



## THE TRANSPLANTATION OF ARABIC TERMINOLOGY IN CRIMINAL LAW: A CROSS-LINGUAL TEXT ANALYSIS OF THE PAKISTAN PENAL CODE, 1860

### 2. Syed Mudasser Fida Gardazi

Assistant Professor, Department of Law, the University of Azad Jammu and Kashmir, Muzaffarabad, AJK, Pakistan  
Email: [smgardazi@ajku.edu.pk](mailto:smgardazi@ajku.edu.pk)

#### ORCID ID:

<https://orcid.org/0000-0001-7532-6038>

### 2. Muhammad Faisal

Assistant Professor, Department of Arabic, the University of Haripur, Hattar Road, Haripur, KP, Pakistan  
Email: [faisaliui@ymail.com](mailto:faisaliui@ymail.com)

#### ORCID ID:

<https://orcid.org/0000-0003-4749-6130>

### 3. Qudsia Ishaq

Assistant Professor, Department of English, the University of Azad Jammu and Kashmir, Muzaffarabad, AJK, Pakistan

Email: [kishaq85@gmail.com](mailto:kishaq85@gmail.com) ORCID ID: <https://orcid.org/0000-0002-8434-6265>

#### To cite this article:

Gardazi, Syed Mudasser Fida, Muhammad Faisal, and Qudsia Ishaq. "ENGLISH-THE TRANSPLANTATION OF ARABIC TERMINOLOGY IN CRIMINAL LAW: A CROSS-LINGUAL TEXT ANALYSIS OF THE PAKISTAN PENAL CODE, 1860." The Scholar Islamic Academic Research Journal 8, No. 1 (June 23, 2022).

To link to this article: <https://doi.org/10.29370/siarj/issue14aren2>

#### Journal

The Scholar Islamic Academic Research Journal  
Vol. 8, No. 1 | January-June 2022 | P.16- 42

#### Publisher

Research Gateway Society

#### DOI:

10.29370/siarj/issue14aren2

#### URL:

<https://doi.org/10.29370/siarj/issue14aren2>

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#### Journal homepage

[www.siarj.com](http://www.siarj.com)

#### Published online:

2022-06-23



**THE TRANSPLANTATION OF ARABIC TERMINOLOGY IN  
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Syed Mudasser Fida Gardazi, Muhammad Faisal, Qudsia Ishaq

**ABSTRACT:**

*A majority of laws operating in Pakistan are embraced from British Legal System. Therefore, the lingua franca in legal system of Pakistan is English. However, Arabic language, being a source of transmission of Islamic law, has a great contribution to compile legal terminologies in criminal and family laws of the country. The study in hand highlights such Arabic terms, their literal and technical meanings alongside the legal interpretations incurred by the higher judiciary of Pakistan. The asymmetry between English and Arabic criminal law creates difficulty for translators as the former lacks the capacity to comprehend needs and structure of the Islamic legal system. So, Islamic criminal law can appropriately be explained and applied only through the use of Arabic terminology. Moreover, the study concludes that the workability of Arabic terminology as legal transplantation to a large extent depends upon the social and judicial acceptance or absorption in the legal fraternity in particular and in the public in general. This is a simple cross-lingual text analysis where the study is limited to analyze the prevailing Pakistan Penal Code, 1860*

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*(PPC) and excludes all other substantive and adjective laws. Hence, further research may be conducted to find the appropriateness for inculcation of the required variant terminology in comparison with other existing laws of the country.*

**KEYWORDS:** Language in Law, Criminal law, Arabic Terminology, Islamic Law, Pakistan

**Introduction:**

Law and language both have a historical correlation with respect to applicability.<sup>1</sup> Latin words are considered part and parcel of English legalese, as the dominant language of the Church in the middle ages was Latin and since then the English language of the law is laden with Latin vocabulary. The common law courts throughout the world though explain the Latin terms comprehensively yet it is a valued practice among the learned lawyers that they use the Latin terms in their daily drafting. On the other side, in the modern legal systems like United States of America (USA), use of plain English language is much appreciated. However, the learned judges of apex courts and senior lawyers of various common law countries use Latin legal terms till date which is mostly witnessed in

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<sup>1</sup> Peter Goodrich, "Law and Language: An Historical and Critical Introduction." *Journal of Law and Society*, Vol. 11, no. 2 (1984): 173–206. <https://doi.org/10.2307/1410039>; Michael BW Sinclair, "Law and Language: The Role of Pragmatics in Statutory Interpretation." *University of Pittsburgh Law Review*, Vol. 46, (1984): 373.

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Pakistan as well. Examples of the use of such Latin terms in Modern English are; '*amicus curiae*' (friend of the court) which assists the court in a case, '*bona fide*' which is used to refer 'in good faith' in UK legal context. On the other hand, the Norman Conquest also introduced numerous French words in English legal discourse such as; '*jury*', '*judge*' and '*verdict*'.<sup>2</sup>

English is an Indo-European language; whereas Arabic belongs to a different language family i.e. the Semitic language. For that, Arabic doesn't have French and Latin words as characterizing features of its Legal discourse. Moreover, Arabic legal discourse has its roots in the Islamic *Shari'ah* Law, and Civil Law, which are different in many aspects from English Common Law. Hence, the languages under discussion are totally unrelated.

Generally, it is argued that the synonyms of any word in a language are not fully equivalent to each other.<sup>3</sup> Hence, the substitution of a word by its synonym cannot satisfy the perfection in originality of the text. It is a deliberation about the interpretation within one and the same language. So, one can understand how much variations may be expected from a

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<sup>2</sup> D. Mellinkoff, *The Language of the Law*, (Boston: Little, Brown and Co, 1994), 58.

<sup>3</sup> Barbara Zurer Pearson, Barbara Zurer, Sylvia Fernández, and David K. Oller, "Cross-Language Synonyms in the Lexicons of Bilingual Infants: One Language or Two?." *Journal of Child Language*, Vol. 22, no. 2 (1995): 345-368.

translation of one language into the other. Weston opines that "the basic translation difficulty of overcoming conceptual differences between languages becomes particularly acute due to cultural and more specifically institutional reasons".<sup>4</sup> Thus, the present work hypothesizes that legal terms loaded with religious and cultural meanings cannot be substituted because of lack of equivalent vocabulary. For example, the Islamic legal term *khula'* does not have direct equivalent terms in English and translating it as 'divorce' cannot explain the socio-culture complexity of the term in Arabic. There are abundant examples of such words related to Islamic Jurisprudence with no equivalence in English and the translation of such terminologies demands paraphrase which is usually eluded in language of law as expressed by Coke' "projicit ampullas et sesquipedalia verba [*Disdain bombast and words half a yard long*]: . . . *speak effectually, plainly, and shortly . . .*".

This research aims to explore religious and culture-specific terms used in criminal law especially in the Pakistan Penal Code, 1860 (PPC). It further provides the description of Arabic legal terms for investigating/identifying the problems of translation between the two languages (Arabic and English). The study responded upon what are the reasons behind the

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<sup>4</sup> Christopher Enright, *Studying Law* (Sydney: Braxton Press, 1983), 207.

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continuation of Arabic terms in criminal law. Taking it as a prelude, the study tries to find the usage and scope of Arabic terminology in the substantive criminal law, especially within PPC through a legal discourse analysis. The study is an attempt to identify such terms and to explicate the reason behind their inescapable use.

**Literature Review:**

Theoretically it seems simple to transform an international legal instrument into a domestic legal system which is quite difficult practically. The three analysts of legal transplantation, Watson, Teubner and Legrand have contributed significantly to the debate of transplantability for a conclusive outcome. A comparative chart of their views is summarized as follows:

<b>Watson</b>	<b>Teubner</b>	<b>Legrand</b>
The legal transplants are achievable	The term may be renamed as 'irritation', instead of 'transplant'	The legal transplants are not possible
It is frequent to borrowing the rules, structures and institutions	It is a falsely claim dichotomy that transplant can be accepted or rejected	Transfer or travel of rules from one legal order to another legal system is not possible
The spirit of legal system is separate from the Rules	The totality of the social values are no more connected to law however few fragments of society have connections	The culture and rules are interwoven and cannot be separated

**Table:** A comparative crux of views by the three scholars on 'legal transplant' is presented to avoid the length of the pape

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The advancement of law, as considered by Watson, is triggered by transplanting. Alongside, the successful borrowing is common in law which is substantial for Watson.<sup>5</sup> He says in a statement expressly that the borrowing is commonly a fundamental characteristic in any legal transformation as illustrated through the feudal laws in medieval period, the French *Code Civil* and the reception of the Roman law paradigms.<sup>6</sup> It is quite clear that Watson equates the notion of legal borrowing with legal transplants.<sup>7</sup> Nevertheless, he believes in the similar way that the massive significance in legal progress is through legal borrowing. The precision at the original home of the borrowed rule would not function similarly in the new station. The differences are fundamental in understanding when, why and how law changes, how the law develops in a culture where it operates afterwards and the direction of legal change which should not be neglected. According to Watson, what he wants to establish that the word 'Pain' in French the word of German language 'Brot' have no exactly

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<sup>5</sup> Alan Watson, *Legal Transplants: An Approach to Comparative Law*, 2nd ed. (Georgia: University of Georgia Press, 1993), 18.

<sup>6</sup> Alan Watson, "Legal Transplants and European Private Law," *Electronic Journal of Comparative Law* 4, (2000), [http://awf.ius.bg.ac.rs/legal\\_transplants.pdf](http://awf.ius.bg.ac.rs/legal_transplants.pdf)

<sup>7</sup> Alan Watson, *Legal Transplants: An Approach to Comparative Law*, 2nd ed. (Georgia: University of Georgia Press, 1993).

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same meaning.<sup>8</sup> However, the point of view is one dimensional in context of law. “*Pain* in French and in France is not the same as *Pain* in French and in France”.<sup>9</sup> The View of Watson can be explained by this example. Bread does not have same meaning in the eye of an individual from a less privilege village in France and a wealthy entrepreneur person from central Paris. Because, the bread’s role in the everyday life of the villager’s family is different, due to the closeness with the source of supply and the limited variety of choice to him.<sup>10</sup> With more such examples, Watson proves his view point and suggests the similar understanding for law within one State or jurisdiction.

Teubner observes the difficulty of legal transplants in complicated matters.<sup>11</sup> Teubner differs from other scholars and prefers the legal transplant as ‘irritant’ being a set of foreign rules.<sup>12</sup> According to him, a legal concept from one apparatus to another having effect of transfer cannot predict as it will change pairing the structures. Moreover, his term

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<sup>8</sup> Pierre Legrand, "The Impossibility of Legal Transplants," *Maastricht Journal of European and Comparative Law* 4 (1997): 117, <https://www.pierre-legrand.com/ewExternalFiles/transplants.pdf>.

<sup>9</sup> Alan Watson, "Legal Transplants and European Private Law," *Electronic Journal of Comparative Law* 4, (2000), [http://awf.ius.bg.ac.rs/legal\\_transplants.pdf](http://awf.ius.bg.ac.rs/legal_transplants.pdf)

<sup>10</sup> Ibid.

<sup>11</sup> Gunther Teubner, "Legal Irritants: Good Faith in British Law or How Unifying Law Ends up in New Divergencies," *The Modern Law Review* 61, no. 1 (1998): 11. <https://doi.org/10.1111/1468-2230.00125>.

<sup>12</sup> Ibid.

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is constructively signifying the shift of a body of rules into a different legal order, where the existing legal customs and meanings of the local entity would not be substituted automatically. In the contrast it creates a new set of effects and options which are not predictable.

Watson and Teubner have a bit similar view for the legal transplantation; however, Legrand implies that since everything is dissimilar in every State therefore legal backgrounds cannot be compared<sup>13</sup> which is conservative approach for defining the legal transplants. Legrand takes a rather firm position on a set of rules and their meaning, when it comes to distinguish between cultural communities. He observes that transplanting a rule preserves some part of culture and meanings of its origin, and a rule of law is mostly influenced by what it is ought to imply and which culture is applying the thought, therefore the transplantation of foreigner's rule into a domestic legal structure is impossible.<sup>14</sup> His point is that the judicial interpretations of a same written statutory law, due to diversity in legal understanding and thinking and local traditions into two different countries will be different.

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<sup>13</sup> Pierre Legrand, "Against a European Civil Code," *Modern Law Review* 60 (1997): 44-45, [https://www.pierre-legrand.com/against\\_european\\_civil\\_code.pdf](https://www.pierre-legrand.com/against_european_civil_code.pdf).

<sup>14</sup> Pierre Legrand, "The Impossibility of Legal Transplants," *Maastricht Journal of European and Comparative Law* 4 (1997): 114, <https://www.pierre-legrand.com/ewExternalFiles/transplants.pdf>

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### **Research Methodology:**

The study is providing a cross-lingual text analysis of the transplanted Islamic terms used in PPC. The comparison is done with a view to characterizing the translation workability within English perspective of legal terminology through the application of lexical as well as pragmatic meanings. The study is limited to two languages only as the original language of PPC is English while the modified version is annexed with Islamic legal terms in its original text of Arabic. The transliterations used here in main text for expressing Arabic terminology are taken from the relevant provisions of PPC.

### **Background of PPC in the Legal System of Pakistan:**

The PPC is the offshoot of English legal system designed for colonial British India (including today's Pakistan).<sup>15</sup> The Islamic Penal Law introduced by substituting sections 53, 299 to 338 in PPC with the previous sections by the Criminal Law (Amendment) Ordinance, 1990 which is not a mere change in the form or nomenclature but change in substance, content, meaning and the consequences flowing therefrom. Thus any apparent similarity in the two provisions, for example, culpable

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<sup>15</sup> Skuy, David. "Macaulay and the Indian Penal Code of 1862: The Myth of the Inherent Superiority and Modernity of the English Legal System Compared to India's Legal System in the Nineteenth Century." *Modern Asian Studies* 32, no. 3 (1998): 513–57. doi:10.1017/S0026749X98003035.

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homicide amounting to murder and *qatl-i-amd* is not to mislead us as this similarity is due to the reason that Islamic Penal Laws were in force when the British acquired suzerainty over the Sub-Continent and the new laws enforced to serve the imperial interests, retained some of the features of the old laws.<sup>16</sup>

### **Pakistan Penal Code, 1860 and Arabic Terminology or Transliterations:**

The Arabic language in its broader sense holds a rich vocabulary but this study is focused on the terminologies used in PPC. Therefore, the paper is introducing approximately all the Arabic or transliterated words used in PPC. However, the words expressing the legal obligations are explained a bit in detail as compare to those which hold the symbolical importance.

S. No	Relevant Provisions of PPC	Arabic words, terminology or transliterations
1	53	<i>Qisas, Diyat, Arsh, Daman, Ta'zir,</i>
2	295-B	<i>Quran</i>
3	295-C	<i>Muhammad (PBUH)</i>
4	298-A	<i>Ummul-mumineen, Ahle-bait, khulafa-e-raashideen, sahaaba</i>
5	298-B	<i>Ameer-ul-mumineen, khaleefa-tul-mumineen, khaleefa-tul-muslimeen, sahabi, Razi Allah Anho, Masjid, Azan,</i>
6	298-C	<i>Muslim</i>

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<sup>16</sup> *Muhammad Ashraf v The Stae*, PLD 1991 Lah 347

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7	299	<i>Fasad-fil-Arz, Ikrah-e-Tam, Ikrah-e-Naqis, Qatl, Wali</i>
8	300	<i>Qatl-e-Amd</i>
9	303	<i>Qatl due to Ikrah-e-Tam or Ikrah-e-Naqis,</i>
10	304	Proof of <i>Qisas</i>
11	309	<i>Waiver-Afw of qisas in qatli' amd</i>
12	310	<i>Sulh in qatl-e-amd</i>
13	315	<i>Qatl shibh-i 'amd</i>
14	318	<i>Qatl-i-khata</i>
15	321	<i>Qatl-bis-sabab</i>
16	332	<i>Itlaf-i-udw, Itlaf-i-salahiyyat-i-udw, shajjah, jurh</i>
17	337	<i>Shajjah-khafifah, mudihah, hashimah, munaqqilah, ammah, damighah</i>
18	337-B	<i>Jaifah, ghair-jaifah</i>
19	337-E	<i>Damiyah, Badi'ah, mutalahimah, mudihah,</i>
20	338	<i>Isqat-i-hamal</i>
21	338-B	<i>Isqat-i- janin</i>

**Table:** Arabic Terminology used with the same Transliterations in

the provisions of PPC<sup>17</sup>

Before entering into the detailed lexical and judicial interpretations of the desired terms, a few Arabic words/terms used in PPC but, beyond the limitation of the study, are explained hereinafter. Contextually, all such expressions are used to safeguard the respect, honor and dignity of the sacred nomenclature of the Islamic religion. The “Quran” is a divine book revealed on the Prophet of the Muslims. The word “Muhammad” is used to represent the Holy Prophet of the Muslims. “Ummul-

<sup>17</sup> Note: The table reproduces the Arabic terminology or transliterations used in PPC to depict the Islamic criminal law but all provisions and repeated words/terms are not reflected hereinabove.

mumineen”<sup>18</sup> stands for any of the wives of the Prophet (PBUH)<sup>19</sup> of the Muslims. The term “Ahle-bait”<sup>20</sup> can be explained as members of or family of the Prophet (PBUH). “Khulafa-e-raashideen”<sup>21</sup> is derived from “*khalaf*” succeeding generations, the generations that came later, in Islamic concept this refers to a Caliph, successor or someone who succeeded the Prophet. Later on, it came to be used to refer to all four righteous Caliph or successors of the Prophet. “Sahaaba” is the plural of “sahabi”<sup>22</sup> which is, derived from “sukhba” pragmatically, a companion of the Prophet. The three expressions “Ameer-ul-mumineen”, “khaleefa-tul-mumineen” and “khaleefa-tul-muslimeen” symbolize the leader of the believers.<sup>23</sup> “Razi Allah Anho” means; may Allah (God) be pleased with him. A prayer often said after mentioning the name of a companion of the Prophet.<sup>24</sup> “Masjid” represents a prayer place: any small or big area designated.<sup>25</sup> “Azan” defined as call to prayer. “Muslim” denotes a person who follows or believes the prophet hood of Muhammad (PBUH).

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<sup>18</sup> Ibid, p. 250

<sup>19</sup> Peace Be Upon Him

<sup>20</sup> Prot. Mahmoud Ismail Saleh, Dictionary of Islamic Words & Expressions, published by: Darrusalaam, 3rd edition 2011, p. 16

<sup>21</sup> Ibid, p.126-130

<sup>22</sup> Ibid, p. 205

<sup>23</sup> Ibid, p. 27

<sup>24</sup> Ibid, p. 191

<sup>25</sup> Ibid, p. 162

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The section below presents the material, gives definitions of the main terms used in the analysis, and specifies what notions and concepts these terms refer to.

### **Literal & Technical Meanings and Judicial Interpretation:**

The words mentioned in the above table are in chronological order with respect to the provisions of PPC and presented without repetition. But, here the explanation is following the alphabetical arrangement of the used words to understand all possible dimensions and intended meanings in their original and contextual peripheries. The reference of all repeated words can also be found through the relevant provisions of PPC wherever used with whatever possible application. Now, the intended “cross-lingual text analysis” of each Arabic legal term is produced below.

#### **1. Arsh:**

The lexical meaning of the Arsh is ‘compensation’. The “Arsh”<sup>26</sup> means a compensation of trauma. Another way it can be defined as “indemnity; blood money”.

The judicial interpretation of Arsh says: “Arsh means the compensation specified to be paid by the offender to the victim or his heirs. It is an

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<sup>26</sup> Arsh can be divided to following types: a) *Arsh –Al-nafiza*: Indemnity for piercing wounds. b) *Arsh al-mowadiha* : Indemnity for bone-clearing wounds. c) *Arsh al-munqalah*: Indemnity for breaking and dislocating bones. d) *Arsh- al –jaifah*: Indemnity for deep wounds. e) *Arsh al-mamooma*: Indemnity for skull-fracturing wounds.

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independent punishment which is compensatory and substantive in nature”.<sup>27</sup> The amount of Arsh can be paid in lump sum or in installments.<sup>28</sup>

The discourse of Arsh through its literal and judicial meaning suggests that the word ‘Arsh’ cannot be comprehended by its translation as compensation. Because, Arsh is not only compensation, but it is also a substantive punishment. Moreover, the compensation is normally used as the damages against a civil wrong while Arsh is a criminal punishment of compensatory nature.

## **2. Daman:**

The literal meanings of ‘Daman’ are compensation, liability or bodily enormity. Daman means the compensation determined by Court to be paid by the offender to the victim for causing a hurt not liable to ‘Arsh’. It is an independent and substantive punishment of compensatory nature.<sup>29</sup>

## **3. Diyat:**

Lexical meanings of ‘*Diyat* or *Diya*’ is known as blood money. The resolution of tribal violence through pardon or ‘*Diya*’ was intended to act as an offer of peace, thereby preventing an escalation of the violence into a

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<sup>27</sup> *Abid Hussain v The Chairman, Pak Bait -ul-Mal*, PLD 2002 Lah 482, <http://www.pljlawsite.com/html/ppc331.htm>

<sup>28</sup> *Asghar Ali v The State*, 2003 YLR 1156, [https://pakistanlaw.pk/case\\_judgements/63022/asghar-ali-versus-the-state](https://pakistanlaw.pk/case_judgements/63022/asghar-ali-versus-the-state)

<sup>29</sup> *Abid Hussain v The Chairman, Pak Bait -ul-Mal*, PLD 2002 Lah 482

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circle of revenge, and as evidenced by *Surah Al-Ma'idah*, the practice of 'Diya' was in fact encouraged as the most desirable solution in the event of harm. *Diyat: 'Badal-o-nafsin Al-qateel'* blood money, "ne, and mulct for murder or wounding. The study of diya is also divided into the study of 'Diya' for loss of life and 'Diya' for the severance of limbs and (inflicting) wounds.<sup>30</sup> *Diya: Compensation for harm inflicted or a return paid for a favour.*<sup>31</sup>

Technically, *Diyat* is a compensatory substantive punishment.<sup>32</sup> The sections 53, 299, 308 and 323 of PPC manifest that amount of 'Diya' is to be fixed by court<sup>33</sup> keeping in view the injunction of Islam and the financial position of the convict and the heirs of the victim. *Diyat* is in fact an alternative punishment to 'Qisas'.<sup>34</sup> In the following cases *Diya* can be awarded:

- a) Section 306 to 307--- *qatl-i-amd* not liable to *qisas*
- b) Section 312--- *qatl-i-amd* after waiver or compounding of *qisas*
- c) Section 315---*qatl shibh-i-amd*
- d) Section 318---*qatl-e-khata*

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<sup>30</sup> Ibn-e-rushd , *Bidayat-ul-Mujtahid wa-al-Nihaya-tl-Muqtasid*, p. 482

<sup>31</sup> Muhammad Ayub, *Journal of Islamic Business and Management* Vol.2 No.2, 2012, p.12

<sup>32</sup> *Abid Hussain v The Chairman, Pak Bait -ul-Mal*, PLD 2002 Lah 482

<sup>33</sup> *Chairman Agricultural Development Bank of Pakistan v Mumtaz Khan*, PLD 2010 SC 695

<sup>34</sup> Section 308, Pakistan Penal Code, 1860

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e) Section 321---*qatl bis sabab*.

The court can award imprisonment (or *Taz'zir*) in addition to punishment of '*diya*'.<sup>35</sup> In case of *Diya* imposed in lieu of *Qisas*, would constitute a sentence against parents of deceased minor who was convicted.<sup>36</sup> The amount of *Diya* is payable in lump sum or in installments.<sup>37</sup> In case of default in payment of monthly installments accused would be remitted to custody as to suffer simple imprisonment till payment of *Diya*.<sup>38</sup> By virtue of the provision of s.299, PPC, *Diya* is relevant only to a case of death of a victim.<sup>39</sup>

#### **4. Fasad-fil-Arz:**

Lexical meanings: The word "*Fasad*" is noun's trilateral root *fā sīn dāl* which means disorder and "*arz*" means the Earth. Therefore *fasad-fil-arz*<sup>40</sup> may be translated as social disorder or spreading evil on the Earth.<sup>41</sup> This term can be understood in current era as act of both domestic and international terrorism as well as extortion, organized crime and drug &

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<sup>35</sup> *Abid Hussain v The Chairman*, PLD 2002 Lah 482; *Abid Hussain v The State*, PLD 2007 SC 315

<sup>36</sup> *The State v Muhammad Hanif*, 1992 SCMR 2047; *Allauddin v The State*, 2001 MLD 1757

<sup>37</sup> *Asghar Ali v The State*, 2003 YLR 1156

<sup>38</sup> *The State v Abdul Aziz*, 1993 PCrLJ 68

<sup>39</sup> *Syed Azhar Hussain Shah v The State*, 2019 SCMR 537, [https://pakistanlaw.pk/case\\_judgements/4091/syed-azhar-hussain-shah-versus-state](https://pakistanlaw.pk/case_judgements/4091/syed-azhar-hussain-shah-versus-state)

<sup>40</sup> Section 299 (ee) PPC

<sup>41</sup> Prot. Mahmoud Ismail Saleh Dictionary of Islamic Words & Expression, p: 55-56; Arabic-English Lexicon by Edward William Lane (London: Willams & Norgate 1863), volume 1, librairie du liban , (Beirut Lebanon: 1968)

human trafficking etc. PPC clearly exhibits to define *fasad fil arz* technically as the past conduct or previous convictions of the offender or brutal, shocking or unprecedented manner of committing an offence which spreads fear or any potential danger to the society. This section extends its ambit to the honor killing after amendment in 2016 and the courts exhibit the same dimension in various cases.<sup>42</sup>

## **5. Ikrah:**

It is a word of Arabic language which has several usages and meanings.<sup>43</sup> Literally the word “*ikrah*” means, dislike or antonym of ‘love or likeness’. The prevailing meaning of “*ikrah*” is to conduct an act or behavior accepting from a person who does not want to do the same in ordinary circumstances. In other words it can be defined as, 'to compel or force a person to fulfill an unlikely or unlawful demand without his free consent'.<sup>44</sup> However the legal terminology in Islamic law describes that the word “*ikrah*” is a verbal noun abstracted from trilateral root is *kāf rā hā* (*kareha*) which means pressure, duress or coercion.<sup>45</sup> The Islamic jurists proposed a few conditions to declare the status of “*ikrah*”. The important

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<sup>42</sup> *Muhammad Ameer v State*, PLD 2006 Supreme Court 283; *Muhammad Qasim v State*, PLD 2018 SC 840, *Ali Ahmad v State*, PLD 2020 SC 201

<sup>43</sup> <http://albayan.co.uk/mobile/MGZarticle2.aspx?ID=4232>

<sup>44</sup> *AL- Raarifaat Li-Ali bin Muhammad Bin Al-Shareef Al-Jurjaani, Taba:1, Daarun Al-Nafaais, 2003, p:91.*

<sup>45</sup> *Anees Al-Fuqahaa Fi Taarifaat Al-Alfaaze Al-mutadaawilate Bayeena Alfuqahaa-e, Li Qasim Bin Abdullah AL-Qunavi, Tab:1, Daarul Kutab Al-ilmiyah, 2004, p:99*

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conditions are:<sup>46</sup> i) the present environment compels the victim to presume the conformity of threat for its occurrence due to either by the power or any other influence upon the victim; ii) immediate happening of the threat. According to the nature of the offence, PPC divides “*Ikrah*” into two kinds elaborated herein below.

**5.1. Ikrah-e-Naqis:** means any form of duress which does not amount to *Ikrah-e-Tam*.<sup>47</sup> Or due to the threats not enlisted in “*ikrah-e-tam*”. For example confinement or prison or any such punishments based upon which a person compel to do an unwanted act.<sup>48</sup>

**5.2. Ikrah-e-Tam**<sup>49</sup> is use of physical compulsion by unlawful threat or coercion. It is subjecting a person to improper pressure which overcomes his will and coerces him to comply with demand to which he would not yield if acting as fully agent. It is a threat from an offender in the following manner:

- (i) Putting any person, his spouse or any of his blood relations within the prohibited degree of marriage in fear of instant death; or
- (ii) Instant permanent impairing of any organ of the body; or

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<sup>46</sup> *Al-Badaa-e-hy Al- sanaaeh Fi Tarteeb Al-sharaaeh, Lil- Kasaani , Taba:2, Daarul Kutab Al-Arabia bairoot 1974,volum: 7, p: 176*

<sup>47</sup> Section: 299 h PPC.

<sup>48</sup> <https://www.alukah.net/sharia/0/72324/>

<sup>49</sup> Section: 299 e PPC.

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(iii) Instant fear of being subjected to sodomy or *zina-bil-jabr*.<sup>50</sup>

## 6. Itlaf-i-Udw:

The word “*Itlaf*” means to destroy and “*Udw*” means limb or organ.

Whoever dismembers, amputates, severs any limb or organ of the body of another person is said to cause itlaf-i-udw.<sup>51</sup>

## 7. Itlaf-i-Salahiyat-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-salahiyat-i-udw.<sup>52</sup>

## 8. Isqat-i-Hamal:

*Isqat-i-hamal* is an act similar to abortion of the fetus in the womb of the mother. In PPC such act is referred as 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

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<sup>50</sup> *The State v Hamid Ali alias Ahmad Ali*, 2002 YLR 4008, [https://pakistanlaw.pk/case\\_judgements/68102/the-state-versus-hamid-ali-alias-ahmad-ali](https://pakistanlaw.pk/case_judgements/68102/the-state-versus-hamid-ali-alias-ahmad-ali)

<sup>51</sup> S. 332, 333 and 334 PPC

<sup>52</sup> S. 335 and 336 PPC

she dies, the convict shall also be liable to the punishment provided for such hurt or death as the case may be.<sup>53</sup>

### **9. Isqat-i-Janin:**

Whoever causes a woman with child in her womb 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 her to miscarry is within the meaning of this section.<sup>54</sup>

### **10. Jurh:**

Whoever causes on any part of the body of a person other than the head or face a hurt which leave a mark of the wound whether temporary or permanent is said to cause *Jurh*. The following are the kinds of Jurh namely:<sup>55</sup>

**i.Jaifah:** Whoever causes jurh in which the injury extends to the body cavity of the trunk, is said to cause *jaifah*.<sup>56</sup>

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<sup>53</sup> S. 338 A, PPC

<sup>54</sup> Ss. 338 B and C, PPC

<sup>55</sup> S.337 PPC

<sup>56</sup> S.337 C, PPC

**ii. Ghair-jaifah:** Whoever causes jurh which does not amount to jaifah, is said to cause *ghayr-jaifah*.<sup>57</sup> The following are the kinds of ghayr-jaifah namely:<sup>58</sup>

- a) **Badi'ah:** by cutting or incising the flesh without exposing the bone, is said to cause *badi'ah*.
- b) **Damiyah:** in which the skin is ruptured and bleeding occurs, is said to cause *damiyah*.
- c) **Hashimah:** by causing fracture of a bone without dislocating it, is said to cause *hashimah*.
- d) **Mudihah:** by exposing the bone, is said to cause *mudihah*.
- e) **Munaqqillah:** by fracturing and dislocating the bone, is said to cause *munaqqilah*.
- f) **Mutalahimah:** by lacerating the flesh, is said to cause *mutalahimah*.

## 11. Qatl:

The word “*qatl*” is perfect verb is third person masculine singular. It has trilateral root; *qāf tā lām* which means killing,<sup>59</sup> homicide, assassination, murder, slaughter.<sup>60</sup> According to Islamic law qatl is causing death of a

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<sup>57</sup> S.337 E, PPC

<sup>58</sup> S.337 E, PPC

<sup>59</sup> Arabic-English Lexicon by Edward William Lane (London: Willams & Norgate 1863), volume 1, librairie du liban , Beirut Lebanon, 1968

<sup>60</sup> J. Milton Cowan , A Dictionary of Modern Written Arabic, Library of Congress Cataloging in Publication Data, Spoken Language Service, INC. Ithaca, new york 14850 , p. 743

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person<sup>61</sup> where its commandments are applicable.<sup>62</sup> The meaning of qatl doesn't include words "intention" and "act" for 'qatl'. The word qatl, therefore, cannot be translated as murder or culpable homicide.<sup>63</sup> The qatl is a sin in the words of Holy Quran.<sup>64</sup>

### **12. Qatl-bis-Sabab:**

It is an indirect killing or without any intention to cause his death or without any intention to cause him any harm, but by doing an unlawful act which becomes the cause of his death.<sup>65</sup>

### **13. Qatl due to Ikrah-e-Tam or Ikrah-e-Naqis:**

It is a kind of murder specifically caused by either of the two terms i.e. Ikrah-e-Tam or Ikrah-e-Naqis which are explained above.

### **14. Qatl-i-Amd:**

Premeditated murder<sup>66</sup> or intentionally killing someone is considered not only a major crime but also a major sin. Capital punishment or payment of "diyyah" may be applied, depending upon the wish of the family (or wali) of the victim.<sup>67</sup>

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<sup>61</sup> S. 299 (j) PPC, 1860.

<sup>62</sup> Al-Murghinani, Al-Hidayah, Volume 4, p. 558, 559

<sup>63</sup> *Taus Khan v State*, 1995 MLD 1775,  
[https://pakistanlaw.pk/case\\_judgements/90648/taus-khan-versus-state](https://pakistanlaw.pk/case_judgements/90648/taus-khan-versus-state)

<sup>64</sup> *Sabir Hussain v Mushtaq Ahmed*, 2001 YLR 2454,  
[https://pakistanlaw.pk/case\\_judgements/72106/sabir-hussain-versus-mushtaq-ahmed](https://pakistanlaw.pk/case_judgements/72106/sabir-hussain-versus-mushtaq-ahmed)

<sup>65</sup> J. Milton Cowan, A Dictionary of Modern Written Arabic, p. 743

<sup>66</sup> Ibid.

<sup>67</sup> Prot. Mahmoud Ismail Saleh Dictionary of Islamic Words & Expression, p. 185

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**15. Qatl-i-Khata:**

It is an unintentional killing of a person<sup>68</sup> or accidental homicide.

**16. Qatl Shibh-i ‘Amd:**

With the intention to cause harm to the body or mind of that or any other person, by means of a weapon or act which in the ordinary course is not likely to cause death.

**17. Qisas:**

Literal meaning: requital, tid for tat, retaliation, and revenge for bloodshed, punishment the study of *Qisas* is divided into Qisas for loss of life and Qisas for limbs.<sup>69</sup> It is a punishment following the footsteps of the offender.

Technical interpretation: the word ‘*Qisas*’<sup>70</sup> has been defined as punishment by causing similar hurt at the same part of body of the convict as he has caused to the victim or causing his death if he has committed *qatl-i-amd* in exercise of the right of the victim or *wali*<sup>71</sup> Liability of qisas cannot be imposed unless Court is satisfied having regard to requirement

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<sup>68</sup> Al Quran Surah: 4, Ayah: 92.

<sup>69</sup> Ibn-e-Rushd , *Bidayat-ul-Mujta-hid wa-al-Nihaaya-tl-Muqtasid* p.482; Prot. Mahmoud Ismail Saleh, *Dictionary of Islamic Words & Expression*, p. 186

<sup>70</sup> Sections 53, 299, 337---

<sup>71</sup> *Muhammad Aslam v Shaukat Ali*, 1997 SCMR 1307, [https://pakistanlaw.pk/case\\_judgements/86839/muhammad-aslam-versus-shaukat-ali](https://pakistanlaw.pk/case_judgements/86839/muhammad-aslam-versus-shaukat-ali)

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of *tazkiyah-al-shahood* (purification of witnesses).<sup>72</sup> Qisas in Islamic terms is Almighty Allah's law dealing with the offences of murder and bodily hurt.<sup>73</sup>

### 18. Shajjah:

It is an Arabic word which means injuries on head or face 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*.<sup>74</sup>

**i.Shajjah-i-ammah:** 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*;

**ii.Shajjah-i-damighah:** 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*.

**iii.Shajjah-i-hashimah:** by fracturing the bone of the victim, without dislocating it, is said to cause *shajjah-ihashimah*;

**iv.Shajjah-khafifah:** without exposing bone of the victim, is said to cause *shajjah-i-khafifah*;

**v.Shajjah-i-mudihah:** by exposing any bone of the victim without causing fracture, is said to cause *shajjah-imudihah*;

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<sup>72</sup> *Sambali Khan v The State*, PLD 1998 Pesh 101, [https://pakistanlaw.pk/case\\_judgements/81287/sambali-khan-versus-the-state](https://pakistanlaw.pk/case_judgements/81287/sambali-khan-versus-the-state)

<sup>73</sup> *Zahid Rehman v State*, PLD 2015 SC 77, [https://pakistanlaw.pk/case\\_judgements/16135/zahid-rehman-versus-state](https://pakistanlaw.pk/case_judgements/16135/zahid-rehman-versus-state)

<sup>74</sup> Section 337 PPC; M. Mehmood, *The Pakistan Penal Code 1860*, Lahore: PLD Publisher, 2018. V. 2, p. 1111

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**vi. Shajjah-i-munaqqilah:** by causing fracture of the bone of the victim and thereby the bone is dislocated, is said to cause *shajjah-i-munaqqilah*.

**19. Sulh in Aatl-i-Amd:**

*Sulh* in qatl-i-amd or compounding of qisas is possible when an adult sane *wali* may, at any time, on accepting badal-i-sulh, compound his right of qisas. And *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 movable or immovable property.

**20. Ta'zir:**

The word '*Tazir*' is derived from the word '*azar*' which means to prevent, to respect, to reform. It includes chastisement, admonition, reprimand, flogging, imprisonment, fines, censure, rebuke, reproof, reprimand, reprehension, scolding, chiding, tongue-lashing etc.

It is a discretionary punishment, punishment the nature of which is not specified in Islamic law: therefore it is left to the discretion of the judge or ruler.<sup>75</sup> Technically, the Tazir is a man-made law for the offences of murder and bodily hurt.<sup>76</sup>

**21. Waiver-Afw of qisas in qatli' amd:**

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<sup>75</sup> Prot. Mahmud Ismail Saleh, Dictionary of Islamic Words & Expression, p. 245

<sup>76</sup> *Zahid Rehman v State*, PLD 2015 SC 77

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According to S.309 of PPC: 1). In the case of Qatl-i-Amd, an adult sane Wali may, any time and without any compensation waives this rig of Qisas: Provided that the right of Qisas shall not be waived: (a) Where the Government is the Wail or (b) Where the right of Qisas vests in minor or insane, (c) Where a victim has more than one Wa’li anyone of them may waive his right of Qisas: 2). Where a victim has more than one Wali at ne of the may waive this 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 offender, 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 mote than one offenders, the waiver of the right of Qisas against one offender shall not affect the right of Qisas against the other offender.

## **22. Wali:**

Wali mens a person entitle to claim qisas. Wali: ...ولى الدم: ورثة القتل. The avenger of blood heir.<sup>77</sup> The jurists agreed that the “Wali al- dam” (heir

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<sup>77</sup> Muhaamd Rawass Qila ji, Haamid Saadiq Qeeni in the Mojamu Lughta Fuqaha, 1985 , “ول-ى”

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intitle to exact qisas) intitle to one of two things: “Qisas” or “Afa/ Pardon” either in return for “diya” or without it.<sup>78</sup>

**Conclusion:**

Legal translation from Arabic into English or vice versa is expressly difficult because of the wide-ranging differences between these two language systems, on the one hand, and legal systems, on the other. The findings suggest that Islamic legal terms could appropriately be explained and applied through original text in Arabic language as the religious and cultural background embedded in these terms do not have a direct equivalent in English legal system. However, the workability of Arabic terminology as legal transplantation to a large extent depends upon the social and judicial acceptance or absorption in the legal fraternity in particular and in the public in general. The major reason to accept this terminology might relate to the Islamization momentum of the laws in the history of the country, anyhow it is an opening to a new socio-legal research.



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<sup>78</sup> Ibn-e-Rushd , Bidaya-ul-Mujta-hid wa-al-Nihaaya-tl-Muqtasid p.490

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