

MONETARY COMPENSATION: AN ANALYSIS OF THE RATIONALE BEHIND AWARDING ARSH IN HURT CASES

¹SHAZIA HASSAN, ²AMARA KHANAM, ³TAJWAR WASEEM KHAN, ⁴MUHAMMAD HAIDER ZAIDI

¹Assistant Professor (Law), The Institute of Legal Studies (TILS), Lahore, Punjab, Pakistan.

²Assistant Professor (Law), The Institute of Legal Studies (TILS), Lahore, Punjab, Pakistan.

³Assistant Professor (Law), The Institute of Legal Studies (TILS), Lahore, Punjab, Pakistan.

⁴Partner at AUC Law, Lahore

Abstract

Within the framework of Islam, ‘Diya’ or ‘Blood Money’ is carried out. It is a system of financial compensation which allows the victim, or the victim’s family to be compensated in situations of injury, accidental death, or any other offence involving harm. This concept originates from the Quran, as well as the Sunnah, which consists of the actions and teachings of Prophet Muhammad (PBUH).

The main concept of Diya is the providing of financial assistance to people which have suffered due to injury, death or harm. It is aimed at promoting forgiveness within Muslims, and is also considered to be a method of resolving issues and conflict between people, as well as promoting the principle of justice.

Keywords: Prophet Muhammad (PBUH), Diya, Blood Money.

Surah Al-Baqarah from the Quran, addresses the system of Diya (2:178-179):

“O you who have believed, prescribed for you is legal retribution for those murdered - the free for the free, the slave for the slave, and the female for the female. But whoever overlooks from his brother anything, then there should be a suitable follow-up and payment to him with good conduct. This is an alleviation from your Lord and a mercy. But whoever transgresses after that will have a painful punishment.”

Diya and its usage depend upon interpretation of Islamic law. This varies amongst different Islamic states and societies. However, Diya is most commonly calculated as per the degree and severity of the harm involved. Legislation, authorities and scholars of the various communities and regions, determine the Diya amount which is to be considered appropriate. This is dependent on a multitude of factors, such as local laws and customs, the nature and severity of the offence, as well as the financial situation of the victim and the perpetrator.

Islamic law however, also consists of other forms of compensation. An example of this is how litigation can involve compensation for damage or losses over a number of situations, which is provided in Islamic contract law.

Ultimately, Diya is a vital part of Islamic law as it promotes forgiveness within the community while also providing financial compensation for the victim or their family.

The compensation provided within the framework of Diya, is a price which is mostly in cash, which is given by the offender to the victim or their family, in order to compensate them for the loss or grievance which was suffered due to their action. Within the framework of common law, damages are treated as either punitive damages or compensatory damages. This essay will discuss Arsh and Diya amounts which can increase in some cases, and also the amounts for Arsh and Diya which are given in Pakistani laws as per the sections provided within the Code of Criminal Procedure (CRPC).

The exclusive powers to award monetary compensation in form of Arsh and the amount of Arsh prescribed in cases of Hurt i.e., ‘itlaf e udw’ or ‘itlaf e salahiyat e udw’ etc. There is a detailed litigation on the problem that the amount of Arsh is exceeded than the amount of Diyat. That means a victim of Hurt is awarded more money than the heirs of murderers.

Monetary Compensation Under Cr.P.C.



Monetary compensation is not a primary or direct concern of the Code of Criminal Procedure CrPC, but there are certain provisions within the CrPC that indirectly address the issue of compensation in specific situations. Here are some key scenarios in which monetary compensation may be addressed within the context of the CrPC:

1. **Compensation to Victims of Crime (Section 357):** Section 357 of the CrPC allows the court to order the payment of compensation to the victim by the offender in cases where the offender is convicted. The court can do this while passing the sentence and may direct the offender to pay compensation to the victim for any loss or injury caused. This provision aims to provide some financial relief to the victim.
2. **Compensation for Wrongful Detention (Section 358):** Section 358 of the CrPC deals with compensation for persons wrongfully confined. If a person is detained or arrested without legal justification and subsequently released, the court may order compensation to be paid to that person for the harm or injury caused by the wrongful detention.
3. **Provisions for Compensation in Special Laws:** Some special laws, like the Motor Vehicles Act or the Domestic Violence Act, contain provisions for the payment of compensation to victims or claimants. While these provisions are not within the CrPC itself, they are part of other legal frameworks that operate in conjunction with the CrPC.
4. **Restitution in Certain Cases (Section 431):** Section 431 allows the court to direct the offender to make restitution to the person who has suffered loss or injury due to the crime. Restitution can include the payment of compensation for financial losses.

Followings are the sections and provisions of the Code of Criminal Procedure 1898 that provides for the monetary compensation of criminal hurt.

Arsh defined Under Section 299(b)

"Arsh" means the compensation specified in this Chapter to be paid to the victim or his heirs under this Chapter

Diyat defined under Section 299(e)

Diyat" means the compensation specified in Section 323 payable to the heirs of the victim;

Value of Diyat provided under Section 323

(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 purpose of sub-section (1), the Federal 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.

Cases in which Arsh is awarded

333. Itlaf-i-udwⁱ:

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-udwⁱⁱ:

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 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.

335. Itlaf-i-salahiyat-i-udwⁱⁱⁱ:

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-salahiyat-i-udw.

336. Punishment for itlaf-i-salahiyat-i-udw^{iv}:



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-salahiyat-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 taz'ir.

336A. Hurt caused by corrosive substance^v:

Whoever with the intention or knowingly causes or attempts to cause hurt by means of a corrosive substance which is deleterious to human body when it is swallowed, inhaled, comes into contact or received into human body or otherwise shall be said to cause hurt by corrosive substance.

Explanation:- In this sub-section, unless the context otherwise requires, "corrosive substance" means a substance which may destroy, cause hurt, deface or dismember any organ of the human body and includes every kind of acid, poison, explosive or explosive substance, heating substance, noxious thing, arsenic or any other chemical which has a corroding effect and which is deleterious to human body.

336B. Punishment for hurt by corrosive substance^{vi}:

Whoever causes hurt by corrosive substance shall be punished with imprisonment for life or imprisonment of either description which shall not be less than fourteen years and a minimum fine of one million rupees.

337-Q. Arsh for single organs^{vii}:

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^{viii}:

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 organs which are found in a human body in pairs.

337-S. Arsh for the organs in quadruplicate^{ix}:

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-fourth of the diyat, if the itlaf is of three such organs; and
- (d) full diyat, if the itlaf is of all the four organs.

Explanation: Eyelids are organs which are found in a human body in a set of four.

337-T. Arsh for fingers^x:

- (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-thirteenth 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^{xi}:

- (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 a 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^{xii}:

(1) Whoever uproots:-

- (a) all the hair of the head, beard, moustaches eyebrow, 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^{xiii}:

(1) Where an accused more than one hurt, he shall be liable to 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 to such organ and not for Arsh for causing hurt to any part of such organ; and
- (b) the wounds join 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 wrists. 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.

Power to Award Monetary Compensation

As per the CrPC, a Magistrate has the power to award the sentence associated with Arsh, as well as adjudicate on matters pertaining to it. In particular, a Magistrate 1st Class possesses the power to sentence Arsh as per certain situations.

Magistrate can adjudicate and award sentence of Arsh. Specifically talking about the punishment of Arsh, Magistrate 1st class has power to award Arsh amount under the following laws:

Magistrate can try suit but cannot pass sentence. Magistrate cannot pass sentence under section 32. It is not original power of magistrate, section prescribes^{xiv} '*Provincial Government may invest...to try*' it cannot be presumed that law has given power to magistrate 1st class to try any offence punishable with death. Precedents are discussed in the following judgement of the honourable courts.^{xv}

- 2014 PCrLJ 901 Isb
- 2013 PLD 12 LHC
- 2012 SCMR 193

2- Section 32(1)(a) of CrPC^{xvi}

32. Sentence which [Magistrate] may pass. (1) The Courts of [Judicial Magistrates] may pass the following sentences namely:

(a) Courts of Magistrates of the first class;

Imprisonment for a term not exceeding [three years], including such solitary confinement as is authorized by law; fine not exceeding [fifteen] thousand rupees, [arsh, daman} Whipping

1-Section 30 CrPC^{xvii}



Notwithstanding anything contained in sections 28 and 29, the Provincial Government may invest any magistrate of the first class with power to try as a magistrate all offences not punishable with death.

There is a vast different between the term ‘to try a suit’ and the term ‘to pass a sentence’. Underneath every law, there is a reasoning and purpose behind its passing. Therefore, law should be interpreted while also considering the rationale as to which it was passed. As per section 30, a magistrate 1st class is able to try any suit not punishable with death. However, this does not indicate that a magistrate has the power to pass any sentence except the death sentence. It is also important to note that the reasoning behind section 30 was to take note of offences at an early stage, in order to accelerate the system of justice.

The answer to the second question should be in positive. The intention of law is equity and fairness. Death is reality but if it is caused intentionally by any person, law provides for the punishments. Dead can feel no pains, he is no more therefore, for the financial support and redressal of the hiers, a monetary compensation is awarded.

But in the second situation when a person is alive and he has all his basic needs. From where shall he fulfil his needs if he is paralysed, when the criminal act of a parson has impaired his main body organs to work. For example, if the hand of a painter is chopped off, when his one painting worth is in millions. He is not only left paralysed but desperate and disappointed also. He cannot earn his living as his skills and expertise are gone with his hands.

Law is based on fairness. In the above situation who deserves more financial support??

A prudent mind would answer that the second person, the living one deserves more. The logic behind is that dead person has no more needs, he does not need any food, clothing, medication etc in fact he cannot feel the life. But the alive needs food, clothes, shelter, medication etc. most of all he is alive to feel the pains of being paralysed and incapacitated.

In the conclusion, the Arsh amount could exceed the amount Diyat because if the nose, one eye, one year and one arm is impaired of a person. The Arsh amount shall be awarded for each organ separately and collectively it will increase Diyat amount.

References:

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- ⁱ Section 333 of CrPC 1898
 - ⁱⁱ Section 334 of CrPC 1898
 - ⁱⁱⁱ Section 335 of CrPC 1898
 - ^{iv} Section 336 of CrPC 1898
 - ^v Section 336A of CrPC 1898
 - ^{vi} Section 336B of CrPC 1898
 - ^{vii} Section 337Q of CrPC 1898
 - ^{viii} Section 337R of CrPC 1898
 - ^{ix} Section 337S of CrPC 1898
 - ^x Section 337T of CrPC 1898
 - ^{xi} Section 337U of CrPC 1898
 - ^{xii} Section 337V of CrPC 1898
 - ^{xiii} Section 337W of CrPC 1898
 - ^{xiv} Section 32 of Cr. P. C
 - ^{xv} 2014 PCrLJ 901 Isb
 - ^{xvi} Section 32(1)(a) of CrPC 1898
 - ^{xvii} Section 30 of Cr. P. C