

# Disputes in Terrorism Exclusion



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CASE STUDY

## Introduction

The purpose of this case study is to deal with disputes regarding terrorism exclusion present in Fire Insurance Policy and how it overlaps with the coverage in Riot and Strike Damage Endorsement.

Although they appear to be two different risks but the trick of some legal terminology makes it difficult for the insured and insurers to fully judge the situation and not only insurers un-necessarily decline the claim but in some cases a genuine declinature becomes payable due to some lack of investigation on surveyors side.

Practice of police in incorporation of the sections of the law at crime scene is also an importance aspect of this case.

It is worth mentioning here that Pakistan being a developing country, which is currently facing high challenges in different economical sectors along with war on terrorism, Terrorism is one of the most important risk prospect in Pakistan insurance industry, which should be dealt with extreme care and no loopholes in law should be left which can leave the margin of error or cause disputes.

Perhaps Pakistan is the only country on the face of this earth, which has paid the price of terrorism in terms of human sacrifices, economical instability, loss of infrastructure and most importantly a deterrent in the international image. Keeping in mind all these sacrifices, acts of terrorism should be justified enough to avoid a loss rather than an excuse to avoid the loss. For the purpose to clear our understanding of current legislation and exclusion pertaining to Terrorism, we will take a case as an example from the books of Federal Insurance Ombudsman of Pakistan, and will see what kind of solutions we can come up with to avoid such issues.

### Terrorism:-

The history of terrorism involves well-known and historically significant individuals, entities, and incidents associated, whether rightly or wrongly, with terrorism. Scholars agree that terrorism is a disputed term, and very few of those labeled terrorists describe themselves as such. It is common for opponents in a violent conflict to describe the other side as terrorists or as practicing terrorism

### Terrorism in Pakistan

As Pakistan became an ally of US in "War on Terrorism" in wake of 9/11 and before that proxy war of US on USSR.

Terrorism in Pakistan has become a major and highly destructive phenomenon. The annual death toll from terrorist attacks has risen from 164 in 2003 to 3318 in 2009, with a total of 35,000 Pakistanis lost between September 11, 2001 and May 2011.

According to government of Pakistan, the direct and indirect economic cost of terrorism from 2000–2010 is approximately \$68 billion. Former President Asif Ali Zardari, along with former President and ex-Pakistan Army Chief General Pervez Musharraf, have admitted that terrorist outfits were "deliberately created and nurtured" by past governments "as a policy to achieve some short-term tactical objectives" The trend began with Muhammad Zia-ul-Haq's controversial "Islamization" policies of the 1980s, under which conflicts were started against Soviet involvement in Afghanistan. Zia's tenure as President saw Pakistan's involvement in the Soviet-Afghan-US War, which led to a greater influx of ideologically driven Muslims (mujahideen) to the tribal areas and increased availability of guns such as the AK-47 and drugs from the Golden Crescent.

The state and its Inter-Services Intelligence, in alliance with the CIA, encouraged the "mujahideen" to fight a proxy war against Soviet forces present in Afghanistan. Most of the mujahideen were never disarmed after the war ended in Afghanistan.

From the summer of 2007 until late 2009, more than 1,500 people were killed in suicide and other attacks on civilians for reasons attributed to a number of causes – sectarian violence between Sunni and Shia Muslims; easy availability of guns and explosives; the existence of a "Kalashnikov culture"; an influx of ideologically driven Muslims based in or near Pakistan, who originated from various nations around the world and the subsequent war against the pro-Soviet Afghans in the 1980s which blew back into Pakistan; the presence of Islamist insurgent groups and forces such as the Taliban and Lashkar-e-Taiba.

### Terrorism Definition as per Insurers in Pakistan

An act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological, or ethnic purposes or reasons including the intention to influence any government and/or to put the public, or any section of the public, in fear.

## Definition of Terrorism in Pakistan's Anti Terrorism Act:-

Terrorism means the use or threat of actions where:  
The action falls with the meaning of sub-section (02) and

The use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society or

The use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause.

An action will fall in the meaning of sub-section (1), if it:-

- Involves the doing or anything that causes death;
- Involves grievous violence against a person or grievous body injury or harm to person;
- Involves grievous damage to property;
- Involves the doing of anything that is likely to cause death or endangers a person's life;
- Involves kidnapping of for ransom, hostage-taking or hijacking;
- Incites hatred and contempt on religious , sectarian or ethnic basis to stir up violence or cause internal disturbance;
- Involves stoning, brick-batting or any other form of mischief to spread panic;
- Involves firing on religious congregations, mosques, imambarghas, churches, temples and all other places of worship, or random firing to spread panic, or involves any forcible takeover or mosques or other places of worship;
- Creates a serious risk to the safety of public;
- Or a section of the public, or is designed to frighten the general public and thereby prevent them from coming out and carrying on their lawful trade and daily business, and disrupts civil (civic) life;
- Involves the burning of vehicles or any other serious form of arson;
- Involves extortion of money (bhatta) or property;
- Is designed to seriously interfere with or seriously disrupt a communications system or public utility services;
- Involves serious violence against a member of the police force, armed forces, civil armed forces or public servant ; or
- Involves serious coercion or intimidation of public servant in order to force him to discharge or to refrain from discharging his lawful duties

## A Disputed Case from the books of Federal Insurance Ombudsman:-

Through this case we will establish current market practices in interpreting Riot and Strike and Terrorism, and how presence of loophole in law affects the decision of regulatory bodies/courts of law;

### Facts:-

Insured purchased insurance from M/s.AAA Company Limited due to Loan from the bank on his shop. The Policy covers stock of all kinds of cloth lying at shop against perils of Fire/Lightning, Atmospheric Disturbance, Burglary and Theft and Riot and Strike Damage.

During the religious processions of Ashura on 15-11-2013, dozens of shops of Madina Market were set on fire by an aggressive mob due to which entire stock at insured's premises was burnt/damaged.

The surveyor mentioned in his report:-

"On Scrutiny of relevant documents and as per physical inspection it was observed that fire loss was occurred due to religious Terrorism attack which is not covered under insurance Policy. Therefore, we advise insurer to close their file treated the matter as "No Loss".

The Insured requested the honorable Federal Insurance Ombudsman to look into the matter and instruct the respondent company to make payment of the insurance claim without any further delay.

### Insurance Company's Response:-

In response insurance company replied with Policy Copy, FIR report, Survey Report with comments that they have already repudiated the claim as it is not covered under fire policy. Further the FIR registered with the Police covered the offences under sections 342,324,148,188,382,302,149 PPC and Section 7 of Anti Terrorism ACT.

The contents of FIR clearly showed that the insured shop was subjected to an act of terrorism which was not covered.

### Reliance of Insured and Insurer:-

Insurer was relying on Terrorism Exclusion as the FIR mentioned the act as terrorism act while insured was of the opinion that the subject loss was due to Riot and Strike which was covered.

## The Case:-

### Definition of terrorism under insurance policy:-

An act of terrorism means an act, including the use of force or violence, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or governments(s), committed for political, religious or ideological purposes including the intention to influence any government and/or to put the public in fear for such purposes.

### Riot and Strike Damage Endorsement:-

“Loss or damage to the property insured directly caused by:

1. The act of any person taking part together with others in any disturbance of the public peace (whether in connection with a strike or lockout or not).
2. The action of any lawfully constituted authority in suppressing or attempting to suppress any such disturbance or in minimizing the consequences of any such disturbance.
3. The willful act of any striker or locked-out worker done in furtherance of a strike or in resistance to a lockout.
4. The action of any lawfully constituted authority in preventing or attempting to prevent any such act or in minimizing the consequences of any such act.

### Tribunal Observations-

A close examination of Policy document in relation to (i) Fire damage as well as (ii) riot and strike damage reveals that exclusions in both the cases are exactly the same or quite similar. Fire damage claim has been rendered null and void by act of terrorism clause of general exclusions. Finding this access blocked the insured picks the coverage provided by riot and strike damage but unfortunately here again he falls victim of the same familiar terrorism clause. What does this mean? It means that a damage by fire and a damage by riot/strike is one and the same thing in the eye of the insurer, which is ill-conceived or rather mischievous. Fire and riot are not synonymous but two different words altogether. In this particular case the Insured must have felt satisfied that risk of damage or loss to his property against incidents of fire or riot/strike had been adequately covered by his insurance policy little knowing that definitions of two different and distinct words cannily crafted would make them synonymous. In this case what insurer gives with one hand he takes away by the other. This,

however, cannot be permitted.

Insurer has chosen to repudiate the claim primarily on the premises that the damage to the property of the insured was caused in consequences of acts of terrorism, hence not covered by the Insurance Policy. The basis of reaching such conclusion is insertion of Section 7 of anti Terrorism ACT in connection with other provisions/sections.

Definition of term “Riot” in Sec.146 Pakistan Penal Code read as under:-

“Whenever force or violence is used by an unlawful assembly or by any member thereof in of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.”

In the realm of PPC, rioting is a violent disturbance created by an unlawful assembly of three or more persons assembled for a common purpose.

The gravity of rioting is exacerbated with the use of weapons or arson and there are specific sections of law in the PPC addressing each individual scenario.

Rioting is typically a wild and turbulent disturbance caused by a large number of people. It is an unrestrained out break and is essentially a civil disorder characterized often by disorganized groups lashing out in a sudden or intense rash of violence against authority, property and/or people. Riots are essentially chaotic, with participants exhibiting a herd behavior and is a manifestation of reaction to a perceived grievance or dissent and typically involves vandalism and destruction of public and private property through any means including arson. The description of property involved is generally indiscriminate.

It can be seen that the definition of “Terrorism” and “Rioting” overlap in some areas but the connotation of each act as seen objectively by a discerning eye, is different in intent and execution.

### Common Practice of Police

It is a common practice of the police in Pakistan that Police applies sections of law carrying enhanced punishments for offences which may be covered by other sections of law under the PPC. This is done with the intent of creating deterrence, and is an effort to make it difficult for the accused to obtain bail.

Before promulgation of Anti Terrorism Act, all such crimes were appropriately covered under the



provisions of PPC, but the stretched interpretation of provision of Anti Terrorism Act have proved to be a boon in the hands of Police.

### **Decision:**

The shops at Madina Market were set on fire by the enraged rioters who were part of traditional Ashura procession. To describe these processionists as terrorists, irrespective of what they did, would be patently wrong.

The Insurer cannot use the misapplication of law by Police as a vehicle to deny the rights of the insured and under the circumstances repudiation of claim by the insurer is unfair and amounts to maladministration. Hence the insurer is instructed to pay the loss which was assessed by the surveyor.

### **A Debate:-**

At first instance this decision shows the approach of Ombudsman is sympathetic towards the insured but if we try to dig this decision out we will find some interesting points hidden in this decision, which are as follows:-

- **Contra Proferentem Rule:-**  
A rule of interpretation used in courts to interpret the contract, it states that if there is any ambiguity in the contract terms, than the drafter of the contract is at disadvantage.(which in this case was Insurer)
- **Novation:-**  
Riot and Strike Damage is a standard exclusion of the Fire Insurance Policy just like Terrorism,. But unlike terrorism which require special arrangements for insurance, Riot and Strike Damage can be covered as an extension of Fire Policy and overrides the exclusion of the fire policy because by the role of Novation a term of the contract can be replaced with the new term and thus the conditions of the Riot and Strike Endorsement will apply and not the exclusion wording of the fire policy.
- **Knowledge:-**  
The Insured is not expected to know all the legal terms of the insurance contract and on the other hand insurers are fully aware of the legal terminology and so it can give a feel that they can exploit the insured for his poor knowledge.

Keeping all this in mind, now we will turn our attention to the authorization of the terrorism event.

### **Who authorizes an event as Terrorism:-**

Practices in Some Prominent Insurance markets

#### **USA:-**

Terrorism Risk Insurance Act (TRIA ) created in 2002, defines terrorism as

Any act certified by the Secretary of Treasury, in concurrence with the Secretary of State and Attorney General to be an act that is dangerous to human life, property , or infrastructure and to have resulted in damage within the USA (or outside the USA in the case of a US-flagged vessel) or on the premises of a US Mission.

#### **United Kingdom:-**

Acts of persons acting on behalf of, or in connection with, any organization which carries out activities directed towards the overthrowing or influencing, by force or violence, or her Majesty's government in the United Kingdom or any other government de jur or de facto.

No indemnification is payable unless and until

- The Treasury issues a certificate that any loss was caused by an act of terrorism
- Or
- In the event of Treasury refusing to issue such certificate a tribunal formed by Government between insurer and the Pool Reinsurance Company limited decides that the cause of loss was terrorism.

#### **In Pakistan:-**

We can see that there are some disputes regarding act of terrorism where insurer relies on exclusion and insured relies on the coverage of Riot and Strike Damage. Can we distinguish this situation? As a matter of fact yes we can.

First and foremost, in relation with terrorism, like most prominent markets of the world is there any procedure like who declares the event as terrorist act?

### **Solutions/Need of the Hour:-**

- **Federal Body to declare the event as terrorism**  
We can see along with legislation In UK and USA there are designated federal authorities which declare the event as terrorism, unfortunately such kind of authority does not exist in Pakistan at the moment. Although a comprehensive law does exist in terms of terrorism (Anti Terrorism ACT 2015) but yet the need of the hour and to reduce the disputes and

un-necessary litigation a federal body should exist to declare and decide the event as terrorism.

- **A Terrorism Pool:-**

Although terrorism re-insurance is available in international market but yet a local pool regarding terrorism coverage will not only provide better coverage for local insurers but also will stop a reasonable amount of Premium out flow from the country.

- **In the Absence of Federal Body:-**

In the absence of a Federal body there should be unified procedure of declaring the act as a terrorism throughout the industry rather than full reliance on police report.

### **Conclusion:-**

It is quite clear that there are some parts which overlap in the legal definition of riot and terrorism but being an emerging insurance industry these loopholes need to be closed and a better understanding of the insured is necessary.

A state level declaration will erase all kind of ambiguity regarding a terrorism event.

The most important person for insurance industry is no doubt the customer and to enhance the customer understanding about insurance, the compliance of Supreme Court order regarding Urdu language as official language for all kind of official correspondence is necessary or perhaps most important step towards customer awareness regarding what is covered in the policy and what is not so an Urdu translation of the policy should be mandatory with every policy.

All these steps will not only erase the burden of investigation of every terrorism event but also insurance companies will avoid unnecessary litigation cost and can also enhance their brand name by gaining customer loyalty.

