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States obligations on Terrorism and Anti-Terrorism laws in Pakistan: An Overview

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Abstract: *The growing debate on terrorism is sensitive, and its effects are dreadful. States are under international legal obligations to respect, protect and fulfil people's basic human rights without discrimination and distinction. States are required to remove the effects of terrorism, which are outrageous and alarming. In this context, this article focuses on terrorism and International law. It aims to analyse provisions of international law pertaining to terrorism and to present ways to establish universal peace. It analyses the relevant United Nations (UN) resolutions and international legal documents to evaluate the States' obligations. It also analyses the legislation of Pakistan on terrorism as a case study for identifying the lacunas and loopholes in the existing legal framework. Based on the legal framework, the paper elaborates on the obligations of states in relation to terrorism. It argues that laws on terrorism in Pakistan are sufficient. However, there is needed to implement laws effectively in order to meet growing challenges. There is still a need for improvement in the implementation mechanism pertaining to counter-terrorism measures taken by Pakistan. The line of argument is that states must conform to norms of international law in practical terms, and universal peace can only be established if social justice is guaranteed and human rights protection at every level is ensured.*

Key Words: Terrorism, Counter-terrorism, International law, Human rights, Pakistan's legal framework

Introduction

Terrorism is a complex and complicated phenomenon because of its severe nature and scope. Without having a unanimous definition of terrorism, all states agree that its nature is severe. Implementation of relevant laws by states is a big challenge. All states are agreed that there should be no arrest or detention without charge. However, it is argued that to dismiss terrorism, a strong mechanism should be built up, and accountability of the persons involved is essential to protect the rights of the people.

This paper is divided into VI sections. Section I provides an introduction to the subject. Section II analyses the legal framework governing terrorism and focuses on resolutions of the UN and other relevant international documents. In line with previous sections, Section III analyses state's international legal obligations to avoid terrorism and to domesticate

norms of international law. Section IV analyses the legislation of Pakistan on terrorism as a case study. Section V points out loopholes and deficiencies in the existing legal system by taking into consideration security issues, human rights violations etc. A brief conclusion will then follow.

International Legal framework governing Terrorism

An analysis of the International legal framework governing terrorism is necessary in order to appraise the reader regarding its severity. The UN has played an important role in defining its various dimensions and aspects. As far as the formulation of the standard definition of terrorism is in question, the UN has taken up time for its formulation. The next section analyses relevant resolutions in relation to terrorism.

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The UN Resolutions and Measures

The relevant laws on terrorism can be found in the UN Resolutions. States have also legislated in this respect and taken measures to avoid it at all levels. The UN has adopted Conventions and Resolutions in this regard. Various important Conventions have been adopted to take appropriate remedial measures.

First and foremost, in 1972, the UN constituted an *ad hoc* committee to debate and develop a report on international terrorism. The main features of the Resolution adopted are (i) Condemnation of all attacks which endanger the life of human beings; (ii) States responsibility to take measures for punishing people involved in acts of violence; (iii) Condemnation of terrorist attacks by at regional level on any basis and "regimes in denying peoples their legitimate right to self-determination and independence and other human rights and fundamental freedoms"; (iv) Urging "States to become parties to Conventions and taking appropriate measures and steps for its elimination"; and (v) focusing on international cooperation by states to prevent terrorism.

In 1985, the UNGA has adopted resolution to prevent terrorism. It also calls for its progressive elimination by states. Thus the international community has adopted various instruments to combat terrorism. These include: (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, (1998)"; (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)"; and (ix) "International convention for the suppression of the Financing of Terrorism, (1999)". Thus adoption of these conventions shows that the UN has tried its best to focus on this subject. The analysis of some important resolutions adopted by the UNGA and UNSC is as follows:

The UNSC Resolution 1373 (2001)

An important document on terrorism is Resolution 1373 adopted by the UNSC, which contains substantive provisions and legal obligations. This Resolution focuses on the suppression and prevention of terrorism. Under this Resolution, States are obliged to implement its provisions. It deals with issues as follows: "Prevention and suppression of the financing of terrorism; Prevention and criminalisation of acts of terrorism; and International cooperation as well as ratification and implementation of the 13 UN-conventions against terrorism" ([The UNSC Resolution 1373, 2001](#)). This Resolution 1373 (2001) calls for states to "... fully implement the relevant international conventions and protocols relating to terrorism ...".

It is important to note that the definition of terrorism in this Resolution is missing. However, terrorist acts are explained in an operative part of another Resolution 1533 of 2004 (Resolution 1566, 2004). The UNSC 1624 of September 14, 2005, also gave the counter-terrorism committee (CTC) the additional task of "monitoring how States prohibit the incitement to commit acts of terrorism" ([The UNSC Resolution 1624, 2005](#)). In operative paragraph 4 of 1373 Resolution, the UNSC noted that: "with concern the close connection between international terrorism and ... illegal arms trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials". It also focused on "the need to enhance coordination of efforts on national, sub-regional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security". After the incident of 9/11, the UNSC played a prominent role in order to avoid terrorism, in particular adopting resolutions in relation to "Global War against terrorism" (GWOT). For instance, the sanctions on Al-Qaida and Taliban are important for consideration by the states to combat all acts of violence.

The UN Resolutions regarding Al-Qaida and Taliban

Under paragraph 6 of Resolution 1267 (1999), the committee of the SC has been established. The purpose of the establishment of the committee was to oversee the implementation of norms by states that the SC imposed. It extends to individuals, organisations, the Al-Qaida and Taliban, or other organisations and to maintain a list of individuals and other organisations involved in terrorism. The UNSC obliged all States "to freeze the assets, prevent the entry into or the transit through their territories, and prevent the direct or

indirect supply, sale and transfer of arms and military equipment with regard to the individuals/entities included on the list" by various resolutions, such as Resolutions 1267 (1999), 1333 (2000), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005) and 1735 (2006) (UNSC Resolution, 2006). These all Resolutions were specific to Al-Qaida and the Taliban. Resolution 1617 (2005) emphasised that implementing these resolutions is essential to secure the people's rights and international peace. Another important legislation is as follows:

The Universal Conventions against Terrorism and other Conventions

The UN has ratified the CAT and obliged states to progressively implement its provisions. This convention is unique in nature as it explains terrorism and other related concepts. It briefly examines the terrorism and focuses on combatting and eliminating terrorism. Other Conventions include: (i) "the Convention on the Marking of Plastic Explosives for the Purpose of Detection" (1991), (ii) "the Convention on Offences and Certain Other Acts Committed on Board Aircraft" (1963), (iii) "the International Convention for the Suppression of Terrorist Bombings", (1997), (iv) "the International Convention for the Suppression of Acts of Nuclear Terrorism", (2005) and (v) "Convention on the Physical Protection of Nuclear Material", (2005) (CPPNM). Thus all conventions oblige states to respect and protect human rights and emphasis the domestication of these legal provisions in order to remove the effects of terrorism. Having an analysis of international instruments, it is necessary to examine the legislation of Pakistan in this respect in order to understand the phenomenon of terrorism. The next section describes the obligations of states.

International Legal Obligations of States

The acts of violence disturb not only "international peace and security" but also human development. The human rights of the people are being violated if there is a security threat or act of violence or terrorism takes place. Under international law, member states are required to ensure the protection of human rights. State parties to the Conventions are required to take immediate and necessary steps for the eradication of terrorism. States have an obligation to take counter-terrorism measures and steps to safeguard the rights of citizens. In this respect, the UNSC Resolution 1624 (2005) stresses that "States must ensure that any measures they take to implement the resolution comply with all their obligations under international law".

The UN's Resolutions and other relevant international documents pose obligations on states to follow provisions of the conventions and ensure their effective implementation. In this respect, States are encouraged to develop and implement counter-terrorism strategies in order to avoid and eliminate terrorism from its roots. In this respect, Resolution 2129 of 2013 "encourages CTED to further develop its activities in the areas of human rights and the rule of law, to ensure that all issues relevant to the implementation of resolutions 1373 (2001) and 1624 (2005) are addressed consistently and even-handedly, including, as appropriate, on country visits that are organised with the consent of the visited Member State and in the delivery of technical assistance".

The UNSC Resolution 1456 of 2003 requires states to consider the elimination of terrorism and to take counter-terrorism measures. The UNSC Resolution 2178 of 2014 emphasises on implementation of norms of International law by states. The most important UNSC resolution 1373 (2001), which established "the Counter Terrorism Committee (CTC)", makes one reference to human rights, calling upon States to take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts."

The preamble of the Resolution also reaffirms the "need to combat by all means, in accordance with the Charter of the United Nations" and "threats to international peace and security caused by terrorist acts". Thus in all respects, states are required to maintain respect for the norms of international law. (ILC Articles on State Responsibility, 2001). States are also required to "confirm the validity of fundamental international norms in relation to terrorism" ([Scobbie, 2009](#)). The next section analyses the laws relevant to terrorism that are applicable in Pakistan.

Analysis of Anti-Terrorism Laws in Pakistan: An Overview

Legislation in relation to Terrorism

Pakistan has witnessed shocks of terrorism, especially after the incident of 9/11. However, Pakistan has ratified international Conventions and instruments from time to time. Keeping in view the States obligations, important legislation by Pakistan is the Anti-Terrorism Act of (1997): "an Act to provide for the prevention of

terrorism, sectarian violence and for speedy trial of heinous offences" ([The Anti-Terrorism Act, 1997](#)).

It covers various areas, such as prevention of terrorism, criminalising terror in the people, threatening people by using force or explosive substances, using an inflammable substance, destruction of property, damage to property, and involvement in unlawful and illegal activities. 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" (1858).

Other legislation on the subject includes: "The Suppression of Terrorist Activities (Special Courts) Act of 1975, Anti-Terrorism Act (ATA) of 1997 and successive amendments to the act and the Pakistan Armed Forces (Acting in Aid of Civil power) Ordinance (PAFO) November 20, (1998) (revoked) are few of the important legislations that were made and used to fight terrorism and militancy within Pakistan" ([Hussain, 2006](#)).

The purpose of enacting anti-terrorism laws is to avoid delays in the administration of justice. Special Courts are also established to tackle such kinds of offences. Although there are challenges in this respect, the Courts have tried to tackle issues concerning terrorism. The ATA of 1997 was amended in 1998 through an ordinance. The accused were given safeguards in this ordinance. Another legislation on the subject is the "Pakistan Armed Forces (Acting in Aid of Civil Power) Ordinance (PAFO)" (1998). As per this ordinance, the pending cases can be transferred to newly established military courts. A new term "civil commotion in the list of crimes was introduced leading up to seven years of rigorous imprisonment" ([Kennedy, 2004](#)).

Another significant legislation in this respect is the promulgation of the Anti-Terrorism (Amendment) Act of (2001). Another legislation is the ([Anti-Terrorism \(Amendment\) Ordinance of \(2004\)](#)). However, it was amended in 2005 through the ([Anti-Terrorism \(Second Amendment\) Act \(2005\)](#)). By virtue of such enactment, the penalties were extended for those who are involved in terrorist activities. This amendment revised overall penalties. The years of punishment and imprisonment for the persons involved are being extended, such as from "5 years to 10 years (Section 7-B); from 14 years to life imprisonment (Section 7-C), from 7 years to 10 years (Section 7-D), and imprisonment not exceeding 14 years to a prison term not exceeding life imprisonment (Section 7-F)". Pakistan struggled best to domesticate international

legal provisions in relation to terrorism. In this respect, another important enactment is The Protection of Pakistan Ordinance (2013). Thus it appears that Pakistan has legislated and tried to avoid terrorism in all respects, but there are certain challenges that need special attention in order to combat all forms of violence. However, these laws also have gaps and loopholes which may be corrected.

Loopholes and Lacunas in existing Legal framework

The previous studies revealed that legislation on anti-terrorism has been revisited by the Pakistani government continuously. The purpose was to counter the danger of terrorism. In particular, after the incident of 9/11, special measures have been taken up for eliminating terrorism. However, the implementation of these laws has remained challenging. Also, the complete elimination of terrorism is questionable. There are various drawbacks, including deficiencies in the legal system, security and safety measures, institutional flaws and violations.

Constitutional and Legal Drawbacks

The legal and constitutional loopholes are as follows:

The foremost flaw is the non-availability of a unanimous definition of terrorism. Although many scholars have tried to explain it, the UN has taken the time to provide a well-defined definition of the term 'terrorism'. A broad definition is missing. The "continuous amendments in the ATA have expanded the array of criminal activities, such as kidnapping for ransom, gang rape, arms trafficking, attack on government buildings, hospitals, schools, and media persons". The process of prosecution of terrorists is very slow. It is also because of pending cases. There is a dire need to resolve pending cases before the Court in an effective manner. Not only enactment is necessary, but its implementation is significant for consideration by the concerned authorities.

Ahmer Bilal Soofi holds that: "the generalised language of the definition of terrorism in the ATA has allowed openings to an ordinary station house officer or investigating officer to indict criminals committing ordinary offences under the ATA" ([Soofi, 2013](#)). Also the application of anti-terrorism measures in tribal areas is quite difficult. It is very difficult to apply provisions of laws to the people residing in tribal areas as "they could be tried under the Frontier Crimes Regulation (FCR)" applicable in Federally Administered Tribal Areas (FATA). In the case where special law

prevails, there is a need to extend the jurisdiction of courts to tackle complicated cases. The pendency of cases in the Courts also needs concentration, and special measures may be taken in this respect.

Safety and Security Issues

The legislation is silent on the safety and security of judges, witnesses and prosecutors. It is very difficult to appear in the Court when there is a threat to peace. Because of lack of evidence, terrorist trials have been delayed.

For example, in November, until the case shifted from Karachi High Court to Shikarpur, six eyewitnesses and prosecutors, namely Naimat Randhawa, were killed during the proceedings of the Court. Under the ATC, four persons were convicted and sentenced to life imprisonment in March 2014 ([The News International, 2014](#)). Human

Rights violations

Protecting the human rights of the people in the State is a big challenge. However, special measures can be taken in order to address it. The right of the accused is violated on no basis. It is well established that "everyone is innocent until proven guilty". The violations of basic rights during proceedings are strictly prohibited. Under the amendment of 2009, the suspect or accused is required to prove his/her innocence in the Court. If the suspect or accused is unable to prove his/her innocence, the provisions of ATA will come into action. If innocence would not be proved, then he/she would be guilty. As per human rights groups, the extra-judicial confession also allows investigators to torture suspects. In this respect, "the provision related to putting time limits on completing the trial within seven days compel the investigating officials to falsify evidence and use coercive methods with suspects" ([Yusuf, 2010](#)).

Due to delays in justice and proceedings, special courts were established in Pakistan under the ATA of 1997. The purpose of courts is to administer justice and protect the basic rights of the people. However, pending cases of the people in Courts have opened a way for the establishment of new courts. Political victimisation is also a hurdle. For example, Akhter Mengal was arrested and detained in 2006, and he was released in 2008 by the new government ([The Dawn, 2008](#)). In this regard, according to I.A. Rehman, "the power given to the Police officer of a BS-15 rank is not of the officer's grade, but whether they can shoot people without a second opinion" ([Imtiaz, 2014](#)).

Thus basic human rights violations have been committed. There is a need to implement laws in letter and spirit so that the protection of the rights of citizens is ensured. Pakistan is under an obligation to take special measures and steps for protection. The provisions of the Pakistan Protection Act can also be violated, but if special measures are taken to address the violations, then the country will prosper. The challenges regarding the implementation of laws must be addressed properly to avoid terrorism, and counterterrorism measures may be reformed. Thus these loopholes need to be filled by effective legislation and ensure implementation in practical terms.

Conclusions

From the preceding discussions, it is concluded that the law on terrorism is found in International Conventions, the UN Resolutions and other international instruments. States are under an obligation to "prevent and combat all forms of terrorism". However, implementation of the provisions of international law is a big challenge for member states. The most important Resolution is 1373 (2001), which aerates international legal obligations on states and the Convention relevant to terrorism. The Conventions and other instruments, including the Rome statute and laws relevant to International Criminal law (ICL), are significant for consideration which creates obligations. The provisions of other law bodies also pose obligations and responsibilities to States to prevent acts of violence.

Within the international legal framework, the other important treaties include Resolution 1540", "the Convention on the Physical Protection of Nuclear Material (CPPNM) (1987)", "the International Convention for the Suppression of Terrorist Bombings (2001)" and "The International Convention for the Suppression of Acts of Nuclear Terrorism, an amendment to the CPPNM and two Protocols amending the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, once these instruments, all of which were adopted in 2005". These legal instruments also oblige states to respect the human rights of the people and combat terrorism at all levels.

While Pakistan has legislated various laws on terrorism, the anti-terrorism policy is criticised, but special measures have been taken up for people's protection. The legislation calls for the protection of the rights of the people and prevents all forms of

terrorism. Through legislation, all acts of violence and unlawful acts are prohibited. Having sound legislation on terrorism in Pakistan, there are certain challenges, such as security issues, delay in the process of trial, human rights violations, extra-judicial killings, misuse of the authority, less speedy proceedings and trials and most important, is the implementation of laws in its letter and spirit.

It is the need of the hour to focus on making sound arrangements and taking special measures to address these challenges. The system of accountability needs improvement as far as dealing with matters pertaining to violations is concerned. Special and progressive measures may be taken in order to domesticate the provisions of international law. Many international legal instruments oblige Pakistan to protect the rights of the people and exterminate all forms of terrorism. There should be a time frame for resolving a case

concerning terrorism as delay is there during trial. The concerned authorities are also directed to implement provisions of law. Any kind of torture without any evidence is prohibited.

Similarly, any arbitrary arrest or detention without following due process of law is prohibited. The Government of Pakistan is obliged to take counter-terrorism measures to eradicate the evil of terrorism. Indeed, all challenges regarding implementation must be addressed properly on a regular basis so that the evil of terrorism may be exterminated throughout the country and the basic rights of the people are protected. The implementation and application of laws are still a big challenge. However, states have international legal obligations for citizen's rights protection and to avoid terrorism in all circumstances. States are required to establish peace through legislation and implementation in letter and spirit.

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