

## **“Terrorism and the Criminal Justice System”**

**BY**

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### **CONCEPT OF DEFINITION**

There is no precise or widely accepted definition of the word, ‘terrorism’. ‘Terrorism’ often refers to and is applied to a variety of acts of violence that are not strictly within the realm of terrorism. The definition of terrorism has become a matter for political as well as intellectual struggle. Because the term is pejorative, politically antagonistic parties label their opponents’ activities with it. However, core elements of a definition seem clearly to include the use or threat of violence; political motivation; and the creation of psychological pressure for some specific or generalized purpose.

### **UNITED NATION’S DIFFICULTIES IN ARRIVING AT A WIDELY ACCEPTED DEFINITION.**

The phenomenon of terrorism, though very old, assumed new dimensions and alarming proportions in the early 70’s and thus attracted increased attention and concern of the international community. The United Nations has spent considerable time to provide a definition of terrorism. This is essential to prevent and punish various acts of terrorism. But the international community is hampered in reaching any single definition of the term ‘terrorism’, for many reasons. There are difficulties of interpretation, ‘one man’s terrorist is another’s freedom fighter’, there are misgivings emanating from the current campaign against terrorism. In the post 9/11 period, the issue of dealing with international terrorism has become the primary objective of the international community. Terrorism is the greatest evil of the present times. Its perpetrators are indifferent to the sanctity of human life.

### **MEASURES ADOPTED BY UN TO CURB TERRORISM**

Despite the differences of perceptions on the issue and in absence of a universally acknowledged definition, terrorism, the international community has made significant headway in combating terrorism in specific areas. About a dozen major International Conventions/Protocols, apart from the regional legal instruments, have been adopted to provide legal framework to check the menace of terrorism in specific forms and in specific fields.

The offences and certain other acts committed on board aircraft, e.g. unlawful seizure of aircraft threatening the lives of innocent people travelling by air etc. were considered by the international community to be so clear cut a form of terrorism that the international community did not feel necessary to go into motives or purposes or causes for which these acts were committed. Thus, three Conventions were adopted on these issues calling the international community to take appropriate remedial measures.

In 1972, the UN General Assembly appointed an Ad-hoc Committee to study the question of international terrorism. The salient features of the General Assembly Resolution adopted at that time were: -

- (a) Unequivocal condemnation of all acts of international terrorism which endanger or take innocent human lives or jeopardize fundamental freedoms;
- (b) Underlining the need of all States devoting immediate attention to find just and peaceful solutions to the underlying causes which gives rise to such acts of violence;
- (c) Condemnation of the continuation of repressive and terrorism acts by colonial, racist and alien regimes in denying peoples their legitimate right to self-determination and independence and other human rights and fundamental freedoms;

- (d) Taking of appropriate measures at the national level with a view to speedy and final elimination of the problems of international terrorism and urging the States to become parties to international conventions which relate to various aspects of the problem;
- (e) Recognition of the importance of international cooperation in devising measures to effectively prevent terrorism acts and studying their underlying causes in order to find just and peaceful solution.

In 1985 the UN General Assembly, by consensus, adopted Resolution on measures to prevent international terrorism, which, *inter alia*, unequivocally condemned all activities, methods and practices of terrorism by whomsoever committed and urged all States to contribute towards progressive elimination of causes underlying terrorism and to pay special attention to all situations, including colonialism, racism and situations involving mass and flagrant violations of human rights and fundamental freedoms and those involving alien occupation that may give rise to international terrorism and may endanger peace and security.

The international community thus has continued to adopt international legal instruments to combat various forms of terrorism. Some of the instruments are: -

- (i) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents 1973.
- (ii) International Convention against the Taking of Hostages, 1979.
- (iii) Convention on the Physical Protection of Nuclear Material, 1979.
- (iv) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1988.
- (v) Convention for the Suppression of unlawful Acts against the Safety of Maritime Navigation 1988;
- (vi) Protocol for the Suppression of Unlawful Acts against the Safety of the Fixed Platform located on the Continental Shelf, 1988;
- (vii) Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991.
- (viii) International Convention for the Suppression of the Terrorism Bombings, 1997.
- (ix) International convention for the suppression of the Financing of Terrorism, 1999.

#### **DIFFERENT PERSPECTIVES OF CRIMINAL JUSTICE SYSTEM IN LIGHT OF ENCYCLOPEDIA OF CRIME AND JUSTICE**

The criminal justice system may be considered from at least three perspectives. First, it can be considered a normative system, that is, a body of legal rules expressing social values through prohibitions backed by penal sanctions against conduct viewed as seriously wrong or harmful. Second, the criminal justice system can be regarded as an administrative system. This view comprehends the official apparatus for enforcing the criminal law, including the police and other front-line enforcement agencies, prosecutorial authorities, the judiciary, and penal and correctional facilities and services. A third view of criminal justice is that of a social system. In this perspective, defining and responding to criminal conduct involves all elements of society. This definition of criminal conduct includes not only the penal law enacted by the legislature but also the way in which these provisions are interpreted by the citizenry at all levels. The arrest and prosecution of an offender for the theft can be considered simultaneously as a manifestation of a legislative prohibition against knowingly taking another's property, as

a response by the police, prosecutor, judiciary, and penal-correctional system to conduct that appears to be criminal and as a community interpretation of the behaviour in question. Criminal justice as a whole results from the interaction between legal rules, administrative practices, and social attitudes and behaviour. The criminal justice system does indeed have a substantial degree of coherence in this sense. Thus, in the law of crimes itself the penalties for deliberate homicide are much more severe than the penalties for assault. This differential is rationally coherent if one assumes that the underlying value is protection of human life and that an attack resulting in death is a more serious impairment of that value than an attack which leaves the victim alive. Similarly, it is rational that adjudication of guilt by the court system should follow after investigation of an offence by the police, if the underlying value is that guilt should be determined on the basis of a disinterested weighing of evidence and not upon predisposition.

### **ROLE OF CRIMINAL JUSTICE SYSTEM IN CURBING CRIMES**

The criminal justice system does have and will continue to have a role and an important one, in addressing terrorism in all its forms. It has proven effective and fair in many cases and it will continue to be an important counter-terrorism tool. But surely, the justice system is not the panacea for the ills of terrorism. There are reasons for it.

Many crimes are committed with premeditation and under certain arrangements conceived by the criminal. That is why, the prosecutors find it difficult to trace such crimes and book the culprits. Terrorism is a more organized crime. It is ruthless and reckless. In the ordinary crimes, the culprit tries to escape from punishment. Here, the perpetrator blows himself up. It is the burden of the justice system, both at the investigation stage as well as the trial stage to devise new techniques.

It is essential that the problem of crime should receive careful attention at the hands of legislators and reformers, for human happiness is directly dependent on it. There is always an apprehension of danger to life and property if crime is not properly put under control. In the absence of security, trade and commerce cannot flourish. There is thus loss of national dividend to the country. Besides, there is huge expenditure of money in the prevention and detection of crime. A large contingent of police force has to be employed for this purpose. Then there is the judicial machinery for dispensation of justice. All this involves huge resources.

### **PUNISHMENT & CRIMES**

Crime is a malady and the aim of every punishment should be reclamation of the offender by prescribing proper treatment. As observed by Victor Hugo, "we should look upon crime as a disease. Evil will be treated in charity instead of anger. The change will be simple and sublime. The cross shall displace the scaffold." This theory of punishment identifies crime with disease.

In awarding punishment to the offenders, the criminal justice system mainly remains wedded to the deterrent theory of punishment. The primary objective of criminal justice is to administer a stern warning to the potential perpetrators of the crime and deter people from committing crime. The infliction of punishment serves as a check on others who are evil minded. The rigour of penal discipline is made a terror and a warning to himself and others. Commission of offences must be made a bad bargain for the offender so as to stop him and other members of the society from taking to criminal ways.

### **LIMITED DETERRENT EFFECT OF PUNISHMENT**

Efficacy of the criminal justice system in dealing with terrorist accused is clogged with obvious, and may be some not so obvious – limitations. One limitation of the criminal justice system is that it necessarily has only limited deterrent effect. This is true in relation to other offences too. In any event, putting dangerous terrorists in jail and taking them out of circulation for life or for many years means that some bombs are not built and detonated; some planes are not hijacked; some innocent people are not assassinated. Thus, some would-be terrorists are deterred from engaging in terrorist acts. Any measure of general deterrence is obviously a good thing.

### **FAIR HEARING, AN ABSOLUTE PRINCIPLE**

Justice demands that the parties should have an opportunity of submitting to the person by whose decision they are to be bound such considerations as in their judgment ought to be brought before him. Fair hearing ensures the scrupulous administration of justice. The rule cannot be sacrificed at the altar of administrative convenience or celerity, for "convenience and justice", as Lord Atkin put it, "are often not on speaking terms". The hearing must be genuine and not formal. Assurance of a fair trial is the first imperative of the dispensation of justice. Every accused person in a criminal case has an unqualified right to a fair hearing in accordance with the principles of fundamental justice. Even the most detested person has a right to be heard.

### **DIFFICULTIES IN TRACING THE CRIME OF TERRORISM, INVESTIGATION & TRIAL.**

Another limitation of the criminal justice system in dealing with international terrorism in particular is the difficulty of using it successfully. They are very difficult cases, especially when the terrorist acts occur abroad or when much of the evidence of the terrorist plot is obtained abroad inasmuch as in such eventuality, evidence is obtained and suspects are often first questioned by the foreign officials under very different systems and rules. Although as a legal matter, those differences do not generally prevent the evidence being used at the place of trial, sometimes these differences lead prosecutors to decide, in their discretion, not to use evidence obtained in ways that deviate sharply from their own system.

### **IMPORTANCE OF INTELLIGENCE**

There is a need for broader, more comprehensive measures to detect and prevent terrorism. Greater emphasis on intelligence and prevention is critical; if we are to get better at preventing terrorist attacks, it is vital that we enhance our abilities to collect information and analyze it real-time, and then share it real-time throughout the world. A global, systematic, military, diplomatic, and financial strategy to effectively deal with the ultimate causes of terrorism is plainly necessary if we are to be successful in preventing as many terrorist attacks as possible in the long term.

We have to engage in the public debate about all of the issues associated with the war against terrorism, we must distinguish between what is constitutional and lawful in these times of heightened threat, should or should not be done as a matter of sound policy.

### **LEGISLATIVE RESPONSE FROM PAKISTAN**

Legislative response from Pakistan to meet the challenges created by terrorism begins with the enactment of the Suppression of Terrorist Activities (Special Courts) Act, 1975, which made special provisions for the purposes of suppressing acts of sabotage, subversion and terrorism and provided for speedy trial of offences committed in furtherance of, or in connection with such acts. With the unfolding of new dimensions of terrorism, new laws had to be framed from time to time. The Anti-Terrorism Act, 1997, which is the latest in the series of laws on the subject, was promulgated to provide for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences. The Act criminalizes the striking of terror in the people, or any section of the people, or alienating any section of the people or adversely affecting harmony among different sections of the people, through any act or thing by using bombs, dynamite or other explosive or inflammable substances, or fire-arms, or other lethal weapons or poisons or noxious gases or chemicals or other substances of a hazardous nature in such a manner as to cause, or to be likely to cause the death of, or injury to, any person or persons, or damage to, or destruction of, property, or disruption of any supplies of services essential to the life of the community or displays firearms, or threatens with the use of force public servants in order to prevent them from discharging their lawful duties. The Act makes cognizable by the Anti-Terrorism Court the offences committed with a cannon, grenade, bomb, rocket or a light or heavy automatic weapon, the offences committed against members of police, armed forces, civil armed forces or public servants, offences subjecting the victim to cruelty, brutality, torture, or burning. The Act provides that the officer-in-charge of a police station shall complete the investigation of a terrorism case within seven working days and forward directly to the Special Court a report under section 173 of the Code of Criminal Procedure. Default on the part of the investigating

officer is deemed to be a wilful disobedience of the orders of the Special Court and made punishable for contempt of Court. Further, failure of the investigating officer to pursue the case properly has been made punishable with imprisonment up to two years. The Special Court is required to proceed with the trial of the case from day to day and decide the case within seven working days. Likewise, the Act provides a period of seven days for filing of appeal by the convict and its decision by the appellate Court within seven days. The Act prohibits adjournment of a case for more than two working days.

### **JUDICIAL RESPONSE TO CHALLENGE OF TERRORISM IN PAKISTAN**

The judicial response to the challenge of terrorism in Pakistan first came with the the judgment of the Supreme Court in 1998 in Mehram Ali's case, which refined various provisions of the Anti-Terrorism Act. The Supreme Court's verdict in Sheikh Liaquat Hussain's case, rendered in 1999 was another important decision inasmuch as the Court further strengthened and clarified the provisions of the Anti-Terrorism Act, bringing the law in accord with the Fundamental Rights, guaranteed in the Constitution. The Court, *inter alia*, directed: -

- One case be assigned at a time to a Special Court and till judgment is announced in such case, no other case be entrusted to it.
- Challan of a case should be submitted to a Special Court after full preparation and after ensuring that all witnesses are produced as and when required by the Court.
- The Chief Justice of the High Court concerned shall nominate one or more Judges of the High Court for monitoring and ensuring that the cases/appeals are disposed of in terms of these guidelines while the Chief Justice of Pakistan may nominate one or more Judges of the Supreme Court to monitor the implementation of the guidelines. The Judge or Judges so nominated will also ensure that if any petition for leave or appeal with the leave is filed, the same is disposed of without any delay in the Supreme Court.

These guidelines are fully followed.

### **CONCLUSION**

Terrorism is both national as well international phenomenon. It has no religion and knows no boundaries. The whole of the world is in the grip of terrorism. No region or country is safe. Terrorism in all its forms – political struggle, national liberation movement, tribal rivalries and sectarian conflict, ethnicity and cross border – afflicts the region. It taxes the poor nations heavily. It impedes their already slower pace of development. It requires deeper analysis. It calls for a multidimensional approach and strategy. We have to decide where force is needed to suppress it and where other means are to be employed to resolve the outstanding issues. There are cross-versions and cross-allegations in our region. This is unfortunate. Our interest requires us to sit together and make individual as well as collective efforts aimed at eradication of this menace. To leave no hiding place for the guilty we have to wrestle with the injustices that provide the noxious fumes in which terror is conceived. There has to be cohesion, cooperation and understanding. It must be sought through better peace making, through engaging with the needs of the neediest and forming partnerships with the oppressed and tyrannized so that they are nurtured and helped. It must light a path to a common edifice of compassion that is the shared inheritance of all people. We have the potential to deal with it.