

OFFENCES AGAINST PROPERTY (ENFORCEMENT OF HUDOOD) ORDINANCE, 1979

(VI of 1979)

An Ordinance to bring in conformity with the injunctions of Islam the law relating to certain offences against property

Whereas it is necessary to modify the existing law relating to certain offences against property, so as to bring it in conformity with the injunctions of Islam as set out in the Holy Qur'an and Sunnah;

And whereas the President is satisfied that circumstances exist which render it necessary to take immediate action;

Now, therefore in pursuance of the Proclamation of the fifth day of July, 1977, read with the Laws (Continuance in Force) Order, 1977 (C.M.L.A. Order No. 1 of 1977), and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Ordinance may be called the Offences against Property (Enforcement of 'Hudood') Ordinance, 1979.

(2) It extends to the whole of Pakistan.

(3) It shall come into force on the twelfth day of Rabi-ul-Awwal, 1399 Hijri, that is, the tenth day of February, 1979.

2. *Definitions.*—In this Ordinance, unless there is anything repugnant in the subject or context,

(a) "adult" means a person who has attained the age of eighteen years or puberty;

(b) "authorized medical officer" means a medical officer, howsoever designated, authorized by Government;

(c) "Hadd" means punishment ordained by the Holy Qur'an or Sunnah;

(d) "Hirz" means an arrangement made for the custody of property;

Explanation 1.—Property placed in a house, whether its door is closed or not, or in an almirah or a box or other container or in the custody of a person, whether he is paid for such custody or not is said to be in 'hirz'.

Explanation 2.—If a single family is living in a house, the entire house will constitute a single 'hirz' but if two or more families are living in one house severally, the portion in the occupation of each family will constitute separate 'hirz'.

- (e) "Imprisonment for life" means imprisonment till death;
- (f) "Nisab" means the 'nisab' as laid down in section 6;
- (g) "Tazir" means any punishment other than 'hadd' and all other terms and expressions not defined in this Ordinance shall have the same meaning as in the Pakistan Penal Code (Act XLV of 1860), or the Code of Criminal Procedure, 1898 (Act V of 1898).

3. *Ordinance to override other laws.*—The provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force.

4. *Two kinds of theft.*—Theft may be either theft liable to 'hadd' or theft liable to 'tazir'.

5. *Theft liable to hadd.*—Whoever, being an adult, surreptitiously commits, from any 'hirz', theft of property of the value of the 'nisab' or more not being stolen property, knowing that it is or is likely to be of the value of the 'nisab' or more is, subject to the provisions of this Ordinance, said to commit theft liable to 'hadd'.

Explanation 1.—In this section "stolen property" does not include property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed.

Explanation 2.—In this section, "surreptitiously" means that the person committing the theft commits such theft believing that the victim of theft does not know of his action. For surreptitious removal of property it is necessary that, if it is day-time, which includes one hour before sunrise and two hours after sunset, surreption should continue till the completion of the offence and, if it is night, surreption need not continue after commencement of the offence.

6. *Nisab.*—The 'nisab' for theft liable to 'hadd' is four decimal four five seven (4.457) grams of gold, or other property of equivalent value, at the time of theft.

Explanation.—If theft is committed from the same 'hirz' in more than one transaction, or from more than one 'hirz' and the value of the stolen property in each case is less than the 'nisab', it is not theft liable to 'hadd' even if the value of the property involved in all cases adds up to or exceeds, the 'nisab'.

(a) A enters a house occupied by a single family and removes from various rooms property the value of which adds up to or exceeds the 'nisab'. Such theft is liable to 'hadd' even though the value of the property removed from any of the rooms does not amount to the 'nisab' of the house is occupied by more than one family and the value of the property removed from the 'hirz' of any one family is less than the 'nisab', then the theft is not liable to 'hadd' even though the value of the properties removed adds up to, or exceeds, the 'nisab'.

(b) A enters a house several times and removes from the house on each occasion property the value of which does not amount to the 'nisab'. Such theft is not liable to 'hadd' even though the value of the properties removed adds up to or exceeds the 'nisab'.

7. *Proof of theft liable to hadd.*—The proof of theft liable to 'hadd' shall be in one of the following forms namely—

(a) the accused pleads guilty of the commission of theft liable to 'hadd'; and

(b) at least two Muslim adult male witnesses, other than the victim of the theft, about whom the Court is satisfied, having regard to the requirements of *tazkiyah-al-shuhood*, that they are truthful persons and abstain from major sins (*kabair*), give evidence as eye-witnesses of the occurrence:

Provided that, if the accused is a non-Muslim, the eye-witnesses may be non-Muslim:

Provided further that the statement of the victim of theft or the person authorized by him shall be recorded before the statements of the eye-witnesses are recorded.

Explanation.—In this section, '*tazkiyah-al-shuhood*' means the mode of inquiry adopted by a Court to satisfy itself as to the credibility of a witness.

8. *Commission of theft liable to hadd by more than one person.*—Where theft liable to 'hadd' is committed by more than one person and the aggregate value of the stolen property is such that, if the property is divided equally amongst such of them as have entered the 'hirz' each one of them gets a share which amounts to, or exceeds the 'nisab' the 'hadd' shall be imposed on all of them who have entered the Hirz, whether or not each one of them has moved the stolen property or any part thereof.

9. *Punishment of theft liable to hadd.*—(1) Whoever commits theft liable to 'hadd' for the first time shall be punished with amputation of his right hand from the joint of the wrist.

(2) Whoever commits theft liable to 'hadd' for the second time shall be punished with amputation of his left foot up to the ankle.

(3) Whoever commits theft liable to 'hadd' for the third time, or any time subsequent thereto, shall be punished with imprisonment for life.

(4) Punishment under sub-section (1) or sub-section (2) shall not be executed unless it is confirmed by the Court to which an appeal from the order of conviction lies, and until the punishment is confirmed and executed the convict shall be dealt with in the same manner as if sentenced to simple imprisonment.

(5) In the case of a person sentenced to imprisonment for life under subsection (3), if the Appellate Court is satisfied that he is sincerely-penitent, he may be set at liberty on such terms and conditions as the Court may deem fit to impose.

(6) Amputation shall be carried out by an authorized medical officer.

(7) If, at the time of the execution of 'hadd' the authorized medical officer is of the opinion that the amputation of hand or foot may cause the death of the convict, the execution of 'hadd' shall be postponed until such time as the apprehension of death ceases.

10. *Cases in which Hadd shall not be imposed.*—'Hadd' shall not be imposed in the following cases, namely:

(a) when the offender and victim of the theft are related to each other as (i) spouses; (ii) ascendants, paternal or maternal; (iii) descendants, paternal or maternal; (iv) brothers or sisters of father or mother; or (v) brothers or sisters or their children;

(b) when a guest has committed theft from the house of his host;

(c) when a servant or employee has committed theft from the 'hirz' of his master or employer to which he is allowed access;

(d) when the stolen property is wild-grass, fish, bird, dog, pig, intoxicant, musical instrument or perishable foodstuffs for the preservation of which provision does not exist;

(e) when the offender has a share in the stolen property the value of which, after deduction of his share is less than the 'nisab'.

(f) when a creditor steals his debtor's property the value of which after deduction of the amount due to him, is less than the 'nisab';

(g) when the offender has committed theft under 'ikrah' or 'iztrar'.

Explanation. In this clause:

- (i) "Ikrah" means putting any person in fear of injury to the person, property or honour of that or any other person; and
- (ii) "iztrar" means a situation in which a person is in apprehension of death due to extreme hunger or thirst.
- (h) when the offender, before his apprehension, has, on account of repentance, returned the stolen property to the victim and surrender himself to the authority concerned.

11. *Case in which Hadd shall not be enforced.*—(1) 'Hadd' shall not be enforced in the following cases, namely:

(a) when theft is proved only by the confession of the convict but he retracts his confession before the execution of 'hadd';

(b) when theft is proved by testimony, but before the execution of 'hadd', any witness resiles from his testimony so as to reduce the number of eye-witnesses to less than two;

(c) when, before the execution of 'hadd' the victim withdraws his allegation of theft or states that the convict had made a false confession or that any of the eye-witnesses have deposed falsely, and the number of eye-witnesses is thereby reduced to less than two; and

(d) when the left hand or the left thumb or at least two fingers of the left hand or the right foot of the offender are either missing or entirely unserviceable.

(2) In the case mentioned in clause (a) of subsection (1) the Court may order retrial.

(3) In a case mentioned in clause (b), or clause (c), or clause (d) of subsection (1), the Court may award 'tazir' on the basis of the evidence on record.

12. *Return of stolen property.*—(1) If the stolen property is found in the original or in an identifiable form, or in a form into or for which it may have been converted or exchanged, it shall be caused to be returned to the victim, whether it is in the possession of, or has been recovered from the offender or any other person.

(2) if the stolen property is lost or consumed while in the offender's possession and the 'hadd' is enforced against him the offender shall not be required to pay compensation.

13. *Theft liable to Tazir.*—Whoever commits theft which is not liable to 'hadd' or for which proof in either of the forms mentioned in section 7 is