



Cheating in Property: A Comparative review of the sections of Pakistan penal code with Islamic Jurisprudence

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Abstract

Law plays an important role in the establishment of any peaceful society. The world at large, needs to have some sort of constitution. Islam, being proactive, has devised important rules about 1440 years back for the safety of Deen, Life, Wealth, Wisdom and Generation. In Sharia they are called "Usool-e-Khamsa" (five rules). Since the entire building of the Sharia stands on these five rules.

As mentioned earlier, the safety of Wealth is one of the basics of Deen. Therefore, Islam introduced the system of Had-e-Sariqa (Punishment for Theft) as well as Highlight its introduction and categorized Theft and Islamic Jurisprudence have determined its different types according to the nature and circumstances and have stated suitable punishments for them. Cheating in Property is also a kind of theft and wealth cannot become safe if a person is making cheats.

Pakistani Laws especially Pakistan Penal Code has gathered all these rules and has given them the shape of a law. However, the alignment of these laws with the Islamic fiqha is always a big question and it is feared that they miss the Islamic teachings regarding these issues. Therefore, this intellectual enquiry is all about the detailed comparative study of these sections of Pakistan Penal Code regarding to the Cheating in Property with all the four basic Islamic schools of thought. The intention is to make it clear that to what extent each section is in accordance or in conflict with which school of thought.

Key words: Cheating, Property, Pakistan Penal Code, Islamic Fiqha

Introduction:

The Pakistan Penal Code is one of these laws which are implement in Pakistan. In this Act categorized various offences and determined punishment of these offences. Lord Macaulay prepared this act for Indian Government with the help of some Legislative in 1860 A.D and was known as "The Indian Penal Code." This act had been implemented on 6th October 1860 A.D and gave him law consideration in All India under Act No. XLV of 1860 A.D¹.

In 1947 A.D when Pakistan came in to being this Penal code inherited him. As Pakistan was a constant country therefore, this Penal Code was named "Pakistan Penal Code"².

¹Irfan Ahmad Saeed, The Pakistan Penal Code (Irfan Law Book House Lahore, 1999)P:1

²The Pakistan Penal Code, Chapter 1, sec:1,P:1

Being an Islamic country, Pakistani law experts and religious scholars are trying time to time to amend its un-Islamic sections in the light of Islamic Jurisprudence. But as a whole Pakistan Penal Code has not researched in the light of Islamic teachings and jurisprudence.

“Offence against Property” is one of Chapter (17th chapter) of Pakistan Penal Code. In this Chapter under the various titles related to the Property are discussed i.e. law’s Introductions, Explanation, Illustrations and Punishment of the related offences. In this chapter there is a part named “Of Cheating in Property” which is contain on the introduction of cheating, possible cases and its legal punishment. But this part has not researched in the light of Islamic teachings and jurisprudence of four Schools yet. In this research article the sections of this part has explanted and reviewed with Islamic Jurisprudence.

Of Cheating

This Part is contain on six sections: (From Section No: 415 to Section No: 420)

Section no 415: Cheating:

“Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person [or any other person] in body, mind, reputation or property, is said to "cheat".”³

Explanation:

In the above section of Pakistan Penal Code, the legal introduction of cheating and has been introduced these cases on which implement cheating legally. As a whole the above introduction is contain on two parts. First part is special part which surrounds on the section and “any person, fraudulently or dishonestly induces the person.....” words represented this part of section. Second part is contain on other two parts. First part of the second part is “any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do” and the second part is “and which act or omission causes or is likely to cause damage or harm to that person” is the alternate part of first part and the last words “is said to "cheat"” are completion word of this section. While these words of the section “which he would not do or omit if he was not so deceived” are related to the second part of the section and its implementation on the first part is not suitable in any case.

Therefore, this section belong to the possible and implement cases of Cheating not contain on the introduction of cheating, which are as under:

1. Keep Property of theft or other property in which cheating has been committed to any one, saying to him that this property of the same position.
2. Induces the person so deceived to do or omit to do anything which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property and inducer doesn’t inform this person.
3. Induces the person so deceived not to do anything which do not act causes or is likely to cause damage or harm to that person in body, mind, reputation or property and inducer doesn’t inform this person.
4. All of the above cases commit by deceiving any person, fraudulently or dishonestly.

Cheating in the light of Sharia:

³The Pakistan Penal Code, Chapter: XVII, Sec: 415

In Arabic language the word “Taghreer” [تَغْرِيرٌ] is used for Cheating. But in Arabic literature it means: Danger, cheat, loss⁴. It also means in Arabic “to present himself on the harm and danger.”⁵ According to the Oxford dictionary’ cheating means: deceit, deceiving, deception, double dealing, fraud etc.

Imam Jurjani has literally defined cheating: “A work which is unknown by result and end ”⁶. While Imam Raghīb writes about cheating:

“Unknown in the awaken condition, unaware, the disclose effect of a thing ”⁷.

In the Holy Quran this word is used for the meanings of “cheating, fraud, loss, and defect. As Allah Almighty says:

﴿وَمَا الْحَيَاةُ الدُّنْيَا إِلَّا مَتَاعُ الْغُرُورِ﴾⁸

“The life of this world is only the enjoyment of deception (a deceiving thing).”⁹

﴿لَا يَغُرُّكَ تَقَلُّبُ الَّذِينَ كَفَرُوا فِي الْبِلَادِ﴾¹⁰

“Let not the free disposal (and affluence) of the disbelievers throughout the land deceive you”

﴿وَمَا يَعِدُهُمُ الشَّيْطَانُ إِلَّا غُرُورًا﴾¹¹

“And Shaitan's (Satan) promises are nothing but deceptions.”

﴿يُوجِي بَعْضُهُمْ إِلَى بَعْضٍ زُخْرُفَ الْقَوْلِ غُرُورًا﴾¹²

“Some of them inspiring others with gilded speech to deceive (them)”

﴿فَلَا تَغُرَّنَّكُمُ الْحَيَاةُ الدُّنْيَا وَلَا يَغُرَّنَّكُم بِاللَّهِ الْغُرُورُ﴾¹³

“Let not then this (worldly) present life deceive you, nor let the chief deceiver (Satan) deceive you about Allah.”

﴿بَلْ إِنْ يَعِدُ الظَّالِمُونَ بَعْضُهُمْ بَعْضًا إِلَّا غُرُورًا﴾¹⁴

“Nay, the wrongdoers hold out promises one to another only to deceive”

﴿مَا غَرَّكَ بِرَبِّكَ الْكَرِيمِ﴾¹⁵

“What evil has deceived you about your Gracious Lord?”

⁴In the Holy Saying of Muhammad (S.A.W) the word “Gharar” has used in the meaning of “Loss”: لَا غَرَارَ فِي صَلَاةٍ وَلَا تَسْلِيمٍ.

“There is no loss and Salam in the Prayer.

[Abu Da’ud, Sulaiman Bin Ash’As Sajistani, Sunan, (Dar-UI-Kitab Al-Arabi, Bairoot), Hadith No:928]

⁵Ibn-i-Sayda, Abu-UI-Hasan Ali Bin Ismail, Al-Muhkam-Wal-Muhit-UI-Azam (Dar-UI-Kotob-UI-Ilmia, Bairoot, 2000) Vol:5.P:360... Raghīb Asfahani, Abul Qasim Hussain Bin Muhammad Bin Mufazzal, Al-Mufradat Fi Gharib-Al-Quran (Dar-UI-Ilam, Damishq, Bairoot, 1412 H), P:604.

⁶Ali Bin Muhammad Al-Jurjani, Al-Tarifaat (Dar-UI-Kitab Al-Arabi, Bairoot, 1405 H) P:161

⁷Al-Mufradat Fi Gharib-Al-Quran, P:604

⁸Al-Imran 3:185

⁹Quran Translation, Tarjamat-i-Englizia Lima’aan-i-Quran (Al-Maktabat-U-Shamila)

¹⁰Al-Imran 3:196

¹¹Al-Nisa 4:120

¹²Al-An’aam 122:6

¹³Luqman 31:33

¹⁴Al-Fatir 35:40

¹⁵Al-Infitar 82:6

According to the terminology of Sharia:

Ahnaaf: "Hide the knowledge and address of a thing from any one is called cheating."¹⁶

Malikia: "Hide the main defect of a thing in a dealing from the person concerned."¹⁷

Shafia: "Keep in ignorance any one from the defect of a thing and related action in a dealing."¹⁸

Hanabila: "Hide the knowledge of phrase and merit of a thing."¹⁹

In Short' the ignorance which is out of the human being, belongs to the things and not describe to the person concerned at the time of dealing' is called "Cheating".

According to the Islamic-teachings cheating is prohibited. As cheating in dealing بيع الغرر is prohibited in the Holy saying of Prophet Muhammadﷺ:

”تَهَى رَسُولُ اللَّهِ ﷺ عَنْ بَيْعِ الْحَصَاةِ، وَعَنْ بَيْعِ الْغَرَرِ“²⁰

“Prophet of Allah has prohibited dealing with throwing of stone and from cheating in dealing.”

Imam Nawawi says: “That Hadith in which the Holy Prophetﷺ had been prohibited use from cheating in dealing’ is the basic formula in dealing chapters of the Islamic-Jurisprudence and many problems are defend upon it. Therefore’ in which dealing the cheating is disclosed and protection is possible and there its completion is no necessary’ this kind of dealing is prohibited and rejected.”²¹

Analyses:

This section of the Pakistan Penal Code is belongs to the specials cases and shapes of cheating which proved that possessing of defective property, Induces the person so deceived to do or omit to do anything which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property and inducer doesn't inform this person is belongs to the cheating. While in the light of Sharia, the circle of cheating is so wide and the mentioned cases are a few shapes and cases of it and these cases are not covered the whole cases of cheating. Therefore, the given introduction of cheating is insipient.

416: Cheating by personation:

“A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is .”²²

Explanation:

In the above section of the Pakistan Penal Code, a special case of cheating has been mentioned, which belongs to the personation deceived. This special shape is that a person pretending to another person by showing that the pretentious personality is the original person which presents

¹⁶Babarti, Abu Abdullah, Muhammad Bin Muhammad Bin Mahmood, Al-Inaya Sharah-Ul-Hidaya (Dar-Ul-Fikar, Bairoot) Vol:6, P:512.

¹⁷Tbn-i-Urfa, Muhammad Bin Muhammad Al-Warghami, Al-Maliki, Al-Mukhtasr-Ul-Fiqhi (Moassasat-Ul-Khalf Ahmad 2014) Vol:3, P:378

¹⁸Ibrahim Bin ali Bin Yousaf, Fairouz Abadi, Sherazi, Al-Muhazzab Fi Fiqh-I-Imam Al-Shafi (Dar-Ul-Kitab-Ul-Ilmia) Vol:2, P:17.

¹⁹Zarikshi, Shams-ud-Din, Muhammad Bin Abdullah, Sharah Al-Zarikshi (Dar-Ul-Abikan, 1993) Vol:5, P:11

²⁰Sahih Muslim, Book: Al-Boyyoo[22], Chapter: Botlan-E-Bay-ul-Husati[2], Hadith No:3881

²¹Nawave, Muhye-ud-Din, Yahya Bin Sharaf, Al-Minhaj Sharah Sahih-Ul-Muslim Bin-Al-Hajjaj (Dar-Ul-Ahya-Ut-Turaas, 1392 H) Vol:10, P:156.

²²The Pakistan Penal Code, Chapter:XVII, Sec: 416

to him. While the fact situation is against to the described position. There are two shapes of this Cheating:

1. Common shape is this' when any person (i.e. Zaid) says about himself or about other person(i.e. Amar) that I (Zaid) or this person(Amar) is (Bakker), while indeed he(Zaid) or that person(Amar) is not (Bakker).
2. Second shape is this' when any person (i.e. Zaid) represented his self in the disgust of another person (i.e. Amar) by adopting his conduct, dress and address.

Personation cheating in the light of Sharia:

The mentioned case in this section is called “Tilbees-e-Shakhsi [شخصى تلبیس]” in Arabic language. “Shakhs” means “A Person” while the origin of “Tilbees” is “[لبس]Lobs” which represent the means of “to hide anything, keep in shelter, confusion mixed and compound.”²³ The following verses of the Holy Quran proved these meanings of this word:

﴿وَلَا تَلْبِسُوا الْحَقَّ بِالْبَاطِلِ﴾²⁴

” And mix not truth with falsehood “

﴿لِمَ تَلْبِسُونَ الْحَقَّ بِالْبَاطِلِ﴾²⁵

“Why do you mix truth with falsehood?”

﴿وَلَلْبَسْنَا عَلَيْهِمْ مَا يَلْبِسُونَ﴾²⁶

“And We would have certainly caused them confusion in a matter which they have already covered with confusion.”

﴿الَّذِينَ آمَنُوا وَلَمْ يَلْبِسُوا إِيمَانَهُمْ بِظُلْمٍ﴾²⁷

“Those who believe and mix not up their faith with iniquity”

In short' literally: “To hide the fact and disclose its opposite side is called Telbees (تلبیس)²⁸ - It's usually and Shari meaning is not out from literally meaning²⁹ and that represented his self in the disgust of another person is called “Personation Cheating.”

Analyses:

The introduction mentioned in this section is adjusted to the case of personation cheating. While in the books of jurisprudence this terminology is used for the common cheating and fraud, although belong to the personation case or with any cheating act. According to the teachings of Islam, if this personation cheating takes place for the sake of Islam and for the safety of Muslims and act against the enemy of Islam and Muslims in this case it is not prohibited for the Muslims, especially in the crises conditions of war between Muslim and Non-Muslims.³⁰

²³Al-Mufradat Fi Gharib-Al-Quran,P:753

²⁴Al-Baqara 2:42

²⁵Al-Imran 3:71

²⁶Al-In'aam 6:9

²⁷Al-In'aam 6:82

²⁸Al-Tareefat Lil-jurjani,P:66

²⁹Jamal,Sulaiman Bin Umar Bin Mansoor,Hashiyat-Ul-Jamal Ala Sharh-i-lmanhaj(Dar-Ul-Fikar,Bairoot),Vol:2,P:78

³⁰Wazarat-Ul-Awqaf Wa Shawon Al-islamia,Al-Moso'At-Ul-Fiqhiyat-Ul-Kowaitia(Dar-Ul-Salal,Kuwait1404 H),Vol:10,P:162

417: Punishment for cheating:

“Whoever cheats shall be punished with imprisonment of either description for a term, which may extend to one year, or with fine, or with both.”³¹

Explanation:

In the above section of The Pakistan Penal Code, The common and simple punishment of cheating has been mentioned and described. This section will be implemented in that case of cheating in which the property is not handed over yet. If the property has been handed over the deceiver, then section No 420 will be implemented.

This fact is disclose that in cheating punishment label to “Tazeer” and not label to “Had” will be implement and this is on the behalf of Justice to give punishment in this case. Now we describe that is cheating include in these offences in which Govt can give the Punishment of “Tazeer”?

Imam Ibn-e-Timyya says: “Those offences which are not label to “Had or kafara” (then described some offences) i.e. someone eat blood or prohibited things, false witness of conjunction on the people, theft from the unsecured place, dishonesty in the trust, cheating in his dealing, decreasing in the scale, false witness, takes interest from the people, misbehavers of govt with people and thus act other prohibited work, these kind of people should be punished as penalty(tazeer) to become good and pure. Judge has the choice to give him the punishment according to act of offence and the offender. If he is the habitual of offence then Judge can give him more punishment than the habitual.”³²

Hafiz ibn-e-Qayyim gives the example of those offenses which are not label to “Had” and says that theft which is not label to cut the hand by it, false oath, seeing to the stranger women and thus others acts which are prohibited by Islam are justify for punishment of “tazeer” by the opinion of Imam Shafi R.A, while according to other scholars and ulamaa this punishment must be given and is Wajib.³³ The offences which are mentioned by Hafiz Ibn-e-Qayyim are most little than the cheating in badness and prohibiting. When here is punishment of Tazeer is due according to the Islamic-Sharia than cheating is most suitable for this case of punishment.

According to the saying of Allama Ibn-e-Farhoon: “Punishment of Tazeer will be practices in the leaving of Wajib and doing of prohibited acts,³⁴ and there is no any doubt in the prohibiting of Cheating.

Analyses:

In the light of the above arguments it’s proved that the section concerned is according to the principles and basics of the four classes of fiqha and this section describe the limitation of this Punishment of Tazeer.

418: Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect:

“Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound either by law, or by legal contract, to protect shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”³⁵

³¹The Pakistan Penal Code, Chapter :XVII , Sec: 417

³² Ibn-i-Timiyya,Ahmad Bin Abdul Halim, Al-Siyasat-U-Sharaia(Wazarat-U>Showon –wa-Awqaf Wa Dawat Wl-Irshad,Saudi Arabia, 1418 H)Vol:1,P:103

³³Ibn-i-Qayyam,Muhammad Bin Abi-Bakar, Al-Turoq-UI-Hikmia Fi-S-Siyasat-UI-Sharia(Matba’at-UI-Madani,Qahira)Vol:1,P:155

³⁴Ibn-i-Farhoon,Ibrahim Bin Ali, Tabsirat-UI-Ahkam Fi Usool-i-Aqziati Wa Manahij-UI-Ahkam(Maktat-UI-Kulyaat-UI-Azharia,Misar,1986), Vol:5,P:267

³⁵The Pakistan Penal Code, Chapter:XVII , Sec: 418

Explanation:

The above section of Pakistan Penal Code explains the punishment of cheating from the person bounded either by law or by legal contract to protect the thing concerned i.e. clerk, servant, broker, watchman and thus other bounded persons of a responsibility who are bound to protect harm from the described thing and overlook the benefit of Master and now he cheat to contractor or Master by giving harm to the protected thing, this kind of cheater shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. This section is consists of the following parts:

1. The servant cheated to any person.
2. The servant has bounded on the protest of benefit of the thing concerned under any law or contract.
3. The cheating has belonged to the dealing and contract concerned.
4. Servant have the knowledge that this act of offence is harmful to the person and Master concerned.

Analyses:

This section is relates with the legal punishment of that cheater who is a clerk, servant, broker, watchman and thus other bounded persons of a responsibility who is bound to protect harm from the described thing and overlook the benefit of Master. If this kind of cheater does not follow the conditions by which he accepts the contract concerned and responsibility, then this section will be applied to legal punishment. Because, in the Holy saying of Prophet Muhammad (S.A.W):

«الْمُسْلِمُونَ عَلَى شُرُوطِهِمْ»³⁶

“The Muslims should care of their conditions.”

So in the above condition the offender:

1. Act the criminal deceived,
2. Destroyed the trust of an institute by which the trust of people finished from the institute concerned and the person concerned,
3. And he disobey the Law and contract concerned.

Therefore, this kind of cheater is justified for the above mentioned punishment as “Legal Punishment”.

419: Punishment for cheating by personation:

“Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”³⁷

Explanation:

The above section of Pakistan Penal Code explains the legal punishment of a special case of cheating called “cheats by personation”. This section should be applied at the time when the purpose of cheating by personality is given harm to the person or thing concerned. If this act done for the sake of citizen’s and country safety and for the recording of the actions of the enemies of a country like intelligent forces and departments of Pakistan, then this kind of action is lawful and legally correct.

³⁶Sunan-i-Abi Dawood, Book: Al-Aqzia[25]Chapter:Al-Sulha[12],Hadith No:3596

³⁷The Pakistan Penal Code, Chapter :XVII , Sec: 419

Analyses:

The above section of Pakistan Penal Code which explains the legal punishment of cheats by personation, is according to the explanations of Islamic thoughts as well as legally correct³⁸ and the expending of punishment is according to the status of crime because the cheating has been practiced here orally as well as practically.

420: Cheating and dishonestly inducing delivery of property:

“Whoever cheats and there by dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment, of either description for a term which may extend to seven years, and shall also be liable to fine.”³⁹

Explanation:

The above section of Pakistan Penal Code explains a special shape of cheating, its possible case and determines its legal punishment. The previous sections explain the case of that cheating in which the cheater cheats by himself and not involve any other person in the committing of cheating. While in this section the offender involve any other person in the committing of cheating induces the person to commit the inducing crime. Therefore, the mentioned offender is deserve for both kinds of punishment i.e. imprisonment and fine and shall be punished with imprisonment, of either description for a term which may extend to seven years, and shall also be liable to fin. There are two conditions for the implementation of this section:

1. Hand over any property to any person.
2. Designed or changed or destroyed any valuable security, or anything which is resemble to the valuable security.

If these conditions are vanished in the case concerned, then section: 417 will be implemented.

Valuable Security:

In the above section the word “Valuable security” is mentioned. Its introduction and explanation according to the section: 30 of Pakistan Penal Code is that:

30: Valuable security:

“The words "valuable security denote a document which is, or purports to be a document whereby any legal right is created, extended, transferred restricted, extinguished or released, or Where by, any person acknowledges that he lies under legal liability, or has not certain legal right .”⁴⁰

Explanation:

The word “Valuable security” used as Guaranty, Bail, warranty, Sponsor, Bound etc. in Islamic-Sharia and “Kafala” used instead of these words in Islamic-jurisprudence books. According to the teachings of Islam “acceptance one’s responsibility, which settlement in the responsibility of the person concerned, is called “Kafala”. As proves from the Holy saying of Muhammad (S.A.W) that:

³⁸Havwe,Said Bin Muhammad Daib Bin Mahmood Al-No’aimi,Al-Asas Fi-S-Sunnati Wa Fiqhoha(Dar-Us-Salam,Bairoot,1994)Vol:3,P:158

³⁹The Pakistan Penal Code, Chapter: XVII , Sec: 420

⁴⁰The Pakistan Penal Code, Chapter: II, General Explanation , Sec: 30

"عَنْ سَلْمَةَ بْنِ الْأَكْوَعِ رَضِيَ اللَّهُ عَنْهُ، قَالَ: كُنَّا جُلُوسًا عِنْدَ النَّبِيِّ ﷺ، إِذْ أُتِيَ بِجَنَازَةٍ، فَقَالُوا: صَلِّ عَلَيْهِ، فَقَالَ: "هَلْ عَلَيْهِ دَيْنٌ؟"، قَالُوا: لَا، قَالَ: "فَهَلْ تَرَكَ شَيْئًا؟"، قَالُوا: لَا، فَصَلَّى عَلَيْهِ، ثُمَّ أُتِيَ بِجَنَازَةٍ أُخْرَى، فَقَالُوا: يَا رَسُولَ اللَّهِ، صَلِّ عَلَيْهَا، قَالَ: "هَلْ عَلَيْهِ دَيْنٌ؟" قِيلَ: نَعَمْ، قَالَ: "فَهَلْ تَرَكَ شَيْئًا؟"، قَالُوا: ثَلَاثَةُ دِنَانِيرٍ، فَصَلَّى عَلَيْهَا، ثُمَّ أُتِيَ بِالثَّلَاثَةِ عَلَيْهِ "فَهَلْ قَالَ: فَقَالُوا: صَلِّ عَلَيْهَا، قَالَ: «هَلْ تَرَكَ شَيْئًا؟»، قَالُوا: لَا، دَيْنٌ؟"، قَالُوا: ثَلَاثَةُ دِنَانِيرٍ، قَالَ: "صَلُّوا عَلَى صَاحِبِكُمْ"، قَالَ أَبُو قَتَادَةَ صَلِّ عَلَيْهِ يَا رَسُولَ اللَّهِ وَعَلَى دِينِهِ، فَصَلَّى عَلَيْهِ."

Narrated by salama bin Al-Akwa: "Once, while we were sitting in the company of Prophet, a dead man was brought. The Prophet was requested to lead the funeral prayer for the deceased. He said, "Is he in debt?" The people replied in the negative. He said, "Has he left any wealth?" They said, "No." So, he led his funeral prayer. Another dead man was brought and the people said, "O Allah's Apostle! Lead his funeral prayer." The Prophet said, "Is he in debt?" They said, "Yes." He said, "Has he left any wealth?" They said, "Three Dinars." So, he led the prayer. Then a third dead man was brought and the people said (to the Prophet), please lead his funeral prayer." He said, "Has he left any wealth?" They said, "No." He asked, "Is he in debt?" They said, ("Yes! He has to pay) three Dinars', He (refused to pray and) said, "Then pray for your (dead) companion." Abu Qatada said, "O Allah's Apostle! Lead his funeral prayer, and I will pay his debt." So, he led the prayer."⁴¹

This shown from this saying that "acceptance one's responsibility, which settlement in the responsibility of the person concerned is called "Kafala" and it's literally and Shari meanings and explanation are same.

In Arabic Literature "Kafala" means: "Joint and connect a thing with another thing"⁴². While in Islamic jurisprudence "acceptance one's (guaranty) responsibility of another one's (guarantee) is called "kafala" (guaranty).⁴³ While responsibility means protection, guardianship, securest, fidelity bond.⁴⁴

Guarantee is one's who accept the responsibility, therefore, a person who accept the responsibility of looking after of someone is called "Kafil" (Bail Bondsman) as in the Holy saying of the Prophet Muhammad (S.A.W):

أَنَا وَكَافِلُ الْيَتِيمِ فِي الْجَنَّةِ هَكَذَا وَأَشَارَ بِالسَّبَّابَةِ وَالْوَسْطَى⁴⁵

"I and the one who take the responsibility of an orphan will be in paradise thus, and he joined his middle finger and forefinger"

In the Holy Quran Allah Almighty described about the Zakaria (A.S) who accepted the responsibility of looking after of the Sayyada Maryam (Mother of Essa A.S) and said:

وَكَفَّلَهَا زَكَرِيَّا⁴⁶

"And Zakaria looked after her (Maryam A.S)."

⁴³Ibn-O-Nujaim,Zain-Ud-Din Bin Ibrahim,Al-Bahr-Ur-Raiq Sharha Kanz-Ud-daqaq(Dar-Ul-Marifat-i-Bairoot)Vol:6,P:221...Qarqi,Shahab-Ud-Din Ahmad Bin Idrees(Dar-ul-Gharab-Ul-Islami,bairoot,1996)Vol:9,P:190...Mawardi,Abu-L-Hasan,Ali Bin Muhammad, Al-Hawe Al-Kabeer, (Dar-Ul-Fikar, Bairoot)Vol:6,P:436....Ibn-i-Qudama,Abdullah Bin Ahmad, Al-Mughni Fi Fiqh-i-Imam Ahmad Bin Hanbal Al-Shaibani(Dar-Ul-Fikar Bairoot,1405 H)Vol:4,P:399.

⁴⁴Al-Bahr-Ur-Raiq Sharha Kanz-Ud-daqaq,Vol:6,P:221

⁴⁵Sahih-Ul-Bukhari, Book: Al-Talaq[72]Chapter: Al-Li'aan[24]Hadith No:5304

⁴⁶Al-Imran 3:73

Analyses:

The above section No: 420 of Pakistan Penal Code which explains the legal punishment of cheats by personation, is according to the explanations of Islamic thoughts as well as legally correct and the expending of punishment is according to the status of crime because the cheating has been practiced here orally as well as practically as well as he involved others people in this criminal act. The explanation of “Valuable security” proves that this is a special kind of Guaranty in which Guarantee is responsible to pay the payment concerned or to looks after the thing concerned.

Conclusion:

“Offence against Property” is one of Chapter (17th chapter) of Pakistan Penal Code. In this Chapter under the various titles related to the Property are discussed i.e. law’s Introductions, Explanation, Illustrations and Punishment of the related offences. In this chapter there is a part named “Of Cheating in Property” which contains the introduction of cheating, possible cases and its legal punishment. This Part contains six sections (**From Section No: 415 to Section No: 420**). In Section No: 415 of Pakistan Penal Code, the legal introduction of cheating introduce these cases on which is implement cheating legally. Under the explanation of this section the word “Cheating” has been explained literally as well as in the light of Islamic thought and then represents the explanations of the four Schools of Fiqha according to the cheating. In section No: 416, a special case of cheating has been mentioned, which belongs to the personation deceived. The introduction mentioned in this section is adjusted on the case of personation cheating. While in the books of jurisprudence this terminology is used for the common cheating and fraud, although belong to the personation case or with any cheating act. If this personation cheating take place for the sake of Islam and for the safety of Muslims and act against the enemy of Islam and Muslims in this case it is not prohibited for the Muslims. Section No: 417 contains on the common and simple punishment of cheating. This section will be implemented in that case of cheating in which the property has not handed over yet. If the property has been handed over the deceiver, then section No 420 will be implemented and In the light of the Shari arguments it’s proved that the section concerned is according to the principles and basics of the four classes of fiqha and this section describe the limitation of this Punishment of Tazeer which is imprisonment of either description for a term, which may extend to one year, or with fine, or with both. The section No:418 of Pakistan Penal Code explains the punishment of cheating from the person bounded either by law or by legal contract to protect the thing concerned i.e. clerk, servant, broker, watchman and thus other bounded persons of a responsibility. If this kind of cheater does not follow the conditions by which he accepts the contract concerned and responsibility, then this section will be applied for legal punishment. Section No: 419 of Pakistan Penal Code explains the legal punishment of a special case of cheating called “cheats by personation” which is according to the explanations of Islamic thoughts as well as legally correct and the expending of punishment is according to the status of crime because the cheating has been practiced here orally as well as practically. The section No: 420 of Pakistan Penal Code explains a special shape of cheating, it’s possible cases and determine it legal punishment. The previous sections explains the cases of that cheating in which the cheater cheats by himself and not involves any other person in the committing of cheating. While in this section the offender involve any other person in the committing of cheating induces the person to commit the inducing crime. Therefore, the mentioned offender is deserves for both kinds of punishment i.e. imprisonment and fine and shall be punished with imprisonment. In this section the word “Valuable security” is mentioned. Its introduction and explanation according to the section: 30 of Pakistan Penal Code has been presented and then explains it in the teachings of Islamic-thought.

Suggestions and Recommendations:

1. Knowledge and learning of Islamic-Laws is most important than Knowledge and learning of Islamic-Economics, Islamic-History, Islamic-Society, Islamic-Culture and Islamic-Politics, because the achievement of progress and development in these fields are not possible without peace and protection, which is possible by the implementation of Islamic-Laws in the society.
2. It is most important for the establishment and achievement of Islamic system of justice to train the Islamic-Groups as well as the members of Law-Society with the training courses and that to start and develop these courses.
3. Because the lack of regular curriculum of Quran, Hadith and Islamic-Jurisprudence in our Legal system of teaching and training, the scholars of our court are not exempted from this kind of training courses.
4. Islamic Ideological Council is back to achieve it's expected struggles along with its benefits to bring Pakistani Laws generally and particularly Pakistan Penal Code according to the Islamic-teachings. However, it is essential to bring positive, basic and fruitful changes in the applied courses of Law Institution to make access of Law students to Quran, Hadith and Islamic-Sources directly.
5. For this purpose, it is essential to gather the scholars and jurists of Religious-Institutions and the modern age legislatives on one platform to think seriously and positively. In this way the legislatives will become aware of the importance and benefits of Islamic-Law and the scholars and jurists of Religious-Institutions become aware of the importance and benefits of Modern-Law courses and its implementation.
6. It is needed to conduct conferences and seminars on these topics everywhere to aware the present Government especially and the public generally of the message and teachings of Islam and to motivate for its implementation.
7. It is most essential to amendment in the sections of Pakistan Penal Code according to the teachings and principals of Islam and the needed explanations should be enter for the common uses and benefits.