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## **An Evaluation of Niṣāb) Threshold) for the Punishment of Theft with Reference to Selected Jurisprudential Exegeses and Hudood ordinance 1979(The Offences Against Property)**

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### **Abstract**

This research paper studies the Hadd e Sarqah (Hand amputation punishment for theft). Islamic jurists have outlined several conditions for implementing the Hadd of theft. Among these, the condition that the stolen item or its value must reach a Niṣāb (minimum threshold) is fundamental. This research investigates what the exact amount of this Niṣāb is. The discussion explores whether there is a consensus on this matter or divergent opinions among scholars, identifying the most authoritative view and the reasoning behind it. This comprehensive analysis is based on the insights from two renowned Quranic commentaries—Tafsir Al-Jassas and Tafsir Al-Qurtubi—making it necessary to introduce these works and their distinguished authors briefly.

Qualitative and comparative methods have been employed in this research. After detailed discussion, it was concluded that according to the Shafi'i school, the threshold (niṣāb) for theft is a quarter of a dinar or its equivalent in value. According to the Maliki and Hanbali schools, the threshold for theft of gold and silver is a quarter of a dinar and three dirhams, while according to the Hanafi school, it is ten dirhams. The majority's position is based on strong evidence, whereas the Hanafi position, although more cautious, is not as substantiated by evidence.

The jurists unanimously agree that theft below the threshold amount does not warrant the punishment of amputation. The ahadith that mention theft below the threshold amount are not to be taken in their apparent and literal sense. Pakistan's Hudood Ordinance for theft is aligned with Shariah. The researcher recommends that these laws be implemented to reduce the increasing incidents of theft.

**Keywords:** Hadd e Sarqa, niṣāb, Hand Amputation, Hudood Ordinance

### **Introduction**

One of the key objectives of Shariah is the protection of wealth, as wealth and assets are essential for survival. It is through wealth that a person

fulfills his basic needs. Without money and resources, life becomes difficult. This is why the Quran has forbidden giving wealth to those who lack understanding, stating that wealth is a means of sustenance for people. If you give it to those who cannot manage it properly, they might waste it. <sup>(1)</sup>Since earning wealth is not easy and requires significant effort, Shariah has also prohibited extravagance and wastefulness. When Islamic law prevents a person from squandering their own wealth, it enforces an even stricter punishment for stealing someone else's wealth, which includes cutting off the hand of the thief.

Regrettably, societies that disregard divine guidance do not show any leniency towards theft and robbery, yet in the country founded in the name of Islam, the state of theft is deplorable. Below are shocking statistics of theft incidents in just one city —the city of Karachi, also known as the “City of the Quaid.”

In the first seven months of 2024, more than 31,000 crimes were reported in Karachi, with incidents of motorcycle theft and snatching being the most prominent. January saw the highest number of incidents at 7,815, while June had the lowest, with 4,954 cases recorded. Of the over 11,000 mobile phones snatched, only 123 were recovered, while out of the more than 31,000 stolen or snatched motorcycles, only 1,066 were retrieved.

The latest report from the Human Rights Commission of Pakistan has revealed a dangerous 11% increase in street crimes in Karachi. The HRCP has expressed serious concern over the rising crime in the city. According to the report, more than 90,000 incidents of street crime were reported in 2023, which is 11% higher than the 80,000 incidents reported in 2022. During this period, 134 citizens were killed during robberies and other street crimes, and hundreds were injured, highlighting the severity of the situation.<sup>(2)</sup>

Electricity theft is also a serious issue in Pakistan. The caretaker government's Energy Minister, Muhammad Ali, stated that the annual electricity theft in Pakistan amounts to 589 billion rupees (49 billion rupees monthly). Due to this theft, those who pay their bills end up paying higher electricity costs. In other words, the people who pay their bills are also covering the costs of electricity thieves along with their own bills.<sup>(3)</sup>

There is an urgent need to curb incidents of theft and implement the hadd (prescribed punishment from Allah Almighty) for theft, which plays a central role in establishing peace. The concept and rules of hadd for theft are a vast topic. This article specifically discusses the niṣāb (minimum threshold or amount) for enforcing the hadd for theft, questioning whether all types of theft warrant the punishment of amputation or if there is a specific Niṣāb set by Shariah. Is there consensus on this issue, or are there

differing opinions? Which of these views is considered the strongest, and what are the reasons behind it?

This article addresses all these matters but approaches the discussion in light of two well-known Quranic commentaries: Ahkam ul Quran Jassas or Tafsir al-Jassas and Al Jami Li Ahkam ul Quran or Tafsir al-Qurtubi. In the end, the discussion also includes the Hudood Ordinance related to theft under the legal framework of Pakistan. A comparison has been made in light of the mentioned rulings from the exegeses. It is essential to first provide a brief introduction to these commentaries and their commentators.

### **Imam Jassas**

Abu Bakr al-Jassas is considered among the esteemed imams of fiqh and tafsir. His exegesis, Ahkam -ul-Qur'an, is renowned among the classical works of legal interpretation of the Qur'an. Below is a brief introduction to Imam al-Jassas and his tafsir (exegesis).

Abu Bakr al-Jassas was born in 305 AH (917 CE) in the city of Ray. He studied fiqh from his teacher, Abu al-Hasan al-Karkhi, and learned hadith from Imam Hakim al-Nishapuri. His hadith teachers included Abu al-Abbas al-Asamm (d. 346 AH), Abu 'Umar Ghulam Thalab (d. 345 AH), al-Tabarani (d. 360 AH), al-Isfahani (d. 346 AH), and 'Abd al-Baqi ibn Qani'. Imam al-Jassas was greatly influenced by Imam Abu Hanifa, defending his views on fiqhi (legal) issues. For this reason, some scholars regard him as a follower (muqallid) rather than mujtahid.

Imam al-Jassas passed away in Baghdad on 7 Dhu al-Hijjah, 370 AH, at the age of 65. His student, Imam Abu Bakr ibn Muhammad ibn Musa al-Khwarizmi, led his funeral prayer and personally laid his teacher to rest in the grave.<sup>(4)</sup>

### **Ahkam -ul-Qur'an Jassas**

Imam al-Jassas's Ahkam -ul-Qur'an is of great significance among the legal commentaries of the Qur'an, with its methodological characteristics outlined as follows:

1. Tafsir -ul-Qur'an bil-Qur'an (interpreting the Qur'an through the Qur'an itself) is frequently observed in Tafsir e Jassas.
2. Imam al-Jassas clarifies linguistic meanings by presenting other verses from the Qur'an.
3. He emphasizes Tafsir bil-Mathur (interpretation based on transmitted reports) and also employs Tafsir bil-Ra'y al-Mahmud (commendable personal reasoning), while avoiding Tafsir bil-Ra'y al-Madhmun (blameworthy personal reasoning).

4. He quotes statements from the Companions, the Tabi'in, Tabi' al-Tabi'in, and prominent jurists, highlighting his own views with “ قال ” (Abubaker said) .”
5. When discussing consensus within the rulings of the jurists, he uses the phrase قد حصل اتفاق السلف (consensus of the pious predecessors).
6. The term قال (He said) often refers to Imam Tahawi, and قال اصحابنا (Our companions said) denotes figures such as Imam Abu Hanifa, Imam Abu Yusuf, Imam Muhammad ibn al-Hasan al-Shaybani, Imam al-Karkhi, Imam al-Tahawi, and other prominent Hanafi scholars. عندنا (in our opinion) generally represents the Hanafi school.<sup>( 5 )</sup>

### Imam Qurtubi

The author of Tafsir-e-Qurtubi is Imam Abu ‘Abdullah Muhammad ibn Ahmad ibn Abu Bakr ibn Farah al-Ansari al-Qurtubi. He was originally from Cordoba. According to Dr. Miftah al-Sanusi's analysis, he was likely born at the end of the sixth century Hijri or the beginning of the seventh. Later, he migrated to Egypt and settled in Munya Abu Khasib, where he passed away in Shawwal in 671 AH.<sup>( 6 )</sup>

Imam al-Qurtubi was a distinguished scholar, devoted worshipper, ascetic, and a person detached from worldly attachments. He spent most of his time in worship and writing, and his works reflect his scholarly greatness, profound study, and vast intellectual insight. Among his notable works is al-Jami li Ahkam -ul-Qur'an, which is regarded as a monumental contribution to Qur'anic exegesis.

His teachers included eminent scholars such as Ahmad ibn ‘Umar al-Qurtubi, Ahmad ibn Muhammad al-Qaysi al-Qurtubi, ‘Abd al-‘Azim ibn ‘Abd al-Qawi al-Munziri, ‘Abd al-Wahhab ibn Zafir, and Abu al-Hasan ‘Ali ibn Muhammad ibn Hafs al-Yahsabi, may Allah have mercy on them all.<sup>( 7 )</sup>

### Al-Jami‘ li Ahkam -ul-Qur’an

Imam al-Qurtubi's Ahkam-ul-Qur'an holds great significance among legal commentaries, with the following methodological characteristics:

1. When discussing a Qur'anic ruling, he often provides a brief historical background of the ruling. For instance, in the case of the legal punishment for theft (hudud al-sariqa), he first presents a brief history before delving into the legal rulings.
2. After mentioning the different opinions of the juristic schools, he concisely and comprehensively presents the supporting evidence for each view.
3. Sometimes, after citing the opinions of the jurists, he identifies the principles upon which their differences of opinion are based.

4. On certain issues, after mentioning the opinions of the jurists, he indicates the correct opinion but, sometimes, does not explain the reasons for his preference. For example, regarding the Niṣāb for theft (niṣāb al-sariqa), he mentions the views of the jurists concerning amounts such as five dirhams, four dirhams, one dirham, and various types of goods, even if their value is minimal. However, he concludes by stating that the correct opinions are those of the four main imams, without offering reasons for the preference.
5. When there is a contradiction in hadith, he provides Tatbeeq(harmonization) and interpretation.
6. Imam Qurtubi belongs to malki school of thought but sometimes gives preference to other schools based on the strength of their evidence. This reflects his impartiality and fairness, and highlights his status as a scholar of independent judgment (mujtahid).
7. Tafsir -ul-Qurtubi is more concise compared to Tafsir -ul-Jassas.<sup>(8)</sup>

### **A Short History of Hand Amputation**

Before discussing the legal punishment for theft (hadd al-sariqa), Imam al-Qurtubi provides a brief history of the crime of theft. In the pre-Islamic era, the punishment for theft was the amputation of the thief's hand, and the first person to decree the cutting off of a thief's hand was Waleed ibn al-Mughirah.

This action was prompted by the growing poverty and hardship among the people of Mecca, which caused concern among the wealthy class. They feared that the impoverished and destitute individuals could pose problems for society. To address the issue of poverty, they believed that if poverty could be eradicated, society would be free from the habit of theft.<sup>(9)</sup> As a result, the punishment of hand amputation was established for theft.

The first person for whom the Prophet Muhammad ﷺ decreed the punishment of hand amputation was Khayar ibn Adi ibn Nufayl ibn Abd Manaf. According to Ibn Hajar al-Asqalani, his name was actually Mukhtar ibn Adi, who was the brother of Khayar ibn Adi.<sup>(10)</sup>

Among women, the first thief whose hand was amputated was Murrah bint Sufyan ibn Abd al-Asad, who belonged to the Banu Makhzum tribe.<sup>(11)</sup>

Hazrat Abu Bakr (R.A) also amputated the hand of a man who had stolen a necklace. This necklace belonged to Asma bint Umays, who was the wife of Hadrat Abu Bakr (R.A).<sup>(12)</sup>

According to Imam al-Qurtubi, Hadrat Umar (RA) amputated the hand of Abdul-Rahman ibn Sumarah's brother, Ibn Sumarah. However,

scholars generally believe that it was not Hadrat Umar, but rather the Prophet Muhammad ﷺ who decreed the amputation of his hand. The name of Ibn Sumarah was Amr.

It appears that Imam al-Mawardi, in his book *Al-Nukat wal-'Uyoon*, narrated the story of the theft committed by Ibn Sumarah (Amr). He first mentioned the Prophet ﷺ issuing the orders for the amputation of the hands of Khayar ibn Adi and Murrah bint Sufyan. Then, in relation to these two individuals, he mentioned the amputation of Amr's hand. However, in this narration, the word Amr was mistakenly written as Umar, which led Imam al-Qurtubi to mistakenly conclude that the Prophet ﷺ had ordered the amputation of the hands of Khayar ibn Adi and Murrah bint Sufyan, while Hadrat Umar (RA) had decreed the amputation of Amr ibn Sumarah's hand.<sup>(13)</sup>

Imam al-Jassas did not provide a historical account of theft, but rather discussed the various applications of the term *sariqa* (theft) and then explained that in the context of the mentioned verse, *sariqa* refers to the theft of property.<sup>(14)</sup>

### **The Niṣāb for theft and Imam Jassas's perspective**

Imam Jassas has cited approximately three narrations to the effect that, in cases of theft involving items worth at least the price of a shield, the thief's hand should be cut. He then notes that these narrations clarify that the ruling in the Qur'anic verse is not general; rather, it applies specifically to the theft of an item valued at the price of a shield. Following this, he references various narrations from the Companions (may Allah be pleased with them) regarding the price of a shield, which includes values such as three dirhams, five dirhams, and a quarter dinar.

After this, Imam Jassas presents the Hanafi position: according to Imam Abu Hanifa, Abu Yusuf, Muhammad, Zufaer, and Sufyan al-Thawri, the punishment of cutting hand applies to theft of ten dirhams or more or theft of items valued at ten dirhams. While there is consensus among the Hanfi school of thought on the application of this punishment for theft of ten dirhams, there is a difference of opinion regarding the type of dirhams. The debate is whether the ten dirhams should be minted and in current circulation, or if any form of dirham suffices. In this regard, it is narrated from Imam Abu Yusuf and Imam Muhammad that the punishment applies for theft of items worth ten minted (currently circulated) dirhams.<sup>(15)</sup>

Imam Mergheenani, author of *al-Hidaya*, has also specified that the punishment of cutting the hand applies to theft of ten dirhams or of an item valued at ten minted dirhams. This includes the condition that if someone steals ten pieces of silver whose value does not reach that of ten minted and circulating dirhams, or if someone steals ten counterfeit

dirhams whose value does not amount to ten dirhams, then the punishment of cutting the hand will not apply in either case. This clarification indicates that the Niṣāb for theft is set at ten minted or circulating dirhams, or their equivalent value. <sup>(16)</sup>

Imam Abu Yusuf's perspective is based on the view that when dirhams are specified as the Niṣāb for the punishment of cutting the hand in the hadith, it refers to minted, circulating dirhams, as these are understood as such in customary practice. This is the position of the *zahir al-riwaya* and is considered correct. <sup>(17)</sup> Imam Abu Hanifa's argument, however, is that the hadith establishes the punishment for theft of ten dirhams in general terms. This means it includes both minted, circulating dirhams as well as non-minted ones. Furthermore, if these dirhams are not minted but are still commonly used in transactions, the punishment would apply, as the essence of the rule lies in their acceptability in trade. Therefore, when such dirhams are accepted in transactions, the punishment of cutting the hand should also apply. In the above discussion, the view of the Imam Abu Yusuf and Muhammad appears stronger, as any currency generally implies the current, circulating form.

According to Imam Jassas, Imam Shafi'i holds that the Niṣāb for the punishment of cutting the hand in cases of theft is a quarter dinar. This standard remains fixed even if the value of a dirham rises, resulting in an exchange rate of two dirhams per dinar. In such a case, a quarter dinar would equal only half a dirham, yet the punishment would still apply for theft of a quarter dinar or half a dirham. Similarly, if the dirham depreciates in value and the exchange rate becomes 100 dirhams per dinar, the Niṣāb remains a quarter dinar, meaning that theft of 25 dirhams would result in the punishment. Imam Jassas mentions Imam Shafi'i's position but does not discuss the views of the Malikis and Hanbalis. However, he does reference the arguments of these schools and provides responses, which will be detailed in their respective sections.

### **Arguments for the ten-dirham Niṣāb in the punishment for theft**

Imam Jassas explains that it is universally agreed that the punishment of cutting the hand applies to the theft of property of a certain minimum value. This minimum value can be determined in two ways. The first way is if we have clear guidance from the Shari'ah. We find this guidance through narrations that specify various values and amounts, though they differ: some narrations indicate three dirhams, others five dirhams, and still others a quarter dinar. The second way is to adopt a value that could achieve consensus. We chose this approach and gave preference to the narration that sets the punishment at ten dirhams. Consensus is possible here because ten dirhams encompass the values of three and five dirhams as well. Moreover,

this approach incorporates caution, as it is more prudent to set the punishment at ten dirhams rather than at three or five, thus ensuring a higher Niṣāb (threshold) for the severe penalty of cutting the hand.

A question still remains regarding Imam Jassas's explanation: establishing ten dirhams as the Niṣāb for cutting the hand allows for consensus on the basis of dirhams, as ten dirhams would naturally encompass the values of three and five dirhams. However, if the Niṣāb (threshold) is set at a quarter dinar, achieving consensus would seem more difficult. This is because it is not necessary for a quarter dinar to always be equivalent to ten dirhams; the value of a quarter dinar could exceed or fall below ten dirhams. Imam Jassas himself mentions that, according to Imam Shafi'i, the Niṣāb for theft is set at a quarter dinar, even if, due to the depreciation of dirhams, a dinar could be worth as much as 100 dirhams.

### **Justifications and Responses to Opposing Ahadith(Narrations)**

Since Imam Jassas has favored the Hanafi opinion, which sets the Niṣāb for cutting the hand at theft of ten dirhams, he has also provided interpretations and responses to narrations that contradict this view. For instance, in a narration from Anas and Ibn Umar (may Allah be pleased with them), it is reported that the value of the shield for which the punishment of cutting the hand was applied was three dirhams. Imam Jassas explains that this value of the shield was estimated by Anas and Ibn Umar, while other Companions valued the same shield at ten dirhams. The higher value of ten dirhams takes precedence, as it is more cautious.

As for the narration from Aisha (may Allah be pleased with her) that sets the Niṣāb at a quarter dinar—a narration that Imam Shafi'i also uses as evidence—Imam Jassas writes that:

There is a disagreement regarding whether this narration is marfu' (a narration attributed to Prophet Muhammad ﷺ, e.g. a reporter says: Messenger of Allah said) or mawquf (stopping at a Companion). In reality, this narration is mawquf and stops at Aisha (may Allah be pleased with her). Hammad ibn Zayd narrated from Ayyub, who narrated from Abdur-Rahman al-Qasim, who narrated from Amra, who narrated from Aisha (may Allah be pleased with her) the narration about the quarter dinar as a mawquf report. Ayyub stated that Yahya also narrated this from Amra and initially reported it as marfu'. However, Abdur-Rahman al-Qasim informed Yahya that Aisha (may Allah be pleased with her) had not narrated it as marfu'. Consequently, Yahya ceased to narrate it as marfu'.

Hisham ibn Urwah narrated from his father, who narrated from Aisha (may Allah be pleased with her) that, during the time of the Prophet (peace be upon him), a thief's hand was not cut off for stealing less than the value of a shield. This narration indicates that, according to Aisha, the fundamental



principle was that theft of property valued less than a shield would not result in the punishment of cutting the hand. Moreover, Aisha (may Allah be pleased with her) had no specific narration from the Prophet (peace be upon him) concerning a set amount of gold or silver, for if she had, she would have mentioned that rather than the shield. This implies that setting the value of a shield at a quarter dinar was her own reasoning. When a narration explicitly sets the Niṣāb at ten dirhams, there is no need for individual reasoning (ijtihād) in the presence of a clear textual basis (nass).

In light of these indications and details, Imam Jassas (may Allah have mercy on him) states that even if the narration from Aisha (may Allah be pleased with her) regarding the quarter dinar is accepted as marfu' (attributed to the Prophet), it would still be her own ijtihād. Furthermore, this narration would contradict those reports in which the Prophet (peace be upon him) specified the Niṣāb for cutting the hand at ten dirhams, stating that the punishment would not apply for theft of anything less than that. In this case, the Hanafī narrations prohibit cutting the hand for theft of less than ten dirhams, while the other scholars' narrations allow the punishment for theft of an amount less than ten dirhams. In the conflict between prohibition (tahreem) and permissibility (ibaha), the prohibition should be given precedence.<sup>(18)</sup>

Imam Jassas (may Allah have mercy on him) considers the narration from Aisha (may Allah be pleased with her), which sets the value of a shield at a quarter dinar, to be her own ijtihād. He states that Hisham ibn Urwah narrated from his father, who narrated from Aisha (may Allah be pleased with her), that during the time of the Prophet (peace be upon him), a thief's hand was not cut off for stealing less than the value of a shield. Imam Bukhari (may Allah have mercy on him) has recorded the following two narrations on this matter:

عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا، قَالَتْ: "لَمْ تُقَطَّعْ يَدُ سَارِقٍ عَلَى عَهْدِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فِي أَذْنَى مِنْ ثَمَنِ الْمِجَنِّ ثُرْسٍ، أَوْ حَجْفَةٍ، وَكَانَ كُلُّ وَاحِدٍ مِنْهُمَا ذَا ثَمَنِ (19) ."

Narrated `Aisha: A thief's hand was not cut off for stealing something worth less than the price of a shield, whether a Turs or Hajafa (two kinds of shields), each of which was worth a (respectable) price.<sup>(20)</sup> -

أَخْبَرْتَنِي عَائِشَةُ "أَنَّ يَدَ السَّارِقِ لَمْ تُقَطَّعْ عَلَى عَهْدِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، إِلَّا فِي ثَمَنِ مِجَنٍّ حَجْفَةٍ أَوْ ثُرْسٍ"، حَدَّثَنَا عُثْمَانُ، حَدَّثَنَا حُمَيْدُ بْنُ عَبْدِ الرَّحْمَنِ، حَدَّثَنَا هِشَامٌ، عَنْ أَبِيهِ، عَنْ عَائِشَةَ: مِثْلَهُ. (21)

Narrated `Aisha: The hand of a thief was not cut off during the period of the Prophet except for stealing something equal to a shield in value.

The narrations from Imam Bukhari and Imam Muslim further clarify the issue, as they not only confirm that the amount of a quarter dinar is not Aisha's (may Allah be pleased with her) ijtihād, but also that this amount

was actually established by the Prophet (peace be upon him). Furthermore, the narration that Imam Jassas (may Allah have mercy on him) considers mawquf (stopping at Aisha) is found in marfu' form in both Bukhari and Muslim. Imam Bukhari (may Allah have mercy on him) has recorded approximately three narrations related to theft, in which the punishment of cutting the hand is prescribed for theft of a quarter dinar. The details of these narrations are as follows:

حدثنا عبد الله بن مسلمة، حدثنا إبراهيم بن سعد، عن ابن شهاب، عن عمرة، عن عائشة، قال النبي

صلى الله عليه وسلم: "تقطع اليد في ربع دينار، فصاعدا". (22)

Narrated `Aisha: The Prophet said, "The hand should be cut off for stealing something that is worth a quarter of a Dinar or more."

عن عمرة بنت عبد الرحمن حدثته، ان عائشة رضي الله عنها، حدثتهم عن النبي صلى الله عليه وسلم،

قال: "تقطع اليد في ربع دينار". (23)

Narrated by Amrah bint Abdur-Rahman that Aisha (may Allah be pleased with her) told her that the Prophet Muhammad (peace be upon him) said:

**"The hand is cut off for [stealing] a quarter of a dinar."**

In **Sahih Muslim**, this narration is also clearly mentioned, for example:

عن ابن شهاب، عن عروة، وعمرة، عن عائشة، عن رسول الله صلى الله عليه وسلم، قال: "لا تقطع

يد السارق إلا في ربع دينار فصاعدا" (24)

Narrated from Ibn Shihab, from 'Urwah and 'Amrah, from Aisha (may Allah be pleased with her), that the Messenger of Allah (peace be upon him) said: **"The hand of a thief is not cut off except for [stealing] a quarter of a dinar or more."**

عن أبي بكر بن محمد، عن عمرة، عن عائشة، انها سمعت النبي صلى الله عليه وسلم، يقول: "لا

تقطع يد السارق إلا في ربع دينار فصاعدا" (25)

Abu Bakr bin Muhammad narrated from 'Amrah, who narrated from Hazrat Aisha (RA), that she heard the Prophet (peace and blessings be upon him) say:

"The hand of a thief should not be cut off except for [theft of] a quarter of a dinar or more."

عن سليمان بن يسار، عن عمرة انها، سمعت عائشة، تحدث انها سمعت رسول الله صلى الله عليه

وسلم، يقول: "لا تقطع اليد إلا في ربع دينار فما فوقه". (26)

Sulaiman bin Yasar narrated from 'Amrah, She heard from Hazrat Aisha (RA). Hazrat Aisha (RA) stated that she heard the Messenger of Allah (peace and blessings be upon him) say:

"Cutting off the hand (of a thief) will be for a quarter of a dinar or more."

These Ahadith (Narrations) clearly indicate that the ruling of cutting off the hand for a quarter of a dinar is not the personal reasoning (ijtihad) of Hazrat Aisha (RA) but rather the command of the Messenger of Allah (peace and blessings be upon him).

The ahadiths used as evidence by the majority (jumhoor) are more authentic than those cited by the Hanafī scholars. Therefore, the stance of the majority is stronger in this matter.

### **The niṣāb for theft and Imam Qurtubi's perspective**

The general indication from the verse on the punishment for theft is that every thief's hand should be cut off. However, this is not the case in practice, as there are differing opinions regarding the niṣāb(threshold) that constitutes theft punishable by hand amputation. Imam Qurtubi has presented these views in a particular order, starting with the stance of Imam Shafi'i, followed by the views of other jurists. This order might suggest that Imam Shafi'i's opinion aligns closely with the views of the Maliki and Hanbali schools, with only minor differences, thereby forming a consensus among the majority. The details of these different positions are as follows.

### **The Opinion of Imam Shafi'i**

Imam Shafi'i's position on the niṣāb for theft punishment is that it should be set at a quarter dinar. This is also the view of Hadrat Umar, Uthman, Ali, Umar bin Abdul Aziz, and al-Layth, based on the saying of the Prophet ﷺ:

تُقَطَّعُ يَدُ السَّارِقِ فِي رُبْعِ دِينَارٍ، فصاعداً<sup>(27)</sup>

"A thief's hand shall be cut off for a quarter dinar or more."

This implies that the punishment of hand amputation does not apply for theft of less than a quarter dinar. Imam Shafi'i has based his stance on this hadith as the primary foundation, disregarding the narration by Abdullah ibn Umar (may Allah be pleased with him) that mentions the Prophet ﷺ ordered the hand of a thief to be cut off for stealing a shield valued at three dirhams.<sup>(28)</sup>

Imam Shafi'i chose the position of a quarter dinar for the niṣāb of theft punishment because the narration from Ibn Umar mentions the value of the stolen shield as three dirhams, while Ibn e Abbas's narration mentions it as ten dirhams<sup>(29)</sup>, and Anas's narration states it as five dirhams.<sup>(30)</sup> Since the value of the shield varies across these narrations, whereas in contrast, the narration from Aisha (may Allah be pleased with her) specifically mentions a quarter dinar and is also considered authentic, the correct niṣāb for theft punishment is thus a quarter dinar in gold or the equivalent value in goods.

### **The Opinion of Imam Malik**

Imam Malik's position on the niṣāb (threshold) for theft punishment is that it is either a quarter dinar or three dirhams. According to Imam Malik, for theft involving dirhams, the stolen amount must specifically be three dirhams. Even if someone steals two dirhams with a value equivalent to a quarter dinar, the punishment of hand amputation would not be applied

because, in his view, the niṣāb of three dirhams has not been met. However, this rule does not apply to commercial goods. If the value of the stolen goods is equivalent to three dirhams,<sup>(31)</sup> then Imam Malik holds that the thief's hand should be cut off.<sup>(32)</sup>

Thus, for gold, silver, or dirhams and dinars, the exact numerical niṣāb must be fulfilled, as they hold intrinsic value. However, for trade goods, the condition is linked to the value of three dirhams—if the goods are worth three dirhams, then hand amputation would apply.

The Malikis base their argument on the narration of Abdullah ibn Umar (may Allah be pleased with him), which states that the Prophet ﷺ ordered the hand of a thief to be cut off for stealing a shield valued at three dirhams.<sup>(33)</sup>

Imam Marghinani explains that both the Malikis and Shafi'i use this evidence, noting that during the Prophet's time, a thief's hand was cut off for stealing a shield, and the minimum reported value for such a shield was three dirhams. There may be differing opinions regarding higher values, but there is no disagreement on this minimum value, making this assessment certain.

As for the question of why Imam Shafi'i did not base his ruling on three dirhams instead of a quarter dinar, Imam Shafi'i responds that, in that era, one dinar was equivalent to twelve dirhams; therefore, three dirhams would indeed equal a quarter dinar.<sup>(34)</sup>

According to Imam Qurtubi, the hadith regarding hand amputation for stealing three dirhams are not the evidence relied upon by Imam Shafi'i. Instead, Imam Shafi'i's argument is based on the hadith that prescribe hand amputation for stealing a quarter dinar. The Shafi'i jurists also consider the aforementioned hadiths on the theft of a quarter dinar as the primary evidence for their position.<sup>(35)</sup>

**The opinion of Imam Ahmad and Imam Ishaq** is that if someone steals gold, the niṣāb (threshold) for the punishment is a quarter dinar. However, if someone steals an item other than gold or silver, the niṣāb is either the value of a quarter dinar or three dirhams. This is also the second opinion of Imam Malik.<sup>(36)</sup>

Imam Ahmad's evidence for this position is based on the narration of Ibn Umar (may Allah be pleased with him), which states that a man who had stolen a shield valued at three dirhams was brought to the Prophet ﷺ, and his hand was cut off.<sup>(37)</sup>

Imam Qurtubi has recorded only one of Imam Ahmad ibn Hanbal's opinions on this matter, and renowned scholar of the Hanbali school of thought, Ibn al-Qudamah has provided further details.

واختلفت الرواية عن أحمد في قدر النصاب الذي يجب القطع بسرقة، فروى عنه أبو إسحاق الجوزجاني، أنه ربع دينار من الذهب، أو ثلاثة دراهم من الورق، أو ما قيمته ثلاثة دراهم من غيرهما. وهذا قول مالك، وإسحاق. وروى عنه الأثرم، أنه إن سرق من غير الذهب والفضة، ما قيمته ربع دينار، أو ثلاثة دراهم قطع. فعلى هذا يقوم غير الأثمان بأدنى الأمرين، من ربع دينار، أو ثلاثة دراهم. وعنه، أن الأصل الورق، ويقوم الذهب به، فإن نقص ربع دينار عن ثلاثة دراهم، لم يقطع سارقه<sup>(38)</sup>

Abu Ishaq al-Jawzajani narrates from Imam Ahmad that the niṣāb (threshold) for theft punishment is either a quarter dinar or three dirhams, and for items other than gold and silver, the niṣāb is three dirhams. This is also the opinion of Imam Malik<sup>(39)</sup>. Athram also narrates from Imam Ahmad that if someone steals an item other than gold or silver, and its value is equivalent to a quarter dinar or three dirhams, then hand amputation will apply.

Imam Qurtubi attributes this opinion to Imam Malik, whereas Ibn Qudamah reports the first opinion as that of Imam Malik. Additionally, Ibn Qudamah mentions a third view from Imam Ahmad, which states that the niṣāb for theft is strictly three dirhams; even if a quarter dinar is stolen, if its value is less than three dirhams, the thief's hand would not be cut off.

In the above narrations, the three Imams (Shafi, Malik and Ahmed) have used the hadiths regarding a quarter dinar and three dirhams as evidence. In light of these narrations, Imam Shafi'i established a quarter dinar as the standard for the theft of gold, and the value of a quarter dinar as the standard for theft involving other items. In contrast, the Malikis and Hanbalis have taken three dirhams as the standard for the theft of items other than gold and silver.

### **The Opinion of Imam Abu Hanifa**

Imam Abu Hanifa's position is that hand amputation will not be applied for theft involving less than ten dirhams. His evidence for this is the narration from Abdullah ibn Abbas, who stated that the shield for which the Prophet ﷺ ordered the thief's hand to be cut off was valued at ten dirhams.<sup>(40)</sup>

Imam Qurtubi (may Allah have mercy on him) has mentioned various opinions regarding the penalty of hand-cutting for theft, including the view that cutting off the hand applies for stealing anything of value, whether it be one dirham, four dirhams, or five dirhams. However, he later stated that the correct opinions are those he has previously mentioned. Perhaps this is why he did not provide detailed arguments for these other views, but instead cited the sayings or actions of the companions regarding each opinion.

In the above discussion, Imam Qurtubi (may Allah have mercy on him) has presented the opinions of the scholars and their supporting evidence. However, he did not delve into the issue of prioritizing the more

valid view, possibly leaving this task for future researchers, so that they may choose the opinion they consider most sound.

### **The niṣāb for theft and Pkitan's Law**

The Hudood Ordinance was enforced in our beloved country, Pakistan, on the 12th of Rabi al-Awwal 1339 AH, / February 10, 1979. This Hudood Ordinance includes a provision for the Hudood related to theft, known as the Offence Against Property (Enforcement of Hudood Ordinance, 1979).

### **Theft liable to hadd**

In the aforementioned ordinance, theft that is subject to the penalty of hand-cutting is defined as follows:

Whoever, being an adult, surreptitiously commits, from any hirz, theft of property of the value of the niṣāb or more not being stolen property, knowing that it is or is likely to be of the value of the niṣāb or more is, subject to the provisions of this Ordinance, said to commit theft liable to hadd.<sup>(41)</sup>

The following points emerge from the above definition:

1. The thief must be of sound mind and adult age.
2. The item stolen must be of a value equal to or greater than the prescribed niṣāb, and the thief must be aware that the item holds this value or more.
3. The theft must be carried out secretly.
4. The stolen item must not be something that has already been stolen.

According to the ordinance, the Niṣāb for the prescribed punishment of theft is 4.457 grams of gold or items of equivalent value. If theft occurs from a single or multiple hirz, and the value of the stolen item in each instance is below the prescribed niṣāb, such theft will not be considered subject to the prescribed punishment, even if the total value of all the stolen items equals or exceeds the Niṣāb.<sup>(42)</sup>

The amount of one dirham is 3.061 grams, and the amount of one dinar is 4.374 grams. According to the Hanafī school, the threshold (niṣāb) for theft punishment (ḥadd al-sariqah) is ten dirhams, so multiplying 3.061 by 10 gives 30.61 grams of silver as the threshold.

For the Malikī and Hanbalī schools, the threshold is three dirhams, which equates to 9.183 grams of silver or its equivalent in stolen property to warrant the punishment of amputation of the hand. Meanwhile, the Shāfi'ī school sets the threshold at a quarter dinar, which amounts to 1.0935 grams of gold stolen for the punishment to apply.

However, under the Ḥadd al-Sariqah Ordinance, the threshold is set at 4.457 grams of gold or its equivalent value, which raises the question of

which school of thought has been followed, as it does not align clearly with the established positions of any of the major schools.

After a brief literature review, it becomes evident that since ten dirhams (silver) are equivalent to one dinar (gold), the ordinance likely specifies the amount of one dinar. In this case, the difference would only be in the decimal figures, which is minimal and subject to estimation and calculation differences—a point on which scholars have disagreed.

The equivalence of ten dirhams of silver to one dinar of gold can also be supported by the fact that the amount of blood money (diyat) is stipulated as 10,000 dirhams or 1,000 dinars, indicating that one dinar equals ten dirhams. As for the view that one dinar equals twelve dirhams, this can be explained by noting that during that era, dirhams varied in weight. It is possible that some dinars were equivalent to twelve dirhams while others equaled ten dirhams, depending on the specific weights of the dirhams in question.

(a) “A” enters a house where a single family resides and steals items from different rooms, the total value of which equals or exceeds the prescribed Niṣāb. This theft will be subject to the prescribed punishment, even though the value of the stolen items from any single room does not meet the Niṣāb.<sup>(43)</sup>

In this case, the punishment will be applied because the different rooms of the same house, occupied by the same family, are considered to be a single Hirz (safe place), even if the value of the stolen goods from each room individually does not meet the Niṣāb, but the total value does.

If multiple families reside in a house and the value of the stolen items from the Hirz of any one family is below the prescribed Niṣāb, the theft will not be subject to the prescribed punishment, even if the total value of the stolen goods equals or exceeds the Niṣāb.<sup>(44)</sup>

This is because each family's Hirz will be considered separately, and it will be necessary for the value of the stolen goods from each Hirz to meet the Niṣāb. Otherwise, the prescribed punishment will not apply.

(b) “A” enters a house multiple times and each time steals property whose value is below the prescribed Niṣāb. Such theft will not be subject to the prescribed punishment, even if the total value of the stolen property equals or exceeds the Niṣāb.

Under Section 10 of the Hudood Ordinance, there are two subsections related to the non-fulfillment of the prescribed Niṣāb. The details are as follows:

- If the stolen item includes the thief's share, and after subtracting that portion, the remaining stolen property does not meet the value of the Niṣāb, then the prescribed punishment will not be applied.<sup>(45)</sup>

- If a creditor steals the property of a debtor, and after subtracting the debt owed to the creditor, the value of the stolen property does not reach the Niṣāb, then the prescribed punishment will also not apply.<sup>(46)</sup>

### **The Hadiths and their interpretations regarding the cutting off of hands for the theft of ordinary items:**

Imam Qurtubi (may Allah have mercy on him) has quoted an objection and then provided his response. The objection is based on a Hadith of the Prophet ﷺ, in which he said, "May Allah's curse be upon the thief who steals an egg or a rope, and his hand is cut off." This seems to imply that there is no fixed niṣāb for theft and that any theft, regardless of the item's value, warrants the cutting off of the hand. Furthermore, this interpretation appears to align with the apparent meaning of the Quranic verse, which states that the hands of male and female thieves should be cut off, without any mention of a niṣāb.

The response given is that the above-mentioned statement of the Prophet ﷺ is meant as a warning, which is why a minor item is mentioned as though it were something substantial. Similarly, when encouragement is given regarding something, a small action may be described as if it were a major one. For example, the Prophet ﷺ said, "Whoever builds a mosque, even if it is as small as a bird's nest, Allah will build a house for him in Paradise."

The second point is that this Hadith conveys that a person who begins by stealing small things will eventually proceed to stealing larger items. In this context, Imam Qurtubi (may Allah have mercy on him) praises the interpretation of Imam A'mash (may Allah have mercy on him), who clarified this concept excellently, and which Imam Bukhari (may Allah have mercy on him) included at the end of the Hadith as a commentary. According to this interpretation, the "egg" refers to an iron item shaped like an egg (meaning something metal, similar to an egg in form), and the "rope" refers to an expensive rope, valued at several dirhams.<sup>(47)</sup>

Imam Jassas (may Allah have mercy on him) responds by explaining that the term "egg" refers to an iron helmet, as there are narrations mentioning the cutting off of hands for the theft of a helmet. Imam Jassas (may Allah have mercy on him) also provides an excellent interpretation regarding the rope mentioned in the Hadith, noting that a rope can sometimes be worth ten dirhams, other times twenty, and occasionally even more. That is, it can be of low value or high value, such as the ropes used to moor boats, which are quite valuable. Given the existence of such narrations, this statement would apply to a high-value rope that meets the niṣāb for theft.<sup>(48)</sup>



## Research Findings

1. According to Imam Shafi'i (may Allah have mercy on him), there are varying narrations regarding the niṣāb for theft punishable by hand-cutting, ranging between three and ten dirhams. For this reason, the narration specifying a quarter dinar is given preference, and it is also considered authentic as it is narrated from Hazrat Aisha (R.A).
2. Imam Jassas (may Allah have mercy on him) views this narration as a mawqoof (a narration attributed to a companion) and considers the quarter dinar amount to be Hadrat Aisha's (R.A) personal interpretation. However, it is true that the narration of a quarter dinar has been reported as marfoo' (directly from the Prophet ﷺ) through various chains, and the value of a shield as a quarter dinar is also narrated from the Prophet ﷺ.
3. For Imam Malik (may Allah have mercy on him), the niṣāb for theft is a quarter dinar or three dirhams for gold and silver theft. For other items, the niṣāb is the equivalent value of three dirhams.
4. For items other than gold and silver, if the stolen item's value is equivalent to a quarter dinar or three dirhams, then hand-cutting applies. Imam Qurtubi (may Allah have mercy on him) attributes this view to Imam Malik (may Allah have mercy on him). However, Ibn Qudamah notes that the niṣāb for theft is a quarter dinar or three dirhams, and for other items, the niṣāb is three dirhams.
5. According to the Hanafi school of thought, the niṣāb for theft punishable by hand-cutting is ten dirhams or goods of equivalent value. This position is based on a narration from Ibn Abbas (R.A) specifying a punishment for theft of ten dirhams or more. This view is seen as cautious, but the narration from Ibn Abbas (R.A) is considered less authentic compared to the narrations of the majority from Hazrat Aisha, Ibn Umar, and others, (R.A) which are stronger in terms of chain of transmission.

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واختلفوا فيما تقوم به سائر الأشياء المسروقة مما عدا الذهب والفضة، فقال مالك في المشهور: تقوم بالدرهم لا بالربع دينار، أعني: إذا اختلفت الثلاثة دراهم مع الربع دينار؛ لاختلاف الصرف، مثل أن يكون الربع دينار في وقت درهمين ونصفاً-

“There is a difference of opinion regarding the valuation of stolen items other than gold and silver. Imam Malik’s well-known view is that they are valued in dirhams rather than a quarter dinar. This means that if there is a discrepancy between the three dirhams and the quarter dinar due to currency exchange fluctuations — for example, if at a certain time the quarter dinar equals two and a half dirhams.”

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Ibn e Quddamah, Muhammad bin Abdullah bin Ahmed (Cairo: Qahirah Press, 1969), 105/9.

39- شیخ وہبہ الزحیلی نے اسی کو اختیار کیا ہے۔

دیکھئے الزحیلی، الفقہ الاسلامی وادولتہ (دمشق: دار الفکر، طبع دوم، 1985ء)، 6/103)۔

Shaikh Wahba has adopted this opinion. See Al Fiqh ul Islami wa Adillataho (Damascus: Dar ul Fiker, 2nd Edi, 1985), 103/6.

40- (قطع رسول الله - صَلَّى الله عليه وسلم - يَدَ رَجُلٍ فِي مِجَنٍّ، قِيمَتُهُ دِينَارٌ، أَوْ عَشْرَةُ دَرَاهِمٍ) سنن أبي داود، باب ما يقطع فيه

السارق، حديث نمبر: 4387 (بيروت: دار الرسالة العالمية، 2009)، 439/6.

(The scholar and editor of Sunan Abu Dawood, Shu'aib al-Arna'oot, has stated that there is criticism regarding it, which Ibn Hajar (رحمه الله) discussed in detail in Fath al-Bari.) Abū Dāwūd, Sunan Abu Dāwūd, Hadith No. 4387, 439/6.

41 - The Offence Against Property (Enforcement of Hudood Ordinance, 1979), Clause 04, Retrieved from:.....

42 - The Offence Against Property (Enforcement of Hudood Ordinance, 1979), Clause 06.

43 - The Offence Against Property (Enforcement of Hudood Ordinance, 1979), Clause 06.

44 - The Offence Against Property (Enforcement of Hudood Ordinance, 1979), Clause 06.

45 - The Offence Against Property (Enforcement of Hudood Ordinance, 1979), Clause 10(e).

46 - The Offence Against Property (Enforcement of Hudood Ordinance, 1979), Clause 10(f).

47- قرطبي، الجامع لأحكام القرآن، 7/452-453

Qutubi, Al Jami Li Ahkam ul Quran, 452-453/7

48- جصاص، أحكام القرآن، 4/66

Jassas, Ahkam ul Quran, 66/4.