

**THE AZAD GOVT. OF THE STATE OF JAMMU & KASHMIR,
LAW & PARLIAMENTARY AFFAIRS SECRETARIAT,
MUZAFFARABAD.**

Dated the February 20, 1979.

No. 864/SL/79. The following Ordinance made by the President on the 20th day of February, 1979, is hereby published for general information:-

(ORDINANCE XXVIII OF 1979)

AN

ORDINANCE

to bring in conformity with the injunction 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 ;

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

NOW, THEREFORE, in exercise of the powers conferred by subsection (1) of Section 41 of the Azad Jammu and Kashmir interim Constitution Act, 1974, the President is pleased to make 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 Azad Jammu and Kashmir.
 - (3) It shall come into force at once.
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) "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 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 in severalty, 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 Ordinance 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)

3. **Ordinance to override other laws.-** The provisions of this Ordinance shall have effect notwithstanding any thing 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, surreptitious commits, from any hirz theft of property of the value of the nisab or more, not being stolen property, knowing that it is or 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 properly it is

necessary that, if it is day time, which includes one hour before sunrise and two hours after sunset, serration should continue till the completion of the offence and. if it is night serration need not continue a Tier commencement of the offence.

6. **Nisab.**- The **nisab** for theft liable to hadd is four decimal four live seven (4.457) grams of gold, or cither 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 the cases adds up to or exceeds, the **nisab**.

ILLUSTRATIONS

(a) A enters a house occupied by a single family and remove from various rooms properly 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**. If 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**, than 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 properly 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 lo of exceeds the **nisab**.

7. **Proof of the 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 **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 eye-witnesses 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.

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 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 High 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

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) decedents 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

VOLUME V (1978-1979)

- (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 or repentance, returned the stolen property to the victim and surrenders himself to the authority concerned.
11. **Cases 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 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.
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 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.

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 not available, or for which hadd may not be imposed or enforced under this Ordinance, shall be liable to **tazir**.
14. **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).
15. **Definition of haraabah.**- When any one or more persons, 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 persons are said to commit haraabah.
16. **Proof of haraabah.**- The provisions of section 7 shall apply mutatis mutandis, for the proof of haraabah.
17. **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 be 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 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 **haraabah** 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 **haraabah** 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 **haraabah** 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 the execution of the punishment of amputation under this section.

18. **Cases in which punishment of amputation or death for haraabah shall not be imposed or 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 theft liable to **hadd** and the provisions of section 10 and section 11 shall apply, **mutatis mutandis**, to such cases.
19. **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, that subsection (2) of the said section shall have effect as if, for the word "**hadd**" therein, the words "punishment of amputation of death" were substituted.

20. **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 enforced under this Ordinance shall be awarded the punishment provided in the Penal Code (Act XLV of 1860), for the offence of dacency, robbery or extortion, as the case may be.
21. **Punishment for rassagiri or patharidari.**- (1) Whoever extends patronage, 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 one 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 strip and with confiscation of all his immovable property and with fine.
22. **Punishment for attempts to commit offence punishable by this Ordinance.**- Whoever attempts to commit an offence punishable under this Ordinance, 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 Ordinance for the punishment of such attempt, be punished with imprisonment 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 in consequence of Z's having nothing in his pocket. A is guilty under this section.

23. **Application of certain provisions of Penal Code (Act XLV of 1860).**- (1) Unless otherwise expressly provided in this Ordinance, the provisions of sections 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**, respect of offences under this Ordinance.
- (2) Whoever is guilty of the abetment of an offence liable to **hadd** under this Ordinance shall be liable to the punishment provided for such offence as **tazir**.
24. **Application of Code of Criminal procedure, 1898 (Act V 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 Ordinance :
- 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.
- (2) 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 Ordinance.
- (3) The provisions of Chapter XXIX of the Code of Criminal Procedure, 1898 (Act V of 1898), shall not apply in respect of punishments awarded under section 9 or section 17 of this Ordinance.
25. **Application of the Azad Jammu and Kashmir Islami (Tazirati) Qawanin Nafaz Act, 1974.**- Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the provisions of Section 23, Section 25 Section 28 and Section 31 of the Azad Jammu and Kashmir Islamic (Tazirati) Qawanin Nafaz Act, 1974 (Act XI of 1974) shall apply, **mutatis mutandis**, in respect of cases under the Ordinance.
26. **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 Ordinance shall be a Muslim :

VOLUME V (1978-1979)

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

27. **Repeal.**- Sections 16 to 22 of the Azad Jammu and Kashmir Islamic (Tazirati) Qawanin Nafaz Act, 1974 are hereby repealed.
28. **Saving.**- Nothing in this Ordinance shall be deemed to apply to cases pending before any Court immediately before the commencement of this Ordinance, or to offences committed before such commencement.

(Brigadier Mohammad Hayat Khan)
President;
Azad Jammu & Kashmir,

Sd/- (Sardar Aftab Ahmed Khan)
Secretary Law.
Azad Govt. of the State of J & K Muzaffarabad.