
The Importance of Hirz for Punishment of Theft an Analytical Study in Light of Selected Jurisprudential Exegeses and Hudood Ordinance 1979(The Offences Against Property)

Dr Hafiz Rao Farhan Ali

Assistant Professor, Department of Shariah,

Allama Iqbal Open University, Islamabad

Email: rao.farhan@aiou.edu.pk

Abstract

Theft is counted among the major crimes, which is why in Islam the punishment of a thief is to cut his hands. Allaah Almighty says: “As for the thief, male and female, cut off their hands as a recompense for what they have done, a deterrent punishment from Allah. And Allah is Almighty, Wise.” However, this punishment does not apply universally to all thefts; specific conditions must be met before it can be implemented. This paper examines one of these prerequisites for enforcing the theft penalty—known as Hirz (a secured or protected place)—analyzing it through the perspectives in Ahkam al-Quran by Jassas and Al Jami Li Ahkam al-Quran by Qurtubi. Finally, a comparison with Pakistani law on this matter is provided. The condition of Hirz (secure custody) is established through Hadiths, and there is consensus among the jurists that if the condition of Hirz is not fulfilled in a theft case, the Hadd (punishment) for theft cannot be enforced on the offender, although Tazeer is allowed. Imam Al-Qurtubi has stated that whatever arrangement is considered Hirz according to customs and traditions will be regarded as such. Imam Al-Jassas agrees with this but has further elaborated by describing various scenarios of Hirz, making the concept more explicit.

In cases of collective theft, the majority of jurists hold that if the stolen property is divided among the members of the group and each individual receives a share equivalent to the Nişāb (minimum threshold), then the hands of all the thieves will be cut off. Otherwise, the punishment of Hadd will not apply. An analysis of Pakistan's Hadd-e-Sariqa Ordinance reveals that it aligns with Islamic law. It is recommended that the implementation of the Hadd for theft be enforced to curb the rising incidents of crime, thereby acting as a deterrent to theft and related offenses.

Keywords: Hadd e Sarqa, Hirz, Nişāb, Hudood Ordinance, Ahkam al-Quran by Jassas and Qurtubi

Introduction

Wealth serves as both the adornment and core pillar of worldly life; Allah Almighty has created it to meet human needs and sustain the course of life. Through wealth, individuals fulfill essential needs, and without it, they face numerous challenges and hardships. Wealth itself is not a purpose but rather a means to enhance life's quality. Shariah provides explicit guidelines on the lawful acquisition and use of wealth, prohibiting unlawful means and recognizing it as one of the five fundamental needs. The Prophet Muhammad ﷺ underscored the sanctity of wealth, equating its value with human life and honor in the Farewell Sermon. Due to this significance, the punishment for theft in Islamic law is the amputation of the hand, as mandated by Allah: "As for the thief, male, and female, cut off their hands as a recompense for what they have done, a deterrent punishment from Allah. And Allah is Almighty, Wise." However, this penalty does not apply universally to all thefts; specific conditions must be met before it can be implemented.

This paper focuses on one of these prerequisites for the enforcement of theft punishment, known as Hirz (secure place), and examines it through the lens of Ahkam al-Quran by Jassas and Al Jami Li Ahkam al-Quran by Qurtubi. Lastly, a comparison with Pakistani law is also presented. The details are as follows.

Evidence of Hirz

Scholars agree that the punishment of hand amputation for theft is only applicable when it is established that the stolen item was taken from a secured place (Hirz). Imam Marghinani states that the theft must have occurred from a place whose security is unquestionable. This same view is echoed by Allama Kasani, who provides the reasoning that:

ولأن ركن السرقة هو الأخذ على سبيل الاستخفاء، والأخذ من غير حرز لا يحتاج إلى الاستخفاء فلا يتحقق ركن السرقة: لأن القطع وجب لصيانة الأموال على أربابها قطعاً لأطماع السراق عن أموال الناس.⁽¹⁾

Stealing something stealthily is a fundamental condition for enforcing Hadd (punishment) for theft. Taking something from a place other than a Hirz (secured place) does not require or meet stealth; thus, the essential element of theft is not fulfilled.

Imam Qurtubi states that scholars unanimously agree that the punishment of hand amputation is applicable only when it is established that the stolen item was taken from a Hirz. He also expresses gratitude to Allah for this consensus among scholars, reflecting his positive outlook.

Evidence of Hirz from Hadith

Imam Qurtubi, quoting Ibn al-Munzir, states that while there is no confirmed Hadith directly establishing the condition of Hirz, it is

nevertheless a point of consensus among scholars that the existence of Hirz is essential. However, it is narrated from Hasan al-Basri and the Zahiri school that they do not consider Hirz a condition for hand amputation⁽²⁾ but The Holy Prophet ﷺ said:

«لَا تُقَطَّعُ الْيَدُ فِي ثَمَرٍ مُعَلَّقٍ، فَإِذَا ضُمَّهُ الْخَرِبَنَ قُطِعَتْ فِي ثَمَنِ الْمِجَنِّ، وَلَا يُقَطَّعُ فِي خَرِبَةِ الْجَبَلِ، فَإِذَا آوَاهُ الْمَرَاخُ قُطِعَتْ فِي ثَمَنِ الْمِجَنِّ»⁽³⁾.

For the theft of fruit hanging on a tree or an animal grazing on a mountain, the punishment of hand amputation does not apply. However, if the fruit is stored in a granary or the animal is kept in an enclosure, and the value of the stolen item equals that of a Mijan (shield), then hand amputation becomes applicable.

A similar narration is reported from Abdullah ibn Umer (may Allah be pleased with him), which states that if a person plucks fruit from a tree out of necessity, without collecting it in large amounts, there is no sin upon him. However, if someone takes it away in quantity, they must pay double compensation and be subject to punishment. Anyone who steals (crops or fruits) from a granary and if the stolen item's value reaches that of a shield is subject to hand amputation; for theft of lesser value, double compensation and punishment are required.⁽⁴⁾

The Legal Status of Double Compensation

The Hadith mentioned above suggests that eating fruit from a tree out of necessity incurs no sin. Still, if a person steals something valued below that of a shield, they would be liable to pay double compensation. Imam Qurtubi states regarding double compensation that this punishment has since been abrogated, and, to his knowledge, no scholar presently upholds it. The current position among scholars is that compensation should be equal to the amount of the loss incurred. This stance is supported by The Holy Qura'n :

فَمَنْ اغْتَدَى عَلَيْكُمْ فَأَعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اغْتَدَى عَلَيْكُمْ ۚ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ مَعَ الْمُتَّقِينَ⁽⁵⁾

So if someone wrongs you, you may also respond in kind but proportional to his offence. And fear Allah. And remember that Allah is with those who fear Him.

However, there is an incident in which Umar ibn al-Khattab (may Allah be pleased with him) imposed double compensation. The incident is as follows: The slaves of Hazrat Hatib (may Allah be pleased with him) stole a camel from a man of the Muzaynah tribe and slaughtered it. When the matter reached Umar ibn al-Khattab, he ordered that their hands be amputated. However, he then paused and said, "Perhaps, Hatib, you have been keeping them hungry, which is why they resorted to this." He then added, "I will impose such a compensation upon you that you will feel its burden." He then turned to the man from the person of the Muzaynah tribe

and asked, "What was the price of your camel?" The man replied, "O Ameer ul Momineen (Commander of the Believers), I did not even sell it for four hundred." Umar (R.A.) then ordered, "Give him eight hundred dirhams."⁽⁶⁾ This decision of Umar ibn al-Khattab (may Allah be pleased with him) appears to be an application of Sadd al-Dhara'i⁽⁷⁾, where, at times, a harsher punishment is imposed to deter people from taking such actions. In Musannaf Abdul-Razzaq (a book written by Abul-Razzaq), it is narrated by Imam Zuhri, from Salim, who reports from his father, that when Umar ibn al-Khattab (may Allah be pleased with him) prohibited something, he would return home and say to his family, "I have prohibited the people from doing such-and-such. If any of you do it, I will impose double the punishment on them."⁽⁸⁾ Umar ibn al-Khattab (may Allah be pleased with him) would say this to his family to ensure that none of his relatives, committed an act that was prohibited, under the assumption that being related to the Ameer ul Momineen (Commander of the Believers) might lead to leniency in their punishment. Such a measure could only be taken as a means of Sadd al-Dhara'i. Therefore, in the incident mentioned above, the decision to double the compensation for the camel of the man of the Muzaynah tribe was also in line with this principle.

Imam al-Jassas (may Allah have mercy on him) establishes the basis of Hirz from the Hadith of the Prophet ﷺ, "لا قطع على الخائن" (There is no hand amputation for a traitor). According to this Hadith, anyone entrusted with something considered trustworthy is not subject to hand amputation if he steals. For example, if someone is invited into a house and the belongings are not kept out of their sight, and he steals his hand will not be cut off. Imam al-Jassas (may Allah have mercy on him) wants to convey that for hand amputation to apply, the items must be secured and stored in a Hirz. The second narration supporting the concept of Hirz is the one quoted by Imam Qurtubi (may Allah have mercy on him), which also directly indicates that hand amputation does not apply to the theft of fruit hanging on a tree. Imam al-Jassas (may Allah have mercy on him) considers this narration to be even clearer in terms of explaining the concept of Hirz.

Different Forms of Hirz

Imam Qurtubi (may Allah have mercy on him) provided arguments for Hirz but did not mention its specific forms, possibly because he established the principle that whatever is commonly recognized by people as Hirz should be considered as such.

Imam al-Jassas (may Allah have mercy on him) elaborates on the different forms of Hirz in great detail, which are as follows:

1. Buildings constructed to safeguard belongings, even if they are residential tents, will be considered Hirz. Houses, tents, and camps are all places of

Hirz, and theft from these places is subject to hand amputation, even if the door of the house is left open, or closed, or if there is no door at all but some sort of barrier is in place.⁽⁹⁾

This is essentially the same point mentioned in the Tafseer of Qurtubi, where it is stated that the common practices and customs of people regarding security will be taken into account when determining Hirz. Whatever method of protection is deemed appropriate by people will be considered within the scope of Hirz.

2. Even the presence of a watchman near an item makes it fall under the category of Hirz. If the watchman is asleep, the theft of the item would still be considered a theft from a Hirz. In this regard, the incident of Hadrat Safwan R.A. is a clear example: when a thief stole his cloak while he was asleep, the thief's hand was still amputated after the crime was proven.⁽¹⁰⁾

3. The principle regarding theft from a shop or similar places is that when a person is generally permitted to enter a location, he is considered trustworthy and reliable. Therefore, in places such as shops, baths, inns, and hotels, where people are usually allowed entry, the person entering is considered trustworthy. In such cases, if they steal, hand amputation will not apply. Instead, they will be considered a traitor, and hand amputation is not prescribed for a traitor. Additionally, once someone is granted permission to enter a house or shop, the belongings or items within are no longer considered to be in a Hirz. For this reason, theft from such places will not lead to hand amputation.⁽¹¹⁾ However, this does not mean that they cannot be punished in any way. Rather, they can be given a ta'zir (discretionary punishment) appropriate to the crime in order to prevent further offenses. However, the punishment of cutting off the hand cannot be imposed.

Rational Arguments for Hirz

Allah Almighty created wealth and property for the benefit of human beings, and within the wealth created by God, there is a right for all people. However, when an individual takes possession of assets/things, they are considered the rightful owner based on the principle of Asbaqiyyat (first come, first served). To protect this owned property from theft, two barriers may be in place.

The first barrier is the individual's sense of honor and integrity, which prevents them from infringing upon someone else's belongings. This quality stops a person from stealing. The second barrier is the safeguarding of possessions—protected items are not meant to be stolen. When a thief overcomes both of these barriers, the punishment of hand amputation becomes necessary to ensure the security of people's property.⁽¹²⁾

Forms of Joint Theft and Differences in Rulings Based on Hirz and Non-Hirz

Imam Qurtubi has mentioned various forms of joint theft, summarized as follows:

If each person committed theft individually, the nature of the act is considered. If the theft was of such a nature that it could be carried out individually without requiring the assistance of others, then it is dealt with individually. However, if the theft requires the cooperation of others, then both (or all) participants will have their hands amputated.

If it is the former case (individual capability), then the hands of those who committed the theft together will not be amputated unless each individual stole an amount equal to the prescribed threshold (Nisab) for amputation. This is the second opinion among the Maliki scholars, and it is also supported by Imam Abu Hanifa (RA) and Imam Shafi'i (RA).

On the other hand, one opinion within the Maliki school states that in such cases, all participants' hands will be amputated. The reasoning is based on the necessity of safeguarding people's wealth. Ibn al-Arabi (RA) supports this by drawing an analogy: just as multiple individuals involved in a single murder are all executed, similarly, if multiple individuals are involved in a single theft, all their hands should be amputated.

This same view is echoed by Imam Ibn Qudama, who writes that if a group is involved in the murder of one person and each of the individuals would individually be liable for the death penalty, then all the perpetrators should be executed.

Ibn Qudama cites the stance of the four main schools and references the actions of the companions of the Prophet (peace be upon him). For example, when seven individuals were involved in the murder of one person in Sana'a, Umar ibn al-Khattab ordered all seven to be executed. Similarly, Ali ibn Abi Talib (R.A) ordered the execution of three people involved in a single murder. Ibn Qudama explains that these decisions were made in the presence of the companions, and no one objected or contradicted them, thus these rulings are considered to be a form of consensus (Ijma').

Additionally, Ibn Qudama argues that if a group carries out a joint crime, such as a murder, and they are not punished by the death penalty, it will embolden others to commit similar acts, rendering deterrence ineffective⁽¹³⁾

Imam Qurtubi has mentioned several scenarios after discussing this fundamental principle. These scenarios are as follows, but before studying them, it is important to keep in mind that they should be understood in light of the previously mentioned principles. Otherwise, several objections may arise.

First: If one person made a hole and the other took the goods, and they were cooperating with each other, in this case, both of their hands will be amputated.

Second: If both individuals carried out these actions independently, for instance, one person made the hole, and the other person happened to come by and take the goods, in this case, neither of them will have their hands amputated. ⁽¹⁴⁾

This is because the person who made the hole did not steal the goods, and the person who stole the goods did not make the hole, and at the time of the theft, the goods were no longer in a secured place (حرز).

Third: If both individuals together made the hole, but one of them took the goods and ran away, then only the person who took the goods will have their hand amputated. This is because he was equally involved in both making the hole and stealing the goods, while the first person was only involved in making the hole and not in stealing the goods (this is also the position of Imam Abu Hanifa. Imam Shafi'i, however, states that neither of them should have their hand amputated because the person who made the hole did not steal the goods, and the person who stole the goods did so after the security of the goods had been breached. Therefore, according to him, neither person should be punished.

However, the question is whether this is correct because although it is true that the goods were stolen after the breach of security, the individual who made the hole was also involved in the breach of security. Therefore, he is equally responsible for the entire act of theft, and the Hadd(punishment) should be applied to him as well. ⁽¹⁵⁾

Imam Abu Hanifa states that if a person is involved in making a hole and also steals the goods, then the Hadd(punishment)will be applied to him. The involvement in creating the hole does not necessarily mean that both persons are using the same weapon; rather, if both have separate weapons and act in cooperation, it will still be considered participation in the act of making the hole.

Fourth: If two individuals cooperated in stealing, where one brought the goods to the door and the other took the goods outside, then the hand of the second person would be amputated, while the first person would receive a Tazeer(discretionary punishment). This is because the second person actually stole the goods from the Hirz(secured place). Imam Ashhab's view is that both persons should have their hands amputated.

Fifth: If the first person took the goods out of the door and placed them outside, and the second person then took them, the hand of the first person will be amputated. This is because the first person took the goods from the secured place and brought them outside, thus violating the Hirz(security).

The second person will not be punished because the goods were no longer in a secure place when he stole them. However, if the first person made the hole and placed the goods in the middle of the breach, and then both persons jointly took the goods, both of their hands would be amputated.⁽¹⁶⁾

From the above-mentioned cases of theft, it is clear that for the punishment of hand amputation to be applied, it is necessary for the thief to both violate the Hirz(secured place) and steal the goods. If either of these two conditions is absent, then the punishment of hand amputation cannot be given, although a discretionary punishment may still be imposed.

Additionally, based on the above principles, a person who does not deserve hand amputation must be in a position where, individually, he could have committed the theft. However, if the theft in question is something that would not have been possible individually and requires cooperation between the individuals, then all participants, even if they did not physically take the goods but were only involved in the cooperation, should be subject to the punishment of hand amputation.

The Punishment for Nabbash(Shroud Thief)

The Hanafi view on the punishment for shroud thief is that they should not have their hands amputated.⁽¹⁷⁾ Imam al-Jassas mentions that besides the Hanafi school, several scholars such as Imam Sufyan al-Thawri, al-Awza'i, Makhul, Ibn Abbas, Abdullah bin Zubair, Ibn Umar, al-Sha'bi, al-Zuhri, Masruq, Hasan al-Basri, Ibrahim al-Nakhai, and Ata' (may Allah have mercy on them all) also hold the same opinion. He further notes that when Marwan was the governor of Madinah and a large number of the Companions were living there, they unanimously agreed that the hand of a shroud thief should not be amputated.⁽¹⁸⁾

Imam al-Jassas, after citing the opinions of the Companions and Tabieen (the Successors), affirms that the Hanafi stance is not merely based on reasoning but is also derived from the practice of the righteous predecessors.

Imam al-Qurtubi also engaged in a detailed discussion on this issue and, through various arguments, established that a shroud thief should indeed face the punishment of hand amputation. The summary of the arguments presented by both Imam al-Qurtubi and Imam al-Jassas is as follows:

1. Imam al-Qurtubi argues that the shroud thief takes advantage of the cover of darkness and steals while remaining out of sight. He compares this to a thief who steals during the time of Eid prayers, when people are busy with prayers and the town is empty. The thief thus avoids the gaze of the public.⁽¹⁹⁾ He counters those who say that a grave is not a hirz(place of

security), asserting that every item has its appropriate place of security. For instance, the grave serves as the security for the shroud (kafan).⁽²⁰⁾

2. Imam al-Jassas disagrees, stating that a grave cannot be considered a hirz(place of security)because there is consensus that if someone hides dirhams or dinars in a grave and they are stolen, the thief's hand would not be amputated. This is because the grave does not serve as a secure location for these items. Since there is unanimous agreement about this with regard to money, Imam al-Jassas argues that the same ruling should apply to the shroud (kafan) as well.⁽²¹⁾

Imam al-Jassas's view is respected, but the grave is indeed the final resting place for the deceased, and therefore, it should be considered a Hirz(place of security) in this context. Additionally, the shroud (kafan) is wrapped around the deceased. When something is physically attached to a deceased person in such a way that it holds religious significance, tampering with it becomes an even more serious crime. As for the issue of dirhams or dinars placed in the grave, it can be argued that the grave is not the rightful place for money, but rather the proper location would be a house or shop. Imam al-Jassas, however, does not accept this view. He acknowledges that there are different types of places of security, such as a stable being a place of security for horses, and a vegetable shop being a place of security for vegetables. However, if other items, such as clothes or cash, are placed there, those items would still be considered to be in a place of security, and theft of such items would warrant the punishment of hand amputation.⁽²²⁾

3. Imam al-Jassas also argues that the shroud (kafan) deteriorates and decays in the grave. In response, Imam al-Qurtubi says that even the clothes of the living wear out and tear over time, so this is not a valid argument to exclude it from being considered theft.⁽²³⁾

4. Imam Qurtubi (may Allah have mercy on him) states that to say the deceased does not own their shroud in any way is incorrect. Isn't it an accepted fact that the deceased cannot be left without a shroud? Since this is universally acknowledged, it serves as proof that the shroud also belongs to the deceased.⁽²⁴⁾ Since the grave itself is the final resting place of the deceased, it should be considered a place of protection. From his statement, we can infer that, as the deceased is only buried in a graveyard and the grave is indeed their ultimate abode, necessity demands that the grave itself be regarded as a place of protection. The Quran also hints at this, as Allah Almighty says:

أَلَمْ نَجْعَلِ الْأَرْضَ كِفَاتًا أَحْيَاءَ وَأَمْوَاتًا

It is reported from Imam Sha'bi that his interpretation of this is that the living people reside on the surface of the earth, while the deceased are buried within it.⁽²⁵⁾

In the aforementioned point, Imam al-Qurtubi's view appears to be more substantial, as he argues that since the shroud is the right of the deceased, it belongs to the deceased. Furthermore, since the resting place of the deceased is the grave, the grave itself is the place of protection (harz) for the deceased.

Imam al-Qurtubi, while providing evidence for this, also mentions a hadith in which the Prophet Muhammad (peace be upon him) referred to the grave using the term "bayt" (house). The Prophet (peace be upon him) said to Abu Dhar (may Allah be pleased with him):

كيف أنت إذا أصاب الناس موت يكون البيت فيه بالوصيف يعني القبر قلت الله ورسوله أعلم أو قال ما خار الله لي ورسوله قال عليك بالصبر أو قال تصبر...⁽²⁶⁾

The hadith mentioned can be interpreted as follows: The Prophet Muhammad (peace be upon him) referred to the grave as "bayt" (house), which indicates that the grave is a place of protection, just like a house is. Imam al-Qurtubi uses this argument to support the idea that the grave, being referred to as "bait," is indeed a place of protection (harz) for the deceased. Imam al-Jassas (may Allah have mercy on him) explains that the term "bayt" in this hadith is used metaphorically, as the Arabic language commonly refers to a constructed dwelling on the ground as "bayt." Since the grave is also constructed in the earth, it is referred to as a "bayt," thus drawing a comparison between a house and a grave. If the term "bayt" is used in this context, it is also applied to the mosque, as Allah says in the Qur'an:

في بيوت اذن الله ان ترفع⁽²⁷⁾

However, it is well known that if something is stolen from a mosque and there is no guard present, the thief's hand will not be cut off because the place of protection (hirz) is absent. The same applies here: the issue of hirz is what is in question. Furthermore, the term "bayt" (house) or "home" does not in itself justify the cutting of a hand; rather, it is the existence of hirz that forms the basis for the penalty of hand-cutting. For instance, if something is stolen from a house, the thief's hand will not be cut off until it is proven that the stolen property was in a place of harz. Thus, the mere presence of a house or the use of the term "bayt" is not sufficient for the application of the punishment of hand-cutting.⁽²⁸⁾

Imam Jassas (may Allah have mercy on him) presents a strong argument that merely referring to a place as a "house" does not imply it is a place of protection. This is because, if the term "house" is taken to mean an actual home, then even there, a thief's hand is not cut off unless that home is considered a place of protection.

The Condition of "Hirz" in Hadd of Theft and Hadd Ordinance of 1979:

According to Pakistan's Criminal Law, specifically the Hadd Ordinance of 1979:

Hirz refers to the arrangement or security setup made for the protection of items. Further clarification states that:

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

Explanation 2. If a single family is living in a house, the entire house will constitute a single hirz, but if two or more families are living in one house severally, the portion in the occupation of each family will constitute separate hirz⁽²⁹⁾ ".

Above mentioned details explain the concept of "Hirz" (protected possession) according to law, covering several situations:

1. **Items Kept at Home:** Any items kept within a house are considered protected (Hirz), regardless of whether the door is open or closed.
2. **Almirah, box, and Other Containers:** Items stored in a almirah, box, or any similar container, or placed under someone's guard (even if they are not paid for it) are regarded as Hirz. Imam Qurtubi states that anything considered Hirz in custom and tradition is indeed Hirz. In light of this, both scenarios mentioned here are considered Hirz in common practice and align with the descriptions given by Imams Qurtubi and Jassas regarding what constitutes Hirz.
3. **Family Households and Separate Portions:** If a single family lives in a house, the entire house is treated as one Hirz. However, if multiple families reside in the same house, each family's portion is considered a separate Hirz. For example, if three brothers live with their respective families in different rooms within the same large house, each room would be treated as a separate Hirz.

Imam Marghinani has also stated this issue in the same way; therefore, this clause of the Hudood Ordinance is also following Islamic law.⁽³⁰⁾

Clause number 6 of the Ordinance relates to the threshold amount for imposing the "Hadd" (punishment) for theft, with a clarification that if multiple thefts occur from the same Hirz and each time the stolen items are valued below the threshold, then the Hadd punishment will not apply. This is because Hadd can only be imposed if the value of the stolen property from a single Hirz reaches the required threshold. Similarly, if thefts occur from multiple Hirzes and the value of stolen items from each Hirz does not reach the threshold, Hadd will not apply, even if the cumulative value of the stolen

items from all Hirzes meets the threshold. This aligns with the views expressed by Imams Qurtubi and Jassas.

In cases where multiple individuals participate in a theft and all enter the Hirz, there are further details:

- If the stolen property is substantial enough that, when divided, each thief receives at least the threshold amount, then the Hadd punishment will apply to all those who entered the Hirz, even if some did not physically remove the stolen property.⁽³¹⁾

Imam Qurtubi mentions that Imams Abu Hanifa and Shafi'i share this view. He writes:

"وبه قال ابو حنيفة والشافعيّ: قالوا: لا يقطع في السرقة المشتركون الا بشرط ان يجب لكل واحد من حصته نصاب: لقوله عليه السلام ((لا تقطع يد السارق الا في ربع دينار او فصاعدا)) وكل واحد من هؤلاء لم يسرق نصابا، فلا قطع عليهم"

"This is also the opinion of Abu Hanifa and Shafi'i, who stated that thieves involved in a joint theft will only have their hands cut off if each individual's share meets the threshold amount, as indicated by the Prophet's saying: 'The hand of a thief shall not be cut off except for a quarter of a dinar or more.' Since none of these individuals stole the threshold amount individually, no Hadd punishment is applied."

Conclusions and Recommendations

1. According to Imam Ibn al-Mundhir, hirz (place of protection) is not explicitly proven from the hadiths; however, there are numerous hadiths, both directly and indirectly, that imply the concept of hirz.
2. The measures established by customary practice to determine whether something is considered to be in a place of harz are also accepted in Islamic jurisprudence.
3. The principles derived from the descriptions of joint theft in the works of Imam Qurtubī and Imam al-Jassās are as follows:
 - a) If a joint theft occurs where one person breaks in and the other takes the goods, two scenarios are possible:

If each person could have committed the theft individually without the assistance of the other, the first scenario applies, and their hands would not be cut off unless each person has stolen the minimum amount required for the punishment. This is the second opinion of the Maliki school, and Imam Abu Ḥanīfa and Imam al-Shāfi'ī also agree with this view.

If cooperation was required for the theft to occur, and the theft would not have been possible without the help of the other person, both thieves would have their hands cut off.

b) The thief must violate the place of protection (harz) and steal the goods. If either one of these conditions is missing, the punishment of hand-cutting cannot be applied.

4. Regarding the punishment for a shroud thief, the Hanafi opinion is that no hand-cutting is to be applied. This is because the grave is not considered a place of hirz, and the shroud does not belong to any particular person, so there is no individual ownership over it for the purpose of cutting off a hand for theft. However, according to the Imam Maliki and other schools, the grave is considered a place of hirz because every object has a place of protection specific to it, and thus, the grave is the place of protection for the deceased's body.

5. It is imperative to raise awareness among the general public, students of Islamic jurisprudence, and law regarding the concept of **Hirz** (protected property).

6. It is also essential to ensure the proper implementation of the Hudood Ordinance on Theft so that incidents of theft can be reduced effectively.

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- 6- طبري، محمد ابن جرير، تاريخ طبري (مصر: دار المعارف، طبع دوم، 1968ع)، 4/207.
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7. Sadd ul Zaria" (سد الذرائع) is an Arabic term in Islamic jurisprudence (fiqh) that means "blocking the means" or "preventing access." It refers to a legal principle aimed at prohibiting actions or behaviors that, while not inherently unlawful, could potentially lead to harm, wrongdoing, or prohibited outcomes.

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