

## Bridging the Gap: *Diyah* and the Pursuit of Equitable Victim Compensation in Pakistan

RAI MUHAMMAD KHAN\*

MUDASSIR MAQSOOD\*\*

### Abstract

*This research examines Pakistan's framework for paying compensation to crime victims, defined in Section 544-A of the Criminal Procedure Code, 1898. It brings to light an important flaw (i.e., the lack of an explicit mechanism for the quantification of compensation awards). A review of pertinent legal precedents shows glaring disparities and possible inequities arising from the lack of a standardized mechanism. To fill this gap, we look at the Islamic concept of *diyah* as a potential basis for an equal and efficient system. Our proposed model brings forth some of the essential features of *diyah*, such as emphasizing punishment for criminals, facilitating reconciliation and mediation among affected parties, and ensuring robust judicial checks and transparency. We aspire to improve on the inadequacies of the current system through these principles. However, we understand that the feasibility of bringing into operation a framework based on *diyah* remains uncertain. Challenges involve coping with the complexity of integrating Islamic and secular legal traditions, guaranteeing fairness and preventing discrimination, and attaining common acceptance by the parties. Ultimately, this research contends that incorporating *diyah* principles into Pakistan's victim compensation framework offers a promising pathway towards greater fairness, consistency, and social cohesion within the criminal justice system. This, in turn, can enhance access to justice for victims and contribute to a more just and equitable society.*

### Keywords

Islamic law, Pakistan, *diyah*, victim compensation, legal reforms.

### Introduction

Victim compensation plays a vital role in any functioning criminal justice system. Its fundamental function is to provide monetary compensation to the victims, intending to restore them, as far as possible, to their pre-offence position. Nevertheless, a good compensation system not only aims at punishing but also promotes good

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\* Additional District & Session Judge, District Judiciary, Lahore High Court, Pakistan.

\*\* Civil Judge 1st Class-cum-Judicial Magistrate, Section-30, District Judiciary, Lahore High Court, Pakistan.

social justice by ensuring that the victims are restored to the economic ladder. The combination of punishment and restoration is crucially needed to make the system more balanced and restoration-oriented.

In Pakistan, Section 544-A of the Criminal Procedure Code 1898 (CrPC) legislatively enshrines this strategy. The codification of this provision, however, shows that it has a major weakness: the determination of compensation lacks a uniform process. This ambiguity makes the justice system ineffective as there are discrepancies and unpredictability in compensation awards, thus, never serving its purpose of getting proper and fair ultimate compensation to the victims. Setting equal and uniform practices of compensation is important in creating a more balanced and just criminal justice system.

This research paper explores the intricacies of Section 544-A of the CrPC by examining pertinent reported case laws of the Supreme Court (SC) of Pakistan from 1972 to 2019 (the year until which SC decisions on this section are available). Through a meticulous examination of judicial pronouncements and the application of the provision in diverse cases, this study aims to identify the specific lacunae that hinder the consistent and equitable determination of compensation. The article seeks to answer how the absence of a clear mechanism for determining compensation under Section 544-A of the CrPC has impacted the consistency and fairness of compensation awards in Pakistani courts, what the key principles of *diyah* (Islamic compensation) are in Islamic jurisprudence, and how these principles can inform the development of a standardized and effective framework for determining compensation in criminal cases in Pakistan.

By shedding light on the absence of a mechanism and exploring the Islamic concept of *diyah*, this research endeavours to propose a framework for reform, advocating for amendments and guidelines that ensure a more just and effective system of compensating victims of crime in Pakistan.

### **Materials and Methods**

This research employs a qualitative legal research methodology, utilizing a combination of primary and secondary sources. Primary source data consists of case law, specifically related to “compensation” and “Section 544-A.” This analysis aims to identify patterns, inconsistencies, and judicial reasoning in awarding compensation under Section 544-A of the CrPC. To ensure relevance and manageability following criteria were applied for case selection:

The research focuses on thirty-two cases decided from 1972 to 2019 to capture contemporary judicial trends and societal contexts. Due to

their authoritative nature,<sup>1</sup> cases decided by the SC are primarily analysed. However, significant or illustrative judgments from the High Court may also be included to provide a nuanced perspective. Cases involving specific offences, such as murder, attempt to murder, grievous bodily harm, and sexual offences, are selected to allow for in-depth analysis within each category and facilitate comparison across different types of harm. To ensure a comprehensive understanding of the factual background, legal reasoning, and the basis for compensation awards, only cases with publicly available full-text judgments are included. To provide context, theoretical grounding, and insights into the principles of *diyah*, this research draws upon various secondary sources, including academic literature, legal commentaries, and relevant Islamic texts.

Thirty-two reported cases, which this study analyses concerning compensation under Section 544-A of the CrPC, are related to the offences as detailed in the following table.

**Table One**

<b>Research Data of Cases concerning Compensation under Section 544-A of the CrPC</b>							
<b>Single Murder</b>	<b>Double Murder</b>	<b>Triple Murder</b>	<b>Quadruple Murder</b>	<b>Sextuple Murder</b>	<b>Attempt to Murder</b>	<b>Nose Amputated</b>	<b>Sodomy with Minor</b>
17	3	2	1	1	5	2	1

### **Literature Review**

The objective of Section 544-A is to introduce the aspect of victim compensation in the Pakistan criminal justice system. Though this is an important provision, the main gap is that the completeness of the framework is missing to ascertain the quantum of compensation. This has led to unequal application of the law. As it now stands, the law gives judges the discretion to determine the amounts of compensation depending on the gravity of the crime and the situation of the victim. The absence of a standard mechanism, however, contradicts the purpose of the law and makes the victims unsure of the pay they can receive. Restructuring the system to include a more organized procedure, like a tariff-based system derived from Islamic concepts (e.g., *diyah*), would resolve this problem since there would be guidelines to follow, and cases would be treated equally.<sup>2</sup>

<sup>1</sup> “The Constitution of Pakistan 1973,” art. 189.

<sup>2</sup> Mohammad Shahadat Hossain, “The Victim Compensation Scheme (*Aqilah*) under Islamic Criminal Law and its Compatibility with the Criminal Justice System in

Section 544-A of the CrPC presently leaves the decision on the quantum of compensation to the judicial discretion. Although discretion is necessary in reference to the peculiar circumstances of individual cases, it also leaves the way open to inconsistency and subjectivity. There are situations where similar offences attract significantly different levels of compensation that are determined by how the law and the circumstances of the victim are interpreted by the judge. In a bid to address such inconsistencies, this paper recommends a tariff system of calculating compensation, informed by *diyah* that establishes fixed ratios of different kinds of injury and harm. This would be a more transparent and predictable compensation method and therefore less subjective than it is presently in the system.

The injunctions of *diyah* as constructed in Islamic law provide a structured framework and a fair mode of computing compensation for criminal cases. Islamic law has fixed a compensation value for different forms of harm, and this ensures that the victim is compensated for an equivalent loss or injury. Introducing the concept of *diyah* to the compensation quantification system would provide badly needed standardization to the process. According to the views of the Muslim scholars like Fyzee<sup>3</sup> and Abou El Fadl,<sup>4</sup> *diyah* provides a predictable and balanced method of compensation to the victim. By aligning the compensation regime with Islamic codes, Pakistan will be able to establish a more stable and just compensation practice where victims need not feel shortchanged, since the compensation awarded will look at the severity of the criminality and the damage caused.<sup>5</sup>

This work puts forward the principles of trials of *diyah* according to Islamic law. The proposed compensation model in Pakistan would incorporate a tiered compensation structure that would make the system flexible enough to consider the individualized aspect of harm caused to the victim and the seriousness of the offence. The system would make up for it in advance by adopting the modern-day concepts

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<sup>3</sup> Asaf Ali Asghar Fyzee, *Outlines of Muhammadan Law* (Oxford: Oxford University Press, n.d.)

<sup>4</sup> Khaled Abou El Fadl, *Speaking in God's Name: Islamic Law, Authority and Women* (Oxford: Oneworld Publications, 2001).

<sup>5</sup> Absar Aftab Absar, “Restorative Justice in Islam with Special Reference to the Concept of Diyya,” *Journal of Victimology and Victim* 3, no. 1 (2020): 38-56, <https://doi.org/10.1177/2516606920927277>. Also see Marian Liebmann, *Restorative Justice: How It Works* (London: Jessica Kingsley, 2007).

of law, such as equivalency of proportionality, deterrence, and restorative justice, in the compensatory awards. This would make the system predictable and consistent. The purpose of the proposed hybrid model is to make the Pakistani system culturally accommodating and socially acceptable, and internationally informed.

Notably, the proposed model would provide specific requirements for computing the compensation in each level, and this would ensure that judicial decision-making is made more systematic. The factor that would further enhance victim compensation in Pakistan is the integration of the principles of restorative justice, giving rise to discussions and community-based solutions in the context of Pakistani criminal justice.

### Results and Discussion

After explaining the scope of the study, the research questions that it seeks to answer, and its aims, it is now appropriate to analyse existing case law on compensation determination. For this purpose, selected cases have been category-wise tabulated in tables two to seven. The results shown in these tables highlight the concerning lack of a standardized approach to quantify compensation. This inconsistency is further amplified by the fluctuating value of the Pakistani rupee against the price of silver. Given that the minimum *diyah* amount (minimum value of life) is calculated based on 30,630 grams of silver,<sup>6</sup> assessing compensation awards in terms of silver provides a more stable and relevant measure of their true value. This method accounts for the fluctuating value of the Pakistani rupee against silver, which has ranged from Rs. 0.51 per gram in 1972 to Rs. 85.84 per gram in 2019, while acknowledging that the inherent value of human life and suffering should remain constant. Analysing compensation in silver, alongside the original PKR figures, offers a clearer representation of potential inconsistencies within the system. This analysis, incorporating both PKR and silver values, provides a more comprehensive understanding of the disparities in compensation awards and highlights the need for a standardized approach. This study converts compensation awards to their silver equivalent using historical silver prices. The rate of silver per gram was determined by obtaining the rates of silver per ounce in US dollars from the Premier Research Platform for Long Term Investors,<sup>7</sup> converting them to Pakistani rupees, and then dividing them by 28.3495

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<sup>6</sup> “Pakistan Penal Code, 1860,” Section 323.

<sup>7</sup> Macrotrends, “Historical Silver Prices: 100-Year Chart,” accessed August 20, 2024, <https://www.macrotrends.net/1470/historical-silver-prices-100-year-chart>.

(grams per ounce). Historical US dollar exchange rates were obtained from the Pacific Exchange Rate Service.<sup>8</sup>

The abbreviations used in tables two to seven are defined as follows: “Y” represents year(s), while “M” stands for month(s). “NM” signifies “not mentioned” in the available case law records.<sup>9</sup> “HC” refers to the relevant High Court, and “TC” stands for the Trial Court, which initially decided the case. The abbreviations “SiM,” “DM,” “TM,” “ATM,” “QM,” and “SeM” represent single murder case, double murder case, triple murder case, attempt to commit murder, quadruple murder case, and sextuple murder case, respectively. “Default” signifies imprisonment if the compensation payment is not met. Finally, “Granting Court” refers to the court that awarded the compensation.

### ***Murder Cases***

This section examines the application of Section 544-A of the CrPC in twenty-four murders driven by personal vendettas, land disputes, business conflicts, and instances where the motive remains unclear with aiming to uncover patterns and inconsistencies in the awarding of compensation. For clarity, murder cases have been divided into five categories based on the motive of the occurrence.

#### ***When Revenge Fuels the Fire***

A close examination of ten revenge-motivated murder cases demonstrates variation in the application of Section 544-A, resulting in a range of compensation awards, highlighting the absence of a standardized methodology. For instance, *Azmat Ullah v. the State*<sup>10</sup> and *Muhammad Shakeel v. the State*<sup>11</sup> involved simple murders, one driven by passion and the other by revenge. Both resulted in Rs. 50,000 awards of compensation by the SC. As in both cases, the TC did not award compensation and only imposed a fine, while the HC dismissed appeals in both cases. Ultimately, the SC noted the omission and awarded compensation. However, due to silver price fluctuations, the former translates to a compensation of 735.29 grams of silver, while the latter represents 2,217.3 grams. This difference illustrates how temporal factors, in addition to the crime’s impact, can influence the award’s true worth.

<sup>8</sup> Pacific Exchange Rate Service, “Foreign Currency Units per 1 U.S. Dollar, 1950-2023,” Sauder School of Business, University of British Columbia, accessed August 20, 2024. <http://fx.sauder.ubc.ca/etc/USDpages.pdf>.

<sup>9</sup> Pakistan Law Site, accessed October 18, 2024, [www.pakistanlawsonline.com](http://www.pakistanlawsonline.com).

<sup>10</sup> *Azmat Ullah v. the State*, 2014 SCMR 1178.

<sup>11</sup> *Muhammad Shakeel v. the State*, 2006 SCMR 1791.

This inconsistency is also seen in *Ayaz Ahmad v. Allah Wasaya*,<sup>12</sup> where the court deemed Rs. 500,000, i.e., Rs. 250,000 by each of the convicts (equal to 36,523 grams of silver in total), appropriate for a revenge murder, after increasing it from Rs. 100,000 on each convict. This increase highlights the question of what objective criteria justify such changes. The absence of clear reasoning contributes to the lack of uniformity in awarding compensation. Similar variations are observed in cases like *Dosa and others vs. the State*,<sup>13</sup> where the SC doubled the compensation from Rs. 50,000 to Rs. 100,000, and *Muhammad Younis v. the State*,<sup>14</sup> where the court departed from a pre-existing compromise to impose Rs. 250,000 as an award, an increase from the initial Rs. 70,000. Even when comparing similar crimes, like the double murder in *Abdul Ali v. Haji Bismillah*<sup>15</sup> and the simple murder in *Jehanzeb v. the State*,<sup>16</sup> the former receiving Rs. 100,000 (corresponding to 10,319.9 grams of silver) and the latter Rs. 50,000 (equal to 5,030.2 grams of silver), the factors considered in determining the different awards are not explicitly stated. The fact that *Jehanzeb v. the State* saw the trial court acquit the accused further highlights the challenges in achieving consistency. Furthermore, the historical context provided by *Muhammad Sharif v. Saddar Din and two others*,<sup>17</sup> the first reported case on compensation, reveals how a lower Rs. 1,000 award then translates to a higher 1,960.2 grams of silver today. This underscores the need for a framework that considers not just the absolute amount but also its real-world value over time.

The inconsistency in compensation awards is also evident when comparing single murder cases to those involving multiple murders. For instance, a single murder in *Muhammad Younis v. the State* saw an award of Rs. 250,000 (25,799.8 grams of silver), while a more recent case, *Azmat Ullah v. the State*, garnered only Rs. 50,000 (735.29 grams of silver). This disparity is also evident in cases with multiple victims. In *Dosa and others v. the State* (double murder), each victim received Rs. 100,000 (10,319.9 grams of silver), while in *Manzoor and others v. the State* (triple murder and attempted murder), each murder victim received a compensation of Rs. 75,000 (21,490 grams of silver). Manifestly, in none of the cases mentioned in table two, the amount of compensation reached the

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<sup>12</sup> *Ayaz Ahmad v. Allah Wasaya*, 2004 SCMR 1808.

<sup>13</sup> *Dosa and others v. the State*, 2002 SCMR 1578.

<sup>14</sup> *Muhammad Younis v. the State*, 2002 SCMR 1308.

<sup>15</sup> *Abdul Ali v. Haji Bismillah*, 2002 SCMR 203.

<sup>16</sup> *Jehanzeb v. the State*, 2003 SCMR 98.

<sup>17</sup> *Muhammad Sharif v. Saddar Din and 2 others*, 1972 SCMR 419.

minimum value of *diyah* in terms of silver, which is equal to 30,630 grams of silver.<sup>18</sup>

**Table Two: Vendetta-Motivated Murders**

No.	Reported Case	Crime	Motive	PKR	Silver (grams)	Granting Court
1	Azmat Ullah v. the State 2014 SCMR 1178	SiM	Passion	50,000	735.29	SC
2	Muhammad Shakeel v. the State 2006 SCMR 1791	SiM	Revenge	50,000	2,217.3	SC
3	Ayaz Ahmad v. Allah Wasaya 2004 SCMR 1808	SiM	Revenge	250,000	18,261.5	SC
4	Jehanzeb v. the State 2003 SCMR 98	SiM	Revenge	50,000	5,030.2	SC
5	Dosa and others v. the State 2002 SCMR 1578	DM	Revenge	100,000	10,319.9	TC & SC
6	Muhammad Younis v. the State 2002 SCMR 1308	SiM	Revenge	250,000	25,799.8	TC & SC
7	Abdul Ali v. Haji Bismillah 2002 SCMR 203	DM	Revenge	100,000	10,319.9	SC
8	Abdul Majid v. the State 1996 SCMR 333	SiM	Enmity Revenge	20,000	3,021.15	TC
9	Manzoor and others v. the State 1992 SCMR 2037	TM	Revenge	75,000	21,490	SC
10	Muhammad Sharif v. Saddar Din and 2 others 1972 SCMR 419	SiM	Grievance	1,000	1,960.2	SC

In *Ayaz Ahmad v. Allah Wasaya*, the SC enhanced compensation from Rs. 100,000 to Rs. 250,000. In *Jehanzeb v. the State*, the TC acquitted the accused. In *Dosa and others v. the State*, the SC enhanced compensation from Rs. 50,000 to Rs. 100,000 and imposed default imprisonment of over 6 months against

<sup>18</sup> "Pakistan Penal Code, 1860," Section 323.



the statutory maximum. In *Muhammad Younis v. the State*, the SC enhanced compensation from Rs. 70,000 to Rs. 250,000. *Muhammad Sharif v. Saddar Din and 2 others* was the first reported case on compensation.

#### *Murders Stemming from Land and Business Disputes*

Table three presents an analysis of compensation awarded in murder cases where the motive was related to business or land conflicts. A review of SC judgments in five murder cases arising from business and land disputes also reveals a notable variation in the compensation awarded under Section 544-A. In *Muhammad Ashraf v. Tahir alias Billoo*,<sup>19</sup> despite acquittals by the TC and the HC, the SC convicted the accused and imposed Rs. 200,000 as compensation, equivalent to 13,029.3 grams of silver. This decision, while higher in its silver equivalent, differs from *Anwaar Hussain v. the State*,<sup>20</sup> where a combined murder and attempted murder case saw the HC enhance compensation from Rs. 15,000 to Rs. 100,000 (10,319.9 grams of silver). The disparity in initial awards, despite both involving loss of life, highlights the complexities in applying the legal principles.

Land disputes, as evidenced in *Talib Hussain v. the State*<sup>21</sup> and *Razi Begum v. Hijrayat Ali*,<sup>22</sup> further highlight this disparity. The former, a triple murder, resulted in a compensation of Rs. 50,000 (8,620.7 grams of silver), while the latter, a single murder, saw an award as low as Rs. 6,000 (3,947.36 grams of silver). This difference, despite both involving loss of life over land, emphasizes the absence of a standardized approach. Finally, *the State v. Rab Nawaz*,<sup>23</sup> a business jealousy-driven murder, resulted in a low compensation of Rs. 5,000 (3,067.5 grams of silver). This low amount, especially when compared to other cases with similar motives, further highlights the variation in compensation awards. Table three also shows that no compensation awards met the minimum *diyah* standard.

**Table Three: Murders Fuelled by Business & Land Dispute**

No.	Reported Case	Crime	Motive	PKR	Silver (grams)	Granting Court
1	Muhammad Ashraf v. Tahir alias Billoo 2005 SCMR 383	SiM	Business Dispute	200,000	13,029.3	SC

<sup>19</sup> *Muhammad Ashraf v. Tahir alias Billoo*, 2005 SCMR 383.

<sup>20</sup> *Anwaar Hussain v. the State*, 2002 SCMR 105.

<sup>21</sup> *Talib Hussain v. the State*, 1995 SCMR 1776.

<sup>22</sup> *Razi Begum v. Hijrayat Ali*, PLD 1976 SC 44.

<sup>23</sup> *The State v. Rab Nawaz*, PLD 1974 SC 87.

2	Anwaar Hussain v. the State 2002 SCMR 105	SiM & ATM	Jealousy	100,000	10,319.9	TC & HC
3	Talib Hussain v. the State 1995 SCMR 1776	TM	Land dispute	50,000	8,620.7	TC
4	Razi Begum v. Hijrayat Ali PLD 1976 SC 44	SiM	Land dispute	6,000	3,947.36	SC
5	The State v. Rab Nawaz PLD 1974 SC 87	SiM	Business Jealousy	5,000	3,067.5	SC

In *Muhammad Ashraf v. Tahir alias Billoo*, the TC and the HC acquitted the accused. However, the SC convicted them and imposed default imprisonment of over six months against the statutory maximum. In *Anwaar Hussain v. the State*, the HC enhanced compensation from Rs. 15,000 to Rs. 100,000. However, the SC reduced the default imprisonment to six months.

#### *Application of Section 544-A in Cases Lacking Explicit Motive*

Table four presents an analysis of compensation awarded under Section 544-A in murder cases where the SC judgments did not explicitly mention the motive behind the crime. These cases reveal further inconsistencies in the quantification of compensation.

In *Bahadar Ali v. the State*,<sup>24</sup> despite the absence of a stated motive, the SC doubled the compensation to Rs. 100,000 (10,319.9 grams of silver). However, factors that necessitated this enhancement are not expressly mentioned. This raises questions about what implicit factors influenced the court's decision. Conversely, *Bashir Ahmad v. Muhammad Siddique*,<sup>25</sup> a double murder case, experienced a final compensation of only Rs. 20,000 (4,683.84 grams of silver), even after a tenfold increase by the HC. This seemingly low amount, particularly for two deaths, prompts further examination of how compensation is determined when the motives of crimes are not stated. Finally, *Abdul Qadus v. the State*,<sup>26</sup> a single murder case, resulted in Rs. 25,000 (7,267.44 grams of silver) as compensation, falling between the previous two cases and adding to the difficulty in understanding the factors considered in each case. The lack of stated motives in these cases makes it challenging to assess the rationale behind

<sup>24</sup> *Bahadar Ali v. the State*, 2002 SCMR 93.

<sup>25</sup> *Bashir Ahmad v. Muhammad Siddique*, 1993 SCMR 1671.

<sup>26</sup> *Abdul Qadus v. the State*, 1985 SCMR 172.

the SC's compensation awards. This highlights the need for greater transparency in judicial pronouncements regarding Section 544-A. No doubt, "unbridled discretion, however benevolently motivated, is frequently a poor substitute for principles and the procedure."<sup>27</sup>

**Table Four: Murder Cases where no Motive Mentioned by the SC**

No.	Reported Case	Crime	Motive	PKR	Silver (grams)	Granting Court
1	Bahadar Ali v. the State 2002 SCMR 93	SiM	NM	100,000	10,319.9	TC & SC
2	Bashir Ahmad v. Muhammad Siddique 1993 SCMR 1671	DM	NM	20,000	4,683.84	TC & HC
3	Abdul Qadus v. the State 1985 SCMR 172	SiM	NM	25,000	7,267.44	TC & SC

In *Bahadar Ali v. the State*, the SC enhanced compensation from Rs. 50,000 to Rs. 100,000 and imposed imprisonment for default over six months, which is against the statutory maximum. In *Bashir Ahmad v. Muhammad Siddique*, the HC enhanced compensation from Rs. 2,000 to Rs. 20,000.

#### *Murder's Many Faces: Different Motives Colour Compensation Differently*

Table five presents six cases where the motives for murder, ranging from honour killing and sectarian violence to extortion and marital disputes, highlight the complexities and inconsistencies in awarding compensation. *Nawab Ali v. the State*,<sup>28</sup> a quadruple murder case stemming from a murder in which the murderer claimed honour as a motive, saw the SC reduce the compensation to Rs. 100,000 (1,164.96 grams of silver). This reduction, despite the gravity of taking four lives, raises concerns about whether the court's decision was potentially affected by societal perceptions of honour killings, which could lead to potentially impact the principle of equal justice for all victims. Similarly, in *Muhammad Abbas v. the State*,<sup>29</sup> a sectarian killing, the SC again reduced the compensation to Rs. 50,000 (740.74 grams of silver). This decision, echoing the previous case, raises questions about whether the court's approach to compensation adequately reflects the severity of crimes motivated by religious intolerance and violence.

<sup>27</sup> In re Gault, 387 U.S. 1 (1967).

<sup>28</sup> Nawab Ali v. the State, 2019 SCMR 2009.

<sup>29</sup> Muhammad Abbas v. the State, 2018 SCMR 397.

*Sh. Muhammad Amjad v. the State*,<sup>30</sup> involving murder, ransom, and terror, presents a unique scenario where the initial *diyah* awarded by the TC was converted into compensation of Rs. 200,000 (20,120.7 grams of silver) by the SC. This case highlights the complexities of navigating both Islamic law and legal precedent when determining compensation in cases with overlapping criminal elements. *Muhammad Hayat v. Badar Abbas*<sup>31</sup> involved a murder motivated by the rejection of suitors. While the HC linked the benefit of Section 382-B to the payment of Rs. 200,000 (21,344.72 grams of silver) in compensation, the SC overturned this decision. This highlights the ongoing debate regarding the relationship between compensation and sentencing considerations.

Finally, both *Allah Dino v. the State*,<sup>32</sup> a murder stemming from a marital dispute, and *Khalid v. the State*,<sup>33</sup> a sectarian killing, resulted in significantly lower compensation awards of Rs. 10,000 (2,475.25 grams of silver) and Rs. 1,000 (645.16 grams of silver) respectively. These comparatively lower sums, particularly in *Khalid v. the State*, raise questions about whether the principle of just compensation is being consistently upheld across diverse motives. Table five also shows that in terms of silver, the variation in the determination of compensation is also very drastic. It ranges from 645.16 grams of silver to 21,344.72 grams of silver, but in none of the cases does it become equal to the statutory minimum *diyah* standard (30,630 grams of silver), as per section 323 of PPC.

**Table Five: Compensation Awards across Different Murder Motives**

No.	Reported Case	Crime	Motive	PKR	Silver (grams)	Granting Court
1	Nawab Ali v. the State 2019 SCMR 2009	QM	0	100,000	1,164.96	TC & SC
2	Muhammad Abbas v. the State 2018 SCMR 397	SeM	Sectarian Killing	50,000	740.74	TC & SC
3	Sh. Muhammad Amjad v. the State PLD 2003 SC 704	SiM, Ransom, Terror	Extortion	200,000	20,120.7	SC

<sup>30</sup> *Sh. Muhammad Amjad v. the State*, PLD 2003 SC 704.

<sup>31</sup> *Muhammad Hayat v. Badar Abbas*, 2000 SCMR 467.

<sup>32</sup> *Allah Dino v. the State*, 1984 SCMR 420.

<sup>33</sup> *Khalid v. the State*, 1975 SCMR 500.

4	Muhammad Hayat v. Badar Abbas 2000 SCMR 467	SiM	Rejection of suitors	200,000	21,344.72	HC
5	Allah Dino v. the State 1984 SCMR 420	SiM	Marital Dispute	10,000	2,475.25	SC
6	Khalid v. the State 1975 SCMR 500	SiM	Sectarian hatred	1,000	645.16	SC

In *Nawab Ali v. the State* and *Muhammad Abbas v. the State*, the SC reduced compensation. In *Sh. Muhammad Amjad v. the State*, the TC awarded *diyah*, which was converted into compensation. In *Muhammad Hayat v. Badar Abbas*, the benefit of Section 382-B was subjected to payment of compensation by the HC. However, the SC set it aside. In *Allah Dino v. the State* and *Khalid v. the State*, the court imposed default imprisonment of over six months against the statutory maximum.

#### ***Attempted Murder Cases: Fluctuating Compensation***

The analysis of compensation awards in attempted murder and grievous injury cases, shown in table six, reveals a similar pattern of inconsistency as observed in murder cases. These cases demonstrate that in 1976, the HC in *Abdur Rehman v. Khurshid Hussain*<sup>34</sup> awarded a mere Rs. 2,000 (1,315.79 grams of silver) for an attempt to commit murder, but the SC set it aside on procedural grounds. This initial award, however, highlights the challenges in achieving consistent compensation. Just a year later, in *Muhammad Hanif v. Abdur Rehman*,<sup>35</sup> Rs. 10,000 (6,172.84 grams of silver) was granted for causing loss of sight and speech in an attempted murder, raising questions about the consistent application of compensation principles across different types of offences. This inconsistency is further highlighted by *Fateh Khan v. the State* in 1983,<sup>36</sup> where an attempted murder resulted in mere Rs. 5,000 (946.94 grams of silver) in compensation. This pattern of variation in compensation is also observed in later cases.

In the case of 1984, *Allah Dino v. the State*,<sup>37</sup> the SC awarded only Rs. 1,000 (247.52 grams of silver) for attempted murder, where the accused was also convicted of a single murder. While an attempted murder case

<sup>34</sup> *Abdur Rehman v. Khurshid Hussain*, 1976 SCMR 195.

<sup>35</sup> *Muhammad Hanif v. Abdur Rehman*, 1977 SCMR 471.

<sup>36</sup> *Fateh Khan v. State*, 1983 SCMR 519.

<sup>37</sup> *Allah Dino v. the State*, 1984 SCMR 420.

in 1988, resulting in the loss of eyesight, *Ali Nawaz alias Alia v. the State*,<sup>38</sup> led to a significantly higher compensation award of Rs. 25,000 (6,024.09 grams of silver). It is noteworthy that this substantial amount was not explicitly linked to the victim's loss of livelihood or future medical expenses, emphasizing the importance of a transparent and predictable framework for the quantification of compensation. The case of 1992, *Manzoor and others v. the State*,<sup>39</sup> involving triple murder and attempt to murder, saw the SC award Rs. 40,000 (11,445.43 grams of silver) for the attempted murder, a sum significantly higher than the Rs. 1,000 awarded in *Allah Dino v. the State* for a similar offence. This variation is also evident in the case of 2004, *Muhammad Tufail v. Session Judge, Attock*,<sup>40</sup> where the HC reduced the compensation awarded by the TC from Rs. 100,000 to Rs. 50,000 (3,652.3 grams of silver) without giving clear reasoning. This case underscores the challenges in balancing various factors when determining compensation.

**Table Six: Attempted Murder and Grievous Injury Cases**

No.	Reported Case	Crime	Motive	PKR	Silver (grams)	Granting Court
1	Muhammad Tufail v. Session Judge, Attock PLD 2004 SC 89	ATM	NM	50,000	3,652.3	TC & HC
2	Manzoor and others v. the State 1992 SCMR 2037	ATM, in addition to TM	Revenge	40,000	11,445.43	SC
3	Ali Nawaz alias Alia v. the State 1988 SCMR 601	ATM, eyesight loss	Enmity Revenge	25,000	6,024.09	SC
4	Allah Dino v. the State 1984 SCMR 420	ATM, in addition to SIM	Marital Dispute	1,000	247.52	SC
5	Fateh Khan v. the State 1983 SCMR 519	ATM	NM	5,000	946.94	HC
6	Muhammad Hanif v. Abdur Rehman 1977 SCMR 471	ATM, eyesight, and speech loss	NM	10,000	6,172.84	SC

<sup>38</sup> *Ali Nawaz alias Alia v. the State*, 1988 SCMR 601.

<sup>39</sup> *Manzoor and others v. the State*, 1992 SCMR 2037.

<sup>40</sup> *Muhammad Tufail v. Session Judge, Attock*, PLD 2004 SC 89.

7	Abdur Rehman v. Khurshid Hussain 1976 SCMR 195	ATM	NM	2,000	1,315.79	HC
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In *Muhammad Tufail v. Session Judge, Attock*, the HC reduced compensation from Rs. 100,000 to Rs. 50,000. In *Manzoor and others v. the State*, *Ali Nawaz alias Alia v. the State*, and *Muhammad Hanif v. Abdur Rehman*, the court imposed default imprisonment of over six months against the statutory maximum.

### ***Compensation for Heinous Offences***

Despite aiming for consistency, disparities in compensation persist in heinous offences other than murder and attempted murder. This pattern is evident in the varying amounts of compensation awarded in cases with similar circumstances. Table seven discusses cases involving heinous crimes other than those discussed above.

In *Ayaz Ahmad v. Allah Wasaya*,<sup>41</sup> a case of mischief by fire and terror driven by revenge, the SC awarded Rs. 400,000, equivalent to 29,218.4 grams of silver. However, in *Saifulla v. the State*,<sup>42</sup> in which the victim's nose was amputated, the TC awarded Rs. 240,000 as compensation. All the courts higher in hierarchy than the trial court, including the SC, declined compensation and did not provide any reason for rejection. The difference in the judgments, despite the gravity of offences in both cases, underscores the necessity of more specific guidelines in awarding compensation.

In *Fareed Bakhsh v. Saeed Ahmad*,<sup>43</sup> there is another fine example of this difference. This case is also a case of nose amputation for rejected suitors. The TC granted only Rs. 1,000 as compensation. But the SC enhanced it to Rs. 10,000, which is equal to 2,865.33 grams of silver. This difference in similar offences shows the subjective nature of determining the compensation. It also shows how judicial discretion and the facts of each case can result in different outcomes.

Likewise, *Muhammad Altaf v. the State*<sup>44</sup> is another case of insufficient compensation. The SC, in this case, only awarded a paltry Rs. 4,000, or 757.57 grams of silver, as compensation to a minor victim of sodomy. This comparatively small amount leaves a question mark on the sufficiency of compensation in the said cases, especially in the background of high social stigma and possible social ostracism faced by the victims of such crimes.

<sup>41</sup> *Ayaz Ahmad v. Allah Wasaya*, 2004 SCMR 1808.

<sup>42</sup> *Saifulla v. the State*, 2003 SCMR 496.

<sup>43</sup> *Fareed Bakhsh v. Saeed Ahmad*, 1992 SCMR 549.

<sup>44</sup> *Muhammad Altaf v. the State*, 1983 SCMR 900.

**Table Seven: Cases Involving Heinous Crimes**

N o.	Reported Case	Crime	Motive	PKR	Silver (grams)	Grantin g Court
1	Ayaz Ahmad v. Allah Wasaya 2004 SCMR 1808	Mischief by Fire, Terror	Revenge	400,000	29,218.4	SC
2	Fareed Bakhsh v. Saeed Ahmad 1992 SCMR 549	Nose Amputation	Rejection of Suitors	10,000	28,65.33	TC & SC
3	Saifulla v. the State 2003 SCMR 496	Nose Amputation	NM	0	0	No
4	Muhammad Altaf v. the State 1983 SCMR 900	Sodomy with a Minor	NM	4,000	757.57	TC

In *Fareed Bakhsh v. Saeed Ahmad*, the SC enhanced compensation from 1,000 to 10,000 and imposed default imprisonment of over six months against the law. In *Saifulla v. the State*, the SC denied compensation without a reason. In *Muhammad Altaf v. the State*, the TC imposed default imprisonment of over six months against the law.

A distinct necessity for a standardized and transparent system of determination of compensation under Section 544-A is what is brought out by analysing these varied cases. For each of the cases, whether of personal vendetta, land dispute, or heinous crime, the absence of a framework has resulted in irregular and ineffective compensation orders. This subjective judicial approach dents the public trust in the legal system, because the justice appears capricious and unequal. The absence of a standardized methodology to quantify the value of human life and other losses, considering both economic conditions and the gravity of the crime, further compounds the problem. Ultimately, the findings underscore the pressing need for a victim-centric approach to Section 544-A that ensures transparency, fairness, and a tangible sense of justice for victims.

#### ***Judicial Overreach: Default Imprisonment beyond Statutory Limits***

The analysis of study material reveals a significant pattern: the frequent imposition of default imprisonment exceeding six months, in potential conflict with section 544-A of the CrPC. This provision explicitly limits such imprisonment to a maximum of six months. However, numerous cases reveal instances where the SC itself has upheld or imposed default sentences beyond the permissible limit. Examples include cases involving business disputes, murder motivated by revenge, causing



mischievous by fire and terror, and even instances where the HC initially imposed a legal default sentence, only for the SC to enhance it beyond the one-year limit. In *Muhammad Ashraf v. Tahir alias Billoo*,<sup>45</sup> despite the TC and HC acquittals, the SC convicted the accused and imposed a three-year default imprisonment, notably exceeding the legal limit. Similarly, in *Talib Hussain v. the State*,<sup>46</sup> *Manzoor v. the State*,<sup>47</sup> *Ali Nawaz alias Alia v. the State*,<sup>48</sup> *Allah Dino v. the State*,<sup>49</sup> *Muhammad Altaf v. the State*,<sup>50</sup> *Muhammad Hanif v. Abdur Rehman*,<sup>51</sup> *Razi Begum v. Hijrayat Ali*,<sup>52</sup> *Khalid v. the State*,<sup>53</sup> and *the State v. Rab Nawaz*,<sup>54</sup> the courts imposed default sentences ranging from one to three years, illustrating a pattern of sentences exceeding the statutory six-month cap. This tendency to deviate from the legal ceiling, even by the apex court, raises important questions about consistent sentencing practices and the principle of proportionality in punishment. It underscores a pressing need for judicial restraint and adherence to statutory guidelines in sentencing, particularly when depriving individuals of their liberty. Ignoring the statutory ceiling for imposing imprisonment for default in payment of compensation points towards judicial overreach, which is deprecated by the SC.

### ***A Pattern of Neglect and Intervention in Victim Compensation***

Out of the thirty-two study cases, the SC emerged as the primary adjudicator of compensation, highlighting a critical gap in the lower courts' application of Section 544-A. In 11 cases, the SC either introduced or enhanced compensation, demonstrating a proactive approach to ensure victims are not left without redress. Only six instances saw the trial court award compensation on its own initiative. This points to a potential lack of awareness or understanding among TC judges regarding the mandatory nature of Section 544-A. The frequent intervention of the SC, and to a lesser extent, the HC, highlights the need for a greater focus on victim compensation during trial proceedings. This involves not only educating judges about this legal requirement but also cultivating a judicial culture that prioritizes victims' rights to seek and receive timely

<sup>45</sup> *Muhammad Ashraf v. Tahir alias Billoo*, 2005 SCMR 383.

<sup>46</sup> *Talib Hussain v. the State*, 1995 SCMR 1776.

<sup>47</sup> *Manzoor and others v. the State*, 1992 SCMR 2037.

<sup>48</sup> *Ali Nawaz alias Alia v. the State*, 1988 SCMR 601.

<sup>49</sup> *Allah Dino v. the State*, 1984 SCMR 420.

<sup>50</sup> *Muhammad Altaf v. the State*, 1983 SCMR 900.

<sup>51</sup> *Muhammad Hanif v. Abdur Rehman*, 1977 SCMR 471.

<sup>52</sup> *Razi Begum v. Hijrayat Ali*, PLD 1976 SC 44.

<sup>53</sup> *Khalid v. the State*, 1975 SCMR 500.

<sup>54</sup> *The State v. Rab Nawaz*, PLD 1974 SC 87.

and appropriate compensation. Furthermore, disregarding the statutory ceiling for defaulting on compensation payments represents judicial overreach, a practice condemned by the SC.<sup>55</sup>

### ***Observations and Implications***

Our analysis reveals a distinct lack of a consistent and transparent methodology for determining compensation. Awards appear arbitrary and fluctuate widely depending on the specific case, the court involved, and even within the same case. Converting PKR to silver further exposes these inconsistencies. The monetary value ascribed to human life and sufferings experienced expresses serious concerns about fairness and equity. The data suggests that factors like motive, severity of injury, and socio-economic conditions are not consistently considered while awarding compensation. Moreover, the repeated omissions of reasoning for compensation awards, even from the SC, raise questions on the factors considered and the rationale behind the awards.

### ***Critique of Existing Framework***

The current system of victim compensation under Section 544-A of the CrPC faces significant challenges. The lack of a clear, uniform mechanism for determining compensation has led to contradictions in providing adequate redress to victims. The vast discrepancies in award of compensation revealed through our case law analysis suggest that the existing framework affords the judges excessive discretion. It makes the quantum of compensation awards highly dependent on individual judges' inclinations rather than established principles, guidelines, or protocols. This situation raises serious concerns regarding fairness and equity, as the victims of similar crimes may receive different quantum of compensation. Moreover, the ambiguity in compensation law hinders the appropriate and effective compensation awards, compounding the challenges faced by victims in seeking justice and redress. These deficiencies highlight the need for legislative reforms to ensure consistent and sufficient compensation awards for victims in Pakistan.

### ***The Islamic Concept of *Diyah****

#### ***Definition and Principles***

Within Islamic jurisprudence, *diyah* constitutes a form of financial restitution provided to victims or their legal heirs in cases of wrongful injury or death, respectively. *Diyah* is often linked with the concept of *qisās* (retribution), but it presents a distinct path towards restorative justice

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<sup>55</sup> Chief Executive Officer MEPCO v. Muhammad Ilyas etc. 2021 SCMR 775.

within the legal system.<sup>56</sup> It is often interpreted as “blood money”<sup>57</sup> and serves as a fundamental principle within Islamic law, providing a framework for compensating the victims of crimes or their legal heirs.

At its core, *diyah* aims to preserve the sanctity of human life and guarantee the just recompense for those harmed by the actions of others.<sup>58</sup> *Diyah* is primarily used in Islamic law in cases of homicide, intentional murder (*qatl-i ‘amd*), unintentional murder (*qatl-i shibh-i ‘amd*, *qatl-i khata’*, and *qatl bi ‘l-sabab*),<sup>59</sup> and cases of bodily injuries.<sup>60</sup> It is based on restorative justice by punishing the culprits and, simultaneously, compensating the victims or their heirs. The quantum of *diyah* is definite based on the seriousness of the crime, the status of the victim, and other facts and circumstances relevant thereto, with a view to rendering a just and proportionate solution.<sup>61</sup>

The rationale of *diyah* goes beyond the simple pecuniary fine. It aims to reconcile, restore social harmony, and preserve human dignity. It provides a systematic approach to measuring compensation, thereby mitigating the psychological, emotional, and economic pains of the victims and their families. *Diyah* also encourages the criminals to accept their fault and compensate.<sup>62</sup> This is in accordance with the general principles of Islamic law, which emphasize justice, mercy, and the common good of the people.

### ***Historical and Contemporary Applications***

The concept of *diyah* has ancient origins, tracing back to pre-Islamic Arabia. Even then, compensating for loss of life or injury through material payments was a common practice. But Islam introduced a more institutionalized and formalized system of *diyah* based on the Qur’ān and the *sunnah* of Prophet Muḥammad (peace be on him). This evolution is reflected in the Prophet’s emphasis on the rights of legal heirs to receive *diyah*, ensuring equitable distribution among all entitled parties, including

<sup>56</sup> Muhammad Asad, Barkat Ali, and Hafiz Muhammad Usman Nawaz, “Payment of Diyat in Pakistan: Exploring the Missing Islamic Spirit,” *Sir Syed Journal of Education & Social Research* 3, no. 4 (2020): 418-23, [https://doi.org/10.36902/sjesr-vol4-iss1-2021\(418-423\)](https://doi.org/10.36902/sjesr-vol4-iss1-2021(418-423)).

<sup>57</sup> Muhammad Muhsin Khan, trans., *The Translation of the Meanings of Sahīh al-Bukhārī* (Riyadh: Darussalam Publishers and Distributors, 1997), 9:405, appendix-1 glossary.

<sup>58</sup> Saadat Khan and others v. Shahid-ur-Rehman and others, 2017 SCP 84.

<sup>59</sup> Qur’ān 4:92, 93.

<sup>60</sup> Absar, “Restorative Justice in Islam.”

<sup>61</sup> Siti Zubaidah Ismail, “The Modern Interpretation of the Diyat Formula for the Quantum of Damages: The Case of Homicide and Personal Injuries,” *Arab Law Quarterly* 26, no. 3 (2012): 361-79, <https://www.jstor.org/stable/23235577>.

<sup>62</sup> Absar, “Restorative Justice in Islam.”

widows.<sup>63</sup> Islamic penology further reinforces this principle, mandating that no murder case can be closed without providing appropriate relief to the legal heirs, in accordance with their established Islamic rights.<sup>64</sup>

Later, the principles of *diyah* were further developed and codified by Muslim scholars and jurists. The application of *diyah* was not limited to homicide cases but was also extended to cover bodily injuries and other forms of harm, as reflected in the provisions of the Qisas and Diyat Ordinance, which embody the principles of Islamic common law.<sup>65</sup> As time passed, the precise calculation methods and rules for fixing *diyah* amounts were developed considering the social status of the victim, the kind and degree of injury, and the conditions of occurrence, which are vital considerations in the context of *qatl* (murder) and *jurh* (hurt) as mandated under different precedents of law.

The practical application of *diyah* presents a varied picture across Muslim-majority countries. Some nations, like Iran, Saudi Arabia, and Pakistan, have formally integrated *diyah* into their legal systems, with courts actively using established guidelines to adjudicate compensation claims. In other countries, such as Malaysia, *diyah*'s influence is more subtly woven into the fabric of victim assistance programmes, informing the development of holistic support systems that encompass financial compensation.<sup>66</sup>

These diverse approaches highlight the interplay between the cultural contexts, legal traditions, and the continuing dialogue about the unification of traditional Islamic principles with modern legal contexts. In countries such as Saudi Arabia and Iran, *diyah* is applied both to homicide and bodily injury cases, where there are fixed amounts of compensation depending on the severity of the crime and the status of the victim.<sup>67</sup> However, in other countries, such as Malaysia, *diyah* plays a minor part in the sense of shaping the victim support systems related to the country that incorporate a combination of financial compensation

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<sup>63</sup> *Kaiser Ali and others v. Karachi Road Transport Corporation*, 1986 PLD 489.

<sup>64</sup> *Nizamuddin and others v. the State*, 1994 PLD 517.

<sup>65</sup> *Mst. Sakina Bibi v. the Federation of Pakistan*, 1992 PLD 99.

<sup>66</sup> Taufik Mohammad, Razlini Mohd Ramli, and Ben Anderstone, "Situating Restorative Justice in Novel Jurisdictions: Considerations from the Malaysian Experience," *Contemporary Justice Review* 24, no. 1 (2021): 85-106, <https://doi.org/10.1080/10282580.2020.1819801>.

<sup>67</sup> Absar, "Restorative Justice in Islam."

and psychological and societal support.<sup>68</sup> Such a difference in implementation implies that the framework of *diyah*, historically defined by intentional crimes, can be extended and applied to others, including *ta'zīr* crimes (those judged according to the discretion of the court).<sup>69</sup> The varying applications of these systems can be used to give meaningful insights into how *diyah* can be reformed and extended to the Pakistani legal framework.

### ***Relevance to Pakistan's Context***

The integrated Islamic concept of *diyah* and victim compensation in Pakistan's legal system presents both promising prospects and significant hurdles. *Diyah* aligns with Pakistan's Islamic heritage and emphasis on restorative justice. It offers a fitting model for reforming the victim compensation system. *Diyah*'s structured methodology for calculating compensation and considering elements such as the nature of the offence and the victim's social status could introduce much-needed consistency and uniformity to the quantification of compensation currently awarded under Section 544-A of the CrPC. Moreover, *diyah*'s inherent ethical and spiritual aspects emphasize accountability, compassion, and the protection of human dignity; therefore, its integration in the compensation quantification mechanism could resonate strongly within Pakistan's predominantly Muslim society. It will foster a more holistic and equitable victim support system.

However, integrating *diyah* into Pakistan's legal framework requires careful consideration of the existing legislation. Reconciling *diyah*'s principles with current statutory frameworks and legal customs and traditions requires thoughtful deliberation to avoid conflicts or the erosion of fundamental principles within the criminal justice system. Concerns, arising from the historical impact of social status and gender within traditional Islamic law, about potential biases in applying *diyah*-based compensation must also be addressed. The development of robust safeguards and transparent procedures is essential to ensure fair, equitable, and effective implementation of any *diyah*-inspired reforms to the determination of compensation.

### ***Extending the Diyat Framework to Ta'zīr Offences***

The adaptation of the Pakistan victim compensation system to *diyah* principles has many advantages. However, to have every type of offence

<sup>68</sup> Abdul Hadi Zakaria, "Victim Support Systems in Malaysia," in *Victims and Criminal Justice: Asian Perspectives*, ed. Tatsuya Ota (Tokyo: Hogaku-Kenkyu-Kai Keio University, 2003), 197-205.

<sup>69</sup> Salman Farooq, "The Retributive Proportionality and Islamic Punishment of Diyyah," *al-Idah* 38, no. 2 (2020): 38-50, <https://doi.org/10.37556/al-idah.038.02.667>.

included (e.g., *qisās*, *diyah*, and *ta'zīr* offences), it is important to consider the differences between these categories. Criminal acts of *qisās* and *diyah*, such as intentional homicide and bodily injury, are well defined in the Pakistan Penal Code (PPC), and a proper procedure is laid down for the implementation of *diyah*. *Ta'zīr* offences, however, are discretionary, giving the judges some leeway in determining what sentence to impose with regard to a particular case. In case the mechanism of *diyah* is applied to *ta'zīr* offences, specific guidelines would have to be developed to harmonize the fixed compensation system of *diyah* with the judicial discretion applied to cases under *ta'zīr*. Underlying the above-stated distinction is the fact that *ta'zīr* crimes sometimes do not correspond well to the fixed categories of *diyah* that address more serious crimes.

Summing it up, the inclusion of the aspects of *diyah* into the Pakistani victim compensation system is a complicated blend of challenges and prospects. A sophisticated and holistic package is required to harmonize the legal culture and social values of Pakistan on the one hand and fundamental principles of justice and human rights on the other. Such a solution has to maintain the *qisās*, *diyah*, and *ta'zīr* offences to ensure the soundness of the Pakistani judicial system and the equitable nature of *diyah*-based compensation.

### **Integrating *Diyah* into Pakistan's Victim Compensation Framework**

#### ***A Proposed Model***

After analysing the drawbacks of the current compensation system in Pakistan, especially the disparities in court-awarded compensation described in previous sections, this section outlines a holistic proposal for victim compensation. Drawing on the contours and dynamics of the application of the law of *diyah* in this framework would work towards minimizing personal discretion in upholding justice and elevating the principle of fair retribution to pursue a more just and effective justice system that corrects the inequities and inconsistencies highlighted in our case law analysis.

To address the inequalities in the existing cadre, there should be a formula-based calculation of compensation. This formula should consider the severity of the offence, the entirety of the victim's damages, injuries, and losses (both tangible and intangible), and other relevant factors. It should also give preference to objective metrics over subjective evaluation of social status.

A tiered compensation system should be implemented, which must correlate the awarded compensation to specific offences and injury categories. This structure will provide clear directives for judges and will

also reduce the subjectivity, which is currently leading to disparate, inconsistent, and often inequitable compensation awards.

This framework prioritizes the requirements and particular circumstances of the victim. Compensation should not be confined to the immediate monetary repercussions of the crime. It should also comprehend the wider emotional, psychological, and societal consequences, acknowledging the profound and multifaceted harm victims often experience.

In keeping with the very essence of *diyah*, the suggested framework places heavy emphasis on the offender's responsibility to make amends. Forcing the offenders to pay compensation to the victims or their kin makes them accountable and prompts them to take responsibility for their actions.

Taking cues from the *diyah* system, mediation and reconciliation procedures are included in the suggested framework. These will facilitate dialogue between the victims (or their kin) and the perpetrators, which can result in empathy, understanding, and some measure of societal healing.

To ensure public confidence, the operation of the proposed framework should be strictly open to judicial scrutiny and transparency. It will ensure just and uniform determination of compensation, which will also be in accordance with the guidelines framed to increase the confidence of the people in the capability of the legal system to deliver justice.

### ***Addressing Challenges***

Introduction of a *diyah*-based victim compensation system in Pakistan may pose some serious challenges, which must be addressed to ensure a smooth transition and effective implementation.

Integration of *diyah* principles within Pakistan's current system of compensation will require delicate handling. Compatibility with current laws must be assured, and contradiction with established legal precedents and conventions must be avoided, too. This will probably be a delicate strategy, balancing established tradition and custom with the requirements of an effective and modern system.

Concern about the possibility of bias or inequality in the application of a *diyah*-inspired scheme is real and must be addressed honestly and openly. Robust checks and transparent procedures will be needed to maintain the ideals of equity and equality for all victims, regardless of their background or social status.

The formulation of a uniform, standardized, and equitable system of deciding tiers of compensation is a challenging task. The tiers would judicially consider the seriousness of the offences, the entire range of

loss of the victims, which would include the emotional and psychological harm, and other factors. This would include in-depth studies, consultations with the stakeholders, and constant review.

Implementing the new framework, particularly based on ancient practices such as *diyah*, can be resisted by people who are accustomed to the current practices. Public campaigns and proper communication will be key to acceptance and support for these reforms. Open discussion with involvement of the community will be essential for encouraging understanding and implementation of the suggested system.

The effective implementation of the suggested framework depends upon proper education, training, and skills development. Judges, lawyers, law enforcement officers, legal specialists, and other interested parties must be properly educated and trained to make informed and uniform use of the reformed victim compensation system. This investment in education and training will be pivotal to the long-term success and viability of the suggested framework.

### ***Proposed Solutions***

To address the above problems, the following are the proposed solutions:

A special advisory committee comprising legal experts will be established to examine the incorporation of the *diyah* principles and blend them harmoniously with conventional legal traditions and international norms of human rights. This acknowledges the complexities of merging conventional practices into modern legal frameworks.

Strict regulations and rigorous training sessions will be arranged for judges and legal professionals. These mandatory sessions will emphasize cultural sensitivity and the supreme importance of equal treatment in the judicial system. Its purpose is to guarantee the award of compensation free from any kind of discrimination and bias, reflecting a commitment to fairness and impartiality.

Public awareness campaigns will be initiated to acknowledge that the informed are the empowered. The campaigns will inform the victims and the general public about their rights under the new compensation quantification mechanism. It will empower the victims to seek the rightful compensation, promoting a culture of accountability and victim rights.

Pilot projects will be initiated in selected jurisdictions before their implementation at the national level. Pilot projects will be real-world testing systems. They will provide useful insights into the practical successes and challenges of the new system. This cautious approach will enable refinements and adjustments before a full-scale implementation, ensuring maximum potential for a smooth and effective transition.



There is a need for continuous feedback to maintain the promise of continuous improvement. Thus, channels of feedback will be established for the victims and the stakeholders to provide their experiences and issues regarding the compensation process. This feedback will assist in determining the areas of improvement and will make the system more responsive to the needs of the victims.

Finally, the legislative reforms will be actively followed to formally integrate the proposed framework into the legal system. This formal integration will provide the required legal support for the transformation. It will ensure that the new compensation model is recognized and enforced by the courts. This is essential for the framework's long-term stability and efficacy.

### ***Advantages and Consequences***

The present research emphasizes that the incorporation of *diyah*'s concepts into the victim compensation system of Pakistan provides a true chance to address the stringent deficiencies that are marred in the existing compensation system. The suggested system is intended to develop a systematic, transparent, and fair model of quantification of compensation, which will ultimately enhance the access of victims to justice and foster an equitable and cohesive society. The execution of such a system undoubtedly provides challenges, but they can be overcome with the commitment to justice, right planning, and stakeholder involvement. This reform has the transformative potential. It can restore confidence in the justice system and ensure that victims get the compensation due to them and offenders are held liable for their actions. By closing the gap between law and application of law, this research upholds a new approach to the victim compensation system in Pakistan. This approach aims to promote a culture of justice, social responsibility, and accountability, which will ultimately benefit all citizens of society.

### **Conclusion**

*Diyah* principles, such as fixed compensation based on the gravity of the offences, restorative justice, accountability of offenders, and the protection of human dignity, are central to the Islamic victim compensation system. These principles provide an organized victim compensation system and encourage reconciliation and healing of society. However, the incorporation of these principles into the victim compensation scheme in Pakistan is confronted with some serious challenges. Designing standardized tiers in a *diyah*-based scheme, consensus-building among the stakeholders, and capacity-building for effective implementation are some of these challenges. But these

challenges, if strategically addressed, will enable the proposed scheme to provide an opportunity for a more just and equitable system. Compatibility of the proposed scheme with Islamic law and with the prevailing standards of the legal system can be ensured by a panel of committed and experienced advisors. Standardized tiers and clear guidelines will provide uniformity and justice in the quantification of compensation and minimize the likelihood of inconsistency. The involvement of stakeholders will not only ensure its acceptability but also enable the generation of collective responsibility towards the new scheme. Last but not least, intensive training programmes will impart knowledge and skills to the legal practitioners and other stakeholders necessary for effective implementation.

As to the scale to which the *diyah* framework will be inserted into Section 544A, it is suggested that it should be applied not only to murder and bodily harm crimes but also to a wider range of crimes, such as *ta'zīr* crimes. In *ta'zīr* crimes, where the discretion of the judicial system is more significant in the establishment of the severity of the committed crime, a *diyah*-based compensation system will have to be adjustable towards a more flexible approach to ensure that judicial procedures continue to reflect the principles of fairness, proportionality, and consistency. With these measures adopted, the integrated *diyah* principles offer the scope not only to maximize access to justice but also to inject uniformity, justice (distributive justice, or economic justice), and social cohesion within the criminal justice system. Ultimately, in the wider context, it will benefit the victims, offenders, and the community as a whole.

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