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Q No. 1. What is Qatl-e-Amad? When is Qatl-e-Amad liable to Qisas and when it's not and

How Qisas is executed? Can Qisas be compounded or waived. (State your answer with

Relevant sections of PPC)

Section 300 : Qatl-i-amd _ whoever with the intention of causing death or with the intention of causing bodily injury to a person, or with the knowledge that his act is so imminently dangerous that it must in all primality cause death, causes the death of such person, is said to commit Qatl-i-amd.

Section 300 P.P.C defines Qatl-i-amd as act of causing death

- With the intention causing death
- With the intention of causing bodily injury to a person by doing an act which in the ordinary course nature is likely to cause death
- With the knowledge that his act is so immensely dangerous that is must all probabilities cause death.

(2005 P.Cr.L.J 182)

Whosoever causes death

The expression 'Causing death' means putting an end to a human life (**AIR 1920 Mad 862**)

The first stage in any injury into an alleged offence of culpable homicide is to see whether the accused has done an act by doing which he has caused the death of another person (**AIR 1979 S.C 1876**).

Death

Death is the main ingredient which constitutes culpable homicide. The other necessary ingredients are the presence of one of the kinds of mens Rea referred in to in **s.299**.

By doing an act

The variety of modes by which life of human being may be cut short, or brought to an immediate end are endless, death may be caused by strangulation, starving, burning, drowning by grievous hurt, by gun fire, by stabbing and so .

With the knowledge that he is likely by such act to cause death:

The words or "with knowledge that he is likely by such act to cause death", occurring in **S.300**, would include cases where there is no intention to kill or to cause such bodily injury, as likely to cause death, but the act is done with knowledge on the part of the offender that he is likely by such act to cause death. If death is caused by such act, the doer of the act will be guilty under s.300. **(1983 Cri LR (mAh) 19)**.

S.302 Punishment for Qatl-i-amd

Whoever commits Qatl-i-amd shall, subject to the provisions of the chapter be,

- Punished with death as qisas,
- Punished with death or imprisonment for life as ta'azir having regard to the facts and circumstances of the case, if the proof either of the forms specified in section 304 is not available
- 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.

Procedure of this section

Cognizable-warrant -not bail able-compoundable- court of sessions.

Proc Q No. 1. What is Qatl-e-Amad? When is Qatl-e-Amad liable to Qisas and when it's not and How Qisas is executed? Can Qisas be compounded or waived. (State your answer with

Relevant sections of PPC)

Section 4: 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 :

- The accused makes before a court competent to try the offence a **voluntary and true confession** of the commission of the offence
- By the evidence as provided in article 17 of the Qanoon-e-shahadat, 1984(P.O.No 10 of 1984).

2: the provisions of sub-section (1) shall, mutatis mutandis, apply to a hurt liable to qisas.

Section 306. Qatl-i-amd not liable to qisas

Qatl-i-amd shall not be liable to qisas in the following cases, namely:

- When an offender is minor or insane:
(provided that, Where a person liable to qisas associates with himself in the commission of the offence with a person not liable to qisas with the intention of saving himself from qisas, he shall not be exempted from qisas;
- When an offender causes death of his **child or grandchild** how low-so-ever
- When any wali of the victim is direct **descendant**, how low-so-ever of the offender.

Such Qatl-i-amd not be liable to qisas

Homicide,

The word homicide has derived from Latin term homo(meaning there by a man) and cido connotes (cut) homicide therefore would connote killing of a human being by a human being.

Kinds of homicide

Homicide may be classified into two types

- Lawful homicide
- Unlawful homicide

Lawful homicide

This is simple homicide and may be exemplified by several cases falling under general exception (chap iv)

It can be Further divided into two classes

- **Excusable homicide**
- **Justifiable homicide**

Excusable homicide

; nothing is an which is done by accident or misfortune (s.80), similarly an act of child under 10 years age (s.82), or an act done by a person of unsound mind(s.84), or an act of person I incapable of judgement by reason of intoxication caused against his will(s.85), or an act not not intended and not known to be likely to cause of grievous hurt done by consent (s.87) or an act not intended to cause death , done by good faith for benefit of a person without consent (s.92) , Or death caused without any criminal intent or knowledge etc, fall within the Amit of excusable homicide.

Justifiable homicide

Where death is caused by a person who is bound by law to do so, act done by a person bound, or by mistake of fact believing himself bound by law (s.76), or an act of judge when acting judicially (s.77) or an act done pursuant to the judgement or order of the court (S.78), or an act justified, or by mistake of fact believing himself justified by law(S 79) , or an act likely to cause harm but done without criminal intent and to prevent other harm(S.81), or an act done exercising right of private defense (S.S 100-103) fall within the Ambit of justifiable homicide.

Unlawful homicide

Unlawful homicide can be divided into two degrees for the purpose of imposing more sever penalty

- Which is intentional, deliberate well designed and premeditated as provided in S.300
- The other where it is the result of negligence, or grave and sudden provocation or for the purpose of self defence,
- The first clause can further be classified into culpable homicide amounting to murder and the second clause culpable homicide not amounting to murder.

Culpable homicide and murder- distinction

A murder is merely a particular form of culpable homicide. Every murder is culpable homicide but not vice versa. What distinguishes culpable homicide from murder is the **special presence of mens rea** which consists of four mental attitudes stated In S.300 P.P.C. unless the offence can be said to involve at least one such mental attitude it can'tbe murder. (**AIR 1966 S.C 1874.**)

Culpable homicide will be murder if the injury inflicted is not merely one likely to cause death but is so great that it is sufficient in the ordinary course of nature to cause death. **If there was no intention to kill, then it can be murder only if,**

- The accused knew that the injury inflicted would be likely to cause death
- That it would be sufficient in the ordinary course of nature to cause death
- That the accused knew that the act must in all probabilities cause death.

Pakistan penal code recognizes three degrees of culpable homicide,

- Culpable homicide of **first degree** i.e the gravest form of culpable homicide as provided in **S.300**.
- Culpable homicide of **second degree** , the lesser form of homicide not amounting to murder as defined in **S.315 Qatl shibh-i-amd** , harm to body or mind in the ordinary course of nature not likely to cause death, **S.321 Qatl-bis-shabab** , death without intention by doing and unlawful act.
- Culpable homicide of **third degree**, the lowest type of culpable homicide as provided under **s.318 of the code, Qatl-khata**, death without any intention either by **mistake of act** or by **mistake of fact** and Qatl-khata under **s.320** i.e, death by rash and negligent driving.

Q No. 1. What is Qatl-e-Amad? When is Qatl-e-Amad liable to Qisas and when it's not and How Qisas is executed? Can Qisas be compounded or waived. (State your answer with

- **Relevant sections of PPC)**

S.314 Execution of qisas in Qatl-i-amd

1: Qisas in Qatl-i-amd shall be executed by a functionary of government by causing death of the convict as the court may .

2: Qisas shall not be executed until all the walis are present at the time of execution , either personally or through their representatives authorized by them in writing in this behalf.

Provided that Where a wali or his representatives 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 authorized 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 the consultation with an authorized medical officer, postpone the execution of qisas upto 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.

Can Qisas be compounded or waived.

Qisas can be compounded or waived under S.S 309 and 310

S.309 waiver -Afw of qisas in Qatl-i-amd

1: in the case of Qatl-i-amd, an 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-

- Where the government is wali ;
- Where the right of qisas vests in a minor or insane

Provided further that where the principal of fasad-fil-arz is attracted, waiver of qisas shall be subject to the provisions of section 311.

2: where a victim has more than one wali, any 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 the one victim shall not affect the right of qisas against 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.

S.310 compounding of qisas(sulh) 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 a female shall not be given in marriage or otherwise in badal-i-sulh).

Provided further that where the principal of fasad-fil-arz is attracted, compounding of the right of qisas shall be subject to the provisions of section 311.

2: where a wali is minor or an insane , the wali or such minor or insane wali may compound the right of qisas on behalf of such minor or insane wali.

3: where the government is the wali, it may compound the right of qisas

4: where the badal-i-sulh is not determined or is a property or a right the the

Value of which can't 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.

Note: the value of badal-i-sulh shall not be Less than the value of 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.

Q No. 2. Write a note on different kinds of Qatal in PPC with relevant sections of PPC.

There are four kinds/types of Qatl under P.P.C

- Qatl-e-Amad
- Qatl shibh-i-amd
- Qatl-e-khata
- Qatl-bis-sabab

Qatl-i-amd

Section 300 : Qatl-i-amd _ whoever with the intention of causing death or with the intention of causing bodily injury to a person, or with the knowledge that his act is so imminently dangerous that it must in all primality cause death, causes the death of such person, is said to commit Qatl-i-amd.

Punishment for Qatl-i-amd

Whoever commits Qatl-i-amd shall, subject to the provisions of the chapter be,

- Punished with death as qisas,
- Punished with death or imprisonment for life as ta,azir having regard to the facts and circumstances of the case, if the proof either of the forms specified in section 304 is not available
- Unished 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.

Qatl shibh-i-amd

S.315 : Whoever, with intent to cause harm to the body or mind of any person causes the death of that or 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.

S.316 : Punishment for Qatl shibh-i-amd

- Whoever commits Qatl shibh-i-amd shall be liable to diyat
- May also be punished with imprisonment of either description for a term which may extend to **(Twenty five years)** as ta'azir.

S.318 Qatl-e-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 -e-khata.

Qatl-e-khata: section 318 of the code deals with offences committed inadvertence without any intent or malice but out of khatam.

S.319 Punishment for Qatl-i-khata.

Whoever commits Qatl-e-khata shall be liable to diyat.

Provided that, where Qatl-e-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 a ta'azir.

S.320 punishment for Qatl-e-khata by rash or negligent driving-

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

S.321 Qatl-bis-sabab.

Qatl-bis-sabab- whoever, without any intention to cause death of, or harm to any person, does any lawful act which becomes a cause for the death of another , is said to commit Qatl-bis-sabab.

S.322 Punishment for Qatl-bis-sabab.

Whoever commits Qatl-bis-sabab shall be liable to diyat.

Difference between them

Qatl-e-Amad and Qatl-bis-sabab

If an offender having no intention to cause death or cause harm to any person, commits any unlawful act which has become a cause for the death of that other person, would attract the criminal liability provided for in **S.321**, P.P.C for the offence of Qatl-bis-sabab which is substantially distinguishable from the provisions relating to the definition of Qatl-i-amd as given in **S.300**, P.P.C

In case of Qatl-bis-sabab, element of intention to cause death or cause harm to any person must be non-arising in relation to any lawful act which become a cause of death of any person.

Where the intention of the accused shows that he intending to cause harm so as to endanger the life of the other he does culpable homicide amounting to murder

(2001 P.Cr.L.J 1548).

Qatl-i-amd and Qatl-i-shibh-i-amd

- Qatl-i-amd is defined in **S.300, P.P.C** ., It is causing death or intentionally causing bodily injury to a person which in the ordinary course of nature is likely to cause death. While Qatl-e- shibh-i-amd is defined in **S.315, P.P.C.**, to say that who ever with intent to cause harm to the body or mind of of any person caused death of or any other person by means of a weapon or an act which in the ordinary course of nature is not likely to cause death.
- A persual of both these provisions would lead to inference that main distinguishing factor between the two is that **in case of Qatl-i-amd intention of the assailant must be cause death or such bodily injury which in the ordinary course of nature is likely to cause death** where as, **in the case of Qatl-shibh-i-amd the intention should be to cause such harm to the body or mind of the person which in the ordinary course of nature is not likely to cause death.** Meaning there by is that in case of Qatl-shibh-i-amd “ **intention to cause death or cause such bodily injury which in the ordinary course of nature is not likely to cause death must be non-existence (2006 P.Cr.L.J. 662) and (2012 YLR 416).**
- Fatwa-e-Alamgiri (vol. Ix, page 294) recites that Qatl-i-shibh-i-amd takes place when the victim dies of an instrument which is neither a weapon not can be used as weapon, **this is the view of imam Azam.** According to imam abou Yusuf and imam Muhammad it **would be a Qatl-i-amd if the death occurs due to injury big stone or heavy stick** and **it would be Qatl-shibh-i-amd if death occurs due to injury by an instrument which ordinary does not cause death.**

Combination of 4 kinds of Qatl

- Qatl-e-amd is premeditated murder
- Qatl-e-sibh-i-amd is murder when a person dies as a result of injury from something which is neither a weapon or like a weapon.
- Qatl-e-khata (homicide by error) is a result of error. (**PLD 1980 FSC 1**)
- In order to attract mischief of Qatl-bis-sabab (**S.321**) , P.P.C attribution of mens Rea to wrongdoer is not conditional precedent and instead, actus Rea of such person is made culpable (PLD 2018 lah 903).