

AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR
LAW, JUSTICE AND PARLIAMENTARY AFFAIRS DEPARTMENT

MUZAFFARABAD

Dated the 23rd July, 1995.

No. 568-75/LD/95. The following Act of the Assembly received the assent of the President of 19th July, 1995 is hereby published for general information:-

AN
ACT

(ACT XII OF 1995)

further to amend the Azad Penal Code, 1860

WHEREAS it is necessary to amend the Azad Penal Code, 1860 (Act XLV of 1860), for the purposes hereinafter appearing;

It is hereby enacted as follows:-

Short title and commencement:- (1) This Act may be called the Azad Penal Code (Amendment) Act, 1995.

(2) It shall come into force at once.

Substitution of Section 53, Act XLV of 1860:- In the Penal Code (Act XLV of 1860), as adapted in Azad Jammu and Kashmir hereinafter referred to as, the said code, for Section 53, the following shall be substituted, namely:-

“53. Punishment:- The punishment to which offenders are liable under the provisions of this Code are,-

1.

Firstly,
Secondly,
Thirdly,
Fourthly,
Fifthly,
Sixthly,
Seventhly,
Eighthly,

Ninthly,
Tenthly,

Qisas;

Ta,zir;

Diyat;

Arsh;

Daman;

Death;

Imprisonment for life;

Imprisonment which is of two
descriptions namely;

(i) Rigorous i.e., with hard
labour;

(ii) Simple;
Forfeiture of property;

Fine.”

Amendment of Section 54, Act XLV of 1860:- In the said

Code, in Section 54, for the full stop at the end a colon shall be
substituted and thereafter the following proviso shall be added,

namely:-

“Provided that, in a case in which sentence of death shall have been passed against an offender convicted for an offence of qatl, such sentence shall not be commuted without the consent of the heirs of the victim.”

Amendment of Section 55, Act XLV of 1860:- In the said Code, in Section 55, for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:-

“Provided that, in a case in which sentence of imprisonment for life, shall have been passed against an offender convicted for an offence punishable under Chapter XVI, such sentence shall not be commuted without the consent of the victim or, as the case may be, of his heirs.”

Amendment of Section 55-A, Act XLV of 1860:- In the said Code, in Section 55-A, for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:-

“Provided that such right shall not, without the consent of the victim or, as the case may be, of the heirs of the victim, be exercised for any sentence awarded under Chapter XVI.”

Amendment of Section 109, Act XLV of 1860:- In the said Code, in Section 109, for the fullstop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:-

“Provided that, except in case of Ikrah-i-tam, (el ø!_S!) the abettor of an offence referred to in Chapter XVI shall be liable to punishment of ta'zir specified for such offence including death.”

Substitution of Sections 299 to 338, Act XLV of 1860:- (1) In

the said Code for Sections 299 to 338 the following shall be

substituted, namely:-

“299. Definitions:- In this Chapter, unless there is anything

repugnant in the subject or context,-

(a) “Adult” means a person who has attained, being a male, the age of eighteen years, or, being a female, the age of sixteen years, or has attained puberty, whichever is earlier.

(b) “arsh” (U4!) means the compensation specified in this Chapter to be paid by the offender to the Victim or his heirs;

(c) “authorised medical officer” means a medical officer or a Medical Board, however, designated, authorised by the Government;

(d) “Daman” (Gt) means the compensation determined by the court to be paid by the offender to the victim for

(m)

(e)

(f)

(g)

(h)

(x)

Uy

causing hurt not liable to arsh;

“diyat” (<4) means the compensation specified in

Section 323 payable to the heirs of the victim;

“Government” means the Azad Government of the State of Jammu and Kashmir;

“ikrah-i-tam” (el el_S!) means putting any person, his spouse or any of his blood relations within the prohibited degree of marriage in fear of instant death or instant permanent impairing of any organ of the body or instant fear of being subjected to sodomy or zina-bil-jabar;

“ikhrah-i-naqis” (U4 el S!) means any form of duress which does not amount to ikrah-i-tam;

(i) “minot” mans person who is not an adult;

Gg) “qatl” (J) means causing death of a person;

“qisas” (Uel..8) means punishment by causing similar hurt at the same part of the body of the convict as he has caused to the victim or by causing his death if he has committed qatl-i-amd in exercise of the right of the victim or a wali;

“ta’zir” (5354) means punishment other than qisas, diyat, arsh or daman; and

“wali” (15) means a person entitled to claim qisas.

300.

atli-amd:- Whoever, with the intention of causing death

or with the intention of causing bodily injury to a person, by doing an act which in the ordinary course of nature is likely to cause death, or with the knowledge that his act is so imminently dangerous that it must in all probability cause death, causes the death of such person, is said to commit qatl-i-amd.

301. Causing death of person other than the person whose death was intended:- Where a person, by doing anything which he intends or knows to be likely to cause death, causes death of any person whose death he neither intends nor knows himself to

be likely to cause, such an act committed by the offender shall be liable for qatl-i-amd.

302. Punishment Of qatl-i-amd:- Whoever, commits qatl-i-amd shall, subject to the provisions of this Chapter be-

punished with death as qisas;

(b)

punished with death or imprisonment for life as ta'zir having regard to the facts and circumstances of the case, if the proof in either of the forms specified in Section 304 is not available; or

punished with imprisonment of either description for a term which may extend to twenty-five years, where according to the Injunctions of Islam the punishment of qisas is not applicable.

303. Qatl committed under likrah-i-tam or ikrah-i-naqis:-
Whoever commits qatl,-

(a)

(b)

under ikrah-i-tam shall be punished with imprisonment for term which may extend to twenty-five years but shall not be less than ten years and the person causing ikrah-i-tam; or

under 'ikrah-i-naqis' shall be punished for the kind of qatl committed by him and the person causing 'ikrah-i-naqis' shall be punished with imprisonment for a term which may extend to ten years.

304. Proof of qatl-i-amd liable to qisas, etc:- (1) Proof of qatl-i-amd liable to qisas shall be in any of the following forms, namely:-

(a)

()

(2)

the accused makes before a Court competent to try the

offence a voluntary and true confession of the

commission of the offence; or

by the evidence as provided in Article 17 of the

Qanun-e-Shahadat, 1984 (P.O. No. 10 of 1948), as

adapted in Azad Jammu and Kashmir.

The provisions of sub-section (1) shall, mutatis

mutandis, apply to a hurt liable to qisas.

Wali:- In case of a qatl, the wali shall be-

(a) the heirs of the victim, according to his personal law; and

the Government; if there is no heir.

306. Qatl-i-amd not able to Qisas:- Qatl-i-amad shall not be liable to qisas in the following cases namely:-

(a) — when an offender is a minor or insane:
Provided that, where a person liable to qisas,

associates himself in the commission of the offence with a person, not liable to qisas with the intention of saving himself from qisas, shall not be exempted from qisas;

(b) when an offender causes death of his child or grandchild, how low soever; and

(c) when any wali of the victim is a direct

descendant, how low soever of the offender.

307. Cases in which qisas for qatl-i-amd shall not be enforced:
Qisas for qatl-i-amd shall not be enforced in the following cases, namely:-

(a) when the offender dies before the enforcement of qisas;

(b) when any wali, voluntarily and without duress,

to the satisfaction of the court, waives the right of qisas under Section 309 or compounds under Section 310; and

(c) when the right of qisas devolves on the offender as a result of the death of the wali of the victim, or on the offender as a result of the death of the wali of the victim or on the person who has not right of qisas against the offender.

Illustrations

(i) A kills Z the maternal uncle of his son B. Z has no other wali except D the Wife of A. B has the right of qisas from A. But if D dies, the right of qisas shall devolve on her son B who is also the son of the offender A. B cannot claim qisas against his father. Therefore, the qisas cannot be enforced.

(ii) B kills Z, the brother of her husband A. Z has no heir except A. Here A can claim qisas from his wife B. But if A dies, the right of qisas shall devolve on his son D who is also son of B, the qisas cannot be enforced against B.

308. Punishment in qatl-i-amd not liable to qisas, etc:- (1)

Where an offender guilty of qatl-i-amd is not to qisas under Section 306 or the qisas is not enforceable under clause (c) of Section 307, he shall be liable to diyat;

Provided that, where the offender is minor or insane, diyat shall be payable either from his property or, by such person as may be determined by the Court;

Provided further that where at the time of committing qatl-i-amd the offender being a minor, has attained sufficient maturity or being insane, has a lucid interval, so as to be able to realize the consequences of his act, he may also be punished with imprisonment of either description for a term which may extend to fourteen years as ta'zir;

Provided further that where the qisas is not enforceable under clause (c) of Section 307, the offender shall be liable to diyat only if there is any wali other than the offender, and if there is no wali other than the offender, he shall be punished with imprisonment of either description for a term which may extend to fourteen years as ta'zir.

(2) Notwithstanding anything contained in sub-section (1), the Court having regard to the fact and circumstances of the case in addition to the punishment of diyat, may punish the offender with imprisonment of either description for a term which may extend to fourteen years, as ta'zir.

309. Waiver-afw (si) of qisas in qatl-i-amd:- (1) In the case of qatl-i-amd and adult sane wali may, at any time and without any compensation, waive his right of qisas:

Provided that the right of qisas shall not be waived-

(a) where the Government is the wali; or

(b) where the right of qisas vests in a minor or insane.

(2) Where a victim has more than one wali, anyone of them may waive his right of qisas;

Provided that the wali who does not waive the right of qisas shall be entitled to his share of diyat.

(3) Where there are more than one victim, the waiver of the right of the qisas by the wali of one victim shall not affect the right of qisas of the wali of the other victim.

(4) Where there are more than one offenders, the waiver of the right of qisas against one offender shall not affect the right of qisas against the other offender.

310. Compounding of qisas (sulh) (eke) in qatl-i-amd:- (1) In the case of qatl-i-amd, an adult sane wali may, at any time on accepting badal-i-sulh, compound his right of qisas; Provided that only giving a female in marriage shall not be a badal-i-sulh, (øla J),

(2) Where a wali is a minor or an insane, the wali of such minor or insane, wali may compound the right of qisas on behalf of such minor or insane wali;

Provided that the value of badal-i-sulh shall not be less than the value of diyat.

(3) Where the Government is the wali it may compound the right of qisas;

Provided that the value of badal-i-sulh shall not be less than the value of diyat.

(4) Where the badal-i-sulh is not determined or is a property or a right the value of which cannot be determined in terms of money under Shariah (~:+) the right of qisas shall be deemed to have been compounded and the offender shall be liable to diyat.

(5) Badal-i-sulh may be paid or given on demand or on a deferred date as may be agreed upon between the offender and the wali.

Explanation:- In this Section Badal-i-sulh means the mutually agreed compensation according to Shari-ah to be paid or given by the offender to a wali in cash or in kind or in the form of movable or immovable property.

311. Ta'zir after waiver or compounding of right of qisas in qatl-i-amd.- Notwithstanding anything contained in Section 309 or Section 310, where all the wali do not waive or compound the right of qisas, or keeping in view the principle of fasad-fil-arz (LLY! (4544), the court may, in its discretion having regard to the facts and circumstances of the case, punish an offender against whom the right of qisas has been waived or compounded with imprisonment of either description for a term which may

(2)

extend to fourteen years as ta'zir.

Explanation:- For the purpose of this Section, the expression

fasad-filaz (U2 YGit.8), shall include the past conduct of the

offender as being a previous convict, habitual or professional criminal and the brutal manner in which the offence is committed.

312.Qatl-i-amd after waiver or compounding of qisas:-

Where a wali commits qatl-i-amd of a convict against whom the right of qisas has been waived under Section 309 or compounded under Section 310 such wali shall be punished with:-

(a) qisas, if he had himself waived or compounded the right of qisas against the convict or had knowledge or such waiver or composition by another wali; or

(b) diyat, if he had no knowledge of such waiver or composition.

313.Right of qisas in qatl-i-amd:- (1) Where there is only one

wali, he alone has the right of qisas in qatl-i-amd but, if there are more than one, the right of qisas vests in each of them.

If the victim-

(a) has no wali the Government shall have the right of qisas; or

(b) has no wali other than a minor or insane or one

of the wali is a minor or insane, the father or if he is not alive the paternal grandfather of such wali shall have the right of qisas on his behalf; Provided that, if the minor or insane wali has no father or paternal grandfather, how high-so-ever, alive and no guardian has been appointed by the Court, the Government shall have the right of qisas on his behalf.

314. Execution of qisas in qatl-i-amd:- (1) Qisas in qatl-i-amd shall be executed by a functionary of the Government by causing death of the convict as the Court may direct.

(2) Qisas shall not be executed until all the wali are present at the time of execution, either personally or through their representatives authorised by them in writing in this behalf; Provided that where a wali or his representative fails to present himself on the date, time and place of execution of qisas after

having been informed of the date, time and place as certified by the Court, an officer authorised by the Court shall give permission for the execution of qisas and the Government shall cause execution of qisas in the absence of such wali.

(3) If the convict is a woman who is pregnant, the Court may, in consultation with an authorised Medical Officer, postpone the execution of qisas upto a period of two years after

the birth of the child and during this period she may be released on bail on furnishing of security to the satisfaction of the Court or, if she is not so released she shall be dealt with as if sentenced to simple imprisonment.

315. Qatl shibh-i-amd:- Whoever, with intent to cause harm to the body or mind of any person causes the death of that or of any other person by means of a weapon or an act which in the ordinary course of nature is not likely to cause death is said to commit qatl shibh-i-amd.

Illustrations

A in order to cause hurt strikes Z with a stick or stone which the ordinary course of nature is not likely to cause death. Z dies as a result of such hurt. A shall be guilty of qatl shibh-i-amd.

316. Punishment for qatl shibh-i-amd:- whoever commits qatl shibh-i-amd shall be liable to diyat, and may also be punished with imprisonment of either description for a term which may extend to fourteen years as ta'zir.

317. Person committing qatl debarred from succession:-

Where a person committing qatl-i-amd or qatl shibh-i-amd is an heir or a beneficiary under a will, he shall be debarred from succeeding to the estate of the victim as an heir or a beneficiary.

318. Qatl-i-khata:- Whoever, without any intention to cause the death of, or cause harm to a person, causes death of such person, either by mistake of act or by mistake of fact, is said to commit qatl-i-khata.

Illustrations

(a) A aims at a deer but misses the target and kills Z who is standing by. A is guilty of qatl-i-khata.

(b) A shoots at an object to be a deer but it turns out to be a

human being, A is guilty of qatl-i-khata.

319. Punishment for qatl-i-khata:- Whoever commits qatl-i-khata shall be liable to diyat:

Provided that, where qatl-i-khata is committed by any rash or negligent Act, other than rash or negligent driving, the offender may, in addition to diyat, also be punished with imprisonment of either description for a term which may extend to five years as ta'zir.

320. Punishment for qatl-i-khata by rash or negligent driving:- Whoever commits qatl-i-khata by rash or negligent driving shall, having regard to the facts and circumstances of the case, in addition to diyat, be punished with imprisonment of either description for a term which may extend to ten years.

321. Qatl-bis-sabab (and JB) :- Whoever, without any intention to cause death of, or cause harm to any person, does any unlawful act which becomes a cause for the death of another

person, is said to commit qatl-bis-sabab.

Illustrations

A unlawfully digs a pit in the through fare, but without any intention to cause the death of, or harm to, any person, B while passing from there falls in it and is killed. A has committed qatl-bis-sabab.

322. Punishment for qatl-bis-sabah:- Whoever commits qatl-bis-sabab shall be liable to diyat.

323. Value of diyat: (1) The Court shall, subject to the Injunctions 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, fix the value of diyat which shall not be less than the value of thirty thousand six hundred and thirty grams of silver.

(2) For the purposes of sub-section (1), the Government shall, by notification in the official Gazette, declare the value of silver on the first day of July each year or on such date as it may deem fit which shall be the value payable during a financial year.

324. Attempt to commit qatl-i-amd:- Whoever does any act with such intention or knowledge, and under such circumstances, that, if he by that act caused qatl, he would be guilty of qatl-i-amd, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, and, if hurt is caused to any person by such act, the offender shall be liable to the punishment provided for the hurt caused:

Provided that, where the punishment for the hurt is gisas which is not executable, the offender shall be liable to arsh and may also be punished with imprisonment of either description for term which may extend to seven years.

325. Attempt to commit suicide:- Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

326. Thug:- Whoever shall have been habitually associated with other or others for the purpose of committing robbery or stealing by means of or accompanied with qatl, is a thug.

327. Punishment:- Whoever is a thug, shall be punished with Imprisonment for life, and shall also be liable to fine.

328. Exposure and abandonment of child under twelve years by parent or person care of it:- Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term

which may extend to seven years, or with both.

Explanation:- This Section is not intended to prevent the trial of the offender for qatl-i-amd or qatl-i-shibh-amd or qatl bis-sabab, as the case may be, if the child dies in consequence of the exposure.

329. Concealment of birth by secret disposal of dead body:-
Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child dies before or after or during its birth, intentionally conceals or endeavors to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

330. Disbursement of diyat:- The diyat shall be disbursed among the heirs of the victim according to their respective shares in inheritance;

Provided that, where an heir foregoes his share, the diyat shall not be recovered to the extent of his share.

331. Payment of diyat:- (1) The diyat may be made payable in lump-sum or installments spread over a period of three years from the date of the final judgment.

(2) Where a convict fails to pay diyat or any part thereof within the period specified in sub-section (1), the convict may be kept in jail and dealt with in the same manner as if sentenced to simple imprisonment until the diyat is paid full or may be released on bail if he furnishes security equivalent to the amount of diyat to the satisfaction of the Court.

(3) Where a convict dies before the payment of diyat or any part thereof, it shall be recovered from his estate.

332. Hurt:- (1) Whoever causes pain, harm, disease, infirmity or injury to any person or impairs, disables or dismembers any organ of the body or part thereof of any person without causing his death, is said to cause hurt.

(2) The following are the kinds of hurt:-

(a) Itlaf-i-udw. (sae 4D!)

(b) Itlaf-i-salahiyyat-i-udw. (sae Cysde CAs!)

(c) shajjah. (~5)

(d) — jurh; and (cs)

(e) all kinds of other hurts.

333. Itlaf-udw:- whoever dismembers, amputates, severs any limb or organ of the body of another person is said to cause Itlaf-

i-udw.

334. Punishment for itlaf-i-udw:- Whoever by doing any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person causes itlaf-i-udw of any person, shall, in consultation

with the authorised medical officer be punished with qisas, and if the qisas is not executable keeping in view the principle of equality in accordance with the Injunctions of Islam, the offender shall be liable to arsh and may also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir.

335. Itlaf-i-salahiyyat-i-udw:- whoever destroys or permanently impairs the functioning, power or capacity of an organ of the body of another person, or causes permanent disfigurement is said to cause itlaf-i-salahiyyat-i-udw.

336. Punishment for itlaf-i-salahiyyat-udw:- Whoever, by doing any act with the intention of causing hurt to any person, or with the knowledge that he is likely to cause hurt to any person, causes itlaf-i-salahiyyat-i-udw, of any person shall, in consultation with the authorised medical officer be punished with qisas and if the qisas is not executable keeping in view the principles of equality in accordance with the Injunctions of Islam, the offender shall be liable to arsh and may also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir.

337. Shajjah:- (1) Whoever causes, on the head or face of any person, any hurt which does not amount to itlaf-i-udw or itlaf-i-salahiyyat-i-udw, is said to cause shajjah.

(2) The following are the kinds of shajja, namely:-

(a) Shajjah-i-Khafifah. (nS ~>4)

(b) Shajjah-i-mudihah. (-™2 54 nat)

(d) Shajjah-i-munaqqilah. (Wi ~»4)

(e) Shajjah-i-ammah, and (~! ~»4)

(f) Shajjah-i-damighah. — (~*«!2 ~»4)

(3) Whoever causes shajjah.

(i) Without exposing bone of the victim, is said to cause shajjah-i-khafifah;

(ii) by exposing any bone of the victim without causing fracture, is said to cause shajjah-i-mudiihah;

(iii) by fracturing the bone of the victim without dislocating it, is said to cause shajjah-i-munaqqilah;

(iv) by causing fracture of the bone of the victim and thereby bone in dislocated, is said to cause shajjah-i-munaqqilah;

(v) by causing fracture of the skull of the victim so that the wound touches the membrane of the brain, is said to cause shajjah-i-ammah; and

(vi) by causing fracture of the skull of the victim and

the wound ruptures the membrane of the brain is said to cause shajjah-i-damighah.

337-A. Punishment of shajjah:- Whoever, by doing any act

with the intention of thereby causing hurt to any person, or with

the knowledge that he is likely thereby to cause hurt to any person, causes-

(i) Shajjah-i-khafifah to any person, shall be liable to daman and may also be punished with imprisonment either description either description for a term which may extend to two years as ta'zir;

(ii) Shajjah-i-mudihah to any person, shall in consultation with the authorised medical officer, be punished with qisas, and if the qisas is not executable keeping in view the principles of equality in accordance with the injunctions of Islam, the convict shall be liable to arsh which shall be five percent of the diyat and may also be punished with imprisonment of either description for a term which may extend to five years as ta' zir.

(iii) | Shajjah-i-hashmah to any person, shall be liable to arsh which shall be ten percent, of the diyat and may also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir;

(iv) shajjah-i-munaqqilah to any person, shall be, liable to

arsh which shall be fifteen percent, of the diyat and may

also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir;

(v) shajjah-i-ammah to any person, shall be liabel to arsh

which shall be one-third of the diyat and may also be

punished with imprisonment of either description for a

term which may extend to ten years as ta'zir; and

(vi) shajjah-i-damighah to any person, shall be liable to arsh which shall be one-half of diyat and may also be punished with imprisonment of either description for a term which may extend to fourteen years as ta'zir.

337-B. Jurh:- (1) Whoever causes on any part of the body of a

person, other than the head or face, a hurt which leaves a mark of

the wound, whether temporary or permanent, is said to cause jurh.

(2) Jurh (جرح) is of two kinds, namely:-

(a) Jaifah; (جفاه) and

(b) Ghayr-jaifah. (غير جفاه)

337-C. Jaifah:- Whoever causes jurh in which the injury extends to the body cavity of the trunk, is said to cause jaifah.

337-D. Punishment for jaifah:- Whoever by doing any act with the intention of causing hurt to a person, or with the

knowledge that he is likely to cause hurt to such person, causes jaifah to such person, shall be liable to arsh which shall be one-third of the diyat and may also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir.

337-E. Ghayar-jaifah:- (1) Whoever causes jurh which does not amount to jaifah, is said to cause ghayr-jaifah.

(2)
(a)
(b)
(c)
(d)
(e)
(f)
G3)

(iv)

The following are the kinds of ghayr-jaifah, namely:-

Damiyah; (ns)
badi'ah; (mal)
mutalahimah; (~2>4s)
mudihah; (45)

Hashimah; (mL)

munaqqilah; — (~lai«)

Whoever causes ghayr-jaifah-

(i) in which the skin is ruptured and bleeding occurs, is said to cause damiyah;

(ii) by cutting or incising the flesh without exposing the bone, is said to cause badi'ah;

(iii) by lacerating the flesh, is said to cause

mutalahimah.

by exposing the bone, is said to cause mudihah;

(v) by causing fracture of a bone without dislocating

it, is said to cause hashimah; and

(vi) _ by fracturing and dislocating the bone, is said to cause munaqqilah.

337-F. Punishment of ghayr-jaifah:- Whoever by doing any act with the intention of causing hurt to any person, or with the knowledge that he is likely to cause hurt to any person, causes-

@

Gi)

(iii)

(iv)

(v)

damiyah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to one year as ta'zir;
badi'ah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to three years as ta'zir;
mutalahimah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to three years as ta'zir;

mudihah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to five years as ta'zir;
hashimah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to five years;

and

(vi) munaqqilah to any person, shall be liable to daman and may also be punished with imprisonment of either description for term which may extend to seven years as ta'zir.

337-G. Punishment for hurt by rash or negligent driving:-

Whoever causes hurt by rash or negligent driving shall be liable to the arsh or daman specified for the kind of hurt caused and may also be punished with imprisonment of either description for a term which may extend to five years as ta'zir.

337-H. Punishment for hurt by rash or negligent Act:- (1)

Whoever causes rash or negligent act, other than rash or negligent driving, shall be liable to the arsh or daman specified for the kind of hurt caused and may also be punished with imprisonment of either description for a term which may extend to three years as ta'zir.

(2) Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

337-I. Punishment for causing hurt by mistake (khata):-

Whoever causes hurt by mistake (khata) shall be liable to arsh or daman specified for the kind of hurt caused.

337-J. Causing hurt by means of a poison:- Whoever

administers to, or Causes to be taken by any person, any poison or any stupefying, intoxicating or unwholesome drug, or such other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence, or knowing it to be likely that he will thereby cause hurt may, in addition to the punishment or arsh or daman provided for the kind of hurt caused, be also punished, having regard to the nature of the hurt caused, with imprisonment of either description for a term which may extend to ten years.

337-K. Causing hurt to extort confession, or to compel

restoration of property:- Whoever Causing hurt for the purpose of extorting from the sufferer or any person interested in

the sufferer any confession or any information which may lead to the detection of any offence or misconduct, or for the purpose of constraining the sufferer, or any person interested in the sufferer, to restore or to cause the restoration of, any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall, in addition to the punishment of qisas, arsh or daman, as the case may be, provided for the kind of hurt caused, be also punished, having regard to the nature of the hurt caused,

with imprisonment of either description for a term which may extend to ten years as ta'zir.

337-L.Punishment for other hurt:- (1) Whoever causes hurt, not mentioned hereinbefore, which endangers life or which causes the sufferer to remain in severe bodily pain for twenty days or more or renders him unable to follow his ordinary pursuits for twenty days or more, shall be liable to daman and also be punished with imprisonment of either description for a term which may extend to seven years.

(2) Whoever causes hurt not covered by sub-section (1) shall be punished with imprisonment of either description for a term which may extend to two years, or with daman, or with both.

337-M.Hurt not liable to qisas:- Hurt shall not be liable to qisas in the following cases, namely:-

(a) when the offender is a minor or insane:

Provided that he shall be liable to arsh and also to ta'zir to be determined by the Court having regard to the age of offender, circumstances of the case and the nature of hurt caused;

(b) when an offender at the instance of the victim causes hurt to him:

Provided that the offender may be liable to ta'zir provided for the kind of hurt caused by him;

(c) when the offender has caused itlaf-i-udw of a physically imperfect organ of the victim and the convict does not suffer from similar physical imperfection of such organ: Provided that the offender shall be liable to arsh and may

also be liable to ta'zir provided for the kind of hurt caused by him; and

(d) when the organ of the offender liable to qisas is missing:

Provided that the offender shall be liable to arsh and may also be liable to ta'zir provided for the kind of hurt

caused by him.

Illustrations

(i) A amputates the right ear of Z, the half of which was

already missing, if A's right ear is perfect, he shall be liable to arsh and not qisas.

(ii) If in the above illustration Z's ear is physically perfect but without power of hearing, A shall be liable to qisas because the defect in Z's ear is not physically.

(iii) If in illustration (i) Z's ear is pierced. A shall be liable to qisas because such minor defect is not physical imperfection.

337-N.Cases in which qisas for hurt shall not be enforced:-

(1) The qisas for a hurt shall not be enforced in the following

cases, namely:-

(a) when the offender dies before execution of qisas;

(b) when the organ of the offender liable to qisas is lost before the execution of qisas:

Provided that the offender shall be liable to arsh, and may also be liable to ta'zir provided for the kind of hurt caused by him;

(c) when the right of qisas or compounds the offence with badl-i-sulh; or

(d) when the right of qisas devolves on the person who cannot claim qisas against the offender under this Chapter:

Provided that the offender shall be liable to arsh, if there is any wali other than the offender, and if there is no wali other than the offender he shall be liable to ta'zir provided for the kind of hurt caused by him.

(2) Notwithstanding anything contained in this Chapter, in all cases of hurt, the Court may, in addition to payment of arsh, award ta'zir to an offender who is a previous convict, habitual or hardened, desperate or dangerous criminal having regard to the kind of hurt caused by him.

337-O. Wali in case of hurt:- In the case of hurt the wali shall be-

(a) the victim;

Provided that, if the victim is a minor or insane, his right of qisas shall be exercised by his father or paternal grandfather, how-high-so-ever;

(b) the heirs of the victim, if the latter dies before the execution of qisas; and

(c) The Government, in absence of the victim or the heirs of the victim.

337-P. Execution of qisas for hurt:- (1) Qisas shall be executed in the public by an authorised medical officer who shall before such execution examine the offender and take due care so as to ensure that the execution of qisas does not cause the death of the offender or exceed the hurt caused by him to the victim.

(2) The wali shall be present at the time of execution and if the wali or his representative is not present, after having been informed of the date, time and place by the Court an officer authorised by the Court in this behalf shall give permission for the execution of qisas.

(3) If the convict is a woman who is pregnant, the Court may, in consultation with an authorised medical officer, postpone the execution of qisas upto a period of two years after

the birth of the child and during this period she may be released on bail on furnishing of security to the satisfaction of the Court or, if she is not so released, shall be dealt with as if sentenced to simple imprisonment.

337-Q. Arsh for single organs:- The arsh for causing itlaf of an organ which is found singly in a human body shall be equivalent to the value of diyat.

Explanation:- Nose and tongue are included in the organs which are found singly in a human body.

337-R. Arsh for organs in pairs:- The arsh for causing itlaf of organs found in a human body in pairs shall be equivalent to the value of diyat and if itlaf is caused to one of such organs the amount of arsh shall be one half of the diyat:

Provided that, where the victim has only one such organ or his other organ is missing or has already become incapacitated the arsh for causing itlaf of the existing or capable organ shall be equal to the value of diyat.

Explanation:- Hands, feet, eyes, lips and breasts are included in the organ which are found in a human body in pairs.

337-S. Arsh for organs in quadruplicate:- (1) The arsh for causing itlaf of organs found in a human body in a set of four shall be equal to-

- (a) one-fourth of the diyat, if the itlaf is one of such organs;
- (b) one-half of the diyat, if the itlaf is of two of such organs;
- (c) three-fourths of the diyat, if the itlaf is of three of such organs;
- (d) full diyat, if the itlaf is of all four organs.

Explanation:- Eyelids are organs which are found in a human

body in a set of four.

337-T.Arsh for fingers:- (1) The arsh for causing itlaf of a finger of a hand or foot shall be one-tenth of the diyat.

(2) The arsh for causing itlaf of a joint of a finger shall be one-thirtieth of the diyat;

Provided that where the itlaf is of a joint of a thumb, the arsh shall be one-twentieth of the diyat.

337-U. Arsh for teeth:- (1) The arsh for causing itlaf of a tooth, other than a milk tooth shall be one-twentieth of the diyat.

Explanation:- - The impairment of the portion of a tooth outside the gum amounts to causing itlaf of a tooth.

(2) The arsh for causing itlaf of twenty or more teeth shall be equal to the value of diyat.

(3) Where the itlaf is of milk tooth, the accused shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to one year:

Provided that, where itlaf of a milk tooth impedes the growth of

a new tooth, the accused shall be liable to arsh specified in sub-section (1).

337-V. Arsh for hair:- (1) Whoever uproots-

(a) all the hair of the head, beard, moustaches, eyebrows, eyelashes or any other part of the body, shall be liable to arsh equal to diyat and may also be punished with imprisonment of either description for a term which may extend to three years as ta'zir;

(b) one eyebrow shall be liable to arsh equal to one-half of the diyat; and

(c) one eyelash, shall be liable to arsh equal to one fourth of the diyat.

(2) Where the hair of any part of the body of the victim are forcibly removed by any process not covered under sub-section (1), the accused shall be liable to daman and imprisonment of either description which may extend to one year.

337-W. Merger of arsh:- (1) Where an accused causes more than one hurt, he shall be liable to the arsh specified for each hurt, separately:

Provided that, where-

(a) Hurt is caused to an organ, the accused shall be liable to arsh for causing hurt any part of such organ; and

(b) the wounds joint together and form a single wound, the accused shall be liable to arsh for one wound.

Illustrations

(i) A amputates Z's fingers of the right hand and then at the same time amputates that hand from the joint of his wrist. There is separate arsh for hand and for fingers. A shall, however, be liable to arsh specified for hand only.

(ii) A twice stabs Z on his thigh. Both the wounds are so close to each other that they form into one wound. A shall be liable to arsh for one wound only.

(2) Where, after causing hurt to a person, the offender causes death of such person by committing qatl liable to diyat, arsh shall merge into such diyat:

Provided that the death is caused before the healing of the wound

caused by such hurt.

337-X.Payment of arsh:- (1) The arsh may be made payable in a lump sum or in instalments spread over a period of three years from date of the final judgment.

(2) Where a convict fails to pay arsh or any part thereof within the period specified in sub-section (1), the convict may be kept in jail and dealt with in the same manner as if sentenced to

simple imprisonment until arsh is paid in full or may be released on bail if he furnishes security equal to the amount of arsh to the satisfaction of the Court.

(3) Where a convict dies before the payment of arsh or any part thereof, it shall be recovered from his estate.

337-Y. Value of daman:- (1) the value of daman may be determined by the Court keeping in view-

- (a) the expenses incurred on the treatment of the victim;
- (b) loss or disability caused in the functioning or power of any organ; and
- (c) the compensation for the anguish suffered by the victim.

(2) In case of non-payment of daman, it shall be recovered

from the convict and until daman is paid in full to the extent of

his liability, the convict may be kept in jail and dealt within the

same manner as if sentenced to simple imprisonment or may be released on bail if he furnishes security equal to the amount of daman to the satisfaction of the Court.

337-Z. Disbursement of arsh or daman:- The arsh or daman

shall be payable to the victim or, if the victim dies, to his heirs

according to their respective shares in inheritance.

338. Isqat-i-Haml (J btau!):- Whoever causes a woman with

child whose organs have not been formed, to miscarry, if such

miscarriage is not caused in good faith for the purpose of saving the life of the woman, or providing necessary treatment to her, is said to cause 'isqat-i-haml'.

Explanation:- A woman who causes herself to miscarry is

within the meanings of this Section.

338-A. Punishment of isqat-i-haml:- Whoever cause isqat-i-

haml shall be liable to punishment as ta'zir;

(a) with imprisonment of either description for a term which may extend to three years, if isqat-i-haml is caused with the consent of the woman; or

(b) with imprisonment of either description for a term which may extend to ten years if isqat-i-haml is caused with the

consent of the woman:

Provided that, if as a result of isqat-i-haml, any hurt is caused to the woman or she dies, the convict shall also be liable to the punishment provided for such hurt or death, as the case may be.

338-B.Isqat-i-Janin:- (Ciss Lis!) Whoever, causes a woman

with child some of whose limbs or organs have been formed, to

miscarry, if such miscarriage is not caused in good faith for the purpose of saving the life of the woman, is said to cause

Isat-i-janin.

Explanation:- A woman who causes herself to miscarry is

within the meaning of this Section.

338-C. Punishment for Isqat-i-janin:- Whoever causes 'jsqat-i-janin' shall be liable to;

- (a) one-twentieth of the diyat if the child is born dead;
- (b) full diyat if the child is born alive but dies as a result of any act of the offender; and
- (c) punishment as ta'zir with imprisonment of either description for a term which may extend to seven years as ta'zir:

Provided that, if there are more than one child in the womb of the woman the offender shall be liable to separate diyat or ta'zir, as the case may be, for every such child:

Provided further that if, as a result of isqat-i-janin, any hurt is caused to the woman or she dies, the offender shall also be liable to the punishment provided for such hurt or death, as the case may be.

338-D. Confirmation of sentence of death by way of qisas or ta'zir, etc:- A sentence of death awarded by way of qisas or ta'zir, or a sentence of qisas awarded for causing hurt, shall not be executed, unless it is confirmed by the Shariat Court of Azad Jammu and Kashmir.

338-E. Waiver or compounding of offences:- (1) Subject to the provisions of this Chapter and Section 345 of the Code of Criminal Procedure, 1898, all offences under this Chapter may be waived or compounded and the provisions of Sections 309 and 310 shall, mutatis mutandis, apply to the waiver or compounding of such offences:

Provided that, where an offence has been waived or compounded, the Court may, in its discretion having regard to the facts and circumstances of the case, acquit or awards ta'zir to the offender according to the nature of the offence.

(2) All questions relating to waiver or compounding of an offence or awarding of punishment under Section 310, whether before or after the passing of any sentence, shall be determined by trial court:

Provided that where the sentence of qisas or any other sentence waived or compounded that where the sentence of qisas or any other sentence waived or compounded during the pendency of an appeal, such questions may be determined by the appellate court.

338-F. Interpretation:- In the Interpretation and application of the provisions of this Chapter, and in respect of matters ancillary or this thereto, the Court shall be guided by the Injunction of Islam as laid down in the Holy Quran and Sunnah.

338-G. Rules:- The Government may, in consultation with the Council of Islamic Ideology, by notification in the Official

10.

Gazette, make such rules as it may consider necessary for carrying out the purposes of this Chapter.

Amendment of Section 459, Act XLV of 1860:- In the said Code, for Section 459, the following shall be substituted, namely:-

“459, Hurt caused whilst committing lurking house-trespass or house-breaking:- Whoever, whilst committing lurking house-trespass or house-breaking, causes hurt to any person or attempts to commit qatl of, or hurt to, any person, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to the same punishment for committing qatl or causing hurt or attempting to cause qatl or hurt as is specified in Chapter XVI of this Code.”

Amendment in Section 460, Act XLV of 1860:- In the said Code, for Section 460 the following shall be substituted, namely:-

“460. Persons jointly concerned in lurking house-trespass or house-breaking by night punishable for qatl or hurt caused, by one of them:- If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to commit qatl of, or hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to the same punishment for committing qatl or causing hurt to attempting to cause qatl or hurt as is specified in Chapter XVI of this Code.”

Amendment of Section 511, Act XLV of 1860:- In the said Code, in Section 511, after the word “fine”, the word “Daman” shall be inserted.

Sd/- (Syed Shakir Shah)
Deputy Secretary Law.