

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*.² 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.³ 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 a 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 1307; PLJ 1996 Cr.C. 733.

3. PLD 1988 Pesh. 101.

"*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.¹

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.²

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.³

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

1. PLD 2010 SC 695.

2. PLD 1958 BJ 5.

3. AIR 1945 All. 207.