

# FRIVOLOUS LITIGATION IN TERRORISM COURTS

By

**M.Zaidi<sup>1</sup>**

Litigation which is tangential to hard core terrorism accounts for a huge proportion of cases tried in the Anti Terrorist Courts (ATCs) in Pakistan, and thus takes up a correspondingly large proportion of the time and resources that the ATCs spend in trying cases. This detracts them from devoting time and energy to the real hardcore terrorist cases, many of which get neglected due to the backlog of cases in ATCs. It is an established fact that police will incriminate accused under Anti Terrorist Act 1997(ATA) that they want to get long prison sentences for, or deny bail, and many litigants will misuse the stricter sentences given in ATCs to bring false cases against their rivals. Kidnapping for ransom is one such crime; strictly speaking, mere kidnapping for ransom is not a hardcore terrorist offence, only the ones in which terrorist organizations are involved for generating finances or otherwise. However, it needs to be put in context that many, if not most of these kidnapping cases are not by terrorist organizations, but is carried out by a wide variety of criminals in Pakistan, organized or otherwise. Therefore, it would be wrong to presume that all these cases are at the behest of terrorist organizations.

---

<sup>1</sup> Writer holds a PH.D from the University of St Andrew's, UK, on the Transmigration of Radical tendencies from the rural to the urban mainstream, with context to the Taliban in Pakistan. Currently a Counter Terrorism Project advisor to the British High Commission in Pakistan, Manzar has an LLM (Masters of Law) degree in Human Rights and Public International Law, and an LLB (Bachelors of Law), both from the University of London. His Ph.D Doctoral thesis from University of St Andrew's is on the Transmigration of Radical tendencies from the rural to the urban mainstream, with context to the Taliban in Pakistan.

One thing is for sure, kidnapping for ransom accounts for a huge majority of the caseload on ATC. It has been reported that the section for kidnapping for ransom, section 365(A), has been misused by the people to settle their financial and other disputes. These cases land in the ATCs, since, by default, they are only to be tried by the ATCs. This increases the unnecessary workload in the ATCs.

Then, there is the problem that the ATA casts a very wide net. Since section 6 of ATA gives a very broad definition of terrorism, many criminal actions fall under the ambit of terrorism. Brutal murders are terrorism, so is aerial firing which creates terror in the public, as well as damaging an electrical transformer; all are considered as creating terror in public, and fall under purview of the ATA. This wide ranging definition creates a host of offences which can be tried by ATA, and sole criteria needed are that it should 'create terror in the public'. To add to this problem, the interpretation of what terror in the public entails is being done by unqualified, poorly trained police officers of lower rank, who are also susceptible to external pressures and corruption. Thus, section 6 can become a tool in the hand of incompetent, unequipped police officers to register cases under the ATA, which just adds to the huge caseload seen in poorly equipped ATCs.

Then, there is the category of cases in which the accused may not have any links with militant organisations, but commit such heinous acts in public places that 'inducing fear' in general public cannot be denied, and section 6 of ATA becomes applicable by default . For instance, in the infamous 'Tipu truckan Wala ' case, a paid assassin was hired to shoot down an opponent of accused in, of all the places, the Lahore international airport. This is the sort of crime which highlights why it is so difficult to extricate such 'non terrorist ' crimes from ATA. The judge mentioned in his ruling that "Needles to mention that it (the airport) is an

important place (where killing was carried out) where not only a large number of ordinary people but also VVIPs including international celebrities do land and board on aircraft to accomplish their respective jobs....at the time of concurrence the people present there must have felt sense of insecurity and panic...it brought a bad name for the country also". Thus the judge reviewed this case under ambit of 6 ATA. This is just one of the many such cases of blatant violence that occur throughout Pakistan, and it is hard not to perceive them under the ambit of the legally elicited definition of terrorism in ATA. Thus, the definition of terrorism itself is a big problem as regard to the cases under the ambit of hardcore terrorism, since unless the definition of terrorism is refined more to include the real terrorist cases only, cases of criminal violence will continue to be included in the purview of terrorism.

In another illustrative case, the accused fired upon a police picket near the shrine of the venerated saint Data Sahib, which is visited by millions of devotees every year, and is thronged by them at all hours, day or night. Such blatant acts of violence which can result in deaths of police or innocent bystanders at a given point represent the inherent dilemma; if such cases are tried by ordinary session's courts, it is easier to get bail there. Also, such accused will not face the deterrent of being tried under the ATA which gives severer punishments, and makes bail in such cases almost impossible. On the other hand, since many such acts of blatant violence occur through Pakistan, and if these are always included within ambit of ATA, this exponentially increases caseload on the ATCs, and results in poor case management both by the police and prosecution, leading to acquittals. This is the Gordian knot which has always faced legislators in Pakistan vying to make changes to the ATA 1997.

Kidnapping for ransom in Pakistan is well entrenched as a terrorist act by default. This is notwithstanding the fact that in many case the abductee is

quietly taken away and put covertly in a place, and the relatives do not cause wide spread panic due to the fear that the abductee will be harmed by abductors if they make too much noise, or inform the police prematurely. In many cases FIRs are lodged late, sometimes after some delay, a fact which even the judges are prone to forgive, since they are sensitized to the anxiety of the relatives of abductee. However, legally speaking, it is difficult to understand how such quietly handled cases, no matter how heinous, cause terror to spread amongst the public at large, though of course this is a legal viewpoint only. On the other side, kidnapping for ransom by itself is a heinous crime, and it terrorizes the public by its very perpetration, no matter how quietly the crime is carried out. Thus, in such cases, judges are very comfortable applying the definition of terrorism.

Then there are those cases in which the definition of terrorism is applied to public protests. For instance , in an instance of murder whence the relatives of deceased demonstrated their anger by aerial firing and pelting stones at the police , a case under ATA was registered against them, since they had 'terrorized the public' by aerial firing. This case could easily have been tried by the ordinary session courts, but sections of ATA were added to the case since any attack on police is considered intolerable. These frivolous cases are thus the biggest structural problem in the ATA, since 90% of cases of such nature which are not really hard core terrorist cases will take up 90% of the time spent by the ATCs. There has to be rationalization now of the definition of terrorism as well as better case management by Anti terrorist courts in Pakistan in order to relieve intractable stresses on the criminal justice system.