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Counterterrorism and Human Rights. A Jurisprudential Critique

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ABSTRACT

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Many people around the world now worry about how current security laws respect basic human rights principles after September 11. This research analyzes the legal problems between human rights protection and counterterrorism rulemaking in several legal systems through modern interpretation of law. Our study employs doctrinal research to examine USA PATRIOT Act and UK Terrorism Acts plus Pakistan's ATA and PECA 2016 and offers legal evaluations. It reviews important decisions made by both regional human rights bodies including ECtHR and supreme courts. This investigation examines established emergency power and derogation clause rules to determine their alignment with legal principles such as required standards and balanced regulations. Judicial systems worldwide show similar patterns of lowering fundamental rights protections as they let government control grow and accept these practices over time through terrorism countermeasures. The different judicial boards worldwide have distinct views on state power although some use a weighing approach while others approve extensive state control. This research shows that our public defense systems must be reformed so terrorist threats can be managed under constitutional security standards.

INTRODUCTION

Countries globally implement excess security measures because of terrorism threats which change both home and international rules. Every nation enhanced their terror-fighting rules following 9/11 to spot and handle terrorist activities faster. These updated security laws present significant problems to vital human rights standards especially defense of private information and fair court processes. Courts from all levels and advocates of human rights have spent many years addressing issues tied to terrorism fight. Freedom limits and security measures face major tests in any democratic system to determine their proper extent (Donohue 2008; Sottiaux 2008).

Different states and courts apply varied regulations when balancing terrorism protection against human rights defense. When international security emergencies arise judges worldwide back executive authority that accepts modified legal methods and arrests people without proper charging documents (Dyzenhaus, 2006). Despite repeated opposition the European Court of Human Rights consistently allows more security measures during crisis periods. Since judicial officers and executive officials disagree about how fundamental rights impact counterterrorism programs. This study targets the defense solution while courts support human rights in counterterrorism to build balanced security methods that do not weaken legal systems.

Our research takes a worldwide perspective to understand how present counterterrorism laws handle human rights by examining official law and court decisions. This research examines how judges from the US, UK, and Pakistan empower the State during security emergencies through limitations of human rights. This study performs a deep analysis of our present approaches and judicial approaches through an evaluation of the exception theory and comparison with the proportionality principle and legality concept. Nations weaken their democracy and establish unclear legal frameworks when they normalize security emergencies and cut away human rights protection. This research will include these parts: Section 2 examines prior studies on security and human rights links and Section 3 shows our study approach. Section 4 shares findings from worldwide examples and legal analysis. Sections 5 and 6 state final results and present last suggestions.

Literature Review

INTRODUCTION: FRAMING THE HUMAN RIGHTS-SECURITY NEXUS

Examination of counterterrorism and human rights shows safety and freedom remains hard to manage effectively. After the 9/11 attacks nations prioritized security needs above civil freedoms which raised important concerns about emergency power boundaries. Scholars agree that Article 4 of the ICCPR allows temporary law departure except when it violates necessity, proportionality, and non-discrimination rules (Moeckli, 2008). Without proper controls many legal systems increased security powers which resulted in severe violations of human rights. The following section groups key research findings according to their subjects and examines how counterterrorism and human rights came together as a topic of study.

THEORETICAL FOUNDATIONS: STATES OF EXCEPTION AND RULE OF LAW

Under counterterrorism law theory the state of exception takes its origins from Carl Schmitt's work which gives states the authority to suspend rules in defense of their existence (Schmitt, 2005). Dyzenhaus (2006) identifies a legal crisis when emergency powers weaken both constitutional rules and their defense in court. Gross and Ní Aoláin (2006) believe that legal systems should acknowledge and control extraordinary authority through visible measures. These viewpoints demonstrate the legal challenge between government freedom and regulation when defining counterterrorism laws.

NATIONAL JURISDICTIONS AND RIGHTS DEROGATIONS

After the USA PATRIOT Act became law in 2001 numerous evaluations in the United States criticized how it reduced due process protections and privacy rights according to Cole & Dempsey (2017). Donohue's 2008 research shows material support legislation and surveillance power abuses caused regular abuses particularly targeting minority groups. Scholars including Fenwick and Walker (2006) identify problems linking the UK Terrorism Act 2006 and control orders to basic rights under the Human Rights Act 1998 and European Convention on Human Rights. In case *A v Secretary of State for the Home Department* [2004] UKHL 56 the highest UK court showed clear opposition to allowing detention when no charges are filed.

INTERNATIONAL AND REGIONAL JURISPRUDENCE

The European Court of Human Rights and similar global tribunals define human rights parameters through their decisions about counterterrorism actions. Despite safety concerns the ECtHR continued upholding its prior decisions about non-refoulement protection both in *Soering v United Kingdom* (1989) and *Chahal v United Kingdom* (1996). In 2009 and following

years the European Court of Human Rights repeated its restrictions on when nations can use Article 15 of ECHR under *A. and Others v United Kingdom*. According to Sottiaux's research from 2008 the ECtHR set up fundamental protections but continues to show inconsistency when giving authorities their freedom in terrorism and surveillance cases.

ISLAMIC AND SOUTH ASIAN JURISPRUDENCE

People across Pakistan strongly oppose the Anti-Terrorism Act 1997 and the Prevention of Electronic Crimes Act 2016 due to their imprecise terrorism definitions, military courts, and restricted court procedures. In 2015 the Supreme Court of Pakistan asserted the validity of terrorism military court proceedings when ruling for *District Bar Association Rawalpindi v Federation of Pakistan*. The court defends special treatment through national sovereignty reasons under Islamic constitutionality but fails to respect human rights standards. Local experts recommend that Pakistan must connect its anti-terrorism laws with international human rights agreements including the ICCPR and CAT.

CRITICAL GAPS AND CALLS FOR REFORM

Most researchers critique current human rights abuses but they need to create better direction for change. Governments now favor safety procedures that work with the legal system to protect basic rights. Her book aligns with both Stacey, J 2018 and Forcese & Roach 2015 to explain how constitutional courts protect rights through independent review but also push for fairer counterterrorism processes. Research worldwide does not have uniform rules that apply throughout all legal systems yet especially in regions outside Western traditions.

The legal studies show a regular conflict between security efforts and human rights law because each party follows distinct rules and beliefs of justice according to their backgrounds. Studies of real-life government actions prove that executives must control to protect civil rights yet scholars see executive discretion as a major threat to rights. Studies demonstrate that protecting citizens should never undermine basic human freedoms worldwide.

Methodology

METHODOLOGICAL APPROACH

Our research studies how different legal systems maintain counterterrorism efforts without violating basic human rights principles. This study bases its research on doctrinal qualitative methods which involve analyzing legal texts alongside statutory instruments and decisions from courts along with academic papers in the field. This study uses legal documents that come

from case laws and international and national law as well as published research studies. Our method helps researchers thoroughly study legal doctrine and court decision logic to achieve acceptable results. The research examines legal development patterns during times of emergency security needs along with court methods to understand and use rights frameworks during crises (Hutchinson & Duncan, 2012).

DATA COLLECTION METHODS

Our research methodology uses in-depth legal research on accessible public and academic documents. Through research the study analyzes legal responses to terrorism under four US, UK, Pakistani, and international legal instruments including specific treaties like the European Convention on Human Rights and the International Covenant on Civil and Political Rights. The highest domestic courts (in this case *A v Secretary of State for the Home Department* [2004] UKHL 56) along with international (in this case *Chahal v UK*) and regional human rights tribunals (in this case ECtHR and Inter-American Court of Human Rights) provide the legal interpretations used by this study. Academic experts share their results from HeinOnline JSTOR Westlaw and Oxford Scholarship Online databases that support their research (McConville & Chui, 2007).

DATA ANALYSIS METHODS

Legal facts are studied using standard legal interpretation and studying the development of court principles. The research checks judicial decisions to see how legal principles work regarding right restrictions within counterterrorism investigations. We examine judicial matters of the state of exception, proportionality, margin of appreciation, and necessity through a study of related decisions made by different courts. The research examines whether liberal democracies share similar or unique legal approaches to fighting terrorism as hybrid systems like Pakistan do. Legal systems should adhere to fixed principles that also make sense morally and uphold the rule of law according to Cryer et al. (2011).

EVALUATION AND JUSTIFICATION

Using the doctrinal method works well since my research focuses on legal-normative topics. Field research becomes unnecessary because statutory and case law analysis can be performed in detail throughout this approach. This approach reveals legal problems and understands difficult court rulings while suggesting better legal systems. The research has limitations because it depends on existing studies and does not include field evidence showing the actual

community effects. The study improves on legal examination by adding doctrine developed through court decisions that outline actual effects of counterterrorism laws on people. Further research can help this study by studying actual law effects via participation with stakeholders in community settings.

ANALYSIS

THE PARADOX OF SECURITY AND FREEDOM

The main subject of this research deals with how protecting national security demands impact basic human rights preservation. Counterterrorism laws protect citizens from dangers but hurt the liberties these laws exist to defend. Liberal democracies worldwide must confront rising demands from their governments to increase national security powers that law enforcement needs. However, these demands are usually justified by exceptional circumstances (Hafetz, 2012).

Emergency powers have become regular practice across several countries including the US, UK, and Pakistan and this shows how constitutional structures now enable more authoritarian rule. Judicial systems have prevented unrestricted government actions by standing up to executives who then made extensive new laws limiting individual freedoms. The judiciaries now tolerate more security exceptions compared to legal safeguards and basic human rights.

THE STATE OF EXCEPTION AND ITS GLOBAL IMPLICATIONS

The results prove that countries worldwide use Carl Schmitt's theory of state exception to bypass ordinary legal rules when emergency situations occur. Schmitt's explanation of how authorities make decisions about exceptions guides legal actions against terrorism worldwide according to his 2005 publication. All three countries (USA, UK, and Pakistan) sustain legally acceptable deviation from standard constitutional procedures in their new antiterror legislation although intended as temporary solutions they now exist permanently in national law.

This research demonstrates that the practice of democracy suffers permanent damage from exceeding legal limits. These laws produce enduring changes to how power works between states and citizens when they habitually treat emergency states as normal operations. The regular use of preventive detention species and military tribunals destroys human rights under programs of widespread surveillance. Pakistan uses military courts as a routine tool to control political opposition by breaking away from ordinary court procedures per District Bar Association precedent.

JUDICIAL OVERSIGHT AND ITS LIMITATIONS

The paper explains how courts maintain some control yet restricted authority in monitoring counterterrorism rules. Courts both in the United States and United Kingdom exercised their

authority by blocking state power overreach as shown in *Boumediene v. Bush* (2008) and *A v Secretary of State* (2004). *Bush* (2008) and *A v Secretary of State* (2004). These particular instances stand out because they reject the overall pattern of government exercises. Over time the courts in the UK have usually taken a backseat approach by accepting executive authority under the margin of appreciation doctrine. Many elements combine to create government officials' preference to stay away from executive authority issues during emergencies.

For instance, in the US, the *Hamdi v. The US Supreme Court* allowed projects and measures for enduring detention under *Hamdi v. Rumsfeld* (2004) despite recognizing detained individuals' right to due process. Despite upholding individual rights partly in its verdict the case still let the executive maintain control over national security actions and future cases such as *Holder v. Humanitarian Law Project* continued this pattern. *Humanitarian Law Project* (2010) (Cole & Dempsey, 2006).

The Supreme Court of Pakistan does challenge unconstitutional laws yet the military keeps ultimate control over counterterrorism programs. National security power allows executives to control more decisions instead of independent judges performing their standard role. Terrorism-related cases in hybrid or authoritarian regimes rarely receive unbiased court review which intensifies the decline of civil rights.

THE LEGAL AND ETHICAL DILEMMA OF SURVEILLANCE LAWS

Understandably the fight against terrorism today relies heavily on surveillance regulations which multiple post-911 nations now make basic to their security measures. FISA amendments 2006 changes strengthened government surveillance powers in the USA and UK but these reforms seriously damaged privacy and free speech rights according to Donohue (2016). Both the NSA's extensive data collection in America and the UK's habitual usage of section 1 from their Terrorism Act unfairly penalize minority groups based on race, religion, and other characteristics.

The ethical problem emerges when surveillance moves past its stated purpose to track dissenters and political protesters. The Pakistani government uses PECA 2016 to restrict the political freedom of people who criticize government officials including journalist and activists. The way these surveillance programs work legally influences how they help or harm terrorism prevention and restrict state authority. Surveillance demands legal boundaries according to Moeckli (2008) who explains that privacy rights remain protected under international human

rights standards.

THE NEED FOR A RIGHTS-RESPECTIVE MODEL OF COUNTERTERRORISM

The research reveals that US, UK, and Pakistani counterterrorism methods must be changed since they protect national security while weakening human rights standards and democratic values. The law system that controls official power has declined in success because courts typically accept what authorities do in defense of national security. The regular use of special powers combined with wide surveillance techniques have weakened civil rights in order to fight terrorism.

A fresh model should blend human rights values into counterterrorism systems to guarantee that security steps maintain balance and expire as planned. A rights-respecting counterterrorism plan should depend on open government activities as well as involve public control of security procedures. According to Ramraj (2005) and Waldron (2003) successful counterterrorism actions depend both on strong security results and proper legal and moral guidelines.

Results

This section details important outcomes from reviewing counterterrorism laws and human rights cases from three regions which are the United States, the United Kingdom, and Pakistan. The discovered facts follow three fundamental subject types about human rights difficulties: detention condition rules plus freedom of speech and exceptional court handling.

EROSION OF DUE PROCESS IN DETENTION AND TRIAL

All research sites demonstrated that counterterrorism legislation weakened standard legal protections especially through changes to detention rules and courts (special tribunals) and secret evidence arguments.

Under the USA PATRIOT Act and Military Commissions Act of 2006 the United States gave authorities permission to hold foreign nationals without bringing charges against them. The landmark case of *Boumediene v. The Supreme Court* returned detainee habeas rights in *Boumediene v. Bush* (2008) yet kept legal options for these prisoners restricted according to *Cole* (2009).

Under United Kingdom law the *A v Secretary of State for the Home Department* [2004] UKHL 56 case established that indefinite detention regulations in the Anti-terrorism, Crime and Security Act 2001 breached the European Convention on Human Rights principles found

in Articles 5 and 14 (Fenwick, 2002).

After the 21st Constitutional Amendment took effect military courts received authority to prosecute civilian suspects linked to terrorist acts in Pakistan. The Supreme Court upheld military courts in *District Bar Association v Federation of Pakistan* through national security grounds yet scholars view this decision as violating Article 10-A fair trial guarantees from both Pakistan's Constitution and ICCPR Article 14.

SUPPRESSION OF FREE EXPRESSION AND EXPANSION OF SURVEILLANCE

The government limits both speech rights and personal privacy in its fight against extremism while using unclear laws and watchful monitoring.

Under the 2006 Terrorism Act Section 1 the UK government arrested people who spoke positively about terrorism without clear threats even though it created confusion about legal boundaries. The appeals court convicted Choudary in 2016 for breaking the law against advocating terrorism [Walker 2006].

The Foreign Intelligence Surveillance Act (FISA) of the US helped create surveillance programs that Edward Snowden discovered later in 2013. The NSA remains under First and Fourth Amendment scrutiny although *ACLU v Clapper* (788 F.3d 787, 2015) ended bulk data collection as unlawful in 2015 (Donohue, 2016).

PECA of 2016 became law in Pakistan to enable the state broad authorities to watch and delete online content. The 2020 government changes added new restrictions especially on public criticism and media transmissions. The Awami Workers Party challenged Pakistan Telecommunication Authority for unwarranted content removals but Pakistani laws still do not protect freedom of expression sufficiently.

JUDICIAL DEFERENCE AND THE NORMALIZATION OF EXCEPTIONALISM

Courts from different areas have supported presidential authority increases even though they have done this to different extents by pointing to national security needs.

In the US, the Supreme Court's decision in *Hamdi v. In Rumsfeld v Hamdi* the U.S. Supreme Court admitted that the President has wartime authority but assigned some due process requirements. However, the Court's deference in cases like *Holder v. The court in Holder v Humanitarian Law Project* affirmed material support laws that banned peacebuilding actions (Hafetz, 2012).

Since the Human Rights Act the UK courts have been stronger but they use the

“margin of appreciation” rule unevenly in their decisions. In *Beghal v DPP* [2015] UKSC 49, the Supreme Court kept Schedule 7 of the Terrorism Act 2000 in place even though it permits officers to detain and search individuals without reasonable grounds.

The Pakistani courts strongly favor national security over other approaches when answering court cases. During the Benazir Bhutto case the judiciary blocked executive power misuse but in subsequent anti-terrorism judgments the judges did not disrupt military authority.

CROSS-JURISDICTIONAL TRENDS AND COMPARATIVE INSIGHTS

Our study finds multiple regular trends in the analysis.

1. Society accepts the special treatment of law during long-lasting security emergencies.
2. General definitions of terrorism in laws give broad authority to law enforcement personnel who use that power to silence critics.
3. When judges willingly defer to military authorities they enable weakening of rights guaranteed by domestic and international conventions.

Security interests have become dominant legal grounds for decision-making around the world in both liberal democratic and non-liberal countries.

DISCUSSION

Researchers have shown that no matter the political system, security laws harm basic human freedoms everywhere. The legal systems worldwide block access to due process rights and encourage authorities to control free speech through undefined anti-terrorism measures and often agree with executive decisions. Some courts protect constitutional rights but others let emergency powers harm rights based on national security reasons. This develops emergency rules into regular governance structures.

Even when protecting national security rights drift away from traditional justice principles such as fair judicial trials. The International Law community urges states to follow essential requirement patterns when they suspend their legal obligations (Joseph & Castan, 2013). In *District Bar Association v Federation of Pakistan* and *Boumediene v Bush* the US government demonstrates a consistent approach of prioritizing security over legal standards when facing national emergencies.

The executive branch establishes an abnormal condition through the state of exception concept defined by Carl Schmitt in 2005. Dyzenhaus (2006) defends the rule of law above all but most courts now accept emergency decisions when legal support for them remains hidden.

As Gross and Ní Aoláin (2006) establish counterterrorism oversight normally ignores basic principles of law after emergency ends.

The evaluative study reveals significant legal philosophical differences between systems. Since 9/11 the UK judiciary initially agreed to defer to the government but the rights review process has become more active since the implementation of the Human Rights Act 1998. Judicial power to eliminate unlawful detention conditions received positive reception from Moeckli (2008) after the House of Lords declared their position in *A v Secretary of State*. The US Supreme Court provided only marginal protection of rights in security cases through limited procedural approval but consistently backed security expansion policies following the Humanitarian Law Project decision which outlawed peace-supporting speech according to Cole and Dempsey (2006).

The judicial role exists in an unclear state throughout South Asia with special consideration for Pakistan. The Supreme Court preserved its independence from military intervention during the *Asma Jilani v Government of Punjab* case (PLD 1972 SC 139) yet strengthen executive and military court powers in counter-terrorism matters more recently. This change indicates that the courts have become active participants in establishing restrictive rights frameworks.

The research shows how existing literature accurately describes the weak protections for rights during counterterrorism rule (J.stacey, 2018; Sottiaux, 2008). This research takes an additional step by undertaking a comprehensive evaluation of juridical bases which support observed evolutions. Studies examining judicial reasoning logic alongside philosophical constructs that determine case outcomes remain sparse even as multiple works establish legal and case-based impacts. This research helps address an important void since it provides South Asian jurisprudence perspectives to international scholarly analysis. Dominant scholarship about constitutional laws displays lack of understanding toward hybrid and authoritarian regimes such as Pakistan with their distinctive judicial behaviors and constitutional narratives. The research provides an alternative approach that examines global counterterrorism law through a de-colonial perspective as well as comparative analysis.

The present study contains multiple restrictions. The doctrinal research approach of this study lacks qualitative field research data coupled with stakeholder surveys which reduces its ability to understand the real-life impacts Counterterrorism legislation creates on those

affected by it. The research examined three jurisdictions exclusively which may not represent all global differences especially those found in African and Middle Eastern and Latin American territories. Counterterrorism legislation routinely needs updating through amendments which leads to some legal interpretations becoming obsolete at a quick pace.

CONCLUSION

This research evaluated the conflicting relationship between counterterrorism processes and human rights preservation from a juridical point of view. The examination investigated whether present-day legal structures along with court-based decisions properly safeguard essential rights when governments increase surveillance powers during states of emergency and political turbulence.

Current counterterrorism law practices exhibit dangerous illegal practices that become mainstream. The systematic elimination of protection zones for due process and freedom of speech and prevention of arbitrary detentions emerged through doctrinal and comparative law assessment which demonstrated judicial acquiescence to expanded executive powers. The research identifies a pattern where state power remains unconstrained because Pakistan along with the USA utilize military justice proceedings to limit individual rights as demonstrated by Guantanamo Bay detention.

The observation shows that counterterrorism policy desperately needs human rights protections and constitutional defenses to restore their fundamental position. The lack of security law limitations produces two-fold harm because it breaches personal rights and destroys the faith people have in both democratic institutions and constitutional law. Regional and international human rights bodies need to advance their jurisprudence by restricting the extent of state power especially for maintaining essential rights and procedural requirements.

Security needs never lead to enduring exceptional measures according to the analysis. During national emergencies all essential constitutional precepts including legality, proportionality and transparency must have permanent standing. The research extends prior studies that refutes the security versus liberty contradiction by establishing constitutional human dignity as the foundation of judicial philosophy (Waldron, 2003)

The analysis holds important value since it reveals fundamental weaknesses within present-day global anti-terrorism institutions. Liberal democracies compromise their democratic principles when implementing authoritarian approaches while pretending to keep the population secure which escalates the risk of enduring democratic system collapse. The research provides crucial insights into legal regression by developing an argument that requires constitutional accountability as its new foundation.

Future reforms need to implement general legislation defining emergency power usage along

with improved judiciary oversight powers and dedicated parliamentary surveillance of counterterrorism legislation. Additional scientific investigations should be conducted along with socio-legal research to determine the consequences of these legal measures upon groups of journalists and ethnic minorities and political supporters. Critical examination needs to endure steadily to develop counterterrorism policies which preserve instead of eroding the principles they defend.

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