CHAPTER THREE

THE EVOLUTION OF THE QISAS AND DIYAT LAW IN PAKISTAN: A BRIEF HISTORY

Introduction: An Analysis of the Origin and Evolution of the Law

In the process of the Islamisation of laws in Pakistan, qisas and diyat law occupies a special position. The law is distinctive for two primary reasons. Firstly, it is concerned with an extremely important area of criminal law, viz. the law pertaining to homicide and murder. Secondly, it has a chequered history which not only exposes Zia-ul-Haq’s political motivations in the promulgation of Islamic laws but also demonstrates successive governments’ lack of concern in the legislation of qisas and diyat law of Pakistan. Unlike other Islamic laws of the country, which were issued in 1979 by Zia-ul-Haq with a single stroke of his pen, the qisas and diyat law took about ten years to come into force. This chapter explores some of the reasons why the qisas and diyat law was not enacted by Zia-ul-Haq, and analyses various reports, documents and drafts of the law that were prepared during these ten years. Other material examined in this chapter includes the reports of the select committees of Zia-ul-Haq’s hand-picked Majlis-i-Shoora and other Legislative Assemblies, in which the drafts of the qisas and diyat law came under extensive discussion. These also offer some explanation for the delay in the formulation of the qisas and diyat law. The main argument in this chapter is that the Executive, Judiciary and Members of Parliament had differing approaches to the application of Islamic criminal law in Pakistan.

1 Four elected governments came into power from 1981–97: M.K. Junejo (1985–88); Benazir Bhutto (1988–90); Nawaz Sharif (1990–93); and Benazir Bhutto (1993–96). None of their parliaments could enact the law, despite Superior Courts recurring Orders. There were also four interim governments, in between the dismissal of the elected government by the president and the election of the new. It was during the interim government of Ghulam Mustafa Jatoi (r. 6 August to 6 November 1990) that the Ordinance pertaining to the law of qisas and diyat was issued. The law was finally enacted during Nawaz Sharif’s third term in Government (1997–99).

2 The Federal Council (Majlis-i-Shoora) was constituted by Zia-ul-Haq in 1981 under articles 4 and 5 of The Provisional Constitutional Order 1 of 1981.
The Executive’s apparent reluctance to draft the ‘new law’ and the Judiciary’s impatience to have it enforced without delay caused tremendous tension between successive Governments and the Judiciary. Eventually, the latter prevailed and the Government was forced to promulgate the qisas and diyat law hastily, on 5 September 1990. The Government continued promulgating Ordinances pertaining to qisas and diyat law one after another for almost seven years, but failed to get the law passed by Parliament. The law was finally enacted in April 1997, by Nawaz Sharif’s Muslim League and the sweeping majority it held in Parliament, which succeeded in pushing through the law in less than twenty minutes and without any debate on its content. The opposition parties strongly protested over the bypassing of general parliamentary rules and procedure pertaining to the adoption of a bill (e.g., time for deliberation, constitution of committees and so on) and in fact ended up boycotting the session since their protestations were not heeded by the majority. The controversial provisions that had delayed the bill for seven years thus finally found their way into law, in The Criminal Law (Amendment) Act II of 1997.

As this chapter is primarily concerned with the emergence and evolution of qisas and diyat law of Pakistan, it explores and analyses several crucial issues. First, the Islamisation during Zia-ul-Haq’s rule and the reasons that prevented him from enacting the qisas and diyat law, despite his unimpeded powers, as Chief Martial Law Administrator and (later) as President, in addition to his repeated pronouncements of establishing Islamic laws in Pakistan.

Second, the chapter explores the Executive’s role and its reservations regarding the ‘new law’. Third, discusses Pakistani women’s perspectives on the ‘new law’. The chapter also compares the two drafts prepared by the Council of Islamic Ideology under the headships of Justice Afzal Cheema and Justice Tanzilur Rehman, and shows that these in fact reflect their personal beliefs in particular schools of thought, thus leading to two different understandings of the theory and practice of qisas and diyat law in contemporary society. Finally, the chapter contrasts the 1980 draft of qisas and diyat law, which was later recommended

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3 According to article 89 of the 1973 Constitution, the life of a Federal Government’s ordinance is only four months.

4 Qisas and diyat law was grafted on to the body of the Pakistan Penal Code though this amendment.