



The Effective Adjudication of Terrorism Cases: From Bangladesh Perspective

Justice Surendra Kumar Sinha
Chief Justice of Bangladesh

Terrorism, in any form, has been one of the constant life threatening concerns affecting more or less every country of the world in the 21st century. These unexpected phenomena are penetrating the stable economic, social, cultural and political aspects of the peace-loving people. It frequently makes headlines, threatening or attacking governments, private business and ordinary citizens. And in many countries of the world, it has been one of the most important threats to peace, security and stability¹.

According to Dr. Myra Williamson, “The meaning of ‘terrorism’ has undergone a transformation. During the reign of terror, a regime or system of terrorism was used as an instrument of governance, wielded by a recently established revolutionary state against the enemies of the people. Now the term ‘terrorism’ is commonly used to describe terrorist acts committed by non-state or subnational entities against a state².”

Sami Zeidan, a Lebanese diplomat and scholar, explained the political reasons underlying the current difficulties to define terrorism as follows:

“There is no general consensus on the definition of terrorism. The difficulty of defining terrorism lies in the risk it entails of taking positions. The political value of the term currently prevails over its legal one. Left to its political meaning, terrorism easily falls prey to change that suits the interests of particular states at particular times. The Taliban and Osama bin Laden were once called freedom fighters (mujahideen) and backed by the CIA when they were resisting the Soviet occupation of Afghanistan. Now they are on top of the international terrorist lists. Today, the United Nations views Palestinians as freedom fighters, struggling against the unlawful occupation of their land by Israel, and engaged in a long-established legitimate resistance, yet Israel regards them as terrorists. Israel also brands the Hizbullah of Lebanon as a terrorist group, whereas most of the international community regards it as a legitimate resistance group, fighting Israel’s occupation of Southern Lebanon. In fact, the successful ousting of Israeli forces from most of the South by the Hizbollah in 2000 made Lebanon the only Arab country to actually defeat the Israeli army. The repercussion of the current preponderance of the political over the legal value of terrorism is costly, leaving the war against terrorism selective, incomplete and ineffective³.”

¹Md. Abdul Halim and FarhanaHelalMehtab, *Terrorism and Counter Terrorism-Legal Issues, Challenges and Responses*.

²Williamson, Myra (2009). *Terrorism, war and international law: the legality of the use of force against Afghanistan in 2001*. Ashgate Publishing. P. 43.ISBN 978-0-7546-7403-0. (<http://google.com/books>).

³Sami Zeidan, *Desperately Seeking Definition: The International Community’s Quest for Identifying the Specter of Terrorism*, 36 *Cornell International Law Journal* (2004) pp. 491-492 (<http://google.com/books>) (last visited on 20.05.15).

In the same vein, Jason Burke, a British reporter who writes about radical Islamist activity, said:

There are multiple ways of defining terrorism, and all are subjective. Most define terrorism as “the use or threat of serious violence” to advance some kind of “cause”. Some state clearly the kinds of group (“sub-national”, nonstate”) or cause (political, ideological, religious) to which they refer. Others merely rely on the instinct of most people when confronted with innocent civilians being killed or maimed by men armed with explosives, firearms or other weapons. None is satisfactory, and grave problems with the use of the term persist. Terrorism is after all, a tactic. The term “war on terrorism” is thus effectively nonsensical. As there is no space here to explore this involved and difficult debate, my preference is, on the whole, for the less loaded term “Militancy”. This is not an attempt to condone such actions, merely to analyse them in a clearer way⁴.

In fact, definitions of terrorism have the following characteristics:

- i) a fundamental motive to bring social or political change;
- ii) generate a sense of fear by attacking the civilian targets; and
- iii) use of illegal force, explosives or weapons maneuvering the cheaper sentiments of the people on various feudal and religious issues.

The Government of Bangladesh has demonstrated political will and firm commitment to fighting against domestic and transnational terrorist groups, and its counterterrorism efforts made it harder for transnational terrorists to operate in or establish safe havens in its territory. It is a very complex and challenging task to address the terrorism phenomenon. While condemnation of terrorist activities by the international community has been unanimous and unequivocal, the efforts so far taken to regulate or combat this phenomenon have been marred by differences of approach and poor competency of the affected countries. Terrorism is one of the threats against which the international community, above all, the States must stand together to protect their citizens. It is very difficult to grasp the reasons as to why the people prepare themselves for such crimes and terrorist activities, which certainly go against the entire humanity. So, terrorism is considered as a daunting problem in today's world. Over the past months, the ISIS theater of savagery has featured the burning alive of a Jordanian pilot, the mass slaughter of Egyptian (Christian) workers, as well as the destruction of antiquities, in addition to its established repertoire of beheading, stoning, limb amputation, and crucifixion. The need to put an end to the depravity, that is, ISIS is yet to be met with a concerted, deliberate effort capable of securing the result.

In Bangladesh, the risks and vulnerabilities created by terrorism have become a serious threat to our national life and security. Terrorism has become a threat to the life, economy, political and religious pluralism in Bangladesh. Incidents of religious assassinations, political violence and bombing in public places sometimes stun the entire nation.

On 17 August 2005, around 500 bomb explosions occurred at 300 locations in 63 out of 64 districts in Bangladesh. The bombs exploded within half an hour starting from 11:30 a.m. A terrorist organization named Jama'atulMujahideen Bangladesh (JMB), claimed responsibility for the bombings. The group, led by ShaykhAbdurRahman and SiddiqurRahman (also known as Bangla Bhai), is alleged to be affiliated with Al Qaeda, although this has not been proven. Another terrorist group, named Harkat-ul-Jihad al-Islami, was found associated with JMB in executing the co-ordinated attacks. Following those acts of bombings and gruesome acts, both the groups were banned by the Government of Bangladesh. The main perpetrators of the

⁴Jason Burke. Al Qaeda, ch.2, p.22 (<http://google.com/books>, last visited on 01.05.15).

terrorist attacks and bombings, namely- Bangla Bhai and ShaykhAbdurRahman, were apprehended by the law-enforcing agencies in early March, 2006. On conclusion of the trial, the Court found them guilty and sentenced them on the charge of murder of two young judges and terrorist acts along with four other militants and they were executed by hanging in 2007. In the said case of ShaiakhAbdurRahman v. the State [15 BLT (AD) 326], the apex court of Bangladesh observed that “Islam is a religion of peace. It is derived from the word “Salam” meaning peace. Using the holy name of Islam, the petitioners have engaged in a wild, mad struggle jeopardizing the law and order of the country resulting in killing of innocent people as has been done in the present case of killing the two Judges. Islam does not encourage use of force in the matter of religion.” In a recent judgment, the High Court Division of the Supreme Court upheld the sentence of Huji leaders Mufti Hannan and two others for their unprecedented terrorism committed in 2004 in the holy city of Sylhet. They launched grenade attacks on the then British High Commissioner to Bangladesh Mr. Anwar Chowdhury while he was coming out of HazratShahjalal’s Shrine in Sylhet where he was fortunately saved; but one police officer died on the spot and two police constables succumbed to their injuries in a hospital. Mufti Hannan and some others are facing trial for grenade attack on our incumbent Prime Minister of the country. At any cost, Bangladesh Government is fully committed to stop terrorism and has decided to show zero tolerance to the perpetrators in the interest of the peace and tranquility of our public life.

The world needs to be stopped from going backward. Nobody wants that political protests take the form of destruction of assets and deadly arson attacks on human beings. Due to 10th Parliamentary Election of Bangladesh, a political alliance started blockade programme and consequently 130 innocent people lost their lives. Political violence including petrol bomb attacks on people, torching or vandalizing of vehicles and removal of fishplates from railway tracks has been resorted to as a measure of pressing the Government into realizing political demands. Though killing of the people by terrorist activities cannot be a political procession of deaths in arson attacks and any other violence – the said incidents in the country continues for months together. Those who hurl petrol bombs on people and destroy people’s assets do not have any share in politics and they, in no way, can be treated as political elements.

Despite the meshed and complex roles of religion and secularism in our country, Bangladesh is known to be a moderate and tolerant Muslim majority State– our Government even boasts of being so. Avijit Roy, an author, blogger and humanist who wrote on promoting secular freedom and spoke openly about his religious beliefs, while returning home with his wife from Boimela (book exhibition) was hacked to death by unidentified assailants on February 26, 2015. Religious extremism in Bangladesh is increasingly becoming a challenging problem and is being recognized as a growing threat. This shocking tragedy once again brings to us a grim reminder of the tragedy that befell one of our great thinkers, Prof. Humayun Azad. This tragedy of untold magnitude reminds us in clear terms that we are still living in an era of the worst form bigotry. Avijit wrote a status in his Facebook on October 14, 2014. “I do not have much faith in any religion, but many people around and close to me are Muslims. I have no abhorrence or repugnance for them. I rejoice with them in their moments of happiness. I feel pain when oppression befalls them. I never hesitate to stand beside the Muslims in Palestine or Kashmir when they become victims of torture and oppression. I did that in the past, I will do that in future. This is the manifestation of my humanism.”

Terrorist acts are usually carried out by the extremist groups and even by lone individuals having cross-border networks and support. So to move forward, we must address all forms and manifestations of terrorism in every nook and corner of the world by operating a globally acceptable Security Mechanism avoiding hegemonic interests. Today the entire humanity is

standing at the crossroads- one leads to peace and the other leads to violence and uncertainty. Being a peace loving country, Bangladesh has always been fighting against terrorism in many fields including economic and financial areas to check money laundering, illicit drug trafficking etc.

In the National Parliament of Bangladesh, SantrasBirodhiAin (Anti-Terrorism Act) (Ain No. XVI of 2009) was passed to make provisions for the prevention of certain terrorist activities, effective punishment thereof. In fact, it will deal with and punish the perpetrators, abettors and other accomplices including the fundsuppliers involved in the terrorist activities in the country. In 2013, the said law was amended wherein a list of International Conventions, Instruments and Protocols have been incorporated under the 1st schedule of the law and violation of any provision of those Conventions or Instruments have been made punishable under the said Act. To carry out the purposes of the aforesaid law, the Government formulated Anti-Terrorism Rules, 2013. The provisions of the said Act are comprehensive for awarding exemplary punishment to the terrorists. Section 6 of the Anti-Terrorism Act includes the effects and modes of all types of terrorism. The effects of terrorism may be summarized thus-

- Economic effects:** Loss of life and property, loss of business both domestic and international, foreign investors withdrawing their financial and technological capital;

- **Political effects:** Political instability and insecurity of life, tightening of border security, counter-terrorism measures, Government and business lose a large amount of potential revenue as a result of insecurity and instability;

- **Social effects:** Destroy social cohesion and peace, social and psychological development of children and women are hampered;

- International effects:** Effects on border countries, checking and tightening of immigration and security measures need to be beefed up.

The Anti-Terrorism Act, inter alia, provides unique provisions to bring the terrorists to book. One of the finest provisions of the said Act is its extra territorial application. Section 5 of the said Act provides that-

- (1) If any person or entity commits an offence within Bangladesh from outside the country which, if committed inside Bangladesh by the same person or entity, he would be punishable under this Act, the said offence shall be deemed to have been committed in Bangladesh and the provisions of this Act shall apply to the said person or entity.

- (2) If any person or entity from Bangladesh commits an offence outside Bangladesh, which if committed within Bangladesh by the said person or entity would be punishable under this Act, the said offence shall be deemed to have been committed in Bangladesh and the provisions of this Act shall apply to the said person or entity.

- (3) If any person commits an offence in any foreign country and then takes shelter in Bangladesh which, if committed in Bangladesh, would be punishable under this Act, the said offence shall be deemed to have been committed in Bangladesh and the provisions of this Act shall apply to the said person if he cannot be extradited to a foreign State having jurisdiction over the said offence.

Under that law, the Government has already banned some extremist groups or parties. The Government has taken a good number of significant initiatives to expedite the trial of the cases pending in the Santras Daman Tribunals functioning in the districts of Bangladesh. Some other stringent laws are also going to be made to punish the offenders and financial

institutions responsible for supplying funds to the terrorist groups by money laundering or otherwise.

It may be mentioned here that Parliament enacted DruptoBichar Tribunal Ain, 2002 (The Speedy Tribunal Act, 2002) for speedy disposal of some heinous offences relating to terrorism. As per the mandate of section 10 of the said Act, trial of cases has to be concluded within 120 days.

To combat terrorism and stop funding to terrorist elements, the Government has taken various measures including monitoring of their banking transactions. As a measure of the same, it was noticed that Islami Bank Bangladesh Ltd. paid a huge amount of money as Zakat. Thereafter, Islami Bank Bangladesh Ltd. applied for exemption of tax on that amount of money on the plea that they paid Zakat on behalf of the depositors. The Authority suspected that the amount was spent towards terrorism and directed to pay tax. The legality and propriety of the order of the concerned authority was challenged before the highest court of the country.

The court [14MLR (AD) 2009] held that Islami Bank Bangladesh Ltd. is not legally entitled (under Islamic Law as well as Law of Land) to pay Zakat on behalf of the depositors or account holders and as such Islami Bank Bangladesh Ltd. cannot be exempted from payment of tax. The Court held:

“A bank is a dealer in other people’s money. It has no ownership over the money/wealth kept in deposit by members of the public or in the share capital of the bank contributed by the share-holder/directors of the company. Therefore, the basic and essential conditions on which Zakat becomes obligatory are not at all applicable to the petitioner, and as such the petitioner bank is not required to pay Zakat and hence not entitled to get exemption under section 29(1) of the Income Tax Ordinance, 1984 on account of payment of Zakat.”

The terrorist groups normally do not get any support from the society. For preparation of bombs, they try to exploit the technology and collect the raw materials from readily available chemical substances. Now, the world is standing on the volcano of terrorism. We all should be conscious of its extensive impacts and effects on the society. In general, the people want to live in peace and enjoy their life in a secure environment. They don't support any destructive activities. Besides, our new generation does not like such horrors and they want to lead a life of tranquility without any hitch. Bangladesh always supports the global war against terrorism, but its ability to combat terrorism is undermined by weak institutions, porous borders, and limited law-enforcement capacity. Presently the Government is trying hard by learning no stone unturned in order to revive a sense of security amongst the people, so that they can freely contribute to the national economy and political progress of the country.

Without regional and international co-operation of the States and awareness of the international community, it will not be possible to combat the menace of terrorist activities. In this respect, I am tempted to make some recommendations for Counter Terrorism Committee of the Security Council. They are as follows:

- Money Laundering is not a new phenomenon-criminals have always tried to hid their bounty, but it is taking on new forms. The problem of money laundering has grown in recent years, to keep pace with the magnitude of the funds involved. According to some estimates, several hundreds of billions of American dollars are available for laundering every year, mostly gained from illicit drug-trafficking and eventually those currencies are being used for proliferation of terrorism. The National and International steps for curbing money laundering are quite inadequate. Therefore, United Nations may take pragmatic

measures to bring the terrorists within the fold of law who spend the money acquired by means of laundering. The US has been engaged in training top bureaucrats and bankers of Bangladesh in investigating terror financing and money laundering. This training is not adequate and extensive. This sort of training should be extended to the Judges who dispose of money laundering cases.

- Terrorism, human trafficking, and drug smuggling have long painted a gritty picture of crime in the developing world, but new details are coming to light about another much less visible form of crime and its adverse effects on developing countries. Fraudulent financial transactions, in particular the misinvoicing of international trade transactions, are having a significant impact on the economies of the world. By way of over-invoicing and underinvoicing in import-export trade, the perpetrators gain a lot of money and use the same for expanding terrorist activities. Therefore, stern action should be taken in no time to check the said activities. Every country should have uniform law to bring the smugglers and culprits to justice so that they may not use the money obtained by smuggling for funding terrorist groups.
- By counterfeiting of currencies, the terrorists are using the same for extending terrorism, therefore, from national and international aspects, stern action has to be taken for reducing counterfeiting of currencies to a minimum or tolerable level.
- Terrorism is generally guided by an ideology, but terror cannot make much headway without funds. There is no exact figure but according to one estimate, the money sent to Bangladesh ranged between 4.0 billion taka to 5.0 billion taka (61.5 million to 76.9 million US dollars) in 2005. The Islamic NGOs in Bangladesh employ about 25,000 people. But what is worrisome about these NGOs is that some of them are front organizations of terror outfits, who are channeling funds from abroad to fuel terrorism in the country.
- Religion has to be separated from State and the curriculum of Madrasha Education should be changed and updated. The students of Madrashes have to read literature, science, information technology and mathematics and the teachers having no basic qualities of those subjects should be terminated from their posts.
- Donations received from Middle East countries to the religious institutions of Bangladesh, Pakistan, Afghanistan, India, Maldives etc. are sometimes used for terrorist activities.
- It is well known that during our Liberation War, Pakistan occupation army along with local collaborators committed atrocities, war crimes, crimes against humanity, genocide in our country and they murdered 3 million innocent people and committed violence against 2 lac women and enjoyed impunity for almost four decades. Pakistani armed collaborators and members of Al-badar, Al-shams brutally killed our intellectuals in December, 1971 at the dawn of freedom aiming to deprive the new nation of its best brains. But eventually the perpetrators and criminals who helped Pakistani Army to commit genocide and crimes against humanity were brought to justice. Some of them were tried under the International Crimes (Tribunals) Act, 1973 and handed down exemplary punishment. Most of the war criminals since the date of independence have been trying to destroy the social fabrics and economic activities with the help of international terrorist groups. And they are also trying with all their might and main to escape from the Trial of brutality. One of the veteran war criminals in Bangladesh entered into an agreement on October 6, 2010 with Washington-based Cassidy & Associates by paying 25 million US dollars only to be freed from Trial. Such activities, no doubt,

encourage other terrorist groups of the world. We urge the UN to take stern steps to stop such illegal agreement.

- It must be said to the credit of SAARC founding fathers that they were sensitive to the danger of terrorism from their very first meeting. This led to the adoption of the SAARC Convention on Suppression of Terrorism at the third summit held in Kathmandu in November 1987. In fact, it was adopted on the basis of UN Resolution and various International Conventions. Accordingly, It was “required that each state should refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another state or acquiescing in organized activities within its territory directed towards the commission of such acts”⁵. SAARC cannot be regional effective organization if its one member is bent upon employing terrorism and use of force as instruments of its engagement with the other⁶. Therefore, my suggestion is that South Asian countries must be committed to eradicate terrorism in the greater interest of this region and has to take pragmatic steps to that effect.

- South Asian Judiciaries may share their experience with each other in respect of disposal of cases relating to terrorism. South Asian countries may set up a Judicial Research Academy where joint research studies shall be conducted by South Asian Scholars, Academicians and Journalists to conceive the different dimensions of terrorism and they will find out comprehensive solutions to reduce terrorism and principle of non-violence should be included in the syllabi of educational institutions so that the students may understand that peace and tranquility are a sine qua non for the over-all development of the South Asian Region.

In order to uproot terrorism, Bangladesh has not only become active within the country itself but has also taken up initiatives with some neighboring countries⁷. In June 2011, the Bangladesh Government recommended that a counter-terrorism institute be set up in Bangladesh to bolster anti-terrorism campaigns in its southern and south-eastern regions. Under the South Asian Association for Regional Cooperation (SAARC), an agreement was signed on “Mutual Legal Assistance in Criminal Matters”; however, a task force by the South Asian countries is yet to be formed. Another “Agreement on Cooperation in Combating International Terrorism, Organized Crime and Illicit Drugs Trafficking” was signed under the BIMSTEC²⁹. This is a regional organization comprising some South and South-East Asian countries. Under this agreement, there is a plan to set up a counter-terrorism institute.

Terrorism has no country and it is a threat to the whole mankind. Terrorism is an instrument of the worst enemies of the mankind bent on suppressing and crushing the people’s struggle for global peace and security. It is a symptom, not the disease and the reasons of the disease are mainly-poverty, religious fanaticism, illiteracy, social inequality and sense of deprivation or frustration. As a peace-loving country, Bangladesh is fully committed and ready to fight against terrorism and support all meaningful steps to be taken by the international community to combat the menace.

I am sure that our noble intentions and endeavors will take us to the desired goal through our concerted efforts to a better future, which is not only the demand for the present, but also the next generation. Let us try to create an international consensus against the morbid and

⁵Preamble of the SAARC Convention. Text in From SARC To SAARC, Vol.I, 1980-1988, SAARC Secretariat, December 1988, Kathmandu, p. 294.

⁶Terrorism in South Asia: Impact on Development and Democratic Process, Paper presented at the International Conference on November 23-25, 2002, SoalteeCrowne Plaza, Kathmandu, Nepal, by SD Muni, Professor, South Asian Studies, Jawaharlal Nehru University, New Delhi.

⁷Bangladesh Enterprise Institute (BEI) Report, 2010-11

monstrous terrorist forces of all forms that tend to turn the countries into a strange world, where bread is dear and blood is cheaper, where crimes of all types flourish, but cardinal and the logical virtues perish.

