

**DEFINING TERRORISM IN NATIONAL LAWS: AN
OVERVIEW OF THE DEFINITION OF TERRORISM IN
THE ANTI-TERRORISM ACT OF PAKISTAN (1997)**

Muhammad Asif Khan¹ and Pervaiz Khan²

Abstract

The definition of terrorism has always remained a relative issue. The definition is adopted in perspective of dealing with the issue in a relative manner. The paper examines how differently the term has been defined by various states in their statutes. This highlights the problem in the definition of terrorism especially in context of Anti-Terrorism Act 1997 in Pakistan. The analysis of various definitions highlights the common elements adopted in order to cope with a special issue of terrorism. The definitions adopted in the anti-terrorism act in Pakistan is then analysed through the broader scope of subjective and objective elements within the definition. The study is focused upon the theoretical analysis of the relative framework adopted in Pakistan through the anti-terrorism act in Pakistan. The study is based upon content analysis whereby different definitions are examined. The common elements within the definitions are examined relatively and the definition adopted within the ATA in Pakistan is examined.

Keywords: Anti-Terrorism Act 1997, Anti-Terrorism, Defining Terrorism.

Introduction

The phenomenon of terrorism dates back to the French revolution, whereby the conduct of the ‘Jacobins’ to suppress the aristocratic threat led by Maximilien Robespierre was called as “terror” by his opposition.¹ Thereby, the term terrorism at first was directed towards state instigated terror on its subjects. The contemporary meaning of the word terrorism has evolved with the international crimes, especially

¹ Head of Department, Department of Law, University of Malakand, Pakistan.
Email: ursasifkhan@yahoo.co.uk

² Senior Assistant Professor, Department of Law, Bahria University, Islamabad.
Email: pervaizkhan@hotmail.com

against the states. The cases of plane hijacking in 1960s made terrorism a subject of debate for the United Nations. The strengthening of the process of 'globalisation' with technological innovations has, *inter alia*, enhanced transnational activities. The increasing transnational activities also give impetus to transnational crime. The events of 9/11 (September 11, 2001) in the midst of these transnational activities have given a new dimension to international terrorist activities. The debate on terrorism and its definition has become an international issue.

The view of a state on a specific issue of global importance rest upon the way it affects its national interest. With regard to the acts of terrorism the approach of states would apparently differ especially in cases where the acts involved are transnational. The course for achieving a consensus to adopt a definition of terrorism acceptable internationally has thus failed. The UN Global Counter Terrorism Strategy has also failed to provide a workable definition.² This is the reason why thirteen different international conventions related to terrorism has been adopted since 1970s. All of these conventions deal with different forms of terrorism and are precise in nature. Negotiations on a comprehensive convention on international terrorism under a UN ad hoc committee established by resolution 51/210 are also facing a deadlock. The failure of states to agree upon a definition has also resulted in the omission of terrorism as an 'international crime' within the jurisdiction of international criminal court (ICC).³ The disagreement on this issue is primarily due to the diverging views regarding terrorism, as opposed to the exercise of the right to self-determination, enshrined in the UN charter.

The acts which are termed as terrorist acts are all criminal activities, mostly defined under national and international laws. Some would argue that the re-specification of some of those criminal acts by creating new counter-terrorism laws is not a sane policy.⁴ *Barzilai* fears the misuse of separate terrorism related laws and argues that separate treatment of terrorism-related crimes will result in municipal authorities employing tougher, more rigorous tools to gain illegitimate political advantages.⁵ On the other hand the acts of terrorism supposedly pose a higher level of threat to the society and public order which may demand a distinction between simple criminal acts and an element of terrorism attached with it.⁶ In some cases the criminal acts also cannot be prosecuted without defining them as terrorist acts, for instance, the financial support of

organisations involved in international criminal activities.⁷With the increasing extent of globalisation, the prosecution of distinct terrorist offences with common objectives can be enhanced by familiar laws for supporting mutual legal assistance.⁸The laws regulating terrorist acts shall have the object of reducing its misuse by distinguishing them from normal criminal activities. This classification shall then be made in parlance with the needs of combating global terrorist activities. This distinction between normal criminal acts and the acts amounting to terrorism commence from the way 'terrorism' is defined.

The Definition of Terrorism in National Laws

Walter insists that the most important elements for defining a term as vague as terrorism would be its objective and subjective elements.⁹ The objective element is the scale of a crime, whereas the subjective element is the motivation or intention on the part of perpetrators. In cases of terrorism the objective element of 'serious violence against persons' is widely accepted.¹⁰The definitions adopted by different states also accept the criminal activity (leading to violence) as a major element.¹¹Some of the states also include damage or threat of damage to government installations and public utilities in addition to violence against persons.¹² This development of the definition might be prone to a broader interpretation, especially in the common-law countries. Demonstrations against government might be termed as terrorist activities in cases where it becomes violent. In Pakistan, around 500 political activists (including leaders of the opposition party) were booked under the anti-terrorism act during a protest against the government in 2014.¹³The objective element then raises an issue regarding the extent of violence that shall be accepted for accruing terrorist conduct. One approach towards defining a terrorist conduct given by UN 'Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism' is to include "all elements of a serious crime as defined by law".¹⁴The question of what amounts to a 'serious crime' under the domestic law may be characterised by the state according to the level of terrorist threats it faces. A broader approach towards determining a 'serious crime' might also perturb the aim of administering anti-terrorism laws. The borderline between a crime and crime leading to a terrorist conduct remains thin. This thin line can be broadened via its combination with subjective elements in a definition. For this purpose,

the *mens rea* and the motive of a *terrorist* must be identified while forwarding a legal definition of terrorism.

The *mens rea* of a normal criminal is completely restricted to something relevant with his own personal benefit or vengeance. That is why the motive and *mens rea* in normal criminal activities may not be long-lasting. On the other hand, the terrorist activities comprise of continuing motivations with the methods of functioning in a developing mode, equivalent with the increasing or decreasing power of the *terrorists*.¹⁵ These motivations might be based upon enforcing any particular ideas or policies upon the masses via coercing the state machinery, through terrorizing the population. Thereby, the subjective elements mostly included within the domestic laws for defining terrorism are the elements of spreading terror in a society and of coercing the government.¹⁶ The element of 'spreading terror' might also be broadly interpreted; a crime of robbery also spreads terror in a specific area but that cannot be used to call the act as a terrorist act. Thereby, the motive behind spreading 'terror' in a society shall also be defined. If the purpose of a serious crime is to spread terror in a society, its motive shall be to compel or coerce a government to do or abstain from doing something, and then this conduct shall be sufficient to amount to 'terrorism'.

Subjective and Objective Elements in Definition of Terrorism in National Laws

States adopt definition of terrorism in accordance with their own system of government and political circumstances. Definitions adopted by states are thereby different from each other; the absence of outer legal boundaries set by international community also helps in such disparity.¹⁷ Some state governments use a pretext of anti-terrorism to forward their political interests by negating objective elements within the definition of terrorism. The practise of terror by state administrations thus in some situation replicates the state of 'terror' in the aftermath of the French revolution; in such cases the pretext by state administrations is the 'anti-terrorism' law. For instance, the Egyptian anti-terrorism law focuses on objective elements by only targeting organisations involved in activities which calls for the "harming of individuals; the spreading of terror; or the endangering of the lives, freedoms, rights, or security of the people".¹⁸ The list of activities that will lead to a terrorist act is extensive,

including harming the environment, buildings, land, air and sea transportation etc. Moreover, individuals' along with organisations are also banned from activities leading to infringements on public order, harming national unity, social peace etc. The objective elements have thus been included indiscriminately, however these elements are not supported with subjective elements. This might be a politically motivated legislation by the establishment to control unwanted organisations and unfavourable acts. This theoretically will result in persecution of unfavourable individuals and organizations.

The international threat of terrorist activities has driven some states to take actions. Any specific laws against terrorism were missing in China; it adopted an anti-terrorism legislation very recently in December, 2015. Previously, a standing committee of the Chinese National Congress adopted the decision on issues related to anti-terrorism works, which clarifies the definition of terrorist activities.¹⁹The definition briefly identifies the subjective and objective elements. It states that,

“Activities that severely endanger society that have the goal of creating terror in society, endangering public security, or threatening state organs and international organizations and which, by the use of violence, sabotage, intimidation, and other methods, cause or are intended to cause human casualties, great loss to property, damage to public infrastructure, and chaos in the social order, as well as activities that incite, finance, or assist the implementation of the above activities through any other means”.

Some states target ideology or political motivation as a subjective element in their definitions. According to Russian federal law “terrorism shall mean the ideology of violence and the practice of influencing the adoption of a decision by public authorities, local self-government bodies or international organizations connected with frightening the population and (or) other forms of unlawful violent actions”.²⁰ This clearly specifies the subjective element whereas the activities which might lead to terrorism and the acts which lead to terrorism (objective element) are defined in the subsequent sections.²¹This approach evolved through the previous efforts of including the term terrorism in the criminal laws. The urge to differentiate the acts of terrorism from simple crime resulted in the adoption of specific anti-terrorism law; supported by the inclusion of a viable subjective element to the definition.

The United States defines domestic and international terrorism separately under its federal laws. The 'domestic terrorism' is shortly defined in Section 2656f(d) of Title 22 of the United States Code as "the term "terrorism" means premeditated, politically motivated violence perpetrated against non-combatant targets by subnational groups or clandestine agents".²²The subjective element has been broadly enshrined in the definition but elaborated in the section 2331 of Title 18 of the United States Code, which defines domestic terrorism as, "the term 'domestic terrorism' means activities that involves acts dangerous to human life that are a violation of the criminal laws of the United States or of any state;

Appear to be intended

- To intimidate or coerce a civilian population;
- To influence the policy of a government by intimidation or coercion; or
- To affect the conduct of a government by mass destruction, assassination, or kidnapping..."²³

The definition limits the acts of coercion to only politically motivated actions rather than generalising the acts of coercion to terrorism. This inculcates a better opportunity to the judiciary and law enforcement agencies in differentiating terrorist activities from normal criminal activities.

Definition of Terrorism under the Anti-Terrorism Act (1997) of Pakistan

The use of criminal law for the benefit of the administrative establishment is not a new phenomenon in Pakistan.²⁴ The Criminal Procedure Code (CrPC) has widely been used for political victimization, especially for suppressing political gatherings under article 144 of the CrPC. The code is a product of British colonial rule designed to allow district magistrate to suppress political gatherings in cases of disobedience to the state machinery. Similarly, legislation of analogous nature has been adopted in different phases in order to suppress political movements.²⁵ The Suppression of Terrorist Activities (Special Court) Act of 1975 is one of the similar acts passed in the wake of suppressing different nationalist movements.²⁶ Special courts for anti-terrorism adjudication were established for "suppression of acts of sabotage, subversion, and terrorism".²⁷ Thus, terrorism was used to control any

political movements which were anti-state establishment. This special law continued till it was repealed by an Anti-Terrorism Act (ATA) of 1997. The ATA also created 'special' anti-terrorist courts parallel with the normal judicial system. The special courts were intended for speedy trials in cases of terrorism related crimes.²⁸ The law was adopted in the wake of growing sectarian violence in the state, the prevalent criminal law was deemed inconvenient for speedy justice. The ATA has ever since been changed in the wake of national and international political alterations, in order to suit the ruling government establishment. The definition of terrorism provided in the ATA (article 6) is also marred by the changing political situations in the state. The definition has been kept broader in order to accommodate any anti-state (or anti-government) activities under ATC. This broad definition overburdens the process of administration of justice involving police, prosecution, and courts which causes a delay in the administration of justice in terrorism related cases.

The preamble of the ATA describes the rationale of the law as providing for "the prevention of terrorism, sectarian violence and for speedy trial of heinous offences and for matters connected there with and incidental there to." Hence an objective element in the definition of terrorism is included within the preamble of the act. In some judgements, more emphasis have been stressed upon the 'intent' of the perpetrators, but a broad application of the term heinous offense is seen in some judgements.²⁹ As one example, the Lahore High Court declared the murder of a man and woman accused of illicit relations to be a heinous offense and an act of terrorism.³⁰ The case is further complicated with a long definition of 'terrorism' in section 6.

In section 6, subsection 1, the act defines terrorism as;

"The use or threat of action where,

(a) the action falls within the meaning of sub section (2) and

(b) The use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or a foreign government or population or an international organization or create a sense of fear or insecurity in society, or

(c) The use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians, including damaging property by ransacking, looting, arson or

by any other means, government officials, installations, security forces or law enforcement agencies. Provided that nothing herein contained shall apply to a democratic and religious rally or a peaceful demonstration in accordance with law”.

In addition to this Section 6(2) brings forward other forms of actions (or threat of actions) which are included under this definition, these also include death, “grievous violence” or damage. Section 6(3) further identifies and defines these actions if “firearms, explosives, or any other weapon” are used during such acts. These acts are considered as terrorist acts even if the section 6(1)(c) is not satisfied. Moreover, section 6(3)(a) broadens the application by adding the violations defined in any international conventions on terrorism ratified by Pakistan. As discussed earlier that the political or ideological motivation distinguishes terrorism from other forms of crime; the optional enforcement of section 6(1)(c) successfully excludes the motivations required for a terrorist act. This helps in creating a situation whereby the acts of terrorism and other acts of crimes cannot be separated objectively.

The ambiguities of article 6 allow the courts and other law enforcement authorities to act in a way whereby the objectives of the act are not met. In a recent judgement, a daytime robbery was termed as an act of terrorism only because the act would ‘frighten public’.³¹ In other cases the courts have stressed upon the importance of the intent i.e. the objective element within the definition.³² The reasons behind different approaches of the courts is the intensely longer version of the definition provided in the ATA. The definition is broad enough to accommodate any crime within the ambit of terrorism. It also allows the law enforcement agencies to use the legislation in a broader sense. As a result, the law enforcement agencies dealing with terrorism cases are overloaded with litigation which is not specifically related with terrorism. This notorious practise leads to unnecessary delays in court decisions and a large number of acquittals.

In addition to this anomaly the government is authorised under article 34 of the ATA to amend the “third schedule” of the ATA. The third schedule deals with the offenses which are punishable under the respected law. This can be achieved through a simple governmental notification rather than a formal amendment to the law. Furthermore, the

jurisdiction of the anti-terrorism courts was largely increased in 2004 through an amendment to ATA by giving them power to try cases of, *inter alia*, abduction or kidnapping for ransom; the use of firearms or explosives by any device, including bomb blast in a mosque, imambargah, church, temple or any other place of worship; and firing or use of explosives by any device including bomb blast in the court premises.

The crimes of kidnapping for ransom and abduction may be categorised as heinous offences. However, in order to consider these crimes as offenses related to terrorism the objective and subjective elements required for a terrorist activity must be satisfied. For instance, these acts shall not be categorised as terrorist acts unless a terrorist body commits such acts in order to facilitate their political goals. The National Crisis Management Cell (NCMC) reports that the reported cases of kidnapping for ransom were around 2,092 in Pakistan between 2008 and 2013.³³ All these cases if defined as terrorist act would with obvious effect affect the performance of the law enforcement agencies. Similarly, there might be other issues of serious criminal nature, however all the serious crimes cannot be classified as terrorist acts. There by the ATA require further amendments to identify the objective and subjective elements of a crime classified as terrorism.

Conclusion

The objective elements have been overwhelmingly mentioned within the definition of terrorism in the ATA. The mentioning of 'speedy trial of heinous offenses' in the preamble of the act diversifies its objectives; in addition to the unending objective elements of the definition clause. This gives effect to the issue that all the crimes mentioned in section 6(2) shall be dealt with under this act because they are heinous crimes and require a speedy trial; thereby making these offenses as terrorist offences under ATA. This objective is also supported by section 6(3) which negates a subjective element mentioned within the same section i.e. 6(1)(c). The focus is thereby not directed towards terrorism or terrorist acts but towards depicting simple crimes as terrorist activities. The main reason for this is the lengthy and excessive language used for defining terrorism. It is thereby important for the clarity of the objective of an act to use specific words; hence the term 'heinous offenses' need to be removed from the text of the preamble.

The definition of a term as vague as 'terrorism' can only be settled by fair interrelationship of objective and subjective elements. The objective elements already seem uncertain in the ATA; the subjective elements are also not differently settled. The two clauses settling subjective matters contain elements of vagueness. The words '*creating sense of fear or insecurity in the society*' needs reconsideration. As most of the criminal cases will qualify under this element, thus it will not be helping the cause of separating terrorism from ordinary crime. The subjective elements are also divided in two separate clauses so that one set of elements might be subdued when required. This creates vagueness within the legislation, thereby only one clause determining the subjective element is required which is not subject to suspension in specific cases. Hence, merger of clause 6(1)(b) and 6(1)(c) or removal of the latter is recommended. The inclusion of a motive for the offence is also recommended as the motive behind the 'coercion or intimidation of government' is not well-defined. The overburdening of the special courts can only be dealt in this way i.e. by clarifying the objective and subjective elements making life easier for the police, judiciary and other law enforcing agencies.

Notes and References:

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³ Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187UNTS 90 (entered into force 1 July 2002).

⁴New Zealand, "Counter-Terrorism Bill. Government Bill. Commentary", as reported from the

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⁸On the subject of mutual legal assistance and extradition in the context of counter-terrorism, see Helen Duffy, *The 'War on Terror' and the Framework of International Law*, (Cambridge: Cambridge University Press, 2005): 106-115.

⁹Christian Walter, "Defining Terrorism in National and International Law", in Christian Walter et al. (eds.), *Terrorism as a challenge for national and international law: Security vs Liberty?*, (New York, Springer, 2004): 26.

¹⁰ Ibid: 27.

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¹² See, for instance, UK Terrorism Act 2000; The Canadian definition of terrorism also includes damage to government installations; See also United States Immigration and Nationality Act 8 U.S.C. 1182(a)(3)(b).

¹³ The Daily Dawn, "Imran, Rashid booked under terrorism charges", <http://www.dawn.com/news/1149928> (December 10, 2014).

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¹⁵ Conte(2010): 10.

¹⁶ Schmid (2004):405.

¹⁷ Ben Saul, "Definition of "Terrorism" in the UN Security Council: 1985–2004", *Chinese Journal of International Law* 4 (2005): 141-166.

¹⁸ Official Gazette Law No. 8 of 2015, article 1.

¹⁹ On 29 October 2011, the standing committee of the National Peoples Congress (NPC) passed a decision in order to fill the gap in domestic laws and international co-operation in combating terrorism.

²⁰ Federal Law No. 35-FZ of 6 March 2006 on Counteraction against Terrorism, article 3(1), available <http://www.coe.int/t/dlapil/codexter/4_theme_files/country_profiles/legislation/CT%20legislation%20-%20Russian%20Federation.pdf> (last visited September 20, 2016).

²¹ Ibid, article 3(1) and (2).

²² United States Code(2012 Edition), available at<www.gpo.gov/fdsys/browse/collectionUScode.action?collectionCode=USCODE> (last visited September 20, 2016).

²³ Ibid.

²⁴ See Shabana Fayaz, "Responding to Terrorism: Pakistan's Anti-Terrorism Laws", *Terrorism Research Initiative* 2 (2008).

²⁵ See for instance, The Security of Pakistan Act (1952); The Defence of Pakistan Ordinance (1955); and The Defence of Pakistan Rules (1965), passed to suppress political movements.

²⁶ For instance, Abdul Wali Khan (president of National Awami Party) was charged for conspiring against state and a special tribunal was set to try him.

²⁷ Preamble, *Suppression of Terrorist Activities (Special Courts) Ordinance (XVIII)*, 1974.

²⁸ See preamble of Anti-Terrorism Act 1997.

²⁹ PLD2004, Lahore 199.

³⁰ 2013 YLR 618.

³¹ 2016 PCr.LJ 1 (Sindh).

³² See for example 2015 PCr. LJ 1142 (KPK); 2015 PCr. LJ 628 (Sindh); PLD 2009 11(SC).

³³ "NCMC Report: Pakistan Witnesses Rise in Rape Cases," October 10, 2013, <http://tribune.com.pk/story/616029/ncmc-report-pakistan-witnesses-rise-in-rape-cases/> (accessed September 20, 2016).