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Iran

Islamic Criminal Law

Book1: Generalities

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Book1: Generalities

Chapter 1 -General Articles

Article 1 -Islamic Criminal Law is about determination of various offences and the punishments and the security and rehabilitary measures which will be applied to the offender.

Article 2 -Every action or omission of an action for which there is a punishment in law, will be regarded as an offence.

Article 3 -Criminal laws will be applied to everyone who commits an offence within the Iranian waters, airspace and land territory, unless the law has stipulated some other arrangements.

Article 4 -If part of an offence is committed inside Iran and its result is produced outside Iranian territory, or part of an offence is committed inside or outside Iran, and its result is produced inside Iran, the offence will be considered as committed inside Iran.

Article 5 -Any Iranian or alien committing one of the following offences outside Iranian territory and is found in Iran or is extradited to Iran, will be punished in accordance with Islamic Criminal Law of the Islamic Republic of Iran:

- a) action against the Islamic Republic of Iran and the internal and external security, her territorial integrity and the independence of the Islamic Republic of Iran.
- b) forging decree, handwriting, seal or signature of the leader [of the Islamic Republic of Iran] or using them [i.e. forgeries].
- c) forging official notes of the President, speaker of the Islamic Consultative Assembly, Council of Guardians, Speaker of Expert's Assembly, Head of Judiciary Power, Vice President, Head of Supreme Court, General Prosecutor, any of the Ministers or using them [i.e. forgeries].
- d) counterfeiting current banknotes of Iran or forging documents of Iranian bank[s] such as: drafts accepted by the banks, cheques issued by the banks, bank bonds, treasury bills, government bonds, guaranteed debentures of the government or current coins.

Article 6 -Any offence committed by the foreign nationals employed by the Government of the Islamic Republic of Iran. or the employees of the Government [i.e. the Iranian employees of the Government] living outside Iranian territory due to the nature of their duties as well as any offence committed by Iranian diplomats and [Iranian] cultural and consulate attaches enjoying diplomatic immunity, will be punished in accordance with the criminal laws of the Islamic Republic of Iran.

Article 7 -Other than the cases cited in articles 5 and 6 aforementioned, any Iranian committing a crime outside Iran is found in Iran will be punished in accordance with the criminal laws of the Islamic Republic of Iran.

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Article 8 -Regarding the offences which are the subject of a special law or international conventions according to which the offender will be prosecuted in the country he/she is found, if the offender is found in Iran he/she will be prosecuted in accordance with the laws of the Islamic Republic of Iran.

Article 9 -The offender must return the property he/she has acquired as a result of the offence to the owner and if the property is not available, the offender should return a similar property or its equivalent to the owner. He/she should pay compensation for the losses incurred.

Article 10 -If the prosecutor or examining judge has issued a warrant of non-prosecution or suspension of persecution, he should determine the fate of the properties and the objects discovered, which are the reason or instrument of the offence, gained by committing the offence or have been used during the offence or were to be used during the offence, so the objects or property are either returned or confiscated or destroyed. The prosecutor or examining judge is also duty-bound to consider the other party's request [i.e. the owner's request] for the property/object to be returned to him [i.e. the owner]. The prosecutor or examining judge can do so whilst he is considering the dossier and in doing so he should abide by the following conditions:

- a) the presence of all or part of the objects and properties is not necessary during enquiry or legal procedure.
- b) the objects and properties are unchallenged. [i.e. the ownership is not claimed by a third party].
- c) the objects or properties are not subject to confiscation or destruction.

In all the criminal cases whilst the court is issuing its judgement or its warrant or after issuing these, the court must issue specific judgement regarding determination of the fate of the objects and properties as whether they should be destroyed, returned or confiscated. Such specific judgement is made whether the judgement [regarding the nature of the case] was of the nature of sentence, acquittal or suspension of prosecution and whether the objects and properties were the instruments of offence or gained by the offence or were used during the offence or were to be used during the offence.

Note 1 -The person who has incurred loss as a result of warrant of prosecutor or judgement or warrant of the judge can appeal against their decision regarding the objects and properties cited in this article to the criminal court, according to the regulations, even though the warrant or judgement of the court on the [original] criminal case is non-appealable.

Note 2 -If custody of the property would incur impropotional cost to the government, or the value of the property would sharply decrease, or if the property would be wasted and the custody of the property is not necessary for the procedure as well as those properties which would rot quickly, [such properties] can be sold by the order of the prosecutor or the court at the current price. The proceedings will be kept in the account of the justice administration until the final decision is made.

Article 11 -In the Governmental regulations and arrangements, punishment and security and rehabilitary measures are not retrospective and no action or omission of action is punishable by the later law. But if, after the offence is made, a law is passed which would result in the non-punishment firial binding judgement is made, it will be acted according to the following procedures:

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a) if an action has been an offence in the past, and according to a later law, it is not an offence, the final judgement will not be executed and if the judgement is in the process of execution, it will be suspended. In the above two cases, and also if the judgement has previously been executed, there will be no criminal record [for the offender]. These regulations do not apply to the laws which have been set for a specific period or for specific circumstances.

b) if the punishment of an offence is commuted in accordance with a later law, the condemned party can request for the commutation of the punishment in which case, the issuing court or its successor, by considering the new law, will reduce the previous punishment.

c) if, according to the new law, the punishment for an offence is converted to taking rehabilitatory and security measures, only these measures will be taken.

Chapter 2 -The punishments and rehabilitation and security measures

Section 1 -The punishments and rehabilitatory and security measures

[The same headings have been used for both chapter and section]

Article 12 -The punishments laid down in this law are [divided into] five categories:

1. Islamic punishment [HAD is used in the text and is defmed later, since in some cases there is no equivalent English for this term, in order to clarify the meaning, in some instances this term will also be used in translation].
2. Talio [GHESAS is the term used in the text which can also be translated as retaliation].
3. Mulcts [DIY AT is the term used, which can equally be translated as compensation].
4. Ta'zirat [singular Ta'zir, there is no equivalent term in English for this term but it is defined later. The same term will be used in the translation].
5. Deterrent punishments.

Article 13 -Islamic punishment (HAD) is defined as a punishment for which the extent, manner and mode is prescribed by Islamic Jurisprudence [Islamic Law].

Article 14 -Talio (GHESAS) is the punishment to which the criminal is sentenced to and is equal to his/her crime.

Article 15 -Mulct is the fine determined by Islamic Jurisprudence for the crime.

Article 16 -Ta'zir is the punishment whose extent and manner is not determined by Islamic Jurisprudence and it's extent and manner is left to the discretion of the judge such as imprisonment, fine and lashes. The number of lashes must be less than the number of lashes stipulated for Islamic punishment. [The comparison with article 13 above is made within the text, whilst according to the two definitions, the two punishments are non-comparable].

Article 17 -A deterrent punishment is the punishment of chastisement laid down by the State in order to safeguard law and order, interests of the society such as imprisonment, fine, closure of the business premises, cancellation of license, deprivation from social rights, banishment to certain places, inhibition of residence to certain areas and the like.

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Article 18 -Duration of imprisonment starts from the day the condemned party is sentenced by the final binding judgement.

Note -If the condemned was arrested, for the offence or offences mentioned in his/her file, prior to the [date] of judgement, often determining the Ta'zir[i.e length of imprisonment], the court will deduct the previous imprisonment from the Ta'zir or deterrent punishment.

Article 19 -The court can supplement the Ta' zir (imprisonment) or deterrent punishment of a person who is condemned for a pre-meditated offence, by preventing him/her from social rights for a period, or banishing him/her to certain areas or ordering him/her to reside in certain areas for a [specified] period.

Article 20 -Prevention from all or part of social rights, banishment to certain areas or forced residence in certain areas, should be proportional to the offence **and** particularities of the offender in the specific period. If the condemned leaves that area he/she is banished to or enters the prohibited areas by the proposal of the enforcer public prosecutor's office, the court can change the said punishment to imprisonment or fine.

Article 21 -The procedure for enforcing the criminal judgements and particularities of prisons is in accordance with the law of regulation of criminal procedures and other laws and regulations.

Chapter 2:

Section 2 - Reduction of punishment

Article 22 -If the mitigating circumstances are established, the court can reduce the Ta'zir [nature of punishment issued is not clear in the text] or the deterrent punishment or change them to other kinds of punishments which is of more assistance to the accused [should have been condemned in the text].

The mitigation circumstances are:

1. Remission by private plaintiff
2. If the statements and assistances of the accused are effective in finding [other] accomplices of finding the goods gained from the offence.
3. The specific circumstances influencing the accused to commit the offence such as verbal or behavioural provocations on behalf of the injured party or if the offence is made for a righteous cause.
4. Statement of the accused prior to prosecution, or his/her confession during investigation effective in detection of offences.
5. Specific circumstances of accused or his/her background.
6. Measures taken or efforts made by the accused to reduce the effects of the offence and indemnities done by him/her for the losses.

Note 1 -The court must explicitly state the mitigating circumstances in its judgement.

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Note 2 -In the case of multiple offences., the court can consider mitigating circumstances.

Note 3 -If other mitigating circumstances are predicted in other articles, like these mentioned in this article, the court cannot re-reduce the punishment for the same mitigating circumstances.

Article 23- If the offence is suspended due to remission of private plaintiff. such remissions should be in full. and conditional and suspended remissions will not be considered. Also. revocation from the remission will not be heard. If several parties have incurred losses from the offence. the criminal prosecution will commence by the complaint of each one of them but suspension of prosecution. investigation and punishment will be subject to the remission if all of the private parties.

Note -The right of remission will be inherited to the heirs which have suffered losses. If all the heirs remit [the offender], the case will be dismissed.

Article 24 -Pardon or reduction of punishment of the condemned, within the Islamic principles, is proposed by the Head of Judiciary power and approval of the Spiritual Leader.

Section 3 -Suspension of executing the punishments:

Article 25 -By observing the following conditions in all Ta'zir or deterrent sentences, the judge can suspend execution of all or part of the punishment for a period of two to five years:

a) The convicted person should not have a formal sentence of one of the following:

1. A final sentence of an Islamic. punishment (HADD).
2. A final sentence of amputation or loss of a limb.
3. A final sentence of more than one year imprisonment for committing a premeditated offence.
4. A final sentence of a fine of more than two million rials.
5. A previous record of final sentence on two or more occasions for premeditated offences with equivalent punishments?

b) By considering the social circumstances and background of the condemned as well as the circumstances causing the offence to be committed, the court does not consider the implementation of all or part of the punishment to be suitable.

Note -In non-Ta'zir and non-deterrent sentences, suspension [of the implementation of the punishment] is not allowed, except in cases stipulated by law or Islamic Jurisprudence.

Article 26 -In the cases where the punishment is a fine as well as other Ta'zir punishments, the fine will not be suspended.

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Article 27 -The decision to suspend the punishment will be issued at the same time the sentence is issued. If the offender whose sentence is suspended in full is in custody, he/she will be released forthwith by the order of the court.

Article 28 -The court will state the reasons for suspension [of the implementation] in its judgement as well as the orders which should be obeyed by the convicted person during suspension. The duration of the suspension will be determined by the court by considering the type of crime, and the personal circumstances of the criminal and duration mentioned in Article 25.

Article 29 -By considering the contents of the file and the circumstances of the convicted person, the court can ask the convicted person to perform the following instruction(s) during the suspension and the convicted person shall be bound to perform them.

- a) To visit the hospital or clinic in order to cure his/her illness or his/her addiction [to drugs].
- b) Non-performance of a specific job of trade.
- c) Studying at an educational establishment.
- d) Refraining from speaking out about committing what is forbidden, or abandoning [religious] obligations and from association with people the court has [forbidden] the convicted person from associating with.
- e) Not travelling to specific areas.
- f) Signing on to a certain person or official assigned by the prosecutor at specified intervals.

Note -If an offender whose punishment has been suspended, does not obey the court's instructions during the suspension as mentioned in this article and does not have an acceptable excuse, after request of the prosecutor and after proof of the matter in the court, on the first occasion one to two years will be added to his/her suspension and on the second occasion, the suspension will be repealed and the suspended sentence will be implemented.

Article 30 -The following criminal punishments arenon-suspendable.

- a) The punishment of importers, manufacturers and dealers of narcotics or those who assist them in any shape or form.
- b) The punishment of those who are convicted of embezzlement, bribery, fraud, forgery, usage of forged documents, breach of confidence, abduction ora theft which is not subject to Islamic punishment [HADD].
- c) Punishment of those participating in the actions punishable in accordance with the Islamic punishment [HADD].

Article 31 -Suspension of execution of a punishment of an offence committed against both public rights and private rights only applies to the part of the offence committed against public rights. The part of the punishment against private rights or payment of the fine to the private party is executed.

Article 32 -If, during the suspension of execution of the punishment, the condemned does not commit the offences aforesaid in article 25, the suspended sentence will be rendered null and will

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be removed from his/her criminal record. After the suspended sentence has been made final, the relevant prosecutor's office must issue a criminal record for the offender and despatch them to the competent authorities. If there is a change in the duration of suspension or if the suspended sentence is rendered null, the circumstances should be reported to the competent authorities forthwith to be registered in the criminal records [of the offender].

Note -If a sentence of dismissal is issued in accordance with the law of employment affairs, this sentence is not subject to the laws of suspension [of implementation] unless such subjectivity is stipulated in the laws or sentence of the court. [i.e. if someone is fired, the sentence will be carried out].

Article 33 -If a person has received a suspended sentence, and during the suspension of the sentence, commits a new offence punishable by one of the punishments aforesaid in article 25, as soon as the new offence is made [i.e. as soon as the new offence is proven by the court], the court which had issued the suspended sentence or the substitute court must announce the abrogation of that suspended sentence so that it can be implemented.

Article 34 -If, after the suspended sentence is issued, it is known that the condemned had previously been convicted and had received one of the punishments aforesaid in article 25 and the suspended sentence has been issued without noticing this [fact], the prosecutor, relying on previous conviction will ask the court to render the suspended sentence null. After establishment of the previous conviction, the court will render the suspended sentence null.

Article 35 -When the warrant of suspension of sentence is issued, the court should explicitly state the consequences of failure to obey its orders so that if during the suspension of the sentence, an offence is committed whose punishment is subject to article 25, not only the new offence will be punished, but also the suspended sentence will be implemented.

Article 36 -The procedures regarding suspension of punishment do not apply to persons who are convicted of premeditated multiple offences. If a person is sentenced to several final sentences for committing several premeditated offences, one of which is a suspended sentence, the prosecutor in charge of implementation [of the suspended sentence] must ask the issuing court to render the warrant or warrants [plural term is used within the text] of suspension null. The court will act to nullify the warrant or warrants.

Article 37 -Prior to the completion of a sentence, if the condemned becomes insane and insanity is diagnosed by the coroner, the condemned will be transferred to an asylum and his/her stay in the asylum will be counted as his/her imprisonment. If an asylum is not available, he/she will be transferred to a suitable place by the discretion of the prosecutor.

Chapter 2: Section 4 -Conditional release of prisoners

Article 38 -If a first offender is sentenced to imprisonment, for the offences punishable to more than three years and two thirds of the sentence is served, and for the offences punishable to up to three years and half the sentence is served, the court which has issued the peremptory sentence can order for the conditional release of the offender provided the following conditions exit.

a) the offender has shown good behaviour whilst serving his/her sentence.

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b) from the circumstances and manners of the condemned, it is predicted that after release he/she will not commit any offence.

c) [the offender] has compensated the plaintiff as much as [the offender] can or has paid the fine or has agreed to pay the fine. Regarding the punishments of both fine and imprisonment, [the offender] pays the fine or with the approval of the prosecutor, an arrangement is made for paying the rme. [ambivaienceand repeats are within the text].

Note 1 -The circumstances aforesaid in clauses a) and b) should be approved by the governor of the prison where the prisoner is serving his sentence as well as the assistant public prosecutor observing the prisons of the district prosecutor. The circumstances aforesaid in clause c) should be approved by the prosecutor in charge of executing the sentence.

Note 2 -If the issuing court of the sentenced is dissolved, the order of release is by the substitute court.

Note 3 -The court will state the circumstances and conditions of the conditional release in its order. Failure to abide by these conditions or reoffending [will result in] the rest of the offender's sentence to be executed by the order of the issuing court. The conditions and circumstances of release can be such as: residing in a specific area; non-residing in a specific area; non-performance of a specific occupation; calling on designated places regularly and the likes.

Article 39 -Order of conditional release is subject to the proposal of the organization of prisons and approval of the prosecutor or observing assistant prosecutor.

Article 40 -The duration of conditional release at the discretion of the court will be between one and five years.

Chapter 3 -Offences

Section 1 -Attempting an offence

Article 41 -Anyone mtending to Commit an offence and attempts to commit it, but the intended offence does not take place, if the actions done [during the process of unsuccessful offence] are [themselves] regarded to be offences, he/she will be punished for the offences carried out.

Note 1 -Intention of committing an offence and preliminary steps taken which have no connection with the offence are not regarded to be offences and hence are not punishable.

Note 2 -If a person has attempted an offence [but] has abandoned it by his own free will and the actions he/she has taken [prior to abandonment] are [themselves] offences, he/she will receive remission.

Section 2 -Associates and accomplices of an offence

Article 42 -Any person who knowingly and intentionally associates with other or others in an offence punishable according to the Ta'zir or deterrent punishments, and the offence is committed by their collective actions, whether the action of each one would be sufficient for committing "the offence or not, whether the result of their actions are equal or not, is regarded to be an accomplice to the offences. His/her punishment will be as though one person has committed the offence. If an

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offence is committed as a result of unintentional actions of two or more people, the punishment for each [offender] would be as though one person has committed the offence.

Note -1 the result of partaking of one of the accomplices is weak, the court will reduce his/her punishment in proportion to the result of his /her action.

Article 43 -The following people will be regarded as accomplices to the offence. The accomplices will be punished by considering their circumstances and means and previous records and extent of their previous Ta'zir [punishment].

a) anyone inciting or encouraging or alluring or threatening someone else to commit an offence, or anyone who by plotting, tricking or deceiving, causes an offence to be committed.

b) anyone knowingly and intentionally preparing instruments of an offence or anyone knowingly demonstrating the way of committing an offence.

c) anyone knowingly and intentionally facilitating the committing of an offence.

Note 1 -Conditions of establishment of association to the offence a sameness? Of intentions and priority [illegible in text] and simultaneously [the text is ambivalent].

Note 2 -If a specified punishment is made for the accomplice either in law or in Islamic law, the accomplice will be punished by the same [specified] punishment.

Article 44 -If due to some legal reason. the offender cannot be prosecuted or punished, or his/her prosecution and punishment is suspended due to some legal reason, the accomplice will receive his/her punishment.

Article 45 -Active partaking of two or more persons in committing an offence, disregarding whether they are accomplices or associates to the offence, will result in receiving an increased punishment.

Section 3 -Multiple offences

Article 46 -In the offences punishable by the Ta'zir, if for a single offence there are different titles, the punishment of the offence will be the maximum of the different titles [i.e. if for a single offence there are several punishments by the Ta'zir, the highest punishment will be imposed].

Article 47 -If the offences of multiple offences are of a different nature, every offence will have a separate punishment. And if the offences of multiple offences are of the same nature, there will only be one punishment. In the latter case, the multiplicity of the offences can result in an increased punishment. If there is a punishment in the law for the aggregation of the offences, the offender will be sentenced to this punishment.

Note -if the sentence for the multiple offence is stated in the Islamic Punishments [HAD], Talio [Ghasas] and Mulct [Diyeh] in their chapters, this sentence will be carried out.

Article 48 -Not provided in the translation.

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Section 4 -Extents of criminal responsibility

Article 49 -Minors, if committing an offence, are exempted *from* criminal responsibility. Their correction is the responsibility of their guardians or, if the court decides by a centre for correction of minors.

Note 1 -A minor is a person who has not reached the age of maturity as stipulated by Islamic Jurisprudence.

Note 2 -If, in order to correct the minor offenders, bodily punishment is necessary, the punishment must have a limit and be appropriate.

Article 50 -If a minor commitS a murder or an assault, his/her paternal relative with the exception of women is responsible. If a property is damaged by the minor, the minor [hirn/herself] is responsible and compensation for the damage is the responsibility of his /her guardian which will compensate from his/her [i.e. the minor offender] property. [assurning the minor has property].

Article 51 -If the offence is committed during insanity, whatever the degree of the insanity, the offender will be exempted from criminal responsibility.

Note 1 -If the corrective measures are effective, the offender will be subject to them by the order of the court.

Note 2 -In circular insanity cases, exemption from the criminal responsibility is made providing the offender was insane whilst committing the offence.

Article 52 -If, whilst committing a crime or after committing the crime, the offender is insane and the insanity and its dangerous condition is diagnosed by a specialist, by the order of ~e prosecutor [the offender] will be detained in an appropriate place until the insanity is cured. The detainee or his/her relatives can appeal to this order to the competentcourt in charge of the actual offence. In which case the court will consider [the appeal] in an administrative session in the presence of the appelland, the prosecutor or his representative, at the first opportune moment. The court will make its judgement as either to release the detainee or confirm the prosecutor's order. The judgement is final, but if the detainee or his/her relatives notice signs of improvement, they can appeal to the prosecutors order.

Article 53 -Ifby consumption of alcohol a person becomes deprived of control but it is proven that consumption of alcohol was made in order to commit the offence, the offender will be punished for both consumption of alcohol and the other offence.

Article 54 -If the offence is subject to the Ta'zir and deterrent punishment and it was committed under duress or unbearable force, the offender will not be punished. In such a case the person who has forced the offender to commit the offence [forced] will be regarded as the actual offender. This person will be sentenced by considering the forced offender's circumstances [i.e. the person who has cornrnitted the offence under duress], nature of the offence, previous convictions, previous verbal warnings and previous cautions.

Article 55 -If during grave dangers such as fire or storm or flood, a person causes an offence whilst trying to save his/11er property or life or those of someone else, he/she will not be punished, provided he/she has not caused the danger intentionally and his/her action is in proportion to the danger and is necessary to quell the danger.

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Note -Mulct and financial security are exempted from this article.

Article 56 -The following actions for which punishments have been set are not considered to be offences. The actions are.

a) the action was made by the order of a lawful supervisor and is not contrary to Islamic Jurisprudence.

b) the action is made to implement a more important law.

Article 57 -If by an unlawful order of an official an offence is committed, both the commanding official and the executor will be punished in accordance to the law. But if the executor had made the action believing it was lawful and has exusable reasons to this effect, he/she will be sentenced to Mulct and bail only.

Article 58 -If a judge makes a mistake or is complacent in applying the law and as a result a person sustains material or intangible damages, regarding the material damages, if the issuing judge had made a mistake the government is responsible for paying compensation and if the issuing judge was complacent, he is responsible for paying compensation. If the mistake or complacency has resulted in tarnishing a reputation of a person, he/she should be rehabilitated.

Article 59 -The following actions are not offences:

a) the actions made by parents, legal guardians of minors and insane people in order to correct or safeguard them, provided such actions are appropriate for correcting and safeguarding them.

b) every legitimate medical action or operation which is done by the approval of the patient, his/her parents or guardians or their legal representative. Such actions must be made with due consideration of scientific, medical and governmental regulations. In emergency cases the approval is not necessary.

c) the accidents caused as a result of performing [physical] sports, provided the accident is not caused by violation of rules of that sport and the regulations do not violate the rules of Islamic Jurisprudence.

Article 60 -If the medical doctor has obtained approval of the patient or his/her parent prior to operation or examination, the medical doctor is not responsible for any defect of limb, financial loss or loss of life. In emergency cases, the medical doctor is not responsible [for such losses].

Article 61 -If whilst defending one's life, honour, chastity, property or freedom against any immediate or imminent aggression, one makes an action which is an offence, provided all of the following conditions are met, one will not be prosecuted and punished.

a) the defence is proportionate to danger or aggression.

b) the action is not excessive.

c) calling the governmental forces is not possible immediately, or calling them is not effective in repelling the aggression or danger.

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Note -Defending someone else's life, honour, chastity, property or freedom is permissible provided he/she cannot defend his/herself.

Article 62 -Resistance against security forces whilst performing their duties is not considered to be defence. But if these forces exceed their duties and there are reasons to believe their actions would cause loss of life or injury or violation of honour or chastity, defence is permissible.