

Conceptual Change in the Law of Medicolegal Certification of Injuries

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The Laws relating the offences against the human body has completely changed with the promulgation of the Criminal Law Ordinance, commonly called Qisas and Diyat Law but the doctors in their medicolegal certificates still express their opinions according to the previous law, which causes problem for the courts to assess the true nature of injury. This practice should immediately be stopped as it confuses the facts, dims the issue and hinders the dispensation of justice. Qisas and Diyat Law has introduced new classification of hurt (injury), which is more clear and elaborate. Besides, this law has provided compensation for physical sufferings due to criminal hurts for the first time in Pakistan. The provisions for the grant of compensation for criminal damages are Arsh, Daman and diyat. In addition there is a provision of qisas. These legal terms should be clearly understood before undertaking medico legal certification.

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Our Law regarding hurt has completely changed more than a decade ago but the certifying doctors in their medicolegal certificates still express their opinions in the language of old law, which create problem for the court to assess the exact nature of injury. Such practice does not serve the desired purpose and should therefore be immediately stopped¹.

The previous law that concerns with the offences relating to human body and was in vogue since the creation of Pakistan was in fact the adaptation from the Indian Penal Code of 1860, broadly classifying injuries into simple and grievous hurts. This law has been radically changed with the promulgation of the Criminal Law (2nd Amendment) Ordinance 1991, commonly called Qisas and Diyat Ordinance 1991, which bring bodily injuries, and their punishments in conformity with the injunctions of Islam as laid down in the Holy Qur'an and Sunnah². Having deep roots in our heritage, this Islamic criminal law has prevailed in the Muslim India up to 1772 A.D. and was than gradually transformed and Anglicized by the British invaders over the next century^{3,4}.

The ideological foundations of Pakistan are embodied in our constitution where Islam is the state religion and sovereignty belongs to Allah Almighty alone and Shariat is the supreme source of law in the country^{5,6}. The promulgation of the Ordinance gave rebirth to the law of the land. The present law was enacted as a result of the Supreme Court's verdict, which has directed to include Islamic punishments and also provide their benefits to people⁷. These punishments are the cardinal feature of this law.

In Muslim law, personal injury is considered as violation of public as well as private right, where the latter preponderates⁴. The retaliation is the superior right of the victim, who has the option to seek enforcement of punishment or pardon the culprit. Therefore the state prerogative of pardoning has been ceased. The 'English' Law (as contained in the Pakistan Penal Code, before

1990), made no distinction between the felony of wounding and any other crime. Every crime was offence against the state.

Qisas, retaliation is a deterrent punishment⁸. It consists of the infliction by the injured person (or heirs of deceased) of similar injury (or death) upon the convict⁹. Qisas is available in all intentional hurts except in breaking bones¹⁰. However, being the right of the private person (or his heirs) the retaliation is inflicted upon their demand and the law allows that the offence may be compounded. Qisas and Diyat Law deals tort and crime together make compensation for victim an essential element¹¹. Diyat is blood money for loss of life. Arsh is a fixed percentage of diyat, which may amount to diyat in causing loss of an organ found singly in human body. The loss of every organ or its part due to physical assault has been estimated in terms of monetary compensation for the first time in Pakistan².

Ta'zir, discretionary punishment, the only punishment under the previous law has been enhanced and its new provision is Daman – a general compensation available to the victim as in medical negligence.

The Islamic law is unique that it recommends the waiver (Afw) of retaliation as well¹². The comprehensive substituted law classifies hurts on the basis of the part of the body involved and the manner of their infliction².

A rare feature introduced is the topographic scheme of hurts and their elaborate stratification. The head and face injuries (Shajjah) are considered more harmful than those inflicted elsewhere (Jurh¹³). Shajjah has six grades depending upon the depth and severity. These range from superficial soft tissue injury (Shajjah-i-Khaffifah) to a wound reaching to membranes of the brain (Shajjah-i-Ammah) or rupturing them (Shajjah-I-Damighah). Between these extremes lie the hurts of exposing skull bone (Shajjah-i-Mudihah), fracturing it (Shajjah-i-Hashimah) and fracturing it with dislocation (Shajjah-i-Munaqqilah). In Jurh, an injury penetrating into the body

cavities is called Jaifa and any injury short of that as Ghayr-Jaifa, with its six subtypes similar to those of the Shajjah in general. Destruction of an organ (Itlaf-i-Udw) or loss of its function (Itlaf-i-Salahiyyat-i-Udw) are liable to Qisas. Most injuries in Shajjah and the Jaifa deserve 'Arsh' and for Ghayr-Jaifa the punishment of Daman is prescribed in the Law.

The old law of wounding classified hurts into two general types, simple and grievous, omitting what might be in between. This division of injuries was too broad and sweeping and it is interesting to note that the phrases simple hurt and grievous hurt were not even defined¹⁴.

Very few people can be ignorant of enormous amount of suffering caused by trauma¹⁵. Trauma is important health problem of our times, a major challenge to medical profession, to law enforcement agencies and to the public at large. The examination of injuries being subject of medicolegal inquiry is conducted on requisition of certain authorities. The first hand knowledge is set out into an injury report, by the Authorized Medical Officer, who submits his assessment regarding the severity and causation of injury for help of the police and courts^{16, 17}.

In the pursuit of truth, medicine has to play a vital role in detection of error and conviction of guilt¹⁸. However some doctors wrongly believe that medico legal work is unnecessary and due to this attitude the administration of justice through medical evidence is hampered^{18, 19}.

The machinery of administration of justice depends on and expects from the medical profession to respond to its queries with accuracy and reasonable certainty²⁰. Likewise the medical man should be conversant at least with law of crimes, notably sections related to assault, wounding and homicide as his duty to keep him abreast of knowledge, which is related to this filed^{21, 22}.

The usefulness of auxiliary service in trials such as medical input not only depends on its soundness but also the way it is presented to enlighten the custodian of law. Because evidence in certain forms is admissible in the court, the scientific conclusion needs to be expressed with precision and clarity and in language, which meets the requirements of the law^{23, 24}.

Rules for evidence in criminal law are very strict, particularly in crimes against the person. The medico legal officer is advised to give conclusive opinion to prove or disprove any fact in question¹¹. For that, our current law is a source of objective and uniform trauma reporting, in which more than twenty hurts are described as 'explicit statements', each under a separate section of law, with a designated Arabic title²⁵. Qisas and Diyat law has its own philosophy and a scope to which no other law can reach, therefore using terms of Indian Penal Code, simple / grievous hurts 'as an opinion' has no justification and validity²⁶. Such practice confuses the facts, dims the issue

and hinders the dispensation of justice – the ultimate aim of the society²⁷.

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