

Why Mass Shooting is Not Terrorism? A Critical Analysis of the Counter Terrorism Laws of Pakistan and the USA

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Abstract

In the US, arbitrariness in charging a suspect with terrorism or hate crime has resulted in adoption of flawed policies, such as launching a de-radicalization program targeting Muslim suspects only while taking eyes off the judicious way forward, such as tightening gun control laws. By comparison, in Pakistan, factors like previous enmity, provocation and uncontrollable rage are taken into considerations for converting a terrorist act into multiple murders. Because murder is compoundable in Pakistan, once it is pardoned, the accused can get away with the crime. Had there been a non-compoundable 'hate crime' under the law of Pakistan in between terrorism and murder, an accused charged with terrorism would have no opportunity to take advantage of pardonable nature of the alternate charge of murder or multiple murder. This article tends to draw a clear distinction between the entangled concepts of hate crime and terrorism together with terrorism and multiple murders.

Keywords: *Mass Shooting, Terrorism, Hate Crime, Multiple Murders, Motive, De-Radicalization.*

1. Introduction:

In today's world several terms have been surfacing in the main stream when it comes to crime and conviction. Hate crime is one of them which is defined and interpreted differently. Under the USA law, a hate crime is defined as a crime motivated by bias against a race, color, religion, national origin, sexual orientation, gender, gender identity or disability. In view of commonalities between the definitions of terrorism and hate crime, the US investigating authorities have been randomly charging the convicts of incidents like mass shootings, rampant there, with terrorism or hate crime depending on their race and religion. Similarly, in Pakistan where hate crime is not criminalized, a mass shooter

can be charged either with terrorism or multiple murders. The criteria for distinguishing these crimes is once again erratic and irregular.

In the US, arbitrariness in charging a suspect with terrorism or hate crime has resulted in adoption of flawed policies, such as launching a de-radicalization program targeting Muslim suspects only while taking eyes off the judicious way forward, such as tightening gun control laws, it has also strengthened the phenomenon of Hate crimes, which emerged after 9/11 attacks. By comparison, Scenario is different in Pakistan, factors like previous enmity, provocation and uncontrollable rage are taken into considerations for converting a terrorist act into multiple murders, because as per the embedded principles of shariah law, a murder is compoundable in Pakistan, and once it is pardoned, the accused can get away with the crime, without much delay he is free to move around. Additionally, here the element of religious hatred and revenge is not comprehensibly defined anywhere, and the aspect of blasphemy law generally covers that. Had there been a non-compoundable 'hate crime' under the law of Pakistan in between terrorism and murder, an accused charged with terrorism would have no opportunity to take advantage of pardonable nature of the alternate charge of murder or multiple murder. It is, therefore, need of the time to draw a clear distinction between the entangled concepts of hate crime, and terrorism together with terrorism and multiple murders.

1. Literature Review

Before getting into religious aspects with regard to the commission of an offence or conviction on the basis of it, it is significant to know that the terms such as mass shooting and terrorism are often used to categorise an offence like murder, ignoring the religious or psychological affiliations with them. Firstly, it is relevant to see that the term 'mass shooter' is not a legal term and has been coined by the media to refer to a breed of indiscriminate killers who act on their own without taking directions from any outside organization (Jenkins, 2017). By way of contrast, a terrorist is supposed to be associated with a gang or an organization.

Norrholm states that typically, a mass shooter represents a deeply disturbed personality, and engages in the act of indiscriminate killing due to personal hatred towards a race, ethnicity or religion (Norrholm, 2022). This description, however, blurs the distinction between an act of terrorism and mass shooting. For instance, under the laws of both Pakistan and the US, an act of terrorism can be carried out to intimidate civilian population or coerce a government to achieve *inter-alia* a political, religious or ideological objective. The US law further suggests, in the report of Department of justice, that the objective of intimidating a civilian population or coercing a government may also be achieved by injuring a race, religion or ethnicity by means of a 'hate crime.'

Meanwhile, in Ghulam Hussain Vs the State, judicial interpretation of terrorism in Pakistan makes it clear that where an act of killing(s) is driven by personal enmity, family feuds, uncontrollable rage and sudden provocation, it must not be prosecuted as an act of terrorism. This implies that in spite of the fact that the act is carried out to advance a sectarian, religious or ethnic objective, if it is driven by personal hatred, it will be tried as multiple murders under the regular penal law as opposed to terrorism under special anti-terrorism law. According to (Beydoun, 2018) the overlap in the definitions of terrorism, hate crime due to religion and multiple murders allows the prosecutors and investigators to randomly charge the suspects involved in one and the same crime. For example, in 2017, when Stephen Paddock, a deeply disturbed white individual, mercilessly gunned down 59 people in Las Vegas, he was designated by media and law enforcement agencies as mass shooter and charged with hate crime,

rather than terrorism (Liston, 2017). On the other hand, when Omer Mateen, a Muslim immigrant of Afghan descent shot dead 49 people in a LGBT club in Orlando, he was charged with terrorism (Thrasher, 2016). In accordance with this policy, almost all coloured suspects of Muslim faith involved in mass shooting were labelled as terrorists, whereas every white supremacist embroiled in the same crime, a hate criminal (Beydoun, 2018). This policy was adopted by the Obama administration and faithfully carried forward by his successor, President Trump. In fact, the latter went a step further by imposing briefly a ban on entry of Muslims to the US. (Huq, 2010), enumerates that the underlying assumption was that Muslims were prone to terrorism because of their religious belief in *Jihad*, so their activities should be closely monitored, and if required they should be de-radicalized through Counter Violent Extremism (CVE) program. The strategy was founded on the flawed assumption that an act of terrorism was necessarily distinguishable from that of mass shooting. However, (Barnes, 2012), no criterion was set out to tell the difference between the two. Consequently, it was the discretion of investigators and prosecutors to charge a person with terrorism or hate crime notwithstanding their inbred prejudices.

Similarly, in Pakistan the anti-terrorism courts are empowered to transfer a case pending before them to a regular court for trial under the ordinary penal law. As per the definition of terrorism under the 1997 Act, an act of killing, grievous injury or destruction of property etc. can be called terrorism, if it is committed to intimidate a civilian population or coerce a government with a view to advance an ethnic, religious or sectarian objective. In the same case cited above, the Supreme Court of Pakistan observed that, if the act is carried out to settle personal score, private enmity, family feuds or is impelled by provocation or uncontrollable rage, it must not to be called terrorism. Therefore, if the court is satisfied that an act of killing is induced by personal emotions, it will be transferred to regular courts to be tried as a case of multiple murders under the ordinary penal law, irrespective of its consequences. Unlike the US definition of terrorism which ties the prohibited acts to achievement of political, social, racial, religious, philosophical and ideological objectives, in Pakistan, under sec 6 (1)(c) of Act 1997, an act of terrorism must be directed towards advancement of an ethnic, religious or sectarian agenda. (Bassiouni, 2005) states that, law of terrorism has a bearing on civil liberties of suspects and once an act is taken out of its fold, it comes under the protection of fair trial rights. Moreover, punishment for terrorism is severe and more resources are placed at the disposal of investigating agencies to prosecute a terror suspect than a person involved in 'hate crime' or 'multiple murders.'

2. Methodology

The intention of this study is to investigate that the hate crime and multiple murders are carved out of more heinous crime of terrorism to make the suspect eligible for fair trial rights, otherwise constrained under the counter-terrorism legislation. However, the indictment of offenders has been random and unpredictable, thus far. Putting it differently, there is no objective standard to cherry pick the suspect for either of these crimes. In the US, it is based primarily on racial origin of the suspect (Huq, 2010) Conversely, in Pakistan circumstances, such as personal grudge, family feuds, uncontrollable rage and provocation are taken into consideration as mitigating factors to separate terrorism from multiple murders. (Swanson, 2015) enumerates that the result of this whimsical classification has not been great so far. In the US, the incidence of mass shooting is on all time high and there have been increased demands for effective gun control law. By contrast, in Pakistan countless cases being tried before the special anti-terrorism courts are being transferred to regular courts for trial under the ordinary penal law of murder in compliance with the Supreme Court's judgement requiring exclusion of acts motivated by personal factors from the ambit of terrorism. Because murder or multiple murders is

compoundable in Pakistan, the accused once freed of the charge of terrorism, gets into position to seek acquittal by effecting a compromise with the heirs of the victims, as per sec. 345 of code 1898.

3. Results and Discussion

Theme: 1 Terrorism – The definition Problem at international level.

3.1.1. Efforts by the League of Nations and UN

Although, efforts to define terrorism commenced soon after the establishment of League of Nations in the twentieth century, not surprisingly though, we are still in search of a consensual definition (Schmid, 2004). First step in this direction was taken in 1937 when 24 members of the League of Nations adopted the *Convention for Prevention and Punishment of Terrorism*. Article 1 of the convention defines an act of terrorism as:

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 (Schmid, 2004).

The convention never came into effect for want of required number of ratifications. In post League of Nations period, the United Nations, instead of building up on the work previously done, put the matter on back burner and took time to realize the seriousness of the issue. Even though the UN Charter was adopted in 1945, the efforts to construct a universal definition of terrorism got underway in 1972 when Munich Olympic massacre took place. Thereupon, the General Assembly set up an Ad hoc Committee to develop consensus for adoption of a universal convention. Unfortunately, the work of the Committee stalemated in 1974 when it transpired that states were deeply divided over the definition of terrorism (Prabha, 2000). To illustrate, states forming part of the Non-Aligned Movement (NAM) and Organization of Islamic States (OIC) were absolutely opposed to the idea of including acts committed by freedom fighters in their struggle against imperialistic regimes and occupying forces in the definition of terrorism. Therefore, once again disagreement as to universal definition of terrorism proved a stumbling block, and consequently the Committee had to be dissolved in 1974 (Schmid, 2004). Afterwards, the issue of defining terrorism remained shelved in the United Nations until the end of the Cold War (Prabha, 2000).

3.1.2. Ratification of Sectorial Conventions and hurdles in adoption of a Universal Convention

The requirement to ratify and implement sectorial conventions received further impetus from the mandatory resolutions passed by the Security Council in the wake of 9/11 attacks. Consequently, the sectorial conventions were ratified by 2/3rd membership of the UN which testified to their phenomenal success (Prabha, 2000). Side by side, the Ad hoc Committee continued working on a *Universal Convention against International Terrorism* (UCIT) to supplement or replace the sectorial conventions (Schmid, 2004). However, the endeavour failed to bear any fruit as it had to face some insurmountable obstacles. (Lederer, 2002) Foremost, among these was refusal of a large block of states to consider freedom fighters as terrorists. Additionally, states were indecisive about considering the acts of the government as terrorism. While some states agreed that there could be state-sponsored terrorism, many of them differed. Lastly, there was a discord in relation to designating unlawful acts of the armed forces as terrorism, particularly, when these were in breach of International Humanitarian Law (Schmid, 2004). Due to these controversies, consensus could not be reached in regard to a universal definition

of terrorism.

3.1.3. Establishment of CTC and launching CVE program

That said, the adoption of sectorial conventions and their overwhelming number of ratifications was an extraordinary achievement of the United Nations. The requirement to implement these conventions was affirmed by two binding resolutions of the UN Security Council, see for instance UNSCRs 1267 (1999), 1373 (2001), 1540 (2004). Additionally, (UNSCR 1373 (2001), a Counter Terrorism Committee (CTC) was established by the Security Council to monitor the compliance of these conventions at national level. Not only that, the UN office on Drugs and Crimes provided the legislative support to states to implement these conventions domestically, (UNODC (2008). Recently, the United Nations Security Council has adopted a binding resolution to address the threat posed by Foreign Terrorist Fighters (FTF) (S/RES/2178 (2014)). It underscores that Countering Violent Extremism (CVE) is an effective response to prevent terrorism in all its forms. Therefore, states must enhance CVE efforts to decrease the risk of radicalization by empowering local communities and civil society groups.

Theme II: Why universal definition of hate crime is desirable?

4.2.1. Arbitrariness in charging offenders

Failure of states to agree on a single definition of terrorism led to adoption of conflicting definitions at national level. Consequently, what one state called terrorism, the other denoted multiple murders. Similarly, what one state designated hate crime, the other branded terrorism, some term it as an event occurred due to islamophobia.

More precisely, states like the US and Pakistan will adjudge an act of mass shooting as terrorism if it is carried out to achieve some pre-defined objectives. Otherwise, the suspect will be charged under the ordinary penal law of the land and also Shariah law as per the situation in Pakistan. However, the objectives specified by the two states to apply a charge of terrorism are so dissimilar that they can turn one state's terrorist into another state's ordinary criminal. And to certain extent a victim of hate crime into an assailant. For example, according to the US law, 18 U.S.C 2331 (5) and 6 U.S.C 101(18), there should be political, religious, philosophical, ideological and social objectives behind an act of killing to designate the same as terrorism. On the other hand, as per the law of Pakistan, to label an act of random killing as terrorism, it is essential that the act must be motivated by religious, ethnic or sectarian objectives. As observed by the Supreme Court of Pakistan, in PLD 2020 SC 61, an act of killing(s) carried out for personal reasons shall not be tried and punished as terrorism. Correspondingly, the killing(s) inspired by ideological, social and philosophical motives will be omitted from the definition of terrorism as these acts are deemed to have been carried out for personal reasons, pursuant to the existing definition. In comparison, under the US law, acts motivated by ethnic, religious and sectarian reasons are frequently charged with 'hate crime' in place of terrorism (Kabir, 2022).

The result of this dual standard in defining terrorism is uncertainty in the indictment of suspects. Thus, the US authorities will charge a person of coloured race with terrorism based on his religion, race and ethnicity. Meanwhile, a white supremacist implicated in the same crime may get away with the lesser charge of 'hate crime (Huq,2010).' Therefore, notwithstanding similarity of the two crimes, the charges can differ in view of the perceived bias of the investigating agencies against a certain ethnicity, religion

or race. By comparison, in Pakistan, conforming to the Supreme Court's ruling in *Ghulam Hussain*, acts of mass murder committed in rage, provocation, honour, personal enmity and family feuds will be prosecuted under ordinary penal law, regardless of the consequences of the act. The next section will reveal how lack of clarity in charging of suspects results in adoption of flawed policies to combat the crimes.

4.2.2. Misconceived policies to address terrorism and mass shooting and religious attributes.

During the Obama regime, idea of Counter Violent Extremism (CVE) was introduced in the US in furtherance of which it was concluded that most of the terrorists were home grown fundamentalists of Muslim descent and coloured race (Akbar, 2013). The CVE was premised on the assumption that Islamic Jihadists could be reformed through de-radicalization programs operated by local police in association with friends and family members of the suspects (Huq, 2010). The modus operandi was to engage volunteers from amongst social circle of the suspect who would provide information about their activities. Once it was established that a certain individual was working for a terrorist network, or planning to do so, he or she would be de-radicalized with the help of state agencies. This program excluded from its purview; the suspects involved in gun violence (Rascoff, 2012).

The major weakness of the policy was that it singled out American Muslim community to apportion the blame for sponsoring international terrorism (Beydoun, 2018). Of course, the policy was misdirected as the number of people killed by Islamic fundamentalist was far less than those butchered by white supremacist allegedly suffering from mental and emotional distress. (Beydoun, 2018). Yet, the latter were charged frequently with 'hate crime' while the former with terrorism. It may be recalled, the US' definition of terrorism takes into its fold several factors, including ideological, political, religious, social and philosophical as underlying objectives of terrorism and a number of these factors are compatible with motivations behind the act of hate crime. Thus, (Eagle, 2004), it can be argued that the de-radicalization program could have been far more effective had it been targeting both, white supremacists and coloured Muslim fundamentalists alike. Making a distinction between a terrorist and a hate crime perpetrator, particularly in situations when no outside influence was present, was entirely up to the investigating authorities, who frequently used their discretion in favour of white supremacists.

In the same way, the Supreme Court of Pakistan allowed numerous offenders to get away with the crime by declaring in *Ghulam Hussain* that the acts of violence triggered by anger, hatred, previous enmity or sudden provocation should not be tried as acts of terrorism. After this ruling, the suspects involved in these crimes were charged with murder or multiple murder in place of terrorism (ref. *Nawab Siraj Ali v. State*). On that account, they were given the opportunity to escape punishment by effecting compromise with the heirs of the victim, (as per sec.345 of the code 1898). If it was necessary to consider hatred, anger, provocation or enmity as mitigating factors, a new non-pardonable crime should have been created on the pattern of 'hate crime' in the US.

4.2.3 Mental disturbance whether a Justification to substitute terrorism with incidents like mass shooting, and what is their link with religious objectives?

It is commonly believed that assailant in the incident of mass shooting tends to lose touch with reality at the time of shooting (Khazan, 2018). In other words, he enters an altered state of consciousness where he loses control over his actions. (Girgis, 2022) Having said that, the experts are of the view that the shooters do not suffer from any mental or emotional delirium. For example, Dvoskin (2022) argues,

such individuals are perfectly lucid and capable of rational thought, logical planning and cognitive processing. As an instance, the 2017 Las Vegas killer was found to be in possession of written notes as to distance of the target from place of shooting, a trajectory of the bullet, direction of the wind, in addition to 23 guns. Likewise, San Jose Killer left doodles in his room to give the impression that the crime was caused by mental illness (Norrholm, 2022). In similar vein, the Orlando killer Omer Mateen was resentful of LGBT community and to annihilate them, he resorted to indiscriminate firing (Zambelich, 2016). In the same way, only racial hatred could have motivated an 18-year-old white kid to kill an 86-year-old coloured woman in a Brooklyn grocery. None of these factors can be said to represent mental illness or delirium. It can be argued that hatred against a certain ideology, religion or race is learnt or acquired from society, it cannot be inbred (Norrholm, 2022). Furthermore, many of these killers derive motivation from perceived injustices causally talked away on media and reinforced by politicians in their public speeches Annas, G. D. (2016).

In like manner, it will be unfair to leave out revenge killing, honour killing, and killing under provocation from the scope of terrorism on the plea of loss of control over one's action, or islamophobia. Intriguingly, the Anti-Terrorism Act 1997 of Pakistan in section 6(3), prescribes that there is no need to prove sectarian, islamophobia, ethnic or religious motive to charge a person with terrorism if the commission of the crime involves use of firearms, explosives or deadly weapons. However, the Supreme Court, in *Ghulam Hussain's case*, observed that the provision did not correspond with their interpretation of terrorism urged the legislature to consider amending it. Much like a person filled with ethnic sectarian or religious hatred, a revengeful or provoked person may also be capable of rational thinking, planning, preparing and executing. Therefore, we cannot make a distinction between a terrorist and mass murderer on the basis of mental delirium generally attributed to the mass murders. As per the latest research only 1 out of 5 assailants suffer from a mental distress or the chances of a person killing randomly because of mental disturbance are less than 20 percent (Norrholm, 2022). Hence it can be argued that having a sense of belief about a particular religious hatred can be a contributing factor of a massacre also.

What is being emphasized here is that mental illness or delirium is not a usual reason behind incidents like mass murders through mass shooting. Even though the law does not recognize these acts as terrorism in view of the underlying emotions such as racism or personal grudge, they are well thought out and well-planned acts executed by a rational mind, capable of cognitive processes. In the opinion of Knoll, 2016, there is very little possibility of an accused losing control over his actions at the time of shooting due to any of the factors noted above (Annas, G. D. (2016). As against mental disturbance, many of these killings are attributable to widespread availability of guns, extremist propaganda, Islamophobia, and rhetoric of perceived injustices on media and in political discourse turning ordinary people into radicals (MacLeish, 2015).

Theme: III-3 Differences and commonalities between Mass murders and Terrorism and challenges

According to some scholars, a distinction can be drawn between domestic terrorism and mass shooting (Miller, 2019). The recent incidents of mass shooting bring to the fore following points of difference.

4.3.1. Distinguishing features

1. Singular act or act of gang: A terrorist is somehow or the other linked with a terrorist organization whereas a mass shooter acts on his own (Dugan, 2004).
2. Motive: A terrorist has a political, religious or ideological objective to achieve, contrarily a mass shooter is driven by personal reasons such as ethnic, religious and sectarian hatred. (Kabir, 2022).
3. Weaponry: Mass shooters usually target their victims with guns and rifles. By contrast, terrorists attack their victims with explosives or grenades. At times, anthrax may be used to achieve the desired result (Beydoun, 2018).
4. Mental Condition: Mass shooters are believed to be mentally or emotionally disturbed. On the contrary, terrorists are assumed to be mentally and emotionally stable to carry out the mission assigned to them (Norrholm, 2022).
5. Prevention: Mass shooting can be checked by tightening gun control laws and making it difficult for youngsters to grab hold of these. By comparison, elimination of terrorism calls for pre-emptive action, such as surveillance, monitoring, restriction on movement, freezing of assets, wiretapping and de-radicalization etc. (Beydoun, 2018).
6. Warning signs: In mass shooting, Reflags and early warning signs are detectable. For example, a mentally or emotionally disturbed person would want to disclose his plans to a confidante. Terrorists, on the other hand are unlikely to do this as the element of shock remains the essence of the crime (Bailey, 2022).
7. Victims: Mass shooters are inclined to choose vulnerable and unsuspecting victims, such as minority groups, and school going children. Therefore, schools and shopping malls are frequently attacked by them. In parallel, terrorists follow a plan set out by their organizations which often requires them to target busy public places to cause maximum damage with a view to coerce a government to do or not to do something (Katsiyannis, 2022).
8. Publicizing: It has been observed that a mass shooter would like to publicize his act by uploading a video on YouTube or live streaming it on social media following the pattern of Christchurch Mosque shooters in New Zealand. Contrarily, a terrorist would not like to do this to keep the element of surprise intact (Bailey, 2022).

4.3.2 Common features

It is important to draw a distinction between the two crimes to make sure that the convicts of mass shootings are tried under ordinary criminal law, while terrorists under special anti-terrorism law. The ordinary criminal law guarantees protection of civil liberties. On the contrary, special anti-terrorism law restricts these rights to neutralize threats to national security (Bassiouni, 2005). Having said this, there are so many commonalities between terrorism and incidents of mass shooting that it is difficult to draw a clear-cut distinction (Miller, 2019)

Some of the similarities are discussed below:

1. Similar agenda: Terrorism is defined as the act of committing mass murders, causing grievous injuries or destroying property etc. to intimidate a civilian population or coerce a government with a view to advance a social, religious, political, ethnic, ideological, philosophical or environmental objective. In parallel, mass shooting comprises the act of indiscriminate firing to cause mass murders or fatal injuries to fulfil personal desire of racial, religious or ethnic cleansing. Clearly, apart from personal nature of the latter, there is nothing much to distinguish between the two offences (Jonathan, 2017).

2. Terrorists too can be acting alone or are associated with any religious belief: Mass shooters are thought to be acting on their own whereas terrorists are generally linked to a group. However, this cannot be true of all terrorists, particularly lone wolf terrorists. The term has been floated to refer to a terrorist who acts in isolation without external support. So, the distinction appears superficial (King, 2017).
3. Mass shooter may also want to convey their message to a wider audience: In Buffalo state's mass shooting incident, the investigators announced soon after the occurrence that the offender would be charged with hate crime, not terrorism. In this case, the offender killed 10 members of black community, and live streamed video of his horrific deed, at the same instant. The live streaming was reportedly done to impress upon the government to ban immigration of coloured people into the US (Dreier, 2022). Therefore, an argument can be built that the act was meant to coerce the government to advance a racial or ethnic agenda. Hence, the offender could have been prosecuted for both, terrorism and hate crime, nonetheless, the investigators in their wisdom decided to charge him with the latter crime only.
4. Motive of a terrorist can also be personal: In Breivik (2011), the offender had no link with any terrorist organisation, still he carried out one of the deadliest gun and bomb attack in the history of Norway killing at least 77 people to protest against government's immigration policy. Ultimately, he was charged with both terrorism and hate crime. This implies that motive of a terrorist is not always organizational, it can very well be personal analogous to the motive of a mass shooter (Richards, 2014).
5. Mental and emotional stability: Contrary to popular belief, research indicates that chances of a mass shooter suffering from a mental or emotional disease are extremely rare (Annas, 2016). It further reveals that mass shooters plan their act in advance to execute the same with precision (Beydoun, 2018). By comparison, a terrorist may be suffering from any mental or emotional disorder (King, 2012). For example, in the case of *Breivik (2011)* who was *inter-alia* charged with terrorism, the state psychiatrist adjudged him a threat to the society if released on parole. In other words, Breivik was found unfit to be released on parole because of suffering from borderline and narcissistic personality disorders, in addition to schizophrenia (Jacobsen, 2015). Therefore, it cannot be said with scientific certainty that a mass shooter deserves leniency in sentencing on the basis of mental health issues. To take insanity plea, both a mass shooter and terrorist must prove that he or she was suffering from a permanent mental disease at the time of commission of the act (Hameed, 2017).

4.3.3. Motive Requirement -A Stumbling Block in Classifying an Act of Mass Killing as Terrorism

In this section, it will be explained how excessive focus on the motive requirement leads to a terrorist act being substituted into homicide simpliciter. The consequences of this amendment in the charge can be far more serious in states like Pakistan where homicide represents a pardonable crime.

4.3.3.1 Jurisprudence of Pakistan on Motive Requirement

As held by the Supreme Court of Pakistan, PLD 2020 SC 661, a violent act which is motivated by personal reasons such as previous enmity, family feuds, provocation and uncontrollable rage shall not be tried as terrorism, regardless of the consequences. To qualify as terrorism, the act must be motivated by ethnic, religious or sectarian objectives. Resultantly, an act prohibited by section 6 of ATA 1997 will not be deemed terrorism if it is driven by a personal reason. Thus, in *Nawab Siraj Ali*, the accused

who allegedly killed the defenceless victim by using firearms at a public place, under egoistic rage was not charged with terrorism, even though the act did produce fear and panic in public as required by the applicable law. Similarly, in *Farooq Ahmed*, a person killing his wife in police custody with firearms and injuring an accompanying police guard was charged with murder and attempt to murder, as opposed to terrorism. He took the plea that his wife dishonoured him by committing theft, and this convinced the court that the matter was of personal vendetta. In the same way, in *Akbar's case*, a brother killing his sister after seeing her in compromised condition with her paramour was not convicted of terrorism, although the murder took place at a public place with firearm. As expected, he took the defence of sudden provocation which satisfied the court that the incident was caused by uncontrollable rage (Cheema, 2008). Apparently, in all these examples, the courts arrived at a conclusion that the incidents were attributable to personal factors, taking the matters out- with the scope of terrorism, consistent with the dictum laid down in *Ghulam Hussain*.

That being said, it is clear that the crimes were conceived, planned and executed by intelligible brains. There is nothing to support the assumption that in certain specific states of mind, the accused loses control over his actions. For example, in revenge killing, the accused usually wait for the opportunity to ambush his unsuspecting victim and engages in extensive planning and preparation to achieve the desired result (*Akbar's case*). Similarly, in honour killing, much effort goes into persuading the victim to be on a designated place at a mutually agreed time, and to carry out the deed without faltering. Therefore, the factors outlined by the Supreme Court of Pakistan i.e., hatred, provocation, enmity or vendetta cannot be said to impact the cognitive abilities of the accused, making him entitled to a lesser charge (Cheema, 2008).

Although the cases are being transferred from anti-terrorism courts to regular court in compliance with the Supreme Court judgement in *Ghulam Hussain*, the reasoning advanced in the said judgment contradicts the latest research on psychiatry. As an example, researchers like Knoll and Seth maintain that in spite of being provoked or angered, one can still conceive plans, wait for the right opportunity to come and perpetrate the offence with precision (Annas, G. D. (2016).

What *Ghulam Hussain* judgement does is to reinforce the fact that people are not yet prepared to believe that terrorism can be an extension of the ordinary criminal activity, they would rather imagine it to be something more shocking or surprising such as a bomb blast or hijacking.

4.3.4 Creation of hate crime- a way forward for Pakistan

Hate crime is a Federal crime in the US which necessitates the existence of an enemy other and carries the sentence from life imprisonment to death. (Act of 2009). However, boundaries between terrorism and hate crime are not as clear as they should have been, the two crimes being comparable. For example, when it was discovered that the Orlando shooter had links with the *ISIS*, the charge of terrorism was added besides hate crime (Beydoun²⁰¹⁸). According to a report of United states department of justice, terrorism should be planned to further a political, social, or ideological aim, whereas hate crimes must be directed against a particular sect, race, or religion. To put it another way, a hate crime includes the component of personal animosity against a certain race, religion, or ethnicity. However, US law alone governs this issue.

By comparison, in Pakistan, under sections 300-302 of the code of 1860 and sec. 6 of the act of 1997, there is no separate category of hate crime, nor is there an independent crime of mass shooting. In place

of these, there is murder or multiple murders under the ordinary penal law and terrorism under special anti-terrorism law. As stated above, a hate crime is distinguishable from terrorism on account of its personal angle. In fact, a hate crime comprises all those factors which have been pointed out by the Supreme Court of Pakistan in *Ghulam Hussain* to drop the charges of terrorism. This means that an act cannot be classified as terrorism if it looks to be driven by personal grievance, personal vendetta, emotional anger, or personal rivalry. As long as an illegal conduct is carried out for these reasons, it will be prosecuted in Pakistan as a murder or a series of killings rather than as terrorism.

With that said, it must be remembered that the crime of murder in Pakistan is compoundable. That is, it allows the accused to secure pardon by paying blood money or entering into compromise with the heirs of the victim under sec. 345 of the code 1898. In the opinion of Faiqa Ibrahim, the insertion of Islamic Provisions has privatised the crime of murder in Pakistan. Originally, the list of pardonable crimes in Section 345 CrPC did not include murder. However, after the inclusion of Islamic provisions in PPC through Qisas and Diyat Ordinance 1990, a corresponding amendment was brought in Section 345 (2) CrPC whereby the crime of murder was made compoundable (Ibrahim, 2005). As it is put:

This law has changed the concept of criminal accountability in justice system re-conceptualising the offences in such a way as are not directed against the legal order of the State but against the victim. This has rendered murders of family members a family affair and prosecution and judicial redress negotiable. (Ibrahim, 2005).

Despite the fact that a court may still sentence a defendant to 10 years in jail as Tazir under section 311 PPC, this clause has generally been disregarded and is rarely applied. Therefore, establishing a non-compoundable hate crime that follows US precedent offers a means of moving forward to set a line between terrorism and murder.

Thus, in *Mumtaz Qadri* case, because of the dead governor's opinions on Islam did not align with his own, the convict was motivated by hatred. In all likelihood, if the act had been committed in the US, it would have been prosecuted as a hate crime. Nevertheless, the culprit was convicted and sentenced under the Anti-Terrorism Law because Pakistan had not made hate crimes a crime. The victim was a governor, and ATA 1997 categorically covers assaults on public servants, hence the conviction was granted. According to the Ghulam Hussain ruling, it would have been difficult to prove that the victim was a terrorist if they had been a regular citizen. In such case, hate crime would have benefited the victim, especially if the murder charge was replaced for it.

As there is no internationally agreed definition of terrorism, states have taken upon themselves to define the term keeping in view the type of the threat being faced by them at national level. The common features of these definitions include causing death, serious injury or destruction of property to intimidate a civilian population or coerce a government to advance a political, religious or ideological objective.

A fundamental challenge that has arisen over the past few years is how to draw a distinction between mass-shooting and terrorism. In the US, the investigating agencies in their discretion may charge an indiscriminate shooter with terrorism or hate crime. By contrast, in Pakistan, a mass shooter may be charged with either terrorism or multiple murders.

However, the criteria for labelling an act of mass shooting as hate crime, terrorism or multiple murders

is ambiguous. For example, in the US suspects involved in similar acts of indiscriminate shooting may be charged distinctly depending on their race and religion. To illustrate, white supremacists have frequently been charged with hate crime whereas coloured Muslims with terrorism. In parallel, the Supreme court of Pakistan has interpreted terrorism in such a way that only those acts of mass shootings may fall within its ambit which are premeditated to achieve an ethnic, religious or sectarian objective. If shooting is motivated by personal vendetta or private enmity it must be tried under ordinary penal law. Pursuant to this judgement, many cases pending before anti-terrorism courts have been transferred to ordinary courts for trial of suspect for murder or multiple murders. Since murder is pardonable in Pakistan, the offender once freed of the charge of terrorism gets into position to escape punishment by entering into compromise with the heirs of the victim.

5. Conclusion.

In this article, it has been argued that the criteria for labelling an act of mass shooting as hate crime in the US, and as multiple murders in Pakistan lacks scientific basis. In the US, a shooter deemed to be suffering from mental and emotional disturbance is charged with hate crime and in Pakistan mass shooters motivated by personal vendetta or private enmity are charged with multiple murders in place of terrorism. According to the psychiatric experts, in both these situations, a suspect retains control over his actions, and nothing goes wrong with his cognitive processes.

Having said this, the irregularity with which suspects of mass shooting are charged gives birth to flawed policies for the elimination of the crime. Thus, the US policy of focusing their Counter Violent Extremism (CVE) program exclusively towards Muslims and members of the coloured race has proved counterproductive. Similarly, in Pakistan Supreme Court's decision to exclude acts driven by personal vendetta or private enmity from the definition of terrorism has afforded opportunity to a mass shooter to get away with their crimes by taking advantage of compoundable nature of the alternate charge of murder or multiple murders.

It is, therefore, dire need that de-radicalization program in the US should be directed towards everyone irrespective of their colour or race, whereas in Pakistan a new category of hate crime should be introduced so that a mass shooter whose crime falls short of terrorism because of lacking motive requirement may not escape punishment by securing compromise. Instead, he should be prosecuted with non-compoundable hate crime.

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