

## The Juristic Approach to the Concept of Theft (*Sariqah*) and Its Punishments:

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### Abstract

Islam as a religion which covers the whole of man's aspects of life, aims at protecting the wealth of individual against thievery, robbery, and other violations on the sanctity of property and wealth. That is why it imposes strict punishments on the culprit(s) who proved guilty beyond any reasonable doubt. Thus, Islamic Shari'ah enforces the bodily punishment of cutting the hand of who steals the property of others which reach the Nisab. This paper attempts to discuss the Juristic Approach on the Concept of Theft and Its Punishment. The paper also highlights on the kinds of theft and its conditions, etc. It ends with conclusion and recommendations.

**Keywords:** Theft, Punishment, Juristic Approach.

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### I. Introduction

It has been clarified that man is an erring creature; in the sense that at times he will be on the right path and at times fortunately or unfortunately he deviates and turn to the left. That is to say, man is like the thin tree, when wind blows it swing or turn towards the right and when it blows again, it swing towards the left side. It is therefore, of paramount importance that the religion of Islam to protects the personal wealth and property of an individual in the society and imposes penalties against thievery, robbery, banditry and other violations against the sanctity of wealth and property.

#### The Concept of Theft (*Sariqah*)

Islam safeguards private ownership of prosperity and enforces very stern punishments against thievery, banditry, robbery and any other defilements against the sacredness of personal belongings. This is for the reason that personal possession and wealth are the foundation of economy and maintenance of the members of the community or society. Therefore duplicitous, misappropriation, domination, hoarding and many other injurious acts are also forbidden. This is done with the aim of safeguarding the treasure and private possessions of the individuals. According to Abdul-'Ati (1978), Islamic *Shari'ah* enforces the capital penalty of cutting the hand of the theft who takes the material goods of others, in line with the requirements and due procedure of edict. And the Glorious Qur'an state:

السا ر ق والسار قة فا قطعوا ايديهما جزاء بما كسبا نكلا من الله والله عزيز حكيم

As for the man who steals and the woman who steals, cut off their hands as a recompense for that which they committed, an exemplary punishment from Allah, and Allah is Mighty and Wise (*al-Ma'idah*, 5:38).

Beside the afore-mentioned crimes, Islam has barred all types of wrongdoing counter to personal possession. This is in line with the sayings of Allah (S.W.T) thus:

ولا تا كلوا أموالكم بينكم بالباطل وتد لوا إلى الحكام لنا كلوا فريقا من أموال الناس بالا سم وأنتم تعلمون

And do not swallow up your property among yourselves by false means, not use it as racket for the judges, with intent that you may swallow up a little of (other) people's property wrongfully while you know (*al-Baqarah*, 2:188).

In his explanation on the above verse, Ali (1998-71) opines that, alongside the three primeval physical desires of man which are pertinent to turn him desirous, there is a fourth part ravenousness in society, the avaricious of affluence and belongings. Customarily, truthful people are gratified if they abstain from theft, robbery, and misappropriation.

Similarly, the Prophet (S.A.W.) was reported to have said:

Whoever unjustly takes any money or wealth of another- without a due right, Allah will meet such in a state of anger (*Imam Ahmad Vol. 3, P. 337*).

In another tradition, it was reported that:

Whoever usurp a hand span of law Allah (S.W.T.) will have this oppressor to be surrounded with seven earths (around his neck) on the Day of Requitul (*Imam Ahmad Vol. 3, P. 339*).

In the same vein, Imam Bukhari transmitted that:

Whosoever is killed defending his wealth is a martyr (*Imam Bukhari Vol. 8, P. 519*).

It could simply be understood from the *Ahadith* that, the transgressor will be subjected to a tremendous and severe penalty in the day of requital. With regards to the second *Hadith*, Islamic edict stresses that autocrat will return the sum unfairly seized from other person(s), land or possessions. Alternatively, he ought to be forced to pay the value of such unfair seized belongings. Moreover, the autocrat in such a circumstance is imperiled to a slamming penalty determined by the advocate (judge). In line with the third *Hadith*, Islam permits the possessor of affluence to defend all that he owns. Even to the magnitude of slaying the aggressor, if that is the only means of bring to an end the aggression. Nonetheless, if the possessor slays the aggressor he is not to be slayed for slaying him, if he can prove that he slayed him while protecting his possession. But if the invader, on the other hand slayed the defending owner(s), the assailant is an assassin and the defending owner is a martyr.

Bambale (2003:53) comments that:

One of the three things which Allah has declared inviolable is properly. The protection to people's property is guaranteed against any violation from other people. This is reflected in a number of injunctions of the Holy Qur'an and saying of the Prophet (S.A.W.) regarding the laws of inheritance, *Zakat*, use of property, charity and earnings.

He further continues to say that, for example the Glorious Qur'an states that:

And do not eat up your property among yourselves for vanities, nor use it as bait for the judges, with intent that ye may eat up wrongfully a little of (other) people's property.

Similarly, al-Qaradawi (1984:326) points out that:

A Muslim is permitted to acquire wealth, as much as he desires, as long as he acquires it through lawful means and increases it through lawful investments. While in another religion it said, "It is easier for a camel to pass through the eye of a needle than for a rich man to enter the kingdom of God".

In given the explanation on the above verse, Ibn Kathir (2007:366) is of the view that:

Allah, the Almighty prohibits His believing servant from illegally devouring each other's property through various illegal (dishonest) mean such as usury, gambling and other wicked ways that would appear to be legal... While you are forbidden from using illegal ways and methods to get money, commercial transactions that are established between the buyer and the seller with mutual consent are made lawful for you as a means of earning your living.

The verse above and many others quoted before show that, it is strictly forbidden by Allah (S.W.T.) for His believing servant to acquire wealth illegally through dishonest or illegal means such as *Sariqah*. But people who fear Allah (S.W.T.) among His servants can acquire it (wealth) with the consent of the owner(s) either through gift or business transactions, so as to earn their living.

### **Definition of Theft (*Sariqah*)**

The word *Sariqah* is defined in various ways by various scholars both from Western and Islamic perspectives. Sally, et'al (2005:1532) define theft as the crime of stealing something from a person or place. al-Maghribi (2008:313) defines *Sariqah* as "the secretly taking away of another's property. In the language of the law *Sariqah* signifies the taking away the property of another in a secret manner, at a time when such property is in custody".

El-Awa (1998:7) pointed out that, "Stolen property is property taken illegally from its owner. Owners usually keep goods in a proper place in which they are safe. The storage place, or the custody of the good, is known to Muslim jurists as *hirz*."

The primary meaning of *Sariqah* according to Sabiq (1996:358) is the taking of the thing in a hidden way. It means one listened in the secret i.e. he heard by a hidden way. It is said: One steals the looking at him, if he inattentively looks at him. Sabiq continues to state that, in the Glorious Qur'an, Allah (S.W.T.) says:

ألا من استرق السمع فاتبعه شها ب ميين

But any that gains a hearing by stealth, is punished by a flaming fire, bright to see (15:18).

He further stresses that, the son of *Arafah* said: The thief as to the Arabs: Is the one who comes hiding to a well-fortified place and takes away something which is not his property. So theft can be committed when the following three conditions are met:

1. The taking of the money of the others.
2. That the taking is by the way of hiding and in the secret.
3. That the money is in a well-fortified place.

It is therefore important to state that the definition of *Sariqah* above clearly indicates that, *Sariqah* can only be constituted or committed by taking of the money or property of others by way of hiding and in secret manner and the money or property is kept in a well-fortified place.

Doi (2007:254) discusses that, *Sariqah* or theft also is an illegal means of acquiring another's property. Bambale (2003:54) postulates that:

Theft is an act of taking other people's property without any lawful claim to it. It is also defined as the taking away of property recognized in law as belonging to another from where it is kept and carrying it with the intention of appropriating it without justifying one's actions. It can be said that anybody who does this commits the crime of theft, provided the value of such stolen property can be legally appreciated.

Ibn Rushd (1996:536) opines that, theft is the taking of the property of another by way of stealth, when the thief has not been entrusted with it. *Sariqah* as noted by al-Jaza'iri (2007:740) means "when somebody takes any kind of money while being hidden, as when he enters into a shop or a house and takes clothes, grains, gold, or the like from it". Salim (2010:75) sees *Sariqah* literally as "taking what do not belong to a person in a secret manner and technically defines it as taking some body's wealth (which is worth value) in secret manner without the consent of the owner".

Uthaimin (2007:205) views *Sariqah* as 'taken of wealth from its owner or his representative in a secret way'. He further expatiates the meaning of "taking of wealth" to exclude what is not a wealth such as a dog cannot be referred to as theft in *Shari'ah*, even though linguistically or literally he can be called thief. Similarly, the connotation has disregarded a person who steals from another thief, not to be subjected to *Hadd* punishment.

From the above definition therefore, it shows that theft (*Sariqah*) is the taking away of another person(s) property and this property may be money or something valuable by other person(s) who has not been entrusted with, in a secret manner. However, if the stolen property is something like fruits the *hadd* punishment should not be inflicted on the thief likewise anything unlawful to eat or drink. With regard to the stealing of hanged fruits, Malik (1982:336) expresses that:

عن عبد الله بن عبد الرحمن بن أبي حسين المكي أن رسول الله صلى الله عليه وسلم قال: لا قطع في ثمر معلق ولا في حريسة جبل فإذا أواه المراح أو الجرين فالقطع فيما بلغ ثمن المجن.

Abdullah bn Abdul-Rahman bn Abi Husain al-Makki reported that the Messenger of Allah (PBUH) said: There is no cutting in hanged dates or the livestock on the mountain, but if one seeks a shelter on the field or the threshing floor then the cutting is in what reaches the price of the shield (Imam Malik, Vol. 2, p.336).

### **Kinds of Theft (*Sariqah*)**

Scholars after given the various definitions of *Sariqah*, beside a person who breaks or enters the premises and takes property which does not belong to him and in a secret manner, have categorized them into three ( 3): The plunderer, the pick-pocket and the snatcher.

#### ***The Plunderer***

According to Sabiq (1996), the plunderer is one who steals things from a place, especially using force during a time of war.

#### ***The Pick-pocket***

This is a person who steals money or any valuable item from other people's pockets. Ibn Rushd (1996:541) elaborates that, scholars have deferred on the nature of spick-pocketing , a group considered pick pocketing if a person is caught putting his hand or tears the sleeve of another person among them are Malik, al-Awza'i, abu Thawr and Al-Hassan the Son of al-Munthir. Others on the other hand maintained that, if the money were packed in the apparent phase of his sleeve and he thrusts it and he steals it, he should not be amputated. But if it was packed inside sleeve and one inserts his hand and he steals it, he is to be amputated.

### **The Snatcher**

This is a situation when a person snatches something from the hand of somebody and runs away with it. Scholars have divergent opinions, some opined that the stolen amount if it reaches the minimum value (*Nisab*) of amputating hand the hand should be amputated because the stolen property is in the possession of the owner and under *hirz*. Others said that such a person should not be considered as a thief and hence *hadd* punishment should not be inflicted on him, instead *Ta'zir* should be applied. Similarly, Ibn Rushd (1996:541) adds that, scholars also have divergent views on the body- snatcher, a gravedigger who steals the coffins of the dead. In this regard, the majority are of the view that his punishment is by the cutting of his hand. This is because his action is an act of theft base on the fact that grave is a well-fortified place.

However, Abu-Hanifa, Muhammad, al-Awza'i and al-Thawri; have a contrary opinion gone to that the punishment of such a person is reproaching, because he is a body snatcher, and not a thief. Therefore, his judgment should be like that of a thief, because he has not steal from a property owned by anyone, since dead persons have no ownership and grave yard is not a fortified place.

### **Conditions of Theft (Sariqah).**

The foregoing sub-sections, have explained kinds of *Sariqah* as opined by various scholars. However, the scholars differ in opinions sin relation to elements which constitute theft. According to Imam Malik (2007:858), Ibn Rushd (1996:537) and Khalil (2004:340), theft is established when the following conditions are met:

#### **1. The thief must be an adult of sound-understanding.**

This simply means, the thief must be of an adult age and of sound-understanding. *Hadd* of amputation of a hand is not applicable to an infant and a person of unsound mind. The noble Prophet (S.A.W) says:

رفع القلم عن ثلاثة: عن الصبي حتى يبلغ، وعن النائم حتى يستيقظ وعن المجنون حتى يفيق.

Three types of persons are exempt from liability of amputation of a hand, a child till he attains maturity, a sleeping person till he gets up and an insane person till he regain his sense.

#### **2. The property must be in proper custody of the man.**

In this regard, *Imam* Malik (2007:858), Ibn Rushd (1996:540) and Khalil(2004:337-8) postulate that theft which calls for amputation of a hand shall be in relation to such property which is in careful protection of a man. They further add that, Abdullah bn, 'Abdur- Rahman bn Abi Husain al-Makki conveyed Allah's Apostle (PBUH) as saying:

لا قطع في ثمر معلق ولا في حريسة جبل، فإذا آواه المراح والجريين فالقطع فيما بلغ ثمن المجن.

Amputation of hand should not to be done for fruitlet which is swung up openly or for a conformist stolen by night from the elevation but when the conformist is in its fold or the fruitlet in the place where it is dried a hand is to amputated for whatever reaches the price of a shield (*Imam* Malik, Vol. 2, P. 858).

#### **3. The material goods must be taken out of the guardianship of another person in clandestine manner.**

The third element which calls for amputation is that the property must be taken out of the custody of another person in a secret manner. Guardianship is of two kinds: firstly, by domicile, for instance, a household or a yard; and secondly, by private guard, which is by means of a personal watch over the belongings. Thus, *Imam* Malik (2007:859) narrated:

أن صفوان بن أمية قدم المدينة فنام في المسجد وتوسد رده فجاء سارق وأخذ رده فأخذه صفوان فجاء به إلى رسول الله صلى الله عليه وسلم فأمر أن تقطع يده فقال صفوان إني لم أرد هذا هو عليه صدقة فقال رسول الله صلى الله عليه وسلم فهلا قبل أن تأتيني به (إمام مالك 2، Vol. 2، P.859)

Safwan bn Umayya arrived at Medina and slumbered in the mosque, using his pane as a pillow. A thief came and took his pane. Safwan apprehended him and brought him to the Messenger of Allah (PBUH) who ordered that his hand should be amputated. Safwan then said: This was not my intention. I give it to him as *Sadaqa*. The Messenger of Allah (PBUH) said: why did you not do so before bringing him to me? (*Imam* Malik, Vol.2 P. 859).

Therefore, *Imam* Malik and most of those who stipulate *hirz* are of the opinion that the thief's hand is cut if he moves the property out of the room, while others like Abu-Yusuf and Muhammad said that amputation is not applied unless he moves it out of the house not out of the room (Ibn Rushd, 1996:541), (Abiy al-Azhariy, n.d:290).

#### **4. The burglar must have gotten full custody of the stolen assets or material goods.**

It is not enough that the thief has taken away the property of another person. He must take its possession completely.

**5. The property must be of some value which must not be less than the prescribed *Nisab*.**

Regarding the amount of the value which establishes theft, there are two divergent opinions amid the jurists. First, *Hijaz* jurists' opinion, Malik, and others. Secondly, the Iraq jurists opinion. The *Hijaz* jurists' beseeched amputation for belongings worth three silver *dirhams* or one-fourth of a gold *dinar*. They parallel about the coinage with which stolen goods is to be assessed. Malik in his well-known opinion, said that such valuation is to be under taken by means of *dirhams* and not with one-fourth of a gold *dirhams*. This is in case the value of three *dirhams* becomes different from one-quarter of a gold *dinar*, as for example, when a quarter of gold *dinar* drops to two and one-half *dirhams*. But according to the jurists of Iraq the value of *Nisab*, because of which amputation becomes obligatory is ten *dirhams* and it does not become obligatory in an amount less than this. One group and among them are Ibn Abi Layla and Ibn Shubrama said that the hand is not to be amputated for less than five *dirhams*, while it is also said four *dirhams*. al-Batti was of the view that it is two *dirhams*. *Imam* Malik (2007:856) holds that, the sum of *Nisab* is three *dirhams* or its equivalent property that calls for amputation of a hand, based on the tradition narrated by A'ishah (R.A) thus:

عن عائشة عن النبي صلى الله عليه وسلم – قال لا تقطع يد السارق إلا في ربع دينار فصاعد (البخارى، Vol. 8، P. 514).

'Aisha (Allah be pleased with her) reported the Prophet (S.A.W) saying that: The hand of a burglar shall not be amputated except for 1/4 of a *dinar* and upwards (*Imam* Bukhari Vol. 8, P.514).

**6. The Property must be Movable.**

The subject of theft must be movable. It is an essential element because theft means taking away the property of another. It is possible in the case of movable property only. The land and things attached to the earth or permanently fixed to anything which is attached to the earth cannot be taken away from the possession of one person to another and hence these cannot be stolen, as *Imam* Malik (1982:345) said. The thief's hand is amputated if he takes the goods out of the room.

**7. Deceitful goal to take the Assets.**

This is the most important part of the definition. It is the intention of the taker which must determine whether the taking or moving of a thing is theft or not. Where there is no intention to take it dishonestly, there is no theft. In his attempt to explain the elements which will confirm the establishment of *Sariqah*, Orire (2007:302) adds that, the theft must not be out of necessity, i.e. hunger, etc. Similarly, Bambale (2003:54) while discussing the conditions which make the act of theft complete as to the thief himself, says, the thief must have committed the act of theft voluntarily. If he was forced, it nullifies responsibility; hence the *Hadd* punishment is not inflicted.

As regards to the stolen property also, where it says: 'the property must be owned by someone', Bambale (2003:55) points out that:

The stolen property must be lawful. For the theft of things that are unlawful like wine, pork, etc., neither *had* nor *Ta'zir* inflicted. But if the thing stolen belongs to a non-Muslim, they should be returned or its value and *Ta'zir* punishment is inflicted. But the things stolen belong to a Muslim, they are never returned to him, instead they should be destroyed and the thief would not be punished at all. As to the theft of things which every being has a right over it, no *Hadd* punishment is imposed. But if anyone becomes the owner of a thing, its theft will warrant the infliction of the *Hadd* punishment.

Similarly, as to theft of thing which every being has a right over it, *Imam* Malik (1982: 346) says:

Every human being has a right over these things, but once any part of these things are secured by an individual and kept in a proper custody, it becomes his own fare and if it is stolen and the value reaches *Nisab*, *Hadd* is applicable.

Furthermore, in relation to the theft of things which every being has a right over it, *Imam* Malik (2007:864), Ibn Rushd (1996:543) and Muhammad (1989:136) elaborate that:

In case of an ascendant stealing from his descendants no *hadd* punishment of cutting the hand is to be inflicted. However, if a descendent steals from ascendant its punishment is with *hadd*. Similarly, theft between husband and wife is not punishable by *hadd*, unless the husband keeps the property away from the ordinary place of their place (residence).

This *Hadith* of the noble Prophet (S.A.W.) shows that if an ascendant steals from his descendant, *hadd* punishment should not be inflicted on him. But if the descendant steals from the ascendant, *hadd* punishment should be inflicted on him. A typical example here could be made with a father who steals or takes his son's property; he will not be punished. But if the son steals from his father's property he is liable to *Hadd* punishment. Similarly, theft between the husband and wife is not punishable by *Hadd*, unless if the husband keeps the thing away from their resident. Thus, reference could be made here to the *Hadith* of the Prophet (S.A.W.) where he ordered Hind to take what suffices her and her children from the wealth of her husband

In his discussion, al-Sheha (n.d. P.32) postulated that the procedure of cut off the hand of a burglar is only executed with stern circumstances which comprise the following:

- i. The whipped valuable or item must be in a well-maintained area whereby the thief gets into. If a thief steals an item that is not cared for, or left outside negligently, there is no chastisement by amputation. The thief in this regard may be endangered to the punishment of snatching, in which the authorities decide the suitable punishment or *Ta'zir*.
- ii. The stealing committed must not contain food for subsistence from hunger. Because Caliph Umar (R.A.) during the year of famines did not apply the penalty for theft due to the circumstances of prevalent of hunger.
- iii. The worth of the taken item(s) must reached or be within the array or beyond the value set for thieving that requires cutting off of the hand. These bodily penalties are not to be passed out except there is undisputable audience (i.e. no hesitation that the criminality has been committed) and that, it is disciplinary by Islamic edict. While explaining the conditions which confirm the establishment of *Sariqah*, *Imam* Malik as in Ibn Rushd (1996:543), Tantawi (2009) and Isma'il (1997) adds that the thief must not have been compelled to steal, because compulsion or enforcement nullifies the punishment; likewise lack of freedom (slavery). They further explain that, the thief must not have a share in the property stolen, if he has, then *Hadd* punishment should not be applied unto him. It is like a father to take the money of his son or a mother to take that of her daughter, as the Prophet (S.A.W.) was reported to have said:

لقول الرسول الله صلى الله عليه وسلم للابن الذي جاء يشكو أباه أنه يأخذ ماله، فقال رسول الله صلى الله عليه وسلم: "أنت، ومالك لأبيك"  
(البخارى، Vol. 8, P 154)

As the Messenger of Allah (S.A.W.) said to a son who came to him crying saying that his father took his money. The Messenger of Allah (S.A.W.) then said to the son: "You and your wealth are under the control of your father" (*Imam* Bukhari Vol. 8, P. 514).

It is pertinent to state here that in the case of the property stolen which belongs to *Bait al-Mal*, it will be presumed that the thief has a share in it, or a wife taking from her husband's property or a father or mother taking away from a son's property. In all these cases, the property will not be deemed to have been taken from *Hirz*, so it is only *Ta'zir* that would be applied but not *Hadd* because it is doubtful that it is really belonged to someone.

### **The Punishment of Theft (Sariqah)**

Theft is considered to be a serious crime or offence and grivous sin in Islam. It deprives a man of one's hard-earned money and or property. Theft is an encroachment upon the property of a man without any justifiable reason and it causes unrest in a society. Islam therefore wants to build a healthy society in order to establish peace and stability in it. So with a view to put the thieves under guard, strict measures have been ordained by the Creator - Allah (S.W.T). The Glorious Qur'an stresses tha:

والسارق والسارقة فاقطعوا ايديهما جزاء بماكسبا نكالا من الله والله عزيز حكيم

And as the man who steals and the woman who steals, cut off their hands: as a punishment for what they deed an exemplary punishment from Allah; and Allah is Exalted in power, full of Wisdom (*al-Ma'idah*, 5:38).

While giving an explanation on the above verse, *Imam* Malik (2007:860) shows that this chastisement (of cutting the hand) was accomplished by the Noble Prophet (S.A.W.) himself. He amputated the hand of a thief and also instructed the amputation of the hand of a female thief's hand as reported in both Bukhari Vol. 8, P.516-17 and Muslim Vol.3 P. 910).

In order to show how the punishment of theft is to be carried out, Sabiq (1996:378) says: If the crime of the theft is confirmed then the establishment of the punishment is enjoined on the thief, and his right hand is cut from the joint of the palm. It is the elbow, as to His saying (The Exalted):

والسارق والسارقة فاقطعوا ايديهما

The thief male and female cut their hands ... (*al-Ma'idah*, 5:38).

He further states that forgiveness on the above stated crime is not permissible by anyone even by a leader other than the victim. Likewise, it is not permissible to exchange the stipulated punishment with another punishment, lighter to it or delaying its execution to break it down. Contrary, the Shi'ites agreed that the amputation of hand of a thief can be forgiven. Similarly, Shi'ites believed that it is the obligation of the *Imam* to execute the punishment of theft; however, he has the right to forfeit the punishment base on the welfare. This view of the *Shi'ites* has definitely contradict the instruction of the Prophet (S.A.W.) as stated in the following narration:

تعافوا العقوبة بينكم، فإذا انتهى بها إلى الإمام فلا عفا الله عنه إن عفا (إمام مسلم، Vol. 3 P. 106 – 109)

Forgive the punishment amongst yourselves that if it reaches the *Imam*, there is no forgiveness on it by Allah, if one forgives (*Imam* Muslim, Vol. 3 P.109-10).



تقطع اليد في ربع دينار أو في ثلاثة دراهم، فإن سرق درهمين وهو ربع دينار لإنحطاط الصرف لم تقطع يده فيهما (البخارى Vol. 8 P. 516)

Cut off the hand (of a thief) who steals up to  $\frac{1}{4}$  of *Dinar* or that which is 3 *Darahim*, but if he steals 2 *Dirham* which is  $\frac{1}{4}$  of *Dinar* because of devaluation of the currency, his hand should not be amputated in that (Bukhari, Vol. 8, P. 516).

In his *Tafsir* of the above verse (Q.5:38), Ibn Kathir (2007:446) remarks that Allah, the Almighty commands and decrees that hand of thief, male or female be cut off by saying “Cut off (from the wrist joint) the (right) hand of the thief, male or female...”.

قال رسول الله صلى الله عليه وسلم: لعن الله السارق يسرق البيضة فتقطع يده، ويسرق الحبل فتقطع يده (البخارى، Vol. 8, P. 509)  
The Messenger of Allah (S.A.W) said: May Allah curses the thief who steals an egg and as a result his hand is cut off, and who steals rope and as a result his hand is cut off (Bukhari, Vol. 8, P. 509).

Qutb (2003:97-104) in his explanation on the reasons for imposing such a stern punishment for theft in the land and the suitability of this punishment to the crime of theft, he says:

When someone thinks of stealing, he actually thinks of increasing what he owns at the expense of someone else. He feels that what he earns legitimately is too little for him and, therefore, he wishes to add to it in an illegitimate way. In short, the motive for stealing is to increase one's income or one's wealth. When a thief is punished according to Islam, his ability to show off is greatly curtailed and his need to work hard is much greater. And When a thief is punished, his hand is cut off up to the wrist. If he commits theft again, then his left foot is cut off up to the ankle. In the case of a third or fourth theft, Scholars have different views as to what is cut off.

He continues to remark that, Allah, who is the Most Compassionate of all those who exercise mercy says:

والسارق والسارقة فاقطعوا ايديهما...

Cut off their hands in requital for what they have wrought, as an exemplary punishment ordained by Allah (*al-Ma'idah*: 38).

It is therefore a stern punishment that could serve as deterrent to others not to steal. To prevent somebody from committing criminality is an act of compassion to that person, for the reason that he is barred from compelling into a crime. It is also an act of elegance to the whole community, as it guarantees peace and security. No one may claim to be more compassionate to individuals than Allah who created them except one with a blind mind and a dull soul. Concrete proof shows that this penalty was not imposed except in a trickle of cases during a period approaching a whole century at the beginning of Islam. This is because Islamic *ummah*, with its own system and severe penalties and safeguards it puts in place, did not witness less criminalities.

al-Qayrawani (1994:211) and al-Maliki (2008:373-4) in their contributions on the punishment of a thief shows that:

He who pinches  $\frac{1}{4}$  of a dinar of gold or its equal, or the weight of three dirhams of silver, then his hand should be cut if he steals from well-fortified place. And there is no cutting in the secret. The hand of the man and the woman and the slave is cut in that, then if he steals his left foot is cut, then if he steals his hand is cut, then if he steals then his foot, then if he steals he is lashed and imprisoned.

al-Maliki (2008:375) further discusses that, if one steals another time, his foot is cut. Then if he steals for the third one, his left hand is cut, then if he returns back, his right foot is cut. Then if he steals he is reproached and imprisoned.

On the severance of the hands of the thief if it were cut, Al-Maliki(2008:375) postulates that, the hand of the thief is severed after the cutting, that it is cauterized with the fire, or it takes a way if is not exposed to the decay and the distraction. He then reported that:

أتى بسارق قد سرق شملة فقالوا: يا رسول الله، إن هذا قد سرق، فقال رسول الله عليه وسلم: ما أخاله سرق، فقال السارق: بلى يا رسول الله، فقال: اذهبوا به فاقطعوه ثم أخمسوه، ثم انتوني به، فقطع فأتى به فقال: تب إلى الله. قال: قد تببت إلى الله. فقال تاب الله عليك (رواه الدار قطني، والحاكم والبيهقي وابن حبان).

A thief was brought to the Messenger of Allah (Peace be upon him) stole a clock. Thereupon they said: O Messenger of Allah said: I don't think that you have stolen. The thief then said: Yes, indeed I have stolen O Messenger of Allah. He said: Take him, cut him and severe him, then bring him back to me. The man was then cut and brought back to him. The Messenger of Allah then said: Repent to Allah. He said: I have repented to



Allah. Thereupon, the Messenger of Allah said: Allah (The Exalted) has forgiven you (ad-Daraqutni, al-Hakim, al-Baihaqi, and the son of Hibban, narrated as in Sabiq Vol.3, P. 375).

Based on the above *Ahadith* together with the explanations given by the scholars, it is enough for one to say that, the hand of the culprit male or female should be cut off after having or satisfied all the conditions and knowing that theft is forbidden and having no reasonable need to lay his hands on the property of others, he commits a crime for which he has no justification. Hence, no mercy should be shown on him or her once he or she is proven guilty.

Finally, on the issue of theft, *Imam* Malik is of the view that, the punishment to be meted for stealing property whose value is three (3) *darahim* of Silver or one-quarter (1/4) of *dinar* as A'isha (R.A.) was reported that:

أن رسول الله صلى الله عليه وسلم قطع في مجن ثمنه ثلاثة دراهم (إمام مالك، 1982:347)

The Noble Prophet (S.A.W) used to cut off the hand of a thief if the value of the property stolen was one over four (1/4) of a *dinar* (*Imam* Malik, 1982: 347).

## II. Conclusion

It has been printed in the paper that Islam is a religion that protects wealth and property of an individual in the society and imposes severe punishment against thievery and robbery as well as banditry on them. It has been pointed also that one cannot be called thief and be punished, unless all the conditions stipulated by the *Shari'ah* are fulfilled. Thus, the problem of theft, banditry as well as robbery, can only be solved by enjoining what is good and prohibiting evils, giving sound religious education and by applying its punishment according to the dictates of the *Shari'ah*

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