

CRIMINAL LAW

THEORIES OF CRIMINAL LAW

In criminal law, there are various theories or principles that are used to define and understand the nature of criminal liability. These theories help in determining whether an individual should be held responsible for committing a crime. Here are a few commonly discussed theories in criminal law, along with simplified explanations and examples:

Actus Reus and Mens Rea:

The Actus Reus refers to the physical act or conduct that constitutes a crime, while the Mens Rea refers to the mental state or intention behind that act. According to this theory, both the wrongful action (actus reus) and the guilty mind (mens rea) are essential elements to establish criminal liability. In most criminal offenses, it is necessary to prove that the accused person not only committed the prohibited act but also had the required mental state or intention to commit the crime.

Example: If a person steals someone's wallet (actus reus) without intending to steal it (no mens rea), they may not be held criminally liable for theft as the mental element is missing.

Strict Liability:

Strict liability is a theory that imposes liability for a crime without requiring proof of intent or a guilty mind. Under strict liability offenses, it is sufficient to establish that the accused person committed the prohibited act, regardless of their mental state or intention. These offenses usually involve public welfare or regulatory matters.

Example: Traffic violations like speeding or parking in a no-parking zone are often strict liability offenses. Even if a person unintentionally exceeds the speed limit or parks in the wrong place, they can still be held liable for the offense.

Causation:

Causation focuses on the cause-and-effect relationship between an individual's actions and the resulting harm or consequences. It seeks to establish a link between the accused person's conduct and the harm caused to determine if they should be held responsible for the crime.

Example: If a person shoots someone with a gun, and the victim dies as a result, the prosecution needs to establish that the act of shooting caused the victim's death, linking the accused person's actions to the fatal outcome.

Concurrence:

The principle of concurrence states that for an individual to be held criminally liable, their wrongful act (actus reus) and their guilty mind (mens rea) must occur simultaneously. This means that the mental state or intention to commit a crime must coincide with the actual commission of the criminal act.

Example: If a person accidentally strikes someone while swinging a golf club (actus reus) without any intent to harm them (no mens rea), they cannot be held criminally liable because there is no concurrence between the act and the intent.

These are just a few examples of theories in criminal law. It's important to note that the application and interpretation of these theories may vary based on the specific laws and legal systems of different jurisdictions.



CRIME

What is Crime?

A crime is a specific act or behaviour that is prohibited by law and punishable by the legal system. It is an offense against society as a whole, and the state or government has the authority to enforce penalties or sanctions for committing a crime.

Crimes can encompass a wide range of actions, from minor offenses such as petty theft or traffic violations to serious offenses such as murder, robbery, or fraud. The exact definition of what constitutes a crime can vary depending on the legal jurisdiction and the specific laws in place.

In general, for an act to be considered a crime, it typically requires two key elements:

Actus Reus:

This refers to the physical act or conduct involved in the crime. It can be an action committed by an individual or a failure to act when there is a legal obligation to do so. The act must be voluntary and intentional, or in some cases, it can be based on negligence or recklessness.

Mens Rea:

This refers to the mental state or intention of the person committing the act. It involves having a guilty mind or a wrongful intention while engaging in the prohibited conduct. The mental state may vary depending on the specific crime, ranging from intentional and premeditated acts to acts committed with negligence or recklessness.

When someone is found guilty of a crime, they can face various penalties or punishments, which may include fines, imprisonment, probation, community service, or, in some jurisdictions, even the death penalty. The severity of the punishment usually depends on factors such as the nature and severity of the crime, the presence of aggravating or mitigating circumstances, and the individual's criminal history.

It is important to note that the definition of what constitutes a crime can evolve over time as societies change, and new laws can be enacted or existing laws can be amended to reflect the evolving understanding of criminal behaviour and its impact on society.

DEFINITIONS OF CRIME:

Here are definitions of crime by famous jurists and dictionaries:

Black's Law Dictionary:

"An act or omission that violates a law for which government may enforce punishment."

William Blackstone:

"A crime is an act committed or omitted in violation of a public law forbidding or commanding it."

Sir Edward Coke:

"A crime is a misdemeanour, or felony, consisting in a breach or violation of some public law, either forbidding or commanding it."

Cesare Beccaria:

"A crime is any action that is punishable by the state, under the law, for the protection of the people."

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Jeremy Bentham:

"A crime is an act that is reprehensible and punishable, either in the interest of the individual or the community."

Roscoe Pound:

"A crime is an act or omission prohibited and punished by law for the protection of the public and the welfare of society as a whole."

Paul H. Robinson:

"A crime is any action or omission that is punishable by the state because it is considered harmful, wrong, or both."

ESSENTIALS OF CRIME:

The essentials of crime are the fundamental elements that must be present in order for an act to be considered a criminal offense. These elements vary depending on the jurisdiction and the specific offense, but some of the common essentials of crime include:

1) Actus Reus:

The term Actus Reus refers to the criminal act or conduct itself. It is the physical or external element of a crime, and it must be proven beyond a reasonable doubt. The actus reus of a crime may include any voluntary or involuntary conduct, omission, or failure to act that is prohibited by law.

2) Mens Rea:

The term Mens Rea refers to the mental or internal element of a crime. It involves the intention, knowledge, or recklessness of the offender in committing the actus reus of the crime. The mens rea must be established for an act to be considered criminal.

3) Causation:

Causation refers to the link between the actus reus and the harm or injury caused by the offense. It must be proven that the criminal act was the direct cause of the harm or injury suffered by the victim.

4) Harm:

The harm caused by the criminal act is an essential element of a crime. The degree of harm caused by the offense may determine the severity of the punishment.

5) Concurrence:

Concurrence refers to the simultaneous presence of actus reus and mens rea. It means that the criminal act was committed with the required mental state.

6) Legality:

The act must be prohibited by law. There must be a legal statute or regulation that prohibits the act.

The presence of all these elements is essential for an act to be considered a criminal offense. If any of these elements is missing, the act may not be considered a crime. It is important to note that the specific elements and their definitions may vary depending on the jurisdiction and the type of offense.

NATURE AND HISTORY OF CRIME

The nature and history of crime encompass the study of criminal behaviour, its causes, and its evolution throughout human history. Understanding the nature and history of crime helps

in developing effective strategies for crime prevention and law enforcement. Here is a discussion of the nature and history of crime:

Nature of Crime:

i. Socially Deviant Behaviour :

Crime is considered socially deviant behaviour because it violates established norms, values, and laws of a society. It involves actions that are harmful, prohibited, and punishable by law.

ii. Variety of Offenses:

Crimes can range from minor offenses such as theft or vandalism to more serious offenses like murder or organized crime. They can be categorized into different types, such as property crimes, violent crimes, white-collar crimes, and cybercrimes.

iii. Motivations and Causes:

The motivations behind crime can vary widely, including financial gain, personal gratification, revenge, or social and psychological factors. Causes of crime are multifaceted and can include socio-economic inequalities, lack of educational opportunities, substance abuse, family background, and mental health issues.

iv. Impact on Society:

Crime has a profound impact on individuals, communities, and society as a whole. It can lead to loss of life, physical and emotional harm, financial losses, erosion of trust, and a general sense of insecurity.

History of Crime:

i. Ancient Period:

Crime has been present throughout human history. In ancient civilizations, crimes were often defined by religious or moral codes, and punishments were often severe, including physical harm, exile, or death.

ii. Development of Legal Systems:

With the development of legal systems, societies started to establish codes of laws to regulate behaviour and address crimes. Examples include Hammurabi's Code in ancient Babylon, Roman law, and the Magna Carta.

iii. Evolution of Criminal Justice:

Over time, criminal justice systems evolved to address crime. This included the establishment of formal legal procedures, courts, and the emergence of principles **such as due process, presumption of innocence, and proportionate punishment.**

iv. Modern Approaches:

In the modern era, the study of crime expanded with advancements in sociology, psychology, and criminology. These disciplines help in understanding the causes of crime, patterns of criminal behaviour, and developing strategies for prevention and rehabilitation.

v. Globalization and Technological Advances:

The nature of crime has been influenced by globalization and technological advancements. Transnational crimes, cybercrimes, and organized crime networks have become significant challenges for law enforcement agencies worldwide.

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Understanding the nature and history of crime is crucial for developing effective policies and strategies to prevent crime, promote justice, and create safer communities. It requires a multidisciplinary approach, incorporating insights from law, psychology, sociology, and other relevant fields.



CAUSES OF CRIME

The causes of crime are complex and multifaceted, influenced by various individual, social, and environmental factors. While it is challenging to attribute crime to a single cause, here are some common factors that are often associated with the occurrence of criminal behaviour :

- i. Socioeconomic Factors:**
Socioeconomic inequalities, poverty, and lack of access to education and employment opportunities can contribute to criminal behaviour . Limited resources, social exclusion, and feelings of frustration or hopelessness may push individuals towards illegal means to fulfill their needs.
- ii. Family Background and Upbringing:**
Dysfunctional family dynamics, parental neglect, abuse, or exposure to criminal behaviour within the family can increase the likelihood of criminal involvement. Lack of positive role models and inadequate socialization can influence an individual's values, attitudes, and behaviours.
- iii. Peer Influence:**
Association with delinquent peers or involvement in gangs can exert a significant influence on individuals, leading them to engage in criminal activities. Peer pressure, seeking acceptance, and a desire for belonging can contribute to participation in illegal behaviours.
- iv. Substance Abuse:**
Substance abuse, including alcohol and drug addiction, is strongly linked to criminal behaviour . Substance abuse can impair judgment, increase aggression, and contribute to impulsive and reckless actions that may result in criminal acts.
- v. Psychological and Mental Health Factors:**
Certain psychological and mental health conditions, such as antisocial personality disorder, conduct disorder, or substance use disorders, can increase the risk of criminal behaviour . Unaddressed mental health issues, including depression, anxiety, or trauma, may also contribute to criminal involvement.
- vi. Lack of Social Support and Community Disorganization:**
Communities characterized by high levels of social disorganization, limited social support, and weak community ties are more prone to criminal activity. A lack of community resources, high crime rates, and a sense of alienation can create an environment conducive to criminal behaviour .
- vii. Cultural and Media Influences:**
Cultural norms, values, and media portrayals can shape attitudes towards crime. Exposure to violence in media, glorification of criminal behaviour , or normalization of antisocial conduct may influence individuals' perception of acceptable behaviour .
- viii. Lack of Effective Social Policies:**
Inadequate social policies related to education, employment, healthcare, and poverty alleviation can contribute to an environment where criminal behaviour thrives. Insufficient support systems and limited opportunities for rehabilitation may impede the reintegration of offenders into society.

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It is important to note that these factors do not excuse criminal behaviour , but rather provide insights into potential contributing factors. Addressing the causes of crime requires a holistic approach, including early intervention programs, access to education and employment opportunities, mental health support, community engagement, and effective social policies aimed at reducing inequalities and fostering social cohesion.



CRIME AND TORT

Crime and tort are two distinct legal concepts that deal with wrongful actions or behaviours, but they differ in terms of their nature, purpose, and consequences. Here's an explanation of crime and tort, along with examples and the key differences between them:

CRIME:

Definition:

A crime is an offense against society as a whole. It is a wrongful act or omission that is prohibited by law and is punishable by the state through criminal proceedings.

Purpose:

The purpose of criminal law is to maintain social order, protect public safety, and deter individuals from engaging in harmful or prohibited conduct.

Prosecution:

Crimes are prosecuted by the state or government, represented by public prosecutors. The burden of proof lies with the prosecution, and the accused is considered innocent until proven guilty.

Punishment:

Conviction for a crime can result in penalties such as fines, imprisonment, probation, or, in some cases, capital punishment.

Example: Murder, theft, assault, and drug trafficking are examples of criminal offenses.

TORT:

Definition:

A tort is a civil wrong or a wrongful act or omission that causes harm or injury to another person or their property. It is a violation of an individual's rights, resulting in a legal liability for the wrongdoer.

Purpose:

The purpose of tort law is to compensate the injured party for the harm suffered and to provide a means for victims to seek justice and obtain monetary compensation for their losses.

Legal Action:

Tort cases are initiated by the injured party (plaintiff) against the alleged wrongdoer (defendant) in civil court. The burden of proof lies with the plaintiff, who must establish that the defendant's actions caused harm or injury.

Compensation:

If liability is proven, the defendant may be required to provide monetary compensation (damages) to the injured party.

Example: Negligence, defamation, trespass, and product liability are examples of tortious conduct. For instance, if someone slips and falls on a wet floor in a store due to the store

owner's negligence in maintaining a safe environment, the injured person may file a tort claim for compensation.

DIFFERENCES BETWEEN CRIME AND TORT

- a) **Nature:**
Crime is a violation of criminal law, while tort is a civil wrong.
- b) **Parties Involved:**
Crimes are offenses against society, and the state prosecutes them. In contrast, tort cases involve private parties, with the injured party seeking compensation from the wrongdoer.
- c) **Burden of Proof:**
In criminal cases, the prosecution must prove guilt beyond a reasonable doubt, whereas in tort cases, the plaintiff must establish liability on a balance of probabilities.
- d) **Purpose:**
Criminal law focuses on punishment, deterrence, and protecting public welfare, while tort law aims to compensate the injured party and deter wrongful conduct.
- e) **Consequences:**
Criminal convictions can result in penalties such as fines, imprisonment, or probation, whereas tort cases typically involve monetary compensation for the injured party's losses.

In summary, crimes are offenses against society and are prosecuted by the state, resulting in punishment, while torts are civil wrongs that harm individuals, leading to legal liability and compensation for the injured party.



FUNCTIONS OF CRIMINAL LAW

Here are main functions of criminal law:

1) Maintaining Social Order:

One of the primary functions of criminal law is to maintain social order within a society. Criminal laws define and prohibit behaviours that are considered harmful or disruptive to the well-being and safety of individuals and the community as a whole. By establishing clear boundaries and consequences for violating those boundaries, criminal law helps deter individuals from engaging in criminal behaviour and promotes a sense of security and order.

2) Protecting Public Safety:

Criminal law serves the crucial function of protecting public safety. It identifies and addresses actions that pose a threat to the physical well-being, property, and overall security of individuals within society. By criminalizing acts such as assault, robbery, and murder, criminal law provides a means for identifying and prosecuting those who commit acts of violence or pose a danger to others, thus safeguarding public safety.

3) Deterring Criminal Conduct:

One of the key purposes of criminal law is deterrence. Criminal laws and their associated punishments serve as a deterrent to potential offenders by creating a fear of legal consequences. The threat of penalties such as fines, imprisonment, or probation can dissuade individuals from engaging in criminal behaviour, as they weigh the potential costs and consequences of their actions.

4) Punishing Wrongdoers:

Criminal law functions as a mechanism for administering punishment to individuals who have violated the law. By holding offenders accountable for their actions through the criminal justice system, criminal law aims to impose penalties that are proportionate to the seriousness of the offense committed. Punishment serves various purposes, including retribution, rehabilitation, and societal protection.

5) Promoting Justice and Fairness:

Criminal law plays a fundamental role in promoting justice and fairness. It ensures that individuals are treated fairly and equally under the law, regardless of their social status, race, ethnicity, or other personal characteristics. The principles of due process, presumption of innocence, and the right to a fair trial are integral components of criminal law, ensuring that defendants are given a fair opportunity to present their case and that guilt is determined based on evidence and legal procedures.

6) Rehabilitation and Reintegration:

Criminal law also aims to promote the rehabilitation and reintegration of offenders into society. While punishment is an important aspect of criminal law, there is increasing recognition of the need to address the underlying causes of criminal behaviour and provide opportunities for rehabilitation. Rehabilitation programs, such as counselling, education, vocational training, and community-based initiatives, can help offenders reform and reintegrate into society as law-abiding citizens.

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By serving these functions, criminal law seeks to establish a just and orderly society, protect individuals from harm, and deter and punish criminal conduct while offering opportunities for rehabilitation and reintegration.



THEORIES OF PUNISHMENT

The theory of punishment in criminal law aims to provide a justification for imposing penalties on individuals who have committed crimes. Various theories of punishment have been proposed throughout history, each with its own underlying principles and justifications. Here, we will discuss four prominent theories of punishment:

1) Retributive Theory:

The Retributive Theory of punishment is a philosophy of punishment that focuses on the notion of "just deserts." According to this theory, the primary purpose of punishment is to exact retribution or payback for the wrongdoing committed by the offender. In other words, it advocates for punishment as a means of balancing the scales of justice and ensuring that the punishment matches the severity of the crime.

In simple terms, the Retributive Theory suggests that individuals who break the law should face punishment that is proportionate to the harm they caused or the moral wrong they committed. The punishment is seen as a form of moral retaliation or payback for their actions.

For example, let's consider a case of theft. According to the Retributive Theory, if an individual steals someone's property, the punishment should be designed to make the offender experience a similar loss or harm. This could involve imposing a fine or imprisonment that aligns with the seriousness of the theft. The goal is to restore a sense of fairness and justice by ensuring that the punishment serves as a just response to the offense.

It's important to note that the Retributive Theory does not focus on the rehabilitation or reform of the offender but rather emphasizes the idea of proportionate punishment based on the principle of "an eye for an eye" or "letting the punishment fit the crime."

1) Deterrence Theory:

The Deterrence Theory of punishment suggests that individuals can be deterred or discouraged from committing crimes by the threat or imposition of punishment. It is based on the idea that the fear of punishment acts as a deterrent, preventing potential offenders from engaging in criminal behavior. In other words, the theory posits that the severity, certainty, and swiftness of punishment can discourage individuals from committing crimes.

For example, let's consider a case where a person is considering stealing a valuable item from a store. According to the Deterrence Theory, if the potential offender believes that the punishment for theft is severe, such as a lengthy prison sentence or a substantial fine, and that there is a high likelihood of being caught and punished, they may be deterred from committing the crime. The fear of facing harsh consequences and the expectation of getting caught act as deterrents, influencing the individual's decision-making process.

The theory suggests that by establishing and enforcing strict laws, imposing significant penalties, and ensuring the consistent and efficient administration of justice, potential offenders will be dissuaded from engaging in criminal activities due to the potential negative consequences associated with their actions.

However, it is important to note that the effectiveness of deterrence as a crime prevention strategy can vary among individuals and is influenced by various factors such as personal circumstances, socioeconomic conditions, and the perceived risk-reward trade-off. Additionally, other theories of punishment, such as rehabilitation or retribution, may also be considered in conjunction with deterrence in the criminal justice system.

1) Rehabilitation Theory:

The Rehabilitation Theory of punishment focuses on the idea of reforming and rehabilitating individuals who have committed crimes, with the goal of reintegrating them back into society as law-abiding citizens. Instead of simply punishing offenders for their actions, this theory emphasizes addressing the root causes of criminal behavior and providing them with opportunities for personal growth and positive change.

In the context of the Rehabilitation Theory, punishment is viewed as a means to facilitate the offender's transformation and help them develop the necessary skills, attitudes, and behaviors to lead a productive and law-abiding life. It recognizes that individuals may turn to criminal activities due to various factors such as lack of education, unemployment, substance abuse, or social disadvantage. By addressing these underlying issues, it is believed that the likelihood of reoffending can be reduced.

One example of rehabilitation in action is the provision of educational and vocational programs within correctional facilities. By offering inmates opportunities to learn new skills or acquire academic qualifications, they can gain valuable knowledge and increase their chances of finding employment upon release. These programs aim to equip individuals with the tools they need to reintegrate into society and lead law-abiding lives.

Another example is the implementation of therapy and counseling services for offenders, particularly those with mental health issues or substance abuse problems. By addressing these underlying challenges, individuals can receive the necessary support to overcome their struggles and develop healthier coping mechanisms. This, in turn, can contribute to a reduction in criminal behavior.

The Rehabilitation Theory of punishment believes in the potential for positive change in individuals, emphasizing their capacity for growth and transformation. By focusing on rehabilitation, society aims to not only prevent future crimes but also to support individuals in becoming productive and law-abiding members of their communities.

2) Restorative Justice Theory:

Restorative justice focuses on repairing the harm caused by the crime and restoring relationships between the offender, the victim, and the community. It emphasizes active involvement of all parties affected by the offense, encourages dialogue, and seeks to address the needs of victims while promoting offender accountability and reintegration.

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Example: Instead of a traditional punitive sentence, restorative justice may involve a mediated dialogue between a burglary victim and the offender, aiming to provide restitution, repair the harm caused, and facilitate reconciliation.

It is important to note that these theories of punishment are not mutually exclusive, and legal systems often incorporate elements of multiple theories. The choice of which theory to prioritize may depend on societal values, the nature of the offense, and the goals of the criminal justice system.



CRIMINAL LIABILITY

Criminal liability refers to the legal responsibility of an individual for committing a crime. It involves holding individuals accountable for their actions by establishing their guilt and imposing appropriate punishments. Here is a detailed discussion of criminal liability with headings and examples:

1) Actus Reus:

Actus Reus refers to the physical act or conduct that constitutes the prohibited behavior in a crime. It is an essential element of criminal liability, as a person cannot be held criminally liable for mere thoughts or intentions. The act must be voluntary and intentional, although certain crimes can also be based on negligent or reckless behavior.

Example: In a case of theft, the actus reus would involve the physical act of taking someone else's property without permission.

2) Mens Rea:

Mens Rea refers to the mental state or intent of the person committing the act. It involves having a guilty mind or a wrongful intention while engaging in the prohibited conduct. The mental state required for criminal liability can vary depending on the specific crime, ranging from intentional and premeditated acts to acts committed with negligence or recklessness.

Example: In a case of murder, the mens rea would involve the specific intent to cause the death of another person.

3) Causation:

Criminal liability also requires establishing a causal link between the act committed by the defendant and the harm caused. It must be demonstrated that the defendant's actions were the direct cause of the prohibited outcome or harm.

Example: In a case of manslaughter, it must be proven that the defendant's actions directly caused the death of another person.

4) Concurrence:

Concurrence refers to the requirement that the actus reus and the mens rea must coincide or occur at the same time. It means that the wrongful intent or mental state must accompany the criminal act. Without the simultaneous presence of both elements, criminal liability may not be established.

Example: If a person accidentally causes harm to another while performing a lawful act without any wrongful intention, criminal liability may not apply due to the lack of concurrence.

5) Strict Liability Offenses:

While most crimes require proof of both actus reus and mens rea, there are certain offenses known as strict liability offenses that do not require a showing of intent or fault. In these cases, the act itself is sufficient to establish liability. These offenses typically involve public safety or regulatory matters.

Example: Traffic offenses such as speeding or parking violations are often considered strict liability offenses because they do not require proof of a specific intent to violate the law.

6) Vicarious Liability:

Vicarious liability refers to holding an individual accountable for the criminal acts committed by another person. It applies in situations where a person has a special relationship or legal responsibility for the actions of another, such as employers being held liable for the criminal acts of their employees within the scope of their employment.

Example: If an employee commits theft while on the job, the employer may be held vicariously liable for the employee's criminal conduct.

7) Corporate Liability:

Corporate liability pertains to holding corporations or organizations responsible for criminal acts committed by their employees or agents within the scope of their employment. It recognizes that organizations can be held criminally liable for offenses committed on their behalf or in pursuit of their objectives.

Example: If a company engages in fraudulent practices or violates environmental regulations, it may be subject to criminal liability, and the organization itself can face penalties and fines.

Criminal liability is a complex legal concept that involves the interplay of various elements, including the actus reus, mens rea, causation, concurrence, and sometimes strict or vicarious liability. Understanding these elements is crucial for determining the guilt or innocence of an accused individual and ensuring that appropriate punishments are imposed based on the severity of the offense and the culpability of the offender.



INTENTION, KNOWLEDGE, MOTIVE

Intention, knowledge, and motive are important concepts in criminal law that help determine a person's state of mind and their level of culpability in committing a crime. While they are related, each term has a distinct meaning and significance. Let's discuss these concepts in more detail and provide examples:

Intention:

Intention refers to the conscious desire or purpose to engage in a specific act or achieve a particular outcome. It involves a deliberate choice to perform an action with a specific goal in mind. Intention is often associated with crimes that require proof of a specific mental state, such as murder or theft.

Example: If a person plans and carries out a premeditated murder by purchasing a weapon, stalking the victim, and executing the act, it demonstrates clear intention.

Knowledge:

Knowledge refers to being aware of certain facts or circumstances surrounding an act or situation. It involves having information that leads a person to reasonably believe that their actions may result in certain consequences. Knowledge is relevant in crimes where a person's awareness of certain elements of the offense is crucial.

Example: If a person possesses drugs in their bag and is aware of the illegal nature of drug possession, they can be said to have knowledge of the illegal substance in their possession.

Motive:

Motive refers to the underlying reason or driving force behind a person's actions. It relates to the person's personal or emotional incentive for committing a crime, which may vary from case to case. While motive can be relevant in understanding a person's behavior, it is not typically an essential element in proving criminal liability.

Example: A person may commit a theft out of financial desperation, seeking to obtain money to meet their basic needs. The motive in this case would be economic hardship.

It's important to note the distinctions between these terms:

- Intention focuses on the conscious choice to perform a specific act or achieve a particular outcome.
- Knowledge pertains to being aware of certain facts or circumstances related to one's actions.
- Motive refers to the underlying reason or incentive for committing a crime.

In criminal law, these concepts play a crucial role in determining a person's mental state and level of culpability. The presence or absence of intention, knowledge, and motive can affect the charges brought against an individual, the severity of the offense, and the potential penalties imposed. It is the responsibility of the prosecution to establish these elements beyond a reasonable doubt to prove a person's guilt in a criminal case.



NEGLIGENCE & RECKLESSNESS

Negligence and recklessness are two different legal concepts that relate to a person's failure to exercise a reasonable level of care in their actions. Both concepts play a significant role in determining the level of culpability and liability in civil and criminal cases. Let's explore negligence and recklessness with examples:

Negligence:

Negligence refers to the failure to exercise the level of care that a reasonably prudent person would exercise in similar circumstances. It involves a breach of the duty of care owed by one person to another, resulting in harm or injury to the affected party. Negligence is a common standard applied in civil cases, particularly in personal injury claims.

Example: A driver who fails to stop at a red traffic signal and collides with another vehicle, causing injuries to the occupants, may be considered negligent. The driver's failure to adhere to the traffic rules and exercise reasonable care led to the accident and subsequent harm.

Recklessness:

Recklessness, on the other hand, refers to a conscious disregard for the foreseeable risks and consequences of one's actions. It involves engaging in conduct that disregards the safety and well-being of others, even if harm is not the intended outcome. Recklessness represents a higher degree of disregard compared to negligence.

Example: A person who drives at a high speed in a residential area, fully aware that their actions could cause harm to pedestrians or other drivers, can be considered reckless. Even if the driver did not intend to cause harm, their conscious disregard for the risks demonstrates recklessness.

The further differentiate between negligence and recklessness:

- Negligence involves a failure to exercise reasonable care, whereas recklessness involves a conscious disregard for known risks.
- Negligence is typically associated with civil cases and can lead to liability for damages, while recklessness can be a factor in both civil and criminal cases, often resulting in more severe consequences.
- Negligence focuses on a failure to meet the standard of care expected of a reasonable person, whereas recklessness emphasizes a person's conscious decision to act despite the risks involved.

It's important to note that the legal definitions and standards for negligence and recklessness can vary across jurisdictions. The specific requirements for establishing negligence or recklessness may differ, but the core principles remain generally consistent. Courts assess the evidence presented and apply these concepts to determine the appropriate level of liability and potential remedies in civil or criminal cases.



STRICT LIABILITY

Strict liability refers to a legal principle in which liability is imposed on an individual or entity without the need to prove fault or wrongful intent. In strict liability offenses, the focus is primarily on the act itself rather than the mental state of the person committing the act. Here's a detailed explanation of strict liability:

Definition:

Strict liability is a legal concept that holds individuals or entities responsible for certain offenses, regardless of their intention or level of care. It means that a person can be found guilty and held liable for a prohibited act, even if they did not have any wrongful intention or were not negligent in their actions.

Elements of Strict Liability Offenses:

Strict liability offenses typically involve matters of public safety, regulatory compliance, or activities with potential risks. They generally have the following elements:

a. Prohibited Act:

There is a specific act or conduct that is prohibited by law, such as selling certain controlled substances, operating a motor vehicle above a certain speed limit, or selling alcohol to minors.

b. Actus Reus:

The act itself is sufficient to establish liability, without the need to prove intent or fault. The focus is on the commission of the prohibited act rather than the mental state of the individual.

c. Lack of Mens Rea:

Unlike other crimes where the prosecution needs to establish a mental state, strict liability offenses do not require proof of intent, knowledge, or negligence on the part of the accused.

Rationale for Strict Liability:

The rationale behind strict liability is to ensure public safety, protect consumers, and promote regulatory compliance. By imposing strict liability, the burden of proof is lowered, making it easier for authorities to hold individuals or entities accountable for activities that carry inherent risks or impact public welfare. Strict liability helps deter potentially harmful behavior and encourages individuals and businesses to exercise caution and diligence in their actions.

Examples of Strict Liability Offenses:

Several areas of law employ strict liability principles. Common examples include:

a. Product Liability:

Manufacturers or sellers may be held strictly liable for defective products that cause harm to consumers, regardless of whether they were aware of the defect or acted negligently.

b. Environmental Offenses:

Violations of environmental regulations, such as illegal waste disposal or pollution, often involve strict liability. The responsible party may be held liable for the damage caused, irrespective of intent or negligence.

c. Statutory Offenses:

Certain offenses, such as traffic violations, selling alcohol to minors, or possessing controlled substances, may be subject to strict liability, as they focus on public safety and regulatory compliance.

Defences to Strict Liability:

While strict liability does not require proof of intent or fault, there are a few defences that may apply in certain cases. These defences typically revolve around factual inaccuracies, such as mistaken identity or lack of capacity.

Mitigating Factors and Penalties:

In strict liability offenses, the focus is primarily on establishing the act and the person's connection to it. However, the court may consider mitigating factors, such as the defendant's cooperation, lack of prior offenses, or other relevant circumstances, when determining the appropriate penalties or remedies.

Strict liability serves as an important legal concept to ensure public safety, regulate certain activities, and hold individuals or entities accountable for their actions, even in the absence of fault or wrongful intent. It promotes a higher level of responsibility and compliance in areas where potential risks and public welfare are at stake.



PRINCIPLES OF PARTICIPATION IN CRIMINAL LAW

Principles of participation in criminal law refer to the legal principles that determine the degree of involvement, responsibility, and liability of individuals who participate in the commission of a crime. These principles help define the roles and culpability of different individuals in criminal acts. Here are some key principles of participation:

1) Principal Offender:

The principal offender is the person who directly commits the criminal act. They are the primary actor in the commission of the offense and bear the highest degree of responsibility and liability for the crime. The principal offender's actions constitute the actus reus (the physical act) of the crime.

Example: In a bank robbery, the person who enters the bank, brandishes a weapon, and takes money from the teller's counter would be considered the principal offender.

2) Accomplice:

An accomplice is a person who assists, encourages, or aids in the commission of a crime, but does not directly commit the act. They play a secondary role and provide assistance or support to the principal offender. Accomplices are also held liable for their participation in the crime, although their level of responsibility may be less than that of the principal offender.

Example: If someone drives the getaway car during a bank robbery, knowing that it will aid the principal offender in escaping, they would be considered an accomplice.

3) Accessories:

Accessories are individuals who assist or provide aid to the principal offender after the commission of a crime. Unlike accomplices, accessories are not physically present during the crime but help the principal offender evade capture, conceal evidence, or otherwise hinder the investigation or prosecution of the offense. Accessories also bear criminal liability for their actions.

Example: If someone helps the principal offender hide the stolen money or provides them with a place to stay to avoid arrest, they would be considered an accessory.

4) Joint Criminal Enterprise:

The principle of joint criminal enterprise applies when multiple individuals participate in a common criminal plan or purpose. Each participant is held responsible for the acts committed by others in furtherance of the common plan, even if they did not personally commit those acts. This principle allows for the attribution of criminal liability to all participants for the actions of any one participant within the scope of the joint criminal enterprise.

Example: If a group of individuals plans and carries out a series of burglaries together, each member of the group can be held responsible for all the burglaries committed by any member of the group.

5) Vicarious Liability:

Vicarious liability extends liability to individuals or entities who may not have directly participated in the criminal act but hold a special relationship or legal responsibility for the person who did. It allows for the attribution of criminal liability to these individuals based on their relationship to the principal offender, such as employers, parents, or guardians.

Example: If an employee commits a crime during the course of their employment, the employer may be held vicariously liable for their actions.

These principles of participation help establish the levels of involvement, responsibility, and liability of individuals in the commission of a crime. They provide a framework for understanding the legal consequences and attributing criminal liability to individuals based on their roles and actions in the criminal act.



GENERAL DEFENCES

General defences in criminal law are legal arguments or principles that individuals accused of committing a crime can raise to challenge their liability or reduce their culpability. These defences aim to justify or excuse the defendant's actions, showing that they should not be held criminally responsible for the offense. Here are some common general defences in criminal law, along with examples:

1) Self-Defence:

Self-defence is a defence that allows individuals to protect themselves or others from imminent harm or threat. It justifies the use of reasonable force to prevent or counter an attack. The key elements of self-defence include a genuine belief in the need for self-protection and the use of proportionate force.

Example: If someone is physically assaulted and, in response, uses necessary and reasonable force to defend themselves, they may raise self-defence as a defence against charges of assault.

2) Duress:

The defence of duress applies when a person is forced or compelled to commit a crime under the threat of serious harm or death. It acknowledges that the individual's actions were not voluntary and that they were coerced by another person.

Example: If someone is threatened with harm to themselves or their loved ones and is compelled to commit a robbery at gunpoint, they may raise duress as a defence against charges of robbery.

3) Necessity:

The defence of necessity recognizes that an individual committed a criminal act to prevent a greater harm or danger. It involves a situation where the person faced a genuine emergency, and their actions were a reasonable response to avoid harm.

Example: If a person trespasses onto private property to seek shelter during a severe storm when there are no other safe alternatives available, they may raise the defence of necessity against charges of trespassing.

4) Insanity:

The insanity defence applies when a person's mental capacity at the time of the crime was significantly impaired, preventing them from understanding the nature and consequences of their actions or distinguishing right from wrong. It asserts that the person should not be held criminally responsible due to their mental condition.

Example: If a person suffering from a severe mental illness commits a crime without being aware of the nature and wrongfulness of their actions, they may raise an insanity defence.

5) Mistake of Fact:

Mistake of fact occurs when a person commits an act under a genuine and reasonable belief in a set of facts that, if true, would have made their actions legal. It asserts that the person should not be held liable because they were unaware of the true circumstances.

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Example: If someone takes an item from a store, genuinely believing that they have already paid for it, and it later turns out to be a mistake, they may raise a mistake of fact defence against charges of theft.

It's important to note that the availability and requirements of these defences may vary depending on jurisdiction. Additionally, the burden of proof for establishing a defence generally rests on the defendant or their legal representatives. These general defences provide individuals with legal avenues to challenge their criminal liability or mitigate the severity of their actions based on specific circumstances surrounding the offense.



PRELIMINARY OFFENCES

Preliminary offenses are actions that are taken towards committing a criminal offense, but which do not constitute the completed crime itself. These actions are often taken with the intent to commit a crime, and they can be punished as criminal offenses in their own right. Here are some common examples of preliminary offenses:

1) Attempt:

An attempt is a preliminary offense that involves a substantial step towards committing a crime with the intent to complete the crime. Attempted crimes are not completed due to some factor outside the perpetrator's control. The criminal law considers attempted crimes to be just as serious as completed crimes because they show an intention to commit the crime and present a danger to society.

Example: If someone enters a bank with the intent to rob it, but is prevented from carrying out the robbery by a bank guard, they may be charged with attempted robbery.

2) Conspiracy:

Conspiracy is a preliminary offense that involves two or more people working together to plan or agree to commit a crime. Conspiracy charges can be brought even if the crime that was planned is never carried out, as the agreement itself is enough to constitute a crime.

Example: If a group of individuals agrees to rob a bank and takes steps to plan the robbery, they may be charged with conspiracy to commit robbery.

3) Solicitation:

Solicitation is a preliminary offense that involves asking, urging, or inciting someone else to commit a crime. Solicitation charges can be brought even if the person being solicited refuses to commit the crime.

Example: If someone hires a hitman to commit a murder, they may be charged with solicitation to commit murder.

4) Incitement:

Incitement is a preliminary offense that involves encouraging, advocating or instigating another person to commit a crime. Unlike solicitation, incitement may not involve a direct request for someone else to commit a crime, but it is still considered a crime because it promotes the commission of the offense.

Example: If someone posts on social media encouraging others to loot stores during a protest, they may be charged with incitement to commit theft.

Preliminary offenses can carry significant legal penalties, even if the completed crime is never committed. The rationale behind punishing preliminary offenses is that they demonstrate a criminal intent that poses a threat to society.

OFFENCES

Here is list of common offences in criminal law:

- **Assault**
- **Battery**
- **Hurt**
- **Homicide**

Assault, battery, hurt, and homicide are terms commonly used in criminal law to describe various types of physical harm or violence inflicted upon another person. Although these terms may have different legal definitions and implications depending on the jurisdiction, here is a general discussion of each term along with examples:

Assault:

Assault typically refers to the intentional act of causing apprehension or fear of immediate harmful or offensive contact in another person's mind. It involves the threat or attempt to commit physical harm, even if there is no physical contact.

Example: If a person raises their fist and threatens to punch someone without actually striking them, it can be considered assault.

Battery:

Battery refers to the intentional and unlawful physical contact with another person that results in harmful or offensive touching. Unlike assault, battery involves actual physical contact between the perpetrator and the victim.

Example: Punching, slapping, or any deliberate physical contact that causes injury or harm to another person would be considered battery.

Hurt:

The term "hurt" generally refers to causing bodily harm or injury to another person. It can encompass a range of physical harm, from minor injuries to more severe damage.

Example: If a person strikes another individual with their hand, causing visible bruises or cuts, it would constitute causing hurt to that person.

Homicide:

Homicide refers to the act of causing the death of another person. It can be classified into various categories depending on the circumstances and intent involved.

Example: If one person intentionally kills another person, it would be classified as intentional or voluntary homicide. However, if the death occurs accidentally, it may be categorized as involuntary manslaughter.

It is important to note that the legal definitions and specific elements of these offenses may vary across jurisdictions. The severity of the consequences for each offense also depends on factors such as intent, premeditation, the degree of harm, and applicable laws. It is advisable to consult the specific criminal code of the relevant jurisdiction for precise definitions and legal implications of these terms.



SEXUAL OFFENCES

Sexual offenses refer to crimes that involve non-consensual sexual acts or acts of a sexual nature committed against another person. These offenses are serious violations of an individual's sexual autonomy, bodily integrity, and right to consent. They encompass a range of illegal behaviors, and laws vary across jurisdictions. Here are some examples of sexual offenses:

Rape:

Rape is the act of non-consensual sexual penetration, usually involving vaginal, anal, or oral intercourse. It involves engaging in sexual activity with another person without their explicit and voluntary consent.

Example: Forcibly engaging in sexual intercourse with someone against their will, or engaging in sexual activity with a person who is unable to give consent due to intoxication or incapacitation, would constitute rape.

Sexual Assault:

Sexual assault refers to any non-consensual sexual act or unwanted sexual contact. It can involve touching, fondling, groping, or any other form of sexual contact without the explicit consent of the other person.

Example: Grabbing someone's intimate body parts without their consent or engaging in unwanted sexual touching or groping would be considered sexual assault.

Sexual Battery:

Sexual battery refers to the intentional and unwanted touching of another person's intimate body parts for the purpose of sexual arousal, gratification, or abuse.

Example: Touching someone's breasts or genitals without their consent, even over their clothing, would be considered sexual battery.

Sexual Harassment:

Sexual harassment involves unwanted sexual advances, comments, requests, or any other form of sexual behavior that creates a hostile, intimidating, or offensive environment for the victim.

Example: Making explicit sexual comments, displaying explicit images, or repeatedly propositioning someone for sexual acts against their will in the workplace would constitute sexual harassment.

Child Sexual Abuse:

Child sexual abuse involves any sexual act or behavior involving a child, including sexual exploitation, molestation, or grooming. These acts are considered particularly heinous due to the vulnerability and inability of children to provide informed consent.

Example: Engaging in sexual activities with a minor, producing or distributing child pornography, or coercing a child into sexual acts would be considered child sexual abuse.

It is essential to recognize that laws and definitions of sexual offenses may vary between jurisdictions. The severity of these offenses often depends on factors such as the age of the victim, the presence of force or coercion, the level of harm caused, and the relationship

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between the perpetrator and the victim. Laws aim to protect individuals from sexual violations and provide avenues for justice and support for survivors of sexual offenses.



OFFENCES AGAINST PROPERTY

Offenses against property are criminal acts that involve the unlawful interference, damage, or deprivation of someone else's property rights. These offenses typically involve actions that infringe upon the ownership, possession, or enjoyment of tangible or intangible property. Here are some examples of offenses against property:

1) Theft:

Theft is the unlawful taking and carrying away of someone else's property without their consent and with the intent to permanently deprive them of it. It involves the unauthorized appropriation of another person's belongings.

Example: Stealing a purse from someone's handbag, taking money from someone's wallet without their knowledge, or shoplifting from a store would be considered theft.

2) Burglary:

Burglary is the unauthorized entry into a building or premises with the intent to commit a theft or any other criminal offense. It involves breaking into a structure or remaining there unlawfully.

Example: Breaking into a house or office space with the intention of stealing valuable items or committing another crime, such as vandalism or assault, would constitute burglary.

3) Robbery:

Robbery is the act of taking someone else's property by force, threat, or intimidation. It involves the use of physical force or the threat of immediate harm to the victim.

Example: Approaching a person on the street, threatening them with a weapon, and forcibly taking their wallet or belongings would be considered robbery.

4) Arson:

Arson is the deliberate and malicious act of setting fire to another person's property, typically with the intent to cause damage or destruction.

Example: Setting fire to a building, vehicle, or any other property to cause damage, collect insurance money, or intimidate someone would be classified as arson.

5) Criminal Damage:

Criminal damage involves intentionally damaging or destroying another person's property without lawful justification or permission. It can include vandalism, destruction of public or private property, or defacing surfaces.

Example: Keying a car, breaking windows, graffiti, or damaging public infrastructure like street signs or park benches would be considered criminal damage.

6) Trespass:

Trespass refers to unlawfully entering or remaining on someone else's property without their consent or legal right to be there.

Example: Entering someone's fenced backyard without permission, remaining in a private building after being asked to leave, or squatting in an abandoned property would be considered trespassing.

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These are just a few examples of offenses against property. Laws and definitions may vary across jurisdictions, but these offenses generally involve actions that interfere with or deprive others of their rightful ownership or use of property. Legal consequences for property offenses can include fines, restitution, probation, and imprisonment, depending on the severity of the offense and applicable laws.



The Pakistan Penal Code (PPC)

Q : DEFINE UNLAWFUL ASSEMBLY .WHAT ARE THE CIRCUMSTANCES THAT CONVERT IT INTO RIOTING?

Q. WHAT IS UNLAWFUL ASSEMBLY? UNDER WHAT CIRCUMSTANCES A MEMBER OF A UNLAWFUL ASSEMBLY COMMITS AN OFFENCE IN PROSECUTION OF COMMON OBJECT OF THE ASSEMBLY.

Ans:

UNLAWFUL ASSEMBLY

In the Pakistan Penal Code (PPC) of 1860, the offense of unlawful assembly is defined in Section 141. According to this section, *when five or more individuals assemble with the intention of committing a crime or using force or violence against another person or property, or engaging in conduct that disrupts public peace, they are considered to be part of an unlawful assembly.*

Section 141 further provides that if the members of an unlawful assembly, after being commanded by a public servant to disperse, continue to stay together and engage in the aforementioned activities, they are liable to be charged with the offense of "being a member of an unlawful assembly" under Section 142.

ESSENTIAL ELEMENTS OF UNLAWFUL ASSEMBLY:

The essential elements of an unlawful assembly, as defined by the Pakistan Penal Code (PPC) Section 141, can be summarized under the following headings:

- i. Assembly of Five or More Persons:**
For an assembly to be considered unlawful, it must consist of a minimum of five individuals. If fewer than five people are involved, it would not meet the threshold to be classified as an unlawful assembly under the PPC.
- ii. Common Object:**
The assembled individuals must have a common object or purpose. This implies that they share a collective intention to commit a crime, use force or violence against someone or their property, or engage in conduct that disturbs public peace. It is the shared objective that distinguishes an unlawful assembly from a lawful gathering.
- iii. Unlawful Acts:**
The assembled group should engage in activities that are contrary to the law or that threaten public peace. This can include actual commission of a crime, use of force, violence, or any other conduct that disrupts the peace and normal functioning of society.
- iv. Knowledge and Intent:**
To establish an unlawful assembly, it is essential to demonstrate that the participants had knowledge of the common object and intended to pursue it. Mere presence at the gathering is not sufficient to establish guilt. The prosecution must prove that the individuals were aware of the unlawful nature of the assembly and consciously participated in it.

v. **Resistance to Disperse:**

If a public servant commands the assembly to disperse in order to prevent the commission of an offense or to maintain public order, the failure of the individuals to disperse is a crucial element. Section 141 of the PPC specifies that an assembly becomes unlawful when the members, upon receiving such a command, refuse to disperse and continue their activities.

PUNISHMENTS:

Here are sections which are related to punishment of unlawful assembly.

Section 143:

Being a Member of an Unlawful Assembly Section 143 deals with the offense of being a member of an unlawful assembly. If a person is found guilty of being a member of a group that has gathered with the intention to commit a crime, use force or violence against others, or disturb public peace, they can be charged under this section.

Punishment: The punishment for being a member of an unlawful assembly can include imprisonment for up to six months, a fine, or both.

Section 144:

Joining Unlawful Assembly Armed with a Deadly Weapon Section 144 addresses the offense of joining an unlawful assembly while being armed with a deadly weapon. If a person joins a group that is unlawfully assembled and carries a dangerous weapon, they can be charged under this section.

Punishment: The punishment for joining an unlawful assembly while armed with a deadly weapon can include imprisonment for up to two years, a fine, or both.

Section 145:

Joining or Continuing in an Unlawful Assembly, Knowing It Has Been Commanded to Disperse Section 145 pertains to the offense of joining or remaining in an unlawful assembly after being ordered by a public servant to disperse. If members of an unlawful assembly are commanded by a public servant to disperse, but they refuse to do so and continue with their activities, they can be charged under this section.

Punishment: The punishment for joining or continuing in an unlawful assembly, despite being ordered to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

WHEN IT BECOMES RIOT?

Under the Pakistan Penal Code (PPC), an assembly becomes a riot when the members of an unlawful assembly engage in violent and disorderly conduct. The specific provisions related to rioting are covered in Section 146 of the PPC. Here's an explanation of when an assembly becomes a riot:

Rioting (Section 146):

An assembly becomes a riot when the members use force or violence or engage in riotous and disorderly conduct. The key elements for an assembly to be considered a riot are:

- **Use of Force or Violence:** The assembly members actively employ physical force or violence. This can involve acts such as physically attacking others, damaging property, or engaging in violent confrontations.
- **Riotous and Disorderly Conduct:** The conduct of the assembly is characterized by chaos, disturbance, or disorder. This can include creating a hostile or threatening

The PPC provides provisions for punishments related to rioting in Sections 147 and 148.

ESSENTIALS OF RIOT:

Here are the essential elements of rioting, as discussed in Section 146 of the Pakistan Penal Code, explained under headings for clarity:

- i. **Unlawful Assembly:**
Rioting occurs when there is an unlawful assembly. This refers to a gathering of five or more individuals who have a common objective to commit a crime, use force or violence against others, or disturb public peace.
- ii. **Use of Force or Violence:**
One of the essential elements of rioting is the use of force or violence by the members of the unlawful assembly. This involves actively employing physical force or violence against people or property. Acts such as physically attacking others, damaging property, or engaging in violent confrontations would constitute the use of force or violence.
- iii. **Tumultuous and Disorderly Conduct:**
Rioting is characterized by tumultuous *خيز ہنگامہ* and disorderly conduct. This means that the conduct of the assembly is chaotic *افراتفری*, disruptive, and creates an environment of disorder. It involves actions that disturb public peace, cause fear or panic, or disrupt the normal functioning of society. The conduct can include shouting, yelling *چیخنا*, throwing objects, inciting *اشتعال انگیزی* violence, or engaging in any behaviour that leads to disorderliness.
- iv. **Collective Responsibility:**
All members of the unlawful assembly may be held collectively responsible for the offense of rioting, regardless of their individual level of involvement or participation in specific acts of violence. The focus is on the collective conduct of the assembly and its impact on public peace and order.
- v. **Intent:**
To establish the offense of rioting, it is important to establish that the members of the unlawful assembly had the intention to engage in riotous behaviour. This refers to a conscious and deliberate decision to participate in acts of violence, use force, or disrupt public peace.

PUNISHMENT FOR RIOTING:

Here's a detailed explanation of the punishments for rioting as outlined in Sections 147 and 148 of the Pakistan Penal Code:

1) Section 147 - Punishment for Rioting:

Section 147 addresses the offense of rioting, which involves the use of force or violence by the members of an unlawful assembly. The key points to note are:

- **Punishment:** If the members of an unlawful assembly engage in rioting, the punishment can be up to two years of simple imprisonment, a fine, or both.
- **Elements:** For an assembly to be considered a riot, there must be a minimum of five individuals who use force or violence, or engage in tumultuous **ہنگامہ خیز** and disorderly conduct. The focus is on the conduct of the assembly, which disrupts public peace and creates a chaotic or threatening environment.
- **Collective Responsibility:** It's important to understand that all members of the unlawful assembly may be held collectively responsible for the offense of rioting, regardless of their individual level of involvement or participation in specific acts of violence.

2) Section 148 - Punishment for Armed Rioting:

Section 148 deals with the offense of armed rioting, which involves members of an unlawful assembly being armed with deadly weapons. Here are the key details:

- **Punishment:** If the members of an unlawful assembly are armed with deadly weapons during the rioting, the punishment can be either of the following:
 - Imprisonment of either description for a term that can extend up to three years, and a fine or both.
- **Armed with Deadly Weapons:** The use of deadly weapons, such as firearms or other instruments capable of causing serious harm or death, during the commission of rioting, intensifies the severity of the offense and leads to enhanced punishment.

CONCLUSION :

In conclusion, unlawful assembly and rioting are distinct offenses under the Pakistan Penal Code. Unlawful assembly involves a gathering of five or more individuals with a common object that threatens public peace or involves the commission of a crime. Rioting, on the other hand, refers to an unlawful assembly where force, violence, or disorderly conduct is employed, creating a tumultuous and disruptive environment. These offenses carry specific punishments outlined in the relevant sections of the Pakistan Penal Code, which may vary based on the severity of the offense. Understanding and enforcing these provisions are crucial for maintaining public order and ensuring the well-being of individuals and society as a whole.



Q. EXPLAIN THE CONCEPTS OF COMMON OBJECT AND INTENTION WITH SPECIAL REFERENCE TO RULE OF CONSTRUCTIVE LIABILITY? (OR)

Q. EXPLAIN THE CONCEPTS OF COMMON INTENTION AND COMMON OBJECT DIFFERENTIATE BETWEEN THEM .

Ans:

COMMON INTENTION & COMMON OBJECT

The concepts of "common object" and "common intention" are relevant when it comes to establishing the rule of constructive liability.

COMMON INTENTION :

Section 34 of the Pakistan Penal Code (PPC) deals with the concept of "common intention" in criminal law. It states that when a criminal act is committed by several individuals in furtherance of a common intention, each of those individuals is liable for that act as if it were done by them individually.

According to Section 34, common intention implies a pre-arranged plan or understanding between two or more individuals to commit a criminal act. It is not necessary for each participant to have actively participated in the actual commission of the offense. Instead, as long as they shared a common intention to commit the offense and acted in furtherance of that intention, they can be held liable.

The key elements to establish common intention under Section 34 are:

- i. **Existence of a common intention:** There must be a prior agreement or understanding between the individuals involved to commit a criminal act. The intention must be shared by all participants and can be inferred from their conduct and actions.
- ii. **Participation in the act:** Even if not actively involved in committing the offense, each participant should have contributed in some way towards the execution of the common intention. This can include providing assistance, aiding, or abetting the main perpetrator.
- iii. **Criminal act done in furtherance of the common intention:** The offense committed should be a result of the collective action or conduct of the individuals with the shared intention.

Section 34 ensures that all individuals who share a common intention to commit a criminal act are held equally responsible, irrespective of their individual roles or specific acts. This provision helps prevent individuals from escaping liability by claiming limited participation or non-involvement in the actual commission of the offense.

It is important to note that Section 34 is often invoked in conjunction with other specific sections of the PPC to establish joint liability for offenses such as murder, rioting, and unlawful assembly. The application and interpretation of Section 34 in a particular case may vary based on the facts, circumstances, and evidence presented.

Examples of Common Intention:

Here are a few examples to illustrate the application of Section 34 of the Pakistan Penal Code:

- a) A group of individuals plans and executes a robbery. While one person physically carries out the act of stealing, others stand guard or keep watch outside. Under Section 34, all participants can be held liable for the robbery, as they acted in furtherance of the common intention to commit the offense.
- b) In a case of murder, if multiple individuals actively participate in the killing of a person, either by inflicting fatal injuries or aiding and abetting the act, they can be held liable for murder under Section 34. Their common intention to cause the death of the victim establishes joint liability for the offense.
- c) A group of people engages in a violent confrontation resulting in the death of an individual. Even if it cannot be established which specific person caused the fatal injury, if it can be proven that they acted with a common intention to commit an unlawful act that resulted in the death, they can be held collectively liable for the offense of murder under Section 34.
- d) During a riot, several individuals participate in acts of violence, such as damaging property or assaulting others. If it can be shown that they shared a common intention to commit the acts of violence and actively participated in furtherance of that intention, they can be held jointly liable for the offense of rioting under Section 34.

COMMON OBJECT:

Section 149 of the PPC deals with the liability of members of an unlawful assembly for offenses committed in prosecution of a common object. The essential elements of Section 149 are as follows:

i. Unlawful assembly:

The first essential element is the existence of an assembly of five or more persons. The assembly is considered unlawful when its common object is to commit a crime or to engage in conduct that threatens public peace, property, or public order.

ii. Common object:

The assembly must have a common object. The common object refers to the shared purpose or objective of the assembly members. It can be inferred from the conduct, actions, and behaviour of the individuals comprising the assembly. The common object can be to commit a crime, engage in violence, cause harm, or disturb public peace.

iii. Offenses committed:

The members of the unlawful assembly must have committed offenses in prosecution of the common object. Under Section 149, every member of the assembly is held liable for the commission of the offense by any other member of the assembly if it was done in furtherance of the common object. Each member is deemed to have intended the probable consequences of the unlawful assembly's actions.

Examples of Common Object:

Here are a few examples to illustrate the application of Section 149:

a) Rioting (Section 147):

If an assembly of five or more persons engages in rioting, where the common object is to commit violence, cause public disturbance, or damage property, all members of the assembly can be held liable for the offense of rioting under Section 149. Each

member is deemed to have intended the consequences of the violent acts committed by any other member of the assembly.

b) Unlawful assembly causing hurt (Section 323):

If an unlawful assembly assembles with a common object to cause hurt to any person, and members of the assembly commit acts of physical violence resulting in hurt, all members of the assembly can be held liable for the offense of causing hurt under Section 323.

c) Unlawful assembly causing grievous hurt (Section 325):

Similar to the previous example, if an unlawful assembly gathers with a common object to cause grievous hurt to any person, and members of the assembly commit acts resulting in grievous hurt, all members of the assembly can be held liable for the offense of causing grievous hurt under Section 325.

d) Unlawful assembly armed with a deadly weapon (Section 144):

If an assembly of five or more persons, armed with deadly weapons, unlawfully assembles with a common object to commit any offense, the members of the assembly can be held liable under Section 144. The presence of deadly weapons enhances the seriousness of the offense.

Proof of Common Intention and Common Object:

Proving common intention and common object requires a careful examination of the facts, circumstances, and evidence in a case. While the exact methods of proof may vary depending on the specific situation, here are some general approaches to establish common intention and common object:

I. Direct evidence:

Direct evidence can include eyewitness testimonies, confessions, or statements by the participants themselves or other individuals who witnessed the planning or execution of the criminal act. Such evidence may explicitly demonstrate the existence of a common intention or the shared objective of the group.

II. Circumstantial evidence:

In many cases, common intention and common object can be inferred from circumstantial evidence. This can include the conduct, behaviour, and actions of the individuals involved. The court can evaluate the sequence of events, the roles played by each person, and their collective behaviour to draw conclusions about their shared intention or objective.

III. Pre-planning and conspiracy:

If there is evidence of pre-planning, meetings, or discussions among the participants that indicate a joint resolve to commit the offense, it can support the existence of common intention or common object. This can include evidence such as phone records, text messages, emails, or surveillance footage.

IV. Actus reus and mens rea:

Proving the actus reus (the physical act) and the mens rea (the mental state) of the participants can contribute to establishing common intention or common object. It involves demonstrating that the participants actively engaged in the criminal act or provided support, and that they possessed the requisite mental state, such as knowledge or intention to commit the offense.

V. Surrounding circumstances:

Additional factors such as the presence of weapons, coordination among the participants, their conduct during the commission of the offense, and any prior relationship or association between the individuals can be considered to infer common intention or common object.

It is important to note that the burden of proof lies with the prosecution, and they must establish the presence of common intention or common object beyond a reasonable doubt. The court will assess the totality of the evidence presented and make a determination based on the available information.

DIFFERENCE BETWEEN COMMON INTENTION AND COMMON OBJECT

Here's a comparison highlighting the differences between common intention (Section 34) and common object (Section 149) of the Pakistan Penal Code:

Nature	Common Intention	Common Object
Definition and Scope	Section 34 of the PPC deals with joint liability for acts done in furtherance of a common intention. It establishes that when a criminal act is committed by several persons with a common intention, each person is liable for the act as if done individually.	Section 149 of the PPC deals with the liability of members of an unlawful assembly for offenses committed in prosecution of a common object. It establishes that if an offense is committed by any member of an unlawful assembly, each member can be held liable for that offense.
Application and Purpose	Section 34 is applicable when individuals act together with a shared intention to commit a criminal act. It ensures that all participants are held equally responsible, irrespective of their individual roles or specific acts.	Section 149 applies to unlawful assemblies where five or more individuals gather with a common object. It holds all members of the assembly responsible for the offenses committed by any member in furtherance of the common object.
Liability	Every participant is individually liable for the entire act committed by the group. Each person is deemed to have intended the consequences of the collective act, regardless of their individual role or specific act.	Section 149 establishes joint liability of the members of an unlawful assembly. Each member is held liable for the offense committed by any other member of the assembly if it was done in prosecution of the common object.

Proof	Proving common intention requires evidence of a pre-arranged plan or understanding between the participants to commit the offense. It can be proven through direct evidence, circumstantial evidence, and the conduct, behaviour, and actions of the individuals involved.	Proving common object involves establishing the existence of an unlawful assembly of five or more persons with a shared purpose or objective. It can be proven through direct evidence, circumstantial evidence, pre-planning, actus reus, mens rea, and surrounding circumstances.
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In summary, while both common intention (Section 34) and common object (Section 149) deal with shared criminal conduct, they differ in their scope, application, liability, and the manner in which they are proved. Section 34 focuses on joint liability for acts done in furtherance of a common intention, while Section 149 holds members of an unlawful assembly liable for offenses committed in pursuit of a common object.



Q. EXPLAIN VARIOUS KINDS OF PUNISHMENTS PROVIDED IN PAKISTAN PENAL CODE?

Ans:

KINDS OF PUNISHMENTS

The punishment for any offense under the Pakistan Penal Code (PPC) varies depending on the specific offense committed. The PPC provides specific provisions for each offense, specifying the range of punishment that can be imposed by the court upon conviction.

Section 53 of the Pakistan Penal Code (PPC) pertains to the "Punishment to which offenders are liable under the sentence of a Court."

Kinds of Punishments (U/S 53 of PPC):

The punishments to which offenders are liable under the provisions of P.P.C are as under.

- 1) Qisas
- 2) Diyat
- 3) Arsh
- 4) Daman
- 5) Tazir
- 6) Death
- 7) Imprisonment for life
- 8) Imprisonment which namely
 - i. Rigorous i-e with hard labour
 - ii. Simple
- 9) Forfeiture of Property
- 10) Fine

1) Qisas :

Qisas is a legal concept derived from Islamic law and is based on the principle of retributive justice. It refers to the right of the victim or their family to seek retaliation or retribution for certain offenses committed against them. The term "qisas" itself means "equality" or "evenness" in Arabic.

Under the concept of qisas, the punishment for an offense is equivalent to the harm caused to the victim. It primarily applies to cases involving bodily harm or loss of life. The goal of qisas is to provide a sense of justice and maintain social order by ensuring that the punishment matches the severity of the crime.

In Pakistan, the provisions related to qisas are primarily derived from Islamic law and are incorporated into the legal framework. The main provisions related to qisas can be found in the Pakistan Penal Code (PPC) and the Qisas and Diyat Ordinance, 1990.

Examples of offenses where qisas may be applicable include:

- **Murder:** If a person intentionally causes the death of another person, the family of the deceased may have the right to seek qisas. The punishment, in this case, would be the equivalent punishment of causing the death of the offender, subject to certain conditions and legal procedures.
- **Bodily Harm:** In cases of serious bodily harm or injuries caused intentionally, the victim or their family may have the option to seek qisas. The punishment would involve causing equivalent harm or injury to the offender, as determined by the court.

The relevant provisions related to qisas in Pakistan include:

Qisas and Diyat Ordinance, 1990: This ordinance provides the legal framework for the implementation of qisas and diyat (blood money) in Pakistan. It outlines the procedures, conditions, and limitations for seeking qisas and settling offenses through compensation (diyat).

Section 299 and Section 302 of the Pakistan Penal Code: These sections define the offense of murder and establish the distinctions between murder and culpable homicide. They provide the basis for determining whether qisas is applicable in cases of intentional killing.

2) Diyat:

Diyat is a concept within Islamic law that relates to the payment of compensation or blood money by the offender to the victim or the victim's family in cases of murder. Diyat means the compensation payable only in cases Qatl and not in cases of hurt. It is payable only in cases where cases an offender guilty of qatl –i – amd is not liable to qisas or where is not enforceable.

Value of Diyat U/S 323 of PPC:

The court shall subject to the injunctions of Islam as laid down in the Holy Quran and sunnah, and keeping in view the financial position of the convict and the heirs of the victim, fix the value of diyat which shall not be less than the value of thirty thousand six hundred and thirty grams silver.

3) Arsh:

Arsh is the kind of compensation payable at the causing of hurt.

Definition U/S 299 (b) of PPC:

Arsh means the compensation specified in P.P.C to be paid to the victim or the heirs.:

Value of Arsh:

The value of Arch will be assessed at certain percentage indicated various provisions of the value of diyat U/S 323 P.P.C.

Mode of payment:

The Arsh will be payable in lumpsum or in instalments spreading over three years from the date of final judgement.

Failure to Pay Arsh:

In case of default, the offender may be kept in jail to serve the simple imprisonment until Arsh is paid in full. It may be awarded in the following section.

- Section 334 P.P.C.
- Section 337 P.P.C.

4) Daman:

"Daman" is an Arabic term that refers to compensation or blood money paid by an offender or their family to the victim or the victim's family as a form of financial restitution for bodily harm caused by the offender. Daman means compensation which is determined by the court as punishment against act causing hurt not liable to arsh. It is a component of the Islamic legal system and is recognized in some Muslim-majority countries, including Pakistan.

Value of Daman:

The value of daman will be determined by the court, Keeping in view:

1. The expenses incurred on the treatment of the victim.
2. Loss or disability caused in the functioning or power of any organ.
3. The anguish suffered by the victim.

5) Tazir:

Tair means punishment where offender can not be punished through Qisas, Diyat, arsh or Daman.”

Tazir is a concept that refers to discretionary punishment or penalties imposed by the court for offenses not specifically covered by fixed punishments prescribed in religious texts or legal codes. It grants judges the authority to determine the appropriate punishment based on their understanding of the principles of justice, societal norms, and the specific circumstances of the case. Tazir punishments can include fines, imprisonment, public chastisement, or other measures aimed at maintaining social order and deterring unlawful behaviour.

6) Death:

The punishment of death, also known as capital punishment or the death penalty, involves the deliberate and authorized taking of a person's life as a form of punishment for certain serious offenses. It is considered the most severe and irreversible penalty in the legal systems of some countries.

Death is the capital punishment that may be awarded for certain offences under P.P.C. Such as:

- (i) Waging war against Pakistan U/S 121 P.P.C.
- (ii) Murder u/s 302, P.P.C.
- (iii) Hijacking etc.

7) Imprisonment For Life :

"Imprisonment for life" is a form of punishment where an individual is sentenced to spend the rest of their natural life in prison for committing a serious offense. In Pakistan sentence of imprisonment for life means, for remaining as span of natural life of convict, which is accepted as being of 25 years duration. (PLD 1968 LAH. 1).

Following are some of the offense, where it may be inflicted, as punishment.

- (i) Sedition U/S 124-A P.P.C.
- (ii) Counterfeiting Pakistan coin U/S 232 P.P.C.
- (iii) Punishment for murder U/S 302P/P/C

8) Imprisonment:

Imprisonment means confinement of convict within certain prescribed limits. The maximum period of imprisonment that can be awarded for an offence is fourteen years U/S 55 P.P.C and the shortest term provided for an offence twenty four hours U/S 510 P.P.C. (I)

Kind Of Imprisonment:

i. Rigorous

ii. Simple

i. Rigorous:

In the case of rigorous imprisonment, the offender is put to labour such as digging earth, drawing water etc.

ii. Simple:

In the case of simply imprisonment the offender is confined to jail and is not put to any kind of work.

9) Forfeiture of Property:

Forfeiture of property refers to the legal process by which assets or property are seized by the state as a punishment for involvement in criminal activities. It serves as a deterrent and aims to disrupt criminal networks, remove proceeds of crime, and compensate victims.

Forfeiture of specific property may be awarded as punishment in the following section,

- (i) Section 126 P.P.C
- (ii) Section 127. P.P.C
- (iii) Section 169, .P.P.C

10) Fine:

"Fine" is a common form of punishment imposed by the courts for various offenses. A fine is a monetary penalty that an offender is required to pay as a consequence of their unlawful actions. The amount of the fine can vary depending on the severity of the offense and is determined by the court within the limits prescribed by law.

Fine is the punishment which may be awarded in some offences along with the imprisonment. Fine is the only punishment provided for in sections. 137, 154, 155, 156, 171-G, 171-H, 171- 1.278, 283, and 290, P.P.C

Sentence of imprisonment for non-payment of fine u/sec 64:

In every case where sentence of fine is awarded whether it is along with imprisonment or without imprisonment, the court may direct that in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

Sentence of imprisonment not to run concurrently:

A sentences of imprisonment in default of fine has to be served out separately. That sentence cannot run Concurrently with any other sentence.

Limit Of Imprisonment For Non-Payment Of Fine U/Sec 65:

If the offence is punishable with imprisonment as well as fine the term shall not exceed one fourth of the imprisonment which is the maximum finds for the offence.

8. Limit of imprisonment for non- payment of fine u/sec 67:

If the offence is punishable with fine only, the imprisonment which the court imposes in default of payment of fine shall be simple and term shall not exceed the following scale. Amount of fine Term of imprisonment in default of payment of fine.

- (i) Not exceeding 2 months and Rs. 50/.
- (ii) Not exceeding Rs.100/. Not exceeding 4 months.
- (iii) In any other case Not exceeding 6 months.



Q. DEFINE CRIMINAL CONSPIRACY. ELABORATE THE DIFFERENCES WITH AMENDMENTS.

(OR)

Q. DEFINE CRIMINAL CONSPIRACY. AND DISCUSS ITS PUNISHMENTS.

(OR)

Q. DEFINE CRIMINAL CONSPIRACY DISCUSS ITS KINDS AND DISTINGUISH IT FROM ABETMENT

Ans:

CRIMINAL CONSPIRACY

Criminal Conspiracy is a term used in the legal system to describe an agreement between two or more individuals to commit an unlawful act or to achieve an illegal objective. In Pakistan, the provisions related to Criminal Conspiracy are primarily outlined in the Pakistan Penal Code (PPC).

Section 120-A of the Pakistan Penal Code defines Criminal Conspiracy. It states:

"Whoever is a party to a criminal conspiracy to commit an offense punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offense."

According to this provision, if two or more persons agree to commit an offense that is punishable by death, life imprisonment, or rigorous imprisonment for a term of two years or more, and if there is no specific provision in the code for the punishment of that particular conspiracy, then the individuals involved in the conspiracy will be punished as if they had abetted the offense itself.

It's important to note that in addition to the offense of Criminal Conspiracy, individuals involved in the conspiracy can also be charged with the specific offense they conspired to commit, as well as any other offenses committed in furtherance of the conspiracy.

DEFINITIONS OF CRIMINAL CONSPIRACY:

Here are definitions provided by famous jurists and law dictionaries:

Black's Law Dictionary :

"Criminal conspiracy is an agreement between two or more persons to commit a crime or to accomplish a legal purpose by illegal means. The crime of conspiracy requires an agreement, an intent to agree, and an intent to commit the underlying offense."

William Blackstone (English jurist):

"Conspiracy is an agreement between two or more persons to do an unlawful act or to do a lawful act by unlawful means."

Roscoe Pound (American jurist):

"Conspiracy is a combination of two or more persons by some concerted action to accomplish some criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means."

Salmond on Jurisprudence:

"A criminal conspiracy consists in an agreement between two or more persons to do an unlawful act or to do a lawful act by unlawful means."

Halsbury's Laws of England (Legal encyclopaedia):

"A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more, to do an unlawful act, or to do a lawful act by unlawful means."

Ingredients of Criminal Conspiracy:

The ingredients of Section 120-A of the Pakistan Penal Code (PPC) are the essential elements that must be present to establish the offense of Criminal Conspiracy. To prove the offense under this section, the following ingredients must be fulfilled:

1) Agreement:

The first essential ingredient is that there must be an agreement between two or more persons. This agreement can be explicit or implicit, and it implies a meeting of minds or a common understanding between the individuals involved.

2) Criminal Object:

The agreement must be for the purpose of committing an offense. The offense contemplated in the agreement must be one that is punishable with death, life imprisonment, or rigorous imprisonment for a term of two years or more.

3) Participation:

Each person involved in the conspiracy must be a party to the agreement. They must actively participate in the planning, organization, or execution of the criminal object. Mere knowledge or passive acquiescence is not sufficient to establish participation.

4) Absence of Express Provision:

If the offense that is the subject of the conspiracy has an express provision for punishment in the Pakistan Penal Code, then Section 120-A may not be applicable. The section comes into play when there is no specific provision for the punishment of that particular conspiracy.

It is important to note that the offense of Criminal Conspiracy is distinct from the actual commission of the crime. Even if the intended offense does not materialize, the conspiracy itself is punishable under Section 120-A.

Legal Act by Illegal Means:

When two or more persons agree to do an act, which is not illegal itself, may be guilty of criminal conspiracy u/sec 120-A when they agree to do or cause to be done that act by illegal means.

Example: Person "A", "B" and "C" agree to sell car without paying custom duty on it. They are guilty u/sec 120-A.

Criminal Law

Agreement To Commit An Offence And Agreement Which Is Illegal But Not Constitute An Offence:

The proviso to section 120-A draws a distinction between an agreement to commit an offence and an agreement of which either the object or the methods employed are illegal but do not constitute an offence. In the case of former, the criminal conspiracy is completed by the act of agreement; in the case of the latter, there must be some act done by one or more of the parties to the agreement to effect thereof.

Proof of Criminal Conspiracy:

Conspiracy may be established by direct or indirect evidence such as circumstantial evidence. Evidence need to be considered together and its cumulative effect to be weighed and given effect. According to article 23 of Q.S.O, 1984, The act done by one is admissible against the co-conspirators.

PUNISHMENT U/SEC 120-B:

- (i) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for a term of two years or upwards, shall where no express provision is made in the code for the punishment of such conspiracy, be punished in the same manner as if he had abetted offence.
- (ii) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months or with fine or with both.

Conspiracy To Commit Offences Punishable By Section 121-A:

Whoever within or without Pakistan conspires to:

- (i) Commit any of the offence punishable by sec 121 i.e. Waging or attempting to wage war or abetting waging of war against Pakistan, or
- (ii) Deprive Pakistan of the Sovereignty of her territories or any part thereof, or
- (iii) Overawe (something more than mere apprehension. It is a situation where one feels to choose between yielding to force or exposing to serious danger) the federal Govt. or any Provincial Govt. by means of criminal force or show of it. He shall be punished with Imprisonment for life or with imprisonment of either description which may extend to ten years and shall also be liable to fine.

DIFFERENCE BETWEEN CRIMINAL CONSPIRACY AND ABETMENT

Here's an explanation highlighting the key differences between criminal conspiracy and abetment:

NATURE	CRIMINAL CONSPIRACY	ABETMENT
Definition	Criminal conspiracy involves an agreement between two or more individuals to commit an unlawful act or achieve an illegal objective.	Abetment refers to intentionally aiding, instigating, or encouraging the commission of a crime by another person.

Criminal Law

Focus on Agreement	The focus in criminal conspiracy is on the agreement or understanding between the individuals involved. It emphasizes the joint effort and planning to commit the offense.	Abetment focuses on the act of actively aiding, instigating, or encouraging the commission of the offense. It does not necessarily require a prior agreement.
Degree of Participation	In criminal conspiracy, each individual involved actively participates in the planning, organization, or execution of the criminal act. They are considered parties to the agreement.	In abetment, an individual aids, instigates, or encourages another person to commit the offense. They may not be directly involved in the execution of the crime but play a supportive role.
Punishment	The punishment for criminal conspiracy depends on the punishment prescribed for the underlying offense that is the subject of the conspiracy. If there is no specific provision for the punishment of the conspiracy, individuals involved are punished as if they had abetted the offense itself.	The punishment for abetment varies depending on the nature and gravity of the offense committed. It is usually a lesser punishment compared to the offense itself.



Q. DEFINE CRIMINAL TRESPASS? EXPLAIN THE DIFFERENCE BETWEEN HOUSE TRESPASS AND HOUSE BREAKING.

(OR)

Q. EXPLAIN CRIMINAL TRESPASS STATING IT DIFFERENT KINDS

Ans:

CRIMINAL TRESPASS

Trespass is an unlawful interference with one's person, property or rights. At common law, trespass was a form of action brought to recover damages for any injury to one's person or relationship with another. Section 441 to 456 of P.P.C deals with different kinds of trespass.

Kinds of Trespass with Relevant Provisions:

Following are the relevant provision of P.P.C

1) Criminal Trespass

- Section 441 and 447 for Criminal Trespass.

2) House Trespass

- Section 442 and 448 for House Trespass.

3) Lurking House Trespass

- Section 443 and 453 for Lurking House Trespass.

1. CRIMINAL TRESPASS:

Criminal trespass is an offense that involves unlawfully entering or remaining on another person's property without their permission or legal right to do so. In Pakistan, the provisions related to criminal trespass are outlined in the Pakistan Penal Code (PPC).

Section 441 of the Pakistan Penal Code defines criminal trespass. According to this section:

"Whoever enters into or upon property in the possession of another with intent to commit an offense or to intimidate, insult, or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate ڈرانا دھمکانا, insult or annoy any such person, or with intent to commit an offense, is said to commit "criminal trespass".

Key Elements of Criminal Trespass:

Let's delve into the key elements of criminal trespass in more detail, along with relevant examples:

a) Entering Into Or Upon Property:

This element involves intentionally entering onto or into a property that is in the possession of another individual. The property can include land, buildings, or any other type of property.

Example: Jameel climbs over the fence surrounding Mateen's property and enters his backyard without her permission. This action constitutes the element of entering onto the property.

b) Lack Of Lawful Right Or Permission:

Criminal trespass occurs when the person enters or remains on the property without the lawful right or permission of the person in possession. If the person has obtained consent or has a legal right to enter the property, the offense of criminal trespass is not established.

Example: Sarah walks onto a public park during its operating hours. Since she has the lawful right to be on the property during that time, she is not committing criminal trespass.

c) Intent:

The person must have a specific intent for their entry or remaining on the property. The intent may be to commit an offense, intimidate ڈرانا دھمکانا, insult, or annoy the person in possession of the property.

Example: Tom enters his neighbour's backyard with the intent to steal valuable items from their shed. His purpose is to commit an offense, which fulfils the intent element of criminal trespass.

Right of Private Defence Against Criminal Trespass:

In case of criminal trespass, the right of private defence continues so long as the trespass continues and is controlled by section 99 of P.P.C. Trespasser on property cannot claim right of private defence of his person unless he first brings to an end his own act of trespass. (PLD 1983 SC 135)

Punishment U/Sec 447:

Whoever commits criminal trespass shall be punished with:

- i) Imprisonment of either description for a term which may extend to three months or
- ii) With fine which may extend to RS. 1500, or
- iii) With both

2. HOUSE TRESPASS U/S 442:

The key section pertaining to house trespass is **Section 442** of the Pakistan Penal Code.

House trespass, also known as criminal trespass to a house, is an offense that involves unlawfully entering or remaining in someone else's dwelling خانہ or residence without their permission or legal right to do so.

Key Elements of House Trespass:

The elements of house trespass can be outlined as follows:

a) Unlawful Entry or Remaining:

The offense of house trespass occurs when a person enters or remains in another person's dwelling unlawfully. Dwelling refers to a place of residence such as a house, apartment, or any other building where a person resides.

b) Lack of Consent or Legal Right:

The entry or remaining in the dwelling must be without the consent of the person in lawful possession of the premises. If the person has obtained consent or has a legal right to enter the dwelling, the offense of house trespass is not established.

c) Intent:

The intent requirement for house trespass is similar to that of criminal trespass. The person must have the intention to commit an offense, intimidate, insult, or annoy the person in lawful possession of the dwelling.

Example:

Ahmed, without the permission of the owner, enters Fatima's house while she is at work and starts rummaging through her belongings. Ahmed's entry into Fatima's dwelling without her consent constitutes house trespass.

In this example, Ahmed unlawfully enters Fatima's house without her permission, which violates the element of unlawful entry or remaining. As a result, Ahmed can be charged with house trespass.

Punishment U/Sec 448:

Whoever commits house trespass shall be punished with.

- a. Imprisonment of either description for a term which may extend to one year, or
- c. With fine which may extend to Rs. 3000. Or,
- d. With both.

3. LURKING چھپتا ہے HOUSE TRESPASS:

Lurking house trespass, also known as criminal trespass by lurking, refers to the offense of unlawfully entering or remaining in someone else's dwelling while attempting to conceal oneself or avoiding detection. In Pakistan, the provisions related to lurking house trespass are outlined in the Pakistan Penal Code (PPC).

The specific section that addresses lurking house trespass is **Section 443** of the Pakistan Penal Code. According to this section:

"Whoever lurks or is found lurking, with the intent to commit any offense punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

The Key Elements Of Lurking House Trespass

The key elements of lurking house trespass can be outlined as follows:

a) Lurking or Found Lurking:

The offense occurs when a person intentionally hides or conceals themselves near or within another person's dwelling. It can also apply if the person is found lurking, which means they are discovered in suspicious circumstances near the dwelling.

b) Intent to Commit an Offense:

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The person must have the intent to commit an offense punishable with imprisonment. This means they have the intention to engage in unlawful activities while lurking near or within the dwelling.

Punishment U/Sec 453:

Whoever commits lurking house-trespass shall be punished with.

(i)Imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Example: Ali hides in the bushes near Zainab's house with the intention to break into the house and steal valuable items. Ali's act of lurking near Zainab's dwelling with the intent to commit an offense punishable with imprisonment constitutes lurking house trespass.

In this example, Ali intentionally conceals himself near Zainab's house with the intention of committing a crime. His actions fulfill the elements of lurking house trespass under Section 443 of the Pakistan Penal Code.



Q. DEFINE AND DISTINGUISH BETWEEN THEFT AND EXTORTION?
WHAT PUNISHMENT IS PROVIDED FOR THESE OFFENCES.

(OR)

Q. DEFINE THEFT? WHEN IT IS LIABLE TO HADD? DISCUSS THE KIND OF
PROOF PUNISHMENTS ' PRESCRIBED FOR THIS OFFENCE IN HADOOD
ORDINANCE?

Ans:

THEFT & EXTORTION

Theft and extortion are two types of crimes related to taking someone else's property without their permission. Theft occurs when someone unlawfully takes another person's belongings with the intention of permanently depriving them of it. It could involve stealing someone's purse, cell phone, or any valuable item. On the other hand, extortion happens when a person uses threats, coercion, or intimidation دھمکیاں to obtain money, property, or favours from someone else. For instance, if someone threatens to harm your family if you don't give them money, that would be considered extortion. We can say that The offence of extortion occupies a middle place between theft and robbery.

Relevant Provisions:

Following are the relevant provisions of P.P.C

- Section 378 and 379 for theft
- Section 383 and 384 for Extortion

THEFT U/S 378 :

According to Section 378 of the Pakistan Penal Code, theft is defined as follows:

"Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft."

This definition can be broken down into the following elements:

- **Dishonest intention:** The person must have the intention to take someone else's movable property dishonestly. Dishonesty refers to the intention to cause wrongful gain to oneself or wrongful loss to another.
- **Movable property:** Theft applies to movable property, which includes any property that can be physically moved, such as money, jewelry, electronic devices, or any other valuable items.
- **Without consent:** The property must be taken without the consent of the person who is in possession of it. Consent can be express or implied, and if the person has given consent under certain conditions and those conditions are violated, it may still constitute theft.
- **Act of moving property:** The person must move the property in order to take it. It can be moving the property physically or causing it to move through some action or manipulation.

Examples of theft under Section 378 of the Pakistan Penal Code could include:

Criminal Law

- A person steals a wallet from another person's pocket without their knowledge or consent.
- Someone breaks into a house and takes valuable jewelry from a drawer without the owner's permission.
- A person picks up a mobile phone left unattended on a table and walks away with it.
- A customer intentionally conceals an item in his/her bag while pretending to be watching other goods and walks out of the store without paying for it.
- A person hacks into someone's online banking account and transfers funds from the account to their own without the account holder's permission.

Punishment of Theft U/S 379:

Under Section 379 of the Pakistan Penal Code, the punishment for theft is described as follows:

"Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

The punishment for theft as per Section 379 is a combination of imprisonment and/or a fine. Here are the key aspects of the punishment:

- **Imprisonment:** The convicted individual can be sentenced to imprisonment for a term that can extend up to three years. The actual duration of the imprisonment can vary depending on the circumstances of the case, the value of the stolen property, the criminal history of the offender, and other relevant factors considered by the court during sentencing.
- **Fine:** In addition to or instead of imprisonment, the court may impose a monetary fine upon the convicted individual. The amount of the fine is at the discretion of the court and may vary based on the severity of the offense, the value of the stolen property, and the financial circumstances of the offender.

Case Law (2000 MLD 651)

It was held that person found guilty of offence of theft u/s 397 cannot Simultaneously be convicted u/s 411 of P.P.C

EXTORTION U/S 383:

According to Section 383 of the Pakistan Penal Code (PPC), extortion is defined as follows:

"Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits 'extortion'."

In simpler terms, extortion occurs when a person intentionally instills fear in someone else and uses that fear to compel the victim to hand over property, valuable security, or anything of value to another person.

Here are a few examples to illustrate extortion under Section 383 of the Pakistan Penal Code:

- **Threatening Violence for Money:** A person threatens to harm someone or their family members if they do not pay a certain amount of money. The victim, fearing for their safety, complies and hands over the requested sum.
- **Protection Racket:** A criminal gang approaches a local business owner and demands a regular payment of money in exchange for "protection" from potential harm or damage to their business. The fear of harm or property damage compels the business owner to pay the protection money.
- **Blackmail:** Someone obtains sensitive or incriminating قابل اعتراض information about another person and threatens to expose it unless the victim pays a certain amount of money. The victim, fearing the potential consequences of the information being made public, agrees to pay the blackmailer.

Kidnapping for Ransom **توان:** Kidnappers abduct an individual and demand a significant sum of money from their family or acquaintances **والے جاننے** in exchange for the safe release of the victim. The fear of harm to the kidnapped person motivates the payment of the ransom.

Punishment For Extortion U/Sec 384:

Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.

DIFFERENCE BETWEEN THEFT AND EXTORTION

Here is main differences between theft and extortion.

Type of Difference	Theft	Extortion
Nature of the Act	Theft involves the unlawful taking of someone else's property without their consent and with the intention to permanently deprive them of it. The act of theft typically occurs in secret or without the victim's knowledge.	Extortion involves obtaining property, valuable security, or any other item of value from someone by intentionally instilling fear in them. It requires the use of threats, coercion, or intimidation to compel the victim to give up their property or valuable possessions.
Consent	In theft, the perpetrator مجرم takes someone else's property without their consent. The owner of the property does not willingly transfer ownership or possession to the thief.	In extortion, the victim is compelled to give up their property or valuables against their will due to fear or intimidation induced by the offender. Although the victim may hand over their possessions, it is not done willingly but under duress.
Intent	The intention of the thief in a theft case is to permanently deprive the owner of their property. The thief does not seek to return the stolen	The intent of the extortionist is to obtain the victim's property or valuables by instilling fear or coercion. The offender may not

	items to the owner.	necessarily seek to permanently retain the property but may use it as leverage for personal gain, concessions, or as a means of control.
Act of Taking	In theft, the act of taking occurs without the knowledge or consent of the owner. The thief seizes the property and gains control over it without the owner's permission.	In extortion, the offender does not physically take possession of the property or valuables themselves. Instead, they use threats or coercion to force the victim to surrender their property willingly.
Punishment	The punishment for theft is prescribed under specific sections of the Pakistan Penal Code (PPC) and may vary depending on the value of the stolen property. It can range from imprisonment for a specified period and/or a fine.	Extortion is also a criminal offense under the PPC. The punishment for extortion may include imprisonment for a term which may extend to three years, or a fine, or both.

While both theft and extortion involve the unlawful taking of someone's property, the key distinction lies in the use of fear, threats, or coercion in extortion cases, whereas theft involves taking property without the owner's consent. The specific circumstances of each case will determine whether it falls under theft or extortion.



Q. WHAT IS CRIMINAL BREACH OF TRUST? DESCRIBE THE VARIOUS INSTANCES OF CRIMINAL BREACH OF TRUST AS MENTIONED IN THE PPC EXPLAIN?

(OR)

Q. DEFINE AND DISTINGUISH BETWEEN THEFT AND CRIMINAL BREACH OF TRUST.

Ans:

CRIMINAL BREACH OF TRUST

Criminal Breach of Trust Section 405:

"Whoever, being in any manner entrusted تفویض کیا گیا with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'."

Case Law (SCMR 1980 402)

To establish the charge of criminal breach of trust the prosecution must prove not only entrustment but also that the accuse dishonestly misappropriated the property.

Key Element of Criminal Breach of Trust:

Here are the key elements and characteristics of criminal breach of trust under Section 405:

- i. Entrustment تفویض کردہ:**
The offender must be entrusted with property or have dominion over property. This means they are given custody, control, or responsibility for the property by the owner or by law.
- ii. Dishonest Misappropriation or Conversion:**
The offender dishonestly misappropriates or converts the property for their own use without the consent of the owner. This involves wrongful appropriation or conversion of the property to the offender's benefit.
- iii. Violation of Direction of Law or Legal Contract:**
The misappropriation, conversion, use, or disposal of the property is done in violation of any direction of law or legal contract. It includes the breach of a legal duty or obligation related to the handling or use of the entrusted property.
- iv. Wilful Suffering of Another Person:**
The offender, if they do not commit the breach of trust themselves, wilfully allows or permits another person to dishonestly misappropriate, convert, use, or dispose of the entrusted property.

Examples of Breach of Trust:

Here are some instances of criminal breach of trust as mentioned in the PPC:

- i. Assume “A” being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will and appropriates them to his own use.” A., has committed breach of trust.
- ii. A public servant entrusted with public funds, such as a government official, embezzles or misappropriates those funds for personal gain or uses them in violation of the prescribed rules and regulations.
- iii. A banker or merchant, acting as a custodian of customer funds, dishonestly misappropriates or converts those funds to their own use without the customer's consent or in violation of the terms of the banking or business relationship.
- iv. An agent or attorney, acting on behalf of a client, dishonestly misappropriates or converts the client's property or assets to their own use without the client's authorization or in violation of the terms of the agency or attorney-client relationship.
- v. A trustee entrusted with managing or overseeing trust property, such as assets or funds, breaches their fiduciary duty by dishonestly misappropriating or converting the trust property for personal gain or using it in violation of the terms of the trust agreement.
- vi. A factor or broker entrusted with goods, merchandise, or funds for the purpose of sale, delivery, or disposal dishonestly misappropriates or converts those goods or funds for personal benefit, without authorization, or contrary to the terms of the agreement.

Punishment For Criminal Breach of Trust U/S 406:

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to seven years or with fine or with both.

DIFFERENCE BETWEEN THEFT AND CRIMINAL BREACH OF TRUST

Theft and criminal breach of trust are distinct offenses under the Pakistan Penal Code (PPC) and involve different elements and circumstances. Here are the key differences between theft and criminal breach of trust:

Nature of Difference	Theft	Criminal Breach of Trust
Nature of the Offense	Theft involves the act of unlawfully taking someone else's property without their consent and with the intention to permanently deprive محرومی them of it. The focus is on the act of taking and depriving the owner of their property.	Criminal breach of trust occurs when a person, who is entrusted with property or has dominion over property, dishonestly misappropriates or converts it to their own use or violates any direction of law or legal contract related to the entrusted property. The emphasis is on the breach of trust and the

		violation of the fiduciary duty owed to the owner of the property.
Consent and Entrustment	In theft, the property is taken without the owner's consent. The thief does not have lawful possession or authorization to take the property.	In case of breach of trust, the property is taken with the owner's consent. The Possession is lawful and with the consent of owner but its use is illegal manner.
Intent and Misappropriation	The intention of the thief in a theft case is to permanently deprive the owner of their property. The thief intends to take the property for their own benefit, without the owner's consent.	In criminal breach of trust, the accused misappropriates or converts the entrusted property for their own use or in violation of the direction of law or legal contract. The focus is on the misuse or unauthorized use of the entrusted property.
Relationship Between the Parties	Theft can occur between any individuals, regardless of their relationship. It does not necessarily require a fiduciary relationship or a position of trust between the parties involved.	Criminal breach of trust typically involves a relationship of trust and confidence between the accused and the owner of the property. The accused is entrusted with the property by virtue of their position, such as being a public servant, banker, agent, or attorney.
Punishment	The punishment for theft under the PPC varies depending on the value of the stolen property and ranges from imprisonment to fines, depending on the specific circumstances and provisions. Imprisonment can be up to 3 years.	The punishment for criminal breach of trust under the PPC is based on the value of the property involved and ranges from imprisonment to fines, depending on the specific circumstances and provisions. Imprisonment can be up to 7 years.



Q. WHAT IS RIGHT OF PRIVATE DEFENCE? UNDER WHAT CIRCUMSTANCES THIS RIGHT OF PRIVATE DEFENCE OF BODY AND PROPERTY MAY EXTEND OF CAUSING THE DEATH?

(OR)

Q. DISCUSS WHEN THE RIGHT TO PRIVATE DEFENCE OF THE BODY DOES NOT EXTEND TO CAUSE DEATH OF THE ASSAILANTS?

Ans.

PRIVATE DEFENCE

Private defence, also known as self-defence, refers to the right of individuals to protect themselves, their property, or others from immediate harm or unlawful attacks. It means that if someone is in danger or being attacked, they have the legal right to defend themselves using reasonable force to prevent further harm. For example, if someone tries to harm you physically or break into your house, you can take necessary actions to protect yourself or your property. However, it's important to remember that the force used should be proportionate to the threat and not excessive. Private defence is a recognized right under the law, allowing individuals to safeguard themselves and others in situations where there is an imminent risk to their safety or property.

Relevant Provisions:

Sec. 96, 97, 99, 100, 101 and 102 P.P.C

DEFINITIONS OF SELF DEFENCE:

Here are definitions of self-defense provided by famous jurists and dictionaries:

Black's Law Dictionary:

"Self-defense is the use of reasonable force to protect oneself or one's property from injury or damage when faced with an immediate threat or danger."

William Blackstone (English Jurist, 18th century):

"Self-defense is justifiable where the injury attempted is a felony or a violent breach of the peace, or if there is reasonable apprehension of such injury, and there is no other probable means of avoiding it."

Roscoe Pound (American Jurist, 20th century):

"Self-defense is the right to repel force by force when one reasonably believes that they or another person is in imminent danger of bodily harm or unlawful interference."

Bouvier's Law Dictionary:

"Self-defense is the right to protect one's person, property, or rights against attempted injury by another."

John Salmond (English Jurist, 20th century):

"Self-defense is the right to resist force by force in order to prevent an unlawful invasion ^{حمله} of one's person or property."

American Heritage Dictionary:

"Self-defense is the act of defending oneself, one's property, or another person against physical harm or threat using necessary force."

Things Done In Private Defence U/S 96.

Nothing is an offence which is done in the exercise of the right of private defence.

KINDS OF SELF-DEFENCE:

Following are types of self defence :

- 1) **Right Of Self Defence Of Body**
- 2) **Right Of Self Defence Of Property**

1) Right of Self Defence Of Body:

The right of self-defense of the body refers to the legal right individuals have to protect themselves from immediate فوری harm or danger to their physical well-being. It means that if someone is being physically attacked or threatened with violence, they have the right to use reasonable force to defend themselves.

2) Right of Self Defence Of Property:

It means the legal right of individuals to protect their property from unlawful intrusion دراندازی or damage using reasonable force. In simple terms, if someone tries to unlawfully enter or harm your property, you have the right to defend it within certain limits.

Right of Private Defence of The Body And of Property U/S 97:

According to Section 97 of PPC, Every person has a right, subject to the restrictions contained in section 99, to defend:

- i. A person has the right to defend their own body and the body of others against any crime that harms or poses a threat to the human body.
- ii. You have the right to defend your own property or someone else's property against certain offenses like theft, robbery, mischief فساد, or criminal trespass. This includes acts of actually committing those offenses or attempting to commit them. You can take action to protect the property, whether it is something you own or belongs to another person.

Right of Private Defence Against The Person of Unsound Mind:

If someone commits an act that would normally be considered a specific offense but is not classified as such due to their young age, lack of understanding, mental instability, intoxication, or a misconception on their part, then every person still has the right to defend themselves against that act. This means that individuals have the same right to protect themselves as they would if the act were actually considered the offense in question.

In simpler terms, if someone does something that would usually be a crime but is not held accountable because they are young, lack understanding, have mental health issues, are intoxicated, or have a misunderstanding, others still have the right to defend themselves as if it were actually a crime. It ensures that individuals can protect themselves in such situations, even if the person committing the act is not legally responsible for it.

Examples:

- (a) Z, under the influence of madness, attempts to kill A ; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.
- (b) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a housebreaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

Acts Against Which There is No Right of Private Defence U/S-99:

- i. You are not allowed to defend yourself privately against an act that does not reasonably make you fear serious injury or death. This applies if the act is carried out or attempted by a public servant who is acting in good faith under the authority of their position, even if their actions may not be completely lawful.
- ii. You do not have the right to defend yourself privately against an act that does not reasonably make you fear serious injury or death. This applies if the act is done or attempted under the direction of a public servant who is acting in good faith under the appearance of their position, even if their direction may not be completely lawful.
- iii. There is no right to private defense in situations where you have enough time to seek help or protection from the public authorities. In such cases, it is better to rely on the assistance provided by the authorities instead of taking matters into your own hands.

WHEN THE RIGHT OF PRIVATE DEFENCE OF THE BODY EXTENDS TO CAUSING DEATH U/S 100.

The right to defend oneself extends to causing the death or any other harm to the attacker. This right can be exercised if the offense that prompts the self-defense falls into any of the following categories:

1. An assault that could reasonably result in death.
2. An assault that could reasonably result in severe injury.
3. An assault with the intention of committing rape.
4. An assault with the intention of engaging in unnatural sexual acts.
5. An assault with the intention of kidnapping or abducting.
6. An assault with the intention of unlawfully confining a person, under circumstances that could reasonably make them believe they won't be able to seek help from the authorities to be released.

In simpler terms, you have the right to defend yourself, including causing harm or even death to your attacker, if you reasonably believe that the attack falls into any of the mentioned categories. This allows you to protect yourself from situations that could lead to severe harm or danger.

Case Law (2004 YLR LAH 2320(b))

It was held that sec 100 being subject to sec 99, and cannot be read in isolation from 99 PPC

Commencement ابتدا And Continuance of The Right of Private Defence of Body S.102:

The right to defend oneself begins when there is a reasonable fear of harm to the body due to an attempt or threat to commit a crime, even if the crime hasn't actually been committed yet. This right remains in effect as long as the fear of bodily harm continues.

In simpler terms, you have the right to protect yourself as soon as you reasonably believe that there is a threat to your physical safety, even if the actual crime hasn't occurred. This right remains valid as long as you genuinely feel that your body is in danger.

Conditions For Exercising Right of Self Defence:

Following condition must be fulfilled in order to exercise the right of self defence.

- (i) The accused must be free from fault in bringing about the encounter.
- (ii) There must be present impending **الآن والى** risk to life or great bodily harm either real or so apparent as to create honest belief of an existing necessity.
- (iii) There must be not safe or reasonable mode of escapable by retreat.
- (iv) There must have been a necessity for life taking.

Burdon of Proof:

In cases of self-defense, the burden of proof rests on the person claiming self-defense. They must provide evidence to convince the court that their actions were justified and that they reasonably believed they were in immediate **فوری** danger. The accused must demonstrate that their use of force was necessary and proportionate to protect themselves or others. The exact burden of proof and legal requirements may vary.

Case Law (2002 SCMR 1425)

It was held that when a specific plea of self defence is raised, the burden to prove the same laid upon the party claiming the same.

Conclusion:

In summary, the right of private defense grants individuals the ability to protect themselves and others from harm or imminent danger. It should be exercised with caution, using reasonable and proportionate force. Understanding the specific circumstances and consulting legal professionals is essential to ensure a proper understanding of this right.



Q. DEFINE AND DISTINGUISH BETWEEN ROBBERY AND DECOITY. ALSO STATE PUNISHMENT FOR THE TWO.

(OR)

Q. DEFINE AND EXPLAIN ROBBERY, DACOITY AND EXTORTION.

ROBBERY AND DECOITY

If someone steals something and while doing so, they intentionally harm or try to harm someone, or scare them with the threat of immediate harm or wrongful restraint, then it is called “Robbery”.

If someone threatens another person and forces them to give something valuable by making them afraid of immediate harm or danger, it is called extortion. If the person doing the extortion is physically present with the frightened person and uses the fear of immediate death, injury, or wrongful restraint (holding them against their will) to make them hand over the thing being demanded, then it is considered as robbery.

According To Section 390 of PPC:

In all robbery there is either theft or extortion.

When theft is robbery.

Theft is “robbery” if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.

Extortion is “robbery” if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Illustrations:

(a) A holds Z down, and fraudulently takes Z’s money and jewels from Z’s clothes, without Z’s consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b) A meets Z on the highroad, shows a pistol, and demands Z’s purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c) A meets Z and Z’s child on the highroad. A takes the child, and threatens to fling it down a precipice, unless Z deliver his purse. Z, in consequence, delivers his purse. Here A has

extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d) A obtains property from Z by saying __ “Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees.” This is extortion, and punishable as such: but it is not robbery, unless Z is put in fear of the instant death of his child.

Relevant Provision:

Following are the relevant provision of P.P.C:

- Section 390 and 392 for Robbery.
- Section 391 and 395 for Dacoity.

Essentials of Robbery:

Robbery is a serious criminal offense that involves the unlawful taking of someone else's property through the use of force, threat, or intimidation. To establish the crime of robbery, certain essential elements must be present.

i. Unlawful taking:

Robbery involves the taking or attempting to take someone else's property without their consent. The taking must be against the will of the owner or the person in lawful possession of the property.

ii. Property of another:

The property that is taken must belong to someone else. It could be tangible items like money, jewelry, or personal belongings, or intangible items such as documents or intellectual property.

iii. Presence of force or threat:

Robbery involves the use of force, threat, or intimidation to overcome the resistance of the victim or instil fear in them. This force or threat could be physical violence, the use of weapons, or verbal intimidation.

iv. Immediate presence:

In many jurisdictions, robbery requires the offender to be in the immediate presence of the victim during the commission of the crime. This means that the victim is aware of the offender's presence and their criminal intent.

v. Mens rea:

Robbery typically requires the presence of a specific mental state, known as mens rea, which refers to the intention or knowledge of committing a crime. The offender must possess the intent to unlawfully take the property and the knowledge that their actions are wrong.

Punishment For Robbery U/S 392:

A person who commits robbery will face punishment of rigorous imprisonment for a period not less than three years and not more than ten years. Additionally, they will be liable to pay a fine. If the robbery takes place on a highway, the imprisonment term may be extended up to fourteen years.

Criminal Law

Case Law (2005 TLR 128):

It was held that the offence of robbery though not compoundable but compromise always considered as redeeming feature. An accused can be acquitted on the basis of Compromise between the parties.

Dacoity U/S 391:

According to Section 391 of Pakistan Penal Code:

When five or more individuals collectively commit or attempt to commit a robbery, or when the total number of individuals involved in committing or attempting to commit a robbery, including those present and assisting in the act, reaches or exceeds five, each person involved in committing, attempting, or aiding the robbery is considered to have committed "dacoity."

Essentials of Dacoity:

Dacoity is a term used to describe a specific type of robbery that involves a group of five or more people acting together.

i. Conjoint Commission:

Dacoity involves the collective commission or attempted commission of a robbery by a group of five or more individuals. The individuals must be acting together, sharing a common intention to commit the crime.

ii. Robbery:

Dacoity is essentially an aggravated form of robbery. The act of robbery involves the unlawful taking or attempting to take someone else's property by using force, threat, or intimidation. The property taken must belong to another person.

iii. Group Participation:

All members of the group involved in the dacoity, including those directly committing the robbery and those present to aid and assist, are considered to have committed dacoity. Each individual must have a shared intention to commit the crime and actively contribute to its commission.

iv. Number Of Participants:

Dacoity typically requires a minimum of five individuals to qualify as such. If the total number of individuals involved in the commission or attempted commission of the robbery, including those directly involved and those aiding, reaches or exceeds five, it can be classified as dacoity.

v. Mens Rea:

Similar to robbery, dacoity generally requires the presence of a specific mental state, known as mens rea, which refers to the intention or knowledge of committing a crime. Each participant must have the intent to unlawfully take property through force, threat, or intimidation.

Proof of Dacoity:

A dacoity begins as soon as there is an attempt to commit robbery. It is not necessary that the force or menace should be displayed by any overt act and it may be implied in the conduct of the mob.

Punishment of Dacoity U/S 395:

The punishment for committing dacoity involves either imprisonment for life or rigorous imprisonment for a period of not less than four years and not more than ten years. In addition, the offender is also subject to a fine.

Jurisdiction of Court:

Offence u/sec 395, being trial by the court of session, magistrate section 30 had no jurisdiction to take cognizance of the same.(1995PrLj 1819)

Difference Between Robbery And Dacoity

Nature of Difference	Robbery	Dacoity
Definition	Robbery refers to the unlawful taking of someone else's property through force, threat, or intimidation by an individual or a group.	Dacoity is an aggravated شدت اختیار کر گئی form of robbery that specifically involves a group of five or more individuals acting together to commit or attempt to commit a robbery.
Number Of Participants	In robbery, the number of participants can vary, and it can be committed by an individual or a group of any size.	Dacoity requires the involvement of a minimum of five individuals who act collectively in committing or attempting to commit the robbery.
Severity	Robbery is generally considered a serious offense but may carry less severe penalties compared to dacoity.	Dacoity is considered an aggravated offense due to the involvement of multiple individuals acting in concert, which often leads to more severe penalties.
Punishment	A person who commits robbery will face punishment of rigorous imprisonment for a period not less than three years and not more than ten years.	The punishment for committing dacoity involves either imprisonment for life or rigorous imprisonment for a period of not less than four years and not more than ten years. In addition, the offender is also subject to a fine.
Collective Intention	In robbery, it is not necessary for all individuals involved to have a shared intention. Some participants may act independently, while others may collaborate.	Dacoity requires a collective intention, meaning all participants must share the intention to commit the robbery and actively contribute to its commission.
Presence Of	Robbery may involve the use	Dacoity often involves a

Violence	of force, threat, or intimidation, but the level of violence may vary depending on the circumstances.	higher likelihood of violence due to the presence of multiple offenders acting together, which increases the potential for more forceful tactics.
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Conclusion :

In conclusion, the definition of robbery requires the accused to have the intention to unlawfully take someone else's property. This can be accomplished by causing harm, restraining the person, or inducing fear of immediate harm or confinement. When five or more individuals are involved in committing this offense, it is considered a more serious and severe act.



Q. DISTINGUISH BETWEEN RIOTING AND AFFRAY WHAT PUNISHMENT IS PROVIDED FOR THIS OFFENCE.

Ans:

Introduction:

Chapter VIII of P.P.C deals with the offences against public peace. It may be disturbed even by single person but when it is disturbed by more than one person; the trouble becomes magnified and deserves special treatment. Both rioting and affray are offences against public peace but differ in their magnitude and scope.

Relevant Provisions:

following are the relevant provisions of P.P.C

- Section 146 and 147 for Rioting
- Section 159 and 160 for Affray

Rioting:

Definition U/Sec 147: Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Ingredients:

Following are the ingredients of an offence of rioting.

(i) Use of Force or Violence:

There must be use of force or violence by an unlawful assembly or any member thereof to constitute an offence of rioting. It is not necessary that the force or violence should be directed against any particular person or object.

(ii) By Unlawful Assembly or Any Member:

The force or violence must be used by an unlawful assembly or any member of it, so to constitute an offence of rioting all the ingredients of sec. 141 need to be fulfilled.

(iii) In Prosecution of Common Object:

Such force or violence should have been used in prosecution of the common object of such assembly.

Punishment For Rioting:

Here's a detailed explanation of the punishments for rioting as outlined in Sections 147 and 148 of the Pakistan Penal Code:

3) Section 147 - Punishment for Rioting:

Section 147 addresses the offense of rioting, which involves the use of force or violence by the members of an unlawful assembly. The key points to note are:

- **Punishment:** If the members of an unlawful assembly engage in rioting, the punishment can be up to two years of simple imprisonment, a fine, or both.
- **Elements:** For an assembly to be considered a riot, there must be a minimum of five individuals who use force or violence, or engage in tumultuous **بنگامہ خیز** and

disorderly conduct. The focus is on the conduct of the assembly, which disrupts public peace and creates a chaotic or threatening environment.

- **Collective Responsibility:** It's important to understand that all members of the unlawful assembly may be held collectively responsible for the offense of rioting, regardless of their individual level of involvement or participation in specific acts of violence.

4) Section 148 - Punishment for Armed Rioting:

Section 148 deals with the offense of armed rioting, which involves members of an unlawful assembly being armed with deadly weapons. Here are the key details:

“Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both”

Affray U/S 159:

When two or more persons, by fighting in a public place, disturb the public peace, they are said to “commit an affray”.

Ingredients:

(i) Two or More Person:

An affray requires two sides fighting.

Case Law (PLD 1959 LAH 1018)

It was held that on the offence of affray there must be two or more person. Passive submission by one party to a beating by the other is not affray.

(ii) Public Place:

Fighting must be at public place. A public place is one where the public go, on matter, Whether they have a right to go or not.

(iii) Disturbance of Public Peace:

It is essential that there must be a disturbance of the public peace i.e assault or breach of the peace. Mere quarrelling is not sufficient to attract section 159.

Punishment U/Sec 160:

Whoever commits an affray shall be punished with imprisonment of either for a term which may extend to one month or with fine which may extend to one hundred Rs. With both.

Distinction Between Rioting And Affray

Rioting and affray are both criminal offenses that involve public disturbances or violence. While there are similarities between the two, there are also key differences that set them apart. Here are the distinctions between rioting and affray:

Nature	Rioting	Affray
Definition	Rioting refers to a situation where a group of five or more individuals engage in violent or disorderly conduct in a public place, causing a disturbance, damage to	Affray occurs when two or more individuals engage in a public fight or violent confrontation <i>سامنا</i> that causes fear or alarm to others who are present at the scene.

	property, or fear among the public.	
Number Of Participants	Rioting involves a group of Five or more individuals acting together.	Affray can involve a minimum of two individuals engaging in a fight or violent confrontation.
Level Of Violence	Rioting typically involves a higher level of violence and may include actions such as property damage, arson آتش زنی, or physical assaults.	Affray generally involves a violent confrontation between individuals but may not necessarily involve the same level of violence as rioting.
Intent And Context	Rioting often involves a collective intent to disturb public peace or engage in violent behaviour. It is usually associated with larger-scale disturbances, protests, or mob violence.	Affray focuses more on the immediate violent confrontation between individuals. It may arise from a personal dispute or a sudden altercation جھگڑا in a public setting.
Public Alarm And Fear	Rioting causes fear, panic, and disruption among the general public due to the larger number of participants and the extent of the disturbance.	Affray primarily causes fear or alarm among the individuals who witness or are present at the scene of the violent confrontation.
Legal Consequences	Rioting is generally considered a more serious offense, often carrying more severe penalties due to the larger scale and potential for widespread harm or property damage.	Affray is still a criminal offense but may carry comparatively lesser penalties than rioting due to its more localized nature and involvement of fewer individuals.



Q. DEFINE QATL-E- AMD? WHEN IT IS LIABLE TO QISAS? DISCUSS THE CIRCUMSTANCES WHEN QISAS FOR QATL -E AMD SHALL NOT BE IMPOSED AND ENFORCED?

Q. WHAT IS THE RIGHT OF QISAS IN QATL-I-AMD? ALSO DISCUSS THE PROVISIONS RELATING TO THE EXECUTION OF QISAS.

Ans:

QATL

Definition of Qatl:

According to section 299 (j) of P.P.C:

“qatl” means causing death of a person;

In legal terms, "qatl" refers to the intentional and unlawful killing of another person with premeditation or malice aforethought. It is considered a serious criminal offense under the Pakistan Penal Code and is punishable by law.

Relevant Provisions:

Follow are the relevant provisions of P.P.C

From Section 300 to 322 P.P.C.

Kinds Of Qatl:

Following are the different kinds of Qatl.

- 1) **Qatl-I-AMD**
- 2) **Qatl shibh-i-Amd**
- 3) **Qatl –i- Khata**
- 4) **Qatl- Bis- Sabab**

1) **Qatl-I-AMD U/S 300:**

"Qatl-e-amd" refers to a situation where someone causes the death of another person intentionally or by performing an act that is highly likely to cause death. This act may be done with the intention of causing death or causing bodily harm, knowing that the act is extremely dangerous and likely to result in death. In simpler terms, if someone intentionally causes another person's death or does something that is very likely to cause death, it is considered as "qatl-e-amd" under the law.

Ingredients of Section 300 :

The following are the ingredients of Sec. 300 of P.P.C:

i. **Intention:**

To constitute the offence of Qatl- I-Amd there must be intention to cause death or to cause bodily injury, on the part of the offender where the accused had the intention to cause such bodily injury as he knew to be likely to cause the victim's death or if he knew that his act was so imminently dangerous that it must in all probability cause death he would be guilty of Qatl-i-amd.

ii. Act Likely to Cause Death:

Intention must be accompanied ساتھ with doing of an act which in the ordinary course of nature is likely to cause death or which is so imminently dangerous that it must in all probability cause death. The phrase “Imminently dangerous” deals with cases where an act is done without any intention to kill but with such utter disregard of consequences that there is imputable ناقابل قبول knowledge that death is an extremely contingency احتمال وقوع .

Illustration:

If “A” shoots “B” with the intention of killing him. “A” commits the offence of Qatl-i-amd.

iii. Causing of Death:

To constitute Qatl-i-amd. The act must result in causing of death of another person. Accused الزام can come within the mischief فساد of this section only if death is direct result of the injury inflicted by the accused. (PLD1976 Sc 377) C.

Determining Factors:

Following factors may be taken into consideration by the court to determine whether the accused is guilty of qatl-i-amd or not.

1. Manner of causing the injuries as defined by the prosecution witnesses.
2. The nature of the injuries caused.
3. The part of the body where they were caused.
4. The weapon used by the accused in the commission of the offence.
5. The conduct of the accused.

Proof of Qatl-I-Amd:

Prosecution has to establish its case against the accused beyond reasonable doubt and every doubt is to be resolved in favour of the accused. (2994 SC MR 1614)

Punishment of qatl-e-amd U/S 302:

Whoever commits qatl e amd shall, subject to the provisions of this Chapter be :

- (a) punished with death as qisas;
- (b) punished with death for imprisonment for life as ta'zir having regard to the facts and circumstances of the case, if the proof in either of the forms specified in section 304 is not available; or
- (c) punished with imprisonment of either description for a term which may extend to twenty five years, where according to the Injunctions of Islam the punishment of qisas is not applicable.

Case law (P.L.D 1994 S.S 274)

Sec. 302 of Pakistan penal code therefore, itself contemplates غور و فکر کرتا ہے plainly clearly a category of cases which are within the definition of Qatl-I Amd but for which the punishment can, under the Islamic Law, be one other than death or life imprisonment. And to what are the cases falling under clause of 302, the, law maker has left it to courts to decide on a case to case basis.

Proof of Qatl-i-Amd Liable to Qisas U/S 304:

Proof of Qatl-i-AMD shall be in any of the following forms.

- (i) Confession اقرار
- (ii) Evidence provided by article 17 Q.S.O, 1984.

(i) Confession:

Accused must make before a court competent to try the offence a voluntary and true confession of the commission of the offence.

a. Meaning of Confession:

“it is not defined in P.P.C.”

Naryanswami vs Emperor (air 1939):

“A” confession is a statement made by an accused which must either admit in terms the offence or at any rate substantially all fact which constitute the offence.”

b. Before Competent Court:

Confession must be made before a court competent to try the offence. Extra judicial confession is excluded from the ambit of proof of Qatl-I amd liable to qisas, by sec. 340 P.P.C.

c. True and Voluntarily:

The test of admissibility of confession its voluntariness, the question as to whether a confession was voluntary being a question of fact, had to be determined keeping in view the facts and circumstances of each case are hard and fast rule of general application could be laid down (2003PCRLJ1212)

(i) Evidence Provided in Article 17 of Q.SO 1984)

Qatl-i-AMD liable to Qisas may be proved by the evidence as provided in Article 17 of Q.S.O,1984.

Right of Qisas in Qatl I Amd U/S 313:

(1) Where there is only one wali, he alone has the right of qisas in qatl iamd but, if there are more than one, the right of qisas vests in each of them.

(2) If the victim:

(a) has no wali the Government shall have the right of qisas; or

(b) has no wali other than a minor or insane or one of the wali is a minor or insane, the father or if he is not alive the paternal grandfather of such wali shall have the right of qisas on his behalf:

Provided that, if the minor or insane wali has no father or paternal grandfather, how high so-ever, alive and no guardian has been appointed by the court, the Government shall have the right of qisas on his behalf.

Qatl I Amd Not Liable To Qisas U/S 306:

Qatliamd shall not be liable to qisas in the following cases:

(a) when an offender is a minor or insane:

Provided that, where a person liable to qisas associates himself in the commission of the offence with a person not liable to qisas with the intention of saving himself from qisas, he shall not be exempted from qisas.

(b) when an offender causes death of his child or grandchild, how low so ever; and

(c) when any wali of the victim is a direct descendant, how low-so-ever, of the offender.

Cases in which Qisas for Qatleamd shall not be enforced U/S 307:

(1) Qisas for qatliamd shall not be enforced in the following cases:

(a) when the offender dies before the enforcement of qisas ;

(b) when any wali voluntarily and without duress, to the satisfaction of the court, waives the right of qisas under section 309 or compounds under section 310; and

(c) when the right of qisas devolves on the offender as a result of the death of the wali of the victim, or on the person who has no right of qisas against the offender.

(2) To satisfy itself that the wali has waived the right of qisas under section 309 or compounded the right of qisas under section 310 voluntarily and without duress the court shall take down the statement of the wali and such other persons as it may deem necessary on oath and record an opinion that it is satisfied that the waiver or, as the case may be, the composition, was voluntary and not the result of any duress.

Illustrations

(i) A kills Z, the maternal uncle of his son B. Z has no other wali except D, the wife of A. D has the right of qisas from A. But if D dies, the right of qisas shall devolve on her son B who is also the son of the offender A. B cannot claim qisas against his father. Therefore, the qisas cannot be enforced.

(ii) B kills Z, the brother of her husband A. Z has no heir except A. Here A can claim qisas from his wife B. But if A dies, the right of qisas shall devolve on his son D who is also son of B, the qisas cannot be enforced against B.

2) Qatl Shibh-i-Amd U/S 315:

"Qatl-e-Shibh-e-Amd" refers to a situation where someone causes the death of a person, or any other person, by intending to cause harm to their body or mind. This harm can be inflicted using a weapon or through an act that, under normal circumstances, would not likely cause death. In simpler terms, if someone causes the

death of another person or someone else while intending to harm them physically or mentally, using a method that wouldn't normally result in death, it is considered as "qatl-e-shibh-e-amd" under the law.

Illustration:

A in order to cause hurt strikes Z with a stick or stone which in the ordinary course of nature is not likely to cause death. Z dies as a result of such hurt. A shall be guilty of qatl shibhi' amd.

Ingredients of Sec 315:

Following are the essential ingredient of sec.315.

- (i) Causing death of human beings.
- (ii) Intention was to cause harm to body or mind.
- (iii) Death must be caused by means of a weapon or a act.
- (iv) Which in ordinary cause of nature is not likely to cause death.

Punishment u/sec 316:

Whoever commits qatl-shibhi amd be liable to diyat and may also be punished with imprisonment of either description for a term which may extend to fourteen years as tazir.

Meaning of Diyat u/sec 299(e):

Diyat means the compensation specified in section 323 payable to the heirs of the victim. Which is not less than the value of thirty thousand, six hundred and thirty grams of silver.

3) Qatl-i-khata U/S 318:

"Qatl-e-Khata" refers to a situation where someone unintentionally causes the death of a person without any intention to cause harm or death. This can occur due to an accidental act or due to a mistaken belief or misunderstanding of the situation. In simpler terms, if someone causes the death of another person by mistake, either by their actions or due to a mistaken belief, it is considered as "qatl-e-khata" under the law.

Illustrations:

- (a) A aims at a deer but misses the target and kills Z who is standing by A is guilty of qatlikhata.
- (b) A shoots at an object but it turns out to be a human being. A is guilty of qatlikhata.

Ingredients of Section 318:

Following are the essential ingredients of sec 318.

- (i) Causing death of a human being.
- (ii) Unintentionally
- (iii) By mistake of fact, or
- (iv) By mistake of act.

Punishment for Qatl-i-khata U/S 319:

The person who commits "qatl-e-khata" shall be held responsible for diyat (compensation for the family of the deceased مرده). However, if the act of "qatl-e-khata" is committed due to reckless لا پرواہی or negligent behaviour, except for reckless or negligent driving, the offender may also face imprisonment of up to five years as ta'zir (discretionary punishment) in addition to paying diyat.

Punishment for Qatl-i-khata U/S 319 By Rash Or Negligent Driving:

If a person commits "qatl-e-khata" through reckless or negligent driving, considering the facts and circumstances of the case, they shall be liable for imprisonment of up to ten years, in addition to paying diyat (compensation for the family of the deceased). The severity of the punishment takes into account the gravity of the offense and the impact of the person's reckless or negligent driving behaviour.

Scope:

Word driving in its application u/sec 320 is limited to a person or person on road and not to animals on the road. Injury or death of occupants or passengers of a driven vehicle will not be covered by mischief of sec. 320 P.P.C(1995MILD 1775)

4) Qatl- Bis- Sabab U/S 321:

"Qatl-bis-Sabab" refers to a situation where if someone unintentionally causes the death of another person by engaging in an unlawful act, without any intention to cause harm or death, it is considered as "qatl-bis-sabab" under the law.

Illustration:

A unlawfully digs a pit in the thoroughfare راستہ, but without any intention to cause death of, or harm to, any person. B while passing from there falls in it and is killed. A has committed qatlbissabab.

Ingredients of Sec 321:

Following are the essential ingredients of sec. 321.

- (i) Causing death of a human being.
- (ii) Unintentionally.
- (iii) By doing of an unlawful act .
- (iv) That unlawful act becomes the cause of the death.

DIFFERENCE BETWEEN QATL-L-KHATA AND QATAL- BIS- SABAB

Nature	Qatl-i-Khata	Qatl-bis-Sabab
As To Mistake	Qatl-i-khata is committed due to some mistake which is either of fact or act.	Qatl- bis – sabab is wholly unintentional and with any mistake
Cause of Death	In Qatl-i-khata, cause of the death is the direct act of the offender	In Qatl-bis-sabsb, cause of the death is some another unlawful intervening act
Aggravating Punishment	Punishment of qatl-I –khata is the payment of diyat but if it is committed by any rash of negligent act the offender	Qatl-i-bis-sabab is punishable only with dityat.

	may. In addition to diyat also be punished with imprisonment.	
Effect Of Rash Or Negligent	If Qatl-i-khata is committed by rash or negligent driving the punishment is the payment of Diyt with imprisonment which may extend to ten years.	Effect of driving is not provided for qatl-bis-sabab.



Q. EXPLAIN QATL COMMITTED UNDER 'IKRAH- I-TAM' AND 'IKRAH-I-NAQIS'.

Ans:

QATAL

Qatl refers to the offense of murder or causing someone's death unlawfully. Under the Pakistan Penal Code, there are two specific circumstances in which qatl can be committed:

1. "Ikrah-i-Tam"
2. "Ikrah-i-Naqis."

1. Ikrah-i-Tam:

"Ikrah-i-Tam" refers to a situation where the offender exercises complete and absolute coercion over the victim, leaving them with no choice but to comply, even if it leads to their death. In such cases, if the victim dies as a direct result of the coercion, the offender can be charged with qatl.

Example 1: A person holds a gun to someone's head and demands that they jump off a high building. Fearing for their life, the victim complies and jumps, resulting in their death. The person holding the gun would be liable for qatl committed under Ikrah-i-Tam because the victim had no alternative but to obey the coercive demand.

Example 2: An individual kidnaps someone and threatens to kill their family members unless they ingest a lethal dose of poison. The victim, under extreme duress, consumes the poison and dies. The kidnapper would be charged with qatl under Ikrah-i-Tam since the victim had no option but to comply due to the imminent danger to their loved ones.

2. Ikrah-i-Naqis:

"Ikrah-i-Naqis" refers to a situation where the offender exerts partial or incomplete coercion over the victim, who still retains some freedom of choice or ability to resist. If, during such circumstances, the victim dies as a direct result of the coercion, the offender can be held accountable for qatl.

Example 1: A person physically assaults another and threatens to continue the assault unless the victim consumes a poisonous substance. While the victim could potentially resist or seek help, the fear and physical domination by the assailant lead them to ingest the poison, resulting in their death. The offender would be charged with qatl under Ikrah-i-Naqis because the victim had some capacity to resist or seek assistance, but the coercion and fear prevented them from doing so effectively.

Example 2: An individual forces someone into a confined space and starts a fire, blocking all escape routes. The victim, trapped and fearing the imminent danger, jumps from a window to escape but suffers fatal injuries. The person who initiated the fire would be charged with qatl under Ikrah-i-Naqis since the victim had limited options for escape due to the coercion and lethal situation created by the offender.

In both cases, it is crucial to establish that the coercion directly led to the victim's death, and the victim had no reasonable means to escape the situation or defend themselves effectively.

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The specific circumstances and evidence presented in each case would determine the penalties for qatl committed under Ikrah-i-Tam or Ikrah-i-Naqis.



Q. DEFINE AND DISTINGUISH BETWEEN THE OFFENCE OF KIDNAPPING AND ABDUCTION? AND DISCUSS PUNISHMENTS FOR VARIOUS KINDS OF KIDNAPPING.

Ans:

KIDNAPPING AND ABDUCTION

Kidnapping and abduction involve the unlawful and forcible زبردستی taking or removal of a person against their will. They are serious offenses that violate a person's liberty and can cause significant harm to a person.

KIDNAPPING U/S 359:

According to sec 359 of PPC, There are two types of kidnapping:

- 1. Kidnapping From Pakistan (Sec 360)**
- 2. Kidnapping From Lawful Guardian Ship (Sec. 361)**

1. Kidnapping From Pakistan U/S 360:

If someone takes a person out of Pakistan without that person's permission or the permission of someone who can give consent on their behalf, it is considered kidnapping from Pakistan.

i. Scope:

The offence of Kidnapping out of Pakistan may be committed in respect of minors as well as grown up persons.

ii. Ingredients:

Following are the essential ingredients of sec 360.

a) Conveying of any person:

There must be conveying of any person beyond the limits of Pakistan, from Pakistan.

b) Without Consent:

Such conveying must be without the consent of that person or of some person, legally authorized to consent on behalf of that person.

iii. Meaning of Consent:

Consent means as active will in the mind of a person to permit the doing of the act complained of and knowledge of what is to be done, or of the nature of the act that is being done.

2. Kidnapping From Lawful Guardian Ship U/S 361:

If someone takes or convinces a child under 14 years old if they are a boy, or under 16 years old if they are a girl, or a person who is mentally incapable, away from their legal guardian without the guardian's permission, it is called kidnapping them from their rightful guardian.

Ingredients of This Section:

- There must be taking or enticing of a person.
- Person is minor or person is unsound minded.
- Minor must be under fourteen years of age, if a male or under sixteen years of age, if a female.
- The taking or enticing must be out of the keeping of the lawful guardian.
- The taking or enticing must be without the consent of guardian.

Explanation of Section 361:

- In this section, the term "lawful guardian" refers to any person who has been legally given the responsibility to take care of or have custody of the minor or the person in question.
- This section does not apply to someone who, in genuine belief, considers themselves to be the father of an illegitimate غیر قانونی child or believes they have the right to legal custody of such a child, unless their actions are done for immoral or unlawful reasons.

Illustration:

“A” enticed “B” a minor girl to come out of the house and sit in the car with him, so that he might drive away with her. The offence of Kidnapping was complete when “B” drove away with her.

Punishment U/Sec 363:

If someone kidnaps a person from Pakistan or from their lawful guardian, they can be punished with imprisonment for up to seven years and may also be required to pay a fine.

ABDUCTION U/A 362:

If someone uses force to make a person go somewhere or tricks them into going, it is called abduction.

Ingredients:

(i) **Forceful Compulsion or Inducement:**

There must be forceful compulsion or inducement by deceitful means to any person. Force means the actual force and not the show of force.

(ii) **To Go From one Place to Another:**

The object of such compulsion or inducement must be the going of a person from any place. It is a continuing offence, and a girl is being abducted not only when she is first taken from any public place but also when she is removed from one place to another.

Scope:

Section 362 merely gives a definition of the word abduction which occurs in some of the penal provision which follow. It is an auxiliary معاون act, not punishable by itself.

Kidnapping or Abducting in Order To Murder U/S 364:

If someone kidnaps or abducts a person with the intention of causing harm or putting them at risk of being murdered, they can be punished with either life imprisonment or rigorous imprisonment for up to ten years, and they may also be required to pay a fine.

Illustrations

- a) If person A takes person Z away from Pakistan with the intention or knowledge that Z might be offered as a sacrifice to an idol, then A has committed the offense described in this section.
- b) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

Kidnapping or Abducting A Person Under The Age of 14 Years U/S 364-A:

If someone kidnaps or abducts a person who is younger than fourteen years old with the intention of causing them to be murdered, seriously harmed, enslaved, or sexually exploited, or putting them at risk of such harm, they can be punished with the death penalty or life imprisonment or rigorous imprisonment for a period of up to fourteen years, but not less than seven years.

DIFFERENCE BETWEEN KIDNAPPING AND ABDUCTION

We can differentiate kidnapping from abduction through following points:

NATURE OF DIFFERENCE	KIDNAPPING	ABDUCTION
Means Used	In kidnapping the minor is simply taken away. The means used may be innocent	In abduction force, compulsion or deceitful means are used.
Scope	Kidnapping is committed only in respect of a minor or person of unsound mind or if it is from Pakistan, of person of any age.	Abduction is committed in respect of any person of any age.
Kinds	Kidnapping is of two kinds i.e; kidnapping from guardianship and kidnapping from Pakistan.	Abduction can be any type of kidnapping with presence of force of deceitful means.
Effect of Consent	In kidnapping from guardianship consent of a person taken or enticed is immaterial.	If person is removed with his or guardian's consent then its not abduction.
Place	In kidnapping from Pakistan, the place to which the victim is taken must be outside the limits of Pakistan or from lawful guardian ship.	In abduction, the place is not important
As To Guardian	In kidnapping from guardianship a child with guardian cannot be assumed as kidnapping.	Abduction has reference exclusively to the person abducted.

Intent	In kidnapping, the intent of the offender is wholly irrelevant.	In abduction, intention is the most important factor.
Continuous	Kidnapping from guardianship is not a continuing offence and it is complete as soon as the minor is removed from the custody of his or her guardian.	Abduction is a continuing offence and a person is abducted both when he is first taken from any place and also when he is removed from one place to another.
Nature	Kidnapping is a substantive offence.	Abduction not punishment by itself unless accompanied with some criminal intent.

In summary, kidnapping is considered a punishable offense regardless of the intent behind it, while abduction is an auxiliary act that is not inherently punishable but becomes a crime only when carried out with criminal intentions.



Q. WRITE A COMPRESSIVE NOTE ON 'WRONGFULLY RESTRAINT' AND 'WRONGFUL CONFINEMENT'.

Ans:

Wrongful Restraint:

Wrongful restraint refers to the intentional obstruction or hindrance of a person's freedom of movement without their consent and without lawful justification. It involves restraining someone's physical movements to restrict their liberty or prevent them from going where they have a right to go.

Essential Elements:

To establish wrongful restraint, the following elements must be present:

a. Intentional Obstruction:

The act of intentionally blocking or hindering someone's movement.

b. Lack of Consent:

The person being restrained did not willingly agree to the restraint.

c. Absence of Legal Justification:

There is no legal justification for the restraint.

Examples:

- a. Holding someone against their will in a locked room.
- b. Tying someone up with ropes, preventing them from leaving.
- c. Physically blocking the path of a person to prevent them from moving forward.
- d. Forcing someone into a confined space against their will.

Wrongful Confinement:

Wrongful confinement refers to the intentional act of unlawfully and wrongfully detaining or confining a person against their will, depriving them of their freedom to move and restricting their liberty for an extended period of time.

Essential Elements:

To establish wrongful confinement, the following elements must be present:

a. Intentional Detention:

The deliberate act of detaining or confining someone.

b. Lack of Consent:

The person being confined did not give their consent willingly.

c. Absence of Legal Justification:

There is no lawful reason or justification for the confinement. d. Extended Duration: The confinement lasts for a significant period, beyond mere restraint.

Examples:

- a. Locking someone in a room or a cage against their will.

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- b. Holding someone hostage for an extended period.
- c. Kidnapping and keeping the person confined against their will.
- d. Forcing someone to remain in a hidden location without their consent.

In both wrongful restraint and wrongful confinement cases, the intentionality of the act, lack of consent from the victim, and absence of legal justification are crucial factors in determining culpability. The penalties for these offenses vary depending on the jurisdiction and the severity of the act, with more severe cases carrying harsher punishments.

It is important to note that the specific legal definitions and provisions may vary across different legal systems and jurisdictions, so it is advisable to consult the applicable laws in a particular jurisdiction for precise understanding and interpretation.



Q. EXPLAIN DIFFERENT KINDS OF HURT PRESCRIBED IN PAKISTAN PENAL CODE?

Q. WHAT IS HURT? DIFFERENTIATE BETWEEN 'ITLAF-I-UDW' AND 'LTLAF-I-SALAHIIYYAT-I-UDW'.

HURT, ITS KINDS AND PUNISHMENT OF HURT

"Hurt" refers to causing physical pain, injury, or harm to another person. It includes any act that causes bodily pain, illness, or any impairment كمزوری of physical condition. The term encompasses احاطه a wide range of actions, from minor injuries to severe harm, and can be intentional or unintentional.

Relevant Provision:

Following are the relevant provisions of P.P.C.

Section 332 to 337 P.P.C.

Definition of Hurt U/Sec 332(1):

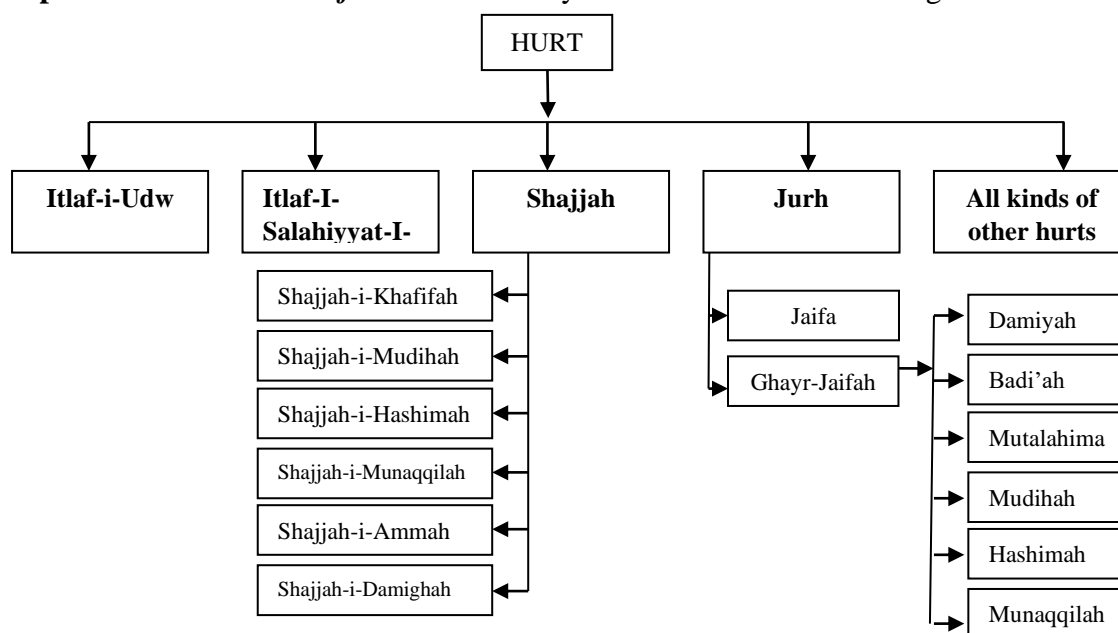
According to this section, If someone causes pain, harm, illness, disability, or injury to another person without causing their death, or if they damage or remove a body organ or part, they are said to have caused hurt.

Kinds of Hurt U/S 332(2):

The following are the kinds of hurt:

- (a) **Itlaf-i-Udw**
- (b) **Itlaf-I-Salahiyyat-I-Udw**
- (c) **Shajjah**
- (d) **Jurh ;and**
- (e) **All kinds of other hurts.**

Important: The word *Itlaf* means to destroy and *Udw* means limb or organ.



(A) ITLAF-I-UDW U/S 333:

Whoever dismembers, amputates, severs any limb or organ of the body of another person is said to cause Itlaf i udw.

Punishment for itlaf-i-udw U/S 334:

Whoever by doing any act with the intention of thereby causing hurt to any person or with the knowledge that he is likely to cause hurt to any person causes Iylaf-i-udw of any person shall be punished with:

- a) **Qisas:** In consultation with the authorized medical officer, that is the court will require the authorized medical to appear as a witness to give opinion, in view principles of equality.

Illustration: An offender inflicts blow with sword resulting amputation of one- fourth of left forearm. The punishment of qisas will be executable only if the authorized medical officer an opinion the similar result could possibly be achieved without any additional damage to the offender.

- b) **Arsh:** If the qisas is not executable and is mandatory upon the court and may also be punished with a form of compensation or imprisonment either description for a term which may extend to ten years as a *Tazir* and it is discretionary with the court.

(B) ITLAF-I-SALAHIIYYAT-I-UDW U/S 335:

The act of causing the destruction or permanent impairment کمزوری of the functioning, power, or capacity of an organ of another person's body, or inflicting permanent disfigurement, is referred to as "itlaf I salahiyat I udw."

Punishment for itlaf i salahiyat i udw U/S 336:

Any person who intentionally performs an action with the aim of causing harm to someone or with the awareness that it is likely to cause harm, resulting in the destruction or permanent impairment of any person's organ, will be subject to punishment. The punishment will be determined by consulting the authorized medical officer. It can include retribution (qisas) if applicable and executable under the principles of equality according to Islamic teachings. If qisas is not applicable, the offender may be held accountable for "arsh," a form of compensation, and may also face imprisonment for a period of up to ten years as determined by the judge (ta'zir).

(C) SHAJJAH U/S 337(1):

It is an Arabic word which means injuries on head or face. According to Section 337 (1) of PPC :

Whoever causes, on the head or face of any person, any hurt which does not amount to *itlaf iudw* or *itlaf I salahiyat iudw*, is said to cause *shajjah*.

Kinds of Shajjah U/sec 337(2):

Following are the kinds of shajjah:

- A. Shajjah-i-Khafifah
- B. Shajjah-i-Mudihah
- C. Shajjah-i-Hashimah

D. Shajjah-i-Munaqqilah

E. Shajjah-i-Ammah

F. Shajjah-i-Damighah

A. Shajjah-i-khafifah :

It means hurt by any weapon on head or face without exposing bone of the victim.

Punishment U/sec 337-A(i):

Shall be liable to daman , which is mandatory and is to be finds by court in its discretion and may also be punished with imprisonment of either description for a term which may extend to two years as Tazir.

B. Shajjah-i-Mudihah:

It means simple hurt by any weapon on head or face where thought bone is exposed but on fracture is caused.

Punishment U/sec 337-A(ii):

The person causing it shall be punished with qisas after consultation with the authorized medical officer and if it not executable, the convict shall be liable to Arsh which shall be five person of value of Diyat and may also be punished with imprisonment of either description for a team which may extend to five years as tazir.

C. Shajjah-i-Hashimad:

It is grievous دردناک hurt by any weapon on head or face, resulting in fracture of bone of the victim without dislocation it.

Punishment U/sec 337-A(iii):

The person causing it shall be liable to Arsh which shall be ten percent of the diyat and may also be punished with imprisonment of either description for a team which may extend to ten years as Tazir.

D. Shajjah-i-Munaqqilah:

It is grievous hurt by any weapon on head or face, resulting in fracture and dislocation of bone of victim.

Punishment U/sec 337-A(iv):

The person causing it shall be liable or arsh which shall be 15% of the diyat and may also be punished with imprisonment of either description for a term which may extend ten years as Tazir.

E. Shajjah-i-Ammah:

It is grievous hurt by any weapon causing fracture of the skull of the victim, where the wound touches the membrane of the brain.

Punishment U/sec 337-A(v):

The person causing is shall be liable to Arsh which shall be one-half of the diyat and may also be punished with imprisonment of either description for a team which may extend to fourteen years as tazir.

F. Shajjah-i-Damighah:

It is grievous hurt by any weapon causing fracture of the skull of the victim, so that the wound ruptures the membrane of the brain.

Punishment U/sec 337-A (vi):

The person causing it shall liable to arsh which shall one-half of diyat and may also punished with imprisonment of either description for a term which may extend to fourteen years as tazir.

(D) JURH U/S 337-B(1) :

The word jurh is derived from the word Jarroh which means injury. The act of causing an injury on any part of a person's body, except the head or face, that results in a visible mark, whether temporary or permanent, is referred to as "jurh."

Kinds of Jurh U/sec 337-B(2):

There are two kinds of Jurh:

- (i) Jaifah
- (ii) Ghayr-Jaifah

(i) Jaifah U/sec 337-C:

Whoever causes jurh in which the injury extends to the cavity of the trunk, is said to cause jaifah.

Case Law (PLD 1998 LAH 84)

Body cavity means a part of body under which vital organs are located and if an injury penetrates into the body cavity and then exters the pert of the body where in vital organ are located, lonely then that can be treated as Jaifah and punishment can be awarded accordingly.

Punishment for Jaifah U/sec 337-D:

The person causing it, with the intention or knowledge of hurt to a hurt to a person, shall be liable to arsh which shall be one-third of the diyat and may also be punished with imprisonment of either description for a term which may extend to ten years as tazir.

(iii) Ghayr-Jaifah U/S 337-E(1):

Whoever causes jurh which does not amount to jaifah , is said to cause ghayr-jaifah.

Kinds of Ghayr- Jaifah:

Following are the kinds of Ghayr-jaifah.

- 1) Damiyah;
- 2) Badi'ah;
- 3) Mutalahimah;
- 4) Mudihah;
- 5) Hashimah; and
- 6) Munaqqilah.

1. Damiyah:

It is injury in which the skin is ruptured and bleeding occurs.

2. Badiyah:

It is a injury by cutting or incising the flesh without exposing the bone.

3. Mutalahima:

It is a injury by lacerating the flesh.

4. Mudihah:

It is injury by exposing the bone.

5. Muanaqqilah:

It is a injury by fracturing and dislocation the bone.

Punishment of Ghayr-Jaifh u/sec 337-F:

If a person with the intention or knowledge of causing hurt causes any of Ghayr-jaifah injuries shall be punished as under.

a. Punishment for Damiyah:

He shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to one year as tazir.

b. Punishment for Badiyah and Mutalahimah:

He shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to three years as tazir.

c. Punishment For Mudihah And Hashimah:

He shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to five years as tazir.

d. Punishment for Munaqqilah:

He shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to seven as tazir.

(E) ALL KINDS OF OTHER HURT:

A hurt which is not covered by any of the four clauses give above, and which endangers life or causes the sufferer to remain server bodily pain for 20 day or more or render him unable to follow the ordinary pursuits for 20 days or more, is covered by daman and may be imprisoned up to seven years, and if it is not of kind mentioned here before the punishment shall be imprisonment which may extend to two years or with daman or both.

Conclusion:

In conclusion, I can say that the penalties for causing harm have been established by law in compliance with the teachings of Islam. Each offense is clearly defined, and the punishment of Ars/Damann has been established as a distinct offense.



Q. DEFINE HADD AND TAZIR WHAT IS DISTINCTION BETWEEN THESE TWO?

(OR)

Q. DEFINE HADD AND TAZIA. DISCUSS THE OFFENCES PUNISHABLE BY HADD.

HADD & TAZIR

When certain public rights are infringed upon, the resulting wrongdoing is termed as "maasiat," referring to a crime or offense. This violation gives rise to specific substitute public rights known as "uqa'bat" punishments, namely Hadd and Tazir. The differentiation between Hadd and Tazir is crucial and revolves around the fundamental doctrine of Hadd itself.

Types Of Punishment:

Punishments are divided into two types:

- (i) Hadd**
- (ii) Tazir**

i) HADD:

Meaning Of Hadd:

The word Hadd literally means prevention, measure, limit.

Legal Meaning:

“Hadd Means a punishment which is fixed and enjoined as the right of Allah.”

Origin Of HADD Punishment:

During the time of the promulgation of Islam, Hadd punishments were commonly practiced in Arabia. The Islamic legal system, known as *MUHAMMADAN LAW*, established strict conditions that needed to be met for the imposition of these punishments. These conditions were stringent in nature and aimed to ensure that Hadd penalties were applied appropriately and in accordance with the principles of justice and fairness.

Object Of Punishment In Islam:

It was held that object of punishment is reformation of convicts and not to penalize them vengeance. (Case Law 1999 MLD 2450)

ii) TAZIR:

Meaning Of Tazir:

Tazir literally means disgracing the criminal for his shameful conduct.

Legal Meaning:

“Punishment that are at the discretion of the judge when the offence is related to a private injury are called Tazir.”

DIFFERENCE BETWEEN HADD AND TAZIR:

There is no indication in Sunnah about the difference between Hadd and Tazir. It would be open to legislature to add to the categories of Hadd and also enhance the punishment fixed by The Holy Quran and the Sunnah keeping in view, the circumstances and requirements of an age, though the punishments so fixed cannot be reduced (PLD 1983 FSC 255)

The following are some points of distinction between Hadd and Tazir.

- (I) **As To Object:**
The object of Hadd is prevention of a crime by following the principle of retaliation and keeps everyone in the limits prescribed by Allah. To object of Tazir is reformation and correction of the offender.
- (II) **Procedure:**
The procedure of trial in Hadd is complicated. The procedure of trial in Tazir is simple as according to some jurists judge can even render judgement on the basis of his own knowledge.
- (III) **As To Right:**
Violation of rights of Allah gives rise to hadd punishments. Violation of rights of individual gives rise to hudud punishments.
- (IV) **Commuting Of Sentence:**
The penalty of Hadd cannot be commuted. The penalty of Tazir can be commuted
- (V) **Pardon Of Sentence:**
Pardon cannot be granted in Hudud cases. Pardon may be granted in Tazir cases.
- (VI) **Operation Of Mistake:**
Doubt or mistake has the effect of waiving the penalty of hadd. Doubt or mistake has effect in Tazir.
- (VII) **Rule Of Evidence:**
Evidence of women is not admissible in hudud cases. The evidence of women is admissible in Tazir cases, but the nisab of one man and two women has to be maintained.
- (VIII) **Standard Of Evidence:**
In Hudud, the standard of evidence is very high as to the number and qualification of witnesses and the conditions under which hadd may be imposed and any doubt would be sufficient to prevent the imposition of hadd. In Tazir, the standard of evidence is not so high.
- (IX) **Mention Of Offences:**
Some jurists list seven hadd offences.
(i) Zina (ii) Sariqah (iii) Hirabah (iv) Qazf (v) Sharab (vi) Riddha (vii) Baghy
Tazir offences has not be mentioned exclusively and they are innumerable.
- (X) **Discretion:**
In Hudud crimes, the judge cannot exercise his discretion. In Tazir. Judge or head of the state may exercise discretion.
- (XI) **Replacement:**
Hadd punishments can be death with under Tazir. In Tazir the punishment of Hudud cannot be enforced.

Conclusion:

In conclusion, Hadd and Tazir punishments are integral aspects of Islamic law. Hadd, which existed in Arabia prior to the emergence of Islam, represents a form of punishment predating Tazir. In contemporary Pakistan, Tazir and Siyasaah are both classified under the broader category of Tazir. The enforcement of Hudud laws in Pakistan is governed by the Hudood Ordinance (No. 4) of 1979, which pertains to offenses against property, and the Zina Ordinance (Enforcement of Hadd) of 1979. These laws outline the regulations and procedures related to the implementation of Hadd punishments within the country.



Q. DEFINE DEFAMATION AND ALSO DISCUSS STATUTORY EXCEPTIONS ENVISAGED THERE IN?

(OR)

Q. DEFINE DEFAMATION WHAT ARE THE EXCEPTION TO THE CHARGE OF DEFAMATION? DISCUSS.

(OR)

Q. DEFINE DEFAMATION WHAT ARE THE DEFENCES AVAILABLE TO A CHARGE OF DEFAMATION.

DEFAMATION

The core nature of the offense of defamation lies in its potential to inflict emotional distress upon an individual who becomes aware of being the target of unfavourable opinions from others, along with the resulting hardships that such unfavourable opinions may bring. Chapter XXI of the Pakistan Penal Code (PPC) is dedicated to the subject of defamation, addressing the legal aspects and consequences of this offense.

Relevant Provisions:

Following are the relevant provisions of P.P.C for defamation.

- Section 499 to 502 of P.P.C

Defamation U/Sec 499:

Any individual who, through spoken or written words, signs, or visible representations, creates or disseminates **الزّام** **پھیلاتا ہے** an allegation about someone else with the intention of causing harm or with the knowledge or reasonable belief that such allegation will damage the person's reputation, is considered to defame that person. However, certain exceptions mentioned later in the law may apply.

Ingredients Of Sec. 499:

The offence of defamation consists of following essential ingredients.

(i) **Making or Publishing any Imputation** **اتهام:**

There must be making or publishing of any imputation concerning any person, that is, communicated to some person other than the person to whom it is addressed, e.g. dictating a letter to a clerk is publication. It is immaterial whether the imputation is conveyed indirectly or by way of question, exclamation or by irony **ستم ظریفی**.

(ii) **Concerning Any Person:**

The words must contain an imputation concerning some particular person or persons whose identity can be established.

(iii) **Mode of Such Imputation:**

Such imputation must have been made by either of following modes.

a. Words: Such imputation may be made by words either spoken or intended to be read.

b. By Signs or Visible Representation: Imputation may be made or visible representations. The words "Visible representations" will include every possible

form of defamation which ingenuity can devise . For instance, a statute, chalk marks on a wall, signs or pictures may constitute a imputation.

(iv) **Intention, Knowledge or Belief to Harm the Reputation:**

It is not necessary to prove that the complainant actually suffered directly from the scandalous imputation alleged, it is sufficient to show that the accused intended to harm, or had reason to believe that the imputation made by him would harm the reputation of the complainant.

Case Law (P.L.D 2001 KAR115) It was held that Mens rea or intention is essential element of the offence of Defamation.

Meaning of Harm: By harm is meant Imputation on a man's character made and expressed to other so as to lower him in their estimation.

What Amounts To Defamation:

Explanation appended to sec. 449 lay down that the following may amount to defamation.

(i) **Imputation to Dead Person:**

It may amount to defamation to Impute anything to a deceased مرده person would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his or other near relatives. A prosecution may be maintained for defamation of a deceased person, but no suit for damages will lie.

(ii) **Imputation Concerning Company etc:**

It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

(iii) **Alternative or ironical ستم ظریفی Imputation:**

An imputation in the form of an alternative or expressed ironically may amount to defamation. They even words of praise may be used in a defamation sense. But in such cases, the complainant or plaintiff has to prove that the words have not been understood in their primary sense but in their different and defamation sense.

Exceptions or Defences To Offences of Defamation:

Following are the exception or defences to the offence of defamation.

1) **Imputation Of Truth Which Public Good Requires To Be Made:**

It is not defamation to impute anything which is true concerning any person, if it for the public and that he imputation should be made or published. But the privilege does not justify publication in excess of the purpose or object which gives rise to it.

2) **Public Conduct Of Public Servants:**

It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of the public functions or respecting his character, so far as his character appears in that conduct. It is because every subject has a right to comment on those acts of public men which concern him as a subjects of the realm دائرے .

3) **Conduct of Any Person Touching Any Public Question:**

It is not defamation to express in good faith any opinion respecting the conduct of any person touching any public question and respecting his character so far as his character appears in that conduct.

4) **Publication of Reports of Proceedings of Courts:**

it is not defamation to publish a substantially true report of the proceeding of a court justice or of the result of any such proceedings. But the resort of judicial proceeding cannot be published to the court has prohibited the publication of any such proceeding or where the subject matter of the trial is obscene.

5) **Merits of Case or Conduct of Witnesses etc.:**

The administration of justice is a matter of universal interest to the whole public. The judgment of the court, the verdict of the jury. The conduct of parties and of witness may all made subject of free comment. But the criticism should be made in good faith.

Illustration: "A" says, "I think "Z" evidence that trial is so contradictory that he must be stupid or dishonest,"A" is within this exception if he says in good faith.

6) **Merits of Public Performance:**

It is not defamation to express in good faith any opinion respecting the merits of any performance which it's another has submitted to the judgment of the public or respecting the character of the author so far as his character appears in such performance and no further. A performance may be submitted expressly or impliedly by the author. In other words, all kinds of performances in public may criticized provided the comments are made in good faith and fair.

Illustration: An actor or a singer who appears on a public stage, submits his action or singing to the judgment of the public.

7) **Ensure Passed in Good Faith By Person Having Lawful Authority Over Another:**

The exception allows a person under whose authority others have been placed, either by their own consent or by the law, to censure them in good faith, so far as regards the matter to which that authority relates.

Illustration: A head of a department censuring in good faith those who are under these orders.

8) **Accusation Preferred In Good Faith To Authorized Person:**

It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to subject- matter of accusation.

Illustration: "A" in good faith accuses "Z" before a magistrate he is within this exception.

9) **Imputation By Person For Protection of His Own & Others's Interests:**

It is not defamation to make an imputation on the character of another if it made in good faith for the protection of the interest of the person making it, or of any other person or for public good. The rule of public policy on which it is based is that honest transaction of business and of social intercourse will otherwise be deprived محروم of protection which they should enjoy.

Illustration: "A" a shopkeeper says to "B" his manger "sell nothing to "Z" unless he pays you ready money for I have no opinion of his honesty "A" is within this exception.

10) Caution Intended For Good of Person or For Public Good:

It is not defamation where a person gives caution in good faith to another for the good of that other, or of some person in whom that other is interested or for public good.

Illustration : This exception for instance will apply where one man warns another against employing a third person in his service, saying that he is a dishonest person. (1979 SCMP 545)

Punishment of Defamation U/S 500:

The act of defaming another person is punishable by either imprisonment for up to two years, or a fine, or both. However, if the defamatory imputation originates from the person making the accusation الزامات, they may face imprisonment for a term of up to five years, or a fine of not less than one hundred thousand rupees, or both.

Conclusion:

In summary, it can be stated that defamation has been established as an offense in the Pakistan Penal Code (PPC) irrespective of its potential to incite اشتعال انگیزی illegal violence. According to Section 499 of the PPC, an imputation made concerning an individual constitutes defamation if it is published and the person responsible for the publication intends to cause harm or has reasonable grounds to believe that such imputation will harm the reputation of the person being targeted.



Q. IN WHAT CASES CONSENT, COMPULSION OR NECESSITY MAY BE A SUFFICIENT DEFENCE AGAINST A CHARGE OF CRIME.

DEFENCE AGAINST A CHARGE OF CRIME

Chapter IV of the Pakistan Penal Code (PPC) addresses the exceptions to criminal liability. In certain situations, such as when there is consent, compulsion, or necessity, these factors may serve as a defense for the accused. When a case falls under these specific sections, the accused has the opportunity to avail themselves of the benefits provided by these defences.

Relevant Provisions:

Following are the relevant provisions of P.P.C

- Section 81 for *Necessity*
- Section 94 for *Compulsion*
- Section 87 to 91 for *Consents*.

Necessity As A Defence To Criminal Offence U/Sec 81:

Meaning Of Necessity:

Necessity may be defined as under “Necessity means unavoidable circumstances or situations critical in nature leaving no choice in action.”

Necessity As A Defence U/Sec 81:

Where an act is done voluntarily, but in good faith and without any criminal intention to cause harm for the purpose of preventing or avoiding other harm to person or property, it will be not an offence.

Ingredients of Sec. 81:

(i) No Intention to Cause Harm:

In order to get the benefit of sec, 81, the act complained of must be done without any criminal intention to cause harm. It is not of the doctrines of criminal jurisprudence that no crime is committed unless it is with a criminal intention. This doctrine is included in sec 81 of P.P.C.

(ii) Act Done In Good Faith:

The act must be done in good faith in order or prevent or avoid harm to the person or property.

(iii) To A void Harm to Person or Property:

An act which would otherwise be a crime may in some cases be excused if the person accused can show that it was done only in order to avoid consequences which could not otherwise be avoided and which may inflicted upon him or upon others inevitable and irreparable and irreparable evil.

Illustration: `A` in a great fire, pulls down house in order to prevent the configuration from spreading in good faith of saving human life or property. `A` is not guilty of the offence.

Consent As A Defence To A Criminal Offence:

Meaning Of Consent:

The word consent has not been defined by P.P.C. So it may be defined in a general way. "Consent means an active will in the mind of a person to permit the doing of the act complained of and knowledge of what is to be done or of the nature of the act that is being done, is essential to a consent to act".

Consent U/Sec 90:

Section 90 of P.P.C. says what is not consent and thus runs in negative terms. According to it a consent is not a consent intended by this code, if it is given.

- (i) By a person under fear of injury, or by a person under misconception of fact and the person obtaining the consent knows or has reason to believe that the consent was given in consequence of such fear or misconception. Or
- (ii) By a person of unsound mind or who is intoxicated and who is unable to understand the nature and consequence of that to which he gives his consent, or
- (iii) By a person under twelve years of age.

Cases Where Consent Justification For An Offence:

(i) Act Done By Consent U/Sec 87:

A person who causes injury to another person above eighteen years of age, who has given his consent to suffer the harm, by doing an act which is not knowing by the doer to be likely to cause death or grievous hurt, does not commit an offence.

A. Basis of sec.87:

Sec.87 is based on the following maxim. "volenti non fit injuria." (he who consents suffers no injury)

B. Scope of sec.87:

Sec. 87 does not permit a man to give his consent to anything intended or known to be likely to cause his own death or grievous hurt. Ordinarily games such as boxing, football are protected by this section.

(ii) Act Done in Good Faith For Person's Benefit U/Sec 88:

Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause or be intended by the doer to cause or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith and who has given a consent, whether express or implied, to suffer that harm or to take the risk of that harm.

A. Scope of sec.88:

Under sec. 88, a person from whose benefit a thing is done may consent that another shall do that thing even if it cause harm to him. Under it any harm except death may be inflicted.

Illustration: "A" a surgeon knowing that a particular operation is likely to cause death of "Z" and intending in good faith "Z"'s benefit, performs that operation on "Z"'s consent, "A" has committed no offence.

(iii) Act Done In Good Faith For Benefit Of Child Or Insane Person By Consent Of Guardian U/Sec 89:

Nothing, which is done in good faith for the benefit of a person under twelve years of age or of unsound mind by or by the consent of the guardian, is an offence by reason of any harm which it may cause or be intended by the doer to cause or be known by the doer to be likely to cause to that person.

A. Conditions:

To attract sec. 89, following conditions need to be fulfilled.

1. The act was done for the benefit of child or lunatic
2. It was done in good faith by or by the consent of guardian.

B. Exceptions:

Following are the exceptions to sec.89.

1. It shall not extend to the intentional causing of death or to the attempting to cause death.
2. It shall not extend to the doing of anything which the doer knows to be likely to cause death, for any purpose other than the preventing of death or grievous disease or infirmity.
3. It shall not extend to the voluntary causing of grievous hurt, unless it be for the purpose of preventing death or the curing of any grievous disease or infirmity.
4. It shall not extend to the abetment of any offence.

Exceptions Where Consent Will Not Justify As Defence U/Sec 91:

Section 91 says that consent u/sec 87, 88 and 89 will only condone the act causing harm to the person giving the consent which will otherwise be an offence. Acts which are offences independently of any harm which they may cause will not be covered by such which they may cause will not be covered by such consent. e.g. Causing miscarriage, public nuisance, offences against public safety, morals etc.

Compulsion As A Defence To Criminal Offence U/Sec 94:

Section 94 provides exception for offences committed by a person who does any act except murder and offences against the state punishable with death, under fear of instant death, but fear of hurt or even of grievous hurt is not a sufficient justification. Even fear of future death is not sufficient for availing the protection provided by this section.

Ingredients Of Section 94:

Following are the essential ingredients of sec.94

- (i) The act has been done under compulsion.
- (ii) The murder or offence against the state punishable with death should have not been committed.

- (iii) The doer of the act did not voluntarily put himself in the situation. (iv) The fear under which he did the act was not short of instant death.

Conclusion:

To conclude, We can say, that the consent, compulsion or necessity may operate as a defence to a criminal offence and the burden will lie upon the accused to prove these circumstances or exceptions under Article 121 of Q.S.O, 1984, and the court shall presume the absence of circumstances bringing the case within any of the exceptions.



Q. DEFINE ABETMENT? WHAT IS THE CRIMINAL LIABILITY OF AN ABETTOR IN DIFFERENT CIRCUMSTANCES?

(OR)

Q. DEFINE ABETMENT. WHAT ARE ITS DIFFERENT KINDS AND PUNISHMENTS PROVIDED UNDER P.P.C

Ans:

ABETMENT

Abetment involves urging or encouraging a person to commit an act in a specific manner or providing assistance to another person in carrying out an act that constitutes an offense. Abetment can only be established when there is clear evidence of instigation, conspiracy, or intentional support. In English common law, abetment is attributed to the Principal in the second degree.

Relevant Provisions:

Following are the relevant provisions of P.P.C

- **Section 107 To 120 P.P.C**

Definitions of Abetment:

Black's Law Dictionary (11th Edition):

"Abetment" is defined as the act of instigating, encouraging, or aiding another person in the commission of a crime. It involves actively promoting or facilitating the commission of an offense, either through direct encouragement, advice, or assistance. Abetment requires the presence of positive evidence demonstrating instigation, conspiracy, or intentional aid.

Bouvier's Law Dictionary (1856 Edition):

"Abetment" refers to the act of encouraging, promoting, or aiding another individual in the commission of a crime. It involves actively assisting or instigating the offense, either through direct actions, encouragement, or advice. Abetment requires a specific intent to contribute to the commission of the offense and may involve actions such as counseling, procuring, or aiding in the execution of the crime.

Ballentine's Law Dictionary (3rd Edition):

"Abetment" denotes the act of actively supporting, encouraging, or assisting another person in the commission of a crime. It encompasses actions that facilitate or promote the offense, such as providing resources, advice, or encouragement. Abetment requires a willful participation with the intent to aid, abet, or promote the commission of the offense.

Definition of Abetment U/S 107 P.P.C:

A person abets the doing of something when they:

- 1) Encourage or provoke someone to do that thing.

- 2) Participate in a conspiracy with one or more people to do that thing, and if an act or illegal failure to act occurs as part of that conspiracy, with the purpose of doing that thing.
- 3) Deliberately جان بوجھ کر help, by doing something or not doing something illegally, in the doing of that thing.

Essentials of Abetment:

- (i) There must be an abettor.
- (ii) He must abet.
- (iii) The abetment must be an offence.

Modes To Constitute Abetment U/Sec107:

There are three modes to constitute an abetment.

- 1) **By Instigation**
- 2) **By Conspiracy**
- 3) **By Aid**

1) Abetment By Instigation:

The word instigate means to urge forward. Instigation shows some sort of advice for the commission of an act, which if done would be an offence. Advice can become instigation only if it is found that it was meant actively to suggest or stimulate ابھارنا the commission of an offence.

Misrepresentation Or Concealment As Abetment:

According to explanation 1 of sec107, a person who by wilful misrepresentation or by wilful concealment of an material fact which he is bound to disclose voluntarily causes or procures or attempts to cause or procures a thing to be done, is said to instigate the doing of that of that thing.

Illustration: "A" knows that "B" is not C, there is warrant for the arrest of "C". He represents the officers executing the warrant that "B" is "C". and thereby causes the officer to arrest "B" the officer is guilty of wrongful restraint but "A" is guilty of abetment.

2) By Conspiracy:

Definition of conspiracy U/S 120-A P.P.C:

When two or more persons agree to do or cause to be done:

- (1) An illegal act, or
- (2) An Act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

Case Law (1998 P.C r. L. J 1486)

It was held that to constitute criminal conspiracy there must be agreement of two or more person to do an act which is illegal or which is to be done by illegal means.

Conspiracy amount to abetment:

Conspiracy can only amount to abetment if an act or illegal omission takes place in pursuance of the conspiracy:

Concert with person abetted not necessary:

According to explanation 5 to sec 108, concert of abettor with the person abetted is not necessary. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

3. Abetment By Aid:

If a person actively participates with someone else in committing a crime from which they derive a benefit, and without their assistance, the crime would not have been possible, they are held responsible for the offence of abetment. Explanation 2 of Section 107 clarifies that a person abets through aiding when, through an act carried out either before or during the commission of the crime, they intend to make it easier and actually contribute to its commission.

Illustration: A village magistrate who was present while certain police constables were wrongfully beating the person, and who not stop the criminal act being committed in his presence he abetted within the meaning of this section.

Who is Abettor U/S. 108:

A person abets an offence, who abets either the commission of an offence or the commission of an act which can be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor:

(I) Abettor May Be Innocent As Principal:

According to explanation 1 of sec. 108, a person can be held guilty as abettor, though as a principal he omission of an act to a public servant by private person.

(II) Act Abetted Need Not To Be Committed:

According to explanation 2 of section 108, to constitute the offence of abetment, it is not necessary that the act abetted should be committed or that the effect requisite مطلوبه to constitute the offence should be caused.

Illustration: "A" instigates "B" to murder "C". B refuses to do so "A" is guilty abetting "B" to commit murder.

(III) Capacity of Person Abetted:

According to explanation 3 of sec 108 the person abetted need not have any guilty intention in committing the act, nor should he be necessarily capable by law of committing an offence, thus a child or a lunatic who are supposed by law incapable to commit an offence may be abetted by another person who is capable law to commit an offence with guilty intention and the abettor is guilty. Whether the act is actually committed or not.

(IV) Abetment Of An Abetment:

According to explanation 4 of sec. 108, when the abetment of an offence is an offence, the abetment of such abetment is also an offence.

Illustration: "A" instigates "B" to instigate "C" to murder Z. "B" accordingly instigates "C" to murder "Z" and "C" murder, "Z" All are liable "C" is for murder, "B" for abetting murder and "A" for abetting the abetment of murder.

Punishments of Abetment:

- 1) **Where no punishment is provided for abetment u/sec 109:**
If no express provision in the code for the punishment of a particular abetment is made and the act abetted is committed in consequence of the abetment. The abettor shall be awarded the same punishment prescribed for the offence and the abettor of an offence referred to in chapter XVI shall be liable to punishment of Tazir specified for such offence including death except in case of Ikrah –i- Tam.
- 2) **Where offence committed with different intention of abettor u/sec 110:**
Where offence is committed with different intention or knowledge from that of abettor, the punishment awarded to the abettor will be the same as provided for the offence of which he abetted, and will on other.
- 3) **Act done is. Different from one abetted u/sec 111:**
When an act is abetted and a different act is done, the abettor is liable for the act done in the same manner and to the same extent as if he had directly abetted it. But it is necessary that the act done was a probable consequence of the abetment.
- 4) **Where different effect cause from act abetted u/sec 113:**
Where the act done is the same as the act abetted but its effect than the abettor is liable for the effect caused provided he know that the act abetted was likely to cause that effect. Presence of abettor when offence is committed u/sec . 114: If abettor is found present at the scene when offence was committed, he shall be punishable in the same manner as if he himself has committed the offence.
- 5) **Presence of abettor when offence is committed u/sec . 114:**
If abettor is found present at the scene when offence was committed, he shall be punishable in the same manner as if he himself has committed the offence.
- 6) **Abetment of offence punishable with death or imprisonment for life, if offence not committed u/sec. 115:**
If abetment is for not offence punishable with death or imprisonment for life and no express provision for its punishment is made, the abettor shall be punished as under.
 - (i) If offence is not committed. 7years and fine.
 - (ii) If act done cause hurt to any person 14years and fine.
- 7) **Abetment of offence punishable with imprisonment if offence not committed u/sec 116:**
If abetment is the for the offence punishable with imprisonment and no express provision for its punishment is made, the shall be punished as under.
 - (i) If offence is not committed Imprisonment of any description provided For that offence for a term which may Extend to one- fourth part of the longest Term provided for that offence. Or with fine Or with both

- (ii) If abettor is public servant Imprisonment of any description for a term Which may extend to one half of the longest Term provided for that offence. Or with fine Or with both.

8) Abetting commission of offence by the public or by more than 10 person u/sec117:

Whoever abets the commission of an offence by the public generally or by any number or class of person exceeding ten, shall be punished with imprisonment of either description for a term which may extend to 3 years or with fine or with both.

Concealment of Design To Commit Offence:

Section 118 to 120 penalize the concealment of design to commit the offence in the following way:

1) Offence Punishable With Death or Imprisonment for Life u/sec 118:

If offence is punishable with death or imprisonment for life and the same is:

- A. Committed Imprisonment that may extend to 7 years and fine.
- B. Not committed Imprisonment that may extend to 3 years and fine.

2) Offence committed by public servant u/sec 119:

If a public servant intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent, the punishment shall be

- a. If offence is committed he shall be punished with imprisonment for a term which may extend to one half of the longest term provided for the offence or with fine or both and if it is punishable with death or imprisonment for life, the punishment may extend to 10 years.
- b. If offence is not committed, he shall be punished with imprisonment for a term which may extend to one-fourth part of the longest term provided for the offence or with fine or both.

3) Offence Punishable With Imprisonment U/sec 120:

If offence is punishable with imprisonment only and the offence is

- a. Committed. Imprisonment that may extend to one fourth provide for the offence With or without fine
- b. Not committed Imprisonment that may extend to one eight of the longest term Provided for the offence with or without fine.

Conclusion:

In summary, it can be concluded that abetment is an independent and distinct offense in itself. The act of abetting is considered a substantive offense, even if the offense being abetted is not ultimately committed. Abetment is not merely a minor offense but holds its own significance as a separate criminal act.



HADOOD

LAWS

Q. DEFINE THEFT? WHEN IT IS LIABLE TO HADD? DISCUSS THE KIND OF PROOF PUNISHMENTS ' PRESCRIBED FOR THIS OFFENCE IN HADOOD ORDINANCE?

Ans:

THEFT LIABLE TO HADD

In Islamic jurisprudence, theft is defined as the act of unlawfully appropriating someone else's property in a concealed manner while the property is under their custody (hirz), and its value is not less than the prescribed nisab. The Holy Quran, specifically in Sura-Al-Maida, prescribes punishment for this offense, which is also punishable under the *Hudood Ordinance*.

Relevant Provisions:

Following are the relevant provisions.

Section 4 To 9 of Enforcement of "Enforcement of *Hudood Ordinance VI of 1979*".

Meaning of Theft:

The literary meaning of theft is the secretly taking away of another property.

Kinds of Theft:

There are two kinds of theft:

- 1) Theft Liable to Hadd
- 2) Theft Liable to Tazir

THEFT LIABLE TO HADD

A person who, as an adult, covertly *خفیہ طور پر* and unlawfully takes possession of property worth the nisab or more, which is not stolen property, is deemed to have committed theft that is subject to Hadd punishment.

Ingredients:

Following are the ingredients elements of Theft Liable to Hadd

(i)Adult Offender:

The offender must be an adult person.

Adult u/sec 2(a):

adult means a person who has attained the age of eighteen years of puberty *جوانی* .

(ii)Surreptitiously *خفیہ طور پر* Commits:

Offence of theft liable to hadd must be committed surreptitiously. According to Explanation 2 of sec. 5, it means that the person committing the theft commits it believing that the victim of theft does not know of his action.

Continuance of Surreption:

For surreptitious removal of property, it is necessary If it is day, time surreption should continue till the completion of the offence, and If it is night, surreption need not continue after commencement of the offence.

(iii) Removal From Hirz:

The property must be removed from any hirz.

Meaning of Hirz:

Literally hirz means precaution and protecting. Hirz U/sec2(d):

“Hirz means an arrangement made for the custody of property.”

According to Explanation 1 of sec. 2, it is not necessary that the goods in hirz be confined in a building or in a locked house. Grazing cattle under the custody of the herdsman چرواہے are considered under his hirz. If any of the cattle is stolen, it will be deemed to be a theft from hirz.

(iv) Value of Stolen Property:

The property must be nisab as laid down in section 6.

Nisab U/S 6.

The nisab for theft liable to hadd is 4. 457 grams of gold. According to explanation to section 6, If theft is committed from the same hirz in more than one transaction or from more than one hirz and the value of stolen property in each case is less than nisab, it is not liable to hadd even though the value of the properties removed exceeds the nisab, if collected.

Illustration:

“A” enters a house several times and removes from the house on each occasion property, the value of which does not amount to the nisab. Such theft is not liable to hadd even though the value of the properties removed exceeds the nisab, if collected.

(v) Not Being a Stolen Property:

It must not be a stolen property i.e. must not be acquired by means of theft. According to explanation 1 of section 5, stolen property does not include property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed.

(vi) Knowledge of Accused:

Accused must be aware that the property stolen by him is either equivalent or exceeding limit of nisab.

PROOF OF THEFT LIABLE TO HADD U/SEC 7:

The proof of theft liable to hadd shall be in one of the following forms.

(I) Confession:

Where the accused pleads guilty of the commission of theft liable to hadd then he shall be liable to hadd.

“Ghulam Habib Vs. state (1994)”

“Confession in a theft case would be material only if made before the trial court.”

(II) By Evidence Of Witnesses:

Theft liable to hadd may be proved by the evidence of at-least two eye witnesses.

Criminal Law

Case Law (2004 P. cr. L. J 285)

It was held that an accused person is presumed to be innocent until his guilt is proved.

1. Witnesses must be male.
2. They must be Muslim, but if the accused is non-Muslim the witnesses may be non-Muslim.
3. They must be adult.
4. They must not be the victim of the theft .
5. The court must be satisfied about them having regard to the requirements of tazkiya-al-shuhood (inquiry adopted by the court to satisfy itself to the credibility of a witness) that they are: Truthful persons and Abstain from major sins.

THEFT BY MORE THAN ONE PERSON U/SEC 8:

Where theft liable to hadd is committed by more than one person and the aggregate value of the stolen property is such that, if the property is divided equally among them, each one of them gets a share which amounts to or exceeds the nisab, the hadd shall be imposed on each of them.

PUNISHMENT FOR THEFT LIABLE TO HADD U/SEC 9:

Whoever commits theft liable to hadd shall be punished with.

- (i) Amputation of his right hand from the joint of the wrist, if it is committed for first time.
- (ii) Amputation of his left foot up to the ankle, if it is committed for the second time.
- (iii) Imprisonment for life, if it is committed third time or any time subsequent thereto.

Confirmation by Court Appeal:

Punishment of hadd shall not be executed unless it is confirmed by the court to which an appeal from the order of the conviction lies.

Postponement of Hadd.

Hadd shall be postponed if the authorized medical officer is of the opinion that the amputation of hand or foot may cause the death of the convict, until the apprehension of death ceases.

CONCLUSION:

In summary, theft liable to Hadd occurs when property is unlawfully taken in a clandestine manner from the custody of its owner or the person responsible for its protection, and the value of the property is equal to or exceeds the prescribed nisab. The act of theft is considered the gravest offense against property, and the implementation of Hadd punishment by severing the hand of the thief aims to eradicate this evil at its core, safeguarding society from its detrimental consequences.



Q. DISCUSS VARIOUS PROVISIONS OF OFFENCES AGAINST PROPERTY (ENFORCEMENT OF HUDOOD) ORDINANCES 1979 RELATING TO HARAABAH.

(OR)

Q. EXPLAIN HARAABAH LIABLE TO HADD? WHAT PROOF IS NEEDED TO PROVE THIS OFFENCE?.

Ans:

HARAABAH LIABLE TO HADD

Haraabah is an aggravated شدت اختیار کر گئی form of theft. More or less it is synonymous to robbery, which contains the element of either theft or extortion. This offence required to be proved in the same manner as the offence of theft liable to hadd as prescribed in Section 07.

Relevant Provisions:

Following are the relevant provisions.

Section 15 to 20 of Enforcement of Hudood regarding the VI of 1979.

HARAABAH U/S 15:

Haraabah is committed when one or more individuals, whether armed or not, employ a display of force to seize another person's belongings, while either physically assaulting them, subjecting them to unlawful confinement, or instilling پیدا کرنا fear of imminent harm or death.

Ingredients of Haraabah:

- (i) It may be committed by one or more person.
- (ii) There must be showing of force for the purpose of taking away the property of another.
- (iii) There must be some attack by the offender, or cause wrongful restraint or put in fear of death or hurt.

Proof of Haarabah U/S 16:

The provisions of section of section 7, shall also apply for the proof of haarabah which is as under.

A. Confession Before the Court:

Where accused pleads guilty of haarabah liable to hadd, shall be punished with hadd.

B. By Evidence of Witnesses:

Haraabah liable to hadd may to prove by the evidence of at least two eye witnesses.

Requirements Regarding Witnesses:

- a. Witnesses must be male.
- b. They must be Muslim, but if the accused is non Muslim the eye Witnesses may be non Muslims.
- c. They must be adult. Evidence of minor witnesses is not acceptable.
- d. They must not be the victim of haraabah.
- e. The court must be satisfied about them having regarded to the requirements of tazkiyaal-shahood (inquiry adopted by the court to satisfy itself to the credibility of a witness) those they are Truthful persons, and Abstain from major sins.

Punishment of Haraabah U/S 17:

Whoever being an adult is guilty of Haraabah, shall be liable to following punishments.

(i) Where neither any murder has been committed nor any property has been taken away, he shall be punished with.

- a. Whipping دھاریاں مارنا not exceeding thirty stripes
- b. Rigorous imprisonment for a term which shall not be less than 3 years and it will continue until the court is satisfied of his being sincerely penitent and;
- c. Punishment for causing such hurt in accordance with such other law, which is applicable at the time.

(ii) Where no murder has been committed but the property of the prescribed nisab has been taken away, he shall, he shall be punished with.

Amputation of his right hand from the wrist and of his left foot from the ankle and if the hand or the right foot of the offender is missing or is entirely unserviceable the punishment of amputation shall not be enforced and punishment will be the rigorous imprisonment which may extend to 14 years with whipping not exceeding 30 stripes.

(iii) Where murder has been committed he shall be punished with.

- a. Death imposed as hadd.

Note : Confirmation of Court of Appeal U/S 17 (5):

Punishment of amputation or death shall not be executed if it is confirmed by the court appeal.

Cases Where Punishment of Amputation or Death Not Imposed U/S 18:

Punishment of Amputation or death shall not be imposed in the following cases.

i. When victim and offender are related to each other as

- a. Spouses
- b. Ascendants ,Paternal or Maternal
- c. Brothers or sisters of father and mother
- d. Brother or sisters or their children
- e. Descendants., paternal or maternal

ii. When guest commits harabaah from the house of his host.

iii. When servant or employee commits harabaah from the hirz of his master or employee.

iv. When the property is wild grass, fish bird, dog pig intoxicant musical instrument or perishable foodstuff.

v. When the offender has a share in property, the value of which after deduction of his share is less than the nisab

vi. When creditor steals his debtor's property, the value of which after deduction of his share is less than the nisab.

vi. When the offender has committed harabaah under ikrah or iztrar.

Punishment For Haraabah Liable To Tazir U/S 20:

When the harabaah is not liable to hadd, the harabaah be same be liable taizr and the punishment would be some as of dacoity rabbery or extortion as provided in P.P.C.

Conclusion:

In conclusion, it can be stated that harabaah is considered an offense within Islamic law. While often used interchangeably with robbery, harabaah encompasses a broader scope, encompassing elements of robbery, dacoity, and extortion. It can be seen as occupying an intermediate position among these offenses. The punishment for harabaah is stipulated under section 17 of the relevant ordinance.



Q. DEFINE DRINKING WHEN IT IS LIABLE TO TAZIR UNDER THE PROHIBITION ORDINANCE 1997.

Ans:

DRINKING

Engaging in the consumption of intoxicating liquor, regardless of the quantity consumed, is referred to as "shrub" (drinking) and is deemed punishable under Islamic law. The Prohibition (Enforcement of Hadd) Order IV of 1979 defines the act of drinking and establishes a range of penalties associated with it.

Relevant Provisions:

Following are the relevant provisions regarding the concerned topic.

Section 6 to 11 of the prohibition (Enforcement of Hadd) order of 1997.

Drinking U/S 6:

Whoever intentionally and without Ikrah or iztirar takes an intoxicant by any means, shall be guilty of drinking.

Ingredients:

Following are the essential ingredients of sec. 6

(i)Intention:

A person may be guilty of drinking only, if he takes an intoxication intentionally.

(ii)Without Ikrah or Iztirar:

Intoxication must be without any ikrah or iztirar.

a. Meaning of Ikrah:

According to explanation of sec. 6, Ikrah means putting any person in fear of injury to the person. Property or honour of that or any other person.

b. Meaning of Iztirar:

Iztirar means a situation in which a person is in apprehension of death due to extreme hunger or thirsty or serious illness.

Kinds Of Drinking U/Sec 7:

There are two liable to Hadd.

- (i) Drinking liable to Hadd.
- (ii) Drinking liable to Tazir.

Drinking Liable To Hadd U/S 8:

If an adult Muslim takes an intoxicating liquor by mouth he shall be guilty of drinking liable to hadd.

Explanation:

- (i) **Adult u/sec 2(a):**

Adult means a person who has attained the age of eighteen years of puberty.

(ii) **Intoxicating Liquor U/sec2(h):**

Intoxicating liquor includes toddy spirits of wine, beer and all liquids consisting of or containing alcohol normally used for purposes of intoxication but does not include a solid intoxication even if liquefied.

Punishment:

Whoever guilty of drinking liable to hadd shall be punished with whipping numbering eighty stripes.

Proof Of Drinking Liable To Hadd U/S 9:

Drinking liable to hadd shall be proved in any one of the following forms.

(I)Confession:

The accused makes before a court of competent jurisdiction a confession of the commission of the offence.

(II)By Evidence Of Witnesses:

Drinking may also be proved by the evidence of at-least two witnesses.

Requirements Regarding Witnesses:

1. Witnesses must be male.
2. They must be Muslim.
3. They must be adult.
4. The court must be satisfied about them having regard to the requirements of tazkiya-al-shahood (Modes of Inquiry adopted by a court to satisfy itself as to the credibility of a witness)that they are (Truthful person and Abstain from major sins)

Drinking Liable To Tazir:

Drinking liable to tazir punishable with imprisonment of either description for a term which may extend to three years or with whipping not exceeding thirty stripes or with both.

Persons Liable To Tazir:

(i) **Muslim:**

A Muslim may be guilty of drinking liable to Tazir, if following conditions are fulfilled, a. Drinking not liable to hadd u/sec 8 or for which proof in either of the forms mentioned in section 9 i.e confession and evidence of two adult male Muslim witnesses, is not available. b. The court is satisfied that the evidence on the record.

(ii) **Non-Muslim Citizen Of Pakistan:**

A non-Muslim citizen of Pakistan who is guilty of drinking, shall be liable to tazir. Exception: He will not be guilty of drinking if he takes it as a part of a ceremony prescribed by his religion.

(iii) **Non-Muslim:**

A non-Muslim who is not a citizen of Pakistan shall be liable to tazir, if he is guilty of drinking at public place.

Conclusion:

In conclusion, it can be stated that the act of drinking is subject to punishment under the relevant ordinance, encompassing both hadd (specific punishments prescribed by Islamic law) and tazir (discretionary punishments based on the judge's discretion). Section 8 of the ordinance specifically outlines the penalties applicable to drinking, falling under the purview of tazir punishment. This implies that the punishment for drinking is determined based on the judgment of the authority or judge overseeing the case, considering the circumstances and severity of the offense.



Q. DEFINE AND EXPLAIN QAZF. HOW IS IT PROVED AND WHAT IS ITS PUNISHMENT.

Ans:

QAZAF

In the Quran, it says that if someone accuses a person of a sexual offense like fornication or adultery, they must provide evidence in the form of four trustworthy witnesses. If they cannot provide these witnesses, they are considered guilty of making false accusations, which is known as **Qazf**. This rule emphasizes the importance of having strong evidence before accusing someone of such serious offenses.

Relevant Provisions:

Following are the relevant provisions of concerned ordinance the topic of Qazf.

Section 3 to 8 offence of Qazf (Enforcement Hadd) ordinance VIII of 1979.

Definition of Qazf U/S 3:

“Whoever makes or publishes an imputation of Zina concerning any person intending to harm or knowing or having will harm the reputation or hurt feelings of such person is said to commit Qazf.”

Ingredients Of Sec. 3:

Here are my ingredients of section 03.

(i) Making or Publishing of Imputation of Zina:

There must be making or publishing of imputation of Zina the term publish means that it must be communicated to some person other than the person to whom it is addressed.

(ii) Concerning Any Person:

Imputation of Zina must be against some particular person or person whose identity can be established.

(iii) Intention or Knowledge to Harm or Hurt the Reputation or Feelings:

It is sufficient to show that the accused intended to harm or knew or had reason to believe that the imputation made by him would harm the reputation or hurt the feelings of the complainant.

According to Explanation 1 of sec. 3, It may amount to Qazf to impute Zina to a deceased person, if the amputation would harm the reputation or hurt the feelings of that person if living and is harmful to the feelings of his family or other near relatives.

(iv) Modes of Imputation:

Imputation of Zina may be made in either the following modes.

- a. By words, which may be either spoken or intended to be read.
- b. By signs or visible representation that will include every possible form of imputation.

According to explanation 2 of sec. 3, An imputation in the form of an alternative or expressed ironically may amount to Qazf.

Illustration: (“Mushtaq Ahmad vs state 1991”)

“ It was observed that direct allegation of Zina against a person is not necessary to hold a person liable under Qazf rather than offence can be committed in any of the modes in sec. 3 of the ordinance.”

Exceptions:

Following are the exception to the offence of Qazf u/sec 3.

(i) Imputation of Truth Which Public Good Requires to be Made:

It is not Qazf to impute Zine to any person if the imputation be true and made or published for the public good

(ii) Accusation Preferred in Good Faith to Authorized person:

It is not Qazf prefer in good faith an accusation of Zina against any person to any of other who have lawful authority over that person with respect to the subject matter of the accusation. Good faith dose not merely imply absence of ill-will but pre-supposes reasonable degree of care and caution in making an amputation. (PSC 1984 S.C.1)

Exceptions: It will amount to Qazf if Complainant makes an accusation in the court but fails to produce four witnesses in support thereof before the court.

Illustration: “Naheed Ahmad vs Mahmood khan (1991)”

“Respondents failed to produce four witnesses in support of their claim. They were held liable for the offence of Qazf. According to the finding of the court, a complaint or a witness has made false accusation or given false evidence, as the case may be, of zina or zina-bil-jabr.

Kinds Of Qazf U/Sec 4:

There are two kinds of Qazf.

(i) Qazf liable to hadd

(ii) Qazf liable to Tazir

Qazf Liable To Hadd U/Sec 5:

Qazf liable to hadd is constituted when any person, who is an adult, intentionally makes an imputation of Zina liable to hadd against any person who is Muhsan and capable of performing sexual intercourse.

Essentials:

Following are the essential ingredients of section 5.

(i) Imputation Made by Adult:

Imputation of Zine must be made by an adult person.

a. Meaning of Adult u/sec 2(a):

“Adult means a person who is attained the age of majority.”

(ii) Against a Muhsan:

Imputation must be made against a particular person who is a Muhsan.

Criminal Law

According to Explanation 1 of sec 5, Muhsan means sane and adult Muslim who either has had no sexual intercourse or has had such intercourse only with his or her lawfully wedded spouse.

(II) Imputation Of illegitimacy:

According to Explanation 2 of sec. 5 if a person makes an imputation in respect of another person, that he is not a legitimate child or refuses to recognize him to be legitimate one, he shall be deemed to have committed Qazf liable to hadd in respect of the mother of that other person.

Proof Of Qazf Liable To Hadd U/S 6:

Qazf liable to hadd shall be proved any of the following forms.

(I) Confession:

The accused makes before a court of competent jurisdiction a confession of the s commission of the offence.

(II) Qazf In Presence Of Court:

If the accused commits Qazf in the presence of the court, then he shall be liable to Qazf liable to hadd.

(III) By Evidence Of Witnesses:

Qazf may also prove by the evidence of at-least two witnesses.

Requirements Regarding Witnesses:

- a. Witnesses must be male.
- b. They must be Muslim, but if the accused is non-Muslim the witnesses may be non-Muslims.
- c. They must be adult.
- d. They must not be the victim of the qazf.
- e. The court must be satisfied about them, having regard to the requirements of tazkiyah-al-shahood that they are Truthful persons and Abstain from major sins.

Punishment Of Qazf Liable To Hadd U/S 7:

Whoever commits qazf liable to hadd, shall be punished with.

- (i) Whopping numbering eighty stripes, which shall not be executed until it has been confirmed by the court appeal, and
- (ii) His evidence shall not be admissible in any court of law.

Person Who May File A Complaint U/S 8:

Cognizance of offence of Qazf can be taken only on a report made to the police or on complaint lodged in court by either of the following person.

(I) If Victim is Alive:

If the person in respect of whom the qazf has been committed be alive, then

- (i) That person or
- (ii) Any person authorized by him

(II) If Victim is Dead:

If the person in respect of whom the qazf has been committed be dead. Then any of the descendants or ascendants of that person.

Conclusion:

In summary, it can be stated that the provisions of the Huddod Ordinance highlight the significant role that morality and safeguarding the family hold in Islamic law. Alongside the stringent punishment imposed on those found guilty of adultery, the law sets specific criteria for establishing the crime, serving as a necessary safeguard to ensure proper proof is presented. These provisions aim to maintain a balance between upholding moral values and ensuring justice is served.



Q. DEFENCE ZINA BIL JABER AND STATE THE PUNISHMENT PROVIDED FOR IT IN THE OFFENCE OF ZINA ORDINANCE WHAT PROOF IS NEEDED TO IMPOSE HADD IN SUCH CASE.

ZINA BIL JABER

Zina means engaging in sexual activities that are considered forbidden according to Islamic law. It includes both fornication (sex outside of marriage) and adultery (cheating on one's spouse). According to the Islamic legal system, the term "Zina" encompasses احاطه both invalid and irregular marriages. An invalid marriage can be considered Zina and is subject to severe punishment prescribed by Islamic law, while an irregular marriage, which does not meet the requirements of a valid marriage, can also be classified as Zina and is subject to less severe punishment determined by the judge.

Relevant Provisions:

Following are the relevant provisions .

Section 4 to 10 of the offence of Zina (Enforcement of Hudood) ordinance VII of 1979.

OFFENCE OF ZINA:

General Meaning:

According to hanafis, Zina means intercourse without milk(ownership) or shubat e milk.

Meaning U/S 4:

A man and a woman are said to commit Zina, if they willfully have sexual intercourse without being validly married to each other.

Ingredients of Offence of Zina:

Following ingredients must be prove in order to secure the conviction of an accused person for the offence of Zina.

(i)Between Opposite Sexes:

There should be a man and a woman. This offence is not possible between human being belonging to the same sex or being sexless.

(ii) Not Validly Married:

There must not be a valid married between such man and a woman. The expression valid marriage will imply the requirements of such marriage as required under Muhammadan Law.

(iii)Sexual Intercourse:

A man and a woman should have committed sexual intercourse with each other. Zina is complete if there is sexual intercourse without valid marriage (1989 PCR L J878)

According to explanation of section 4 penetration is sufficient to constitute the sexual intercourse. Penetration means entering of the male organ into the vagina for the offence of Zina.(1985 PCRL J 110)

(iv)Willfully:

A man and a woman must commit sexual intercourse willfully. Willfully signify an act done by design with set purpose. (PLD 1985FSC 126)

Zina is Liable To Hadd

If It is Committed By A Man Or A Woman Who is.

(i) An adult and according to section 2(a) adult means a person who has attained.

- a. If male, eighteen years of age.
- b. If female, sixteen years of age or puberty.

(ii) Not Insane

(iii) with the woman or man as the case be, to whom he or she is not and does not suspect to be married.

Punishment of Zina U/Sec 5(2):

Whoever is guilty of Zina liable to hadd shall be punished as under.

(i) If Musan:

If he or she is a Muhsan, be stoned to death at a public place.

(ii) If not Musan:

If he or she not a muhsan, be punished at a public place with whipping numbering one hundred stripes.

Meaning of Muhsan:

According to section 2(a), Muhsan means an adult Muslim man or woman who is not insane and has had sexual intercourse with a Muslim adult, who at the time he or she had sexual intercourse with her or him was married to him or her and was not insane. In other words Muhsan means a married man or woman.

Confirmation of Court of Appeal:

Punishment of hadd shall be executed only when it is confirmed by the court of appeal.

Offence Of Zina-Bil-Jabr U/S 6:

A person is said to commit Zina-bil-jabr if he or she has sexual intercourse with a woman or man, as the case may be, to whom he or she is not validly married, under any of the following circumstances.

- i. Against the will of the victim
- ii. Without the consent of the victim
- iii. With the consent of the victim when the consent has been obtained by putting the victim in fear of death or hurt.
- iv. With the consent of the victim, when the consent is given under mistake believing that the offender is another person to whom the victim is validly married and the offender knows that he is not validly married to the victim.

Punishment Of Zina Or Zina-Bil-Jabr Where Convict is Not Adult U/S 7:

Whoever, who is not an adult, is guilty of Zina or Zina-bil-jabr be punished with imprisonment of either description for a term which may extend to five years or with fine or with both and may also be awarded the punishment of whipping not exceeding thirty stripes and in the case of Zina-bil-jabr, if the offender is not under the age of 15 years, the punishment of whipping must be awarded.

Proof of Zina or Zina-Bil-Jabr Liable To Hadd U/S 8:

Zina or Zina-bil-jabr liable to hadd shall be proved in any one of the following forms.

i. Confession:

The accused makes before a court of competent jurisdiction a confession of the commission of the offence.

ii. By Evidence Of Witnesses:

It may be proved by the evidence of at-least four witnesses, who give evidence as eye-witnesses of the act of penetration. i. Requirements Regarding Witnesses:

1. Witnesses must be male.
2. They must be adult.
3. They must be Muslim but if accused is non-Muslim, the eye-witnesses may be non-Muslim.
4. The court must be satisfied about them having regard to the requirements of tazkiyah-al-shahood(mode of inquiry adopted by a court to satisfy itself as to the credibility of a witness)that they are Truthful and Abstain from major sins

Zina Or Zina-Bil-Jabr Liable To Tazir U/S 10:

When Zina or Zina-bil-jabr:

- (i) is not liable to hadd or
- (ii) not proved under section 8 or the punishment of Qazf liable to hadd is not awarded to the complainant, or
- (iii) for which hadd may not be enforced under this ordinance. It is liable to tazir.

Pusishment of Zina Liable To Tazir:

Zina liable to tazir shall be punished with rigorous imprisonment for a term which shall not be less than four years nor more than ten years and with whipping numbering thirty stripes and shall also be liable to fine.

When Committed by Two or More Person:

When Zna-bl-jabr to tazir is committed by two or more person in furtherance مزید آگے بڑھنا of common intention of all, each of such person shall be punished with death.

Conclusion:

In summary, if a man and a woman who are not legally married to each other willingly engage in sexual intercourse, they will be considered to have committed the offense of Zina. This term encompasses both fornication and adultery. The seriousness of the offense increases when it is committed under specific circumstances outlined in section 6 of the law.

