

Pakistan Qisas and Diyat Act: review of hurt laws and suggestions

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ABSTRACT

Introduction: Pakistan, at inception, inherited the British system of Criminal Justice and the same was followed till 1979 when the Qisas & Diyat (Q&D) Ordinance was introduced to provide for societal benefits. The Act has not been extensively reviewed although it is in practice in courts of law.

Objective: To review the Qisas & Diyat Act laws on hurt, and provide suggestions for consideration by the lawmaking authorities.

Materials & Methods: The review was conducted in the Department of Forensic Medicine, Rehman Medical College (RMC), in collaboration with the Department of Islamic and Pak Studies, RMC, for two years (2020-22) over frequent meetings and discussions among the staff and medical students of the college. The complete Q&D Act was downloaded from the internet, and reviewed item-wise based on a structured format and question points raised during meetings, using the Quran and Hadith as reference standards. Consensus was reached on need for further modification/improvement/clarification for all 17 items of discussion related to the domains of Hurt, Loss of Organ, Shajjah, and Jurh.

Results: Four items related to Pain required rephrasing, while an additional fifth item related to injuries of tendons/ligaments needed to be included. Three items related to Loss of Organ needed clarification regarding the practice of punishment for this domain. Six items related to Shajjah are not clear on definitions, and details of terminology and concepts. Three items related to Jurh have issues of classification, and details of injury.

Conclusion: The Qisas & Diyat Act needs extensive and in-depth review for justifying its practical implementation and causing actual benefit to victims, as well as improving the practice of Forensic Medicine in Pakistan.

Keywords: Qisas; Diyat; Hurt; Loss of Organ; Shajjah; Jurh; Wounds and Injuries; Social Justice; Ethics; Human Rights.

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INTRODUCTION

In Pakistan, the present criminal justice system is primarily based upon the codified penal and procedural laws designed by the British masters in the colonial era of British Indian history. It includes the criminal procedure code of 1898 and penal code of 1860. These criminal laws did not provide any concept of restorative justice. Our system is still based upon the accusatorial principle i.e. The state is a party in any criminal transaction. Punishment of the offender as a rule has been provided as the only penalty for the criminals instead of extending any relief/remedy to the victim.

It truly speaks of the underlying objective that the state is interested in maintaining 'order' and writ of the state in the society instead of taking care of the victim.

However, in the course of development, Pakistan as a country tried to improve the inherited criminal laws to make them more consistent with and beneficial for the society. In brief, one of these codified changes is the Qisas and Diyat Act of 1979.¹

The Holy Quran has described a very important principle of civil law, i.e., Equality of men and the necessity of awarding proportionate punishment to all offenders, without distinction, unless and until the offender is pardoned by the relatives of the victim under circumstances that are expected to lead to improvement of conditions.^{2,3}

The Holy Quran says in Surah Al-Baqarah (2:178). "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 the female. But if the killer is forgiven by the brother (or the relatives, etc.) of the killed against blood-money, then adhering to it in 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 (i.e., kills the killer after taking the blood-money), he shall have a painful torment".²

The Holy Quran says in Surah Al-Ma'idah. (5:45). "And We ordained therein for them: Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal. But if anyone

remits the retaliation by way of charity, it shall be for him an expiation. And whosoever does not judge by that which Allah has ordained, such are the *Zâlimûn* (polytheists and wrong doers – of a lesser degree”.³

The Islamic law of just-retribution provides a very effective and practical means to put a stop to murder and safeguard human life.

In February 1979, President Zia al-Haq issued new Shariah laws of Qisas and Diyat, that punished rape, adultery, and the "carnal knowledge of a virgin" by stoning; first time theft by amputation of the right hand; and consumption of alcohol by eighty lashes.¹ However, these laws were strongly opposed and debated by

Shariat courts till 1990, when it was ordained as a state law. It was later in 1997 that the then government passed the Act through parliament to form the Qisas and Diyat Act 1997.^{1,4}

Stoning and amputation, it should be noted, had not been carried out as of early 1994--at least not outside of the tribal area where tribal custom, rather than the Pakistani penal code, is the law of the land.

The penal code and the code of criminal procedure were amended in the early 1990s to bring them into conformity with Islamic law, and the Qisas and Diyat Act (1991), promulgated by the Criminal Law Amendment Act (1997).

Table 1: Some important definitions in Qisas and Diyat Act section 299 definitions

#	Sections of Q&D Act	Definitions
1.	Qisas 299 a	It is not defined in conventional law (CrPc & PPC). It means equal punishment. In other words, it is "tit for tat", i.e, life for life and an eye for eye.
2.	Arsh 299 b	It means compensation specified in the chapter xvi of Qisas & Diyat Act to be paid by the offender to the victim or his heirs.
3.	Authorized medical officer 299 c	It means a medical officer/ medical board howsoever designated, authorized by provincial government.
4.	Daman 299 d	It means compensation determined by court to be paid by the offender to the victim for causing hurt not liable to Arsh.
5.	Diyat 299 e	It means compensation specified in section 323, payable to the heirs of the victim by the offender.
6.	Qatl	It means causing death of a person.
7.	Tazir	It means punishment other than Qisas, Diyat, Arsh or Daman.
8.	Wali	It means person entitled to claim Qisas.
9.	Adult	It means a person who has attained, being a male the age of 18 years or being female age of 16 years or has attained puberty which is earlier.

The Q&D Act has been in practice since 1979, and has had two modifications (1991 and 1997) but has not been reviewed in-depth by Islamic and legal scholars. Careful scrutiny of the document reveals areas that could be misunderstood or misinterpreted, thereby creating loopholes in practice.

MATERIALS & METHODS

This review of the laws relating to Hurt in the Qisas and Diyat Act (Q&D Act) was conducted from 2020-2022 in Rehman Medical College, Peshawar, involving the Departments of Forensic Medicine and Islamic & Pak Studies. Copies of the Q&D Act were downloaded from the Internet (Reference) and distributed to the authors for perusal and requested for in-depth review to identify lacunae, ambiguities, pitfalls, and related objectionable content.

Subsequently, a series of meetings were held to discuss identified issues, and reach consensus on items that needed improvements / revisions in the views of the authors. Moreover, the list of items was taken up for classroom discussion with third year medical students in small group format so that further views could be obtained from a more diverse and naïve group. All the items were accepted by students as worthy of revision and none was considered redundant. The possible implications of the items in practice were also discussed including the necessary changes to improve the teaching of Forensic Medicine in medical colleges.

RESULTS

A total of 17 items relating to Hurt laws of the Q&D Act were found to have significant loopholes that could affect interpretation and the practice of medicolegal aspects for the medical practitioners and the victims. The items, points of objection, and the implications for medicolegal practice are listed in Table 2.

Regarding the section on Hurt, it becomes difficult for the medicolegal practitioner to apply the laws if they are not clear in their definitions or could be interpreted in alternate ways, thereby influencing the outcome of a case. Technical and professional terms need to be defined precisely as they will be applied in an actual medicolegal case, based on the standard classification of Hurt, whether based on Islamic Law or other legal systems. The definitions also affect pain investigations, whereby medicolegal personnel should be able to identify and classify pain easily and correctly in each case. Similarly, hospitalization for Hurt/Pain can be determined only after thorough investigation to rule out fictitious claims as well as determine the duration of hospital stay based on individual case merits and not on a fixed time span of 21 days.

Loss of organ is a serious injury depending on the organ involved and can even be life threatening. The Q&D Act does not include all the organs in the head and face region, nor classify them based on their importance to normal life and job productivity and earnings. Similarly, loss of function of the organ has not been

included in depth or its significance in real life situations. Punishments for Loss of organ or its function have not been clearly defined, and left to the discretion of the Qazi / Judge (Daman).

In Shajjah, only the skull is mentioned in all the subsections of Shajjah, and face has been excluded. Moreover, the details of

injuries based on the six subsections have not been clarified or considered in-depth. The subsection of Khafifa does not refer to details of the wound or the extent of bleeding involved. Exclusion of mention of scar tissue prevents medicolegal reporting of such evidence. Hence, organs not mentioned cannot be subjected to medicolegal examination in the forensic report and victims will be denied full justice based on the extent of injuries sustained.

Table 2: Items that need in-depth review for implications in practice.

#	Domains	Issues / Objections		Implications for practice
1.	Hurt (Definition)	Here the objection is to the term “causing pain” <ul style="list-style-type: none"> • What should be the nature of pain? • Who will decide the intensity of pain? • How to rule out the claim of the victim? • Why hospitalization for 21 days? • Injury/tear/rupture of tendon and ligament is not mentioned. 		<ul style="list-style-type: none"> • The doctor should know the exact nature of pain • Pain investigation should be supported by valid documentary evidence to rule out false claims of pain • Hospitalization cannot be determined as absolute 21 days • Pain of tendon/ligament origin cannot be categorized
2.	Loss of Organ	<ul style="list-style-type: none"> • All organs are not included • Loss of function of an organ has not been clearly demarcated • Punishment should be clearly defined, not left to the Qazi / court judge 		<ul style="list-style-type: none"> • Organs not listed in Q&D Act cannot be included in medicolegal cases • Lack of details about functional loss and punishments will prevent due justice in some cases
3.	Shajjah	Only the skull is mentioned in these subsections of Hurt; scar tissue is not mentioned. <ul style="list-style-type: none"> • Khafifa: Without exposing bone • Madiha: Exposing of bone but no fracture • Hashima: Fracture • Munaqila: Fracture dislocation • Amma: Only touches the membrane during the penetrating wound • Damighah: Injury to actual brain matter 		<ul style="list-style-type: none"> • Hurt for other organs (face, eye, ear, and chin) cannot be included in medicolegal cases • Medicolegal aspects of scar tissue cannot be part of evidence
4.	Jurh	<ul style="list-style-type: none"> • Jurh Jaifa (Penetrating wound to body cavities) 	(The type of wound is not clearly defined)	<ul style="list-style-type: none"> • Scar tissue in Shajjah will be excluded from medicolegal cases • The depth of wound (penetrating, perforating) and injury to internal organs will not be included in medicolegal cases • Amount of bleeding can be important in a medicolegal case
	<ul style="list-style-type: none"> • Ghayr-Jaifa (Non-penetrating wound) 			
	<ul style="list-style-type: none"> • Damia 	(Amount of bleeding not mentioned)		
	<ul style="list-style-type: none"> • Badiha • Muttalahima • Modiha • Hashima • Munaqila 	(Magnitude of force not mentioned)		

Regarding the important issue of Jurh (Jaifa and Ghayr Jaifa), the importance of depth of wound has been ignored, the amount of bleeding (external and internal) has not been included, and the magnitude of force has been neglected. Similarly, injury to internal organs has not been included or defined. No value has been given to perforating wounds with or without internal organ injury. All these omissions have drastic effects on reporting of medicolegal cases of wounds, which is a highly inflammable situation for the victims and their families.

DISCUSSION

This review of the Hurt laws of the Pakistan Qisas & Diyat Act highlighted 17 different items that were objectionable and could

have serious implications for commonly observed medicolegal cases. The Act has not been extensively reviewed by previous authors; one study (2003)⁵ advocates the Act and its implementation to blend in with Pakistan Penal Code (Reference) and enhance medicolegal practice, without identifying loopholes that could be detrimental to practice. However, Nizamani et al⁶ reviewing the Act in his Editorial pointed out major pitfalls in the Q&D Act related to all the above-mentioned aspects of Hurt laws. He emphasizes that examination of an injured person plays an important part in medico-legal cases and due attention should be given to detailed definitions and classifications of injuries. As an example, he differentiates the well-defined word “Privation” in the previous PPC 320 from the word “Impairment” in the new

PPC Section 335 which is not given specific meanings that could be used to gauge the degree of impairment quantitatively. Moreover, he mentions that the previous PPC had provision for disfigurement of the Head and/or Face, (PPC 320 Part VI), whereas the new PPC does not specify body parts or regions and applies to the whole body, even though the consequences of disfigurement are different on different parts of the body. Referring to PPC 337, Nizamani mentions that though this is the best substitute for the previous law, yet it is not clear on the phrase *“By exposing any bone of victim without causing fracture”* in Section 337 A(ii), Shajjah -i- Mudihah; the objection is that once the wound has healed, doctors cannot give their opinions about the nature of injury. Further objections were raised to the new laws pertaining to Fractures of bones in that there is no mention of dislocation of joints, and dental injuries have not been described adequately; injuries of contusions and bruises have also not been described properly.

The issue of Pain has been dealt with in depth regarding its medical complexity and medico-legal aspects by Lacerte and Shah,⁷ including the aspect of testifying as an expert witness in a court of law; moreover, the issues of disability and incapacitation due to pain accompanied by loss of gainful employment require detailed descriptions and clauses in law for efficient medico-legal practice. In the new law, the mention of pain is merely in relation to general provisions for Hurt without treating the subject separately.

The Qisas and Diyat Laws have been further criticized from other aspects. These include honor killings⁸⁻¹⁰ for which there is no concept in the new laws, thereby allowing perpetrators to go Scot free; and the issue of Zina¹¹ where the rights of women have not been adequately protected and the new laws have been made a tool in the hands of husbands and parents to punish members of the opposite gender.

CONCLUSION

The Qisas and Diyat laws are inadequate to address a number of medico-legal issues in real time, primarily the area of Hurt, due to lack of clarity in concepts, definitions, and implementation. This results in embarrassing situations for medical professionals during medico-legal procedures in the workplace and in courts of law.

RECOMMENDATIONS

The Qisas and Diyat Laws need to be reviewed thoroughly by teams of medico-legal and religious experts in the different areas of the new laws so that an efficient system of practical Islamic laws can be implemented in Pakistan.

LIMITATIONS

Only one Islamic scholar was part of the study, and no authority pertinent to the Qisas and Diyat Act was consulted.

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