

## CHAPTER III, OF PUNISHMENTS

**53. Punishments.**—The punishments to which offenders are liable under the provisions of this Code are:—

- Firstly, Qisas;
- Secondly, Diyat;
- Thirdly, Arsh;
- Fourthly, Daman;
- Fifthly, Ta'zir;
- Sixthly, Death;
- Seventhly, Imprisonment for life;
- Eighthly, Imprisonment which is of two descriptions, namely:—
  - (i) Rigorous i.e., with hard labour;
  - (ii) Simple;
- Ninthly, Forfeiture of property;
- Tenthly, Fine.

### COMMENTS

**Qisas and Diyat Law—Effect.**—The Islamic Penal Law introduced by substituting sections 53, 299 to 338 in the Pakistan Penal Code for the previous sections by the Amending Ordinance, 1990 is not a mere change in the form or nomenclature but change in substance, content, meaning and the consequences flowing therefrom. Thus, any apparent similarity in the two provisions e.g. culpable homicide amounting to murder and *qatl-i-amd* is not to mislead us as this similarity is due to the reason that Islamic Penal Laws were in force when the British acquired suzerainty over the Sub-Continent and the new laws enforced to serve the imperial interests, retained some of the features of the old laws.<sup>1</sup>

**Hudood and Qisas.**—Hudood and Qisas have almost the same meaning whereby both are the punishments prescribed by Allah and as an obligation to be

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1. PLD 1991 Lah. 347.

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**Hudood and Qisas.**—Hudood and Qisas have almost the same meaning whereby both are the punishments prescribed by Allah and as an obligation to be

implemented by Muslim rulers. However, the rights contained in Hudood are different from the rights found in Qisas. In implementing Hudood punishment the right of Allah is stressed whereas in administering Qisas, it is the right of man that is more emphasised. For example the punishment for offences like theft, latrocination, intoxication, fornication and apostasy are imposed by Allah and are to be fully implemented without giving any right to anyone to make any alteration, reduction or addition and definitely not to withhold the punishment of Hudood as it is the right of Allah. Unlike Qisas, which, notwithstanding it is determined by Allah and its implementation is an obligation, remains the right of human being as the final decision of its execution rests with the legal heirs of the deceased. It is also permissible for both parties, the offender and the one demanding the Qisas punishment to replace Qisas with compensation since Qisas is the right of human being.<sup>1</sup>

**Qisas, Ta'zir, Diyat, Arsh and Daman defined.**—The terms Qisas, Ta'zir, Diyat, Arsh, and Daman may be defined as follows:--

**"Qisas".**—The word "*Qisas*" has been defined as punishment by causing similar hurt at the same part of body of the convict as he has caused to the victim or causing his death if he has committed *qatl-e-amd* in exercise of the right of the victim or *wali*.<sup>2</sup> Liability of *Qisas* is to be established by two competent (*A'dil*) witnesses and sentence of death as *Qisas* cannot be imposed unless Court is satisfied having regard to requirement of *Tazkiyah-al-Shahood*. Sentence of *Qisas* can be altered to imprisonment for life.<sup>3</sup> Under the Islamic Law the sentence of '*Qisas*' is not to be executed where even one of the heirs pardons or accepts '*Diyat*' at the last moment.

**"Ta'zir".**—is a punishment which is not fixed by the legislature but is left to the discretion of the Court. The word "*Ta'zir*" is derived from the word "*Azar*" which means to prevent, to respect, to reform. It is discretionary punishment to be inflicted for transgression against man or against an individual, for which there is neither a fixed punishment nor a penance or expiration. (*Kaffara*). It includes chastisement, admonition, reprimand, flogging, imprisonment, fines etc.

**"Diyat".**—means compensation as specified in section 323 Cr.P.C., payable to the heirs of the victim by the offender. The value of the '*Diyat*' has not been fixed and is left to be determined by the Court keeping in view the injunction of Islam as laid down in the Holy Qur'an and Sunnah and keeping in view the financial position of the convict and the heirs of the victim.

**"Arsh".**—means the compensation specified to be paid by the offender to the victim or his heirs.

1. PLD 2002 Pesh. 65.

2. 1997 SCMR 1285, PLD 1996 C. C. 732

“*Daman*”.—means the compensation determined by Court to be paid by the offender to the victim for causing a hurt not liable to ‘*Arsh*’.

‘*Diyat*’ and ‘*Badl-i-Sulh*’, distinction.—Concept of *Badl-i-Sulh* is totally different from the concept of *Diyat* inasmuch as provisions of section 310(5), P.P.C and the Explanation attached therewith show that *Badl-i-Sulh* is to be “mutually agreed” between the parties as a term of *Sulh* between them. *Diyat*, under section 53, P.P.C. is punishment and provisions of section 299(e), P.P.C. and section 323, P.P.C. manifest that amount of *Diyat* is to be fixed by Court.<sup>1</sup>

So far as the application of the punishments under Islamic Criminal Laws is concerned section 338-F, P.P.C. provides guidelines. Offences and crimes relating to *Qisas*, *Diyat*, *Ta'zir*, *Arsh*, *Daman* have been incorporated in Chapter XVI of P.P.C. (section 299 - 338-H). Section 338-F of Pakistan Penal Code provides:

“In the interpretation and application of the provisions of this Chapter and in respect of matters ancillary or akin thereto, the court shall be guided by the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah.”

This section provides guidelines as to the interpretation of the various provisions of Chapter XVI. These provisions make the Islamic Law on the subject applicable not only to cases relating to the offences enumerated in Chapter XVI of Penal Code but also to all matters ancillary and akin thereto. According to the provisions of section 4(a) of Enforcement of Sharia Act, 1991, all conflicts or doubts in the provisions of all the statutes are to be resolved in accordance with injunctions of Islam and in such events Islamic law is to be followed.

**General principles of punishment.**—Every conviction of an offence is followed by the prescribed punishment. The question of the appropriateness of sentence is not one of law. Opinion of one court with regard to the sentence that was passed in a particular case has no binding force on any other Court, even though the former Court may have been superior to the latter. A court called upon to pass a sentence for an offence has to take all the circumstances of the case into consideration; therefore the quantum of punishment imposed in other cases cannot be of much assistance.<sup>2</sup>

The measure of harm which an individual action causes to society is the measure of its condemnation. Therefore different sentences have been provided for different offences.<sup>3</sup>

The law leaves the measure of punishment to the discretion of the Court. Nevertheless, it insists that the discretion be used judicially and not

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1. PLD 2010 SC 695.  
2. PLD 1958 BJ 5.  
3. AIR 1945 All. 207.

arbitrarily. This implies that it is the bounden duty of the Court to apply its mind to the question of sentence and decide it after considering all relevant circumstances.<sup>1</sup>

The determination of right measure of punishment is often a point of great difficulty and no hard and fast rule can be laid down, it being a matter of discretion which is to be guided by variety of considerations, but the Court has always to bear in mind the necessity of proportion between an offence and its penalty.<sup>2</sup> Punishment must fit the crime and, therefore, the quantum of punishment is dependent upon the seriousness of the offence committed.

It is the infliction of lenient punishment that brings the administration of justice into contempt and acts as a wrong standard before the public that they could commit serious offences and yet get away with them lightly. It is one thing if the Court does not believe the evidence led in for the prosecution in support of the charges and acquits the accused. But if the prosecution evidence is believed and an accused person is convicted of a serious crime, it is imperative to award an adequate and proper sentence commensurate with the gravity of the crime committed.<sup>3</sup>

**Determination of the measure of punishment.**—It is discretionary with the Court to determine the term of imprisonment within the bounds laid down by the Pakistan Penal Code. The punishment varies with the evil consequences of a criminal act, motive and character of the offender. Circumstances which aggravate an offence, such as the manner in which an offence is committed, and the number of previous convictions to the credit of the offender necessitate the infliction of a longer term of imprisonment, while circumstances such as the minority or old age of the offenders, provocation, absence of bad intention, self protection, etc., call forth for a lenient view. In some cases, however, the Pakistan Penal Code, has prescribed a minimum term of imprisonment of seven years (viz., Ss. 397 and 398) where the offence of robbery or dacoity is attended with certain aggravating circumstances, viz., use of a deadly weapon, or causing of grievous hurt or attempting to cause death or grievous hurt or where in an attempt to commit robbery or dacoity the offender is armed with any deadly weapon, so also in case of offences under section 364-A.

**Object of punishment.**—The principal object of punishment is the prevention of offence, and a rational penal policy of the State should aim to protect the society and reclaim the criminal by evolving measures to prevent people from committing crimes. There are, however, four different theories of punishment, viz. Deterrent, Preventive, Retributive and Reformative.

**Deterrent.**—The object of criminal justice in awarding

punishment, according to his theory, is to deter people from committing crime. Commission of offences must be made a bad bargain for the offender. The infliction of punishment serves as a check on others who are evil-minded. But this theory is not absolutely correct for a hardened criminal becomes accustomed to the severity of punishment and no amount of deterrence prevents him from indulging in crimes.

**Preventive.**—It aims to prevent a repetition of the offence by the offender by such penalties as imprisonment, death and exile. This form of punishment also fails to achieve the desired end. Persons who visit jail once are habituated to it. With the advancement of civilization death sentence has also become incongruous, for murders are in a large number of cases never premeditated.

**Retributive.**—According to it, the offender should be made to suffer in proportion to the injury caused to the victim, viz., a tooth for a tooth or an eye for an eye. It is a barbarous form of punishment and betrays an utter ignorance of the causes that lead to crimes.

**Reformative.**—The object of the punishment must not be to wreak vengeance so to reform the criminal as to prevent him from further crime. Crime like all other diseases should be properly diagnosed and treated scientifically. Crime is a malady and the aim of every punishment should be the reclamation of the offender by prescribing proper treatment. Uninvestigated criminals are an expensive luxury. "Hate the sin and not the sinner" should guide the reformer in adopting a judicious penal policy. For the society contains within itself the germs of all the crimes that are about to be committed, and the criminal is only the instrument which executes them. In the new era of prison reform medical treatment on the basis of the study of the causative factors of crime will play a very important part.

**Mitigating circumstances.**—The following circumstances have been held to mitigate against harsh punishment:--

- (a) First offence.<sup>1</sup>
- (b) Sudden provocation,<sup>2</sup> or provocation.<sup>3</sup>
- (c) Exceeding right of private defence.<sup>4</sup>
- (d) Apology in case of defamation.<sup>5</sup>
- (e) Consent of woman in sexual offence.<sup>6</sup>
- (f) Intimacy of deceased with the sister,<sup>7</sup> or the wife of the accused.<sup>8</sup>

1. AIR 1933 All. 438.

2. PLD 1953 Pesh. 33; PLD 1953 Lah. 546.

3. PLD 1957 Lah. 31; PLD 1962 Lah. 20; PLD 1962 Lah. 728; PLD 1962 Kar. 800.

4. PLD 1959 Lah. 987; AIR 1927 All. 105; AIR 1932 Lah. 344.

5. AIR 1914 Law Bur. 63; AIR 1928 All. 321

- (g) When no motive is found for murder.<sup>1</sup>
- (h) When a case is kept pending for an unduly long time.<sup>2</sup>
- (i) An act which has only recently been made an offence or which is not unlawful in other parts of the country or a province or which is not essentially criminal in character.
- (j) Old Age.
- (k) Youth of the offender and his having acted under influence of another.

**Punishments in Islam are of three kinds.**—Following are three kinds of punishments in Islam:—

- (1) Hadd, (2) Qisas and (3) Ta'zir.

According to section 53, P.P.C. as amended by Criminal Laws (Amendment) Act, II of 1997, the offenders are liable to the following punishments.

- (1) Qisas
- (2) Diyat
- (3) Arsh
- (4) Daman
- (5) Ta'zir.

**Death.**—Death may be awarded as punishment for the following offences:--

- (1) Waging war against Pakistan (section 121).
- (2) Abetting mutiny actually committed (section 132).
- (3) Giving or fabricating false evidence upon which an innocent person suffers death (section 194).
- (4) Murder (section 302).
- (5) Dacoity accompanied with murder (section 396).

**Imprisonment for life.**—Sentence of imprisonment for life means “for remaining span of natural life of convict, which is accepted as being of 25 years duration”.<sup>3</sup>

1. P.L.D. 1959 Kar. 460; P.L.D. 1959 Kar. 678; AIR 1962 Cal. 428.

Sentence of imprisonment for life may be awarded in the offence falling under the following sections of the Code.

Sections 121, 121-A, 122, 124-A, 125, 130, 131, 132, 194, 195, 225, 225-A, 232, 233, 255, 302, 327, 364, 364-A, 371, 377, 388, 389, 394, 396, 400, 409, 412, 413, 436, 449, 459, 460, 467, 472, 474, 475, 477 and 511.

**Imprisonment.**—Imprisonment is of two kinds, namely, (1) Rigorous, and (2) Simple. In the case of rigorous imprisonment the offender is put to hard labour, such as grinding the corn, drawing water, digging earth, cutting firewood, etc. In the cases of simple imprisonment, the offender is confined in jail and is not put to any kind of work.

The maximum period of imprisonment that can be awarded for an offence is fourteen years (section 55). The shortest term provided for an offence is twenty-four hours (section 510), but the minimum is unlimited.

In the following cases the minimum term or imprisonment is fixed:--

(1) If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, he shall be punished with imprisonment of not less than seven years (section 397).

(2) If; at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, he is punished with imprisonment of not less than seven years (section 398).

Generally speaking the Code has left to the discretion of the Court to inflict simple or rigorous imprisonment, but in the following cases the offender is punished with rigorous imprisonment without the alternative of simple imprisonment:--

(1) Giving or fabricating false evidence with intent to procure conviction of an offence which is capital by any law for the time being in force (section 194);

(2) Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft (section 382);

(3) Robbery (section 392);

(4) House trespass in order to commit an offence punishable with death (section 449).

The offences falling under the following sections are punishable with simple imprisonment only:

Sections 168, 169, 172, 173, 174, 175, 176, 177 (Part I), 178,



179, 180, 187, 188, 223, 225-A, 228, 291, 341, 500, 501, 502, 509 and 510.

**Forfeiture.**—Sections 61 and 62 of the Penal Code, which provided for the forfeiture of the entire property of the offender have been repealed by the Act, XVI of 1921.

In the offences falling under the following sections forfeiture can be ordered:

Sections 126, 127 and 169.

**Fine.**—Fine is the only punishment provided for in sections 137, 154, 155, 156, 171-G, 171-H, 171-I, 278, 283, 290 and 294-A.

**Detention in reformatories.**—Juvenile offenders sentenced to imprisonment for life may be sentenced to and detained in a Reformatory School for a period of three to seven years, as provided for by section 8 of Act, VIII of 1897.