THE EFFECTS OF TERRORISM ON THE CRIMINAL JUSTICE SYSTEM OF PAKISTAN

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Abstract
Every catastrophe as an opportunity at the same time, recent wave of terrorism has exposed the criminal justice system of Pakistan and revealed all it shortcomings. The article is focused on the analyses of crimes and terrorism related laws of Pakistan where shortcomings are identified and recommendations are given to address lacunas for effective criminal justice system in relation to terrorism.

Keywords: Terrorism laws, criminal justice system, evidence.

Introduction:
It is hard to agree on one unanimous definition of the expression “terrorism”. Acts which are though not strictly within the meaning of terrorism are often wrongly regarded as terrorist activities and on the flip side acts that results in spreading terror are not as such termed if not committed by a proscribed organization or individuals. There are political constraints in agreeing on a single definition for terrorism both nationally and internationally. Despite all the disparities few agreed expression will always find its way into the definition on all sides of the boarder. These expression will include use or threat of violence; creation of hostile environment based on terror for a generalized struggle and objectives.

The phenomenon of terrorism is not a new one but it magnified many folds towards the conclusion of the preceding century. The international community and United Nation have taken a considerable time in defining the expression of terrorism. Such blatant lethargy on part of the international community is comprehensible as one man’s terrorist is another man’s freedom fighter. In the wake of 9/11 it became the sole

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concern of international community to impart an agreed definition to terrorism. Generally speaking terrorism requires an objective element i-e crime of certain scale and a subjective element i-e certain motivation or intention on part of the perpetrators (Walter, Christian. 2003). The United Nations General Assembly vide a resolution 49/60 titled as “Measures to eliminate international terrorism” has made an effort to suggest a consensus definition to terrorism: “Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them” (United Nations General Assembly resolution). Despite of having no convergence on the definition of terrorism of the international community, considerable progress has been made to curb this evil since its inception. A number of international conventions on the subject of terrorism, its root causes, effects and measures eliminate them has been adopted by the UN and other international institutions. Some of these instruments are:

Approaches towards criminal justice system:
There could be three approaches in discussing the criminal justice system. Firstly, the conduct in violation of the broader consensual norms fostered by the society backed by some penalty and regulated through the state legal apparatus, secondly its administrative dimension with enforcement and execution of laws through the law enforcement agencies, prosecution, penal correctional facilities and arrangements, thirdly crime is a prohibited act, this prohibition is the manifestation of the collective will of the people sharing one social order. No law can survive the dissent of those for whose interests it is made in the first place; penalties in absence of agreed definitions of prohibition by people are like bodies without souls. The entire concept of the criminal justice system is based on Police, Prosecution, judiciary and penalties and correctional facility and allied arrangements. Crimes and its punishments are proportionate; this is the corner stone and the underlined principle of the criminal justice system.

Criminal justice system is not the sole panacea:
Criminal justice system has a pivotal role to play in addressing the menace of terrorism, and perhaps it will always remain at the center stage. However regarding CJS as the only tool which would address this complex phenomenon will be the stretch of imagination beyond practical constraints. Ordinary crimes are committed either with a premeditated mind makeup or by events unfolded at the spur of the moment, in both these cases the culprit has a define objective to achieve other than sowing terror in the society. In the ordinary crimes mostly the culprit tries to evade his guilt and escape the punishment whereas in the crimes related to terrorism there is no such endeavor. The obsolete techniques of investigation fall short of the required standards set forth for achieving fair, transparent and impartial trial proceedings. The state is therefore under this immense duty to devise new and updated tools for evidence collection and meticulous investigation. It is therefore warranted that state should consider the CJS as one of the most important component in dealing with terrorism but not the sole, there are steps both legislative, political and social that need to be identified so that to address the root causes.

Every crimes is a disease, agreement with this notion will render criminal as a patient (Mushlin, M. B., Kramer, D. T., & Gobert, J. J. 1993). Killing a criminal is the admission of failure in his reformation;
the state should be more concerned with the manner in which the punishment is administered, inhumanity is to be treated with humanity and no other. In this era reference is always made to the deterrent character of punishment, it though mostly work but not in the cases related to terrorism for obvious reasons of its inefficacy. Pakistan is amidst serious and scattered terrorism since decades. More than 70000 mostly innocent lives have been lost in the previous years, with incalculable lose to the property all over the country. Situation since 9/11 has drastically transformed the Pakistani society and its legal spectrum dealing with terrorism related crimes. It is increasingly becoming difficult for the legal system of Pakistan to establish distinction between ordinary crimes that take place relatively in normal circumstance and crimes related to terrorism. The intention, motives and the circumstances behind the commission of both these crimes are different and vary. Such extraordinary circumstance results in creating a hostile regime especially in keeping up with the basic human rights of the citizens. The effects of terrorism on the Pakistani society and its legal system may best be summarized in the following points namely:

- Apprehensive and hostile environment: Terrorism has distorted the general routine and affected the lives of all the people living within or outside Pakistan. Regular Snap checking, installations of barricades, bob wire and armed personals with frequent suicide attacks and other suspicious activities has created apprehensions in the minds of people and the state apparatus.

- Distraction and lose of focus by the law enforcement agencies: Police and other law enforcement agencies are normally trained to tackle ordinary crimes. They master the causes behind such violations and had over the years developed an adequate understanding on its motives and implications after a thorough study of criminal behavior and tendencies. Terrorist activities has by far forced those related to criminal justice system to divert their expertise and energies from their basic assignment of dealing with ordinary crimes resulting in their inefficiency to focus on the intricacies of criminal proceedings and the rights of the accused and fundamentals of fair trial and its antecedents.

- Violations of basic human and constitutional rights enshrined in various international legal instruments and the supreme law of the land: The state normally fosters a very aggressive posture in dealing with those accused of any terrorist activity. Now in situations where it is difficult for the state, to differentiate
between an ordinary criminal and a terrorist in construing their liability has often been seen to jeopardize citizen’s due rights such as formal arrest and lawful detention, the right against the use of violence for extracting evidence and right to remain silent and legal representation and right to fair trial as a whole.

- Sacristy of evidence: In majority of cases the police will hardly find an independent witness against those accused of terrorism and the same is quite understandable in the absence of a comprehensive witness protection program. The evidence collected in the cases of terrorism is either inadequate or mostly inadmissible in the court of law due to its feeble character in accordance with Qanun-e-shahadat ordinance 1984.

- Overcrowded, inappropriate and inadequate prison system: The prison system of Pakistan has been accommodating prisoners far more than its normal capacity (Prison Reforms and Situation of Prisons in Pakistan). Overcrowding of prisons is leading to growing radicalization with hardened convicts and under trial prisoners being kept in the same barracks (Yumna Rufi, May, 2015). The attacks on various prisons and jail breaks from the recent past also suggest the insufficiency of the required security for all the prisons across the country; most of them are accommodating high value targets. Pakistan inherited its prison system from Britishers as colonial legacy. This system was meant to punish the local uprisings and mostly used by the colonials as punitive measures in the sustenance of their reign. The core phenomena regarding the prison system was to make it a correctional facility or penitentiary, this aspect of the criminal justice system apparently seems to have been cornered by the emergence of terrorism. Jails in Pakistan are mostly used as places for custody of the under trial and a confined premises for those outcast by social order, they are kept inside in some cases for indefinite.

- Chang in perception about crimes: Terrorism has changed the perception of both state and its legal system about crime and criminal liability. Steps which were supposed to be considered before construing criminal liability has been repeatedly compromised such as warrant of arrest, detention and search, the presumption of innocence until proven guilty and individual and personal criminal liability. This in most of the cases has
adversely affected the interest of many accused of crimes both ordinary and terrorism related.

- Exclusive reliance on obsolete techniques of evidence collection and ineffective prosecution: The wave of terrorism has exposed the legal system of Pakistan at large. The conventional legal system in the country was unable and ill-equipped in dealing with the new challenges. However since every catastrophe is an opportunity at the same time therefore it taught us many of lessons. The police and other law enforcing agencies are still using obsolete techniques of evidence collection and its extraction, new and scientific tools were either not made available to them or they are lacking the required skills to effectively use such innovations in investigations. The prosecutors needs to get acquainted with the modern tools of state prosecution, they are required to be paid handsomely to reduce the chances of malpractice and at the same time it will attract prosperous brains to be part of this profession as their first priority.

Notes and References


