

Definition of terrorism and police powers

[Society](#), [Terrorism](#)



Abstract

It is important that the police are provided with sufficient powers to identify and prevent terrorism where necessary; however it is also important that these powers are not being abused. There is a wide definition of terrorism which has led to abuse by the police and this has resulted in human rights violations.[1] In order to ensure that human rights are being preserved and terrorism is being tackled, a balance between the two needs to be struck.[2] This is not being attained at present and so reform to this area is necessary. This study intends to discuss what problems currently exist followed by any suggestions for change.

Introduction

Although there is a need to provide the police with wide and even intrusive powers it seems as though the powers are actually too broad.[1] This generally leads to abuse and those of an ethnic minority are usually discriminated against as a result.[2] Because of how difficult it is to define terrorism, it is unlikely that this problem will be rectified any time soon. This study aims to examine such issues in light of the recent Supreme Court decision of *R v Gul (Mohammed)* [2013] UKSC 64 by accessing relevant text books, journal articles and online legal databases.

Police Powers

The police have been given extensive powers under the Terrorism Act (TA) 2000[3] and the Anti-Terrorism Crime and Security (ATCS) Act 2001 in recent years and now have the ability to undertake a stop and search in circumstances where they have a 'reasonable suspicion that the individual

is a terrorist'[4] (section 44 of the AT). They can also forcefully obtain fingerprints and other identifying features of a person to determine their identity (Part 10 ATCS) and detail foreigners suspected of terrorism (Part 4 ATCS). It has been argued that these wide powers are likely to be detrimental to the ethnic minority who will most likely be subjected to police searches.[5] This undermines a person's right to liberty that is provided for under Article 5 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998. Conversely, it was held by the Court in *R (Gillan) v Commissioner of the Police of the Metropolis*[6] that pursuant to section 44 of the TA "the interference with the appellant's freedom of movement in order to effect a stop and search is not enough to have amounted to a deprivation of liberty." [7] The exploitation of police powers under section 44 may therefore not amount to a deprivation of liberty and will be justified regardless of police intentions.[8] Since this Act was implemented, those of an ethnic minority have been stopped and searched more frequently than they used to, which is supported by the Ministry of Justice's 2009 data analysis that stop and search rates from black populations are disproportionately high compared to white populations.[9] Some form of control is therefore necessary to prevent abuse by the police force because although it is necessary to provide the police with wide powers,[10] it is vital that they are only being used for their intended purpose; that is to prevent terrorism.[11] Police are also given further powers under the Criminal Justice Act 2003 to detain suspected terrorists for longer periods of time and apply control orders under the Preventions of

Terrorism Act 2005. The Counter-Terrorism Act 2008 also provides police with the ability to question suspects after they have been charged.

Definition of Terrorism

Given the extensive range of police powers, it is vital that they are being used appropriately and do not lead to abuse. This has been further explained by McKenzie who stated that; “ the responsibility that is attached is that the powers must be used appropriately and properly. That is the only way in which the police function can be conducted in a democratic society.”[12]

However, the main reason why the police are able to abuse their powers in the first place is largely the result of the extensive definition of terrorism.[13]

Thus, it is extremely difficult to identify what a terrorist will consist of, which is why the police have been provided with extensive powers in the first place.[14] The complex nature of this area has recently been identified in

the *R v Gul (Mohammed)*[15] case where the issue as to what ‘ terrorism’ is to be defined as was determined. It was questioned in the case whether the definition of ‘ terrorism’ under section 2 of the Terrorism Act 2006 includes “

military attacks by non-state armed groups against national or international armed forces in a non-international armed conflict.”[16] Section 1 of the TA

2000 defines terrorism as;

“ the use or threat of action; (a) involving serious violence against a person, involving serious damage to property, endangering another person’s life, creating a serious risk to public health or safety, or designed to seriously interfere with or seriously disrupt an electronic system; (b) designed to influence a government or intergovernmental organization or to intimidate

the public or a section of the public; and (c) made for the purpose of advancing a political, religious, racial, or ideological cause.”

Unless all of these conditions are satisfied, a person should not be accused of committing a terrorist act, yet the reality of this is implausible given that many individuals are often stopped and searched under the Act without having committed any act of terrorism whatsoever.[17] The Court in *Gul* held that section 1 had a very wide natural meaning and that it could not be read restrictively as was being argued by Mr Gul. It was made clear in the case that the definition was drafted so widely in order to account for situations such as this. Hence, My Gul was convicted of five counts of disseminating terrorist publications, which included YouTube videos showing al-Qaeda attacks. This type of behaviour should be punishable, though if a strict interpretation of the definition was employed Mr Gul would not have been prosecuted. This would be a serious threat to national security[18] and so it is vital that some flexibility is available when interpreting the definition of terrorism,[19] yet this should not be interpreted too broadly as identified in *KJ (Sri Lanka) v Secretary of State for the Home Department*[20] and *Secretary of State for the Home Department v DD (Afghanistan)*. [21] Consequently, a balance needs to be struck between protecting the interests of national security and protecting the human rights of individuals.[22] This is likely to be extremely hard to achieve since the powers of the police have been extended even further since the events of September 11th 2001[23] as rigorous attempts have been made under international law to prevent a further re-enactment of terrorism.[24]

The War on Terror (WOT) is one of the main reasons why a broad definition is frequently adopted since the objectives of WOT were to eradicate terrorism. Many believe that such efforts have been successful[25] and as argued by O'Rourke; " the war on terror has had two major economic impacts; an increase in overall military assistance to countries experiencing conflict and the elimination of sanctions on arms exports to these countries." [26]

Nevertheless, many problems continue to arise because of the wide definition of terrorism and it has been said that the Guldecision " represents a step backwards in the definition of terrorism primarily because it endorses the extremely wide understanding of terrorism." [27] There is also much difficulty in distinguishing between a ' freedom fighter' and a ' terrorist'. This has led to much controversy and debate and the law in this area remains unclear and inconsistent. [28] Because of this, inadequate anti-terrorism adoption measures are being employed which is not the intentions of WOT and unless further clarification of the meaning of ' terrorism' is provided, complications will continue to exist. It is vital that a freedom fighter is not mistaken for a terrorist and vice versa since the actions of a freedom fighter will be deemed lawful whereas the actions of a terrorist will not be. [29]

Accordingly, it is thus essential that a terrorist does not escape criminal liability for his or her actions in the same way that a freedom fighter should not be punished. [30]

Nevertheless, as has been argued; " today's terrorists are tomorrow's freedom fighters, next month's political opponents and, next year, our oldest allies." [31] This suggests that a distinction cannot be made between terrorists and freedom fighters because of the fact that attitudes continue to

change. If a strict interpretation of a terrorist was provided by the law, difficulties may still arise in the future. Furthermore, it has been said that “ the only difference between a freedom fighter and a terrorist is whether the person describing them likes them.”[32] The extent to which this view is accurate is unclear but it is clear a dangerous one given that terrorists can be classed as freedom fighters in order to avoid criminal liability.[33] On the other hand, Hanif believes that; “ the difference between freedom-fighters and terrorists is not perception but terminology.”[34] Therefore, a distinction between terrorists and freedom fighters is based on terminology as opposed to differing perceptions. The definition of terrorism remains controversial which is largely the result of the differing meanings that exist under various legal systems and governmental agencies. The international community needs to define terrorism in order to provide clarity and unity within this area. This is because it seems as though the international community have failed to adopt a universal definition that can be employed by every jurisdiction.

Nevertheless, because of the fact that terrorism is an emotionally and politically charged issue it is doubtful that harmonisation would be established. It has been stressed by Hoffman that terrorism consists of “ the deliberate creation and exploitation of fear through violence or the threat of violence in the pursuit of political change.”[35] The threat of violence or actual violence is clearly present in all acts of terrorism though because each is completely different from the next it is extremely difficult to provide a rigid definition and flexibility will continue to be needed. Nevertheless, “ terrorists seek to obtain the leverage, influence and power they otherwise lack to

effect political change on either a local or an international scale.”[36] The fact that there is no universal declaration of terrorism can actually be beneficial in allowing a flexible approach to be undertaken[37] and as stressed by the Court in *R v Ashton*,[38] the intention of Parliament needs to be looked at when deciding how far the definition of ‘terrorism’ should stretch. Thus, it is necessary that the definition allows for special circumstances to be taken into account, which would not be possible via a strict interpretation of terrorism. Nevertheless, Sorel believes that problems would be likely to arise if a global definition was implemented since it would be very difficult to take account of “special circumstances according to the type of action committed, the nature of the victims or the type of method of the terrorist action.”[39] Much debate has already arisen as to whether a definition is necessary, however it was decided by the Security Council when they adopted Security Council Resolution 1373 in September 2001 that “one shouldn’t try to define terrorism in order to reach a quick agreement; to do so runs the risk of getting into deeper and deeper water.”[40]

Terrorism acts are arguably so wide-ranging than an attempt to define them would only result in further risk. Having a flexible definition is vital in ensuring that each and every act is decided on its facts in order to determine whether an act of terrorism has actually occurred.[41] In *R v F*[42] the broad definition of ‘terrorism’ was emphasised when it was held by the Court that governments which were not representative of the people were not governments for the purposes of section 1 and that any acts carried out against such governments were not acts of terrorism. This widens the scope of section 1 even further and is likely to have dangerous consequences as

evidenced by Ouseley J in R (On the application of Islamic Human Rights Commission).^[43] In order to protect human rights and prevent those of authority from abusing their powers and accusing innocent persons of terrorism, some changes need to be implemented because the system at present is unsatisfactory.^[44] Conversely, it has been suggested that “ a definition would only be necessary if the punishment of the relevant offences were made conditional on the existence of a specific terrorist intent.”^[45] An example of this can be seen in respect of the definition that has been provided by the League of Nations Convention of 1937 under Article 1. 1. Here, it was stated that an act of terrorism will consist of “ criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public.” It was also provided by the United Nations General Assembly under Article 2. 1 of the Comprehensive Convention on International Terrorism that a terrorist is someone who causes; “ death or serious bodily injury; serious damage to public or private property, or damage to property, places, facilities, or systems likely to result in major economic loss.”^[46]

Distinction between a Freedom Fighter and a Terrorist

A freedom fighter is a person that attempts to achieve political freedom and is generally defined as a person who takes part in a resistance movement against an oppressive political or social establishment.”^[47] Such persons include the South African Umkhonto we Sizwe (MK) and the Irish Republican Army (IRA). These were considered to be freedom fighters on the basis that they fought for freedom against national governments.^[48] The MK launched its first attacks in 1961 and was rendered freedom fighters despite the fact

that they were originally classified by the South African government and the United States as terrorists. The IRA launched its first attacks in 1919 and was too deemed freedom fighters, although many did in fact render them terrorists. As noted by Brown; “ the Provisional IRA’s ceasefire means its members should regarded as freedom fighters to distinguish them from terrorist groups that refuse to enter a political process.”[49] These two sets of freedom fighters demonstrate what a ‘ freedom fighter’ will consist of, yet they also demonstrate how a fine line is usually drawn between a freedom fighter and a terrorist. In light of this, it would seem appropriate to establish a clearer definition so that the two could be distinguished more easily. The Lehi (Lohamei Herut Israel) was also classed as a freedom fighter early on, yet they later faced terrorism.

Again, this signifies how it can be difficult to distinguish between the two and it is often argued that one man’s terrorist is another man’s freedom fighter[50] as also noted in the Gulcase. It is arguable whether this statement holds any truth, yet given that there are varying definitions it is possible to interpret a terrorist as a freedom fighter and vice versa. This is also due to the fact that the roles in which the two undertake are extremely similar, thus making it more difficult to make an appropriate distinction. An individual may resultantly be deemed a terrorist in one jurisdiction but a freedom fighter in another because of the different meanings that exist. As pointed out by Rosand; “ the General Assembly’s inability to reach agreement on a definition of terrorism after nearly thirty-five years of discussions in one form or another has limited the impact of its counterterrorism efforts.”[51] Conflicts will therefore continue to exist, yet if terrorism is to be tackled

effectively it is necessary that an appropriate definition is provided by the international community in order to avoid such complexities. Consequently, “terrorism can be seen in the shadow on the wall: a silhouette of a gun, discharged into the body of a man who crumples before us.”[52] This suggests that terrorism is simply a half-truth that cannot be identified with ease. This leads to a great deal of ambiguity as it cannot be said what the exact differences between a freedom fighter and a terrorist are. Many believe that terrorists are able to escape liability for their actions as a result of these issues since they may be considered freedom fighters by certain jurisdictions.

Terrorist actions are more difficult to be eliminated because of the fact that consideration must be given to the possibility that an individual may in fact be a freedom fighter as opposed to a terrorist. Yet, in preserving the human rights of individuals this is a necessary requisite. Nonetheless, as put by Scheuer; “ the counterterrorism record of the Bush administration is resoundingly negative” [53] This is because two wars, which were nearly lost, were created at the expense of thousands of lives. A substantial amount of money was spent and the credibility of the U. S. military was reduced. Furthermore, the Bush administration’s failings form part of a continuum of negative accomplishments that stretch back to more than a decade.[54] This is likely to be the result of a lacking definition since those who are involved in terrorist acts are often being rendered freedom fighters when they should be classified as terrorists.[55] However, in making the necessary distinction new concepts will be unnecessary as certain acts of violence will not be treated as crimes and will thus be permitted under international law. In

accordance with this it is thereby necessary to distinguish between “ common criminals and those who have exercised violent, but proportional, resistance against persons ordering the commission of a war crime or a crime against humanity.”[56] However, it is important that the seriousness of one’s actions is being given sufficient recognition within the international community so that the WOT can be effectuated.[57]

Reform

It cannot be said that a satisfactory definition is being produced at present which successfully distinguishes between a ‘ freedom fighter’ and a ‘ terrorist’ and because of this terrorism legislation will continue to generate controversies. [58] As has been evidenced, this can have a significant impact upon the human rights of individuals as well as the maintenance of national security and peace.[59] If a freedom fighter is mistaken for a terrorist, this can have severe human rights consequences.[60] On the contrary if a terrorist is mistaken for a freedom fighter, the international community will be at risk and their national security interests will not have been adequately protected by the international community.[61] As such, it is important to attain a balance within this area so as to prevent any absurd consequences from occurring.[62] There have consequently been many suggestions for reform in this area to create a universal definition, yet this may not be feasible given the wide-ranging definitions that already exist. The Joint Committee on Human Rights stressed that; “ by using the definition of terrorism contained in the Terrorism Act 2000, the offence of encouragement of terrorism in s. 1 of the 2006 Act is much wider than the offence which is required to be criminalised by Article 5 of the Convention.”[63] Again, this

signifies how a more limited definition ought to be employed so as to prevent human rights abuses from occurring. Nevertheless, if a single definition was to be adopted, serious injustice would ensue. Whether this means that the present system is in fact sufficient is arguable, though it is manifest that some clarity is fundamental.

Still, the anti-terrorist strategies that have been incorporated will not be effectuated if inconsistency exists and as put by Duffy; “undermining the authority of the law can only lay the foundation for future violations, whether by terrorists or by states committing abuses in the name of counter-terrorism.”[64] Accordingly, much of the problems that arise with combating the WOT occur as a result of the lacking definition and the extensive powers that are provided to the police. This has led Amnesty International to point out that; “Governments around the world have spent billions in an effort to beef up national security and the “war on terror”.” In spite of this, much of the security mechanisms that were adopted were deemed to be corrupt and inept systems of policing and justice.[65] Whilst the WOT is supposed to make the world safer, it seems as though more damage is being done and innocent people are being subjected to human rights abuses.[66] If the definition of terrorism was more limited and the police’s powers were not so extensive, it is likely that the WOT would be more effective. At the same time, human rights would be better protected and less conflict would transpire.

Nevertheless, because many are in favour of the broad definition[67] it is unlikely that a rigid approach will ever be adopted since it is important that

national security can still be maintained. However, in replace of a rigid definition, a description as to what type of actions would amount to a terrorist act could be provided. This would prevent the police from abusing their powers and violating the rights of innocent individuals, whilst at the same time avoiding persons, such as Mr Gul, from escaping liability. This would provide an element of certainty to an area that is currently overcome with confliction and would provide greater confidence to the international community that their rights were being preserved.[68] Not all agree that a description would be sufficient and instead argue that there a definition of terrorism should be implemented in international law.[69] As enunciated by Saul; there is a “ need to condemn violations to human rights, to protect the state and deliberative politics, to differentiate public and private violence, and to ensure international peace and Security.”[70] Given that abuse is prevalent throughout the police force in the UK, it seems as though a lack of definition would prevent these objectives from being achieved.[71] This view is supported by Diaz-Paniagua who contends that an effective terrorism legal regime can only be established if a comprehensive definition of that crime is formed. This is because a comprehensive definition would; “ on the one hand, provide the strongest moral condemnation to terrorist activities while, on the other hand, would have enough precision to permit the prosecution of criminal activities without condemning acts that should be deemed to be legitimate.”[72]

Conclusion

Overall, it is evident that the definition of terrorism and the powers that are provided to the police under section 44 of the 2000 Act are too extensive.

Because of the difficulty in defining a terrorist, the police are given the power to make their own decisions, which often leads to the violation of innocent people. The police are thus able to argue that they suspected a person of terrorism without any supporting evidence, which often results in ethnic minorities being the subject of much abuse. Reform to this area is clearly necessary if the human rights of individuals are to be protected, yet this must not be at the expense of national security. It remains to be seen what, if any, changes will be made given the problems that have arose so far, yet it is apparent that something needs to be done. The starting point would be to adopt a stricter interpretation of the meaning of terrorism, yet because of the difficulties associated with distinguishing between a terrorist and a freedom fighter it is likely that this will prove problematic. In addition, because the activities of a freedom fighter are similar to the activities of a terrorist, a distinction cannot easily be made and the two are frequently being wrongly classified. Furthermore, different jurisdictions have different interpretations as to what is meant by a terrorist, yet some conformity is integral if the WOT is to be tackled effectively. This will result in many problems and the fight against terrorism will not be adequately achieved. Greater clarification is therefore needed, yet this can only be successfully achieved by the introduction of a universal definition of terrorism. This would remove the ambiguities that currently exist and the WOT's objectives would be preserved. On the other hand, it could be argued that greater flexibility is needed when it comes to defining terrorism so that special circumstances, which would not be foreseeable, could be accounted for. This would not be possible if a strict universal definition was employed. Furthermore, because

different jurisdictions all have dissimilar views as to what will amount to a terrorist act, flexibility is needed. On the whole, whilst the present approach lacks a universal declaration, this may in fact be necessary in preventing a rigid system from being established.

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