

Punishment of Theft in Islam and its Enforcement in Pakistan

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Abstract

The Shari'ah classifies punishments into Hudūd, Qiṣāṣ and Ta'zīr which aim to protect life, lineage, reason, property and intellect in order to provide welfare and protection to the society. The Islamic system of punishments described different punishments on committing different crimes, i.e; murder, theft, adultery, intoxicant, blasphemy, and robbery etc. The study concludes that in respect of Hudūd and Qiṣāṣ the power of court is limited but in Ta'zīr punishments the court has wider power. The punishments that are described in PPC are not similar to punishments mentioned in Qur'ān. The Federal Shari'ah court has supported punishment of amputation of hand against the crime of theft which is similar to the punishment of Qur'ān. Hadd punishment of theft in Pakistan is not implemented because the conditions i.e. at least two Muslim adult males eye-witnesses and Tazkiyah al-Shuhood (truthful person and abstain from major sins) are very difficult to fulfill to the extent that Shariah demands. Therefore theft in Pakistan is punishable with Ta'zīr punishment.

Keywords: murder, theft, adultery, intoxicant, blasphemy, robbery, Hudūd, Qiṣāṣ

Introduction

Security is the fundamental need of every person. Human beings expressed their needs through formation of laws. These laws were accomplished to settle disputes. The objective of Shariah is to protect the wellbeing of humanity in this world and hereafter also. The Objectives of Shariah provide the universal principles for the welfare and safety of humanity. These universal principles are:

1. Protection of Life
2. Protection of lineage
3. Protection of reason
4. Protection of property
5. Protection of Intellect¹

The Islamic system of punishments aims at securing these five universal objectives. To protect life, it prescribes the law of revenge. For the protection of religion, it described punishment for Blasphemy. To save reason, it gives the punishment for drinking. To protect family, it described the punishment for adultery. For the protection of wealth, it described the punishment for larceny. To safeguard all these principles it gives the punishment for robbery. That's why

1. Offence against life i.e. murder
2. Offense against property i.e. theft
3. Offense against family i.e. adultery
4. Offence against cause i.e. intoxicant
5. Offence against religion i.e. blasphemy
6. Offence against all common needs i.e. robbery

Implementation of Islamic Criminal Law

Islam is an absolute method of life and Islam is covering every aspect of life in every phase of life. The Shariah with its objectives function smoothly and efficiently. In the present situation where the Individual is surrounded by many forces implementation of Islamic criminal law might amount to oppression and injustice. According to fundamental philosophy of Islam it is not necessary to study the various parts of Shariah in link from one another.² On the issue of implementation of Islamic criminal justice there is observation of Maududi.

"Amazing fact about the Shariah is that it is natural whole and random and discriminating division of the universal scheme of Shariah is leap to harm the courage as well as structure of Shariah."³

There are people who selected a few things of Islamic criminal law but they do not think that these provisions are against the Islamic system of life

and against the intension of law giver. Under Islamic criminal jurisprudence the real philosophy of the punishment of theft is that it is for Islamic society that those who are wealthy and financial capable and they paid the Zakat that is obliged on them. In an Islamic state every citizen avail equal opportunities of livelihood. In an Islamic state people feared from Allah Almighty and they help their fellow members to gain the pleasure of Allah Almighty. Islamic criminal law and justice system is part and parcel of the laws of Allah Almighty is mentioned in the primary sources of Islamic jurisprudence. In the present situation crime rate is so high in every sphere of life and Islamic penal elements in their existing penal laws are introducing amendments.⁴

Islam is a perfect religion and covers every aspect of life covering the matters of this world and hereafter also. Everything is integrated into each other if any part is removed; other part is to be affected. Thus in the present situation where the Islamic norms and values are not being adopted by the people the Islamic penal is also not constructive. Indeed if a person commits theft in state of hunger the hand of thief shall not be amputated. There is no sense to punish for the sexual offences and circumstances leads towards illegal relationship. The will of Allah Almighty is mentioned in The Qur'ān and the authentic and trustworthy Ḥadīth are being protected their legitimate interests. For the implementation of Islamic criminal law, justice system in Islamic society must follow the laws of Qur'ān and Sunnah. If a person commits theft in society is a place where the basic needs of a person is fulfilled the punishment is deterring.⁵ Concentrating on the hadd of theft Al-Qardawi remarks

*“The fairness of Islam does not confess the reason that the authority of God execute on the thief as punishment for what he or she might have stolen and yet we take no notice of the command of God on the expense of Sadat and the social bear system .There is only one verse on the hadd of theft but many of ayah on Sadat and helping the poor”.*⁶

The Objectives of the Islamic Penal System

The Islamic severe system has many objectives, the most important of which are as follows:

The first objective is that Islam safeguards the society from hazard of crime. Society will be in severe condition if serious punishments are not given to criminals. Islam seeks to make social steadiness and make environment peaceful and punishment will deject crime. If the severe punishments are given to criminals then there is no chance of committing the crime again and rest of the society when knows the severity of punishment then there less chances of crimes.

The Second Objective is that Islam wants to reform the criminal. The

Qur'an make it clear that door of repentance will be open for criminals if he admit his crime and behaves correctly. It has made repentance a means of waiving a fixed punishment in some ways, like the punishment for highway robbery. Allah Almighty says:

"إِلَّا الَّذِينَ تَابُوا مِنْ قَبْلِ أَنْ تَقْدِرُوا عَلَيْهِمْ فَاعْلَمُوا أَنَّ اللَّهَ عَفُورٌ رَحِيمٌ"⁷

"...except for those who repent before you take hold of them. Then know that Allah is the Forgiving, the Merciful."

Allah Almighty says regarding the punishment for fornication

"وَالَّذَانِ يَأْتِيَانِيَا مِنْكُمْ فَأُذُوهُمَا فَإِن تَابَا وَأَصْلَحَا فَأَعْرِضُوا عَنْهُمَا إِنَّ اللَّهَ كَانَ تَوَّابًا رَحِيمًا"⁸

"It they both repent and fix their ways, then leave them alone. Verily, God is the Acceptor of repentance, the Merciful."

Allah Almighty says after mentioning the prescribed punishment for theft:

"فَمَنْ تَابَ مِنْ بَعْدِ ظُلْمِهِ وَأَصْلَحَ فَإِنَّ اللَّهَ يَتُوبُ عَلَيْهِ إِنَّ اللَّهَ عَفُورٌ رَحِيمٌ"⁹

"But whoever repents after his wrongdoing and reforms, indeed, Allah will turn to him in forgiveness. Indeed, Allah is Forgiving and Merciful".

In Ta'zir punishments it depends upon the judge to take into deliberation the situation of the criminal and what steps should be taken for his betterment.

The Third Objective is that the punishment is a compensation for the crime. The criminal should receive his just reward as he is pleased with taking the path of evil in its place of the path of virtue. Then the security of the society will be safe from danger.¹⁰ The Qur'an has asserted this objective when mentioning a number of punishments. Allah Almighty says:

"إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ جِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ"¹¹

"The recompense for those who wage violent transgression against God and His Messenger and who go forth spreading corruption in the Earth is that they should be killed or crucified or that their hands and feet should be cut off on alternate sides or that they should be sent into exile"

Meaning of Theft

Theft means to take the property of another person surreptitiously without the knowledge and consent of that person. To take away the property of another person is not called theft. The Holy Prophet (PBUH) said:

"The Hand of the usurper and seizer shall not be amputated."¹²

The person who commits the theft is called *Sāriq*. Custody means to protect, and technical it means an agreement made for the safekeeping of a property.¹³ The Prophet (PBUH) said;

*"He who steals a sheep from among the sheep grazing in the field without a guard his hand will not be cut off."*¹⁴

Custody is of two kinds. Custody in the form of a building where the things are kept and where the entry of a public is prohibited and where the property is kept e.g. house. Custody in the form of watchman and watchman is usually in mosques shopping centers desert and garden etc.

If a person commits theft of the coffin of dead from a grave his hand shall not be cut off and he shall be liable to Ta'zīr punishment this is the view point of Imam Abu Hanifa.¹⁵ He relies on the Ḥadīth in which Prophet(PBUH) said that *"the hand of a thief of the coffin shall not be cut."*¹⁶ But grave is *hirz* and theft of the coffin from it shall be liable to hadd. This is the view point of Imam Malik, Imam Shafi and Imam Aḥmad.¹⁷ These jurists rely upon the Ḥadīth of Holy Prophet (PBUH):

*"He who digs a grave and commits theft of the coffin of the dead body, we shall cut his hand."*¹⁸

Theft of Jewelry: If theft is committed from jewelry from house and person brings jewelry from the house and jewelry was kept in safe place then person hand will be cut and he will accountable to hadd punishment. But if a person commits theft of jewelry from the house where jewelry was lying on the ground then person shall be accountable to Ta'zīr punishment. If a person commits theft from trading centers during business hours he shall be Ta'zīr punishment not Ḥudūd punishment but if a person theft in trading centers at night he shall be liable to had because at that time entrance is not allowed of any person.¹⁹

Theft of Perishable foodstuffs: If theft is committed from foodstuffs like milk, fruits and meat then Ta'zīr punishments shall be given to a person and Hadd punishment shall not be given to him. Holy Prophet(PBUH) said;

*"the hand shall not be cut off in thief of fruit."*²⁰

Theft of Prohibited things: If theft is committed from prohibited things such as wine, pig the person shall not be liable for had punishment. All intoxicants are included in prohibited things and person shall be liable for Ta'zīr punishments.

Theft of Common Things: The Holy Prophet (PBUH) said that three things are common for all, namely, water grass and fire.²¹

If a person committed theft of hen his hand shall not be cut off. Hadrat

Usman said; the hand shall not be cut in case of birds. But according to Imam Malik and Imam Shafi if such things are in the *Hirz* then person shall be liable to Hadd punishment.²²

If a value of stolen property is less than a nisab and a person committed theft then he shall not be liable to Hudūd punishment. If two or more person committed theft and if the aggregate value of stolen property and divided equally among them each one of them will get a share which is less than nisab then had punishment shall not be implemented on a person but if the stolen property is more than nisab then a person shall liable to had punishment. This is the view point of Imam Abu Hanifa.²³

Theft committed from Bait-ul-mal shall not be liable to had punishment but liable to Ta'zir punishment. One of the governors asked about the punishment who committed theft from Bait-ul-mal. Hadrat Umar told him not to cut off his hand as everybody has a right in Bait-ul-mal.²⁴ Hadrat 'Umar during his caliphate suspended the Hadd punishment of theft in the time of famine thus if a punishment commits theft in the time of famine he shall not be liable to had punishment.²⁵

When the following conditions are fulfilled had is implemented while in the absence of any of these conditions the person shall liable to Ta'zir .

1. The property is not perishable
2. The property is not a government property
3. The person entered a protected place of property and come out along with stolen property
4. The property is owned by individuals.
5. The property is valuable according to injunctions of Islam
6. The property does not belong to any friend²⁶

Punishment of Theft in Islam

The punishment in Islam (*Hadd*) for stealing is to cut off the hand of the thief. But there are lots of conditions which should be fulfilled before this punishment is conducted. Stealing is a big sin and it can be understood by the following verse no. 38 of Surah Al-Maida:

"وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا نَكَالًا مِنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ"²⁷

"And (as for) the male thief and the female thief, cut off their hands as a recompense for that which they committed, a punishment by way of example from Allah. And Allah is All-Powerful, All-Wise."

"قَمْرٌ نَابٌ مِنْ بَعْدِ ظُلْمِهِ وَأَصْلَحَ فَإِنَّ اللَّهَ يَتُوبُ عَلَيْهِ إِنَّ اللَّهَ عَفُورٌ رَحِيمٌ"²⁸

"But whoever repents after his wrongdoing and reforms, indeed, Allah will turn to him in forgiveness. Indeed, Allah is Forgiving and Merciful".

In this verse, Allah Almighty has given commandment regarding the punishment of theft that the (right) hand of the thief (male or female) will be cut off. This punishment is not an act of unkindness rather it sets an example for all people in the society that anyone who will steal other's property, will be rewarded with such punishment. It is a clear-cut ruling. If the crime of theft is proven against anyone and all the conditions which are required for amputation of the hand are fulfilled, then the thief (male or female) will not be pardoned.

Regarding that person, who (after committing theft and going through the punishment) feels regret, asks for the forgiveness of Allah Almighty and reforms himself, shall be saved from the wrath of Allah. The reason is that the punishment was given to the offender for the protection of the society but it does not necessarily purify his heart and this correction and refinement in the behavior can be achieved through the repentance.²⁹

First Offence and the Punishment

From the joint of wrist the hand of the thief shall be cut and afterwards cauterized. The amputation is carried out from the wrist because in Qur'ān the word *Yed* used in Qur'ān which signifies the whole arm up to the shoulder and the wrist joined is also included. There is Hadith of Holy Prophet in the Sahih that he ordered that hand of a thief shall be stuck off from the wrist then cautery is to be applied. The Holy Prophet(PBUH) said:

*"Cut off the hand of a thief and cauterize the part."*³⁰

If the cautery is not applied, amputation leads towards destruction. According to Imam Abu Hanifa, Imam Malik and Imam Shafi the hadd punishment of theft is the cutting off the right hand from wrist joint but according to Shia jurists only the tips of the finger shall be cut off and not its palm.³¹

Second Offence and the Punishment

A thief who evicted from his hand again commits theft for the second time his left foot up to ankle shall be cut off. If a thief commits theft for the third time he shall be imprisoned until he repents. Some jurists say that it left upon the discretion of ruler some says that punishment should be for one year some says that imprisonment should be till death. Our modern scholars say that Ta'zīr punishment shall be given to offender.³²

If the person commits liable for second time his left foot up to the ankle shall be amputated. And if he commits theft for the third time his hand and foot shall not be cut but the person is punished with imprisonment this is the view point of Imam Abu Hanifa But according to Imam Malik and Imam Shafi if he commits theft for the third time his left hand shall be cut from the

wrist and if he commits theft for the fourth time his right foot shall be cut from the ankle and if he commits theft for the fifth time he shall be imprisoned.³³ According to some jurists if a person commits theft for the first time Hadd punishment shall not be implemented on him but it is for habitual offender.³⁴

The punishment for theft in Shariah is very strict. The person who commit theft for the first his hand will be cut off from wrist. The wound is cauterized with boiling oil. The hand can be fixed around the criminal neck for three days this is the view point of Hanbali jurists.³⁵

Amputation cannot be awarded without suit of claimant, nor executed in the absence of injured party: A sentence of amputation cannot be carried unless the person robbed is present because in punishment execution is supplemented to the judge according to majority of jurists.³⁶ In an Islamic penal system the value of stolen is one Quarter of Dinar. There is Ḥadīth of Holy prophet (PBUH):

“A thief hand shall not be cut off except for Quarter of Dinar and upwards”³⁷

The Maliki School fixed the Nisab at a quarter of Dinar and Hanifa jurists fixed the Nisab for 10 dirham. The person who steals government property his hand shall not be cut off. Amputation of hand shall not be carried out in famine. The Prophet(PBUH) cursed upon the thief because he is corrupt element and if thief is not punished evil shall spread all over the society. The Prophet (PBUH) said;

“May Allah cursed the thief who steals an egg and his hand cut off or steals a rope and his hand cut off.”³⁸

Aisha narrated that during the life time of Hadrat Muhammad(PBUH) the hand of the thief will not be cut off for less than the price of shield iron coat or armor and both of them were valuable. At the time of Prophet ﷺ there was a Makhzoomi women who commit theft and Osama Ibn Zayd, (R.A), wanted to mediate for her. The Prophet ﷺ became angry and said:

“Do you intercede relating to one of the Hadd set by Allah Almighty? Those who came before you were shattered because if a rich man among them stole, they would let him off, but if a poor person stole, they would carry out the punishment on him. By Allah Almighty, if Fatimah Bint Muhammad were to steal, I would cut off her hand”³⁹

Cutting of hand is serious matter. There are several conditions for amputation of hand of thief

1. The theft is proved by the testimony of two credible witnesses.
2. The thief must be sane.

3. If a minor child commits a theft for the first time and the second time he is forgiven but if a minor child commits theft for the third time he issued a strict warning but if he continuously commits theft some of his fingers have to be cut off.⁴⁰

Enforcement of Theft Punishment in Pakistan

In the law of Pakistan theft is a punishable crime. According to Pakistan Penal code section 378 without the consent of a person whoever takes the property dishonestly out of possession of any person and moves the property then it is said to commit theft. There is difference between theft and theft in residence. If a person commits a theft in private residence which includes any building the person is punished with captivity and the time period for imprisonment is seven years. Theft of car is punishable offence under Pakistani law whoever commits theft of car including motor cycle and scooter the person is punished with imprisonment for seven years and theft of utility services such as telephone, gas is punished with sentence for three years.⁴¹

Shariah Laws Implemented by the Constitution of the Islamic Republic of Pakistan 1973

Theft is considered as a violation of fundamental right of ownership. The Constitution of Pakistan has recognized this as a fundamental right of people and discussed it under Article 23.

Article: 23 Provisions as Property

Every citizen shall have the right to, hold and arrange the property in any part of Pakistan, subject to the Constitution and any practical limits forced by law in the community interest.

Article: 24 Protections of Property Rights

No person shall be dispossessed of his property save in accordance with law.

Basically, these are the fundamental rights, provided to people in the Constitution of Pakistan 1973 against abuse of powers, damages or injustice to provide the people equal protection of law and to create a better law and order situation for them. These fundamental rights are the part of our democratic constitution which protects the freedom and rights of the people of Pakistan. From the Articles # 23 and 24 in the Constitution, it is proved that any type of violation against the basic rights of the people of Pakistan like theft, which is a crime against the right of property, is also not allowed⁴². These Articles, described in the Constitution of Pakistan are exactly in accordance of Shariah law whose purpose is to protect the life and property of the people of an Islamic State. It is a violation of law to steal someone's

possession in Shariah and there is a punishment for this crime so is in the Constitution of Pakistan.

Sections of Pakistan Penal Code Regarding Amputation of Hands in Pakistan

The punishments determined for the crime theft come under the case of *Ta'zīr*. In *section 378*, theft is defined as to take the property of another person surreptitiously without the knowledge and permission of that person. In *section 379* whoever commits theft shall be punished with sentence for three years or with fine and both punishment shall be given. In *section 381* if a person commits theft from the ownership of his master the person shall be liable to sentence for seven years and shall also be liable for fine according to Pakistan penal code.

Whoever commits theft and made preparation for causing the death of any person after committing theft and escape from the place after done the crime then the person shall be liable for punishment which may be extend for ten years and shall also be liable to fine. According to *section 381(a)* if a person commits theft of motor vehicle which includes motorcycle, scooter and tractor the person shall be punished with imprisonment or fine not exceeding the value of stolen vehicle.

From the above mentioned Sections *378 to 382* of Pakistan Penal Code (Act XLV of 1860), it becomes clear that theft is the stealing of a person's wealth and possession wrongfully without his consent and all punishments for different types of thefts, described in PPC, do not come in the case of *hadd* rather they come under *Ta'zīr* like imprisonment or fine or in some cases both. Although these punishments, described in the Sections of PPC are not completely similar to the punishment mentioned in the Qur'ānic injunction. However, it is showed that as the wealth of a person is worthy to be kept safe from any harm so is the case in the PPC. Amputation of hands is not implemented but imprisonment and fine in the form of *Ta'zīr* are conducted.⁴³

Criminal Code Regarding Amputation of Hands in Pakistan

The Federal Shariah Court has supported the punishment of amputation of hands against the crime of theft which is also a punishment of theft under Section 9 of The Offences against Property (Enforcement of *Ḥudūd*) Ordinance, 1979 in Pakistan. Here, the punishment supported by The Federal Shariah Court is fully similar to the punishment of amputation of hands mentioned in the Qur'an.⁴⁴

Theft Liable to *Hadd* and *Ta'zīr* under the Offences against Property (Enforcement of *Ḥudūd*) Ordinance, 1979 in Pakistan

Theft is of two kinds, mentioned as; Theft with *hadd* punishment and theft with *Ta'zīr* punishment. When an adult person secretly commits theft of un-stolen property from someone's custody and value of property is *Nisab* and the thief knows this value then he/she is liable to *Hadd*

Essential Conditions for Theft Liable to *Hadd* in Pakistan Penal Code

The Offender must be mature: According to *Ḥudūd* Ordinance, maturity is a must condition while in Pakistan Penal Code, age of maturity is not a condition for punishment.

Theft should be Committed Secretly: Theft should have been committed in secret and owner doesn't have knowledge that his property is lost.

Protective Custody (*hirz*): The theft must occur of any belonging that is placed in *hirz*. *Hirz* means an arrangement made to keep the property safe. Thus the property has to be taken away from a safe custody.

Amount of theft should be equal to Value of *Nisab* or More: An important pre-requisite for awarding the *hadd* punishment is that stolen amount should be equal to *Nisab value*, i.e. 4.457 grams of gold. This amount is fixed under Section 6 of the *Ḥudūd* Ordinance 1979.⁴⁵

Evidences of Theft Liable to *Hadd*

Following proofs are required for applying *hadd* punishment for theft.

1. Accused Pleading: If the accused (thief) admits the commission of the offence, *hadd* punishment is awarded.

2. Eye-Witnesses: The evidence of two adult males, who testify witnessing the crime, and fulfill the requirements of *Tazkiyah al-Shuhood* will be a proof for theft answerable to *Hadd*. However, there is a condition that statement of victim of theft has to be documented prior to recording the statements of eyewitness. If the offender is non-Muslim then eye witness is also non-Muslim.⁴⁶

Theft punishment of *Hadd* on More Than One Persons

Hadd is awarded to more than one person in case more people are involved in theft. The conditions in this case would be that the stolen property is in *hirz* and the value of stolen property is such that if divided amongst the ones who are involved in theft, each one got a share to the value of *nisab*, whether or not each one took part in moving the property.⁴⁷

Theft Punishment Liable to Hadd

In the following sub-sections, the details are discussed regarding the cases in which hadd punishments can be given for theft

Amputation of Right Hand from Joint of Wrist: For the first time if the person commits theft he is given the punishment of amputation of right hand from wrist joint.

Commission of theft for second time: If the same person commits theft then hadd punishment for him would be to cut off his left foot up to ankle.

Life Imprisonment: Commission of theft punishment by same person again after he got hadd punishments previously, third time he would be awarded life imprisonment (till death).⁴⁸

Approval by Court: Hadd punishment cannot be carried out till the court conform it. Until the execution of punishment, the offender will not be mistreated and dealt with like an ordinary crime punishment imprisonment.

In the Case When Offender Feels Regret: In the case of an offender sentenced to imprisonment for life under sub-section (3), if the Appellate Court is satisfied that he is sincerely regretful, he may be set at liberty on such terms and conditions as the Court may deem fit to impose.

Need of an Authorized Medical Officer: an authorized medical officer is to be deputed to carry out the procedure and provide medical aid afterwards, if need be.

In the Case of Fear of Death for the Offender: Enforcement of hadd punishment can be postponed on the advice of medical officer if he opines that amputation might lead to the death of the offender. The Hadd has to be postponed until the time when there is no fear of death for the offender anymore

Punishment of Theft liable to Ta'zīr

Whoever commits theft which is not liable to *hadd* or for which, proof in either of the forms mentioned in Section 7 is not available or for which, *hadd* may not be imposed or enforced under this Ordinance, shall be liable to Ta'zīr

Punishment for Theft Liable to Ta'zīr

Whoever commits theft liable to Ta'zīr shall be awarded the punishment provided for the offence of theft in the Pakistan Penal Code (Act XLV of 1860).

From the Offences against Property (Enforcement of Hudūd)

Ordinance 1979, the hadd and Ta'zīr punishments to theft cases, proofs which are required for theft liable to Hadd, conditions for theft liable to Hadd which are necessary to be fulfilled, punishment and its 3 levels in the case of theft liable to Hadd more than one time, process of giving this punishment, punishments for theft liable to Ta'zīr which have also been mentioned in Pakistan Penal Code (Act XLV of 1860).⁴⁹

Under this Ordinance, both *Hadd* and *Ta'zīr* are given. *Hadd* is quite similar to the punishment provided by Shariah law which is amputation of hand, while the proofs for theft, its conditions, 3 levels of punishment as well as punishments for theft liable to *Ta'zīr* are different from the Shariah law.

According to section 379 whoever commits theft shall be punished with imprisonment and or will give a fine. In this section the accused moves the property from person's possession without his consent.⁵⁰

The person who commits theft in respect of any property and possession of his master the person shall be punished with imprisonment for seven years and also liable to fine under section 381. Under section 382 whoever commits, having made preparation for causing death or fear of death in order to the effecting of his escape after the committing of such theft the person is awarded ten years punishment along with fine.⁵¹

Reported Cases Regarding Amputation of Hands in Pakistan

In the case, *The State vs. Ghulam Ali 1982*, the offender was liable to *hadd* for stealing the wall-clock from the mosque. Shariah Court confirmed the conviction. On further appeal to the Supreme Court, the counsel for the accused said that in order to be punished by hadd, the theft should be committed in such a way that the offender believed that the victim of the theft did not know about this. As in a mosque, no one was the victim of theft so Ghulam Ali would not be liable to *hadd*. Regarding the matter of *Hirz*, Shariah Court preferred the view of Imam Malik, according to which, the mosque was a *Hirz* as there was a *Khadim* in that mosque. In that case, Ghulam Ali would be liable to Hadd. However, the question of the amount of that wall-clock was dealt by the Supreme Court and it was held that the offender did not know the price of that clock so would not be liable to *hadd* as here, one condition is not fulfilled.

Conclusion

Punishments are given to criminals for the public interest of society and to stop crime. Shariah classifies punishments into Ḥudūd, Qiṣāṣ and Ta'zīr. The punishment for theft in Shariah is amputation of hand. If all the conditions are fulfilled the court has no right to give any other punishment. In respect of Ḥudūd and Qiṣāṣ the power of court is limited but in Ta'zīr punishments the court has wider power. The application of hadd punishment

for theft in Pakistan is affected due to number of factors. The punishment of theft in Islam is the amputation of the hand while theft is punishable crime in Pakistan Penal Code. The punishments that are described in PPC are not similar to punishments mentioned in Qur'ān. Amputation of hand is not implemented in Pakistan and imprisonment and fine in the form of Ta'zīr are implemented. The Federal Shariah court has supported punishment of amputation of hand against the crime of theft which is similar to the punishment of Qur'ān. *Hadd* punishment of theft in Pakistan is not implemented because the conditions i.e. at least two Muslim adult males eye-witnesses and *Tazkiyah al-Shuhud* (truthful person and abstain from major sins) are very difficult to fulfill to the extent that Shariah demands. Therefore theft in Pakistan is punishable with Ta'zīr punishment.



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