

Probe into the Human Rights Safeguard in China's Anti-Terrorism Law

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ABSTRACT. *At present, the "balanced struggle" between national security and human rights in counter-terrorism action is a problem that must be faced by anti-terrorism laws in all countries of the world. Human rights protection is the goal of China's "Anti-Terrorism Law" and its basic restrictions. The law covers specific measures about human rights protection for ordinary citizens, suspected terrorist suspects, counter-terrorism participation and facilitators, and victims. It is a milestone in China's counter-terrorism action. However, China's "Anti-Terrorism Law" has a short development process, and it still has limitations such as lack of censorship system, insufficient legal connection between other laws, and lack of specific restrictions. In this regard, it is possible to establish a sunset clause and judicial review system, improve the connection between other laws, and establish a database of information on terrorism to strengthen the human rights protection of China's Anti-Terrorism Law.*

KEYWORDS: *Anti-terrorism Law; Human Rights Protection; Limitations Analysis*

1. The "Balanced Struggle" Between Anti-terrorism and Human Rights

Civil liberties and human rights are fundamental components of a democratic society, as is the rule of law. The war on terror has created a tension between the need for national security and the need to maintain basic civil liberties and human rights. Scholar Amos Giola called the "balanced dilemma" between security and civil rights.

At present, anti-terrorism agencies face a core dilemma: To what extent should a government deprive citizens of their human rights and civil liberties in order to protect national security? In order to safeguard national security and the personal property safety of all citizens, it is necessary to take some necessary measures to effectively punish criminal acts suspected of terrorism. On the other hand, because of the particularity of terrorist crimes, international common practice will adopt to some extent, it violates the pre-emptive measures of citizens' privacy and even human rights violations [1]. Obviously, the extent of this deprivation is related to the laws and freedoms of individual countries. But the goal is always the same, that is, to strike a balance between national security concerns and safeguards and the need for rights and freedoms related to liberal democracy.

The United States, Israel, India and other countries have all entered this "balanced dilemma" without exception. In order to accommodate the Taliban prisoners captured in the Afghan war, in order to obtain valuable counter-terrorism information from these prisoners of war, the US military established a dedicated military prison in Guantanamo, Cuba, and a number of intelligence acquisition operations were led by the US Central Intelligence Agency. This mainly includes passing the harsh criminal law [2]. The public and the judiciary severely condemned the technology if it was poured into a wooden box for 11 days and asked to stand in ice water for 66 hours. In response to public and judicial pressure, the US government gave up. The technology. The Israeli Supreme Court upheld the right of the country to establish a 385-mile fence along the Green Line, but ordered the state to minimize its impact. At the same time, India redefines terrorism after the September 11th incident, expanding the powers of investigations and criminal proceedings, but in the face of public criticism, the courts have restricted these powers.

2. The Balance of National Security and Human Rights in China's Anti-Terrorism Law

As China's anti-terrorism work has gradually on the right track, anti-terrorism actions step by step, and the "balance struggle" has gradually entered the public's vision. Summarizing and sorting out the human rights protection measures in China's Anti-Terrorism Law is conducive to enhancing the overall cognition of the status quo of human rights protection in China's anti-terrorism action, improving the existing anti-terrorism rule of law in China, understanding and practicing the comprehensive rule of law and the overall state. The concept of security is also beneficial .

2.1 Establishment of the principle of human rights protection

The "Anti-Terrorism Law" at the beginning stipulates that "In order to prevent and punish terrorist activities, strengthen counter-terrorism work, safeguard national security, public safety and the safety of people's lives and property, this Law is enacted in accordance with the Constitution." Article 6 stipulates: "Anti-terrorism work It should be carried out in accordance with the law, respect and protect human rights, and safeguard the legitimate rights and interests of citizens and organizations. It is clear that the formulation of the Anti-Terrorism Law and the development of anti-terrorism activities are fundamentally aimed at safeguarding the lives and property of ordinary citizens and profoundly reflecting China's anti-terrorism. The people-oriented value orientation of work and the purpose of respecting and protecting human rights.

2.2 Specific human rights protection

2.2.1 Human rights protection for criminal suspects

China's anti-terrorism law has strict requirements on the identification subjects and procedures of terrorist organizations and personnel, and provides a relief system for those who refuse to accept the identification results. At the same time the introduction of help and education system. Under this system, Xinjiang province first created the vocational skills training class form of helping and teaching, "one hand to combat, one hand to prevent", unity education to save the vast majority of people with minor crimes, to avoid becoming another victim of terrorism and extremism and victims.

2.2.2 Human rights protection for victims

The "Anti-Terrorism Law" stipulates that "in response to the handling of terrorist incidents, priority should be given to protecting the personal safety of personnel directly harmed by terrorist activities." "After the handling of terrorist incidents, the people's governments at all levels shall organize relevant departments to help affected units and individuals. Restoring life, production, and stability of the social order and public sentiment in the affected areas as soon as possible." "Government agencies are responsible for the rescue of victims and their close relatives in terrorist incidents." This provision is the victim of the terrorist incident in China and its near. The basic rights of relatives provide legal protection.

2.2.3 Human rights protection for counter-terrorism facilitators and participants

Counter-terrorism activities assistants mainly refer to witnesses, reporters, etc. Participants in the anti-terrorist activities mainly refer to law enforcement officers in the counter-terrorism department. Article 75 of the Anti-Terrorism Law stipulates that the above-mentioned persons shall apply for personal or personal information such as their real names, addresses and work units; Take special protective measures for the person and their address; change the name of the person to be protected, and re-arrange the necessary protective measures such as the residence and the work unit. In the process of counter-terrorism, personnel who have been disabled or killed in order to perform their duties or to assist and cooperate with relevant departments to carry out counter-terrorism work shall be treated accordingly according to relevant state regulations.

2.2.4 Human rights protection for counter-terrorism facilitators and participants

When the logistics unit and the telecom service provider screen the postal content, network and telephone information, it is bound to involve the public privacy issue. Therefore, if the relevant departments and units or individuals concerned with anti-terrorism are required to disclose state secrets, trade secrets and personal privacy in violation of the provisions, they shall be investigated for legal responsibility according to law. At the same time, it is stipulated that if technical investigation measures are required due to the needs of counter-terrorism intelligence information work, strict approval procedures must be passed, and the use of personal information obtained through technical investigation means must

also be specified, and no other use may be made. If the personal information obtained according to law in the process of counter-terrorism is leaked or other acts that infringe upon the privacy of individuals, the legal responsibility of the relevant subject will be investigated according to law. This is also a highlight of our country's legislation on the protection of citizens' privacy rights in the process of counter-terrorism.

3. Limitation analysis on China's Anti-Terrorism Law

3.1 Lack of Review System

China's anti-terrorism law has actively responded to social concerns and has achieved a better legislative value standard for balancing the relationship between counter-terrorism and human rights protection [3]. However, counter-terrorism is not a day's work. The anti-terrorism situation is also changing. The society with relatively progressive legislation must have a certain lag. China's Anti-Terrorism Law does not stipulate a censorship system, which means that some counter-terrorism measures taken under special circumstances may be consistently followed. These special measures may be unnecessary after the counter-terrorism situation has changed. Violations of human rights.

The lack of censorship will also lead to a certain degree of discretion in the anti-terrorist authorities in identifying cases involving terrorism. At present, China's "Anti-Terrorism Law" only stipulates that administrative review is a remedy for dissatisfaction with the anti-terrorist organs, and does not stipulate judicial review system.

3.2 Insufficient legal connection between upstream and downstream

First of all, the criminal law of our country does not stipulate the crime of terrorist activities committed by terrorists alone. This will result in the criminal suspects who are not members of terrorist organizations but who commit terrorist acts alone and cannot be disposed of by terrorist crimes [4]. From the perspective of safeguarding the human rights of victims, it is impossible to punish perpetrators on charges of terrorism, which is an violation of the rights of victims.

In addition, there is no clear distinction between the prosecution and trial procedures of suspected terrorist suspects in China and ordinary criminal offences. The trial of suspected terrorist suspects through the same judicial process as ordinary crimes is conducive to protecting the human rights of suspected terrorist suspects, but such prosecutions can easily trigger retaliation in the form of new terrorist attacks. The public nature of criminal trials can serve as a prominent forum for terrorist suspects to pay more attention to the cause of terrorism.

3.3 Insufficient specific restrictions

China's "Anti-Terrorism Law" currently has some provisions on personal information and privacy obtained in anti-terrorism work. The foregoing has been described, but the "involving" personal information and "abuse" of personal information in its provisions need to be more clearly defined. For example, there is no specific approval procedure for technical investigation measures. Article 18 stipulates that telecommunications operators and Internet providers are obliged to provide decryption technology to public security organs and national security agencies, but they are not set strictly. The provision of procedures and how to supervise whether public security organs and state security agencies regulate the use of decryption techniques, rather than abusing the technology infringes upon the privacy of citizens, nor does it provide for remedies for citizens who violate the privacy of counter-terrorism agencies.

In addition, the current law in China stipulates that suspects of terrorist activities can be secretly detained, but the specific circumstances and procedures of "unable to notify" family members are not clear. There are no specific provisions that may be referred to in the case of "may be hampered by investigations", giving the public security organs greater discretion, which is not conducive to the protection of the human rights of suspected terrorists.

At the same time, the "Anti-Terrorism Law" stipulates that "the damage caused by the counter-terrorism work to the legitimate rights and interests of units and individuals shall be compensated and compensated according to law", but the specific rights and interests belong to "legal rights and interests" and no clear answer is given. Specific compensation and compensation standards have not been specified.

4. Thoughts on Perfecting Human Rights Protection Measures in China's Anti-Terrorism Law

4.1 Adding Sunset Terms and Judicial Review System

China can follow the German anti-terrorism law and set up the "sunset clause", requiring legislators to re-examine some of the provisions of the anti-terrorism law based on the counter-terrorism situation in special periods before the expiration of the prescribed expiration date, and judge whether it is necessary to analyze it. extension. If the anti-terrorism situation has changed and the legislature has not approved the continuation of its legal effect, then the power of the anti-terrorism-related public authority based on this law will lose its survival basis. This failure is not due to changes in the legal concept, but due to the disappearance of legislative reasons. Based on the approaching period of the German Anti-Terrorism Law and the actual anti-terrorism situation in the country, Congress passed the German Anti-Terrorism Supplement Act to continue the former function. The United States has also extended the application period of the Patriot Act twice. This kind of legislative model that stipulates the validity period of the law is a possible warning to the

potential of the anti-terrorism law to potentially threaten the people's freedom rights. It can reflect the legislator's high regard for safeguarding human rights and regulating public rights, and is conducive to the realization of anti-terrorism legislation. The unity of effects and social effects.

4.2 Complete upstream and downstream laws, set up a special criminal procedure for suspected terrorist suspects

For criminal suspects who carry out terrorist activities alone, they are supplemented with corresponding charges in the criminal law in order to impose sanctions on such "lone wolf" crimes.

The formulation of prosecution and trial procedures specifically for suspected terrorist suspects will help to avoid turning the trial process into a "propaganda channel" for terrorists, and will also help lay the groundwork for the arrest of terrorist leaders in the future. According to the definition of terrorism cases in the Anti-Terrorism Law, after the suspects of terrorist crimes are clarified, the Criminal Procedure Law stipulates the investigation, prosecution and trial procedures of special terrorist suspects, such as suspected terrorist crimes. The use of secret trials, etc., is conducive to the means by which the atmosphere of terror will not spread among the public.

4.3 Establish a database about anti-terrorism actions

The establishment of a powerful data protection library and data protection mechanism can greatly help the fight against terrorism to achieve a balance of rights.

The Terrorism Information Database enables counter-terrorism units across the country to share and retrieve information about individuals, events and equipment related to terrorist cases (eg suspects, weapons, phone numbers, number plates, passports). At the same time, the range of data that can be processed in the database should be limited in several ways: for example, data that can only be used by counterterrorism units to perform tasks. The data in the library must be related to suspects, convicted offenders or those who have factual signs or have reasonable grounds to believe that they will commit crimes within the purview of the counter-terrorism unit.

If there is a need to delete the data, it will be reviewed. For example, when someone is acquitted or their proceedings have been determined to be deleted, the data in the database must be deleted.

In addition, sensitive personal data may only be made public if absolutely necessary. Sensitive personal data should include information that reveals racial or ethnic origin, political opinions, religious or philosophical beliefs, union membership, health and sexual life.

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