ISSN E: 2709-8273
ISSN P:2709-8265
JOURNAL OF APPLIED LINGUISTICS AND TESOL
JALT

BLOOD MONEY (*DIYA*) IN ISLAMIC AND PAKISTANI LAW

Dr. Syed Hasnat Ahnad Shah Gillani.
Gillani500@gmail.com
Asmara Farzand
Asmara.farzand@udc.edu.pk
Dr.Noor-al-Ain Shabir
Noorulain.ajku@gmail.com

Abstract

The renewed public discourse surrounding the law of Diyat, particularly following a recent high-profile homicide prosecution in Pakistan, has exposed widespread misconceptions regarding its nature, purpose, and operation within the Islamic criminal justice system. Motivated by this debate, the present article critically examines the concept of Diyat by exploring its normative foundations in the Holy Qur'an, the Sunnah, and classical Islamic jurisprudence, alongside its incorporation into the Pakistan Penal Code through the Qisas and Diyat provisions. It argues that much of the criticism directed against law of Diyat is attributable to misunderstandings of its doctrinal framework rather than any inherent deficiency in Islamic law. The article analyses the statutory scheme, Islamic version, and the interaction between victims' rights, state authority, and the public interest, distinguishing the principles of the doctrine from shortcomings in its implementation. It demonstrates that Islamic law does not recognize Diya as a means of escaping criminal liability or compromising the administration of justice. The study concludes that a principled interpretation of Diya, informed by both classical Islamic jurisprudence and Pakistan's constitutional and statutory framework, is essential for ensuring doctrinal coherence, judicial consistency, and public confidence in the criminal justice system.

Keywords: Qisas and Diyat, Islamic Law, Islamic Jurisprudence, Surrounding, Misconceptions, misunderstandings

BILOOD MONEY (DIYA) IN ISLAMIC AND PAKISTANI LAW

1. Introduction

The law of Diyat or in Arabic Diya remains one of the most debated and, at the same time, one of the most misunderstood components of Pakistan's criminal justice system. Although deeply rooted in Islamic jurisprudence, its incorporation into Pakistan's criminal law[1] following the landmark judgments of the Shariat Bench of the Peshawar High Court,[2] the Federal Shariat Court,[3] and the Shariat Appellate Bench [4]of the Supreme Court of Pakistan did not bring an end to the legal and academic controversy surrounding its nature, purpose, and application. On the contrary, subsequent judicial interpretation, legislative developments, and statutory amendments have significantly influenced the operation of the law, often creating a distinction between the original jurisprudential philosophy of Diya and its practical application within Pakistan's criminal justice system. Consequently, public perception of Diya has increasingly been shaped by isolated cases and popular commentary rather than by a careful understanding of its legal foundations and doctrinal objectives.

[1] Pakistan Ordinance on Qisas and Diyat, Ordinance No. VII of 1990 made by the president on September 5, 1990 later on enacted as Criminal law 2nd (Amendment) Act, 1997; Annual Report of the Council of Islamic Ideology 1978-79; Draft Ordinance relating to the Law of Qisas and Diyat, 1981, Three Shari‘ah Draft Laws, 1988

[2] Gul Hassan Khan v. Government of Pakistan PLD1980 Peshawar 01

[3] Muhammad Riaz v Federal Government PLD 1980 FSC 01

ISSN E: 2709-8273
ISSN P:2709-8265
JOURNAL OF APPLIED LINGUISTICS AND TESOL
JALT

[4] Government of Pakistan v. Gul Hassan Khan PLD 1989 SC 633

ISSN E: 2709-8273
ISSN P:2709-8265
JOURNAL OF APPLIED LINGUISTICS AND TESOL
JALT

The inspiration for this research emerged from the public debate that followed the Noor Mukadam case.[5] While an additional note appended to the judgment observed that the real challenge lay not in the inadequacy of the law itself but in prevailing societal attitudes and entrenched social norms, much of the ensuing public discourse centered on the law of Qisas Diya. Particularly, a significant body of commentary portrayed specifically doctrine of Diya as a legal mechanism through which wealthy or influential offenders could evade criminal punishment by purchasing forgiveness. Such criticism, however, often proceeded without a comprehensive examination of the jurisprudential basis, legislative framework, and judicial interpretation of Diya, and tended to attribute deficiencies in the administration of justice to the law itself. It was this widespread perception and the apparent disconnect between public understanding and the legal reality that prompted the present study.

This paper, therefore, undertakes a doctrinal and historical examination of the law of Diya in Pakistan. It seeks to explore its origins in Islamic jurisprudence, the constitutional and judicial developments that led to its incorporation into Pakistan's criminal law, and the legislative framework governing its operation today. More importantly, the study critically evaluates whether the criticisms directed at Diya are attributable to inherent deficiencies within the law itself or whether they stem from errors in its interpretation, implementation, and application. In doing so, this research aims to present a balanced and jurisprudentially grounded account of Diya, separating the essence of the law from the misconceptions that have increasingly come to define it in contemporary legal and public discourse.

2. Transformation of structured system(Reconciliation)

The practice of ‘an eye for an eye’ (lex talionis) [6]was an essential part of justice in even pre-Islamic Arabian Pennsylvania. Due to the lack of a centralized authority that could seek justice on behalf of victims, retribution was the default response to harm suffered. Not only was the culprit a potential target of this retribution, but so were members of his tribe. As a result, the tribes of the Arabian Peninsula often found themselves occupied in extended blood feuds capable of lasting generations and causing great harm to those involved.[7] Hamasa, the 'quality of fierce readiness to defend person and 'house' that every real man should have’,[8] was vital to the Arabian man’s identity, and it included the ‘steadfastness in seeking revenge’.[9]

However, the practice of ‘blood revenge’ was costly to the families involved and disruptive to their lives, with arbitration being the final option available after an extended conflict.[10] Tribal society therefore developed a method to mitigate the impact of blood feuds and to encourage peace through mechanisms of compensation and institutionalized retaliation

[5] Manzoor, Saima, Abiha Munir, Eman Fatima, and Alishba Zia. "Justice on Trial: Investigative Strengths, Systemic Weaknesses, and Gendered Implications in the Noor Mukadam Case." Journal of Political Stability Archive 3, no. 3 (2025): 1324-1337.

[6] Lex talionis is a Latin legal phrase that translates directly to the "law of retaliation" or "law of retribution." It refers to the legal and moral principle of retributive justice where a punishment should match the exact degree and kind of injury inflicted by the wrongdoer

[7] Daniel Pascoe, ‘Is Diya a Form of Clemency?’ (2016) 34 B.U. Int'l L.J. 149, 153

[8] Michael Gilsenan, Lords of the Lebanese Marches: Violence and Narrative in an Arab Society (UC Press 1996) 160

[9] Michael Mumisa, ‘Sharia Law And The Death Penalty’ (2015) Penal Reform International <https://cdn.penalreform.org/wp-content/uploads/2015/07/Sharia-law-and-the-death-penalty.pdf> accessed 3 October 2016, 10

[10] Matthew Lippman, 'Islamic Criminal Law and Procedure: Religious Fundamentalism v. Modern Law' (1989) 12 B.C. Int'l & Comp. L. Rev. 29, 30

ISSN E: 2709-8273
ISSN P:2709-8265
JOURNAL OF APPLIED LINGUISTICS AND TESOL
JALT

for the harm suffered by the victim.[11] This early form of criminal justice had a tremendous impact on reducing the instances of inter-tribal violence.

The advent of Islam transformed the pre-Islamic Arabian approach to homicide and personal injury by replacing the prevailing culture of unrestrained tribal vengeance with a structured and principled system of justice founded upon the rule of law, proportionality, and reconciliation.[12] Practices that had previously been governed by custom and collective retaliation were formalized within Islamic jurisprudence through the doctrines of Qisas and Diyat (Diya), which sought not only to ensure justice for victims but also to discourage cycles of revenge and promote social harmony through lawful accountability and, where appropriate, forgiveness and compensation. Within the framework of Islamic criminal law, offences came to be classified into three principal categories: Hudood, comprising offences against the rights of God for which punishments are divinely prescribed; Qisas and Diya, governing offences against the person, particularly homicide and bodily injury, where the rights of the victim or the victim's heirs assume central importance; and Ta'zir, encompassing offences affecting public order and welfare, for which the nature and extent of punishment are left to the discretion of the competent judicial authority.[13]

The Qur'an provides for qisas and diya in Surah Al-Ma'idah (5:45):

> "And we ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution. But whoever gives [up his right as] charity, it is an expiation for him. And whoever does not judge by what Allah has revealed – then it is those who are the wrongdoers."

It is clear from this passage that Qisas encompasses offences of physical assault and murder, which are subject to retaliation on the choice of the victim or surviving heirs. The word 'Qisas' means 'quality' or 'equivalence'[14]; therefore, the punishment that would balance the scales for murder could only be death under the traditional practice. Qisas also includes 'the right of the victim or his heirs to choose between retribution, pardon, or negotiated settlement'[15] (Diya, or as it is more popularly known, blood money). The resolution of tribal violence through pardon or Diya was intended to act as an offer of peace, thereby preventing an escalation of the violence into a circle of revenge, and as evidenced by Surah Al-Ma'idah, the practice of Diya was in fact encouraged as the most desirable solution in the event of harm.

3. Diya (Blood Money) in Islam.

Diya means blood money and ransom, and it spelled sometimes as Diya and Diya .And it legally means compensation, which is granted to heirs of victim by an offender or it only applies when victim's family want to compromise with the guilty party; otherwise Qisas applies. [16]

Blood money is to be paid not only for murder, but also in the case of any event caused the death of any innocent individual whether the cause is known to the public, as the cases of death in fire , industrial or road accident, or not known like the case of Qusammah interpreted as

[11] Evan Gottesman, 'The Reemergence of Qisas and Diyat in Pakistan' (1991-1992) 23 Colum. Hum. Rts. L. Rev. 433, 444

[12] Crime and Punishment in Islamic Law by Rudolph Peter, Journal of Islamic Studies, Vol.18, No.2 (May 2007), pp244-246 published by: Oxford University Press

[13] Gottesman 444-445

[14] Lippman 43

[15] Gottesman 434

[16] Ibn Nujaym, Zayn al-ʻ ʟbidʟ n b. Ibrʅ hʟ m. Al-Ba ғr al-Rʅ 'iq Shar ғ Kanz al-Daqʅ 'iq. Beirut: Dʅ r al-Maʻrifah, n. d

ISSN E: 2709-8273
ISSN P:2709-8265
JOURNAL OF APPLIED LINGUISTICS AND TESOL
JALT

the collective liability of Muslim society. [17]With that, as long as the obligation of Diya is concerned it serve the greater purpose and the one of the core objectives of Shariah known as Hifz al Nafas or preservation of human life. [18]To this, in some cases is to be paid by accused as personal liability while in other cases it is to be imposed on Aaqila as collective social liability (a collective pledge of compensation). It encompasses both the issue of legal retaliation as well as the issue in which there is no legal retaliation.[19]

Islamic law treats homicide and unintentional homicide (not just bodily injury and property damage), as a civil dispute between believers, rather than remedial punishment by the state to maintain order. The offender must either face equal retaliation known as Qisas "[20]Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal, pay Diya to the victim or heirs of the victim, or be forgiven by the victim or victim's heir" In all cases of death, injury, and damage, under traditional sharia doctrine, the prosecutor is not the state, but only the victim or the victim's heir (or owner, in the case when the victim is a slave).[21] Diya is similar in practice to "out-of- court settlement in a tort case, but with important differences. Under sharia practice, tort-like civil liability settlement is limited to property damage,[22] while in the cases of bodily injury and death, the "blood money" Diya compensation is fixed by a formula (such as the value of a certain number of camels). The victim, victim's heir or guardian may alternatively forgive the bodily injury or murder as an act of religious charity (expiation of their own past sins).

Although, the value of Diya, under all schools of sharia, varied with the victim's religion and legal status (free or slave). For a free Muslim, the Diya value of their life was traditionally set as the value of 100 camels. This was valued at 1000 dinars or 12000 dirhams, corresponding to 4.25 kilograms of gold, or 29.7 to 35.64 kilograms of silver.

The Diya value in case the victim was a non-Muslim (Dhimmi) or slave varied in the sharia of different schools of Islamic law. The Diya must be paid by the murderer or the estate of the murderer. In some cases, such as when the murderer is a juvenile, the diyah is owed by the family of the murderer (Aqila).[23]In other cases, the group ('Aqila) that must pay diyah to the victim or victim's heirs is the tribe or urban neighbors of the culprit.

4. Arsh (proportionate to Diya in lieu of Qisas

One of the distinctive features of Islamic criminal jurisprudence is its remarkably detailed and systematic scheme for compensating victims of bodily injuries through the institution of Arsh. While Qisas remains the primary and preferred punishment for

[17] Abdul Qadir Audah, 1997, At-tashri' Al-Jinai' Al-Islami.Jilid. 1. Dar Al katib Al-arabi.

[18] Nst, Abdul Saman. "National Law: Sharia Law as an Instrument for Protecting Human Rights (HAM) in Islam." Jurnal Hukum dan Keadilan 2, no. 6 (2025): 93-104.

[19] Rushdi Ismail "al janayat "chapter 3, maktaba alqalam beroot

[20] Qur'an 5:45

[21] Evaz Ahmad Idris , Blood money (1998), translated by Ali Feiz, Tehran: Ministry of Culture Pakistan penal code 1872

[22] Legitimate Expectations And Pre-Contractual Duties Of Contracting Parties: Reconciling Islamic-Law Minimalism With Doctrines Of Pre-Contractual Good Faith. Journal 0f Bahiseen Vol, Issue April June Issn 2025 (E) 2959-4758 P2959-474.

[23] Natana J. DeLong-Bas, The Islamization of law in Pakistan by Rubia Mehdi, Journal of Law and Religion, Vol 15 No. ½ (2000-2001), pp.589-592, Published by: Cambridge University Press.

ISSN E: 2709-8273
ISSN P:2709-8265
JOURNAL OF APPLIED LINGUISTICS AND TESOL
JALT

intentional bodily injury wherever its execution is legally and practically possible,[24] Islamic law prescribes Arsh as a fixed and proportionate form of compensation where Qisas cannot be enforced or where the law specifically provides for financial redress. Unlike modern compensation regimes, which often leave the assessment of damages to judicial discretion, the Islamic law of Arsh establishes predetermined and uniform standards based upon the nature and severity of the injury, thereby ensuring certainty, consistency, and equality before the law. Thus, the destruction of paired organs such as both eyes, ears, hands, feet, breasts, and lips ,entails payment of the full Diya, while the loss of one member of the pair attracts one-half of the Diya. Significantly, where the victim possesses only one functioning paired organ, the destruction of that remaining organ renders the offender liable for the full Diya, as the injury results in total deprivation of the relevant bodily function.

Similarly, the four eyelids are collectively valued at the full Diya, making the loss of each eyelid compensable at one-fourth thereof. The loss of an entire finger or toe carries Arsh equal to one-tenth of the Diya, while the severance of an individual finger joint generally attracts one-thirteenth of the Diya, except in the case of the thumb, where each joint is valued at one-twentieth. The permanent loss of each tooth likewise attracts one-twentieth of the Diya.[25] Islamic law also accords protection to bodily appearance and personal dignity by prescribing the full Diya for the permanent destruction of all scalp hair, the entire beard, or both eyebrows where regrowth is impossible, one-half of the Diya for the permanent loss of one eyebrow, and one-fourth of the Diya for the permanent loss of the eyelashes of one eyelid. This elaborate and carefully calibrated framework illustrates the sophistication of Islamic criminal jurisprudence, which seeks to balance retributive justice with restorative compensation by assigning objective and predetermined values to specific bodily injuries while preserving the overarching objective of justice through the primary remedy of Qisas wherever legally applicable.

5. The law relating to Arsh in Pakistan

This law is comprehensively codified under Chapter XVI of the Pakistan Penal Code. [26]Section 299 defines Arsh as the compensation specified in the Chapter payable to the victim or his heirs for specified bodily injuries, thereby distinguishing it from Diya, which is compensation for homicide, and Daman, which is court-assessed compensation for injuries not subject to Arsh. The statutory scheme classifies injuries according to the organ or body part affected and prescribes predetermined compensation as a fixed proportion of the prescribed Diya, thereby eliminating judicial discretion in assessing the amount. The Code provides Arsh for the destruction or permanent impairment of single organs, paired organs, organs occurring in sets of four, fingers, joints, teeth, hair, and other specified body parts, while also regulating the merger of Arsh where multiple injuries are caused, the circumstances in which Arsh merges into Diya if the victim subsequently dies before recovery, the manner and period of payment, and recovery from the offender's estate in the event of default or death. Through Sections 299 and 337-A to 337-Y, the Pakistan Penal Code establishes a comprehensive and coherent statutory framework that reflects the principles of Islamic jurisprudence by providing certainty, proportionality, and uniformity

[24] Doli Incapax And The Legal Capacity Of Children And Juveniles: Sharia Vs. Law. (2025). Contemporary Journal Of Social Science Review, 3(4), 175-182.Issn Online: 3006-1466issn Print: 3006-1458

[25] Pakistan Ordinance on Qisas and Diyat, Ordinance No. VII of 1990 made by the president on September 5, 1990 later on enacted as Criminal law 2nd (Amendment) Act, 1997;

[26] Draft Ordinance relating to the Law of Qisas and Diyat, 1981, Three Shari‘ah Draft Laws, 1988.

ISSN E: 2709-8273
ISSN P:2709-8265
JOURNAL OF APPLIED LINGUISTICS AND TESOL
JALT

in compensating victims of bodily injuries while preserving the broader objectives of justice and public order.

6. **Diya in Pakistan penal code**

In the definition the word "heirs of victim" have been used this expression shows that Diya is a compensation payable only in case of Qatl and not in case of hurt because in cases of Hurt another term Arsh serves the meaning. In addition, according to the circumstanced of the case the courts are also empowered with discretion to award punishment of imprisonment as Tazir in along with Diya amount Diya is a sort of punishment in the form of blood money and it's the right of the wali of the victim and may be compromised by them only. While Qisas is physical in nature and it's also a right of the victim in cases of Hurt or the wali of the victim in case of Qatal. Qisas means '' retaliation in kind'' "eye for an eye'' or retributive justice .In September 1990 president of Pakistan enforced the Qisas and Diya Ordinance , which redefines certain crimes and punishments under PPC and provides punishments which ,by according to some human rights activists are contradictory to internationally accepted human rights standard, are considered cruel ,inhuman or degrading.[27]

7. **Evaluation of Diya in Pakistani Law**

In the late seventies onward, the legal reforms in the context of islamization seems to be the priority of the legislative body. Therefore, the newly established courts, and the Council contributed in this regard. [28]The Council of the Islamic Ideology has drafted Hudood, Qisas and Diya laws[29] and presented the same to the legislative body of Islamic Republic of Pakistan during the era of General Zia ul Haq. The draft of Hudood laws was promptly enacted[30] whereas yet, the draft of Qisas and Diya laws did not receive any positive response. On the other side, several petitions were filed in the Shariat Benches of the high courts, challenging the repugnancy of the law related to culpable homicide and hurts with Islam. The Shariat bench of Peshawar High Court in Gul Hassan Khan v. Government of Pakistan[31] declared the sections related to the subject of Qisas and Diya repugnant to the injunctions of Islam. Similar decision was pronounced by the Federal Shariah Court in Muhammad Riaz v Federal Government where seven petitioners challenged serval sections of PPC regarding homicide[32].

The FSC directed the legislative body to make amendments in accordance with the injunctions of Islam by 1st April 1981. Both the cases went for appeal at the Shariat Appellant Bench of the Supreme Court of Pakistan and the appeal was dismissed in the judgment reported as Government of Pakistan v. Gul Hassan Khan, hence repugnancy got confirmed.[33] It was held that sections related to homicide ought to be amended. Partial compliance with the directions of the Supreme Court was made by adopting the third draft on Qisas and Diya by the Council of Islamic Ideology [34] recommended for substituting the English Law on culpable homicide. The replacement process has a long and interesting history, it was first adopted as Qisas and

[27] Pakistan Ordinance on Qisas and Diyat, Ordinance No. VII of 1990
[28] Natana J. DeLong-Bas, The Islamization of law in Pakistan by Rubia Mehdi, Journal of Law and Religion, Vol 15 No. ½ (2000-2001), pp.589-592, Published by: Cambridge University Press
[29] See; Annual Report of the Council of Islamic Ideology 1978-79.
[30] (Enforcement of Hudood) Ordinance,1979
[31]See PLD1980 Peshawar 01
[32]See PLD 1980 FSC 01
[33] See PLD 1989 SC 633
[34] See: Three Shari'ah Draft Laws, the Council of Islamic Ideology, 1988.

ISSN E: 2709-8273
ISSN P:2709-8265
JOURNAL OF APPLIED LINGUISTICS AND TESOL
JALT

Diya Ordinance in August 1990[35] than re-promulgated about 27 times until it was enacted as Criminal law 2nd (Amendment) Act, 1997.[36]

As mentioned earlier, that Pakistan, which is predominantly Hanafi, Sunni Muslim nation, introduced Qisas and Diya Ordinance in 1990, amending sections 229 to 338 of Pakistan Penal code. [37]The new Ordinance replaced British era criminal laws on bodily hurt and murder with sharia-compliant provisions, as demanded by the Sharia Appellate Bench of Pakistan's Supreme Court. The Criminal Procedure Code was also amended to give legal heirs of a murdered person to enter into compromise and accept Diya compensation, instead of demanding Qisas-based retaliatory penalties for murder or bodily hurt.

Interestingly, what happens under Pakistan's Qisas (retribution) and Diya (compensation) laws. first introduced in 1990 and subsequently enshrined in law through an act of parliament passed by the government in 1997, the Qisas and Diya laws apply to all offences against the human body and have two main effects; firstly, they ensure that crimes against the body (such as murder or rape) are strictly assumed to involve individuals, meaning that the state and society cannot be party to any proceedings relating to these crimes, and secondly, the victims of such crimes, or their heirs, can reach private settlements with the accused, allowing for the payment of compensation or even outright forgiveness to take the place of the kinds of punishment that might otherwise be imposed by a court. The ordinance of 1990 was re-promulgated over 20 times before it became an Act of the Parliament in April 1997.[38] This law re-conceptualized the offences related to physical injury and murder in Islamic terms as understood in Pakistan, and replaced about 40 sections (299 to 338) of the Pakistan Penal Code 1860 relating to offences affecting human body which were derived from the British Common Law.

Similarly, some provisions of the Criminal Procedure Code 1898 were amended to allow the legal heirs of the victim to compromise or forgive a murderer even at the last minute before execution. These provisions make intentional and deliberate murder (qatl-e-amd) punishable by Qisas (retribution) or forgiveness while un-intentional/accidental murder (qatl-e- khata) punishable with Diya (compensation).

According to the law, in awarding Diya, courts are to take into account the financial position of the convict and the victim's heirs, but the amount fixed must not be less than the value of 30,630 grams of silver, a value that the federal government must declare at the start of each fiscal year. During the time of the Prophet (PBUH), the Arab used to pay 100 camels as Diya and he did not change this custom. They say that in present times, it is not possible to pay Diya in the form of camels nor is it a very wise step to fix the amount of Diya on this basis and every society should decide it according to its customs.

There are only two sets of circumstances under which the Qisas and Diya laws can be bypassed; either when the accused are tried as terrorists under Pakistan's anti-terror laws (in which case the state automatically becomes party to the proceedings, negating the possibility of a private settlement), or when a court decides that, under section 311 of the

[35] See; Pakistan Ordinance on Qisas and Diyat, Ordinance No. VII of 1990
[36] Also known as Qisas and Diyat Act of 1997
[37] A Presidential order that has the same force as an Act of Parliament but is meant to expire after 120 days (Article 89 of The Constitution of Pakistan (1973)). The Qisas and Diyat Ordinance was re-promulgated over twenty times. In 1997, the amendments to the P.P.C. and Cr.P.C. were brought onto a statutory footing under the government of Nawaz Sharif.
[38] Natana J. DeLong-Bas, The Islamization of law in Pakistan by Rubia Mehdi, Journal of Law and Religion, Vol 15 No. ½ (2000-2001), pp.589-592, Published by: Cambridge University Press

ISSN E: 2709-8273
ISSN P:2709-8265
JOURNAL OF APPLIED LINGUISTICS AND TESOL
JALT

Pakistan Penal Code, the offence in question constitutes an outrage against society. In the past, both of these scenarios have rarely been invoked.

In the Shahzeb Khan Murder case,[39] for example, the accused Shahrukh Jatoi and his alleged accomplices have been set back to prison by the Supreme Court after it set aside an earlier decision by the Sindh High Court that had nullified the sentence passed by the anti-terrorism court that first heard the case. The fear, as expressed by activists who had petitioning the Supreme Court to take up the case, was that sans the charges of terrorism that had initially been filed against Jatoi, any retrial in a sessions court would simply be subverted by a private settlement under the Qisas and Diya laws. Indeed, the family of Shahzeb Khan has repeatedly said that it has 'forgiven' Shahrukh Jatoi, and has no interest in pursuing the matter further. What is problematic about this, is the existence of some evidence, gleaned from statement made by extended members of the family, suggesting that the Jatois and their supporters have been coercing the family, using their power and influence to force a settlement.

Instances in which influential or affluent offenders are able to secure compromise through coercion, intimidation, or the unequal exercise of social and economic power do not, in themselves, demonstrate any inherent defect in the law of Diya. Rather, they expose broader structural and societal deficiencies, including unequal access to justice, weak institutional enforcement, and the persistence of social hierarchies capable of undermining the voluntary nature of legal compromise. In such circumstances, the apparent failure lies not in the normative framework of Islamic law but in the manner of its implementation and the inability of the criminal justice system to ensure that forgiveness and settlement are the product of genuine free will.

Islamic jurisprudence itself contains safeguards against the misuse of Diya. The doctrine of Siyāsah al-Sharʿiyyah recognizes the authority,and, where necessary, the duty—of the state to intervene in exceptional cases where private compromise would undermine the public interest, threaten social order, or result in fasād fi al-arḍ (corruption and disorder in society).[40] In such circumstances, the competent authority may impose mandatory or discretionary punishment to protect society, preserve the integrity of the legal system, and prevent influential offenders from exploiting the law as a shield against accountability. Properly understood, therefore, the Islamic law of Diya does not provide immunity to the powerful; rather, its abuse reflects failures of governance and enforcement, while the broader principles of Islamic criminal jurisprudence furnish mechanisms to prevent such misuse in the interest of justice and the public good.[41]

Those who support these laws on the basis of their Islamic origins would undoubtedly agree with the idea that principles of justice and fair-play must underpin any legal system, [42]and that Islamic provisions and laws are not meant to simply provide mechanisms through which the powerful can do as they please. Pakistan, which is

[39] Manzoor, Saima, Harram Fatima, Tayyba Khan, and Zain Ali. "Criminal Justice Response to Personal Revenge Homicides in Pakistan: A Case Study of FIR No. 591/2012." Journal of Political Stability Archive 3, no. 4 (2025): 1141-1159.

[40] Ahmad, Muhammad Mushtaq "The Doctrine of Siyasah in the Hanafi Criminal Law and its Implication for Islamization of Laws in Pakistan", (International Islamic University Islamabad, 2015).

[41] Ghazi, Mehmood Ahmad. Musawwadah Qanun-e-Qisas wa Diyat. Islamic Research Institute, International Islamic University, 1986.

[42] Islamic Justice System And Judicial Model Of Azad Jammu & Kashmir." Hazaraislamicus 10, No. 02 (2021): 20-43. Issn 2410-8065

ISSN E: 2709-8273
ISSN P:2709-8265
JOURNAL OF APPLIED LINGUISTICS AND TESOL
JALT

predominantly Hanafi, Sunni Muslim nation, introduced Qisas and Diya Ordinance in 1990, amending sections 229 to 338 of Pakistan Penal code. The new enactment replaced British era criminal laws on bodily hurt and murder with sharia-compliant provisions, as demanded by the Sharia Appellate Bench of Pakistan's Supreme Court. The Criminal Procedure Code was also amended to give legal heirs of a murdered person to enter into compromise and accept Diya compensation, instead of demanding qisas-based retaliatory penalties for murder or bodily hurt. The sharia-compliant Qisas and Diya law made murder a private offense, not a crime against society or state, and thus the pursuit, prosecution, and punishment for murder has become the responsibility of the victim's heirs and guardians. The Pakistan Penal Code modernized the Hanafi doctrine of Qisas and Diya by eliminating distinctions between Muslims and non-Muslims.

Retaliation in homicide cases cannot be dropped or waived unless some conditions are satisfied.[43] The first logical issue is when the accused dies prior to the execution. In this case, paying blood money from his wealth to the relatives of the victim is obligatory. This was held by both Imam Ahmed Ibn Hanbal and Imam Al-Shafi'i. However, both Imam Malik and Imam Abu Hanifa said that no blood money is to be paid in such a case since their right is to take the life of the accused, and the accused has died in this instance. [44]This is valid unless the parties have chosen to waive their rights of retaliation and have accepted the blood money, a decision which may be given up to the point that the offender is to suffer. The second issue where retaliation may be waived is the granting of pardon. Scholars agree that it is permissible to grant pardon in legal retaliation and that this is the better choice. The basis for this is in the Qur'an and the Sunna: as said

> "Qisas is prescribed for you in the case of murder, but whoever is pardoned by his brother (i.e deceased's guardian) against something {blood money} then it should be adhered to properly and the payment should be given to him with good conduct"[45]
>
> "And we ordained for them herein a life for a life, and for wounds is legal retaliation. But whoever gives up his right as charity, it is an expiation for him".[46]

However, discussing the amounts payable as blood money is concern. Since it has already been shown that if retaliation is waived then blood money is obligatory, it is worth examining this topic must be addressed. Even in imposing blood money, the sharia shows that the law is merciful, since it is offering compensation to the relatives who have suffered and lost their loved one. It recompenses them after the death of a family member, and, by direct confiscation of his assets, shows the murderer the consequences of his own action. The blood money is a punishment, but it is a punishment which gives him a new life. Thus, the offender should thank the Lord for this mercy, and think deeply before committing another homicide in

[43] Gillani, DR Syed Hasnat Ahmad Shah. "DOLI INCAPAX AND THE LEGAL CAPACITY OF CHILDREN AND JUVENILES: SHARIA VS. LAW." Contemporary Journal Of Social Science Review 3, No. 4 (2025): 175-182.

[44] Awdah, 'Abd al-Qadir, Al-Tashri' al-Jina'I al-Islami Muqaranan bi-alqanun al-Wad'I (Maktabah Dar al-Turath, 2003)

[45] Al-Qur'an 2-178
[46] Al-Qur'an 5-45

ISSN E: 2709-8273
ISSN P:2709-8265
JOURNAL OF APPLIED LINGUISTICS AND TESOL
JALT

the future.[47] Legal blood money is the amount that it becomes obligatory to pay because of a crime, and it is paid to the victim or his legal representative. It encompasses both the issue of legal retaliation as well as the issue in which there is no legal retaliation. Blood money (Diya) is sometimes called Aql (a collective pledge of compensation).[48] This is derived from a time when the perpetrator killed a victim, and had to pay blood money, would collect the blood money in the form of camels from his tribe. Then he would tie them up in the courtyard outside the house of the relatives of the deceased. The old Arabs, in the pre-Islamic past, practiced a system of blood money. The Holy Qur'an confirmed the principle as it is given that[49]

> "It is not lawful for a believer to kill another except by mistake. And whoever kills a believer unintentionally must free a believing slave and pay blood-money to the victim's family—unless they waive it charitably. But if the victim is a believer from a hostile people, then a believing slave must be freed. And if the victim is from a people bound with you in a treaty, then blood-money must be paid to the family along with freeing a believing slave. Those who are unable, let them fast two consecutive months—as a means of repentance to Allah. And Allah is All-Knowing, All-Wise."

This Qur'anic legislation codified and reformed an older tribal custom. In pre-Islamic Arabia, blood-money (Diya) was routinely practiced as a way to resolve tribal conflicts and prevent endless cycles of blood feuds. The Qur'an adapted this existing system to establish a fair, structured, and legally enforceable framework for justice and repentance. By instituting this law, the Holy Qur'an transitioned blood money from a mere tribal tool of negotiation into a moral and legal obligation. It provided clear guidelines on the compensation (Diya) amounts (often settled in camels), established exceptions for victims belonging to wartime enemies or treaty-bound allies, and offered a system of forgiveness through charity if the victim's family chose to waive the compensation.

8. **Analysis of The Mechanism Of Diya**

The doctrine of Diya occupies a central position within Islamic criminal jurisprudence as a carefully balanced mechanism of restorative justice, designed to protect both the rights of victims and the broader interests of society. Far from being a mere monetary substitute for punishment, Diya represents a divinely sanctioned legal institution derived directly from the Holy Qur'an and the Sunnah of the Prophet Muhammad (peace be upon him). Its legitimacy is firmly established in Surah al-Nisā', [50]which prescribes the payment of Diya to the heirs of the deceased in cases of homicide, and is further elaborated through numerous Prophetic traditions, including the narration reported by Imam Abū Dāwūd specifying the measure of one hundred camels as the standard Diya. [51] Classical Islamic jurisprudence subsequently developed a comprehensive legal framework distinguishing between aggravated (mughallazah) and ordinary (mukhaffafah) Diya, prescribing different modes and periods of payment according to the nature of the offence, whether intentional, quasi-intentional, or accidental. Although the original standard of one hundred camels has, for practical reasons, been translated into its monetary equivalent in contemporary legal systems, the underlying principle remains unchanged: Diya is intended to restore justice

[47] Khan, Muhammad Farooq, Hudud –o-Qisas--o-Diyat Ordinance ka tanqidi ja'iza, Qur'an -o-Sunnat ki roshani men (Peshawar: Aurat Foundation, 2004)

[48] Awdah, 'Abd al-Qadir, Al-Tashri' al-Jina'I al-Islami Muqaranan bi-alqanun al-Wad'I (Maktabah Dar al-Turath, 2003)

[49] Al-Qur'an 4;92
[50] Qur'an 4:92
[51] Sunan Abī Dāwūd, Hadith 4541

ISSN E: 2709-8273
ISSN P:2709-8265
JOURNAL OF APPLIED LINGUISTICS AND TESOL
JALT

through lawful compensation while preserving social harmony and preventing cycles of retaliation. The amount of Diya is therefore not an arbitrary figure but a legally prescribed standard rooted in divine revelation and refined through centuries of juristic interpretation. Much of the contemporary criticism directed against Diya arises not from any inherent deficiency in the doctrine itself but from misconceptions regarding its nature and from failures in its implementation. The suggestion that Diya enables affluent offenders to purchase immunity from criminal liability overlooks the broader structure of Islamic criminal law, in which Diya operates alongside Qisas, Ta'zir, and the overarching principles of Siyāsah al-Sharʿiyyah. Islamic jurisprudence never envisages Diya as a mechanism for shielding offenders from accountability or legitimizing coercive settlements. Rather, forgiveness and compensation are recognized only where they are voluntary and consistent with the interests of justice. Where compromise is procured through intimidation, abuse of influence, or where the offence gives rise to fasād fi al-arḍ (corruption and disorder in society), the state retains both the authority and the obligation to impose appropriate punishment in order to safeguard public order and uphold the rule of law. Consequently, instances of abuse reflect deficiencies in governance, enforcement, and societal practice rather than defects in the doctrine of Diya itself. Properly understood, Diya embodies one of the most sophisticated features of Islamic criminal justice, harmonizing the objectives of retribution, restitution, mercy, reconciliation, and deterrence within a coherent legal framework that seeks to preserve both individual rights and the collective welfare of society.

Conclusion

The discussion above demonstrates that the institution of Diya is founded upon the fundamental objectives of Islamic criminal law: the preservation of human life, the administration of justice, the prevention of crime, and the maintenance of social order. Rather than constituting a mere financial payment, Diya is a penal mechanism that combines punishment with compensation, imposing a substantial financial burden upon the offender while simultaneously providing restitution to the victim or the victim's heirs. Its purpose is not only to compensate for the harm caused but also to deter future offending, encourage repentance, and remind the offender of the mercy inherent in Islamic law, which affords an opportunity for reform instead of perpetual retaliation. More broadly, the Islamic system of punishments is designed to protect both individual rights and the collective welfare of society by ensuring that penalties are proportionate, preventive, reformative, and socially beneficial, while also serving an important educative and deterrent function. Nevertheless, the practical application of the Qisas and Diya laws in Pakistan continues to raise significant jurisprudential concerns. A critical question remains whether Pakistani courts consistently interpret and apply these provisions in accordance with the injunctions of the Holy Qur'an and the Sunnah, as mandated by section 338(F) of the Pakistan Penal Code, and whether sufficient reliance is

ISSN E: 2709-8273
ISSN P:2709-8265
JOURNAL OF APPLIED LINGUISTICS AND TESOL
JALT

placed upon the principles of classical Islamic criminal jurisprudence in resolving contemporary legal issues.

The historical predominance of the common law tradition, coupled with the limited specialized training in Islamic criminal jurisprudence among segments of the legal fraternity, has contributed to inconsistent judicial approaches, particularly regarding the effect of waiver or compromise by the legal heirs where conviction is recorded on a Ta'zir basis. These inconsistencies have resulted in conflicting decisions by the High Courts and the Supreme Court of Pakistan. Accordingly, the effective realization of the objectives of Qisas and Diya requires not only faithful adherence to the Qur'an and Sunnah but also the development of a coherent and principled judicial methodology that harmonizes statutory interpretation with the established principles of classical Islamic jurisprudence, thereby ensuring consistency, legal certainty, and the proper administration of justice.

Bibliography

1. Al-Qur’an.
2. Awdah, ‘Abd al-Qadir. 2003. Al-Tashri‘ al-Jina’i al-Islami Muqaranan bi-al-Qanun al-Wad‘i. Maktabah Dar al-Turath.
3. Audah, Abdul Qadir. 1997. At-Tashri‘ Al-Jinai’ Al-Islami. Vol. 1. Dar Al-Katib Al-Arabi.
4. Council of Islamic Ideology. 1979. Annual Report of the Council of Islamic Ideology 1978–79. Islamabad: Council of Islamic Ideology.
5. Council of Islamic Ideology. 1988. Three Shari‘ah Draft Laws. Islamabad: Council of Islamic Ideology.
6. Council of Islamic Ideology. 1981. Draft Ordinance Relating to the Law of Qisas and Diyat. Islamabad: Council of Islamic Ideology.
7. DeLong-Bas, Natana J. 2000–2001. “The Islamization of Law in Pakistan by Rubia Mehdi.” Journal of Law and Religion 15, no. 1/2. Cambridge University Press.
8. Gilsenan, Michael. 1996. Lords of the Lebanese Marches: Violence and Narrative in an Arab Society. Berkeley: University of California Press.
9. Gillani, Syed Hasnat Ahmad Shah. 2025. “Doli Incapax and the Legal Capacity of Children and Juveniles: Sharia vs. Law.” Contemporary Journal of Social Science Review 3, no. 4.
10. Gottesman, Evan. 1991–1992. “The Reemergence of Qisas and Diyat in Pakistan.” Columbia Human Rights Law Review 23.
11. Ghazi, Mehmood Ahmad. 1986. Musawwadah Qanun-e-Qisas wa Diyat. Islamabad: Islamic Research Institute, International Islamic University.
12. Idris, Evaz Ahmad. 1998. Blood Money. Translated by Ali Feiz. Tehran: Ministry of Culture.
13. Khan, Muhammad Farooq. 2004. Hudud-o-Qisas-o-Diyat Ordinance ka Tanqidi Ja’iza, Qur’an-o-Sunnat ki Roshni Men. Peshawar: Aurat Foundation.
14. Lippman, Matthew. 1989. “Islamic Criminal Law and Procedure: Religious Fundamentalism v. Modern Law.” Boston College International and Comparative Law Review 12.
15. Manzoor, Saima, Abiha Munir, Eman Fatima, and Alishba Zia. 2025. “Justice on Trial: Investigative Strengths, Systemic Weaknesses, and Gendered Implications in the Noor Mukadam Case.” Journal of Political Stability Archive 3, no. 3.

ISSN E: 2709-8273
ISSN P:2709-8265
JOURNAL OF APPLIED LINGUISTICS AND TESOL
JALT

16. Manzoor, Saima, Harram Fatima, Tayyba Khan, and Zain Ali. 2025. "Criminal Justice Response to Personal Revenge Homicides in Pakistan: A Case Study of FIR No. 591/2012." Journal of Political Stability Archive 3, no. 4.
17. Mumisa, Michael. 2015. "Sharia Law and the Death Penalty." Penal Reform International.
18. Nst, Abdul Saman. 2025. "National Law: Sharia Law as an Instrument for Protecting Human Rights (HAM) in Islam." Jurnal Hukum dan Keadilan 2, no. 6.
19. Pascoe, Daniel. 2016. "Is Diya a Form of Clemency?" Boston University International Law Journal 34.
20. Peter, Rudolph. 2007. "Crime and Punishment in Islamic Law." Journal of Islamic Studies 18, no. 2. Oxford University Press.
21. Pakistan. 1973. The Constitution of the Islamic Republic of Pakistan. Islamabad: Government of Pakistan.
22. Pakistan. 1979. Enforcement of Hudood Ordinances. Islamabad: Government of Pakistan.
23. Pakistan. 1990. Qisas and Diyat Ordinance, Ordinance No. VII of 1990. Promulgated by the President of Pakistan on September 5, 1990. Islamabad: Government of Pakistan.
24. Pakistan. 1997. Criminal Law (Second Amendment) Act, 1997. Islamabad: Government of Pakistan.
25. Pakistan. 1860. Pakistan Penal Code. Islamabad: Government of Pakistan.
26. Rushdi, Ismail. n.d. Al-Jinayat. Chapter 3. Beirut: Maktabah al-Qalam.
27. Islamic Justice System and Judicial Model of Azad Jammu & Kashmir. 2021. Hazaraislamicus 10, no. 2.
28. "Legitimate Expectations and Pre-Contractual Duties of Contracting Parties: Reconciling Islamic-Law Minimalism with Doctrines of Pre-Contractual Good Faith." 2025. Journal of Bahiseen, April–June.
29. Ibn Nujaym, Zayn al-'Abidin ibn Ibrahim. n.d. Al-Bahr al-Ra'iq Sharh Kanz al-Daqa'iq. Beirut: Dar al-Ma'rifah.
30. Sunan Abi Dawud. n.d.
31. Gul Hassan Khan v. Government of Pakistan. 1980. PLD 1980 Peshawar 1.
32. Government of Pakistan v. Gul Hassan Khan. 1989. PLD 1989 SC 633.
33. Muhammad Riaz v. Federal Government. 1980. PLD 1980 FSC 1.