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PART I

Acts, Ordinances, President's Orders and Regulations

SENATE SECRETARIAT

Islamabad, the 11th April, 1997

The following Act of Majlis-e-Shoora (Parliament) received the assent of the President on the 10th April, 1997, is hereby published for general information:—

ACT No. II OF 1997

An Act further to amend the Pakistan Penal Code, 1860, and the Code of Criminal Procedure, 1898

WHEREAS it is expedient further to amend the Pakistan Penal Code, 1860 (Act XLV of 1860), and the Code of Criminal Procedure, 1898 (Act V of 1898), to bring them in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah ;

It is hereby enacted as follows :—

1. **Short title and commencement.**—(1) This Act may be called the Criminal Law (Amendment) Act, 1997.

(383)

Price : Rs. 30.50

[753(97) Ex. Gaz.]

(2) It shall come into force at once.

2. **Substitution of section 53, Act XLV of 1860.**—In the Pakistan Penal Code, 1860 (Act XLV of 1860), hereinafter referred to as the Penal Code, for section 53, the following shall be substituted, namely :—

“53. **Punishments.**—The punishments to which offenders are liable under the provisions of this Code are,—

Firstly, *Qisas* ;

Secondly, *Diyat* ;

Thirdly, *Arsh* ;

Fourthly, *Daman* ;

Fifthly, *Ta'zir* ;

Sixthly, Death ;

Seventhly, Imprisonment for life ;

Eighthly, Imprisonment which is of two descriptions, namely :—

(i) Rigorous *i.e.*, with hard labour ;

(ii) Simple ;

Ninthly, Forfeiture of property ;

Tenthly, Fine.”

3. **Amendment of section 54, Act XLV of 1860.**—In the Penal Code, in section 54, for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely :—

“Provided that, in a case in which sentence of death shall have been passed against an offender convicted for an offence of *qatl*, such sentence shall not be commuted without the consent of the heirs of the victim.”

4. **Amendment of section 55, Act XLV of 1860.**—In the Penal Code, in section 55, for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely :—

“Provided that, in a case in which sentence of imprisonment for life shall have been passed against an offender convicted for an offence punishable under Chapter XVI, such punishment shall not

be commuted without the consent of the victim or, as the case may be, of his heirs.”.

5. **Amendment of section 55A, Act XLV of 1860.**—In the Penal Code, in section 55A, for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely :—

“Provided that such right shall not, without the consent of the victim or, as the case may be, of the heirs of the victim, be exercised for any sentence awarded under Chapter XVI.”.

6. **Amendment of section 109, Act XLV of 1860.**—In the Penal Code, in section 109, for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely :—

“Provided that, except in case of *Ikrah-i-Tam* (اكره تام), the abettor of an offence referred to in Chapter XVI shall be liable to punishment of *ta'zir* specified for such offence including death.”.

7. **Substitution of sections 299 to 338, Act XLV of 1860.**—(1) In the Penal Code, for sections 299 to 338 the following shall be substituted, namely :—

“299. **Definitions.**— In this Chapter, unless there is anything repugnant in the subject or context,—

- (a) “adult” means a person who has attained the age of eighteen years ;
- (b) “*arsh*” (ارش) means the compensation specified in this Chapter to be paid to the victim or his heirs under this Chapter ;
- (c) “authorised medical officer” means a medical officer or a Medical Board, howsoever designated, authorised by the Provincial Government ;
- (d) “*daman*” (ضمان) means the compensation determined by the court to be paid by the offender to the victim for causing hurt not liable to *arsh* (ارش) ;
- (e) “*diyat*” (دیت) means the compensation specified in section 323 payable to the heirs of the victim ;
- (f) “Government” means the Provincial Government ;
- (g) “*ikrah-e-tam*” (اكره تام) means putting any person, his spouse or any of his blood relations within the prohibited

degree of marriage in fear of instant death or instant permanent impairing of any organ of the body or instant fear of being subjected to sodomy or *zina-bil-jabr* ;

- (h) "*ikrah-e-naqis*" (اكره ناقص) means any form of duress which does not amount to *ikrah-i-tam* ;
- (i) "minor" means a person who is not an adult ;
- (j) "*qatl*" (قتل) means causing death of a person ;
- (k) "*qisas*" (قصاص) means punishment by causing similar hurt at the same part of the body of the convict as he has caused to the victim or by causing his death if he has committed *qatl-i-amd* in exercise of the right of the victim or a *wali* ;
- (l) "*ta'zir*" (تعزير) means punishment other than *qisas* (قصاص), *diyat* (ديت), *arsh* (ارش) or *daman* (ضمان) ; and
- (m) "*wali*" (ولي) means a person entitled to claim *qisas*.

300. *Qatl-e-amd*.— Whoever, with the intention of causing death or with the intention of causing bodily injury to a person, by doing an act which in the ordinary course of nature is likely to cause death, or with the knowledge that his act is so imminently dangerous that it must in all probability cause death, causes the death of such person, is said to commit *qatl-e-amd*.

301. *Causing death of person other than the person whose death was intended*.— Where a person, by doing anything which he intends or knows to be likely to cause death, causes death of any person whose death he neither intends nor knows himself to be likely to cause, such an act committed by the offender shall be liable for *qatl-i-amd*.

302. *Punishment of qatl-i-amd*.— Whoever commits *qatl-e-amd* shall, subject to the provisions of this Chapter be—

- (a) punished with death as *qisas* ;
- (b) punished with death or imprisonment for life as *ta'zir* having regard to the facts and circumstances of the case, if the proof in either of the forms specified in section 304 is not available ; or
- (c) 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.

303. Qatl committed under ikrah-i-tam or ikrah-i-naqis.— Whoever commits *qatl*,—
- (a) under *Ikrah-i-tam* shall be punished with imprisonment for a term which may extend to twenty-five years but shall not be less than ten years and the person causing '*ikrah-i-tam*' shall be punished for the kind of *qatl* committed as a consequence of his *ikrah-i-tam*; or
 - (b) under '*ikrah-i-naqis*' shall be punished for the kind of *qatl* committed by him and the person causing '*ikrah-i-naqis*' shall be punished with imprisonment for a term which may extend to ten years.
304. Proof of qatl-i-amd liable to qisas, etc.— (1) Proof of *qatl-i-amd* shall be in any of the following forms, namely :—
- (a) the accused makes before a court competent to try the offence a voluntary and true confession of the commission of the offence; or
 - (b) by the evidence as provided in Article 17 of the Qanun-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*.
305. Wali.—In case of *qatl*, the *wali* shall be—
- (a) the heirs of the victim, according to his personal law; and
 - (b) the Government, if there is no heir.
306. Qatl-i-amd not liable to qisas.—*Qatl-i-amd* shall not be liable to *qisas* in the following cases, namely :—
- (a) when an offender is a minor or insane :
Provided that, where a person liable to *qisas* associates 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*;
 - (b) when an offender causes death of his child or grandchild, how low-so-ever; and
 - (c) when any *wali* of the victim is a direct descendant, how low-so-ever, of the offender.

307. Cases in which Qisas for qatl-i-amd shall not be enforced .— (1) Qisas for qatl-i-amd, shall not be enforced in the following cases, namely :—

- (a) when the offender dies before the enforcement of *qisas* ;
 - (b) when any *wali* voluntarily and without duress, to the satisfaction of the court, waives the right of *qisas* under section 309 or compounds under section 310 ; and
 - (c) when the right of *qisas* devolves on the offender as a result of the death of the *wali* of the victim, or on the person who has no right of *qisas* against the offender.
- (2) To satisfy itself that the *wali* has waived the right of *qisas* under section 309 or compounded the right of *qisas* under section 310 voluntarily and without duress the court shall take down the statement of the *wali* and such other persons as it may deem necessary on oath and record an opinion that it is satisfied that the waiver or, as the case may be, the composition, was voluntary and not the result of any duress.

Illustration

- (i) A kills Z, the maternal uncle of his son B. Z has no other *wali* except D the wife of A. D has the right of *qisas* from A. But if D dies, the right of *qisas* shall devolve on her son B who is also the son of the offender A. B cannot claim *qisas* against his father. Therefore, the *qisas* cannot be enforced.
- (ii) B kills Z, the brother of her husband A. Z has no heir except A. Here A can claim *qisas* from his wife B. But if A dies, the right of *qisas* shall devolve on his son D who is also son of B, the *qisas* cannot be enforced against B.

308. Punishment in qatl-i-amd not liable to qisas, etc.—(1) Where an offender guilty of *qatl-i-amd* is not liable to *qisas* under section 306 or the *qisas* is not enforceable under clause (c) of section 307, he shall be liable to *diyat* :

Provided that, where the offender is minor or insane, *diyat* shall be payable either from his property or, by such person as may be determined by the court :

Provided further that where at the time of committing *qatl-i-amd* the offender being a minor, had attained sufficient maturity or being

insane, had a lucid interval, so as to be able to realize the consequences of his act, he may also be punished with imprisonment of either description for a term which may extend to fourteen years as *ta'zir* :

Provided further that, where the *qisas* is not enforceable under clause (c) of section 307, the offender shall be liable to *diyat* only if there is any wali other than offender and if there is no wali other than the offender, he shall be punished with imprisonment of either description for a term which may extend to fourteen years as *ta'zir*.

- (2) Notwithstanding anything contained in sub-section (1), the court, having regard to the facts and circumstances of the case in addition to the punishment of *diyat*, may punish the offender with imprisonment of either description for a term which may extend to fourteen years, as *ta'zir*.

309. Waiver (Afw) (عفو) 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—

- (a) where the Government is the wali ; or
 (b) where the right of *qisas* vests in a minor or insane.
- (2) Where a victim has more than one Wali any one 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 *qisas* by the wali of one victim shall not affect the right of *qisas* of the wali of 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.

310. Compounding of qisas (Sulh) (صلح) 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 giving a female in marriage shall not be a valid *badal-i-sulh* (بدل صلح).

- (2) Where a *wali* is a minor or an insane, the *wali* of such minor or insane *wali* may compound the right of *qisas* on behalf of such minor or insane *wali* :

Provided that the value of *badal-i-sulh* shall not be less than the value of *diyat*.

- (3) Where the Government is the *wali*, it may compound the right of *qisas* :

Provided that the value of *badal-i-sulh* shall not be less than the value of *diyat*.

- (4) Where the *badal-i-sulh* is not determined or is a property or a right the value of which cannot be determined in terms of money under *Shari'ah* (شريعة), the right of *qisas* shall be deemed to have been compounded and the offender shall be liable to *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*.

Explanation.— In this section, *Badal-i-sulh* means the mutually agreed compensation according to *Shari'ah* to be paid or given by the offender to a *wali* in cash or in kind or in the form of moveable or immovable property.

311. *Ta'zir after waiver or compounding of right of qisas in qatl-i-amd.*—Notwithstanding anything contained in section 309 or section 310, where all the *wali* do not waive or compound the right of *qisas*, or keeping in view the principle of *fasad-fil-arz* (فساد في الارض), the court may, in its discretion having regard to the facts and circumstances of the case, punish an offender against whom the right of *qisas* has been waived or compounded with imprisonment of either description for a term of which may extend to fourteen years as *ta'zir*.

Explanation.— For the purpose of this section, the expression *fasad-fil-arz* (فساد في الارض) shall include the past conduct of the offender, or whether he has any previous convictions, or the brutal or shocking manner in which the offence has been committed which is outrageous to the public conscience, or if the offender is considered a potential danger to the community.

312. *Qatl-i-amd after waiver or compounding of qisas.*—Where a *wali* commits *qatl-i-amd* of a convict against whom the right of *qisas*

has been waived under section 309 or compounded under section 310, such *wali* shall be punished with—

- (a) *qisas*, if he had himself waived or compounded the right of *qisas* against the convict or had knowledge of such waiver of composition by another *wali*; or
- (b) *diyat*, if he had no knowledge of such waiver or composition.

313. Right of *qisas* in *qatl-i-amd*.—(1) Where there is only one *wali*, he alone has the right of *qisas* in *qatl-i-amd* but, if there are more than one, the right of *qisas* vests in each of them.

(2) If the victim—

- (a) has no *wali*, the Government shall have the right of *qisas*; or
- (b) has no *wali* other than a minor or insane or one of the *wali* is a minor or insane, the father or if he is not alive the paternal grandfather of such *wali* shall have the right of *qisas* on his behalf :

Provided that, if the minor or insane *wali* has no father or paternal grandfather, how high-so-ever, alive and no guardian has been appointed by the court, the Government shall have the right of *qisas* on his behalf.

314. Execution of *qisas* in *qatl-i-amd*.—(1) *Qisas* in *qatil-i-amd* shall be executed by a functionary of the Government by causing death of the convict as the court may direct.

(2) *Qisas* shall not be executed until all the *wali* are present at the time of execution, either personally or through their representatives authorised by them in writing in this behalf :

Provided that where a *wali* or his representative 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 authorised 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 consultation with an authorised medical officer, postpone the execution of *qisas* upto a 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.

315. Qatl shibh-i-'amd.—Whoever, with intent to cause harm to the body or mind of any person, causes the death of that or of 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*.

Illustration

A in order to cause hurt strikes Z with a stick or stone which in the ordinary course of nature is not likely to cause death. Z dies as a result of such hurt. A shall be guilty of *qatl shibh-i-'amd*.

316. Punishment for qatl shibh-i-'amd.—Whoever commits *qatl shibh-i-'amd* shall be liable to *diyat* and may also be punished with imprisonment of either description for a term which may extend to fourteen years as *ta'zir*.

317. Person committing qatl debarred from succession.—Where a person committing *qatl-i-amd* or *qatl shibh-i-amd* is an heir or a beneficiary under a will, he shall be debarred from succeeding to the estate of the victim as an heir or a beneficiary.

318. Qatl-i-khata .—Whoever, without any intention to cause 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-i-khata*.

Illustration

- (a) A aims at a deer but misses the target and kills Z who is standing by. A is guilty of *qatl-i-khata*.
- (b) A shoots at an object to be a boar but it turns out to be a human being. A is guilty of *qatl-i-khata*.

319. Punishment for qatl-i-khata.—Whoever commits *qatl-i-khata* shall be liable to *diyat* :

Provided that, where *qatl-i-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 as *ta'zir*.

320. Punishment for qatl-i-khata by rash or negligent driving.—Whoever commits *qatl-i-khata* by rash or negligent driving shall, having regard to the facts and circumstances of the case, in addition to *diyat*, be punished with imprisonment of either description for a term which may extend to ten years.
321. Qatl-bis-sabab.—Whoever, without any intention to cause death of, or cause harm to, any person, does any unlawful act which becomes a cause for the death of another person, is said to commit *qatl-bis-sabab*.

Illustration

A unlawfully digs a pit in the thoroughfare, but without any intention to cause death of, or harm to, any person. B while passing from there falls in it and is killed. A has committed *qatl-bis-sabab*.

322. Punishment for qatl-bis-sabab.—Whoever commits *qatl-bis-sabab* shall be liable to *diyat*.
323. Value of diyat.—(1) 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.
- (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.
324. Attempt to commit qatl-i-amd.—Whoever does any act with such intention or knowledge, and under such circumstances, that, if he by that act caused *qatl*, he would be guilty of *qatl-i-amd*, shall be punished with imprisonment for either description for a term which may extend to ten years, and shall also be liable to fine, and, if hurt is caused to any person by such act, the offender shall, in addition to the imprisonment and fine as aforesaid, be liable to the punishment provided for the hurt caused :
- Provided that, where the punishment for the hurt is *qisas* which is not executable, the offender shall be liable to *arsh* and may also be punished with imprisonment of either description for a term which may extend to seven years.
325. Attempt to commit suicide.—Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be

punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

326. Thug.—Whoever shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with *qatl*, is a thug.

327. Punishment.—Whoever is a thug, shall be punished with imprisonment for life and shall also be liable to fine.

328. Exposure and abandonment of child under twelve years by parent or person having care of it.—Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—This section is not intended to prevent the trial of the offender for *qatl-i-amd* or *qatl-i-shibh-i-amd* or *qatl-bis-sabab*, as the case may be, if the child dies in consequence of the exposure.

329. Concealment of birth by secret disposal of dead body.—Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child dies before or after or during its birth, intentionally conceals or endeavours to conceal the birth shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

330. Disbursement of diyat.—The *diyat* shall be disbursed among the heirs of the victim according to their respective shares in inheritance :

Provided that, where an heir foregoes his share, the *diyat* shall not be recovered to the extent of his share.

331. Payment of Diyat.—(1) The *diyat* may be made payable in lump-sum or in instalments spread over a period of three years from the date of the final judgement.

(2) Where a convict fails to pay *diyat* or any part thereof 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 equivalent to the amount of *diyat* to the satisfaction of the court.

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

332. Hurt.—(1) Whoever causes pain, harm, disease, infirmity or injury to any person or impairs, disables or dismembers any organ of the body or part thereof of any person without causing his death, is said to cause hurt.

- (2) The following are the kinds of hurt :—

- (a) *Itlaf-i-udw* اتلاف عضو
 (b) *itlaf-i-salahiyyat-i-udw* اتلاف صلاحیت عضو
 (c) *shajjah* شجہ
 (d) *jurh* جرح ; and
 (e) all kinds of other hurts.

333. Itlaf-i-udw.—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-i-udw.—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-salahiyyat-i-udw.—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-salahiyyat-i-udw*.

336. Punishment for itlaf-i-salahiyyat-i-udw.—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-salahiyyat-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*.

337. *Shajjah*.—(1) Whoever causes, on the head or face of any person, any hurt which does not amount to *itlaf-i-udw* or *itlaf-i-salahiyyat-i-udw*, is said to cause *shajjah*.

(2) The following are the kinds of *shajjah*, namely :—

| | | |
|---------------------------------|------------|-------|
| (a) <i>Shajjah-i-Khafifah</i> | شجہ خفیفہ | ; |
| (b) <i>Shajjah-i-mudihah</i> | شجہ موضعیہ | ; |
| (c) <i>Shajjah-i-hashimah</i> | شجہ ہاشمہ | ; |
| (d) <i>Shajjah-i-munaqqilah</i> | شجہ منقولہ | ; |
| (e) <i>Shajjah-i-ammah</i> | شجہ امہ | ; and |
| (f) <i>Shajjah-i-damighah</i> | شجہ دامیغہ | |

(3) Whoever causes *shajjah*,—

- (i) without exposing bone of the victim, is said to cause *shajjah-i-khafifah* ;
- (ii) by exposing any bone of the victim without causing fracture, is said to cause *shajjah-i-mudihah* ;
- (iii) by fracturing the bone of the victim, without dislocating it, is said to cause *shajjah-i-hashimah* ;
- (iv) by causing fracture of the bone of the victim and thereby the bone is dislocated, is said to cause *shajjah-i-munaqqilah* ;
- (v) by causing fracture of the skull of the victim so that the wound touches the membrane of the brain, is said to cause *shajjah-i-ammah* ;
- (vi) by causing fracture of the skull of the victim and the wound ruptures the membrane of the brain is said to cause *shajjah-i-damighah*.

337A. *Punishment of shajjah*.—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—

- (i) *Shajjah-i-khafifah* to any person, shall be liable to *daman* and may also be punished with imprisonment of either description for a term which may extend to two years as *ta'zir* ;

- (ii) *shajjah-i-mudihah* to 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 convict shall be liable to *arsh* which shall be five per cent of the *diyat* and may also be punished with imprisonment of either description for a term which may extend to five years as *ta'zir* ;
- (iii) *shajjah-i-hashimah* to any person, shall be liable to *arsh* which shall be ten per cent of the *diyat* and may also be punished with imprisonment of either description for a term which may extend to ten years as *ta'zir* ;
- (iv) *shajjah-i-munaqqilah* to any person, shall be liable to *arsh* which shall be fifteen per cent of the *diyat* and may also be punished with imprisonment of either description for a term which may extend to ten years as *ta'zir* ;
- (v) *shajjah-i-ammah* to any person, shall be liable to *arsh* which shall be one-third of the *diyat* and may also be punished with imprisonment of either description for a term which may extend to ten years as *ta'zir* ; and
- (vi) *shajjah-i-damighah* to any person shall be liable to *arsh* which shall be one-half of *diyat* and may also be punished with imprisonment of either description for a term which may extend to fourteen years as *ta'zir*.

337B. *Jurh*.—(1) Whoever causes on any part of the body of a person, other than the head or face, a hurt which leaves a mark of the wound, whether temporary or permanent, is said to cause *jurh*.

(2) *Jurh* جرح is of two kinds, namely :—

(a) Jaifah جانفہ ; and

(b) Ghayr-jaifah غير جانفہ

337C. *Jaifah*.—Whoever causes *jurh* in which the injury extends to the body cavity of the trunk, is said to cause *jaifah*.

337D. *Punishment for jaifah*.—Whoever by doing any act with the intention of causing hurt to a person or with the knowledge that he is

likely to cause hurt to such person, causes *jaifah* to such person, shall be liable to *arsh* which shall be one-third of the *diyat* and may also be punished with imprisonment of either description for a term which may extend to ten years as *ta'zir*.

337E. *Ghayr-jaifah*.—(1) Whoever causes *jurh* which does not amount to *jaifah*, is said to cause *ghayr-jaifah*.

(2) The following are the kinds of *ghayr-jaifah*, namely :—

- (a) *damihah* دامیه ;
- (b) *badi'ah* باصغہ ;
- (c) *mutalahimah* متلاحصہ ;
- (d) *mudihah* موضغہ ;
- (e) *hashimah* ہاشمہ ; and
- (f) *munaqqilah* منقلدہ

(3) Whoever causes *ghayr-jaifah*—

- (i) in which the skin is ruptured and bleeding occurs, is said to cause *damiyah* ;
- (ii) by cutting or incising the flesh without exposing the bone, is said to cause *badi'ah* ;
- (iii) by lacerating the flesh, is said to cause *mutalahimah* ;
- (iv) by exposing the bone, is said to cause *mudihah* ;
- (v) by causing fracture of a bone without dislocating it, is said to cause *hashimah* ; and
- (vi) by fracturing and dislocating the bone, is said to cause *munaqqilah*.

337F. *Punishment of ghayr-jaifah*.—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—

- (i) *damihah* to any person, shall be liable to *daman* and may also be punished with imprisonment of either description for a term which may extend to one year as *ta'zir* ;

- (ii) *badi'ah* to any person, shall be liable to *daman* and may also be punished with imprisonment of either description for a term which may extend to three years as *ta'zir* ;
- (iii) *mutalahimah* to any person, shall be liable to *daman* and may also be punished with imprisonment of either description for a term which may extend to three years as *ta'zir* ;
- (iv) *mudihah* to any person, shall be liable to *daman* and may also be punished with imprisonment of either description for a term which may extend to five years as *ta'zir* ;
- (v) *hashimah* to any person, shall be liable to *daman* and may also be punished with imprisonment of either description for a term which may extend to five years as *ta'zir* ; and
- (vi) *munaqqilah* to any person, shall be liable to *daman* and may also be punished with imprisonment of either description for a term which may extend to seven years as *ta'zir*.

337G. Punishment for hurt by rash or negligent driving.—Whoever causes hurt by rash or negligent driving shall be liable to *arsh* or *daman* specified for the kind of hurt caused and may also be punished with imprisonment of either description for a term which may extend to five years as *ta'zir*.

337H. Punishment for hurt by rash or negligent act.—(1) Whoever causes hurt by rash or negligent act, other than rash or negligent driving, shall be liable to *arsh* or *daman* specified for the kind of hurt caused and may also be punished with imprisonment of either description for a term which may extend to three years as *ta'zir*.

- (2) Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

337I. Punishment for causing hurt by mistake (khata).—Whoever causes hurt by mistake (khata) shall be liable to *arsh* or *daman* specified for the kind of hurt caused.

337J. Causing hurt by means of a poison.—Whoever administers to, or causes to be taken by, any person, any poison or any stupefying, intoxicating or unwholesome drug, or such other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence, or knowing it to be likely that he will

thereby cause hurt may, in addition to the punishment or *arsh* or *daman* provided for the kind of hurt caused, be punished, having regard to the nature of the hurt caused, with imprisonment of either description for a term which may extend to ten years.

- 337K. Causing hurt to extort confession, or to compel restoration of property.—Whoever causes hurt for the purpose of extorting from the sufferer or any person interested in the sufferer any confession or any information which may lead to the detection of any offence or misconduct, or for the purpose of constraining the sufferer, or any person interested in the sufferer, to restore, or to cause the restoration of, any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security shall, in addition to the punishment of *qisas*, *arsh* or *daman*, as the case may be, provided for the kind of hurt caused, be punished, having regard to the nature of the hurt caused, with imprisonment of either description for a term which may extend to ten years as *ta'zir*.
- 337L. Punishment for other hurt.—(1) Whoever causes hurt, not mentioned hereinbefore, which endangers life or which causes the sufferer to remain in severe bodily pain for twenty days or more or renders him unable to follow his ordinary pursuits for twenty days or more, shall be liable to *daman* and also be punished with imprisonment of either description for a term which may extend to seven years.
- (2) Whoever causes hurt not covered by sub-section (1) shall be punished with imprisonment of either description for a term which may extend to two years, or with *daman*, or with both.
- 337M. Hurt not liable to qisas.—Hurt shall not be liable to *qisas* in the following cases, namely :—
- (a) when the offender is a minor or insane :
- Provided that he shall be liable to *arsh* and also to *ta'zir* to be determined by the court having regard to the age of offender, circumstances of the case and the nature of hurt caused ;
- (b) when an offender at the instance of the victim causes hurt to him :
- Provided that the offender may be liable to *ta'zir* provided for the kind of hurt caused by him ;

- (c) when the offender has caused *itlaf-i-udw* of a physically imperfect organ of the victim and the convict does not suffer from similar physical imperfection of such organ :

Provided that the offender shall be liable to *arsh* and may also be liable to *ta'zir* provided for the kind of hurt caused by him ; and

- (d) when the organ of the offender liable to *qisas* is missing :

Provided that the offender shall be liable to *arsh* and may also be liable to *ta'zir* provided for the kind of hurt caused by him.

Illustration

- (i) A amputates the right ear of Z, the half of which was already missing. If A's right ear is perfect, he shall be liable to *arsh* and not *qisas*.
- (ii) If in the above illustration, Z's ear is physically perfect but without power of hearing, A shall be liable to *qisas* because the defect in Z's ear is not physical.
- (iii) If in illustration (i) Z's ear is pierced, A shall be liable to *qisas* because such minor defect is not physical imperfection.

337N. Cases in which *qisas* for hurt shall not be enforced.—(1) The *qisas* for a hurt shall not be enforced in the following cases, namely :—

- (a) when the offender dies before execution of *qisas* ;
- (b) when the organ of the offender liable to *qisas* is lost before the execution of *qisas* :

Provided that offender shall be liable to *arsh*, and may also be liable to *ta'zir* provided for the kind of hurt caused by him ;

- (c) when the victim waives the *qisas* or compounds the offence with *badl-i-sulh* ; or
- (d) when the right of *qisas* devolves on the person who cannot claim *qisas* against the offender under this Chapter :

Provided that the offender shall be liable to *arsh*, if there is any *wali* other than the offender, and if there is no *wali* other

- (c) when the offender has caused *itlaf-i-udw* of a physically imperfect organ of the victim and the convict does not suffer from similar physical imperfection of such organ :

Provided that the offender shall be liable to *arsh* and may also be liable to *ta'zir* provided for the kind of hurt caused by him ; and

- (d) when the organ of the offender liable to *qisas* is missing :

Provided that the offender shall be liable to *arsh* and may also be liable to *ta'zir* provided for the kind of hurt caused by him.

Illustration

- (i) A amputates the right ear of Z, the half of which was already missing. If A's right ear is perfect, he shall be liable to *arsh* and not *qisas*.
- (ii) If in the above illustration, Z's ear is physically perfect but without power of hearing, A shall be liable to *qisas* because the defect in Z's ear is not physical.
- (iii) If in illustration (i) Z's ear is pierced, A shall be liable to *qisas* because such minor defect is not physical imperfection.

337N. Cases in which qisas for hurt shall not be enforced.—(1) The *qisas* for a hurt shall not be enforced in the following cases, namely :—

- (a) when the offender dies before execution of *qisas* ;
- (b) when the organ of the offender liable to *qisas* is lost before the execution of *qisas* :

Provided that offender shall be liable to *arsh*, and may also be liable to *ta'zir* provided for the kind of hurt caused by him ;

- (c) when the victim waives the *qisas* or compounds the offence with *badl-i-sulh* ; or
- (d) when the right of *qisas* devolves on the person who cannot claim *qisas* against the offender under this Chapter :

Provided that the offender shall be liable to *arsh*, if there is any *wali* other than the offender, and if there is no *wali* other

than the offender he shall be liable to *ta'zir* provided for the kind of hurt caused by him.

- (2) Notwithstanding anything contained in this Chapter, in all cases of hurt, the court may, having regard to the kind of hurt caused by him, in addition to payment of *arsh*, award *ta'zir* to an offender who is a previous convict, habitual or hardened, desperate or dangerous criminal.

337O. Wali in case of hurt.—In the case of hurt the *wali* shall be—

- (a) the victim :

Provided that, if the victim is a minor or insane, his right of *qisas* shall be exercised by his father or paternal grandfather, how-high-so-ever ;

- (b) the heirs of the victim, if the later dies before the execution of *qisas* ; and

- (c) the Government, in the absence of the victim or the heirs of the victim.

337P. Execution of qisas for hurt.—(1) *Qisas* shall be executed in public by an authorised medical officer who shall before such execution examine the offender and take due care so as to ensure that the execution of *qisas* does not cause the death of the offender or exceed the hurt caused by him to the victim.

- (2) The *wali* shall be present at the time of execution and if the *wali* or his representative is not present, after having been informed of the date, time and place by the court an officer authorised by the court in this behalf shall give permission for the execution of *qisas*.

- (3) If the convict is a woman who is pregnant, the court may, in consultation with an authorised medical officer, postpone the execution of *qisas* upto a 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, shall be dealt with as if sentenced to simple imprisonment.

337Q. Arsh for single organs.—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.

337R. *Arsh for organs in pairs.*—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.

337S. *Arsh for the organs in quadruplicate.*—(1) 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.

337T. *Arsh for fingers.*—(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*.

337U. *Arsh for teeth.*—(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 beside 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).

337V. *Arsh for hair*.—(1) Whoever uproots —

- (a) all the hair of the head, beard, mustaches, 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.

337W. *Merger of arsh*.—(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 wrist. 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.

337X. Payment of arsh.—(1) The *arsh* may be made payable in a lump sum or in instalments spread over a period of three years from the date of the final judgement.

- (2) Where a convict fails to pay *arsh* or any part thereof 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 *arsh* is paid in full or may be released on bail if he furnishes security equal to the amount of *arsh* to the satisfaction of the court.
- (3) Where a convict dies before the payment of *arsh* or any part thereof, it shall be recovered from his estate.

337Y. Value of daman.—(1) The value of *daman* may be determined by the court keeping in view.

- (a) the expenses incurred on the treatment of victim ;
 - (b) loss or disability caused in the functioning or power of any organ ; and
 - (c) the compensation for the anguish suffered by the victim ;
- (2) In case of non-payment of *daman*, it shall be recovered from the convict and until *daman* is paid in full to the extent of his liability, the convict may be kept in jail and dealt with in the same manner

as if sentenced to simple imprisonment or may be released on bail if he furnishes security equal to the amount of *daman* to the satisfaction of the court.

337Z. Disbursement of arsh or daman.—The *arsh* or *daman* shall be payable to the victim or, if the victim dies, to his heirs according to their respective shares in inheritance.

338. Isqat-i-Hamal (إسقاط حمل).—Whoever causes a woman with child whose organs have not been formed, to miscarry, if such miscarriage is not caused in good faith for the purpose of saving the life of the woman, or providing necessary treatment to her, is said to cause '*isqat-i-haml*'.

Explanation.—A woman who causes herself to miscarry is within the meaning of this section.

338.A. Punishment for Isqat-i-haml.—Whoever causes *isqat-i-haml* shall be liable to punishment as *ta'zir*—

- (a) with imprisonment of either description for a term which may extend to three years, if *isqat-i-haml* is caused with the consent of the woman ; or
- (b) with imprisonment of either description for a term which may extend to ten years, if *isqat-i-haml* is caused without the consent of the woman :

Provided that, if as a result of *isqat-i-haml*, any hurt is caused to woman or she dies, the convict shall also be liable to the punishment provided for such hurt or death as the case may be.

338B. Isqat-i-janin (إسقاط جنين).—Whoever causes a woman with child some of whose limbs or organs have been formed to miscarry, if such miscarriage is not caused in good faith for the purpose of saving the life of the woman, is said to cause *isqat-i-janin*.

Explanation.—A woman who causes herself to miscarry is within the meaning of this section.

338C. Punishment for Isqat-i-janin.—Whoever causes *Isqat-i-janin* shall be liable to—

- (a) one-twentieth of the *diyat* if the child is born dead ;

- (b) full *diyat* if the child is born alive but dies as a result of any act of the offender ; and
- (c) imprisonment of either description for a term which may extend to seven years as *ta'zir* :

Provided that, if there are more than one child in the womb of the woman, the offender shall be liable to separate *diyat* or *ta'zir*, as the case may be, for every such child :

Provided further that if, as a result of *isqat-i-janin*, any hurt is caused to the woman or she dies, the offender shall also be liable to the punishment provided for such hurt or death, as the case may be.

338D. Confirmation of sentence of death by way of qisas or tazir, etc.—A sentence of death awarded by way of *qisas* or *ta'zir*, or a sentence of *qisas* awarded for causing hurt, shall not be executed, unless it is confirmed by the High Court.

338E. Waiver or compounding of offences.—(1) Subject to the provisions of this Chapter and section 345 of the Code of Criminal Procedure, 1898 (V of 1898), all offences under this Chapter may be waived or compounded and the provisions of sections 309 and 310 shall, *mutatis mutandis*, apply to the waiver or compounding of such offences :

Provided that, where an offence has been waived or compounded, the court may, in its discretion having regard to the facts and circumstances of the case, acquit or award *ta'zir* to the offender according to the nature of the offence.

- (2) All questions relating to waiver or compounding of an offence or awarding of punishment under section 310, whether before or after the passing of any sentence, shall be determined by trial court :

Provided that where the sentence of *qisas* or any other sentence is waived or compounded during the pendency of an appeal, such questions may be determined by the appellate court.

338F. Interpretation.—In the interpretation and application of the provisions of this Chapter, and in respect of matter ancillary or akin thereto, the court shall be guided by the Injunctions of Islam as laid down in the Holy Quran and Sunnah.

338G. *Rules.*—The Government may, in consultation with the Council of Islamic Ideology, by notification in the official Gazette, make such rules as it may consider necessary for carrying out the purposes of this Chapter.

338H. *Saving.*—Nothing in this Chapter, except sections 309, 310 and 338E, shall apply to cases pending before any court immediately before the commencement of the Criminal Law (Second Amendment) Ordinance, 1990 (VII of 1990), or to the offences committed before such commencement.”; and

(2) after section 338H, substituted as aforesaid, the following new heading shall be inserted, namely :—

“CHAPTER XVIA”

8. **Amendment of section 459, Act XLV of 1860.**—In the Penal Code, for section 459, the following shall be substituted, namely :—

“459. *Hurt caused whilst committing lurking house-trespass or house-breaking.*—Whoever, whilst committing lurking house-trespass or house-breaking, causes hurt to any person or attempts to commit *qatl* of, or hurt to, any person, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to the same punishment for committing *qatl* or causing hurt or attempting to cause *Qatl* or hurt as is specified in Chapter XVI of this Code.”.

9. **Amendment of section 460, Act XLV of 1860.**—In the Penal Code, for section 460 the following shall be substituted, namely :—

“460. *Persons jointly concerned in lurking house-trespass or house-breaking by night punishable for qatl or hurt caused by one of them.*— If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to commit *qatl* of, or hurt to, any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to the same punishment for committing *qatl* or causing hurt to attempting to cause *qatl* or hurt as is specified in Chapter XVI of this Code.”.

10. **Amendment of section 511, Act XLV of 1860.**—In the Penal Code, in section 511, after the words “fine”, the word “*daman*” shall be inserted.

11. **Amendment of section 32, Act V of 1898.**—In the Code of Criminal Procedure, 1898 (Act V of 1898), hereinafter referred to as the Criminal Code, in section 32, in sub-section (1), in clause (a), in the second column, after the word and semi-colon “rupees;”, the words and semi-colons “*arsh ; daman ;*” shall be inserted.

12. **Amendment of section 337, Act V of 1898.**—In the Criminal Code, in section 337, in sub-section (1), for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely :—

“Provided that no person shall be tendered pardon who is involved in an offence relating to hurt or *qatl* without permission of the victim or, as the case may be, of the heirs of the victim.”.

13. **Amendment of section 338, Act V of 1898.**—In the Criminal Code, in section 338, for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely :—

“Provided that no person shall be tendered pardon who is involved in an offence relating to hurt or *qatl* without permission of the victim or, as the case may be, of the heirs of the victim.”.

14. **Amendment of section 345, Act V of 1898.**—In the Criminal Code, in section 345,—

- (a) in sub-section (1), in the table, in the second column, the figures and comma “323, 334” and the entries relating thereto in the first and third columns shall be omitted ; and
- (b) in sub-section (2), in the table, in the second column, for the figures “302, 303, 304A, 305, 306, 307, 308, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 335, 337 and 338” and the entries relating thereto in the first and third columns the following shall be substituted, namely :—

| | | |
|--|-----|-----------------------------|
| <i>Qatl-i-amd</i> | 302 | By the heirs of the victim. |
| <i>qatl</i> under <i>ikrah-i-tam</i> | 303 | Ditto |
| <i>Qatl-i-amd</i> not liable to <i>qisas</i> | 308 | Ditto |

| | | |
|---|------|---|
| <i>Qatl-i-shibh-i-amd</i> | 316 | By the heirs of the victim. |
| <i>Qatl-i-khata</i> | 319 | Ditto |
| <i>Qatl-i-khata</i> by rash or negligent driving. | 320 | Ditto |
| <i>Qatl-i-bis-sabab</i> | 322 | Ditto |
| Attempt to commit <i>qatl-i-amd</i> . | 324 | The person against whom the offence was committed. |
| <i>Itlaf-i-udw</i> | 334 | The person to whom hurt is caused. |
| <i>Itlaf-i-salahiyyat-i-udw</i> | 336 | Ditto |
| <i>Shajjah</i> of any kind | 337A | Ditto |
| <i>Jaifah</i> | 337D | Ditto |
| <i>Ghayr-jaifah</i> of any kind | 337F | Ditto |
| Hurt by rash or negligent driving. | 337G | Ditto |
| Hurt by rash or negligent act. | 337H | Ditto |
| Hurt by mistake. | 337I | Ditto |
| Hurt by means of a poison. | 337J | Ditto |
| Hurt to extort confession or to compel restoration of property. | 337K | Ditto |
| Other hurts. | 337L | Ditto |
| Hurt not liable to <i>qisas</i> | 337M | Ditto |
| Cases in which <i>qisas</i> for hurt cannot be enforced. | 337N | Ditto |
| <i>Isqat-i-hamal</i> | 338A | The victim or the heirs of the victim, as the case may be. |
| <i>Isqat-i-janin</i> | 338C | The victim or the heirs of the victim, as the case may be." |

15. **Amendment of section 381, Act V of 1898.**—In the Criminal Code, in section 381, for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely :—

“Provided that the sentence of death shall not be executed if the heirs of the deceased pardon the convict or enter into a compromise with him even at the last moment before execution of the sentence.”

16. **Insertion of new section 402C, Act V of 1898.**—In the Criminal Code, in Chapter XXIX, after section 402B, the following new section shall be added, namely :—

“402C. *Remission or commutation of certain sentences not to be without consent.*—Notwithstanding anything contained in section 401, section 402, section 402A or section 402B, the Provincial Government, the Federal Government or the President shall not, without the consent of the victim or, as the case may be, of his heirs, suspend, remit or commute any sentence passed under any of the sections in Chapter XVI of the Pakistan penal Code.”

17. **Amendment of Schedule II, Act V of 1898.**—In the Criminal Code, in Schedule II,—

- (a) for the figures “302 to 338” occurring in column 1 and the entries relating thereto in columns 2 to 8 the following shall be substituted, namely :—

| Section | Offence | Whether the Police may arrest without warrant or not | Whether a warrant or summons shall ordinarily issue in the first instance | Whether bailable or not | Whether compoundable or not | Punishment under the Pakistan Penal Code | By what court triable |
|---------|--|--|---|-------------------------|-----------------------------|---|-----------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 302 | <i>Qatl-i-amd</i> | May arrest without warrant | Warrant | Not bailable | Compoundable | Qisas, or death, imprisonment for life or imprisonment upto twenty-five years. | Court of Session. |
| 303 | (a) <i>Qatl</i> under <i>ikrah-i-tam</i> . | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for twenty-five years but not less than ten years. | Ditto |
| | (b) Causing of <i>ikrah-i-tam</i> for commission of <i>qatl</i> . | Ditto | Ditto | Ditto | Ditto | Punishment provided for the kind of <i>qatl</i> committed. | Ditto |
| | (c) <i>Qatl</i> under <i>Ikrah-i-naqis</i> . | Ditto | Ditto | Ditto | Ditto | Punishment provided for the kind of <i>qatl</i> committed. | Ditto |
| | (d) Causing <i>ikrah-i-naqis</i> for the commission of <i>qatl</i> . | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for ten years. | Ditto |

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
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| 308 | <i>Qatl-i-omd</i> not liable to <i>qisas</i> . | May arrest without warrant. | Warrant | Not bailable | Compoundable | <i>Diyyat</i> , and imprisonment of either description for fourteen years. | Court of Session. |
| 311 | <i>Qatl-i-omd</i> when waived compounded. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for ten to fourteen years. | Ditto |
| 312 | <i>Qatl-i-omd</i> after compounding of <i>qisas</i> etc. | Ditto | Ditto | Ditto | Ditto | <i>Qisas</i> or <i>diyyat</i> . | Ditto |
| 316 | <i>Qatl</i> <i>Shibh-i-omd</i> . | Ditto | Ditto | Ditto | Ditto | <i>Diyyat</i> , and imprisonment of either description for fourteen years. | Ditto |
| 319 | <i>Qatl-i-Khara</i> | Ditto | Ditto | Bailable | Ditto | <i>Diyyat</i> , and imprisonment of either description for five years. | Ditto |
| 320 | <i>Qatl-i-Khara</i> by rash or negligent driving. | May arrest without warrant | Warrant | Bailable | Compoundable | <i>Diyyat</i> , and imprisonment of either description for ten years. | Ditto |
| 322 | <i>Qatl</i> <i>his-subab</i> . | Ditto | Ditto | Not bailable | Ditto | <i>Diyyat</i> . | Ditto |
| 324 | Attempt to <i>qatl-i-omd</i> . | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for ten years and fine, <i>qisas</i> , or <i>arsh</i> in case of hurt and imprisonment upto seven years. | Ditto |
| 325 | Attempt to commit suicide. | Ditto | Ditto | Bailable | Not Compoundable. | Simple imprisonment for one year, or fine, or both. | Magistrate of the first or second class. |

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
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| 327 | Being a thug. | May arrest without warrant | Warrant | Not bailable | Not Compoundable | Imprisonment for life and fine. | Court of Session. |
| 328 | Exposure of a child under 12 years of age by parent or person having care of it with intention of wholly abandoning it. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for seven years, or fine, or both. | Court of Session or Magistrate of the first class. |
| 329 | Concealment of birth by secret disposal of dead body. | Ditto | Ditto | Bailable | Ditto | Imprisonment of either description for two years, or fine, or both. | Magistrate of the first class. |
| 334 | <i>Itlaf-i-udw</i> . | Ditto | Ditto | Not bailable | Compoundable | <i>Qisas</i> , or <i>arsh</i> , and imprisonment of either description for ten years. | Court of Session. |
| 336 | <i>Itlaf-i-salahayyat-i-udw</i> . | May arrest without warrant | Warrant | Not bailable | Compoundable | <i>Qisas</i> , or <i>arsh</i> , and imprisonment of either description for ten years. | Court of Session. |
| 337A | (i) <i>Shajjah-i-khafifah</i> | Shall not arrest without warrant. | Summons | Bailable | Compoundable | <i>Daman</i> , and imprisonment of either description for two years. | Magistrate of the first class. |
| | (ii) <i>Shajjah-i-mudfiah</i> | May arrest without warrant | Warrant | Not bailable | Ditto | <i>Qisas</i> , or <i>arsh</i> , and imprisonment of either description for five years. | Court of Session or Magistrate of the first class. |
| | (iii) <i>Shajjah-i-kashmiah</i> . | Ditto | Ditto | Ditto | Ditto | <i>Arsh</i> , and imprisonment of either description for ten years. | Ditto |

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| | (v) <i>Shajjah-i-munagqlah.</i> | May arrest without warrant | Warrant | Not bailable | Compoundable | <i>Arsah</i> , and imprisonment of either description for ten years. | Court of Session or Magistrate of the first class. |
| | (v) <i>Shajjah-i-ammah.</i> | Ditto | Ditto | Ditto | Ditto | <i>Arsah</i> , and imprisonment of either description for fourteen years. | Ditto |
| | (vi) <i>Shajjah-i-damighah.</i> | Ditto | Ditto | Ditto | Ditto | <i>Arsah</i> , and imprisonment of either description for fourteen years. | Ditto |
| 337D | <i>Jajjah.</i> | Ditto | Ditto | Ditto | Ditto | <i>Arsah</i> , imprisonment of either description for ten years and punishment provided for <i>Itlaf-i-udh</i> or <i>Itlaf-i-salaby-yar-i-udh</i> , if caused. | Ditto |
| 337E | (i) <i>Damiyah.</i> | Shall not arrest without warrant | Summons | Bailable | Compoundable | <i>Daman</i> , and imprisonment of either description for one year. | Magistrate of the first class. |
| | (ii) <i>Badi'ah.</i> | May arrest without warrant | Warrant | Not bailable | Ditto | <i>Daman</i> , and imprisonment of either description for three years. | Ditto |
| | (iii) <i>Mutalohamah.</i> | Ditto | Ditto | Ditto | Ditto | <i>Daman</i> , and imprisonment of either description for three years. | Ditto |
| | (iv) <i>Mud'bah.</i> | Ditto | Ditto | Ditto | Ditto | <i>Daman</i> , and imprisonment of either description for five years. | Court of Session or Magistrate of the first class. |

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
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| | (V) <i>Hishmah</i> . | May arrest without warrant | Warrant | Not bailable | Compoundable | <i>Daman</i> , and imprisonment of either description for five years. | Court of Session or Magistrate of the first class. |
| | (VI) <i>Munazqilah</i> . | | | | | | |
| 337G | Hurt by rash or negligent driving. | Ditto | Ditto | Ditto | Ditto | <i>Daman</i> , and imprisonment of either description for seven years. | Ditto |
| | | Ditto | Ditto | Bailable | Ditto | <i>Arsh</i> , or <i>daman</i> , and imprisonment of either description for five years | Ditto |
| 337H | (1) Hurt by rash or negligent act | Ditto | Ditto | Ditto | Ditto | <i>Arsh</i> , or <i>daman</i> , and imprisonment of either description for three years. | Magistrate of the first class. |
| | (2) A rash or negligent act to endanger human life or personal safety of others. | Shall not arrest without warrant | Summons | Ditto | Ditto | Imprisonment of either description for three months, or with fine, or with both. | Magistrate of the first or second class |
| 337I | Hurt by mistake (<i>Khata</i>). | Shall not arrest without warrant | Summons | Bailable | Compoundable | <i>Arsh</i> , or <i>daman</i> for the kind of hurt caused. | Magistrate of the first class. |
| 337J | Hurt by poison. | May arrest without warrant | Warrant | Not bailable | Compoundable | <i>Arsh</i> , or <i>daman</i> , provided for the kind of hurt caused and imprisonment of either description for ten years. | Court of Session. |

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| 337K | Hurt for extorting confession etc. | May arrest without warrant | Warrant | Not-bailable | Compoundable | <i>Qisas, ar'ab, or daman</i> , provided for the kind of hurt caused and imprisonment of either description for ten years. | Court of Session. |
| 337L | (a) Hurts other than specified in sections here-to-before. | Ditto | Ditto | Ditto | Ditto | <i>Daman</i> , and imprisonment of either description for seven years. | Court of Session or Magistrate of the first class. |
| | (b) Other hurts not covered here-to-before. | Shall not arrest without warrant | Summons | Bailable | Compoundable | <i>Daman</i> , or imprisonment of either description for two years or with both. | Magistrate of the first class. |
| 337M | Hurt not liable to <i>qisas</i> . | Ditto | Ditto | Ditto | Ditto | <i>Arsab, ta'zir</i> and punishment provided for the kind of hurt caused. | Ditto |
| 337N | Hurt where <i>qisas</i> cannot be enforced | May arrest without warrant | Warrant | Not bailable | Ditto | <i>Arsab, ta'zir</i> and punishment provided for the kind of hurt caused. | Court of Session or Magistrate of the first class. |
| 338A | (a) <i>Isqat-i-haum'</i> with consent. | May arrest without warrant | Warrant | Not bailable | Compoundable | Imprisonment of either description for three years and punishment provided for the kind of hurt or death, if caused. | Court of Session or Magistrate of the first class. |
| | (b) <i>Isqat-i-haum'</i> without consent. | May arrest without warrant | Warrant | Not bailable | Compoundable | Imprisonment of either description for ten years and punishment provided for the kind of hurt or death, if caused. | Court of Session or Magistrate of the first class. |
| 338C | <i>Isqat-i-haum'</i> | May arrest without warrant | Warrant | Not bailable | Compoundable | <i>Diyat, ta'zir</i> and imprisonment of either description for seven years and punishment provided for the kind of hurt or death, if caused. | Court of Session or Magistrate of the first class. |

- (b) in entries relating to section 459 in column 1,—
 - (i) in column 2, for the words “Grievous hurt” the word “Hurt” shall be substituted ; and
 - (ii) in column 7, after the word “fine”, the words “and shall also be liable to the kind of *qatl* committed by him or hurt caused or attempted to cause” shall be added ;
- (c) in the entries relating to section 460 in column 1,—
 - (i) in column 2, for the words “Death or Grievous” the words “*Qatl* or” shall be substituted ; and
 - (ii) in column 7, after the word “fine”, the words “and shall also be liable to the kind of *qatl* committed by him or hurt caused or attempted to cause” shall be added ; and
- (d) in entries relating to section 511 in column 1, in column 7, after the word “fine”, the word “daman” shall be inserted.

18. **Repeal.**—The Criminal Law (Fourth Amendment) Ordinance, 1996 (CXIII of 1996), is hereby repealed.

AGHA AFZAAL HUSSAIN,
Acting Secretary.