

AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR
LAW AND PARLIAMENTARY AFFAIRS SECRETARAIT,
MUZAFFARABAD.

Dated the 23rd October, 1985.

No. 2183-85/LD/Leg (A)/85, The following Act approved by the Azad Jammu and Kashmir Legislative Assembly at its meeting held on 5" October, 1985 and assented by the President on 21st October, 1985, is hereby published for general information:-

(ACT XII OF 1985)

AN
ACT

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 Quran and Sunnah;

It is hereby enacted as follows:-

PRELIMINARY

1. Short title, Extent and Commencement.- (1) This Act may be called the Offences Against Property (Enforcement of Huddod) Act, 1985.

(2) It extends to the whole of Azad Jammu and Kashmir.

(3) It shall come into force at once and shall be deemed to have taken effect on and from the 5" day of October 1985.

2. Definitions.- In this Act, unless there is any thing repugnant in the subject or context;

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

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

(c) "Hadd" means punishment ordained by the Holy Quran or Sunnah;

(d) "hirz" means an arrangement made for the oustody of property;

Explanation-I 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-II 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 in seperalty, the portion in the occupation of each family will constitute a 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 Act shall have the same meaning as in the Penal Code (Act XLV of 1860), or the Code, of Criminal Procedure, 1898 (Act V of 1898).

Act to override other laws.- The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.

Two kinds of theft.- theft may be either theft liable to hadd or theft liable to tazir.

Theft liable to hadd.- Whoever, being an adult, surreptitiously commits, from any hirz, theft of property of the value of the nisab or remove, 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 Act, said to commit theft liable to hadd.

Explanation-I.- In this Section, 'stolen property' does not include property which has been criminally misappropriated or in respect of which has been criminally breach of trust has been committed.

Explanation-II.- 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 sun rise 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.

Nisab.- The nisab for theft 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)

(b)

Illustrations

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 room does not amount to the nisab. If the house is occupied by more than one family and the value of the property removed from the hizb 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.

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.

Proof of theft liable to hadd. - The proof of theft liable to hadd shall be in one of the following forms, namely:-

(a)

(b)

the accused pleads guilty of the commission of theft liable to hadd; and

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 tazkiya 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 eyewitnesses may be non-Muslim.

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

Explanation. - In this Section, Tazkiya Al-shuhood means the mode of inquiry adopted by a Court to satisfy itself as to the credibility of a witness.

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.

Punishment for 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 sub-section (3), if the Shariat 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 authorised medical officer.

(7) if, at the time of the execution of hadd, the authorised 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.

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;

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(d)

(e)

(f)

(g)

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when a servant or employee has committed theft from the hizb of his master or employer to which he is allowed access;

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

when the offender has a share in the stolen property the value of which, after deduction of his share, is less than the nisab;

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;

when the offender has committed theft under ikrah or izardar;

Explanation.- In this clause.-

(h)

(i) 'ikrah' means putting any person in fear of injury to the person, property or honour of that or any other person; and

(ii) 'izardar' means a situation in which a person is in apprehension of death due to extreme hunger or thirst.

when the offender, before his apprehension, has, on account of repentance, returned the stolen property to the victim and surrenders himself to the authority concerned.

Cases in which hadd shall not be enforced.- (1) Hadd shall not be enforced in the following cases, namely:-

(a)

(b)

(c)

when theft proved only by the confession of the convict, but he retracts his confession before the execution of hadd;

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-witness less than two;

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

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

(2) In the case mentioned in clause (a), or sub-section (1) the Court may order retrial.

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

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 or 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.

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 not available, or for which hadd may not be imposed or enforced under this Act, shall be liable to tazir.

Punishment for theft liable to tazir.- Whoever commits theft liable to tazir shall be awarded the punishment provided for the offence of theft in the Penal Code (Act XLV of 1860)

Definition_of haraabah.- When any one or more person, whether equipped with arms or not, make show of force for the purpose of taking away the property of another and attack him or cause wrongful restraint or put him in fear of death or hurt, such person or person are said to commit haraabah.

Proof of haraabah.- The provisions of Section 7 shall apply at this mutandis, for the proof of haraabah.

Punishment for haraabah.- (1) Whoever, being an adult, is guilty of haraabah in the course of which neither any murder

has been committed nor any property has been taken away shall be punished with whipping not exceeding thirty stripes and with rigorous imprisonment until the Court is satisfied of his being sincerely penitent;

Provided that the sentence of imprisonment shall in no case less than three years.

(2) Whoever, being an adult, is guilty of haraabah in the course of which no property has been taken away but hurt has

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been caused to any person shall, in addition to the punishment provided for in sub-section (1), be punished for causing such hurt in accordance with such other law as may for the time being be applicable.

(3) Whoever, being an adult, is guilty of harrabah, in the course of which no murder has been committed but property the value of which amounts to, or exceeds, the nisab has been taken away shall be punished with amputation of his right hand from the wrist and of his left foot from the ankle:

Provided that, when the offence of harrabah has been committed conjointly by more than one person, the punishment of amputation shall be imposed only if the value of the share of each one of them is not less than the nisab;

Provided further that, if the left hand or the right foot of the offender is missing or is entirely unserviceable, the punishment of amputation of the other hand or foot, as the case may be, shall not be imposed, and the offender shall be punished with rigorous imprisonment for a term which may extend to fourteen years and with whipping not exceeding thirty stripes.

(4) Whoever, being an adult, is guilty of harrabah in the course of which he commits murder shall be punished with death imposed as hadd.

(5) Punishment under sub-section (3), except that under the second proviso thereto, or under sub-section (4), shall not be executed unless it is confirmed by the Court to which an appeal from the order of conviction lies, and if the punishment be of amputation, until it is confirmed and executed, the convict shall be dealt with in the same manner as if sentenced to simple imprisonment.

(6) The provisions of sub-section (6) and sub-section (7) of Section 9, shall apply to execution of the punishment of amputation under this Section.

Cases_in which punishment of amputation or death for

haraabah shall not be imposed enforced.- The punishment of amputation or death shall not be imposed or enforced for the

offence of haraabah in cases in which hadd may not be imposed for the theft liable to hadd and the provisions of Section 10 and Section 11 shall apply, mutatis mutandis, to such cases.

Return of property_taken away during haraabah.- The provisions of Section 12 shall, apply, mutatis mutandis, for return of property taken away during haraabah, so, however,

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that sub-section (2) of the said Section shall have effect as if, for the word 'hadd' therein, the words 'punishment of amputation or death' were substituted.

Punishment for haraabah liable to_tazir.- Whoever commits haraabah which is not liable to the punishment provided for in Section 17 or for which proof in either of the forms mentioned in Section 7 is not available, or for which punishment of amputation or death may not be imposed or endorsed under this Act shall be awarded the punishment provided in the Penal Code (Act XLV of 1860), for the offence of dacoity, robbery or extortion, as the case may be.

Punishment_for_rassagiri_or_patharidari- (1) Whoever extends patron-age, protection or assistance in any form to, or harbours, any person or group of persons engaged in the theft of cattle, on the understanding that he shall receive on or more of that cattle in respect of which the offence is committed, or a share in the proceeds thereof, is said to commit 'rassagiri' or 'patharidari.'

(2) Whoever commits 'rassagiri or patharidari" shall be punished with rigorous imprisonment for a term which may extend to fourteen years, or with whipping not exceeding seventy stripes, and with confiscation of all his immovable property and with fine.

Punishment for attempts to commit offence punishable by this Act.- Whoever attempts to commit an offence punishable under this Act, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Act for the punishment of either description for a term which may extend to ten years.

Illustrations

(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box that there is no jewel in it. He has done an act towards the commission of theft, and therefore, is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt I

consequence of Z's having nothing in his pocket. A is guilty under this section.

Application of certain provisions of penal Code (Act XLV of 1860).- (1) unless otherwise expressly provided in this Act, the

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provisions of section 34 to 38 of Chapter II, section 71 and section 72 of Chapter III, and section 149 of Chapter VIII of the Penal Code (Act XLV of 1860), shall apply, mutatis mutandis, in respect of offences under this Act.

(2) whoever is guilty of the abetment of an offence liable to hadd under this Act shall be liable to the punishment provided for such offence as tazir.

Application of Code of Criminal Procedure, 1898 (Act V of 1898).- (1) The provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), shall apply mutatis mutandis, in respect of cases under this Act:

Provided that, if it appears in evidence that the offender has committed a different offence under any other law, he may, if the Court is competent to try that offence and to award punishment therefore, be convicted and punished for that offence:

Provided further that offences punishable under this Act shall be triable by a Tehsil Criminal Court, except offences under Section 9 or sub-sections (3) to (6) of Section 17, which shall be triable by a District Criminal Court.

(2) An appeal from order of conviction of a person by the Tehsil Criminal Court shall lie to the District Criminal Court and an appeal from the orders of the District Criminal Court under this Act shall lie to the Azad Jammu and Kashmir Shariat Court.

(3) The provisions of sub-section (3) of Section 391 or Section 393 of the Code of Criminal Procedure, 1898 (Act V of 1898), shall not apply in respect of the punishment of whipping awarded under this Act.

(4) The provisions of Chapter XXIX of the Code of Criminal Procedure, 1898 (Act V of 1898), shall not apply in respect of punishment awarded under Section 9 or Section 17 of this Act.

(5) Notwithstanding anything contained in any other law for the time being in force, if a member of the District Criminal Court or Tehsil Criminal Court as the case may be, is for any reason unable to attend the sitting, the other member of the Court may hear and decide bail applications or grant remand or adjournment under Section 167 and 344 of the Criminal Procedure Code, 1898, respectively.

Application of the Azad_Jammu_and_Kashmirislami
(Tazirati) Qawanin Nafaz_ Act, 1974.- Notwithstanding

anything contained in the Code of Criminal Procedure, 1898

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(Act V of 1898), the provisions of Section 23, Section 25, Section 28 and Section 31 of the Azad Jammu and Kashmir Islami (Tazirati) Qawanin Nafaz Act, 1974 (Act XI of 1974) shall apply, mutatis mutandis, in respect of cases under the Act.

Presiding officer_of Court to _be_a Muslim.- The Presiding Officer of the Court by which a case is tried, or an appeal is

heard, under this Act shall be a Muslim:

Provided that, if the accused is a non-Muslim, the Presiding Officer may be non-Muslim.

Repeal.- Section 16 to 22 of the Azad Jammu and Kashmir Islamic (Tazirati) Qawanin Nafaz Act, 1974 and the Offences Against Property (Enforcement of Hudood) Ordinance, 1985, (Ordinance CLIII of 1985) are hereby repealed.

Pending cases.- Nothing in this Act shall be deemed to apply to cases pending before any Court immediately before the commencement of this Act, or to offences committed, before such commencement.

Savings.- Notwithstanding any judgment, decree or order of any court including High Court, every thing done, all actions taken, notifications issued, orders or appointments made, proceedings initiated, jurisdiction or powers exercised under the provisions of the offences against property (Enforcement of Hudood) Ordinance, 1979 (Ordinance XXVII of 1979) or its succeeding Ordinances, issued from time to time shall be deemed to have been validly done, taken, issued, made, initiated or exercised under this Act.

Sd/-

(Syed Atta Mohy-du-Din Qadri)

Deputy Secretary Law