

## Offences against Property in Chinese Criminal Law and Pakistan Penal Code: A Brief Comparison between Natures of Punishment

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### Abstract

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China and Pakistan are neighboring countries and they not only share border with each other but moral and social values of an Asian society but the modern day legislation of both countries is not the same. The major difference is of their basic legal system. Pakistan is a common law country and follows the Common law legal system that is purely based on statutes. China follows Civil law legal system. In Pakistan, as it is Common law country, everything is described and prescribed in statutes and statutes have set strict boundaries. In China, statutes are enforced but many of the things are left on the discretion of judges. Religion also plays a vital role while comparing both of the legal systems. Pakistan is an Islamic Republic and according to its constitution, no law can be made which is repugnant to the basic principles of Islam (Article 227 of Pakistan Constitution of 1973). In China, there is no such limitation or restriction over legislation.

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**Keywords:** The People's Republic of China, Pakistan, Offences against property, Punishment(s)

### Introduction

The word for law in Chinese is "*fa*" that represents meaning of fair, straight and just. The historical evolution of Chinese law can be divided into two broad periods. The first period is of classical Chinese law. There were two major theories prevailing at that time, Confucianism and Legalism. The theory of Confucianism advocates for ruling through traditional customs, norms, and mores. It insists upon the idea of human beings are basically good and by educating and guiding human beings, the goal of a crime free society can be achieved. On the other hand, Legalism believed in the utilization of codified laws and implementation of harsh punishments to achieve social order and peace in society.

The second period is basically period of modernization. After the communist victory in 1949, the People's Republic of China attempted to create a legal system based on socialist law. At present Chinese law is a mixture of socialist law and somewhat western style Civil law. However, earlier traditions from Chinese history have retained their influence even to the present.

Before getting independence from British rule in 1947, Pakistan was a part of Indian sub-continent. After independence, same legal system and laws are adopted by Pakistan. There are some laws based on religious teachings and practices but most of the laws are same as of colonial times, no doubt there are many new laws and amendments in existing laws according to the needs of time but basic structure of judiciary and legislature is same as of any other Common law country.

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As far as offences against property are concerned, in Pakistan Penal Code, nature of crimes and their respective punishments are described thoroughly and does not give judges more space to exercise their discretion except while implementing fines. On the other hand Chinese Criminal Law categorized a specific offence into three categories of large, huge and serious and allows a judge to exercise his discretion while announcing sentence. These three ranges are of monitory nature and they are different in every province.

### **Statutory Reference**

Pakistan Penal Code (XLV of 1860), chapter XVII, offences against property, sections 378-462.

The Criminal Law of People's Republic of China, chapter V, crimes of property violation, articles 263-276.

### **Theft/Stealing**

Section 378 of Pakistan Penal Code defines theft as "intending to take dishonestly any moveable property out of the possession of any person without the person's consent", while the Criminal Law of the People's Republic of China does not describe and define the act of theft/stealing expressly but rely upon general definition.

In Chinese law there are three levels of intensity of a crime, large, huge and serious. (Article 264 of Criminal Law of the People's Republic of China). In Pakistan there are not these kinds of levels; each crime is separately described according to its nature.

### **Punishment:-**

In Pakistan; imprisonment that may extend to three years or with fine or both. (Section 379 of Pakistan Penal Code)

In China; for the crime of large nature imprisonment not more than three years, criminal detention or public surveillance or shall only be fined. For the crime of huge nature, imprisonment for three to ten years. If the amount is especially huge then imprisonment not less than ten years or life imprisonment. There may be death penalty if the crime is of really serious nature. (Article 264 of Criminal Law of the People's Republic of China)

### **Extortion**

Section 383 of Pakistan Penal Code defines extortion as "use of fear of an injury for stealing and robbing."

Article 263 of Criminal Law of the People's Republic of China recognizes and categorizes the act of extortion in Sub-Article 263(5). Article 274 deals with the act of extortion of money or property by blackmail.

### **Punishment:-**

In Pakistan; for the act of extortion, minimum punishment is an imprisonment that may extend to a term of two years with fine or both as referred to section 385 of Pakistan Penal Code. In case of serious nature of crime, the imprisonment may extend to ten years with fine or both. (Sections 386-389 of Pakistan Penal Code)

In China; for the crime of large nature, imprisonment not more than three years, criminal detention or public surveillance or shall only be fined. For the crime of huge nature or serious nature, imprisonment for three to ten years. (Article 274 of Criminal Law of the People's Republic of China)

### **Theft in dwelling house**

Section 380 of Pakistan Penal Code deals with the act of theft in any building, tent or vessel which is used for human dwelling.

Sub-Article 263(1) of Criminal Law of the People's Republic of China, recognizes and considers the act of stealing from someone's residence but takes it as robbery not theft.

### **Punishment:-**

In Pakistan; imprisonment that may extend to a term of seven years and shall also be liable to fine. (Section 380 of Pakistan Penal Code)

In China; for the crime of large nature, imprisonment not more than three years, criminal detention or public surveillance or shall only be fined. For the crime of huge nature, imprisonment for three to ten years. If the amount is especially huge then imprisonment not less than ten years or life imprisonment. There may be death penalty if the crime is of really serious nature. (Article 264 of Criminal Law of the People's Republic of China)

## **Robbery**

Robbery is an act of stealing by putting someone in fear of hurt or death. Sections 390 to 402 of Pakistan Penal Code deal with this act. In Criminal Law of People's Republic of China, the word used is violence. Article 263, from sub-article 1 to 8 categorizes the offence into various kinds.

### **Punishment:-**

In Pakistan, the punishment for the offence of robbery is rigorous imprisonment more than three years which may extend to ten years and fine also. If the robbery is committed on highway then the imprisonment may extend to fourteen years. The attempt to commit robbery is to be punished with rigorous imprisonment which may extend to a term for seven years and fine also. (Sections 392 and 393 of Pakistan Penal Code)

In China; according to article 263 of Criminal Law of People's Republic of China, robbery is punishable with imprisonment for a term not less than three years which may extend to ten years and fine also. If the robbery is committed in someone's residence, or in broad means of public transportation, or in a bank or banking institution, or sum of money is huge, or serious injury or death is caused during course of robbery, or the offender is impersonating as a serviceman or police man, or robbery is done with a gun, or the offender had robbed military materials or emergency or disaster relief materials than punishment shall be an imprisonment not less than ten years, life imprisonment or death and shall also be fined or sentenced to confiscation of property. Article 267 deals with forcible seizure of public and private money and if the crime is of large nature, imprisonment not more than three years, criminal detention or public surveillance or shall only be fined. For the crime of huge nature, imprisonment for three to ten years. If the amount is especially huge then imprisonment not less than ten years or life imprisonment and shall also be fined or be sentenced to confiscation of property.

### **Gathering or Assembling:-**

According to article 268 of Criminal Law of People's Republic of China, if people are gathered to forcibly seize public or private property and if the crime is of large nature, imprisonment not more than three years, criminal detention or public surveillance or shall only be fined, and if the amount is especially huge then imprisonment not less than ten years or life imprisonment and shall also be fined or be sentenced to confiscation of property.

In Pakistan in case of gathering or assembling to commit robbery, the punishment is rigorous imprisonment that may extend to seven years and shall also be liable to fine. (Section 402 of Pakistan Penal Code)

## **Fraud and Cheating**

Section 415 of Pakistan Penal Code expressly categorized use of fraud or dishonest means, or to deceive someone to cause him damage or to his property under the head of "cheating".

Article 269 of Criminal Law of People's Republic of China deals with the elements of fraud, theft and forcible seizure of money or property.

### **Punishment:-**

In Pakistan; simply cheating is punished by imprisonment which may extend to one year, or fine, or with both. (Sections 417 and 419 of Pakistan Penal Code)

In China; in this case punishment is according to article 263 of Criminal Law of People's Republic of China, imprisonment for three to ten years and shall also be fined.

## **Fraudulent Dispossession of Property**

Article 270 of Criminal Law of People's Republic of China describes when someone unlawfully takes possession of another person's property. In Pakistan sections 421 to 424 of Pakistan Penal Code deals with this act and sub-categorize it under the head of fraud and cheating.

**Punishment:-**

In Pakistan; fraudulent deeds, fraudulently preventing debt being available for creditors, dishonest or fraudulent execution of a deed of property transfer, and fraudulent and dishonest removal or concealment of property, all are kinds of fraud and shall be punished with an imprisonment which may extend to two years, or with fine, or with both. (Sections 421-424 of Pakistan Penal Code)

In China; for the crime of large nature, imprisonment not more than two years, criminal detention or shall only be fined. For the crime of huge nature, imprisonment for two to five years and shall also be fined. (Article 270 of Criminal Law of the People's Republic of China)

If someone unlawfully takes possession of an object, which another person has forgotten about or buried, and refuses to hand it over and the amounts are relatively large then the criminal shall be punished in accordance with article 270 of Criminal Law of the People's Republic of China. The crime mentioned in this article shall only be handled upon complaint.

**Misappropriation of Funds or Property**

In the Criminal Law of People's Republic of China, articles 271-273 deal with misappropriation of funds by an employee or someone engaged in public service. The punishment for a state employee in a state owned company is described in 382, 383, and 384. In Pakistan sections 403 and 404 of Pakistan Penal Code deal with misappropriation of funds or property and sections, 405 to 409 deal with criminal breach of trust.

**Punishment:-**

In Pakistan, the punishment for misappropriation of property is imprisonment which may extend to two years, or fine, or with both. In case of misappropriation of property of a deceased person, the punishment of imprisonment may extend to three years, and if the offender at the time of such persons decease was employed by him as clerk or servant then the imprisonment may extend to seven years. (Sections 403 and 404 of Pakistan Penal Code)

In case of criminal breach of trust by carrier, clerk, or servant, the term of imprisonment may extend to seven years and shall also be liable to fine. If criminal breach of trust is made by public servant, or by banker, or by agent or merchant, then the term of imprisonment may extend to ten years.(Sections 406-409 of Pakistan Penal Code)

In China; any employee of a company, enterprise or any other unit who, taking advantage of his position, unlawfully takes possession of the money or property of his own unit, if the amount is relatively large, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the amount is huge, he shall be sentenced to fixed-term imprisonment of not less than five years and may also be sentenced to confiscation of property, and if an employee who is engaged in public service in a State-owned company, enterprise or any other State-owned unit or if a person who is assigned by a State-owned company, enterprise or any other State-owned unit to a company, enterprise or any other unit that is not owned by the State to engage in public service commits such a crime then if amount embezzled is not less than 100,000 Yuan shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and may also be sentenced to confiscation of property; if the circumstances are especially serious, he shall be sentenced to death and also to confiscation of property.

If the amount embezzled is not less than 50,000 Yuan but less than 100,000 Yuan shall be sentenced to fixed-term imprisonment of not less than five years and may also be sentenced to confiscation of property; if the circumstances are especially serious, he shall be sentenced to life imprisonment and confiscation of property. If the amount embezzled not less than 5,000 Yuan but less than 50,000 Yuan shall be sentenced to fixed-term imprisonment of not less than one year but not more than seven years; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than seven years but not more than 10 years. If the amount embezzled is not less than 5,000 Yuan and less than 10,000 Yuan, shows true repentance after committing the crime, and gives up the embezzled money of his own accord, he may be given a mitigated punishment, or he may be exempted from criminal punishment but shall be subjected to administrative sanctions by his work unit or by the competent authorities at a higher level. If an individual who embezzles less than 5,000 Yuan, if the circumstances are relatively serious, shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention; if the circumstances are relatively minor, he shall be given administrative sanctions at the discretion of his work unit or of the competent authorities at a higher level.

If someone repeatedly commits the crime of embezzlement and goes unpunished then he/she shall be punished on the basis of the cumulative amount of money he has embezzled. (Articles 271 and 383 of Criminal Law of People's Republic of China)

In case of misappropriation of funds, if the money comes back in three months then the term of imprisonment for large amount is not more than three years, or criminal detention, for huge amounts the term of imprisonment if from three to ten years.

Any State functionary who, by taking advantage of his position, misappropriates public funds for his own use or for conducting illegal activities, or misappropriates a relatively large amount of public funds for profit-making activities, or misappropriates a relatively large amount of public funds and fails to return it after the lapse of three months, shall be guilty of misappropriation of public funds and shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years. Whoever misappropriates a huge amount of public funds and fails to return it shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment. (Articles 272 and 384 of Criminal Law of People's Republic of China)

If money is fixed for some emergency fund or for some sort of general public or special persons then in case of large amount the term of imprisonment is not more than three years, or criminal detention. If the circumstances are serious then term of imprisonment shall be three to seven years. If a State functionary misappropriates for his own use funds or materials allocated for disaster relief, emergency rescue, flood prevention and control, special care for disabled servicemen and the families of revolutionary martyrs and servicemen, aid to the poor, migration and social relief shall be given a heavier punishment. (Articles 273 and 383 of Criminal Law of People's Republic of China)

### **Damage to Public or Private Money or Property**

Articles 275 and 276 of Criminal Law of People's Republic of China deal with the act of intentionally destroying or damaging public or private property. In Pakistan, sections 425 to 440 deal with this act under the head of "Mischief."

#### **Punishment:-**

In Pakistan; for small nature of mischief, imprisonment which may extend to two years, or fine, or both. For killing animals/cattle, or injury to public road, or bridge, or river, or channel, it may extend to five years or with fine or both. (Sections 428-432 of Pakistan Penal Code)

In China; for a large amount imprisonment which may extend to three years or criminal detention and for huge amount the imprisonment may extend to seven years.