

The MacrotHEME Review

A multidisciplinary journal of global macro trends

Role of Investigation Agencies and Judiciary to Warfare Terrorism in Pakistan

Muhammad Mumtaz* and Muhammad Shahbaz Arif**

College of Law GC University Faisalabad, Pakistan* Adv.mumtaz@yahoo.com

Dean faculty of Management Sciences GC University Faisalabad, Pakistan**

Abstract

Terrorism is worldwide phenomena and with the course of time it is going to be a complicated one. All over the world especially developed countries are adopting new methods to combat with the crimes like terrorism through latest criminal investigation techniques but unfortunately in Pakistan the methods of criminal investigation are same as were in the past. In this paper critical review is made over the existing legislation in Pakistan to fight with the terrorist activities. The paper also focuses the role of investigation agencies towards criminal justice system in Pakistan. It also addresses the primary legal weakness in conviction of hardened criminals, why they are being released regularly on bail, why criminal investigation system is so weak and is unable to collect evidence. This research is an attempt to identify the inherent legal flaws in our legal system because the terrorist and hardened criminals are being released from the courts and the same practice will be continued if the existing terrorism law are not changed according to the needs of the present time. The suggestions are also given that how the role of police or other investigation agencies will be effective and facilitate the judicial system towards justice and compatible with modern technology for effective criminal justice system.

Keywords: *Warfare terrorism, Pakistan*

1. Introduction

Since the 9/11 attacks in the United States of America, Terrorism has been become the heinous challenge for Pakistani think-tank and law enforcement agencies. Existing anti terrorism law are becoming ineffective due to the major technical flaws. In order to control terrorism, strict penalties are introduced under anti-terrorism laws but these alarms of penalties have been failed to control the terrorist activities particularly in Pakistan. (Saeed, 1997). Anti terrorism laws and internal security of the whole world was changed after 9/11. The most visible change was observed at the global lawmakers' reaction against the emerging threats of terrorism and how they devised new ways and mechanisms to deter these threats. Law Enforcement Agencies (LEA's) all around the globe got special powers to cope with the emerging internal security challenges. (James, 2007)

The first initiative in this regard was taken by America, who introduced new anti-terrorism laws and measures after 9/11 and it began with the creation of the Department of

Homeland Security (DHS). To achieve the desired results, the department was provided full legal support from the US congress. New legislations was made to enhance the performance of the DHS in order to fight with the terrorist activities. The US Patriot Act was also passed which gives powers to the American law enforcement agencies to have access towards the telephone data, financial records and other communicating tools which used for the terrorist activities. (Dawn,2007).

Similarly, in order to combat with the wave of terrorism some hard anti-terrorism laws were introduced in the UK after 9/11. The Changes made in anti-terrorism laws gave special powers to the UK authorities to conduct their operations aggressively. New Control Orders regime was introduced assigning unprecedented legal powers to the British police and other LEA's including a provision to impose curfew for 16 hours at any place on need basis without wasting time in seeking approval from the British government. Under the Anti Terrorism Act 2000, British police was given extensive powers with regard to the detention of anybody. For this purpose, similar measures were also adopted by the European and Asian countries.

2. Initiatives in Pakistan

Unluckily, In Pakistan situation remained entirely different due to the failure or lack of interest of our leadership regarding security strategy. Law agencies are not responding the terrorist threats with broader strategy (Dawn 22 April 2012). This inattention provided the ways to the global terrorists to create their links in the different parts of our country particularly in FATA and Baluchistan. The terrorists are applying different strategies like guerilla warfare, suicide attacks, bombings, target killings on security forces and government institutions (Dawn, 2010). It seems that terrorists are feeling easy in Pakistan for their activities, because they are doing their activities easily without any fear due to the lack of any effective policy. The terrorists are doing easily and frequently attacks on the law enforcement agencies which have been become the challenge for the Pakistani government.

If we examine the policies of anti-terrorism, the political history of Pakistan is common with policies designed to fight terrorism in its various pretexts. In the era of Ayub Khan different policies were designed to justify the suppression of domestic opposition. We should also not ignore the valuable contribution of Z.A Bhutto because he introduced Suppression of Terrorist Activities Ordinance 1975 in Sind and Punjab until it repealed in 1997. The ethno national violence of Bangladesh civil war and Baloch national movement, also raised issues similar as raised after 9/11 in Pakistan, where civil order was threatened by violence. Nawaz Sharif was first Pakistani leader who introduced Anti-terrorism Act 1997 with new strategy and special ATC's were established to combat the terrorism. Although different policies were adopted by Pakistani decision makers to suppress the political opponents but they failed to make effective institution to warfare terrorism. (Kennedy, 2002)

Since 9/11, many political personalities, foreigners, government institutions, shrines, residential areas and security forces have been attacked by terrorists brutally in Pakistan. The major factor behind these attacks is considered, Pakistani coalition on Terrorism with U.S. In response to this many terrorists were arrested by Pakistani forces and consequently most of them have been acquitted by the courts (Erum, 2010)

The current anti-terrorism law is insufficient to combat the challenges of terrorism in Pakistan. Crimes which are included in the ATA 1997 are murder, malicious insult of the religious beliefs of any class, the use of derogatory remarks in respect of the wholly personage, kidnapping and various statutes relating to robbery and dacoity. Such a broad definition of terrorist acts was seen as layer available to the ruling government to define virtually any kind of violence as terrorism (Rabia, 2010). The Anti-Terrorism Act of 1997 has been become ineffective and is failed to provide support to the armed forces because criminals are being leased from the courts due legal flaws in text of existing law. This law is also failed to provide any effective mechanism for the safety of judges and witnesses. The judges work in these courts under the disposal of federal government and they can be changed frequently at any time. The terrorists are being funded and supported by the different working groups whether they belong to any political party or to any foreign mission and the current Act of 1997 is silent over this activity (Hussain,2006). Although some steps were taken by the government in the evolution of anti-terrorism law while obeying the landmark judgments of supreme court in the case of Mehran Ali vs Federation of Pakistan and Liaquat Hussain Vs federation of Pakistan.

There are statutory loopholes which are helping terrorists groups to be escaped from the punishments and courts are unable to award the punishment to the high profile terrorists due to the certain weaknesses in the police investigations. The bad performance of our investigation agencies can be seen from the arrests made in the Daniel Pearl Killing, Marriot Hotel Bombing, Karachi attacks on Benazir Bhutto, attacks on Sri Lankan team, attack on Manawa Police center, attack on FIA building Lahore and attack on GHQ Rawalpindi, where none of them is convicted so far.

The main reason is that Anti terrorism laws and ATA courts have been failed to convict the major culprits due to technical defects in the investigation ducted by the police. The investigation agencies are badly failed to provide sufficient evidence in the courts. Success of prosecution is not possible without sufficient evidence, which has been hard to compile against suspected terrorists. The acquittal of Hijrat Ullah raised lot of questions and started debate about the weakness and technical flaws of the existing criminal justice system of Pakistan. The law enforcement agencies and other think tanks of the country are seriously thinking that how the target killings and suicidal attacks can be stopped (Daily, 2012). This question is regularly being asked by the citizens of Pakistan that whether Pakistani armed forces would be able to tackle the biggest challenge of terrorism which is a threat to the integrity of state but Pakistani government is still unable to answer this question so far.

It is pertinent to mention here, the factors involved in failure of ATC and the entire criminal justice system in Pakistan;

- Illegal detention is a major factor for the failure of ATC's because once terrorist is arrested then he is handed over to intelligence agencies and police procedure is stopped.
- Lack of transparency and cooperation between various organizations.
- Limited access to police for the purpose of handling the terror suspects
- Delay in response to Police by ISI.
- Threats to Judges, lawyers and police officials are also reason that terrorists or hardened criminals are not being punished. One example is in the case of Sufi

Mohammad when his case was pending in ATC Malakand, Taliban threatened the judge and his family about the dire consequences.

- Protection of witnesses is again crucial factor because there is no mechanism for the protection of witnesses in our existing criminal justice system. Due to the absence of witnesses the terrorists are acquitted in the courts.

- Acquittal rate is very high in Pakistan due to the major flaws in trial process like unnecessary delay and the failure of prosecution. due to the immense power to the prosecutor. Because once prosecutor receives case file from the police, the prosecutor reviews that file and has the option to continue, or take no further action, or divert it away from criminal proceeding.

- Lack of Training to the police in order to combat with the terrorism, is also major factor. Training courses should be offered for frontline officials.

While analyzing the above said factors, it is clear that the current anti terrorism law is a weak type of law which can not be helpful to face the challenge of terrorism in Pakistan. Pakistani interior minister Rehman Malik has admitted that the current anti terrorism laws are not sufficient to control the activities of banned organizations and terrorists. He urged the government to adopt an amendment to remove loopholes for closing the door on terrorist bailouts (The Daily, 2011). The politicians did not address the basic problem for the conviction of hardened and desperate criminals and the lack of facilities to investigation agencies. Keeping in mind all the loopholes in our investigation system, flaws in the existing terrorism laws and inability of courts to convict the terrorists and hardened criminals, following recommendations are made;

- The Anti Terrorism Act 1997 need to be refined its definition of terrorism. The new definition should address all the existing problems and challenges which are being faced by the state.

- Special provisions should be made for the protection witnesses, prosecutors and judges in Pakistani laws.

- Pakistan Penal Code is needed to be amended as currently no law existed to bring terrorists to justice.

- The ability of police investigation must be enhanced with well modern equipment, by computerizing all the police records, providing technology in order to access to mobile phone data.

- High qualified scientists should be appointed to head the forensic science laboratories.

- Investigation process should not be interfered by external factors like politicians.

- Coordination and cooperation between the prosecutors and police official is required.

- Salaries of investigation agencies should be enhanced in order to avoid them from corruption.

- Adequate protection should be given to all the officials involved in cases of terrorist cases.

- Highly educated official should investigate the major criminal cases.

- Facility of finger prints should be given to police. .

- Finally, need to establish Think Tanks in Law Enforcement Agencies Consists of Law Experts, Academics, Jurists and Modern Devices Experts.

3. Conclusion

From all this study it is clear that the role of investigation agencies and judiciary to combating with the terrorism is not so developed as it is the need of the day. Even though several anti terrorism laws were introduced in Pakistan but this country is still suffering from terrorism and facing frequent comments from western media regarding its failure to maintain peace and order. Every government has used the anti terrorism laws to further its interests, suppress political opponents and prolong its rule. If the present government is sincere to create a secure and peaceful environment and destroy the network of terrorists then it must adopt a long term strategy. Solutions of all challenges to criminal justice system during internal armed conflict, making criminal investigation effective and compatible with modern technology, managing trials, respecting due process and rights of accused and victims has been provided in constitution of Pakistan. The real problem is political will and way of thinking. If parliament, by using its collective wisdom, introduces a powerful strategy and ensures a fair and balanced criminal justice system while giving the full protection of basic fundamental rights then the above said problems can be solved easily. The attitude that favours violence must be changed through economic reforms in their areas because the major root cause of terrorist activities is poverty and the lack of basic necessities of life. If we see the originality of the terrorists and their family background then it is very clear that they belong to very poor families. The most alarming and painful story is the involvement of young boys because they are not proper guided and are being used in the hands of terrorists. Special reforms are necessary for their development otherwise it would be very difficult to control the terrorists and their activities in the Pakistan but in all over the world.

References

1. Anti Terrorism Act 1997. Ministry of Law , Islamabad
2. Din,Najam U, (2007). Terrorist Unless Proven Otherwise: Human Rights Implications of Anti Terror Laws and Practice in Pakistan Lahore, HRC Publication.
3. Daily, The Times, December, 2011. Lahore
4. Daily, The Post, July, 29, 2008. Karachi
5. Dawn, 22 April 2012. Karachi
6. Gull, Erum Sajjad (2006) ‘Prosecuting Terrorists’. Islamabad,The News.
7. Hussain, Mian Ghullam, (2006). ‘Manual of Anti Terrorism in Pakistan’ Afsari Printers. Lahore
8. James W, (2007). ‘Criminal Investigation’ New York, NJ: Matthew Bender &Company.
9. Kenndy,Charles H, (2002). The Creation and Development of Pakistan and Anti Terrorism Regime, 1997-2002.Islamabad
10. Majeed, Dr,Abdul, (2005). ‘Crime and Criminology’ Federal Law House. Rawalpindi.
11. Liaqat Hussain Vs Federation of Pakistan PLD 1999
12. Mehran Ali Vs Federation of Pakistan, Islamabad, Supreme Court of Pakistan
13. Mahmood, M (2010). Constitution of Pakistan 1973, Manzoor Law Book House. Lahore.
14. Ministry of Interior Islamabad 2011.Islamabad
15. Shakoor Rabia and Alvi Eqbal. (2010) ‘Why Pakistan cannot Convict any Terrorists’. Let us Build Pakistan. Lahore.