

A CRITICAL ANALYSIS OF EVIL NEXUS BETWEEN CHARITY & TERRORISM FINANCING THROUGH LEGAL LENS

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Abstract

The word “Charity” has a very virtuous nature. Charity, either for religious or for humanitarian purposes has always shown to the world the benevolent face of humanity. Unfortunately, at the same time, this pious obligation is exploited as tool to collect finances to fulfill the evil intentions of sustaining terrorism. Post 9/11, the deadly connections between charity and terrorism has exposed to the greatest extent and global community has taken a strong initiative to sever this connection. India has also significantly contributed in this endeavor. In the light of this background, the researcher has initially attempted to understand the basic concept of charity and its various perspectives. After having understood the nature of terminologies, the researcher has tried to analyze the alliance of charity and religion with terrorism and it’s financing. Further, the researcher has made an evaluation of international and Indian legal framework dealing with the present issue. The evaluation is supported with the case study of Zakir Naik. This evaluation has resulted into some concrete conclusions. And at the end, the researcher has tried to put forth some valuable practical recommendations which need immediate attention and implementation.

Keywords: Terrorism Financing, Charity, FCRA

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INTRODUCTION

Charity has two perspectives, one is religious and other is neutral. Religious charity is done when persons donate under the name of particular religion for religious purpose or as a religious duty. On the other hand, Neutral charity is not connected to any particular religion but the donor donates out of free will for the purpose of humanity.

The understanding of the concept of charity makes it clear that it is either for religious purpose or for humanitarian aid. Therefore, all over the world, charitable institutions of both the types are working tirelessly and providing their services to the society. These organizations were never suspected of being involved in funding terrorism till their nexus with terrorist activities was exposed after 9/11 attacks.

NEXUS WITH TERRORISM FINANCING

Terrorism financing envisages within its fold all those acts and activities which are providing financial support to terrorism in any form. Financing is the soul of terrorism and every social avenue is exploited by terrorists to develop and sustain their terrorist ideology.

In the context of terrorism financing, it is found that there are certain sections of society, which willfully and out of sympathy to terrorist cause, donate to charities whose money is going to be used for terrorism financing. On the other hand, there are certain innocent sections of population who donate to charity, either as a religious duty or for humanity, without knowing that their money is going to be used to finance terror act. The former people are the culprits of those victims who suffer at the hands of terrorist organizations.

When the Cold War ended and new or perhaps dormant, ideological divides emerged, only to be augmented by socioeconomic factors, extremist organizations propagated their ideas to masses of the same religious or social orientation. Whether or not the prospect of indiscriminate violence was ever expressly addressed, such legitimate gatherings of socio religious groups around the world were exploited as funding vehicles for terrorism. In accordance with this scenario, the vast majority of those donating money were not aware that it would be used in this way. In some cases, under the guise of a "charitable" or "relief" organization, a terrorist group would openly (to the particular audience addressed) solicit funding for its operations, taking advantage of the benefits inherent in the legislation on

charities.¹ Thus, the historical development of geopolitical decisions taken by states paved way for funding through charitable institutions.

The organizational structure, ideological beliefs and goals of terrorist organization decide the pattern of use of charities as a source of fund raising. For example, the organizational structure and ideology of Hamas wanted the use of charity as a source of fund raising in transparent way and it was main source of it. On the other hand, Al Qaeda widely used charities but did not established public links with them. They formed merely one of the sources and not the only one and main source for the all the times. Thus, the preferences of terrorist organizations of using charity as a source of financing are determined by the exigencies of the time and requirements.

Charitable institutions are both the source and channel of terrorism financing. The previous paragraph explains how it works as a source. In the context of channel, it can be seen that due to very less control on charitable institutions, foreign financial aid to the terrorism was channeled through these institutions. The pious purpose was exploited to move the funds across the borders without the fear of being obstructed by CTF agencies.

Under the garb of charitable institutions, blind trusts are established by the terrorists to move and store the funds. The documents of these blind trusts do not reveal either the purpose or the beneficiaries of the trust. Similarly, so-called asset protection trusts are available, which allow the settler retain control over the assets of the trust by becoming the beneficiary. Finally, in some jurisdictions the insertion of "flee clauses" enables the trust to be automatically shifted to another country if it prompts an inquiry.²

Charitable institutions come under the scanner of CTF agencies when it is found that they preserve misleading promotional literature and carry out high-pressure sales techniques. They fail to maintain proper accounting records, destruct records illegally and transfer charity's proceeds to a middleman who operated outside the charity's designated target country. Suspicion can also be raised when these institutions are found to be unqualified to handle such considerable amounts of money and the trustees are unable to explain why certain funds were missing. Due to the humanitarian consequences that CTF measures can cause, it becomes difficult for governments and bodies to apply strict measures to this source.

¹ Ilias Bantekas, *The International Law of Terrorist Financing*, 97/2, *The American Journal of International Law*, pp. 315, 322 (2003), Available at: <http://www.jstor.org/stable/3100109>, (Accessed on 05/05/2018)

² *Ibid* at 323

MASK OF ZAKAT

Zakat is the payment made annually under Islamic law on certain kinds of property and used for charitable and religious purpose and it is one of the five pillars of Islam.³ Zakat is the Islamic concept of tithing and alms obliging Muslims to contribute to charitable causes.⁴ Zakat is a tax on wealth, payable on various categories of property, notably savings and investments, produce, inventory of goods, salable crops, and precious metals. The source of zakat is the Quran itself, the primary source of legal and religious reference in Islamic law. The Quran sets out five lawful recipients of zakat. Of particular interest are those described as *sabil Allah*, which refers to persons engaging in deeds for the common good of a particular Muslim society. Terrorist groups have construed *sabil Allah* to encompass violence against non-Muslim Western targets.⁵ In this way, the pious concept of Zakat is misinterpreted and altered by terrorists to garner funds.

Zakat is a peculiar feature of Islamic charity. Every Muslim person is bound by its religion to pay Zakat. Most of the donors of Zakat are wealthy private Muslim citizens, especially in Gulf countries and Saudi Arabia and therefore, the amount collected is very huge. The donor is unaware about the utilization of amount collected by Zakat. Also, being of pious and religious nature, unregulated and seldom audited, it hardly comes under the scanner of CTF agencies. It can easily be co-mingled with other funds. Therefore, it has been widely exploited by the global jihadists or Islamic terrorists and it is one of the important sources of funding for Islamic terrorism. Most of the Islamic terrorist's organizations had maintained their close contacts with mosques so that they can utilize the amount of Zakat for terrorist purposes.

The state sponsorship of terrorism financing has been indirectly through this source of Zakat. Whenever states officially ended their financial support, they continued to fund terrorists through Zakat. One of the specially designated global terrorist Gulbuddin Hekmatyar was the recipient of vast Zakat from Saudi mosques and wealthy Saudi sheikhs.⁶ This channeled Zakat was also a major source of support for mosques and madrasas in Pakistan which

³ Zakat, Available at: <https://en.oxfordictionaries.com/definition/zakat>, (Accessed on: 8/05/2018)

⁴ Thomas J. Biersteker & Sue E. Eckert, *The Challenge of Terrorist Financing*, 1,9 in *Countering the Financing of Terrorism* (Thomas J. Biersteker & Sue E. Eckert, 2008)

⁵ *Supra* note 1

⁶ Thomas H. Johnson, *Financing Afghan Terrorism*, 93,108 in *Terrorism Financing and State Responses: A Comparative Perspective* (Jeanne K. Giraldo and Herold A. Trinkunas, 2007)

provided recruits for terrorist activities.

IDEOLOGICAL FORCE

It is no doubt that religion plays ideological role in every person's life. But when this ideological force is misused and directed towards ill cause of terrorism, it poses dreadful threat to the whole humanity. The history of terrorism shows that terrorism was earlier characterized as liberation movements; but with the rise of Islamic fundamentalism, terrorism changed its color into religious and ideological terrorism. Islam is a pious religion. It nowhere preaches policy of violence. However, for selfish and imperialistic interests, certain non-state actors initially along with certain state entities misinterpreted Islamic tenets and misused them for spreading terrorism. Thus, the religion of Islam is employed as an ideology to support ill intentions of certain fundamentalists.

The ideological force of Islam is misused to gain sympathy for terrorist cause. The Islamic principles are utilized to make appeal for fund raising. The strategies adopted by superpowers during the period of cold war and after its end, the misguided actions like waging war against Iraq, Taliban and taking over the state of Afghanistan of certain states like U.S.A. have created discontent in the Islamic population. By exploring these mistakes, under the garb of Islamic ideology, extremists and terrorist groups ably exploit Muslim sufferings, resentment and anger.⁷

In this way, the ideological force of Islam has given birth to Al Qaeda and ISIL which today pose a devilish threat to whole humankind.

VEIL FOR INVISIBLE FUNDRAISING

Ethnic and religious Diasporas are appealed in the name of religion to contribute money for the cause of religion. Diasporas are the target of religious fundamentalists because people constituting Diasporas stay in foreign countries. They exhibit more love for their motherland and religion because they are living in the geographic areas which may not have their own religion and the affectionate environment. This vulnerability is fuelled by such fundamentalists and perverted interpretation of religion is used as a tool to gain sympathy and raise funds.

⁷ Rohan Gunaratna, *The Evolution of AL Qaeda*, 47, 48 in *Countering the Financing of Terrorism* (Thomas J. Biersteker & Sue E. Eckert, 2008)

The discussion on Islamic charity makes it clear that religion itself makes provision for funds for its followers. It is true that religious charity is meant for humanitarian purposes; however the perverted form of religious instructions is used by the terrorists' organizations and networks for wrongful purposes. Fundraising in the name of religion was common propaganda of Al Qaeda. ISIL is appealing to Islamic people to give their contribution in the ongoing global jihad and so Islamic radicalized small groups or individuals are inspired to donate funds to terrorist acts. ISIL is using social media to carry out its jihadist propaganda and radicalize the local youth. Such youth, for the love and sake of religion, finance themselves through various petty channels and sources and carry out terrorist attacks.

INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK DEALING WITH CURRENT ISSUE

Charity has a humanitarian face and hence global legal fraternity had neglected its evil nexus with terrorism financing till 9/11 attacks. Post 9/11 also, barring few actions by U.S.A., the international community has largely given a free hand for charity to flow through the globe. Religion is fuel for war and hence it is very less interfered with by the international legal norms. Nevertheless, it is significant to note that many charitable institutions which had been convicted of supporting terrorism have been banned by most of the nations in the world.

In India, religion is a volcano and hence, religious charity is seldom regulated. The Unlawful Activities Prevention Act, 1967 (Amended up to date) indirectly deals with charitable organizations, only if they are found to be unlawful associations. Apart from this, The Foreign Contribution (Regulation) Act, 2010 is the prime regulatory statute which controls the functioning of non-governmental and charitable institutions in India. However exclusion of certain suspicious sources of foreign contribution and absence of ground of "terrorism financing" from the grounds of disqualification⁸ make it a weak law for curbing the menace of terrorism financing.

The enforcement machinery in India in the National Investigation Agency is burdened with other so many responsibilities that it is not possible for it to dedicate focused attention on the crime of terrorism financing under the garb of charity and religion. The following case study throws light upon the nexus and its analysis done by Indian state-

⁸ Section 12 (4), The Foreign Contribution Regulation Act, 2010

CASE STUDY OF ZAKIR NAIK AND HIS ISLAMIC RESEARCH FOUNDATION

Zakir Abdul Karim Naik is an Indian Islamic preacher. He is the founder and president of the Islamic Research Foundation (IRF). He is also the founder of the “comparative religion Peace TV” channel through which he reaches a reported 100 million viewers. Zakir Naik is known as “controversial preacher” because he has interpreted Islamic fundamental principles in his own way and these interpretations are inspiring Islamic youth to adopt the path of terrorism. The sermons of Zakir Naik include the subjects like why every Muslim is terrorist, jihad, suicide bombings and he referred to Osama Bin Laden as “Soldier of Islam”.⁹ Due to these fiery subjects, his preaching is banned in India, Bangladesh, Canada, Malaysia¹⁰ and United Kingdom. When he was denied physical presence for his lectures at various venues in India, his organization, Islamic Research Foundation, organized his lectures via social media.¹¹

Islamic Research Foundation is established by Zakir Naik for seeking advancement of knowledge through spiritual and intellectual growth.¹² The foundation carries on the activity of raising funds to establish an Endowment Fund for purposes of awarding research grants, scholarships and establishing centers of higher learning which integrate Islamic and modern education and awarding grants for publication of Books that meet the Aims and Objectives of the Islamic Research Foundation. It runs a fully-fledged website which hosts thousands of articles which try to decipher the meaning of Islam and preaches the so called modern interpretations of Islam. This funding for scholarships is exposed to have been linked with individuals who have connections with ISIL. According to recent news, NIA investigators claim that one Abu Anas, an accused charge sheeted in the “ISIS conspiracy case” registered by NIA in 2015, received a scholarship from Naik’s IRF for three consecutive years from 2013 to 2015. Sources say that Hyderabad-based Abu Anas was alleged to be part of a

⁹ Rama Lakshmi, *This Islamic preacher might have influenced one of the Dhaka terrorists. Now Indians want him banned*, The Washington Post (06/07/2016), Available at: www.washingtonpost.com/news/worldviews/wp/2016/07/06/did-an-Indian-islamic-tv-evangelist-inspire-one-of-the-dhaka-terrorists-many-indians-say-the-preacher-must-be-banned-/?utm_term=.3b9e8ba0a0cb, (Accessed on: 04/05/2018)

¹⁰ Adrija Bose, *10 times ‘Islamic Preacher’ Zakir Naik Proved the He Promoted Anything but Peace*, The Huffington Post, (07/07/2016), Available at: www.huffingtonpost.in/2016/07/07/zakir-naik_n_10851550.html, (Accessed on: 04/05/2018)

¹¹ Mohammed Wajihuddini, *Will Return to India Only Next year: Zakir Naik*, The Times of India, (16/07/2016), Available at: www.timesofindia.indiatimes.com/india/Will-return-to-India-only-next-year-Zakir-Naik/articleshow/53233375.cms, (Accessed on: 04/05/2018)

¹² Islamic Researcher Foundation, Available at: www.irfi.org/about_irfi.htm, (Accessed on: 04/05/2018)

conspiracy linked to an ISIS-affiliated group, Junood-ul-Khalifa-fil-Hind.¹³

Zakir Naik claims himself as a preacher of peace, morality and justice but he has spread hate and anger through his speeches. His sermons are referred by many individual terrorists on social media and therefore, it is alleged that Zakir Naik has links with terrorist organizations and he indirectly, through his speeches, supports pro-terror agenda.¹⁴

Zakir Naik is blamed not only for inspiring terrorism but also for amassing huge wealth under the garb of charity. His web of financial transactions includes at least 10 companies and 19 properties in Mumbai and Pune in which Naik has invested an estimated Rs 104 crore. The National Investigation Agency, on November 18, 2016, on the orders of Ministry of Home Affairs, had registered a criminal case against Naik at its Mumbai branch under Sections 153A of Indian Penal Code and Sections 10, 13 and 18 of the Unlawful Activities (Prevention) Act, 1967. IRF has already been declared as an Unlawful Association by Government of India as per a notification dated November 17, 2016. In September 2012, Zakir Naik obtained a status of Non-Resident Indian. He left India on May 13, 2016, and has not returned since. The special NIA Court at Mumbai issued a non-bailable warrant against Naik on April 21, 2017. The NIA has also initiated proceedings to get a Red Corner Notice against Naik and has sent the requisite documents to National Central Bureau (Interpol) NCB, India on May 11, 2017.¹⁵

Probing Naik's financial assets, investigators are learnt to have found huge investments in various properties across Mumbai and Pune. At least 19 properties have been identified in which Naik reportedly invested more than Rs 104 crore over the last few years. The NIA has also traced a web of at least 11 companies incorporated by Naik with his family members and close aides as Directors of these companies. NIA has tracked the trail of financial transactions running into many crores through these companies. The investigations are currently undergoing.

¹³ Varinder Bhatia, *NIA moves to revoke Zakir Naik's passport, probe his money trail*, The Indian Express (09/06/2017), Available at: www.indianexpress.com/article/india/nia-moves-to-revoke-zakir-naiks-money-trail-probe-his-trail-4695667/, (Accessed on: 04/05/2018)

¹⁴ PTI, *Government hints action against Islamic preacher Zakir Naik for "hate speech"*, The Economic Times (06/07/2016), Available at: www.economictimes.indiatimes.com/news-and-politics/nation/government-hints-action-against-Islamic-preacher-Zakir-Naik-for-hate-speech/articleshow/53080185.cms, (Accessed on: 04/05/2018)

¹⁵ *Supra* note 13

In this way, Zakir Naik is exploiting the principles of Islam for propagating terrorism and financing terrorist activities indirectly. This case presents recent development in the terror financing investigations and the misuse of charities and religion for spreading and financing terrorism. Therefore, the outcomes of the case registered against Zakir Naik will set a new precedent in the realm of CTF investigations and law enforcement.

CONCLUSION

Religion is made to confer peace of mind and security of soul. Charity is pious obligation, either towards particular religion or humanity. Both of these elements are inherently virtuous. They are omnipotent and whole humanity, with negligible exceptions, follows one or other religion and performs charity in some or other form. However, the evil intentions exploit these devout features of civilizations for satisfying their illegitimate ideological or political greed. Terrorists have misinterpreted religious tenants for their selfish purposes and abused charities for fulfilling their financial needs. Donors of charity, knowingly or unknowingly, have supported this source of terrorism financing since decade.

The subject of religion and charity and its link to terrorism financing is very less discussed; but it has to be considered that this source and channel is the most vulnerable to TF risks and the most widely abused among all other sources and channels. Further, the evaluation of exiting international and national legal framework dealing with the nexus of terrorism financing and charity and religion reveals that there is no legal deterrence at international level. The national laws are inadequate and lack strict enforcement vigor. The relevant case study clarifies the extensive use of charities by terrorists to gain financial support and the present unhappy state of affairs of investigation. At some point of time, the treatment of these charities and religious sections of society by the government authorities under the name of “war on financial terror” had led to the exercise of state coercive power. Under the veil of financial war on terror, U.S. authorities prosecuted many charitable organizations but it can be found that the events took unexpected turn and instead of treating the main cause, innocent persons were unnecessary indicted and prosecuted without due process of law.

India must formulate an umbrella policy dealing with the menace of terrorism financing and covering all preventive, curative and punitive aspects of the said crime. The policy must lay down effective ways for securing adequate and sufficient participation of relevant stakeholders like participants in financing, private players and victims of the said crime. As

the charity and religion are social organs of the society, law must secure community participation in effective manner. It must adopt advocacy function to prevent the community from indulging into charity for evil purposes. It must look into psychological trends of the society to explore the positive side of religion. Only in this way, the law as an instrument of social change can bring social transformation in real terms. The policy must also lay down a comprehensive and consolidated enactment exclusively targeted at preventing the evil of terrorism financing. The enactment must also aim at remedial as well as penalizing aspects of said crime.

In the wake of global and national terrorism assuming religious identity, it is the need of the hour that law must take cognizance of this evil nexus from balanced point of view. It must adopt preventive, regulatory and punitive comprehensive approach along with preservation and protection of freedom of religion. Then only the charity and religion can serve benevolent needs of humanities.