

OFFENCE OF QAZF (ENFORCEMENT OF HADD) ORDINANCE, 1979

(VIII of 1979)

*An Ordinance to bring in conformity with the injunctions
of Islam the law relating to the offence of 'qazf'*

WHEREAS it is necessary to modify the existing law relating to 'qazf', so as to bring it in conformity with the Injunctions of Islam as set out in the Holy Qur'an and Sunnah;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE in pursuance of the Proclamation of the fifth day of July, 1977, read with the Laws (Continuance in Force) Order, 1977 (C.M.L.A. Order No. 1 of 1977), and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:

1. *Short title, extent and commencement.*—(1) This Ordinance may be called the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979.

(2) It extends to the whole of Pakistan.

(3) It shall come into force on the twelfth day of Rabi-ul-Awwal, 1399 Hijri, that is, the tenth day of February, 1979.

2. *Definitions.*—In this Ordinance, unless there is anything repugnant in the subject or context:

(a) "adult", "hadd", and "zina" have the same meaning as in the Offence of Zina (Enforcement of Hudood) Ordinance, 1979; and

(b) All other terms and expressions not defined in this Ordinance shall have the same meaning as in the Pakistan Penal Code (Act XLV of 1860), or the Code of Criminal Procedure, 1898 (Act V of 1898).

3. *Qazf.*—Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes as imputation of 'zina' concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation, or hurt the feelings, of such person, is said, except in the cases hereinafter excepted to commit 'qazf'.

• *Explanation 1.*—It may amount to 'qazf' to impute 'zina' to a deceased person, if the imputation would harm the reputation, or hurt the feelings, of that person if living, and is harmful to the feelings of his family or other near relatives.

Explanation 2.—An imputation in the form of an alternative or expressed ironically, may amount to 'qazf'.

First exception (imputation of truth which public good requires to be made or published).—It is not 'qazf' to impute 'zina' to any person if the imputation be true and made or published for the public good. Whether or not it is for the public good is a question of fact.

Second exception (Accusation preferred in good faith to authorized person).— Save in the cases hereinafter mentioned, it is not 'qazf' to prefer in good faith an accusation of 'zina' against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation—

- (a) a complainant makes an accusation of 'zina' against another person in a Court, but fails to produce four witnesses in support thereof before the Court.
- (b) according to the finding of the Court, a witness has given false evidence of the commission of 'zina-bil-jabr'.
- (c) according to the finding of the Court, a complainant has made a false accusation of 'zina' or 'zina-bil-jabr'.

4. [Omitted by Protection of Women (Criminal Law Amendment) Act, VI of 2006 w.e.f. 02-12-2006.]

5. *Qazf liable to hadd.*—Whoever, being an adult, intentionally and without ambiguity commits 'qazf' of 'zina' liable to 'hadd' against a particular person who is a 'muhsan' and capable of performing sexual intercourse is, subject to the provisions of this Ordinance, said to commit 'qazf' liable to 'hadd'.

Explanation 1.—In this section, "muhsan" means a sane and adult Muslim who either has had no sexual intercourse or has had such intercourse only with his or her lawfully-wedded spouse.

Explanation 2.—If a person makes in respect of another person the imputation that such other person is an illegitimate child, or refuses to recognize such person to be a legitimate child, he shall be deemed to have committed 'qazf' liable to 'hadd' in respect of the mother of that person.

6. *Proof of qazf liable to hadd.*—(1) Proof of 'qazf' liable to 'hadd' shall be in one of the following forms, namely—

- (a) the accused makes before a Court of competent jurisdiction a confession of the commission of the offence;
- (b) the accused commits 'qazf' in the presence of the Court; and

- (c) at least two Muslims adult male witnesses, other than the victim of the 'qazf', about whom the Court is satisfied, having regard to the requirements of '*tazkiyah-al-shuhood*' that they are truthful persons and abstain from major sins (*kabair*), give direct evidence of the commission of qazf':

Provided that, if the accused is a non-Muslim, the witnesses may be non-Muslims:

Provided further that the statement of the complainant or the person authorized by him shall be recorded before the statements of the witnesses are recorded.

(2) The Presiding Officer of a Court dismissing a complaint under Section 203-A of the Code of Criminal Procedure, 1898 or acquiring an accused under Section 7 of the Offence of Zina (Enforcement of Hudood), if satisfied that the offence of Qazf liable to Hadd has been committed, shall not require any proof of Qazf and shall proceed to pass sentence under Section 7.

7. *Punishment of qazf liable to 'hadd'*.—(1) Whoever commits 'qazf' liable to 'hadd' shall be punished with whipping numbering eighty stripes.

(2) After a person has been convicted for the offence of 'qazf' liable to 'hadd', his evidence shall not be admissible in any Court of law.

(3) A punishment awarded under subsection (1) shall not be executed until it has been confirmed by the court to which an appeal from the Court awarding the punishment lies; and, until the punishment is confirmed and executed, the convict shall, subject to the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) relating to the grant of bail or suspension of sentence, be dealt within the same manner as if sentenced to simple imprisonment.

8. *Who can file a complaint*.—No proceedings under this Ordinance shall be initiated except on a complaint lodged in a Court by the following, namely—

- (a) if the person in respect of whom the 'qazf' has been committed be alive, that person, or any person authorized by him; or
- (b) if the person in respect of whom the 'qazf' has been committed be dead, any of the ascendants or descendants of that person.

9. *Cases in which hadd shall not be imposed or enforced*.—(1) 'Hadd' shall not be imposed for 'qazf' in any of the following cases, namely—

- (a) when a person has committed 'qazf' against any of his descendants;
- (b) when the person in respect of whom 'qazf' has been committed and

(c) when the imputation has been proved.
(2) In a case in which, before the execution of this section, a husband withdraws his allegation of Qazf or states that the persons had deposed falsely, the wife shall not be enforced.

10. [Omitted by Protection of Women (Criminal Law Amendment) Act, VI of 2006 w.e.f. 02-12-2006.]

11. [Omitted by Protection of Women (Criminal Law Amendment) Act, VI of 2006 w.e.f. 02-12-2006.]

12. [Omitted by Protection of Women (Criminal Law Amendment) Act, VI of 2006 w.e.f. 02-12-2006.]

13. [Omitted by Protection of Women (Criminal Law Amendment) Act, VI of 2006 w.e.f. 02-12-2006.]

14. *Lian*.—(1) When a husband accuses before a Court his wife who is 'muhsan' within the meaning of Section 5, of 'zina' and the wife does not accept the accusation as true, the following procedure of 'lian' shall apply, namely:

(a) the husband shall say upon oath before the Court: "I swear by Allah the Almighty and say I am surely truthful in my accusation of 'zina' against my wife (name of wife)" and, after he has said so four times, he shall say: "Allah's curse be upon me if I am liar in my accusation of 'zina' against my wife (name of wife)": and

(b) the wife shall, in reply to the husband's statement made in accordance with clause (a) say upon oath before the Court: I swear by Allah the Almighty that my husband is surely a liar in his accusation of 'zina' against me", and after she has said so four times, she shall say: "Allah's wrath be upon me if he is truthful in his accusation of 'zina' against me".

(2) When the procedure specified in subsection (1) has been completed, the Court shall pass an order dissolving the marriage between the husband and wife, which shall operate as a decree for dissolution of marriage and no appeal shall lie against it.

(3) [Omitted by Protection of Women (Criminal Law Amendment) Act, VI of 2006 w.e.f. 02-12-2006.]

(4) [Omitted by Protection of Women (Criminal Law Amendment) Act, VI of 2006 w.e.f. 02-12-2006.]

15. [Omitted by Protection of Women (Criminal Law Amendment) Act, VI of 2006 w.e.f. 02-12-2006.]

16. [Omitted by Protection of Women (Criminal Law Amendment) Act, VI of 2006 w.e.f. 02-12-2006.]

17. Application of the Code of Criminal Procedure, 1898 (Act V of 1898).—(1) Unless otherwise expressly provided in this Ordinance, the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), hereinafter referred to as the said Code, shall apply, 'mutatis mutandis', in respect of cases under this Ordinance:

Provided that an offence punishable under Section 7 shall be triable by a Court of Session and not by or before a Magistrate authorized under Section 30 of the said Code and an appeal from an order of the Court of Session shall lie to the Federal Shariat Court:

Provided further that a trial by, or proceeding before, the Court of Session under this Ordinance shall ordinarily be held at the headquarters of the Tehsil in which the offence is alleged to have been committed or as the case may be, the husband who has made the accusation ordinarily resides.

(2) The provisions of the said Code relating to the confirmation of the sentence of death shall apply 'mutatis mutandis' to the confirmation of a sentence under this Ordinance.

(3) The provisions of subsection (3) of Section 391 or Section 393 of the said Code shall not apply in respect of the punishment of whipping awarded under this Ordinance.

(4) The provisions of Chapter XXIX of the said Code shall not apply in respect of a punishment awarded under Section 7 of this Ordinance.

18. *Presiding Officer of Court to be a Muslim.*—The Presiding Officer of the Court by which a case is tried, or an appeal is heard, under this Ordinance, shall be a Muslim.

19. [Omitted by Protection of Women (Criminal Law Amendment) Act, VI of 2006 w.e.f. 02-12-2006.]

20. *Saving.*—Nothing in this Ordinance shall be deemed to apply to cases pending before any Court immediately before the commencement of this Ordinance, or to offences committed before such commencement.