

IN THE FEDERAL SHARIAT COURT
(ORIGINAL JURISDICTION)

PRESENT

MR. JUSTICE MUHAMMAD NOOR MESKANZAI, CHIEF JUSTICE
MR. JUSTICE SHAUKAT ALI RAKHSHANI
MR. JUSTICE DR. SYED MUHAMMAD ANWER

SHARIAT PETITION NO. 11-I OF 2020

IRUM MALIK DAUGHTER OF UMAR HAYAT MALIK, RESIDENT
OF HOUSE NO 391, STREET NO.12, SECTOR-B, ASKARI-14,
RAWALPINDI

PETITIONER

VERSUS

FEDERATION OF PAKISTAN THROUGH SECRETARY MINISTRY
OF LAW AND JUSTICE GOVERNMENT OF PAKISTAN
ISLAMABAD.

RESPONDENT

COUNSEL FOR THE PETITIONER . . Ms Irum Malik
(IN PERSON)


DATE OF INSTITUTION ... 08 10.2020
OF PETITION

DATE OF HEARING . 11 11.2020

DATE OF DECISION/ . 24 12 2020
JUDGMENT

JUDGMENT:

DR. SYED MUHAMMAD ANWER, J: Through this Shariat Petition, the petitioner has challenged section 9(1)(2)(3) and section 10 of The Offences Against Property (Enforcement Of Hudood) Ordinance 1979. The petitioner claims that according to Quran the punishment for theft is amputation of hand only. According to her claim the punishment of theft as mentioned in Section 9 in the Offences Against Property (Enforcement Of Hudood) Ordinance 1979 (hereinafter referred as the Ordinance) is un-Islamic. Similarly she also challenged section 10 of the Ordinance, stating that the cases under which implementation of *Hadd* Punishment of amputation of hand is exempted is also un-Islamic. She claimed in her petition

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- i. That the punishment of theft according to Quran is amputation of hand only.
 - ii. For theft forgiveness, return of stolen property and repentance are prescribed.
 - iii. The cutting off of hand, foot and crucifixion is described as punishment for *fasad fil al-ard*.
 - iv. Imprisonment is prescribed for *fahaashi* (fornication)
 - v. She also stated that awarding punishments on the basis of one's own desire or bringing changes in prescribed punishments is considered as work of Pharaoh.
 - vi. Severe punishment is prescribed for those who write or say something against the Holy Quran
 - vii. According to the verses of the Holy Quran, Sunnah of Allah is the Quran

viii According to the verses of the Holy Quran, the Quran is Wahī (Revelation). The Holy Prophet used to decide all issue in the light of the Quran

2. She has supported her claim by verses Nos 5 38,5 33,34, 4.15,16, 7.120-124, 39.23, 45 6, 2.79, 2.174, 48 23, 53:1-5, 28.85, 4.105 These verses prescribed punishments for theft, Fasad, Hiraba and fornication. Some of the verses discussed other issues not apparently related to the issue in the petition directly

3. She also made verbal argument at some length in which she mainly remained focused on Verse 38 of Surah al-Maidah:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ

“As to the thief, male or female, cut off his or her hands, a punishment by way of example, from Allah, for their crime, and Allah is Exalted in power ”

4. She made it a point that the punishment for theft is only and only the amputation of hand even if someone commits a theft of one rupee his or her hand should be amputated. She is in favor of strict interpretation of the verse of the Quran, to the extent that this verse (38 al Maida) talks only about adult male and adult female so if a transgender commits the crime of theft the punishment of amputation is not applicable in that case While arguing she was not clear about the definition of “hand” to which extent it will be cut when the punishment of amputation of hand is imposed Whether it is to be cut from palm,

or up to the wrist or to the elbow, and which hand is to be cut left or right? She stated in her petition “چوری کی سزا قرآن کے مطابق ہاتھ کاٹنا ہے”

5. After hearing the arguments of the petitioner and going through the points she made in the petition we have examined all the relevant aspects related to the issue and thoroughly reviewed each and every Clause and Sub-section of the Section 9 and Section 10 of the Ordinance from the touchstone of Holy Quran and Sunnah as required under Article 203 D of the Constitution We are also mindful of the fact that the specific point of view of the petitioner related to punishment of theft as mentioned in the Ordinance needs some deliberations.

6. Before dilating each clause and sub-section of the impugned sections we consider it necessary to elucidate the understanding regarding the inseparable linkage between the Quran and Sunnah al-Nabi to understand Islamic Injunctions in accordance with principles of jurisprudence set by the Muslim jurists. There are plenty of Quranic verses like 132:3, 93:5, 158:7, 46:8, etc which tell us that Sunnah of the Holy Prophet Muhammad (صلی اللہ علیہ وآلہ وسلم) is binding on every Muslim. It is part of our faith [Ref 64 4, 80 4, 52 24, 31 3 etc.] Hence without understanding and acting upon Sunnah we cannot follow or understand the Injunctions of Islam. The crux of the subject can be understood from this verse:

وَمَا أَرْسَلْنَا مِنْ رُسُلٍ فَخُذُوا وَ مَا نَهَيْكُمْ عَنْهُ فَانْتَهُوا وَ اتَّقُوا اللَّهَ ۚ إِنَّ اللَّهَ

شَدِيدُ الْعِقَابِ ۝

“.. and whatsoever the messenger gives you take it and whatsoever he forbiddeth, abstain from it ” (59-7)

7. In addition to that, the Quran states the importance of thorough Muslim scholars is also, at times, required to interpret its verses The Quran says

هُوَ الَّذِي أَنْزَلَ عَلَيْكَ الْكِتَابَ مِنْهُ آيَاتٌ مُحْكَمَاتٌ هُنَّ أُمُّ الْكِتَابِ وَأُخَرُ
مُتَشَابِهَاتٌ فَأَمَّا الَّذِينَ فِي قُلُوبِهِمْ زَيْغٌ فَيَتَّبِعُونَ مَا تَشَابَهَ مِنْهُ ابْتِغَاءَ الْفِتْنَةِ
وَابْتِغَاءَ تَأْوِيلِهِ وَمَا يَعْلَمُ تَأْوِيلَهُ إِلَّا اللَّهُ وَالرَّاسِخُونَ فِي الْعِلْمِ يَقُولُونَ آمَنَّا
بِهِ كُلٌّ مِّنْ عِندِ رَبِّنَا وَمَا يَذَّكَّرُ إِلَّا أُولُو الْأَلْبَابِ ②

“He it is Who has sent down to thee the Book: In it are verses basic or fundamental (of established meaning); they are the foundation of the Book others are allegorical. But those in whose hearts is perversity follow the part thereof that is allegorical, seeking discord, and searching for its hidden meanings, but no one knows its hidden meanings except Allah And those who are firmly grounded in knowledge say We believe in the Book, the whole of it is from our Lord ” and none will grasp the Message except men of understanding ” [Aal-e-Imran 7 translation, Yusuf Ali , Emphasis added]

This verse of the Holy Quran tells us that the Quran at most of the times uses words termed as Muhkamat (محكمات) and sometimes it uses words which the Quran termed as Mutashabihat (متشابهات) for which interpretation is required To understand their meanings the Muslim jurists or scholars who have firmly grounded knowledge can guide us Consequent to this verse and many others verses, number of Islamic Jurists over the last fifteen centuries have developed the principles of interpretation of dictates of Allah as prescribed in the Holy Quran They

have developed as whole subject for that purpose known as Principles of Islamic Jurisprudence or Usul al Fiqh (أصول الفقه). There is plenty of literature of Usul al Fiqh explaining the rules for interpretation of verses of the Quran in a systematic, disciplined and uniformed way. [Some of the prominent works are Usul-i-Shashi, al-Wajeez, Jamia al Usul, etc] The Usuliyeen categorized the words of the Quran in many categories according to their use, meaning, context and legal impact etc

8. A need was surfaced, from the arguments of the petitioner, to understand the methodology of use of words in the Quran in the general (عام) sense, and the use of the words of the Quran in specific (خاص) sense in accordance with the principles set by the Jurists. This need was surfaced in this case when the petitioner relied only on a verse of Quran (38 al-Maidah) and her saying that only it is enough to implement the punishment of *Hadd* of Theft. Looking objectively, it is a small verse but to be obeyed and followed in a uniformed and systematic way at the state level it needs interpretation and explanation. With reference to this case the verse 38 al-Maidah clearly states a punishment for commission of theft, but the questions like: upon whom *Hadd* of theft is to be implemented? Which action of a person amounts to theft? What are the ingredients of theft? Who will be exempted from this *Hadd* to be implemented? Under which circumstances a person will be exempted to be punished for *Hadd* of theft? Is the value of the thing which is stolen relevant for the implementation of punishment of *Hadd*?

From which place and under which condition a thing is to be stolen which amounts to constitute theft liable to *Hadd* ? If a person, takes a thing of other person, who has access in normal routine to a place where the stolen thing was placed on the basis of relations, like brothers and sisters, or parents and their siblings or husband and wife etc living in a house will that act amount to theft liable to the punishment of *Hadd* or not? Naturally these all and many other similar questions need answers for uniform administration law and justice in a society. Their answers are available in Sunnah and their explanations are made by the great scholars of the Islamic Jurisprudence in accordance with certain set principles of Islamic Jurisprudence (Usul al-Fiqh)

9. This issue had been discussed and decided by the Shariat Appellate Bench in a much elaborated way [Ref PLD 1983 FSC p 255]. It is a long judgment following paragraphs authored by Justice Pir Karam Shah is reproduced below being relevant to this case

آیات قرآنی اور سنت نبوی کا باہمی تعلق کیا ہے؟ اس سوال کا صاف جواب قرآن کریم کی اس آیت میں

موجود ہے -

وَأَنزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ وَلَعَلَّهُمْ يَتَفَكَّرُونَ⁽¹⁶⁾

ترجمہ - اور ہم نے نازل کیا آپ پر یہ ذکر (قرآن) تاکہ آپ کھول کر بیان کریں لوگوں کے لئے جو نازل کیا گیا ہے ان کی طرف تاکہ وہ غور و فکر کریں۔

اس آیت سے قرآن کریم کے ساتھ سنت نبوی کا جو تعلق ہے وہ واضح ہو گیا کہ سنت بیان ہے۔ آیات

قرآنی کا علماء اصول فقہ نے اس ”بیان“ پر بڑی مفصل بحثیں اپنی کتب اصول میں کی ہیں مجمل کی تفسیر، مطلق کی

تفسیر اور عام کی تخصیص یہ بھی منجملہ بیان کی اقسام ہیں اور یہ ایسی اقسام ہیں جن کو تسلیم کرنے سے کسی کو مضر

نہیں۔ جب ہم فقہ اسلامی کا مطالعہ کرتے ہیں تو ہمیں جگہ جگہ اس کی مثالیں ملتی ہیں کہ احادیث نبوی نے آیت کے اجمال کی تفسیر کر دی ہے کہیں مطلق کو مقید کر دیا ہے اور کہیں عام کی تخصیص کر دی ہے اور ان امور کو سب تسلیم کرتے ہیں مثال کے طور پر میں چند چیزوں کا یہاں ذکر کرتا ہوں۔ اللہ تعالیٰ کا حکم ہے۔ ”وَأَتُوا الزَّكَاةَ“ کہ زکوٰۃ ادا کرو۔ اس میں یہ تصریح نہیں کہ اتنا سرمایہ ہو تو زکوٰۃ ادا کرو اگر اس سے کم مقدار ہو زکوٰۃ ادا نہ کرو حالانکہ تمام کے نزدیک نصاب زکوٰۃ مسلم ہے اس نصاب سے کم سرمایہ اگر کسی کے پاس ہو تو اس پر زکوٰۃ لازم نہیں ہوگی۔ یہ نصاب کا تعین سنت نبوی نے کیا ہے اگر عام کی تخصیص، قرآن کا انکار یا اس کے معانی میں تحریف ہے تو پھر یہاں نصاب کا تعین کیونکر روا ہوگا نیز آتوا الزکاة کے مفہوم سے حوالان حول کا کوئی ثبوت نہیں ملتا، یعنی زکوٰۃ صرف اس مال پر فرض ہو جو مالک کے پاس ایک سال تک رہا ہو یہ شرط بھی سنت نبوی سے مستنبط ہے اور جو عین حکمت ہے۔

اسی طرح ”السَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا“ کا حکم عام ہے کہ ہر چور مرد اور چور

عورت کا ہاتھ کاٹ دو اس میں یہ نہیں کہ اگر اتنے مال کی چوری کرے تو ہاتھ کاٹو اور اس مقدار سے کم مال کی چوری کرے تو ہاتھ نہ کاٹو۔ اس کا کوئی ذکر نہیں لیکن سنت نبوی نے اس کی تخصیص کر دی کہ ہر چور کا ہاتھ کاٹنا ضروری نہیں بلکہ اتنی مقدار کی مالیت کی چوری کرے گا تو اس کا ہاتھ کاٹا جائے گا اور اس سے کم مالیت کی چوری کرے گا اگرچہ اس پر سارق کا اطلاق ہوتا ہے لیکن اس کا ہاتھ نہیں کاٹا جائے گا۔

[Ref p. 372 of PLD 1983 FSC 255]

(۱) آیات سے یہ حقیقت روز روشن کی طرح واضح ہو گئی کہ قرآن کی طرح بیان قرآن بھی منجانب اللہ ہے اور اس حقیقت کو بیان کرنے کے لیے تو کثیر تعداد میں آیات قرآنی موجود ہیں کہ اللہ تعالیٰ نے آپ پر صرف قرآن نازل نہیں کیا بلکہ دو چیزیں نازل کیں قرآن اور حکمت ارشاد ہے۔

وَأَنْزَلَ اللَّهُ عَلَيْكَ الْكِتَابَ وَالْحِكْمَةَ وَعَلَّمَكَ مَا لَمْ تَكُنْ تَعْلَمُ وَكَانَ فَضْلُ

اللَّهِ عَلَيْكَ عَظِيمًا - (۱۱۹) ۴

ترجمہ۔ اور اتاری ہے اللہ نے آپ پر کتاب اور حکمت اور سکھادیا آپ کو جو کچھ بھی آپ نہیں جانتے تھے اور اللہ تعالیٰ کا آپ پر فضل عظیم ہے۔

اس تفصیل سے چند حقائق نکھر کر سامنے آگئے۔

(الف) اللہ تعالیٰ کی اطاعت کے ساتھ ساتھ اس کے رسول مکرم صلی اللہ تعالیٰ علیہ وآلہ وسلم کی اطاعت ہم پر بحکم الہی فرض ہے۔

(ب) یہ بھی معلوم ہو گیا کہ سنت نبوی قرآن کریم کا بیان ہے۔

(ج) بیان قرآن کا منصب بھی اللہ تعالیٰ نے صرف اپنے رسول کو عطا فرمایا ہے۔

(د) بیان قرآن میں مجمل کی تفسیر، عام کی تخصیص اور مطلق کی تقیید سب شامل ہیں۔

(ه) یہ بیان بھی حضور کا خود ساختہ نہیں ہے بلکہ جس رب نے آپ کو یہ قرآن سکھایا اس نے آپ

کو قرآن کا بیان بھی سکھایا۔

یہ چند اصولی مباحث اگر ہم ذہن نشین کر لیں تو پھر اتباع رسول میں ہم قدم قدم پر بدکنے کی بجائے بڑے شرح صدر کے ساتھ احادیث نبوی کی روشنی میں قرآن کریم کو سمجھتے جائیں گے اور اس پر عمل کرتے جائیں گے۔ [p 375]

10. In the same judgment, the note of Justice Muhammad Taqi Usmani has also discussed the same point in detail which contains many relevant reference also The relevant portion of that note is reproduced below:

واقعہ یہ ہے کہ ”سنت“ کو اسلامی قوانین کا مستقل ماخذ تسلیم کرنے کے بعد منطقی نتیجہ یہی نکلتا ہے کہ اس کے ذریعے قرآن کریم کے کسی عام حکم کو مخصوص کیا جاسکتا ہے، اور اس کو تسلیم کئے بغیر کوئی چارہ کار نہیں، تخصیص کی چند مثالوں سے یہ بات اچھی طرح واضح ہو سکے گی۔

(ا) قرآن کریم کا ارشاد ہے۔

السَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا

المائدہ - چور مرد اور چور عورت دونوں کے ہاتھ کاٹ دو۔

یہ حکم ہر قسم کے چور کے لیے عام ہے، خواہ اس نے ایک روپیہ چوری کیا ہو، یا ایک لاکھ روپے چرائے ہوں، لیکن سنت نے اس حکم میں تخصیص کی، اور یہ حکم دیا کہ نصاب سے کم مالیت کی چوری کرنے والے کا ہاتھ نہیں کٹے گا۔ گویا سنت نے آیت کے حکم کو صرف اس چور کے ساتھ مخصوص کر دیا جس نے کم از کم نصاب کی مالیت چرائی ہو۔

اسی طرح مذکورہ آیت میں اس بات کی کوئی تفصیل نہیں تھی کہ چور کا ہاتھ کس زمانے میں کاٹا جائے، اور کس زمانے میں نہ کاٹا جائے، لیکن سرکارِ دو عالم صلی اللہ علیہ وسلم نے فرمایا کہ قحط سالی کے زمانے میں چوروں کے ہاتھ نہ کاٹے جائیں چنانچہ حضرت ابواسامہ رضی اللہ عنہ سے مندرجہ ذیل حدیث مروی ہے۔

لا قطع فی زمن المجاع

قحط سالی کے زمانے میں ہاتھ کاٹنے کی سزا نہیں ہے۔

(کنز العمال ص 79 ج 3 مطبوعہ دکن حدیث، 152 ہر مزا الخطیب)

اسی حدیث کی بناء پر حضرت عمرؓ نے زمانہ قحط میں یہ قرآنی سزا موقوف فرمادی اور قرآن کریم کے عام حکم کو حدیث کے ذریعے مخصوص کر دیا۔

اسی طرح قرآن کریم کے عام حکم میں چوری داخل ہے، خواہ وہ پھلوں ہی کی کیوں نہ ہو؟ لیکن آنحضرت صلی اللہ علیہ وسلم نے فرمایا۔

لا قطع فی ثمر

پھل کی چوری پر قطع ید نہیں ہے

(کنز العمال ص 79 ج 3 ہر مزا احمد و ابن حبان)

اس طرح اس حدیث کے ذریعے قرآن کریم کے عام حکم کو مخصوص کیا گیا۔

11. Without going into further detail we will examine the impugned section 9 in accordance with the Article 203-D of the Constitution to analyze whether it is in accordance with Islamic Injunction or not as fundamentally required by the Article 203-D of the Constitution For reference impugned section 9 (1) (2) (3) of the Ordinance is reproduced below for reference

“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.”

The Hadd punishment for theft is prescribed by Allah Almighty in the following verse of the Holy Quran

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ وَاللَّهُ
عَزِيزٌ حَكِيمٌ

As for a man or a woman who commits theft, cut off the hands of both to punish them for what they earned, a deterrent punishment from Allah Allah is Mighty, Wise (al-Maidah.38)

This verse contains a general Hukum of Allah all the other necessary and related questions are explained in Ahdith and other sources of Shariah as discussed in Paras 6 to 10 supra The following Ahadith, opinion of the rightly guided caliphs, continuous practice of the ummah upon which

there is consensus of the Muslim jurists (Ijma) are the Islamic basis of the impugned section 9 (1) (2) (3) :

A Hadith narrated by Hazrat Abu Hurairah (RA)

عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، قَالَ «إِذَا سَرَقَ السَّارِقُ فَأَقْطَعُوا يَدَهُ، وَإِنْ عَادَ فَأَقْطَعُوا رِجْلَهُ، فَإِنْ عَادَ فَأَقْطَعُوا يَدَهُ، فَإِنْ عَادَ فَأَقْطَعُوا رِجْلَهُ»

“If someone commits theft then his right hand will be cut, if he commits it second time cut his foot, if he commit it again cut his hand and he comes again then cut his foot.” [Ref Sunnan-Dar-Qutni Vol 4 No. 3392, this hadith is narrated by few other sources also].

This practice continued by the Khulfah-ur-Rashedeen during their period. Hazrat Ibn i Abbas (RA) narrated that

عَنِ ابْنِ عَبَّاسٍ، قَالَ شَهِدْتُ عُمَرَ بْنَ الْخَطَّابِ رَضِيَ اللَّهُ عَنْهُ «قَطَعَ بَعْدَ يَدٍ وَرِجْلٍ يَدًا»

I saw Hazrat Umar (RA) in cases of theft he would cut foot after cutting hand and then foot.” If someone committed theft time and again in the era of Hazrat Umar (RA) Hazrat Umer used to act in accordance with the above mentioned Hadith [Sunnan-Dar-Qutni Vol.4 No. 3393].

The saying and practice of rightly guided Caliphs being close companion of the Prophet (صلى الله عليه وآله وسلم) are also an important source of interpretation of the Quran and Sunnah Their opinions and action or judicial decisions are source of interpretation of Injunctions of Islam in the light of a Hadith

عليكم بسنتي وسنة الخلفاء الراشدين

“The tradition of Khulafa-i-Rashedeen is a source of guidance for you”
The Rightly Guided Caliphs delivered judgments during their period of Khulafah and would convict the criminals in cases of theft in the light of above mentioned Hadith In the opinion of Hazrat Ali (RA) if someone

commits the theft for the third time he should be imprisoned. (al-Tashri' al-Jinai' al-Islami Vol 1 p 652)

On the basis of the verse , Ahadith and the practice of the Khulafah-ur-Rashedun , quoted above it is agreed upon by the Muslim scholars that in the first instance right hand of thief shall be cut off, and if he commits it a second time, his left leg shall be cut off Jurists are in agreement that the hand in execution of punishment of *Hadd* of theft is to be cut from the wrist [Ref. Hidayah, Bidayah wa Sinayah Vol 7] Jurists use the principle of *usul al fiqh* to understand the meaning of hand in determinate meaning which is called (مقيّد) instead of indeterminate meaning called (مطلق). In an indeterminate meanings, the word “hand” can be applicable to complete arm, or a “hand up till elbow” and “ hand up till wrist” depending on the use and context in which this word is used In Arabic the word ‘أيدي’ is used for hand and foot too. Dr. Adud al-Qadir ‘Audah also narrated opinion of the four schools of thought as discussed by Wahabah Zuhaili in Al fiqh ul Islami wa Addilathu as: “the Jurists are unanimous that the word ‘أيدي’ occurring in the Quranic verse applies to both, hand and foot If thief commits offence for the first time, his right hand will be cut off If he commits it a second time his left foot will be amputated The hand and foot both are to be cut from the wrist and ankle joints as the case may be ” The punishment of theft as prescribed in section 9 of the Ordinance is in accordance to Injunction of

Islam [Ref. Fath al-Qadir vol 5 , Hidayah, Kanz al- Daqa'iq, Bidiya wa Sinaya vol 7].

12. Now we will examine impugned section 10 of the Ordinance from the touchstone of Injunctions of Islam. This section fundamentally explicates the list of those persons who are exempted from imposition of *Hadd* punishment for theft even if they take property of some other person without his permission or knowledge. The basic reason for this exemption in every case which is enlisted in this section is that, at least one ingredient in their actions is missing to constitute theft liable to be punished for *Hadd* of theft, like

- i Firstly, they may have implied permission to have access to Hirz (the safe custody where the stolen thing is kept) being blood relative or being spouse etc.
 - ii. Secondly, they may have express permission to safe custody i.e. Hirz, as in case of employee or welcomed guest, or being partner in the property which is stolen
 - iii. Thirdly, the situation under which the element of Hirz is missing may not constitute theft
 - iv. Fourthly, in some case the value of the stolen property is less than the Nisab (minimum prescribed amount of the stolen property necessary for imposition of *Hadd* of theft).
 - v. Fifthly, if theft is committed under Ikrah or Izterar (under coercion or duress etc) then the punishment of *Hadd* shall not be implemented.
- Hence the proposition of the petitioner that any person who apparently commits theft must be subjected to the punishment of *Hadd* under all

and any situation is not correct. When Islam suggests such a severe punishment for a crime as of theft then it also gives more stringent rules to be followed for the implementation of such punishment

13. Section 10 of the Ordinance explains the cases in which amputation of hand shall not be imposed. The impugned Section 10 explains following situation where the punishment of *Hadd* in cases of theft is not applicable

- (1) Where on the basis of relation, norm or contract, etc the accused, either has implied or express access to the *Hirz* of the property.
- (2) Where the value of the stolen property is trivial or in any case it is less than the *Nisab*
- (3) Where over a property there is a claim of joint ownership of the parties or the accused has some legal lien over the property
- (4) Where theft is committed under coercion or duress

The impugned section is reproduced here :

S. 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 surrenders himself to the authority concerned

14. According to Islamic Law one of the necessary ingredients that constitutes theft is that the thing which is stolen has to be in safe custody. This safe custody is called "Hirz" (حرز). Imam Ghazali states that Hirz is a place which is considered by the owner of the thing as safe and it depends upon the customs and usages. All the jurists agree upon this definition of Hirz (Musua Fiqhiya, Fath al Qadir vol.5, al Mughni vol 7, Bidaya al-Mujtahid). The Impugned Ordinance defined Hirz as:

- (d) "hirz" means an arrangement made for the custody of property.

Explanation 1 Property placed in a house, whether its door is closed or no, 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 a separate 'hirz'

To punish someone on the charge of Hadd of theft presence of 'Hirz' is one of the necessary conditions to exist. The thing which has been stolen must be in some safe custody called Hirz from where it has been stolen. It is narrated from 'Amr bin Shuaib, that

سُئِلَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي كَمْ تُقَطَّعُ الْيَدُ قَالَ " لَا تُقَطَّعُ الْيَدُ فِي ثَمَرٍ مُعَلَّقٍ فَإِذَا ضَمَّهُ الْجَرِينُ قُطِعَتْ فِي ثَمَنِ الْبَجْنِ وَلَا تُقَطَّعُ فِي حَرِيسَةِ الْجَبَلِ فَإِذَا أَوَى الْمُرَاخَ قُطِعَتْ فِي ثَمَنِ الْبَجْنِ "

"The Messenger of Allah was asked. ' For how much is the hand (of the thief) to be cut off?' He said 'The hand (of the thief) is not to be cut off for (stealing) fruit on the tree, but if (the fruit) has been taken to the place where it is stored to dry, then the (thief's) hand is to be cut off (if what is stolen is equivalent to) the price of a shield. The (thief's) hand is not to be cut off for a sheep (stolen) from the grazing land, but if it had been put in the barnyard, then the (thief's) hand is to be cut off (if what is stolen is equivalent to) the price of a shield "[Ref. Mauta Imam Malik, No. 1525, in addition similar concept is stated in another Hadith in Sunan an-Nasai in The Book of Cutting off the Hand of the Thief]

This Hadith explains the concept of Hirz and the effect of absence of Hirz very clearly

15. The necessary ingredient of Hirz to constitute theft liable to *Hadd* wanes mainly under following situations:

- i. Firstly, if the act is committed by any of those persons who are given access explicitly to the Hirz where the thing is kept by the owner

of thing as in cases of master and servant, or host and guest etc. In presence of such association if someone takes something without the permission of its owner it may constitute a crime like, cheating, embezzlement or fraud etc ; but it does not constitute the crime of theft liable to *Hadd*

ii Secondly, in addition to husband and wife the Muslim Jurists includes all the relatives mentioned in verses 22-23 of Surah al-Nisa as Mehrams and in verse 61 of Surah al-Noor in which Allah has mentioned a list of relatives in houses of whom one is allowed to enter and eat there The list of relatives that are allowed to have implied permission of access to the Hirz of a person are mentioned in the Ayat 61 of Surah al-Noor

iii Thirdly, when the stolen thing is either lying unguarded at a public place or is publicly accessible like hanging fruits of a garden.

In all of these situations if someone takes something without the permission of its owner it may constitute a crime like, cheating, embezzlement or fraud etc , but it does not constitute the crime of theft liable to *Hadd*

16. The impugned sub-section 10(a) contains a list of those persons who normally have implied permission of access to the place of Hirz of one and other Like husband and wife, father and son or brother and sister etc This list of persons is mentioned in section 10 (a) (i) (ii) (iii) and (iv) On the basis of the fore referred verses of the Holy Quran of Surah al-Nisa and Surah al-Noor and relevant Ahadith, the Jurists

have formulated the list of relatives which are included in persons having permissible access to the Hirz. [Ref: Bidaya wa al-sinaya vol 7 p.75, Fath al-Qadir vol 4 p 239, al-Ahkam al-sultania p.268] Hence, if they take anything from the Hirz it will not amount to theft. This principle is translated in different clauses of Section 10(a) which are as follows

1. Majority of the Muslim jurists are of the view that *Hadd* of theft cannot be implemented in cases of theft if committed by spouses inter-se i.e , if one of the spouses takes a thing of the other without permission or knowledge then it will not constitute theft [Badiya al-sinaya Vol 5 p 75, al-Zarqani vol.8 p 98, Abi Yala al-ahkam alsultaniya, kashaf al-Qina vol 6 p 114, Fath al-Qadir Vol 5p 382] . The juristic opinion which is stated in Section 10(a)(i) is based upon the following Hadith:

عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا أَنَّ هِنْدَ قَالَتْ لِلنَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِنَّ أَبَا سُفْيَانَ رَجُلٌ شَحِيحٌ، فَأُحْتَاجُ أَنْ أَخْذَ مِنْ مَالِهِ قَالَ " خُذِي مَا يَكْفِيكَ وَوَلَدَكَ بِالْبَعْرِوفِ "

Hind (bint `Utba) said to the Holy Prophet (ﷺ) "Abu Sufyan is a miserly man and I need to take some money of his wealth " The Prophet (ﷺ) said, "Take reasonably what is sufficient for you and your children " [Ref Sahih al-Bukhari , Hadith No 7180]

- 11 The relation of father and son has a unique place in Islam which is expressed in this Hadith

جَاءَ رَجُلٌ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ إِنَّ أَبِي اجْتَنَحَ مَالِي فَقَالَ أَنْتَ وَمَالُكَ لِأَبِيكَ " وَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ . إِنَّ أَوْلَادَكُمْ مِنْ أَطْيَبِ كَسْبِكُمْ فَكُلُوا مِنْ أَمْوَالِهِمْ "

A man came to the Messenger of Allah (ﷺ), and said 'My father is taking all my wealth.' He said: 'You and your wealth belong to your father.' And the Messenger of Allah (ﷺ) said: 'Your children are among the best of your earnings, so eat from your wealth.' [Ref Sunan Ibn Majah, Kitab al-Tijarah Hadith 156 Vol. 3, Book 12, Hadith No.2292]. This Hadith makes everything so clear that nothing left doubtful regarding the ownership of wealth and property between father and son. On the basis of this principle jurists have included all the ascendant, paternal or maternal in this list which is mentioned in Section 10(a)(ii).

iii. On the basis of the Hadith mentioned in preceding para and because the children have natural right to enter their parents' house which means they have implied as well as express right to have access to Hirz. In addition they also have inheritance share in the property of their parents therefore the descendants are included in the list of the persons who are exempted from imposition of *Hadd* of theft if they take anything of their parents. In addition to the concept of legal and rightful access to the Hirz normally there exists the element of doubt in such like case which vitiates any *Hadd* too in such case. On these grounds the jurists have included children or descendants paternal or maternal in the category of person who have rightful access to a Hirz due to which they are exempted from implementation of *Hadd* of theft, these relations are mentioned in Section 10 (a)(iii)

iv. On the above stated principle the Jurists have also included brothers or sisters of father or of mother, or brothers or sisters or their children in the same category because they have implied permission of access to the house of a person which is normally considered as Hirz [Ref Fath al Qadir Vol 5; Kashaf al-Qina vol.6 p.114, al-Zarqani vol 8 p.98] This principle of Islamic law is

translated in section 10(a) (iv) and section 10(a) (v) of the impugned Ordinance.

- v. Any person who enters Hirz with the express permission of the owner and commits theft then he is exempted from punishment of *Hadd* of Theft. The basis of this is a Hadith "If a guest commits theft his hand will not be cut as punishment of *Hadd*" [Jami Ahadith al Shia' vol 30, p 942 No. 46861] If a guest steals something from the place he is allowed to stay by the host, then his hand will not be cut [Ibn I Qudaima al Mughni, p.284, Bidayat al-Sinaya vol 7 p 75] Section 10 (b) of the impugned Ordinance is based on a principle of Islamic law stated in this para
- vi. Similarly a servant of a person is also included in the same category as of guest because a servant has an implied as well as express permission of access to the Hirz, so when a servant or employee has committed theft from the 'Hirz' of his master or employer to which he is allowed to have access the *Hadd* of theft will not be implemented upon him. This is explained in a decision of Hazrat Umar. It is reported that Abdullah ibn Amr ibn al-Hadrami brought a slave of his to Umar ibn al-Khattab and said to him, "Cut off the hand of this slave of mine. He has stolen." Umar said to him, "What did he steal?" He said, "He stole a mirror belonging to my wife. Its value was sixty dirhams." Umar said, "Let him go. His hand is not to be cut off. He is your servant who has stolen your belongings." [Muwatta Malik Book 41, Hadith No 1537]

أَنَّ عَبْدَ اللَّهِ بْنَ عُمَرَ بْنَ الْخَضِرِيِّ، جَاءَ بِغُلَامٍ لَهُ إِلَى عُمَرَ بْنِ الْخَطَّابِ فَقَالَ لَهُ اقْطَعْ يَدَ غُلَامِي هَذَا فَإِنَّهُ سَرَقَ فَقَالَ لَهُ عُمَرُ مَاذَا سَرَقَ فَقَالَ سَرَقَ مِرْآةً لِمَرْأَتِي ثَمَنُهَا سِتُّونَ دِرْهَمًا فَقَالَ عُمَرُ أَرْسَلُهُ فَلَيْسَ عَلَيْهِ قَطْعُ خَادِمِكُمْ سَرَقَ مَتَاعَكُمْ

In this situation where an employee or servant steals something from a Hirz to which he has implied or express permission of

access, in that case he shall not be punished with *Hadd* of theft but may be subjected to some other crime as the case may be This principle of Islamic injunction is contained in Section 10(c)

- vii. In the opinion of the Muslim jurists, in case of theft of trivial or paltry things which are called 'maal adam al-taqweem' (things of no value) like wild-grass, fish, bird, dog, pig, intoxicant, musical instrument or perishable foodstuffs for the preservation of which provision does not exist etc hand is not amputated [Fath-al Qaqir vol 5 p 371]. In any case their value must not increase the Nisab For stealing a paltry thing or a thing of less value than that of Nisab may constitute some other crime but not the theft liable to *Hadd* This concept of the Islamic law is mentioned in section 10 (d) of the Ordinance It is based upon a Hadith narrated by Hazrat Ayesha (RA)

عن عائشة، قالت «لم يكن يقطع على عهد النبي صلى الله عليه وسلم في الشيء التافه»

Hazrat Aysha (RA) narrated Sunnah of the Prophet (صلى الله عليه وآله وسلم) regarding the non-amputation of hand upon the theft of cheap things she said : "during the period of the Holy Prophet hands were not amputated upon the theft of cheap things." [Musannaf Ibi Abi Shaiba Vol.5 page 477, Hadith No. 28114]

Another incidence is mentioned in the books of Ahadith elaborating the same principle of the Islamic Law Muhammad ibn Yahya ibn Hibban said A slave stole a plant of a palm-tree from the orchard of a man and planted it in the orchard of his master The owner of the plant went out in search of the plant and he found it He solicited help against the slave from Marwan ibn al-Hakam who was the Governor of Medina at that time Marwan confined the slave and intended to cut off his hand The slave's

master went to Rafi' ibn Khadij and asked him about it. He told him that he had heard the Messenger of Allah (ﷺ) saying: 'The hand is not to be cut off for taking fruit or the pith of the palm-tree'. The man then said: Marwan has seized my slave and wants to cut off his hand. I wish you to go with me to him and tell him that which you have heard from the Messenger of Allah (ﷺ). So Rafi' ibn Khadij went with him and came to Marwan ibn al-Hakam. Rafi' said to him. I heard the Messenger of Allah (ﷺ) saying 'The hand is not to be cut off for taking fruit or the pith of the palm-tree'. So Marwan gave orders to release the slave and then he was released [Sunan Abu Dawud, Kitab al-Hudood].The concept that in case of stealing of trivial things, the value of which is less than Nisab, the Hadd of theft will not be implemented does not mean that the person will go scot-free. In such situation the person who commits theft may or may not be subjected to tazir depending upon the situation of the case

- viii. The concept of Nisab is also relevant to a property which is jointly owned by a person who commits theft and the person from whose custody the property is stolen. The jurists are of the opinion that if someone steals a thing from his partner or from his creditor then his hand will not be cut as a punishment of Hadd. In such cases he may be punished for commission of some other crime but not theft liable to Hadd (Fath I Qadir vol 5 p 376-77). These two concepts of Islamic Law are translated into section 10 (e) and 10 (f). Section 10 (e) explains a situation when the offender has a share in the stolen property the value of which, after deduction of his share, is less than the 'nisab', and Section 10(f) states the case

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';

- ix. There are plenty of Ahadith which explicitly state that the hand of a thief will not be cut if the value of the stolen property is less than to a certain value this is called "Nisab". The term Nisab is explained in many different ways to express its value. In the light of all such Ahadith the value of Nisab is calculated by the legislators in term of gold as 4 457 grams which is stated in the impugned Ordinance as:

"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 the cases adds up to or exceeds, the 'nisab' "

The Holy Prophet (SAW) said The hand of a thief shall not be amputated unless the price of a stolen property reaches or equivalent to one fourth of a Dina [Muskat vol 3 Hadith No742 this Hadith is narrated in many book of Ahadith]

قال النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ " لَا تَقْطَعُ يَدَ السَّارِقِ إِلَّا بِرَبْعِ دِينَارٍ
فَصَاعِدًا "

In another Hadith it is narrated by Hazrat Aysha (RA) that . A thief's hand was not cut off for stealing something cheaper than a Hajafa or a Turs (two kinds of shields), each of which was worth a price.

إِنَّ يَدَ السَّارِقِ لَمْ تُقْطَعْ عَلَى عَهْدِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِلَّا فِي ثَمَنِ هِجَيْنٍ
حَجَفَةٍ أَوْ تُرْسٍ

All the above mentioned Hadith are taken from Bukhari kitab al hudood

عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ كَانَ يَقْطَعُ فِي رُبْعِ دِينَارٍ فَصَاعِدًا

'Hazrat Aysha (RA) said The prophet (ﷺ) used to cut off a thief's hand for one fourth of a dinar and upwards

Where someone takes out a property in which he has joint ownership will not be punished of *Hadd* of theft this preposition is based on following Ahadith reported by Ibn I Ubaid (RA) that once he was sitting with Hazrat Ali (RA) in a meeting where he was distributing the Khums and a person from Hazarmaut stole a hammer of steel form there he was caught and produced before Hazrat Ali (RA) and Hazrat Ali gave a judgment that "his hand will not be cut because he also had share in the Khums however he embezzled.

It was narrated from Ibn Abbas that : one of the slaves of who himself was part of Khums stole something from the Khumus, and the matter was referred to the Holy Prophet (ﷺ) but he did not cut off his hand, and he said ' The Property of Allah, (SAW) part of it stealing another part ' [Ref Sunan Ibn Majah Vol. 3, Book 20, Hadith 2590]

عَنِ ابْنِ عَبَّاسٍ، أَنَّ عَبْدًا، مِنْ رَقِيقِ الْخُمْسِ سَرَقَ مِنَ الْخُمْسِ فَرُفِعَ ذَلِكَ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَلَمْ يَقْطَعْهُ وَقَالَ " مَا لِلَّهِ عَزَّ وَجَلَّ سَرَقَ بَعْضُهُ بَعْضًا "

This concept becomes more clearer in a judgment delivered by Hazrat Ali It is reported by Ibn I Ubaid (RA) that once he was sitting with Hazrat Ali (RA) in meeting where he was distributing the Khums and a person from Hazarmaut stole a hammer of steel form there he was caught and produced before Hazrat Ali (RA) and Hazrat Ali gave a judgment that "his hand will not be cut

because also had share in the Khums however he embezzled. [Sunnan al-kubra , Bahiqi vol 8 p 489 Hadith No. 17305].

- x. Section 10 (g) is based upon a general principle of Shariah which is generally applicable in matters related to the implementation of Hadd including the Hadd of theft also This section states that when the offender has committed theft under 'ikrah' or 'iztrar' then the punishment of amputation of hand as Hadd of theft is not implemented. The term 'Ikrah' (إكراه) means coercion or duress it is a general exception regarding applicability of rules and law under Islamic Injunctions Similarly the term 'Iztrar' (اضطرار) means 'considerable urgency constraint', it is also a general exception to applicability of the rules and the law The cases of theft in which Ikrah or Iztrar is found the punishment of Hadd of theft is not implemented. In section 10(g) of the Ordinance, these terms are explained as

“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,”

Following verses of the Holy Quran are the basis of the Islamic law for the formulation of the principle creating general exception for application of any rule or law

فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ [البقرة ١٧٣]

“But if someone is compelled by necessity – neither driven by desire nor exceeding immediate need – then there is no sin upon him; for Allah is All-Forgiving, Most Merciful.” [al-Baqarah 173]

فَمَنْ اضْطُرَّ فِي مَخْمَصَةٍ غَيْرَ مُتَجَانِفٍ لِإِثْمٍ فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ [المائدة ٣]

“But if anyone is compelled by severe hunger, not intending to sin, then Allah is All-Forgiving, Most Merciful” [al-Maidah 3]

فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَإِنَّ رَبَّكَ غَفُورٌ رَحِيمٌ [الأنعام ١٣٥]

“However, if someone is compelled by necessity – neither driven by desire nor transgressing due limit – then your Lord is All-Forgiving, Most Merciful ”

فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ [النحل ١٥]

“But if one is compelled by necessity – neither driven by desire nor exceeding the need – then Allah is All-Forgiving, Most Merciful ” [al-Nehal].

This principle of Islamic law of general exception to the applicability of rules or the law which is mentioned in these verses is also explained in the following Hadith as :

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: "إِنَّ اللَّهَ تَجَاوَزَ عَنْ أُمَّتِي الْخَطَأَ وَالنِّسْيَانَ وَمَا اسْتُكْرِهُوا عَلَيْهِ "

The Messenger of Allah (صلى الله عليه وآله وسلم) said : “Allah has forgiven for me my nation their mistakes and forgetfulness, and what they are forced to do.” [Sunan Ibn Majah Vol. 3, Book 10, Hadith No. 2043]

- x1. The provision contained in section 10 (h) which states that when the offender, before his apprehension on account of repentance, has returned the stolen property to the victim and surrenders himself to the authority concerned then in that case the Hadd of theft shall not be implemented. This principle of Sunnah explained in a Ahadith.

"تَعَاَفُوا الْحُدُودَ فِيمَا بَيْنَكُمْ، فَمَا بَلَغَنِي مِنْ حَدٍّ، فَقَدْ وَجَبَ "

“The Holy Prophet (صلى الله عليه وآله وسلم) said: Settle the matter of hudood among yourselves and grant forgiveness, if a matter reaches to me then it becomes wajib on me.” [Sunnan Abi Daud, Hadith No 4376].

2

This Hadith gives us a clear direction that parties should try to settle the matter of hudood before reaching to the court of law. There are many other instances where the Holy Prophet (SAW) gave similar directions to us. There is another case which contains similar directions. It is reported in many books of Ahadith as:

عَنْ صَفْوَانَ بْنِ أُمَيَّةَ أَنَّهُ طَافَ بِالْبَيْتِ وَصَلَّى ثُمَّ لَفَّ رِدَاءَهُ مِنْ بُرْدٍ فَوَضَعَهُ تَحْتَ رَأْسِهِ فَنَامَ فَأَتَاهُ لَيْصٌ فَاسْتَلَّهُ مِنْ تَحْتِ رَأْسِهِ فَأَخَذَهُ فَأَتَى بِهِ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ إِنَّ هَذَا سَرَقَ رِدَائِي فَقَالَ لَهُ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَسَرَقْتَ رِدَاءَ هَذَا قَالَ نَعَمْ قَالَ اذْهَبَا بِهِ فاقْطَعَا يَدَهُ قَالَ صَفْوَانُ مَا كُنْتُ أُرِيدُ أَنْ تُقَطَعَ يَدُهُ فِي رِدَائِي فَقَالَ لَهُ فَلَوْ مَا قَبِلَ هَذَا -


It was narrated from Safwan bin Umayyah that: "a man stole his Burdah, so he brought him before the Holy Prophet (ﷺ), who ordered that his hand be cut off. He said: "O Messenger of Allah, I will let him have it." He said: "O Abu Wahb! Why did not you do that before you brought him to me?" [Sunan Nisai , vol.3, Hadith No.1190]

17. We have thoroughly examined each and every subsection of the impugned sections 9 and 10 of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 from the touchstone of Islamic Injunctions. There is no provision in these two impugned sections which is un-Islamic.

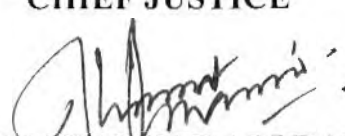
18. For the foregoing reasons, we do not find any force in the petition, hence, is hereby dismissed *in-limine*.



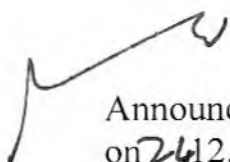
MR. JUSTICE DR. SYED MUHAMMAD ANWER



MR. JUSTICE MUHAMMAD NOOR MESKANZAI,
CHIEF JUSTICE



MR. JUSTICE SHAUKAT ALI RAKHSHANI



Announced in open Court
on 24 12.2020 at Islamabad
Mujeeb/*

Fit for reporting