

## CRIME AND TORT

### REMEDIES RECOGNISED BY ISLAMIC JURISPRUDENCE :

Following are the remedies for torts as recognized by the Islamic Jurisprudence:

#### EXTRA-JUDICIAL REMEDIES:

**Abatement of private nuisance:** Removal of nuisance by the injured party without the assistance of the Court. My neighbor's trees' branches overhang in my courtyard. I can cut them away.

**Example of the abatement of a public nuisance:** If a log of wood is lying on the public road, the obstruction to free passage can be removed by self-help.

**Distress Qurqi:** *i.e.*, taking other's property for the discharge of a duty incumbent on that other. Cattle of other damaging my crop can be impounded by me as a pledge for the pecuniary redress of the injury caused to me.

**Recaption:** owner of certain goods can recover his those goods hitherto derived, by the use of requisite force.

**Retaliation:** *i.e.*, reply a tort by tort.

#### JUDICIAL REMEDIES:

**Pecuniary Compensation** in the form of damages. *Deeyat* (is plural of *deyit*) means a fine for any offence against person. Retaliation (*Qisas*) is the remedy granted by Law to the affected person on his heirs, and the injury can be compounded with offending person in the shape of money consideration (or pardoning).

**Restitution**, by return (*radd*) of the article usurped by other, in case the property involved is of dissimilars or delivering to the aggrieved party of a similar article *a'tal Misliah* in case the property involved was a similars. Wrongdoer is also liable for *mesne profits* obtained during the time he was in wrongful possession.

#### CRIMINAL LAW:

The Criminal Law may be defined as the body of law, whether dealing with *mala prohibita* or *malainse*, the infraction of which is a crime or an offence punishable by a criminal proceeding.

**SALIENT FEATURES OF ISLAMIC CRIMINAL LAW:** Following are the salient features of Islamic Criminal Law.

1. It is a divine law and not a manmade law. Its basis have been provided in the Holy Quran',
2. It is calculated to save mankind from incurring the wrath of Allah by nipping evil in its bud.
3. It upholds, defends and consolidates the positive values of Muslim society.
4. It eradicates the crime and manages at the same time no innocent person is convicted.

5. It classifies crimes according to the quantum of punishment, i.e. crimes of fixed punishment, crimes of retaliation and blood money and crimes of discretionary punishment.
6. It provides many escape valves in the cases of Hadd, Qisas and Theft. Escape values in the cases of Hadd are the benefit of doubt, non availability of the prescribed quantum of evidence and mode of execution. In Qisas one of the escape values is regarding composition of the offences. In theft the accused person may return the stolen property to the owner and compound the offence, before the case comes to the Court and get the imputation remitted.
7. It provides those foundation on which criminal responsibility of a man rest. These foundations are. '
  - 1) a person commits a prohibited action;
  - 2) the person exercises his free will;
  - 3) the person' has the capacity to discriminate between the , right and wrong.

### **THEORY OF CRIMINALITY:**

The theories of criminality falls in the following four classes

- (1) Sociological
- (2) Physical or Biological
- (3) Psychological
- (4) Psychiatric

(1) **SOCIOLOGICAL:** The sociologists have analyzed the characteristic of the criminals. They compared the so collected individual 'criminals statistical data and came to the conclusion that sociological factors are responsible in the making a man criminal.

Gabriel Trade Mothers regarded crime as social phenomenon. He considered social interaction to be the process of limitation.

Dr. W.A Banger, the Dutch criminologist, considered to be a bye-product of capitalism because it is closely related to the economic system. Theft is the most feasible example of it because it is actually the result of the unbalanced division of money. It has been noted many times an innocent person started the commission of theft due to hunger, starvation and monetary hard pressed circumstances. Therefore, it is tussle between rich and poor.

(2) **PHYSICAL AND BIOLOGICAL:** After the advent of the sodological theory comes the biological theory. The social theories were over shadowed by the biological theories. The profounder of this theory believe that biological development and evolution are the responsible factors for the creation of criminals. They say that in the due course of development the criminals are under-developed human beings because they have retained certain germs of animals. Therefore, the biological factors are responsible in their commission of crime such as committing murder, assault, rioting and looting.

Mr. Ceasare Lambroso, the Italian Physician tried to connect criminal

behavior with biological causes. He established the positive school of law. According to him the criminal was so low in the evolutionary scale that he retained certain animal characteristics of savagery not found in the non-criminal persons.

(3) **PSYCHOLOGICAL:** The psychologists are of the view that cause of crime is feeble-mindedness. This shows that there is only one cause for all crimes. This theory does not appeal to our minds.

They say that the cause of criminality, whether physical or mental, is inheritable. Henry Goddard opined that low grade mentality is the greatest cause of delinquency and crime. This low grade mentality usually begets from feeble-mindedness. A feeble-minded person is almost sure to commit crime.

(4) **PSYCHIATRIC PSYCHO-ANALYTIC:** According to this theory several factors are responsible for criminal behavior.

William Healy opined that there are several causes for criminal potency in human being. They hold the view that the criminal acts are the result of conflicts and frustration. It is the human nature that when a child steps towards adulthood, he wants self-assertion and independence from the restrictions of family. If at this juncture his natural demands and urges are suppressed he becomes dejected and frustrated. Due to this dejection and frustration he started to find an opportunity to get rid of this state of affairs.

The Psychoanalytic expert views crime as significant in terms of a person's inner emotional urges and as a part of the process by which he seeks inner peace and self-approval.

If we compare and analyze the theories we find that all the theories have the following common factors conventional groups have absorbed the individual and thus prevented association with delinquent groups.

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- Islam, signifies the complete subservience of the will of the individual and the collective society to the command and dictates of Allah. Human society can only flourish and thrive as long as it subjugates its will and desire to the law enunciated by Allah. These- Laws can only be discerned by the selected few, namely, the Prophets and are contained in the Holy scriptures having been made known to man through direct and immediate revelation. Human history has number of examples of those who achieved the *summum bonum* of human existence by following the Laws of Allah in letter and spirit.

Islamic concept of criminality basically is that an individual is personally responsible for his acts. It is in fact due to his heinous and evil deeds that he is criminally prosecuted. According to the canons of Islam no one is born criminal but on the other hand he is born as an innocent being. Therefore, the acts of individuals are themselves responsible for making person good and bad. Qur'an says that to ah' individual: "*We have shown the two paths and it is up to him to select any one of them.* It is more clear from another verse which says "*For it is (only) that which is hath earned, and against it (only) that which it hath deserved.*"

The above two verses clearly show that there individuals', evil designs and ulterior motives are responsible to make a person criminal. It means that the person does not inherit the criminal tendencies. It also repudiates the biological theory. It does not also support the sociological theory. According to Islam the crimes are the product of evil designs and ulterior motives. It is explicitly clear from the verse that the reward proportioned (to other evil deeds),

Islamic Law is crystal clear on the point that no one is responsible for the acts of others. It means that he has to earn good -by himself. His own good deeds will pay him.

In *Surai Baqr* it is said that everybody gets every good that it earns, and it suffers every ill that it earns. The Qur'an has used the word '*Kasab*<sup>m</sup>. The Muslim jurists while interpreting this term have agreed on the point that a man is neither the creator of his deeds nor his actions are predetermined. But the correct view is in-between these two. According to Islam the phenomenon of crime is explained by the theory of "*Kasab*" which is neither creation nor a pre-determination.

If we examine all the Western theories of crimes we come to one conclusion that they make the criminal responsible to commit the crime either due to inborn characteristic of human being or the role of society. The biological theory says it is biological defects or febleness of mind which is responsible in the commission of the offence. It means it is not the will of the person. Therefore, Western system of law are very mild in punishment. They take much care to criminals than to the crime. They consider the criminal as helpless under the circumstances. On the other hand Islam cannot tolerate crimes. It wants to eradicate all such evils from the society. The Islamic system cannot tolerate the prevalence of crimes. Therefore, the punishment is very deterrent so that the crime cannot be repeated. We have already noticed the observation of Warren Hastings on the Islamic System of punishment prevalent in India during those days.

#### 4. Theories of Criminality in Islam:

The main theory of criminality in Islam is that a man himself is responsible for his actions. It is due to his heinous and evil deeds that he is criminally prosecuted. According to Islamic view, no one is born criminal. These are his own acts which make him good or bad. He is free to act. The Quran says:

*As he was shown both, the paths of good and evil, so it would be his own skill to choose the right track.*

The principle of personal responsibility of the offender committing the offence is clear from the Quranic verse which clearly directs that:

*[For it (is only) that which it hath earned, and against it (only) that which it hath deserved.*

Whenever a person commits a criminal act, it is mostly due to his ulterior motive. He substantiates his inner self or motive in the form of crime. In fact, crimes are the product of evil designs.

*[Each soul earns only on its own account]*

So it is obvious from the above mentioned verses that crimes are due to one's own volition to act in a manner that violates the Commandments of Allah. In short, the cause of crime is one's own evil acts. Another important approach to the theory of crime is that no one will be responsible for the actions of others.

### **Q. 45. What are different theories of punishment in Islam?**

**PUNISHMENTS:** Punishments are called Uqahat (aqb means a thing, following another thing). It means violation of law is immediately followed by

punishment.

### **OBJECT OF PUNISHMENT:**

The object of punishment is the prevention of crime and every punishment is intended to have a double effect *viz.* to prevent the person who has committed a crime from repeating the act or omission and to prevent other members of the community from committing similar crimes. The main object of awarding punishments for offences is to create such atmosphere which may become a deterrence for the people who have propensities towards crime and thereby prevention of offences so that the society in which all the members have to live may not feel suffocated, disturbed, unsafe and prone to unhealthy environment.

### **THEORIES OF PUNISHMENT IN ISLAM :**

The four different theories of punishment are the following:-

**Ibratnak:** According to this theory the punishment is awarded to deter people from committing the crime. The motion of fear plays a vital role in man's life. The people fear to commit the offence because it will render them to suffer. The fear of punishment puts a check not only on the criminal from committing further crime but also on all other evil minded.

It is said in Quran in relation to retributive punishment:

*'As to be thief male or female, cutt off his or her hands, a deed for which they have earned, an exemplary punishment from Allah;' (Al-Maida : 38)*

**Intaqmi:** This theory is based on the principle of an eye for eye and tooth for tooth. The offender should be punished according to the nature of injury caused by him to the victim. In other words punishment should be in proportion to the injury caused by the accused. This theory does not look to the motive but to intention in committing crime.

It is said in Quran in relation to retributive punishment:

*"Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wound equal for equal. (Al. Maida: 45)*

**Insadadi:** This theory aims at preventing the crime by disabling the criminal. In order to prevent the repetition of the crime the offenders are punished with death, imprisonment for life or transportation of life. For example a murder is committed by A, and he is punished. Here A is punished not for having committed the murder, but in order that no further murder be committed.

**Islahi:** The object of punishment according to this theory should be to reform the criminals. The crime is mental disease which is caused by different anti-social elements. Therefore, there should be mental cure of the criminals instead of awarding them severe punishment. Much truth lies in the statement that to open a school is to close a prison. If persons of criminal character are so educated and trained that they are made competent to carry on well in society, there will be little or not at possibility of any crime being committed by them. The punishment should therefore be curative or corrective because nobody can cure by killing.

### **What are different kinds of punishment In Islamic Law?**

### **MEANINGS OF PUNISHMENT:**

Punishment literally means a thing following another thing. In legal terminology punishment means any fine, penalty or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a Court for some crime or offence committed by him or for his omission of a duty enjoined by law.

### **OBJECTS OF PUNISHMENT:**

The objects of punishment in Islam are as follows.

1. To obstruct people from violating those acts for which hudood has been fixed by God.
2. To maintain the society on its center, so that matter may be solved by way of balance and moderation and not by extremism.
3. To satisfy the sense of retribution which is naturally stirred up when a person is wronged.
4. To prevent a wrongdoer from committing a wrong second time.
5. To make offender an example to other person who have criminal tendencies.
6. To reform offender by realizing his offence.
7. To fulfil the requirements of Islamic system of justice.

### **KINDS OF PUNISHMENTS:**

Punishments in Islam are of three kinds.

(I) Hadd                      (II) Tazir                      (III) Qisas

**HADD:** Hadd literally means "Obstruction" prohibiting from entering. It is thus that 'haddad' means a person who prevents from entering i.e. gate keeper. It also means limit. In its legal sense, with which we are here concurred the term hadd means the prescribed punishment as ordained by Allah through the Holy Quran or as given by the Holy Prophet (Peace be upon him).

1. Meaning of "Hadd" -

Hadd means measure, limit, and in law it means a punishment the measure / of which has been definitely fixed.

3. Historical Background of "Hadd"

Hadd used to be prevalent in Arabia at the time of the promulgation of Islam, and the Islamic law, while confirming it as the extreme punishment of certain-crimes, has laid down conditions of a stringent nature under which such punishments may be inflicted. These rules are so strict and inflexible that it must be only in rare cases that the infliction of hadd as of retaliation would be possible, and, in fact there are only a few instances known in which hadd has been inflicted. The department of the law relating to hadd has merely a historical interest and is typically illustrative of the principle of Islamic jurisprudence, namely not to interfere with the customs and usage's of the people in such matters except so far as to may be necessary to safeguard against abuses and oppression and to let die new principle take the place of the old rule slowly and along with the advance or public opinion.

"Punishment by way of hadd are of the following forms:

Death by strong, amputation of a limb or limbs, flogging by hundred or eighty strikes. They are prescribed respectively for the following offences wheredom, theft highway robbery, drunkenness, and stander imputing un-chastity.

Such punishments relate to:

- i. Theft:** The Quran says as to the punishment of the offence of theft;  
“And (as for) the male thief and the female thief, cut off (from the wrist joint) their (right) hands as a re-compensate for that which they committed, a punishment by way of example from Allah
- ii. Haraabah :** Quran says as to the punishment of the offence of haraabah  
*"The recompense of those who wage war against Allah and His Messenger and do mischief in the land is only that they shall be killed, crucified or their hands and their feet be cut off opposite sides or be exiled from the land." (Al-Maidah : 33)*
- iii. Zina:** Quran says as to the punishment of the offence of Zina:  
*"The woman and the man guilty of illegal sexual intercourse, flog each of them with a hundred stripes. (Al-Noor 2)*
- iv. Qazf :** The Holy Quran says as to the punishment of the offence of Qazf:  
*"And those who accuse chaste women and produce not four witnesses, flog them with eighty stripes and reject their testimony. They indeed are the Fasiqun (Liars, disobedient of Allah). (Al-Noor; 4)*
- v. Drinking :** The Holy Quran says as to drinking,  
*"Intoxicants (all kinds of alcoholic drinks) and gambling and Al, Ansab and Al-Azlam (arrows for seeking luck or decision) are an abomination of shaitan's (Satan) handi work. So avoid strictly-all that (abomination) in order that you may be successful. (Al- Maidah:90)*  
The Book of God has not prescribed any punishment but the punishment sanctioned is 40 stripes and in some cases 80 stripes.
- vi. Apostasy:** The Holy Quran says as to apostasy:  
*"And whosoever of you turns back from his religion and dies as a disbeliever, then his deed will be lost in this life and in the hereafter, and they will be dwellers of the Fire." (Al. BaQarah; 217)*
- vii. Treason:** In the list of Hadd, treason is last Hadd. There is punishment of murder for this offence. Quran say as to treason:  
*'And if two parties of believers fall to fighting, then make peace between them. And, if, one party of them doeth wrong to the other, fight that which wrong till in return unto the Ordinance of Allah." (Al. Hajurat: 9)*

## **TAZIR :**

Crimes which are not punishable with punishments (hadd) are classified under the Head of Tazir: Crime punishable as such have no fixed or prescribed punishment. In this category of crimes may fall murder, misappropriation, forgery and what not and the punishments may be by way of ordering death, flogging, and imprisonment fine, etc.

## Meaning of Tazir

In tazir, the court is allowed discretion both as to the form in which such punishment is to be inflicted and its measure.

Tazir may be inflicted for offences against human life and body, property, ' public peace and tranquility, decency, morals , religion and so on, in fact the entire criminal law of the Muhammadans as prevalent at the present day is based on the principle of tazir.

“The nature of sentence to be inflicted by way of tazir for particular kinds of offences may be regulated by the head of the state who has absolute discretion in the matter.' The objects of tazir are the correction of the offender and the preventing of the recurrence of the crime, and it is left to the discretion of the Magistrate to determine, in view of the circumstances of each case, the sentence by which the objects of the law would best be achieved. He is to take into account in awarding punishment, the nature of the offence and the circumstances under which it was committed, and the previous character and the position in life of the offender and so on. The range of this form of punishment extends from mere warning to fine, corporal chastisement, imprisonment and transportation.”

Tazir may further be discussed under the following heading:-

**a) Definition of Tazir :** Tazir, in its primitive sense, means prohibition and also instruction:

In law it signifies an infliction undetermined in its degree by the law on account of the right either of God, or of the individual; and the occasion of it is any offence for which Hadd has not been appointed whether the offence consists in word or deed.

**b) Tazir is ordained by law:** Tazir is ordained by law, the institution of it being established on the authority of the Quran where God enjoins men to chastise their wives, for the purpose of correction and amendment, and the same also occurs in the traditions. It is moreover recorded that the Prophet chastised a person who had called another perjured; and all the companions agree concerning this. Reason and analogy moreover both evince that chastisement ought to be inflicted for acts of an offensive nature, in such a manner that men may not become habituated to the commission of such acts; for if they were, they might by degrees be led into the perpetration of others more atrocious.

**c) Objects of Tazir:** The objects of Tazir are the correction of offender, the prevention of the recurrence of the crime and-it is left to discretion of the Magistrate to determine in view of the circumstances of each case, the sentence by which the objects of law would be best achieved. He is to take into account the nature of offence and circumstances under which it was committed, the previous character and the position in life of the offender and so on. For example for sodomy or other unnatural carnal offences no punishment is fixed. According to Imam Abu Hanifa the offender 'should be detained in prison till he repents. Similarly for counterfeit coins Tazir shall be applied.

**d) Offences of Tazir:** Offences of Tazir are innumerable. However, they are of two kinds.

1. The acts or the omission in which some Divine-provisions are violated. For instance, the practice of usury, misappropriation of pledge, bribery, abuses *etc.*
2. The violation of the rules, regulations and order of the Government acting as sub-legislative authority. Such rules and regulations cannot be



arbitrary. They must be promulgated in the larger interests of the society. Not only that they should not contravene any Divine provisions but also they should be furthering and executing some Divine injunctions. The legislative powers of Government are limited to this extent.

**e) Infliction of tazir:** Tazir may be inflicted by imposition of fine, scourging, imprisonment, etc. It is the punishment which is left to the discretion of the Qazi or judge.

**f) State power of pardon:** In the cases of Tazir, the state has got the pardoning powers. In these crimes right of punishment has been delegated by the Shariah to the state. The state has got discretion to alter the quantum of punishment to the minimum extent of mere admonition.

### **QISAS:**

Qisas literally means to go back and, legally, it is an act which follows another act. It is allowed in case of wilful murder, destruction of life or limb, capable or definite ascertainment. It calls for similar injury to the wrongdoer.

Quran explains the concept of Qisas in these words.

*"O you who believe, Al-Qisas. (The law of Equality in punishment) is prescribed for you in case of murder. The free for the free, the slave for the slave and the female for female. But if the killer is forgiven by the brother (or the relatives) of the killed against, y blood money, then adhering to it with fairness and payment' of the blood money to the heir should he made in fairness. This is an all eviation and a mercy from your lord. So after this - whoever transgresses the limits (i.e.) kills the killer after taking the bloodmoney), he shall have a painful torment (Al-Baqarahl 178)*

Another form of Qisas is Itlaf-udu or Utlaf-Salahit-udu. In such case the offender could be given punishment to such an extent which he would have caused to the mutzarar. The injunction of Quran is this,

*"Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal.' (Al-Maldah 45)*

It is dear from the above verses of Holy Quran that retaliation is a right of the person injured or of his heirs. They can compound with offender by accepting money or pardon him. But nowadays this remedy has theoretical value only as it is not in vogue because the act of retaliation has now become the exclusive right of the State.

### **5. Five Universals:**

According to Muslim jurists, rights may be classified into rights of God and rights of men. The former are those which involve the benefit to the community at large, while the latter are those which are not attributed to God but to a particular individual. The enforcement of the rights of God vests in the State, while the enforcement of the rights of men to the pleasure of the individual concerned. Rights of God may be linked to public rights and rights of men to private rights.

With reference to their subject matter, private rights may be classified as,

1. Rights to the safety of person (nafs)
2. Rights to the safety of reputation (hurmat) "
3. Rights to the safety of property

4. Rights to the safety of faith"
5. Rights to the safety of soundness of human mind
6. Structure of Crime

The following are the three elements of crime:

- (1) Legal Elements:

There must be a text to forbid and punish a crime.

- (2) Material Elements:

The criminal act is either by commission or omission.

- (3) Metaphysical Elements:

A criminal must be major, that is, liable for his crime.

#### 7. Classification of Crime:

Crime may be classified as follows;

- (1) First Grade:

Crime affecting the public. It includes all those crimes which affect the general public. It has two kinds and each has different law.

- (a) First Kind. Crimes with full punishment are seven in number: (i) Zina, (ii) Slander, (iii) drinking, (iv) theft, (v) robbery, (vi) apostasy and (vii) treason.
- (b) Second Kind, (i) Intentional homicide, (ii) Culpable homicide not amounting to murder, (iii) Unintentional murder, (iv) Intentional-injury and (v) unintentional injury.
- (2) Second Grade:

This grade includes all those crimes which are not classified under the first grade. It has three kinds: (i) the crimes relating to original punishments are those which are neither hudood nor retaliation nor blood-money, (ii) the crimes relating to those hudood whose punishment is not prescribed; either they are incomplete or their hadd is averted, and (iii) crimes relating to retaliation or blood-money whose punishment is not prescribed, such as those crimes in which there is no retaliation or blood-money.

### **Discuss all the Hudood crimes in detail?**

#### **MEANINGS OF HADD**

**Literal Meanings:** The literal meaning of Hadd is measure or limit

**Legal Meanings:** In legal terminology it means that punishment, the limit of which have been defined and fixed in the Quran and Hadith. It relates to those Crimes in which the right accrues to God alone without any right accruing to humanity.

#### **CRIMES OF HUDOOD:**

The following crimes are the crimes of Hudood

- |                    |                    |                    |
|--------------------|--------------------|--------------------|
| <b>1. Zina</b>     | <b>4. Theft</b>    | <b>7. Sedition</b> |
| <b>2. Qazaf</b>    | <b>5. Apostasy</b> |                    |
| <b>3. Drinking</b> | <b>6. Harrabah</b> |                    |

#### **ZINA:**

When a sane adult man woman, not married together nor suspecting to have been married together, indulge in sexual intercourse, such man/woman commit Zina.

**Proof of Zina:** Proof of Zina is by two ways.

- 1) Bayyinah and
- 2) Confession

**Bayyinat:** By Bayyinat is meant testimony of four competent witnesses. .

**Confession:** By confession is meant the four times confession by accused himself.

**Punishment of Zina:**

- i. If convict is Mohsan, then he shall be stoned to death at a public place; or
- ii. If convict is not a Mohsan, then he shall be punished with whipping numbering one hundred stripes.

**QAZF:** When an adult person, intentionally and unequivocally makes an imputation of Zina against any person who is Muslim and capable of performing sexual intercourse such person committ the offence of Qazf.

**Proof of Qazf:** The offence is proved when the offender himself confesses his guilt or when at least two Muslim adult male witnesses give direct evidence to such effect.

**Punishment of Qazf:** The person guilty of Qazf shall be punished with whipping numbering 80 lashes and his evidence shall not be admissible in any Court of law. --

**DRINKING :** Drinking means intentionally (without Ikrah or itizar) taking any intoxicant by any means whatsoever even though intoxication may net be caused.

**Ikrah :** means putting a fear of injury to person, property, or honour of the person concerned or any person such as for example ones wife or children.

**Itizar :** means putting a person in such situation where he feels an apprehension of death due to extreme hunger thirst or illness.

**Proof of Drinking :** Drinking is proved when the accused confesses to take intoxicating liquor by mouth or when at least two adult male Muslim witnesses give evidence that accused have committed the offence of drinking.

**Punishment of Drinking:** The person guilty of drinking shall be punished with whipping numbering 80 stripes.

**THEFT:** Theft signifies the taking away the property of another in a secret manner when such property is in safe custody (Hire) \.t., when the effects are in supposed security from the hands of other people and where the value is not less than ten dirham and effects taken the undoubted property of some other than of him who takes them.

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**Proof of Theft:** Theft is proved when the accused pleads guilty or when at least two Muslim adult witnesses give evidence as eye-witness of the occurrence and the Court is satisfied after tazkiya-al-shuhood that they are truthful witnesses and abstain from major sins.

**Punishment of Theft :** The punishment for theft shall be as follows:

- i. when the offence is committed for the first time- amputation of right hand from the joint of wrist.
- ii. when committed for second time-amputation of left foot up to ankle.

- iii. When committed for third time or subsequently - imprisonment for life *i.e.* till death.

**APOSTASY:** Apostasy means turning from Islam after being a Muslim. In Islam the punishment prescribed for the act of apostasy is death. Muslim jurists hold the view that before penalizing an apostate it is necessary to give him an option of three days to re-embrace the faith.

According to Hanafi school of thought an apostate woman and a hermaphrodite would not be condemned to death but imprisoned and even physically tortured.

**HARAABAH:** When a person or persons, armed, or not armed, make a show of force for taking away the property of another and attack him or cause wrongful restraint or put him in fear of death or hurt such person commit the offence of Haraabah.

**Proof of Haraabah:** Haraabah is proved when the accused pleads guilty or when at least two Muslim adult witnesses give evidence as eye witness of the occurrence.

**Punishment of Haraabah:** The punishment for Haraabah shall be as follows:

- i. When the offence, is committed for the first time — amputation of the right hand and left foot.
- ii. When committed for second time— amputation of the left hand and right foot

**SEDITION :** Sedition to Islamic state is an offence and also comes under the crime of Hudood. There is a punishment fixed for this offence in Islam.

#### **Q. 49. Define and Qisas and Diyat in Islamic Law? Discuss."**

**Ans. QISAS AND DIYAT**

**QISAS :**

Qisas literally means to go back and legally, it is an act which follows another act. It is allowed in case of willful murder or wilful destruction of life or limb, capable of definite ascertainment. It calls for similar injury to the wrong doer.

Quran Says:

*O you who believe! Al Qisas (The law of equality in punishment) is prescribed for you in case of murder. The free for the free, the slave for the Slave and the female for female! But if the killer is forgiven by the brother (or the relatives) of the killed against blood money, then adhering to it with fairness and payment of the blood money to the heir should be made in fairness. This is an alleviation and a mercy from your lord. So after this whoever transgresses the limits, he shall have a painful torment. (Al Baqrah 178)*

In another place Quran says:

*"Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth and wounds equal for equal." (Al-Maidah 45) r,,*

It is clear from the above verses of Holy Quran that retaliation is a right of the person injured or of his heirs. They can compound with offender by accepting

money or pardon him,-But now a days the above said remedy has the theoretical value only as it is not in vogue because the act of retaliation has now become the exclusive right of the State.

**DIYAT:**

Diyat means the compensation granted to the heirs of the victim by the offender.

It is a compensation fixed by Law Shariat payable to the heir of the victim by the offender. This blood money is a substitutory punishment for Qisas is the form of monabley compensation. It is a fixed punishment impiementable as the right of the individual.

It is payable on the commission of Qatl-UShibb-i-Amd, Qatl-i- Khata, Qatl-i-Khata by rash or negligent driving and Qatl-i-bis- Sabab.

**FORMS OF DIYAT:** In Qati-hShibb-i-Amd, Diyat mugh-allagza is payable, whereas in Qatl-i-Khata, Qatal-i-Khata by rash or negligent driving and Qati-i-bis-Sabnb A’nm Diyat is payable.

**Diyat-e-Mughalaza :** Diyat-Mughallaza is paid only in the form of camels. According to Shelkkhan, Diyat Mughallaza is one hundred camels. Among these she camels, 25 will be one year old, twenty five 2 years old, twenty five three years old and twenty five four years old. Diyat Mughallaza is also one hundred camels according to Imam Muhammad, Imam Shafi, and Imam Ahmad.

**A’am Diyat :** There are different forms of A’am Diyat. This can be paid in the form of camels or in any other form.

- i. In first case, hundred camels should be paid.
- ii. In second case, one thousand dinar should be paid from
- iii. In third case, according to Ahnaaf ten thousand dirham, and according to Malik and Imam Shaffi twelve thousands Dirham should be paid from the Silver.

**Diyat of Unbelievers:** If a Christian or a Jew be killed, his blood wit is half that of a free Muslim. A Muslim may not be put to death for an unbeliever unless he have killed him treaherosly. The bloodwit of a Magian is 800’Dirhams.

**Exemption from Diyat:** Women and children are not liable to pay diyat.

**DIFFERENCE BETWEEN QISAS AND DIYYAT:**

<b>Qisas</b>	<b>Diyyat</b>
Qisas is a bodily compensation.	Diyyat is a financial compensation.
Qisas in paid on Qatl-i-amd only.	Diyyat is paid on Qatl-i-shibh-amd, Qatl-i-khata, and Qatl-bis-sabab.
Qisas is taken from the offender.	Diyyat is taken from Aaqila.
In Qisas, social status of the offender is not considered.	In Diyyat, social status of both oppressor and oppressee is

	considered.
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