

Counter-Terrorism Measures and Human Rights Protection: The Case of Pakistan



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Abstract *This article focuses on counter-terrorism measures and human rights protection in Pakistan. Terrorism is a complex phenomenon having shocking effects and impacts on states and societies. Terrorists have no boundaries and violate the basic human rights of people. In this context, the people of Pakistan have faced shocking effects of terrorism after the attacks of September 11. The infrastructure of Pakistan is also damaged. While Pakistan has international legal obligations, this paper explores to what extent counter-terrorism measures are to be taken by Pakistan in order to combat terrorism. It explains the nature of the relationship between human rights and terrorism in order to investigate anti-terrorism initiatives taken by Pakistan and to assess human rights protections. It argues that domestication of the norms of international law with regard to terrorism is the need of the hour, and special measures are required to be taken to remove the effects of the evil of terrorism. In all respects, the security of the people of Pakistan is an important concern. Pakistan is active in combating terrorism. However, there are still certain challenges to eliminating terrorism. The paper concludes that Pakistan is under international legal obligations to respect, protect and fulfill the human rights of people without discrimination at every level.*

Key Words: Human Rights, Counter-terrorism Measures, Pakistan's Commitments, Terrorism, International Law

Introduction

Terrorism is a complex phenomenon having shocking effects and impacts on states and people at large. All States are unanimously willful to fight against terrorism and acts of violence. International law on terrorism is developed in order to combat it worldwide. States also have obligations to domesticate provisions of international law in order to avoid brutal and shocking attacks by terrorists. There is no uniform definition of terrorism. However, it includes all acts which are harmful or dangerous to states, the public at large, and individuals. In other words, all acts of violence or cruelty are considered acts of terrorism.

Pakistan became an ally to the US after the attacks on September 11 to combat terrorism. In this respect, this paper aims to examine anti-terrorism legislation, counter-terrorism measures, and the protection of human rights in the context of Pakistan. For that purpose, this paper is divided into V Sections. Section I analyses the phenomenon of terrorism and human rights in order to create the context for further discussion. Section II analyses the anti-terrorism initiatives

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of Pakistan with linkage to human rights protection. Section III elaborates counter-terrorism measures in Pakistan. Section IV discusses the domestication of the norms of international law in Pakistan. It argues about the harmony of domestic laws with international laws and the promotion and protection of human rights. Finally, conclusions will be drawn up.

International Law, Human Rights, and Terrorism

Terrorism is a complex phenomenon and there is no uniform definition of terrorism. However, it includes all acts which are against humanity or which create violence. Terrorism is a crime against humanity. Human rights are those rights that are available to everyone on the basis of humanity. The prohibition is not specific to one state. Rather, it extends all around the world. The provisions of International Humanitarian Law (IHL) also prohibit acts of violence against humanity. However, the provisions of IHRL and IHL converge and overlap in certain situations. The practices and responses of states agencies to combat terrorism have implications for the protection of the human rights of the people ([Pokempner, 2002](#)). The responses, in particular after the attacks of September 11, have called upon the convergence of regimes and various norms. The norms of different bodies of law, such as, IHL and IHRL, converge and diffuse ([Lietzau, 2002](#)).

Traditionally the provisions of IHRL are applicable to states in general. However, the scope of provisions of IHRL also extends to individuals as well. Individuals are the beneficiaries and subject to remedies of IHRL in case of violation of their rights. The main source of IHRL is the International Bill of human rights which comprises of (a) Universal Declaration of Human rights (UDHR), 1948; (b) International Covenant on Civil and political rights (ICCPR), 1966 and the International Covenant of economic, social and cultural rights (ICESCR), 1966. The former declaration is general and includes human rights, whereas the latter covenants are specific to the protection of individual rights. The other sources include international conventions/treaties, declarations, regional human rights agreements, customary international law (CIL), Resolutions, and peremptory norms. Examples include Art 3 of UDHR, 1948 and art 3 of ICCPR, 1966.

It is important to note that states are under obligation to domesticate provisions of the IHRL. The treaties impose direct and indirect obligations on states. Under certain treaties, limitations are also imposed on states. In other words, derogation as an exception to certain rights is permissible. For example, article 21 of the ICCPR provides that: "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others." Thus derogation is possibly an exception subject to fulfillment of grounds enumerated in provisions ([Pokempner, 2002](#)).

In this regard, the United Nations Human Rights Committee (UNHRC) has noted that the list of non-derogable rights is not exhaustive in its scope. On article 14 of ICCPR, the Committee has noted that: "Fundamental requirements of fair trial are respected during a state of emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceeding before a court to enable the court to decide without delay on the lawfulness of detention must not be diminished by a State party's decision to derogate from Covenant" ([Nowak, 2005](#)). Derogations are permissible on genuine grounds and as an exceptional case. The regional human rights agreements are also a useful source of IHRL. The next sub-section is devoted in order to examine the relationship of human rights and terrorism.

The Relationship of Human Rights and Terrorism

It is well established that states are under obligations to ensure the protection of human rights at all levels and guarantee remedies in the case of violation of human rights. Traditionally, states are the sole subject of international law. On the other hand, terrorism is a quite complex phenomenon that is understood as an illegal and unlawful act of violence against civilians or

innocents. There is no doubt that the very act of terrorism amounts to a crime. The debate over the application of the provisions of IHRL clarifies that not only states are subjects, but also individuals of states are also subject. It is the sole responsibility of the states to punish one who commits violence or acts of terrorism because, by virtue of that act, the human right of the people or individuals is violated (General Comment UNHRC, 2001). The acts of terrorism have damaging, devastating and shocking effects on the human rights of the people at large. Terrorism has economic and social ramifications and repercussions on states concerned. By virtue of acts of terrorism, there are chances of violation of economic, social and cultural rights that are protected under IHRL.

Similarly, civil and political rights are also violated in the case of terrorism. For example, people's freedom of speech and association suffer in an environment of crisis and emergency situations ([Pokempner, 2002](#)). The relationship between human rights and terrorism is specific, such as, by virtue of acts of terrorism, the basic rights of the people are violated, which is impermissible under international law. The whole fabric of society disturbs by virtue of acts of terrorism, and it affects the social and cultural norms of the people (Report Human rights Watch (HRW), 2002). However, there is a need to bridge a gap between theoretical and practical perspectives of implementation of the norms of international law by domestication in order to combat acts of terrorism. States are also required to take precautionary measures and effective steps to eliminate terrorism.

Impact of Terrorism on Human Rights

The acts of terrorists violate the basic human rights of the people concerned. These acts also have impact on societies, public at large and other states too. Damaging human right is central to the act of terrorist. In order to combat terrorism, states have established their own respective authorities having certain immunity. For instance, the authority of the state may inspect without a warrant during counter terrorism operation. The action of the counter-terrorism authority may extend to cause harm to the property and health of the terrorist. For instance, after September 11, the United States Department of Justice (USDJ) has allowed to detain persons who are certified as terrorists by the Attorney General. However, Congress has denied accepting such unlimited powers of the Attorney General. The final consensus was made on the point that USDJ has the power to keep suspected terrorists in custody for seven days by the legislation of Patriot Act of 29 October, 2001 (Report HRW, 2002).

The counter-terrorism measures vary from state to state. The response of states to combat terrorism is quite different due to the organization and intensity of the crime. However, in all respects, it is agreed upon that necessary steps should be taken by states in the case of gross human rights violations committed by terrorists. The acts of terrorism not only affect individuals but it affects and damage the public at large. In general, states are under obligation to ensure the protection of human rights at all levels and punish persons who are involved in terrorism-related activities. The next section is devoted to assess the protection of human rights in Pakistan.

Anti-terrorism Initiatives in Pakistan: An Overview

The debate over the protection of human rights gained significance, especially after the incident of September 11. The UN General Secretary, Kofi Annan considered the incident as a "seismic shift in international relations" ([Sattar, 2007](#)). The participation and role of Pakistan is notable in the Global War on Terror (GWOT), which has influenced the human rights of the people. The strategic location of Pakistan stressed to involve against terrorists. In this regard, Pakistan has participated as an ally to the United States (US) in order to combat terrorism near border areas of Afghanistan. Pakistan became a frontline state in GWOT because of the international coalition and geographic location. Pakistan has enacted laws in order to combat internal and external terrorism or acts of violence. By virtue of these enactments, certain militant groups are banned. Pakistan has endeavored to establish new anti-terrorism courts as a special measure. In particular, Pakistan has established nine new anti-terrorism courts in Khyber Pakhtunkhwa (KP) province and four in Sindh

province after 9/11. In other regions, the number of anti-terrorism courts was also expanded as a serious concern ([The Dawn, 2001](#)).

Pakistan promulgated Anti-terrorism (Amendment) Ordinance in January, 2002. Under this law, efforts were made to increase the number of courts and decide cases in a speedy way. The purpose was to punish those people who act, abet or are involved in acts of violence or terrorism activities. The members of the armed forces were also involved in courts in order to speed up the lengthy process and pending cases ([BBC News, 2002](#)). However, the involvement of the military in judicial set up was criticized by few communities. For strengthening the rule of law and legal regime, Pakistan has promulgated the Anti-terrorism (Amendment) Ordinance on 16 November, 2002. Under this enactment, the power of the Police was enhanced to counter acts of terrorism. The suspects of terrorism were also targeted under this enactment to eliminate the roots of terrorism. Pakistan has banned those organizations that were involved in acts of terrorism by the end of 2002. Pakistan was blamed by India for attacks of 13 December 2001 in Dehli.

However, the government of Pakistan has taken serious steps to combat terrorism at its length. Pakistan has responded to India and assured the international community to combat terrorism by stating that: "no one would be allowed to carry out any territorial or subversive activities in or outside the country. No party in [the] future will be allowed to be identified with words like Jaish, Lashkar, or Sipah.... Foreign students and teachers would have to be registered with the concerned government agencies.... We should stop interfering in the affairs of others and stop using violence as a means to thrust our point of view on others" (Speech Pervez Musharaff, 2002).

By virtue of enactment of new legislation, the government of Pakistan assured that: "(i) it has taken actions against banned organizations; (ii) their offices, if any would be sealed; (iii) their assets and accounts would be frozen; (iv) all literature and electronic media material would be seized; and (v) the publication, printing or dissemination of press statements, press conferences, or public utterances by or on behalf of, or in support of, a proscribed organizations would be prohibited" ([Rana, 2005](#)). Another important enactment is promulgation of the Political Parties Order of 28 June, 2002. Under section 3 of the order, "any political party is prohibited from (i) promoting sectarian, regional or provincial hatred or animosity; (ii) bearing a name as a militant group; and (iii) imparting any military or paramilitary training to its members or other persons".

The order has also required political parties to maintain official manifesto under section 4. The most important provision is section 15 of the said order, which provides for "dissolution of any political party that is foreign-aided or is found indulging in terrorism." The Anti-Terrorism Act of 1997 (ATA) was again amended in November, 2004. The aim was "to strike at the support network of the terrorism and deter those who are providing financial, logistical and infrastructure support to the terrorists and remove loopholes in the ATA" ([Gardezi, 2004](#)). In order to strengthen the process at its length, another amendment to ATA was made on 10 January, 2005. This amendment enhanced the scope of ATA, 1997 by expanding the length of punishments for terrorists. It also provides for the establishment of special Benches to speed up the process. This amendment also allowed for the transfer of cases from one province to another. The jurisdiction of Anti-terrorism courts was also expanded (ATA Second Amendment, 2005).

Protection of Human Rights

It is important to note that Pakistan is under an obligation to provide reports to UNSC's counter-terrorism Committee (CTC) in relation to the implementation of treaties, resolutions, and human rights protection. In particular, UN Resolution no: 1373 of 2001 and UN Resolution no: 1642 of 2005 are to be implemented by Pakistan. The domestication of international norms is necessary with regard to human rights protection and anti-terrorism measures. It is monitored by the UN. For domestication of resolutions, Pakistan has enacted the Anti-money laundering Bill, 2005.

Pakistan submitted a report to CTC in 2005 by stating that: "the law aims to make the financing of terrorism a predicate offense for money laundering; extend the banking and financial laws and alternative money transfer systems; and, regulate charitable, religious, and other non-

governmental organizations". The terrorist financing Investigations Unit at Federal Investigating Agency (FIA) level was also established in Pakistan in line with assistance from UK and US (Pervez, 2007). The entry and exit area of Pakistan is also now monitored through a Personal Identification Secure Comparison and Evaluation System (PISCES). The purpose of all these initiatives is to combat acts of terrorism and ensure the protection of human rights at all levels.

Pakistan has also submitted reports for human rights protection. In particular, reports are submitted in 2015 to realize provisions of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR). The national commission on Human rights was also established to ensure the protection of human rights at the national level. However, certain reports are overdue as well and challenges are there to combat terrorism and ensure human rights protection at its length which is "central for Pakistan to acquire international recognition because level playing on political and economic grounds at international forums is going to be very much associated together with trade and human rights." There is further need for improvement in respect of domestication of international legal norms and human rights protection. The next section is specific to address counter-terrorism measures.

Counter-Terrorism Measures

Pakistan has a definite policy against terrorism. In this respect, Pakistan became an ally of the USA soon after the attacks of September, 11. Pakistan joined the international coalition in order to combat terrorism. The focus of the US army was in Afghanistan. Pakistan stood up with the US in order to fight against the Taliban regime. It is important to note that Pakistan has provided logistics as well as other facilities to the US for the elimination of the Taliban regime in Afghanistan. Especially, facilities are provided in military operations. Meanwhile, within the country, Pakistan has initiated various operations to combat terrorism. The legislation of the Pakistani parliament focused on the adoption of counter-terrorism measures ([Khan, 2013](#)). Also Pakistan has banned various terrorist organizations within the country. The regime of General Musharraf worked as an ally to the US army for removing acts of violence and terrorism. The operations of the military are also significant in this respect ([Babar, 2014](#)). Given the crisis in Afghanistan, brutal attacks were done within the country. Most of the attacks were suicide and thousands of people were victims.

The policies of the Government for combating terrorism are significant. Under General Musharraf's regime, the policy of 'enlightened moderation' was also adopted which was very much criticized by the religious community. However, Pakistan has started an anti-terrorism campaign to remove the evil of terrorism at its length. Along with the general public, the target of the terrorists were military and law enforcement agencies by which Pakistan suffered a lot ([Mehdi, 2012](#)). At that time, sound and effective measures were necessary to combat terrorism at its length.

Internal and External Militancy

The policy of Pakistan towards the end of terrorism was based on the fact that 'terrorism is a threat to peace and security. Pakistan as an ally of the US, determined to curb the terrorists. In this respect, an important measure taken by the Government was internal as well as the external war against terrorism. Pakistan has fought against militancy in tribal areas as well as in the regions where there was doubt of the presence of terrorist organizations ([Rafique, 2011](#)).

Militancy is a serious threat to stability and peace within-country; therefore military of Pakistan has initiated special operations against terrorist organizations. The participation of Pakistan against eliminating terrorism is also seen as 'liberalization' of country because few states considered Pakistan as a hub for terrorism activities. Pakistan has tried its best to eliminate terrorism irrespective of allegations and criticism by international media and observers. The tribal area of Pakistan was also considered as 'sensitive' according to experts. The experts claim that the basis of terrorists and militancy is tribal regions. However, the tribal regions of Pakistan have a special status and it is a big challenge for Pakistan to eliminate terrorism in those areas because

of its geographical location. The region is full of mountains and it is very difficult to target terrorists in those areas. However the operations of the military remain successful.

In particular, operation 'Zarb-e-Azab' was designed to combat and eliminate terrorism, and it was a successful operation. The military of Pakistan has carried this operation as a counter-terrorism measure ([Akhtar, 2010](#)). Pakistan was also blamed for providing asylum to members of Al-Qaeda and other organizations. Even, it was considered that the terrorist organizations in other world have links with Pakistan. In practical terms, such accusations remained unproved. The affiliation of terrorist residing in other countries was linked with Pakistan in order to create a bad image for Pakistan ([Padukone, 2011](#)). As a result of operations, Pakistan gained control over certain parts of tribal regions. However, the location of that area is specific because it is situated between Pakistan and Afghanistan. Numerous efforts were made to eliminate the evil of terrorism within and outside the country ([Khan, 2008](#)).

The overall control within tribal areas was a difficult task. However, the government has designed specific measures to root out militancy in that region. For example, funding, as well as necessary steps, were taken in this respect. Controlling militancy and alike activities was difficult. The specific operation of military paved the way for Pakistan to control that area partially. The activities of terrorists were restricted to certain specific areas because of military operations. The special measures of operation against terrorists remain successful in general. The costs for such operations were financed by the Government. Pakistan has suffered a lot, especially after joining the US as an ally against GWOT. According to one report, almost 3,000 military personnel were killed during these operations. The civilians and people of Pakistan have faced injuries, killings and sufferings in higher terms. The members of law enforcement agencies were also brutally killed by terrorists ([Khan, 2011](#)).

Along with these injuries and killings, numerous casualties within-country took place. The situation of human rights within-country was dreadful, and gross human rights violations were committed by terrorists. In the region of tribal areas, home demolitions, killings and casualties took place because of drone attacks (Report International Crisis group, 2011.) Despite these efforts and counter-terrorism measures taken Pakistan, still there are certain challenges to eliminate the roots of terrorism. Although operations were successful and an effort has been made properly but still roots and basis of terrorist organizations is yet to be damaged. The tribal areas of Pakistan remain susceptible to recruit and train people for performing terrorist activities ([Racine, 2002](#)).

Terrorist activities were also performed in other regions of Pakistan, such as Punjab and Sindh which is a challenge. Militancy in tribal areas is an alarming indication that terrorism-related activities are carried out, which is a threat to peace and security. Controlling militancy and eliminating roots of terrorism is a big challenge for Pakistan (Report US Department of State, 2010). In this regard, domestication of international norms and implementation is need of the hour.

Domestication of International Norms

The militancy and activities of terrorism within-country requires special efforts. It is common to all states that terrorists have no religion and boundaries. Indeed, it is a threat to global peace and security because it has serious repercussions for societies worldwide.

The need of the hour is domestication or harmonization of domestic laws with international law. Also, special measures are required to eliminate the roots of terrorism.

In Pakistan, the activities of terrorists is not limited to military or Police rather it extends to general public, civil society and individuals. The holy and religious places are also targeted by terrorists. There is need to strengthen the fabric of society to fight against terrorism. It is responsibility of every citizen to combat terrorism. The legislation of Pakistan contains various provisions of international law. However, implementation of these norms is still a big challenge. It is also responsibility of government and media to start campaign of awareness for removing evils of terrorism at its length. Without participation of individuals, civil society and general public, it is much difficult to control acts of terrorism at its length.

The provisions of IHRL clearly provides that: "States will respect human rights; will not engage in discrimination on the basis of race, ethnicity, creed, religion, or any other grounds; will not tolerate sexual harassment; will foster a proper understanding and awareness of the issue of human rights; will respect the cultures, customs, and language of other countries and regions; and will promote and maintain harmony with the international and local communities in which it operates". Pakistan has signed various international agreements and has obligations. For example, respect for human rights is a core obligation on Pakistan by virtue of party to human rights instruments. The obligation to protect and fulfill is much more important for domestication of international norms. Along with these direct obligations, certain indirect obligations are also incumbent on Pakistan to promote human rights and eliminate acts of violence. Examples include: implementation of general principles such as non-discrimination, fair treatment and equality etc. The other obligations include: protection of civil life and well-being, protection of property, privacy, and freedom of expression, opinion so on and so forth.

Thus Pakistan has direct and indirect obligations to domesticate provisions of international law and ensure their implementation in order to protect human rights and eliminate roots of terrorism.

Conclusion

From the preceding discussion, it is concluded that terrorism is a complex phenomenon having shocking effects on individuals, civil society and the public at large. Under international law, all acts of violence and terrorism are prohibited. States are under legal obligations to eliminate terrorism. Aftermath of the incident of September 11, Pakistan has witnessed brutal acts of terrorism. It became an ally to us on GWOT to eliminate terrorism. Keeping in view international legislation on terrorism, Pakistan has legislated laws on terrorism within the country. The anti-terrorism laws are unique for eliminating terrorism at its length. Pakistan has also obligation to respect and protect the human rights of people. The situation of human rights within-country seeks attention for protection. Pakistan has challenges in order to respect, protect and fulfill the human rights of people at all levels. The counter-terrorism measures and initiatives taken by Pakistan remain useful for eliminating terrorism in various regions. However, still it is a big challenge to eliminate the roots of terrorism at its length. The domestication of international norms and effective implementation is need of the hour to combat terrorism and protection of human rights of people.

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