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Title of assignment: **Midterm Arsh, daman, diyat.**

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QNo: 8. Define The Following Terms

- Arsh
- Diyat
- Daman

### **Arsh**

Arsh means the compensation specified to be paid by the offender to the victim or his/her heirs.

Arsh is compensation specified in the newly added chapter xvi, P.P.C for offences relating to various kinds of hurt. It is to be assessed at certain percentage of value of diyat.

It is to be paid in lump or in instalments.

In default the convict is liable to simple imprisonment. He. She may be released on bail against security of an equal amount.

Arsh can be awarded in addition to Ta'zir, it is liability on the estate of deceased convict, if not paid during his life time.

Arsh, Damn and diyat basically are three forms of compensation and are quasi civil damages provided in different conditions. If the amount of diyat is payable in lump sum or in instalments then arsh or daman can also be paid in lump sum or in instruments.(2003 YLR 1156)

Damn, arsh are independent punishments in their own right.

Diyat, ash and damn may, however, be correctly described as punishments which are compensatory in nature but nonetheless they remain substantive

punishments . These Punishments are not merely compensatory ( Pld 2002 lab 482).

### **No payment of arsh**

Convict having served out substantive sentence of imprisonment can not be kept in prison for non payment of arsh, convict released subject to his/her executing surety bound for payment of arsh within three years and to be taken back in jail u/s 337-x in case of his failure to pay arsh within three years.(2004 Cr.L.J 1246)

### **Diyat**

Diyat means compensation as specified in section 323 P.P.C , Payable to the heirs of the victim by the offender. The value of diyat has not been fixed and is left to be determined by the court keeping in view the injunction of Islam as laid down in the Holy Aura and Sunnah and keeping in view the financial position of the convict and the heirs of victim.

The words 'payable to the heirs of the victim' specify that diyat is Payable in cases of qatl and not in cases of hurt. In cases of qatl , diyat can be aware where the offence committed is proved to be not liable to qisas or where qisas is not enforceable .the consideration in such cases is badl-e- such as laid down in section 310 P.P.C.

Diyat is in fact an alternate punishment to qisas and provisions of s.308, P.P.C confirm the same.

It is true that the definitions of words diyat , arsh and daman in s.299 P.P.C describe them as compensation but the fact remains that s.43 P.P.C clearly provides that the diyat arsh, damn besides Tazir , death , imprisonment for life, imprisonments both rigorous and simple, forfeiture of property and fine are **Punishments** to which offenders are liable under the provisions of Pakistan Penal code, 1860.

Diyat , arsh and daman may, however be correctly describe as punishment which are compensatory in nature but

Nonetheless they remain substantive punishments . which have to be undergone by the convict in the manner provided by the criminal law and there is no escape from it other than any provided by the criminal law itself

**( Pld 2002 lab 482)**

Court can award imprisonment in addition to punishment of diyat( **PLD 1999 lab 272**).

Courts of at liberty to determine amount of diyat as they deem fit by they are restricted by law not to award the amount less than the value of RS. 30, 630 gram of silver no maximum limit is prescribed for quantum of diyat.

Courts can ascertain diyat considering circumstances of the case , financial position of convict as well as that of legal heirs of victim ( 2009 P.Cry.L.J.

1479)

**Non payment of diyat**

In case of default in payment of monthly Installment accused would be remitted to custody as to suffer simple imprisonment till payment of diyat( **2009 P.Cr.L.J. 1479**).

### **Value of diyat**

The value of diyat should not be less than the value of **thirty thousand six hundred and thirty grams of silver.**

**Value of diyat for the year 2021-2022 is Rs. 4,261,205/ Rupees four million two hundred sixty one thousand, two hundred and five only.**

### **Section 323 P.P.C value of diyat:**

- the court shall, subject to the injunctions of Islam as laid down in the holy Quran 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.

- For the purposes 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 of Payable during a financial year.

### **Payment of diyat in instalment**

Provisions of S.331, P.P.C provides that diyat can be made Payable in lump sum or in installments spreading over a period of **Five years** from date of **Final judgment**. Convict can be released on bail (2006 P.Cry.L.J. 80).

### **330: Disbursement of diyat**

The diyat shall be disbursed among the heirs of the victim according to their respective shares in inheritance.

Where an heir forgoes his share, the diyat shall not be recovered to the extent of his share.

- Section 330 of penal code deals with disbursement of diyat awardable in offences as envisaged in the code.
- Diyat is a sentence which is provided in Islam as compensation to the victim.
- It is to be disbursed among the heirs of the victim according to the respecting share of inheritance as provided in sharia according to the personal law.
- If an heir forgives his/ her share , the diyat money shall ceased to be recovered to the extent of his share.

### **331: payment of diyat**

- The diyat may be made Payable in lump s or in installments spread over a period of **(Five Years)** from the day of the final judgement
- Where a convict fails to pay diyat or any part there of 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 or surety equivalent to the amount of diyat to the satisfaction of the court or may be released on parole as may be prescribed in the rules.

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

**Note** section 331 is supplement to s.330.

**In the following cases diyat can be awarded:**

1: Section 306 to 307- Qqatl-i-Amd not liable to qisas

2: Section 312- Qalt-I-Amd after waiver or compounding of qisas

3: Section 315- Qatl- Shih-i-Amd

4:Section 318- Qatl-I- khata

5: Section 321 Qatl-i-bis Sabah.

With the exception of section 321, P.P.C. The court can award Ta'zir in addition to diyat.

## **Diyat and “ Badal-i- such” \_ Distinction**

Concept of badal-i-sulh is totally different from the concept of diyat inas much as provisions of S.410(5) , P.P.C , and the explanation attached therewith show that badal-i-such is to be “mutually agreed” between the parties as a term of sulh between them.

Diyat, under S.53 , P.P.C is punishment and provisions of S.299€, P.P.C, and S.323, P.P.C, manifest that the amount of diyat is to be fixed by court( PLD 2010 S.C, 695).

Compounding of offence of murder upon payment of badal-i-sulah is not a result of payment of diyat which is form of punishment

## **Fatal accident act, 1855**

If a person is dead due to intentional, unintentional , unlawful, neglecting act, rash or negligent driving or by mistake the legal heirs of the victim are also entitled to compensation which is non as diyat( 2008 MLD 62).

## **Daman**

Daman has been defined as the compensation fixed by court payable by the offense to the victim for causing hurt not liable to arsh.

It is to be paid in lump sum or in instalments. In default is liable to simple imprisonment. He may be released on bail against security of an equal amount.

It can be awarded in addition to Ta'zir .