



Advance Social Science Archive Journal

Available Online: <https://assajournal.com>

Vol.2 No.4, Oct-Dec, 2024. Page No. 1081-1089

Print ISSN: [3006-2497](#) Online ISSN: [3006-2500](#)

Platform & Workflow by: [Open Journal Systems](#)



EQUITABLE APPLICATION OF FINE AND SOME OTHER MONEY RELATED LAWS IN PAKISTAN: BRIDGING THE GAP BETWEEN TIME AND JUSTICE

Mohammad Zamin	Lecturer at Department of Shariah & Law Islamia College, Peshawar Email: mzamin@icp.edu.pk
Dr. Mehnaz Begum*	Lecturer at Department of Shariah & Law Islamia College, Peshawar corresponding Email: mehnaz@icp.edu.pk
Seema Gul	Assistant professor at Khyber Law College, University of Peshawar Email: seemagullb56@gmail.com
Amina Iqbal	Lecturer in Law at Capital University of Science and Technology, Islamabad. Email: Iqbalamina2024@gmail.com
Jaweria	LLM Scholar at Dalian Maritime University, China Email: jaweriaamin84@gmail.com

ABSTRACT

Fine is one of the punishments under Pakistani Laws which is awarded in various types of offences. In the same manner there are many other cases where money is awarded as a compensation for the satisfaction of cases. This fine and other money related cases create no problem when they are on the discretion of courts and have no upper limit because courts can deal with them in accordance with changing circumstances. However, fine and other money related cases create serious problems when their upper limits are fixed by laws. These laws remain effective and workable for a certain period of time. However, with the passing of a longer period, they become obsolete and ineffective due to the devaluation of money. The legislative bodies do not update these laws for a longer period of time that is why these laws remain obsolete and ineffective. The basic theme of this research paper is to dig out how fine as a punishment and some other money related issues affect the laws with over changing circumstances. The paper explains these problems and recommend a workable and effective solution to give an end them for all the time.

Keywords: Equitable, Application, Money, Laws, Pakistan, Bridging, Gap, Time, Justice.

Introduction

The Pakistani law prescribes various types of punishments. When offenders are convicted of different types of offences, they are charged and punished under many provisions in various Pakistani laws. The main provision in this regard is Section 53 of Pakistan Penal Code (PPC) (Pakistan Penal Code, 1860), which makes around ten types of punishments. The section outlines Qisas (A punishment to treat the offender in the same way as he has treated the victim), Diyat (Compensatory amount in Qatl), Arsh (Compensatory amount in hurt) Daman (Compensatory amount in hurt not liable to Arsh), Tazir (Punishment on the discretion of courts), Imprisonment for Life, Rigorous

and simple Imprisonment, Confiscation of Property and Fine as punishments under the code. There are many other laws which prescribe these punishments and some other punishments. Such as Hudood Laws, Anti-Narcotics Law, Anti-Terrorism law, Family law and Cyber-Crimes Law etc. Owing to the above, this paper discusses various types of punishments under Pakistani laws. It describes that how the magnitude of these punishments changes over the course of time. The paper digs out the gap between time and justice relating to fine as a punishment and some other money related cases and suggest reforms that will bridge the gap between time and justice.

Classification of Punishment under Pakistani Laws

1. **Hudood Punishment (Fixed Punishment):** These punishments are imposed on offenders who are convicted under Hudood laws such as, The offence of Zina, (The Offence of Zina (Enforcement of Hudood) Ordinance, 1979), Qazf (The Enforcement of Qazf (Enforcement of Hudood) Ordinance, 1979) Prohibition of intoxicant liquor, (Khamr) (The Prohibition (Enforcement of Hadd) Order, 1979) and Theft and Harabah (Dacoity) (Offences against property (The Enforcement of Hudood) Ordinance, 1979. These punishments are imposed on the body of a convict either by stoning him to death or punishing him with flogging or the amputation of hands or feet. The nature and magnitude of these punishments remain the same over the course of time. Stoning to death, flogging and amputation are as harsh today as these were hundred years back. These punishments are executed as a right of Allah (God) that is why they cannot be changed over the course of time.
2. **Qisas, Death Penalty and Imprisonment:** Punishment of Qisas, death penalty and imprisonment are given under Pakistan Penal Code (Pakistan Penal Code, 1860) and some other laws for various offences. The convict is executed in cases which are liable to Qisas in Qatl-i-Amd and death penalty under many other laws. The punishment of imprisonment is imposed in various offences ranging from days to imprisonment for life. The nature and magnitude of these punishments remain the same like Hudood punishments. Their severity remains the same all the time. The severity of Qisas and death penalty is the same as it was hundred years back. It is because the value and worth of human being remains the same all the time. Similarly, the punishment of imprisonment for any period remains the same all over the time because of its same severity all the time. Though the nature and magnitude of these punishments usually remain the same, yet there is a room for change over the course of time. An offence which punishment was death penalty in 2000 may not need to be the same today. Similarly, an offence which punishment was imprisonment for life may not have the same severity today. Furthermore, an offence which had maximum ten years punishment may have life imprisonment due to its increased severity. Thus, this punishment should also be updated with the course of time and may be increased or decreased. But as mentioned above, it usually remains the same even without any changes and because of its nature as it does not make a big difference over the course of time.

3. **Punishments Based on the Discretion of Courts:** Punishment on the discretion of courts are divided into two types. The first one is the punishment of Tazir. According to section 299 of Pakistan Penal Code, Tazir means punishment other than Qisas, Diyat, Arsh or Daman. (Pakistan Penal Code, 1860) Generally, in Pakistan Penal Code, it is that type of punishment where the upper limit and sometime both the lower and upper limit are determined by the law. Courts have discretion between its lower and upper limit. In such cases courts, while fixing punishment, see the convicted person, the circumstances in which the offence was committed, the age and gender of the convict and many other factors and punish the convict within the parameter of its lower and upper limit. For instance, Section 147 of Pakistan Penal Code states that, when a person or persons are guilty of the offence of rioting, they shall be punished with imprisonment which may extend to two years or with fine or both. (Pakistan Penal Code, 1860).

The second type is the cases where there is no lower or upper limit of the penalty. Such as Daman (Compensation) under Section 299 of Pakistan Penal Code (Pakistan Penal Code, 1860). In this, the court imposes punishment on a convict keeping in view the anguish, disability of organ, if any, and the expenses incurred on victim treatment. Here again, the punishment of imprisonment does not make a big difference as its value remains the same with the passing of time. Similarly, Daman punishment also makes no such difference because it is solely on the discretion of courts. Courts decide compensation in accordance with the factors mentioned above.

4. **Confiscation of Property:** This type of punishment is awarded under Section 53 of Pakistan Penal Code, (Pakistan Penal Code, 1860) Section 11Q of Anti-Terrorism Act, (Anti-Terrorism Act, 1997) Section 13 of Prevention of Corruption Act, (Prevention of Corruption Act, 1997) Section 156 and 157 of Custom Act (Custom Act, 1969 and Section 23 of Foreign Exchange Regulation Act (Foreign Exchange Regulation Act, 1947). This punishment also does not affect the nature and magnitude of punishment. The reason is its having the same magnitude all the time.

5. **Diyat and Arsh:** Diyat is the compensation which is awarded as an alternative to Qisas in those cases of Qatl-i-Amd (Intentional Murder) in which the right of Qisas is compounded or which is not liable to Qisas or in which Qisas is not enforceable. It is awarded as a primary punishment in Qatl Shihb-i-Amd (Homicide Resembling Intentional Murder) Qatl-i-Khata (Unintentional Murder) and Qatl-i-Bis Sabub. (Indirect Murder). Arsh is awarded in cases of hurt amounting to Itlaf-i-udw, (Amputation of Organ) Itlaf-i-Salahiyyat udw, (Impairing the functioning capacity of an organ) Shajjah, (Hurt on head or face) Jurh (Hurt other than face or head) and other kinds of hurt under Section 332 of Pakistan Penal Code, (Pakistan Penal Code, 1860). Though this is a compensatory punishment, yet it has no effect on the nature and magnitude of punishment. It is because of its fixation on the basis of silver. Section 323 of

Pakistan Penal Code prescribes the minimum value of Diyat. It states that the amount of Diyat shall not be less than the value of 30630 grams of silver. (Pakistan Penal Code, 1860). It means that the punishment of Diyat cannot be less than the mentioned quantity. For this, the government declares the rate of silver each year and on the basis of that rate, it fixes the minimum amount of Diyat. The provision was incorporated in Pakistan Penal Code under Qisas and Diyat ordinance (Qisas and Diyat ordinance, 1990) and became an Act in 1997. (Qisas and Diyat Act, 1997. The section is as workable today as it was in 1990. The reason is its fixation on the basis of silver. With the course of time the rate of silver increases which increases the value of Diyat. Thus, it does not affect the magnitude of the value of compensation. The valuation of 30,630 grams of silver was Rs. 1,71,000 in 1991 (PLD 1991 SC 202.) and it is Rs. 8,103,955 in 2024. (Government of Pakistan, 2024). The section has not been updated over the last 34 years but it is as workable and implementable today as it was 34 years ago. The reason is its fixation on the basis of silver. If it were to enact in 1990 that the minimum compensation would be 1, 71,000, it would have not been effective today. This is also the case with Arsh punishment because of its fixation on the basis of Diyat and as mentioned, Diyat is paid on the basis of silver.

6. **Fine and some other money related cases:** Fine as a punishment is divided into two types. The first one is that fine where the law prescribes the punishment of fine but does not fix it. For instance, it is enacted that the offender shall be liable to imprisonment which may extend to so and so years or fine or both. Such as, Section 143 of Pakistan Penal Code prescribes that anyone who is the member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both (Pakistan Penal Code, 1860). Some provisions prescribe that the offender shall be liable to imprisonment which may extend to so and so years and shall also be liable to fine. Such as, Section 365 of the code states that any person who kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. (Pakistan Penal Code, 1860). In this type, fine is mentioned but its lower and upper limit is not fixed. It is left on the discretion of courts and are awarded according to the merit of each case. This type of fine does not affect the nature of fine over the course of time because it does not have a lower and upper limit. Courts are free to apply it in accordance with each case.

The second type, which is the theme of this research paper, is related to fine or other money related cases where the amount is specified. In this type, various laws usually prescribe the upper and sometime both the lower and upper limit of fine and other amount. Courts have discretion within its lower and upper limit. These provisions remain workable and effective for a certain period of time. With the course of time, when money devalues, courts have the discretion to stretch the amount to its upper limit. However, with the course of time, even

the upper limit of such fine or other money related cases does no justice with the case and thus become practically ineffective and inoperative. For instance, if the punishment of an offence is extendable to two thousand rupees in 2000, it may work for three to five years after which it needs to be updated because two thousand becomes a negligible amount after eight to ten years. Such cases become more disheartening when fine the only punishment is or the case revolves solely around money related matters. There are many such instances where the provisions are almost inoperative and ineffective due to the lapse of a longer period of time. Some of the cases are discussed as under:

Section 171H of Pakistan Penal Code deals with Illegal payments in connection with an election. It states that any person who without the general or special authority in writing of a candidate incurs or authorizes expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to one thousand five hundred rupees. (Pakistan Penal Code, 1860). This amount was last updated in 2002 and the same fine is charged today after the lapse of 22 long years.

Another Section, 171I of the code deals with failure to keep election accounts. The section states that any person who is required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election and he fails to keep such accounts, shall be punished with fine which may extend to five hundred rupees (Pakistan Penal Code, 1860). This provision, too, was last updated in 2002 and today it is the same fine under the Pakistan Penal Code. Now, even if the violator of the section is charged with the upper limit of this fine, it is nothing. Thus, the section has become inoperative and ineffective due to its obsolete nature.

One more Section, viz, Section 175 of the code is related to the omission to produce document to public servant by a person. The section states that when a person is legally bound to produce or deliver to any public servant documents, intentionally omits to produce or deliver the same, shall be imprisoned for a term which may extend to one month or fine which may extend to fifteen hundred rupees. (Pakistan Penal Code, 1860). The same amount was updated in 2002.

Section 273 of the code relates to the sale of noxious food or drink. It says that any person who sells or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to three thousand rupees or with both. (Pakistan Penal Code, 1860.) This fine was also last updated in 2002.

Section 32 of Criminal Procedure Code relates to sentences which magistrates may pass. According to the section, the Court of Magistrate of 1st Class may pass a fine not exceeding 45 thousand, Court of Magistrate of 2nd Class may pass a fine not exceeding 15 thousand and the Court of Magistrate of 3rd Class may pass a fine not exceeding three thousand rupees. (Criminal procedure Code, 1898) These monetary limitations were last updated in 2002 and the same is applied today.

Section 15 of West Pakistan Family Court Act, 1964 deals with appeals. It prescribes some cases where no appeal can be filed. One such case relates to maintenance. The section states that a defended husband has no right of appeal against a decision of family court when it decides the maintenance in favor of wife which is one thousand rupees or less. (West Pakistan Family Court Act, 1964). This section too, was updated in 2002 and now it is 2024. The value should have been at least five times higher due to the devaluation of money but there is no amendment yet. Only Punjab government has increased this amount to five thousand in 2015. (Pakistan Family Court Act, 1964). There is much devaluation in the value of Pakistani Rupees in these nine years, but there is no further amendment.

Section 16 of the same Act viz, West Pakistan family Act, 1964 deals with contempt of family court. It prescribes some fine when there is a contempt of court by any party. The fine may extend to two thousand rupees. This section was also last updated in 2002 and the fine was increased from two hundred to two thousand. Today, even the upper limit of this fine has no worth.

There is another section of the same act which deals with power of family court to summon witness. It says that if the court summons any witness to give evidence or produce documents and he willfully disobeys court order, the court after giving him the opportunity to show cause of his disobedience, sentence him to a fine of two thousand rupees. (West Pakistan Family Court Act, 1964). This amount was last updated in 2002 and today it is 2024. There is no increase in this amount. Thus, it is, in fact, inoperative and ineffective today due to its outdated nature. Punjab amendment has increased this amount to five thousand rupees but it is also not an effective fine after the period of 9 years.

It is quite evident from the above sections that how the punishment of fine become ineffective and inoperative with the course of time. This issue is one of the serious issues which need to be addressed. It may effectively be addressed by adopting the following measures.

Frequent Amendment in laws: The first solution to address this issue is frequent amendment in the laws related to fine and other money related cases so as to keep these laws up-to-date and maintain its relevance with the over changing times. For this, the legislative bodies have to revisit and update all such laws almost every three to five years. Though this is possible, yet very difficult for legislative bodies. This is the reason that laws remain unchanged for a longer period of time leading to many

problems with its application to over changing time and circumstances. Many laws remain unchanged for 20 to 25 years.

Increase in fine percentage: The second solution to address this issue is the increase in fine percentage or other money related cases by legislative bodies. There are many instances of such provisions in Pakistani Laws. One such instance is Section 17-A. of The Family Court Act, 1964 (Punjab). It states that if the family court does not prescribe annual increase in the maintenance, the maintenance fixed by the court shall automatically stand increased at the rate of 10 percent each year. (The Pakistan Family Court Act, 1964).

So, the legislative bodies can address fine and other money related issues on the analogy of this provision of law. The legislature can enact laws that offenders shall be liable to fine which may extend to so and so amount which upper limit shall increase 10 or any other percent annually. The legislature can fix it according to the nature of different laws. With this, the upper limit of fine will increase with the passing of time. Though such enactment will make fine related provisions a bit complicated, yet it will not let the law inoperative and ineffective with the passage of time.

Silver as a Standard for Fine and other Money Related Cases: This seems to be the most logical and reasonable solution to address the issue of fine and other monetary related matters. As mentioned above, Diyat and Arsh are fixed on the basis of silver and the government notify each years the amount of Diyat on the basis of silver rate. The provision related to Diyat was incorporated in Pakistan Penal Code in 1990 (Qisas Wa Diyat Ordinance, 1990) but it is as operative and effective today as was in 1990. All other monetary punishment and other money related provisions like maintenance can be made practicable and effective for all the time on the basis of its fixation on silver. For instance, government enacts a law and fixes a fine for an offence which may extend to five thousand rupees. This will be effective for a maximum period of three to five years or, it most, upto seven years. The same fine may be converted to silver by enacting the law that; the offender shall be liable to fine which may extend to the value of 30 grams of silver. So, the fine may instead of five thousand should be like this; the offender shall be liable to fine which may extend to the value of 30 grams of silver. Thus, the amount will automatically increase each year. For this, government will have to notify each year the rate of one gram of silver. This type of punishment will make money related law effective for all the time. One may argue that the rate of silver may decrease with the passage of time but it seems impractical. However, if there is a bit decrease in its price, it may be covered with the execution of the upper limit of the punishment. The amount of Diyat and Arsh on the basis of silver is a practical example of such cases. It is effective and operative after the lapse of 34 years. Fine and some other money related cases on the basis of Diyat provision can save the legislature from frequent changes and can make the monetary provisions of law alive for a longer period of time.

Conclusion

The Pakistani laws prescribe various types of punishments for different types of offences. These punishments include, Hudood, Qisas, Death Penalty, Diyat, Arsh,

Daman, Tazir, Imprisonment for life, Regourous and Simple Imprisonment, Confiscation of Property and Fine. These punishments are awarded on conviction of various types of offences. These punishments are classified into various types. The first one is Hudood laws where the punishments are fixed and cannot be changed with the course of time. It is because of its infliction as a right of Allah. These punishments magnitude and nature does not change over the course of time. The second classification is Qisas, Death Penalty and Imprisonment. These punishments also make no difference over the course of time because the life and worth of human being remain the same all the time. The imprisonment also makes no difference over the course of time because time remains the same all the time. The 3rd classification is punishment which is on the discretion of courts. They are punishment of Tazir and Daman. Tazir, when it is related to imprisonment or fine without fixation, makes no problem because it is based on the discretion of courts. It has no effect on the nature and magnitude of punishment because courts award it in accordance with each case. Same is the case with Daman. It is also on the discretion of courts and are awarded on the basis of the facts of each case. The 4th classification is the confiscation of property. This punishment also has no such effect on the nature and magnitude of punishment as the property is taken in legal custody and the value, if changed, has no effect on its nature. The 5th classification is Diyat and Arsh. Diyat is a compensation which is awarded as an alternative to Qisas in Qatl-i-Amd and primary punishment in Qatl Shih-i-Amd, Qatl-i-Khata and Qatl-i- Bis Sabub. Arsh is also a monetary punishment which is awarded in Itlaf-i- udw, Itlaf-i- Salahiat-i-udw, Shajjah, Jurh and other types of hurts. These punishments are same like Diyat but are awarded in bodily offences which are less than Qatl. Thought these punishments are monetary in nature, yet they do not affect the value and magnitude of punishment. It is because of its fixation on the basis of silver. With the passage of time, the value of silver increases, and with this, the monetary value of these punishments also increases. Due to its valuation on the basis of silver, its magnitude and value does not change with the course of time.

The last, but not the least, classification is fine and other money related cases. The cases of fine do not make any difference when its limit is not fixed. For instance, it is enacted that the offender shall be liable to imprisonment which may extend to so and so period and shall also be liable to fine or it is enacted that the offender shall be liable to imprisonment which may extend to so and so period or fine or both. In such sections, fine is declared as one of the punishments but it's not fixed. It remains on the discretion of courts to determine its quantity which varies from case to case. This type has no effect on the nature and magnitude of punishment because courts award it on the basis of the facts of each case. Fine makes a big difference with the course of time when it is fixed. Such as, it is enacted that the offender shall be liable to imprisonment which may extend to so and so period and a fine which may extend to so and so hundred/thousand/lak etc. rupees. Some time it is enacted that the offender shall be liable to fine which may extend to so and so amount. This type of punishment needs to be revisited by the legislative bodies every three to five years to bridge the gap

between time and justice. If there is no change in such laws after the lapse of a certain period of time, they become ineffective and inoperative due to its obsolete nature.

Recommendations

1. The legislative bodies in Pakistan revisit laws after a longer period of time which make some laws unupdated. The legislative bodies should re visit laws after a certain period of time to adapt them with the over changing circumstances.
2. The legislative bodies are recommended to bridge the gap between time and justice in relation to fine as a punishment and other money related laws by adopting any of the following methods.
 - a. It can reform fine and other money related laws by frequently revisiting and making changes in these laws to adapt them with over changing circumstances. Though this method is tiresome but not impossible.
 - b. The legislative bodies can reform fine and other money related laws by increasing its upper limit in percentage. This will enable courts to apply its increased percentage rate with the passing of time.
 - c. The legislative bodies can reform fine and other money related cases by its fixation on the basis of silver. This is the most logical, rational and reasonable way to give an end to this problem for all the time. Thus, the legislative bodies need to fix fine and other money related provisions on the basis of silver and give an end to this issue for all the time. It should frame this law on the pattern of Diyat and Arsh sections in Pakistan Penal Code.

References

- Pakistan Penal Code, 1860.
The offence of Zina, (The Offence of Zina (Enforcement of Hudood) Ordinance, 1979)
(The Enforcement of Qazf (Enforcement of Hudood) Ordinance, 1979)
Prohibition of intoxicant liquor, (Khamr) (The Prohibition (Enforcement of Hadd) Order, 1979)
Theft and Harabah (Dacoity) (Offences against property (The Enforcement of Hudood) Ordinance, 1979.
Anti-Terrorism Act, (Anti-Terrorism Act, 1997)
Prevention of Corruption Act, (Prevention of Corruption Act, 1997)
Custom Act (Custom Act, 1969)
Government of Pakistan, Finance Division, October 02, 2024
(Qisas and Diyat ordinance, 1990.
(Qisas and Diyat Act, 1997
Safdar Ali etc. (PLD 1991 SC 202.). PLJ 1991 SC 256)
The Code of Criminal Procedure Code, 1898.
West Pakistan Family Court Act, 1964.
Pakistan Family Court Act, 1964.