movement of any suspicious person and detained him, and cancel his release order for specified time. Under Criminal Procedure Code (CRPC) 1898 government is empowered for prevention of offence and to maintain peace and security used section 107 and 144. However, these laws didn't use word terrorism. In 1974 the Prevention of Anti-National Activities Act has introduced that was articulated to criminal activities, which disturbed sovereignty of country. In 1975 the Suppression of Terrorist Activities (Special Courts) (STA) was used terrorism word. It

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was introduced against political opposition in Khyber Pakhtunkhwa. This law had two purposes, first to sabotage activity of terrorism and second to give speedy trial of such offences. In Pakistan Penal Code (PPC) 1860 defined these offences e.g. law of explosive substances, aircraft, telegraph, arms etc. Special courts established for speedy trial and take directly cognizance of schedule offences. Under this law that accused would be presumed guilty if found possession of such article for commission of offence but this law is departure of criminal law. This law is against human rights that person be trial under presumption of suspect¹.

Before 9/11 aimed of legislation in UK, India and Pakistan was to counter domestic terrorism. In Pakistan nature of terrorism is different from India and UK. In India movement of separatist faced in the East Punjab and in UK religious threat i.e. Catholic. In Pakistan facing threat Sunni-Shia conflicts it like UK. So they didn't define terrorism as independent and separate offence. It attached in schedule of several other crime in PPC.

Definition of Terrorism in the ATA

As discussed above anti-terrorism used initially as a political tool but after passage of time political elements make it effective on the response of challenges. It is crucial to know other reasons to the introduction of ATA specially definition of terrorism. Instead of opposition of political parties to uplift such situation, Zia prolong his illegal government. Now it became opened that Afghan war was just proxy war, the concept of jihad was exploited by Kalashnikov culture, which sowed terrorism seed global. In 1990s certain anti-terrorism laws were enacted to control in Sindh ethnic terrorism and from country sectarian terrorism.

The 9/11 wake of, US attacked on Afghanistan, then extremist and Taliban war against west on one side and against Pakistan on the other side. So such set off starting new wave of terrorism in tribal area and Khyber Pakhtunkhwa. After 9/11 the US started war against terrorism because it became also threat UN Security Council. Pakistan brought amendment in anti-terrorism law by the pursuant of UN Resolutions. Pakistan criminal justice system has not respond effectively against terrorism instead of making new laws.

Terrorism definition after subsequent amendments in ATA

Due to threat of terrorism Pakistan made new law on August 1997. This law has two purposes first provide speedy trial on heinous offence, second sectarian violence and terrorism prevention. Under ATA section 6 is talk about terrorism definition and this definition is consist of three parts: purpose or motive, means and consequences. The definition as following:

Purpose: Whoever, terror or strike on people, or group of people, or transfer any section of people or disturb harmony of people,

Means: does anything i.e. bomb using, explosive or other things, dynamite, or danger weapons, poisonous gases or chemical or other things such as nature,

Consequences: that cause death, or injury, or destruction of property, or damage, or interference in providing of essential services of life, or shows fire arms, or threat of using force to public servant to prevent him from his legal work so terrorist act is committed.

Sectarian violence didn't lessen terrorism at domestic level though many amendments brought in ATA at regional and international level and also many resolutions passed by Security Council of UN against Taliban. The definition of terrorism amended between 2002 and 2013 nine times. The present definition is reproduced by mean of purpose, means, consequences and also exception.

Purpose: (b) to use threat, intimidation, coerce or government overawe or the public or community, or section of public or create society fear and insecurity; or (c) the use of threat for purpose of proceeding sectarian or religion or ethnic reason, or public terrorizing or intimidation, media person, community of business or damaging property and arson, or looting government officials, installations, or security forces etc.

Means: The threat or use of action under subsection (2) includes use of explosive or other weapon, or firearms, is come in terrorism.

¹ Shabana 2008 at 11, citing Najm-U-Din, Terrorist unless proven otherwise: Human rights implications of anti-terror laws and practice in Pakistan, Lahore, HRCP Publication, 2007, p 10.

Consequences: If the use of threat cause death, bodily injury, grieves violence, property damage, or doing such thing caused death of person, kidnapping, hijacking, explosive use of device i.e. bomb blast or explosive material without lawful reason, or provoke hatred contempt towards sectarian or ethnic or religious base or caused internal disturbance etc.

Exception: The action of threat not applies on religious and democratic rally or accordance in law and peaceful demonstration.

Terrorism definition and legality principle in jurisprudence of Pakistan

Supreme Court has critically developed definition of terrorism and it legality principle. The original definition of terrorism is shorter than 2001 definition. The ambiguous language has used in original definition. It said that terrorism is that act which disturbs balance among people. These definitions words are compare with India POTA that terrorist mean any act that threaten security, unit and integrity of India. But harmony word is ambiguous and this word not legal so meaning of it made from plain dictionary. According to Oxford Dictionary 2010, harmony means peaceful existence state under agreement and in perfect harmony living together. Harmony is also in different categories i.e. racial and social harmony. To understand criminal law it need that language of it is clear and specific. But the word harmony is not specific, not clear and nor strictly construed, so it result many interpretations. So it leads to misuse and abuse criminal case of terrorism. The definition shows in several aspect over breadth i.e. damage and injury should not be serious and also there is no differences between private and public property. Likewise the disturbance of life essential service community means with reference to law of India is to cut telephone line is also terrorism. The original definition of the selected part does not fulfill rule of law as broadly i.e. law should ne prospective, certain and clear.

In 1998 amendment two changes were made, first was about violence meaning some word were added i.e. 'any other weapon' in result the act of terrorist, after the word 'property to damages' added large on scale. Due to the addition of these words in definition become broad. Second some other offences i.e. robbery along with rape, molestation of child, gang rape were included in offences of terrorism. These offences are serious in nature and couldn't be included in terrorism category because the purpose of these offences is to take out law from its intention. Unlike, Australia and UK, in several case definitions comes under scrutiny of judiciary. Liaqat vs Federation of PK and Mehram Ali vs Federation of PK were two land mark cases, which happened before incident of 9/11. In the light of Armed forces of Pakistan and to establish military court in Liaqat Hussain case is unconstitutional and is not relevant. In definition of terrorism Mehram Ali touched many issued but such arguments were rejected by court. Because public servant murder in response enmity of personal would be come in offence of terrorism. The argument was accepted by court that murdered of public servant with intention to terrorize public servant and didn't do their duties of office then such act of crime came in terrorism. In other case that the Government of Baluchistan vs Azizullah court observed: In the schedule offences are mention is nexus to the object and also comes under section 6, 7 i.e. punishment and definition of terrorism. But in case offences are not nexus to the sections above, so in such event offence will be ultra vires and included in notification. As a necessary element nexus of terrorism is clearly enunciated in Mehram Ali case. The subsequent study of case law showed that the higher court has adherence with it. Instead it shortly examined the case law, that creation of insecurity and fear amount terrorism offence.

The Supreme Court held in 2002 case, that in court premises murder of police and lawyer had amounted terrorism because this event created insecurity among community of advocates and as well as public section. The Supreme Court observed in other case i.e. Mst Najam-ud-Nisa in this murder of seven at night time in house, so determination of question whether such crime created terror or sense of insecurity among people or not. The sense of insecurity and fear also interpreted as effect of psychological to produced criminal violent act. In other case Kalshnikov killed four people in a city and daytime so court give decision that it had happening of time and place as such a way that create insecurity and fear in society. In many cases of court in similar circumstances of crime, this decision was maintained i.e. murder by Kalashnikov firing and petrol sprinkling on someone, two persons were killed at time of prayer of Friday in a mosque, and college teacher was killed by a student in examination hall from stopping cheating.

Here examined in many cases, the court has not made reference of Mehram Ali case. But Court has done interpretation in Mehram Ali case e.g. murder of college teacher in examination hall

was act of terrorism. The court arguing on teacher killing case on the base of Mehram Ali case and held that accused person act created sensation, fear, insecurity, panic and fear as a whole teaching class. Likewise, accused persons killed the Naeem Akhtar a medical surgeon. The case facts were this that accused mother surgery was done by deceased surgeon that the condition of patient worsen during surgery and resulting to cut left leg of patient. So accused demand compensation and the expenses came on her mother treatment but demand was accepted then he killed the surgeon. The Supreme Court has accepted that motive behind the accused person was personal grievance, but abduction of doctor and then murder was alarming condition for other doctor and that creating panic and terror in the profession of medical.

In some case, The Supreme Court had given decision that terrorism is not count in certain act. Like-wise in criminal trespass case in 2007, damage caused by fire or other, wasn't amount act of terrorism. The court gave reference with Mehram Ali case that in present case there was lack of nexus. Another case of murder concerning of three people and did murder of one person on the bases of dispute of immovable property, the court give his verdict that the event didn't create any panic or fear in the public.. The court said incident happened on bases of personal revenge. As above discussion, in certain cases court give its decision that terrorism act involved in certain cases. In 2007 Mohabbat Ali and another v. The State and another the court held enmity of personal issued not amount terrorism. As earlier repeated and court held that personal enmity didn't create sense of insecurity and fear.

The court held in 2009 case in criminal private dispute that insecurity or fear must not be result of crime of private. Terrorism act is to be decided by motive, object. Terrorism definition is not if the crime has not created threat or intimidate, or coerce, or the government overawe, or section of public, or sense of insecurity or fear is created in public or in society. Due to two reasons this case is important. First, that any act of criminal and it is how much serious nature not amount terrorism unless it intimidate and coerce the government or public or section of public. Second, it creates sense of insecurity and fear in a society.

It is established by jurisdiction of Supreme Court not consistent and blame goes to definition of wording that it is not clear and breadth. Even in Mehram Ali case only stress on nexus but no correction course of jurisdiction. The reason of this is the criminal act must be nexus and sections 6,7 and 8 of ATA are the object. Additionally, law isn't confine threat or its action to just intimidate or overawing government or coerce, or create insecurity in public or section of public. As discussed above the word insecurity and fear have interpreted by court in connection with section of public or public.

This definition also compared with other jurisdictions for purpose to know its uniformity. In UK and ATA both law need threat of action or use must be designed (mean: to plan, to draw, to contrive, to intend) to intimidate or coerce or government overawe in ATA, to influence the government in UK. India and Australia laws respectively used the intent and intention word. The definition of ATA is similar to the Australia, UK and India with respect to electronic system disruption and ATA used the word service of public utility or communication system. The definition of ATA is closer to Australia and India mentioned essential services disruption. Under ATA the doing of anything involve causing of death. In Australia law the words used causes death of person. In UK any act against person involved serious violence included to bodily injury against person. It is enough that serious damage to the property in UK and Australia but in Pakistan the damage must be serious to public property as well as official installations and government premises and private property etc. In UK, Australia and India there is no difference made between private and public property but the words damage and destruction is included. In Australia and UK a criminal act is that which creates risk seriously to the safety of person, health, public or public section, but additional factor in Pakistan is such that act may create frighten the public general and in response of this public is not coming out for trade, business and civil life become disrupts.

Due to broad and indefinite definition of terrorism in Pakistan and it give evidence and shows that ATA used in leading to misuse, unwarranted circumstances and law abuse. The Pakistan Human Rights Commission has observed many reports as a instances. Like in 2011 HRCP's has noted report of 390 people, three parliamentarians were also included in this and arrested because they were wanted that government released water in rural district river and solve clean water issue. The other report is about the 100 lady worker were arrested because they were demanding regularization of their

service and they send to jail for year by the Punjab Anti-Terrorism Court. In 2013, Adiyala Jail in Rawalpindi, the 11 detained missing person case were arrested after acquittal of terrorism charge and in custody four were died, so after raised the voice Supreme Court heard the case.

The ATA and International legal Structure

Pakistan is 9 conventions sectorial party. However, it has entered reservations convention in 1997 and 1999. The former relate to struggle being peremptory norm, self-determination within scope of 1969 Vienna Convention article 53 the Law of Treaties. And latter is about extradition. It declares in reservation that Pakistan isn't taking this Convention on legal point of view to helping other parties' states on extradition (article 11). According to article 14 extraditions must be subject to the Pakistan laws of domestic and if dispute is presented to Court of international Justice so in every case all parties agreement is necessary (article 24).

According to 1373 Council resolution, Pakistan has several reports submitted to Counter Terrorism Committee (CTC) and 5 reports are available publically. To study this report critically it showed little contribution in definition of terrorism in Pakistan. In regard of contribution it showed only in terrorism financing. In 2003 third report Pakistan answered to CTC raised certain questions. These questions consisted of (1) terrorism financing, (2) recruitment of terrorist, (3) act of terrorism towards their citizen and member state, and (4) weapons supply outside and within Pakistan to terrorists. Pakistan answered that these pointed questions are handled on Anti-Terrorism Act 1997 in section 11O (c) and 2(z) (aa) (i), 11 V and Penal Code section 121 and 125. The CTC quires and respond it 4th and 5th reports present that law were applied on anti-money laundering.

It was noted that 1566 Council resolution supported by Pakistan but it significant seen that there is no step towards definition of terrorism. Pakistan responded on terrorism and recommended long-term strategy and expected that resolution help globally against Taliban and Al-Qaida and enlarge its range other terror sources.

Conclusion

In historical perspective of definition of terrorism and recent amendments showed it against legality principle in light of Supreme Court jurisprudence. The study showed that until 1997, the governments of Pakistan have used legislation of anti-terrorism as weapon of oppression of political. In Pakistan political disgruntlement root lie due to two reasons: an effective federation and religion role in politics. And this adopted many expression of terrorism i.e. religion, racial nationalism, ethno-linguistic and sectarian. International and regional conflicts have further increased such issue. The original law of terrorism was changed in two phases. On first stage amendments brought in 1998 till 2001 and on second stage amendments brought after 9/11 incident and still continues. Like other countries, Pakistan has also struggling to solidify criminal system of justice against terrorism but it is still away achieve success against terrorism. Like UK and Australia Pakistan also struggle for effective and independent review on legislation of anti-terrorism. The great and significant role of courts brings interpretation of ATA and stops it from abuse and misuse.

The analysis has clarified that international efforts also failed to give consensus definition. First point terrorism is not common crime because it's well-organized crime and also political nature. In international law political crime is non-extraditable crime. Because political nature of crime of terrorism is complex and it is used to change political and social condition. Terrorism complex nature has negatively influence on international law because states striving their political interest instead striving for justice and peace.

Second on the legal point of view that recognition of terrorism crime is in both formal and customary international law. The customary international law process is in practice as well as normatively complex. International law formally consent is taken by the state political interest generally and powerful state has hegemonic role specifically.

Third point of view there is absence of harmony on international acceptable definition is that the state force anti-terrorism laws and policies for their own benefit. Due to lack of international definition of terrorism the states are free and define it according to their domestic, political and in respect of security concern regionally. The primary obligation of state has to ensure that anti-terrorism laws are according to the standards of Human Rights and principle of legality. The developed countries like UK, Australia terrorism definition is fond satisfactory on the base of human right and principle of legality standard. However, developing countries like Pakistan and India, the abuse and misuse of terrorism offence is more serious and rampant.

Fourth the definition of terrorism in ATA is overbroad, inconsistent and imprecise with other jurisdictions. There is proved these laws causing abuses human rights. While crime of terrorism in criminal justice system is an organized crime and there is also international concern to consider it standard of human rights. ATA section 6 is amended that definition isn't use the purpose is not according to law. This help courts in interpretation but the courts feel that ATA must be strictly construed because criminal law is present for other crime. Last but not least, independent and meaningful review helps further to safeguard from misuse and abuse the law.

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