PREFACE

Hudood Ordinance was enforced in 1979. This was an innovative experiment, merging Pakistan Penal Code offences based on Common Law Jurisprudence and criminal procedure with Hudud Laws based on Hanafi jurisprudence. Its implementation has been an instructive experience. During the 27 years since its enforcement the Ordinance has been a subject of controversies. A number of people welcomed it, but considerable critical literature questioned the punishment of Rajm, ambiguity about Zina and Zina bil Jabr, the prescribed discriminatory criminal procedure and definition and identification of Hudud crimes. In media, opinions about the Ordinance have been divided into three groups: those who wanted status quo, those who wanted it to be repealed and those who wanted necessary amendments. The opinion in favor of status quo argued that Hudud laws were divinely revealed and only the Westernized segments of Pakistani society were calling for its repeal. Others argued that Hudud laws were not divine, they were laws framed by the jurists. This report is an outcome of three years deliberations by the Council of Islamic Ideology. An Interim Brief Report was issued by the Council in 2006. The present is the final report.

This report consists of eight chapters. The first chapter provides a background history of Hudood Ordinance, 1979 and the second summarizes the discourses about this Ordinance between 1980 and 2006. The third and fourth chapters note amendments to the Ordinance suggested by various commissions and organizations including *Protection of Women Act, 2006*. The fifth chapter explains the process of review of the Ordinance by the Council during 2004 - 2006, and the sixth provides a summary of this analytical review. The seventh

chapter includes Council's recommendations for further amendments in Hudood Ordinance, 1979. The last chapter consists of the data of Hudood cases in the various Pakistani Courts. This report finds that

- 1. The definition of *Hadd* in the ordinance is not derived from the Qur'an and Sunna; it does not even agree with the definitions prescribed by the jurists.
- 2. The concept and usage of the term Hadd differs from the definition given by Ordinance and the jurists; The Qur'an uses different terms for the idea of punishment (*jaza'*, '*adhab*). In the Prophetic hadith the term Hadd is used in a general meaning, not in the technical sense in which the jurists use it.
- 3. The jurist use the term *Hadd* in the meaning of "fixed punishment", regardless whether fixed by the Qur'an, Sunna or Ijma".
- 4. The identification and division of crimes as *Hudud*, *Qisas* and *Ta'zir* has been done by the jurists and it varies.
- 5. Hudood Ordinance has adopted Fiqhi identification and classification of Hudud offences selectively and arbitrarily and thus added to the confusion between Hudud and Ta'zir. It has further confused the concept of Hudud by mixing common law criminal procedure and fiqhi procedure, disregarding the need for fine distinctions.
- 6. Not all Muslim countries are enforcing Fighi Hudud laws.
- Statistics show that *Hudood Ordinance* has not been effective in reducing the crimes in Pakistan. Although the number of registered cases is not a proper indication of crime statistics, but even that

shows the rate of *Hudud* crimes has not decreased. The total number of cases registered under *Hudood Ordinance* arose from 75,943 in 2001 to 82,545 in 2002, and from 76, 063 in 2003 to 77,420 in 2004. This increase in the rate of crimes is despite the fact that the rate of conviction has been higher than the acquittal; in 2001, 47, 518 cases ended in conviction against 13,266 in acquittal, in 2002, 46,874 were convicted and 12,753 were acquitted, in2003, 44, 146 convictions and 16,478 acquittals, and in 2004, 36,511 were convicted and 13,212 were acquitted.

On the other hand, the conviction rate in cases of *Zina* has been lesser than the acquittal. The number of registered cases under Zina increased during 2001 -2004 from 3291 to 3522 to 3641 to 3817. In 2001 356 cases ended in conviction and 1123 in acquittal. In 2002, 388 convictions and 1320 acquittals, in 2003 316 convictions and 1318 acquittals, and in 2004 there were 345 convictions and 1093 acquittals. Among other reasons, the weakness of procedural laws is the cause of more acquittals than convictions.

8. Need for amendment to the Ordinance has been expressed by federal Shari'a Court, Council of Islamic Ideology, and several Members of National Assembly. In addition to that, The Commission of Inquiry for Women 1997, National Commission for the Status of Women 2003, Women Aid Trust 2003, and Awrat Foundation. Have also suggested amendments to the Ordinance.

Regarding the point that the Hudood Ordinance is protected in the Constitution by Article 270A, it needs to be clarified that under this article only those laws which are included in Schedule 7 cannot be

amended or challenged in the court without first amending this article in the constitution. Other laws are not included in the Schedule and can be reviewed by the legislature.

The Hudood Ordinance does not conform fully to the Qur'an and Hadith. Partial amendments to this Ordinance cannot bring it to accord with the letter and spirit of the Qur'an and Sunna. A thorough revision of the Hudood Ordinance is necessary in order to make it more responsive to the philosophy of crime and punishment in the Qur'an and Sunna as well as more effective in a modern judicial system.

This analytical report, including the Council's recommendation for amending the *Hudood Ordinance 1979*, suggests guidelines for the legislators for reviewing *Pakistan Penal Code*, *Pakistan Code of Criminal Procedure* and the *Hudood Ordinance 1979* in the light of the Qur'an and Sunna. This is also a valuable document for students of Islamic law and those who wish to study modern Islamic legislation.

I thank the Research Section, particularly Dr. Ghulam Murtaza Azad, Mr. Muhammad Ilyas Khan, Maulana Inamullah, Maulana Muhammad Khalid Saif, Murad Ali Shah and Maulana Zar Khalil for their assistance. I am also grateful to the staff for typing the several drafts of this report.

MUHAMMAD KHALID MASUD

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BACKGROUND OF THE HUDOOD ORDINANCE

The Council of Islamic Ideology was established in 1962 under the Islamic provisions of the 1962 Constitution. (Article 204) designated as "Islamic Advisory Council". In 1973, the Council was re-designated as "The Council of Islamic Ideology".

The relevant articles about the Council of Islamic Ideology in the 1973 constitution that defines the composition and functions of the Council are given below.

Art. 228: Composition, etc., of Islamic Council:

There shall be constituted within a period of ninety days from the commencing day a Council of Islamic Ideology, in this part referred to as the Islamic Council.

The Islamic Council shall consist of such members, being not less than eight and not more than twenty as the President may appoint from amongst persons having knowledge of the principles and philosophy of Islam as enunciated in the Holy Our'an and Sunnah, or understanding of the economic, political, legal or administrative problems of Pakistan.

While appointing members of the Islamic Council the President shall ensure that so far as practicable various schools of thought are represented in the Council;

Not less than two of the members are persons each of who are, or has been a Judge of the Supreme Court or of a High Court;

Not less than four of the members are persons each of whom has been engaged, for a 'period of not less than fifteen years, in Islamic research or instruction; and

At least one member is a woman.

Article 229: Reference by Majlis-e-Shoora (Parliament), etc., to Islamic Council:

The President or the Governor of a Province may, or if two-fifths of its total membership so requires, a House or a Provincial Assembly shall, refer to the Islamic Council for advice any question as to whether a

proposed law is or is not repugnant to the Injunctions of Islam.

Article 230: (1) The Functions of the Islamic Council shall be:

- (a) To make recommendations to [Majlis-e-Shoora (Parliament)] and the Provincial Assemblies as to the ways and means of enabling and encouraging the Muslims of Pakistan to order their lives individually and collectively in all respects in accordance with the principles and concepts of Islam as enunciated in the Holy Qur'an and Sunnah;
- (b) To advise a House, a Provincial Assembly, the President or a Governor on any question referred to the Council as to whether a proposed law is or is not repugnant to the injunctions of Islam;
- (c) To make recommendations as to the measures for bringing existing laws into conformity with the Injunctions of Islam and the stages by which such measures should be brought into effect; and
- (d) To compile in a suitable form, for the guidance of {Majlis-e-Shoora (Parliament)] and the Provincial Assemblies, such Injunctions of Islam as can be given legislative effect.

- (2) When, under Article 229, a question is referred by a House, a Provincial Assembly, the President or a Governor to the Islamic Council, the Council shall, within fifteen days thereof, inform the House, the Assembly, the President or the Governor, as the case may be, of the period within which the Council expects to be able to furnish that advice.
- (3) Where a House, a Provincial Assembly, the President or the Governor, as the case may be, considers that, in the public interest, the making of the proposed law in relation to which the question arose should not be postponed until the advice of Islamic Council is furnished, the law may be made before the advice is furnished, provided that, where a law is referred for advice to the Islamic Council and the Council advises that the law is repugnant to the Injunctions of Islam, the House, or as the case may be, the Provincial Assembly, the President or the Governor shall reconsider the law so made.
- (4) The Islamic Council shall submit its final report within seven years of its appointment, and shall submit an annual interim report. The report, whether interim or final, shall be laid for discussion before both Houses and each Provincial Assembly within six months of its receipt, and [Majlis-e-Shoora (Parliament)] and the Assembly, after considering the report, shall enact laws in respect thereof within a period of two years of the final report.

PROGRESS

The Council has completed examining laws from 1836 to 1999, and submitted more than twenty reports based on this examination. The Present Council, constituted on 16 June 2004, began reviewing laws introduced since 1977. More than 400 laws have been so far reviewed. The laws issued in 1979 form part of this review. The Council has been responsible for the drafting of most of the

Hudood Ordinance, but since the courts, various commissions, parliamentary committees and citizens have pointed to some problems that call for review, the Council has begun this task. This report provides basic information for this review.

1977: THE COUNCIL OF ISLAMIC IDEOLOGY RECONSTITUTED

General Muhammad Ziaul Haq reconstituted the Council on 26 September 1977, nominating the following members:

- 1. Justice (R) Muhammad Afzal Cheema,
- 2. Justice (R) Salahuddin Ahmad
- 3. Mr. A.K. Brohi (died on 2 April 1978)
- 4. Mr. Khalid M. Ishaq
- 5. Mawlana Muhammad Yusuf Bannuri (died on 4 October 1977)
- 6. Khwaja Qamruddin, Pir of Siyal Sharif
- 7. Mufti Sayahuddin Kakakhel
- 8. Mufti Muhammad Husain Na'imi
- 9. Mawlana Zafar Ahmad Ansari
- 10. Mawlana Muhammad Taqi Usmani
- 11. Mufti Ja'far Husayn Mujtahid
- 12. Mawlana Muhammad Hanif Nadwi
- 13. Dr. Ziauddin Ahmad
- 14. Mr. Tajammul Husayn Hashimi (replaced by SMA Ashraf in July 1978 and by I A Imtiazi in November 1978).
- 15. Mawlana Shamsul Haq Afghani (appointed on 19 June 1978)
- 16. Allama Sayyid Muhammad Razi (Appointed on 19 June 1978)
- 17. Muhtarama Dr. Mrs. Khawar Khan Chishti (appointed on 19 June 1978)

The historical significance of this reconstituted Council lies in the fact that among these 17 members of the Council, 11 were reputed religious scholars from different religious schools of thought in Pakistan, two judges and two law experts.

1978: THE COUNCIL DRAFTS THE HUDUD LAWS

After holding 15 meetings in different cities of the country during 29 September 1977 and 20 December 1978, The Council prepared the following draft laws on Economic, Educational and Social systems as well as on Media and Communication.

- Draft for the Law for the enforcement of Hudud institutional amendment enabling to challenge the legitimacy of non-Islamic laws in the Supreme Court
- 2. Draft law for the establishment of Boards of reconciliation
- 3. Law for the maintenance of poor relatives
- 4. Draft law for the prevention and elimination of lewdness and pornography
- 5. Law for the enforcement of Hudud d (offences against property)
- 6. Law for the enforcement of Hudud (offences of Zina and rape)
- 7. Law for the enforcement of Hudud (prohibition)
- 8. Law for the enforcement of Hudud (Qazf)
- 9. Law for the sanctity of Ramadan al-Mubarak

The four drafts, nos. 5 -8, prepared by the Council in the above list, later came to be known as "Hudood Ordinances".

In addition to these specific drafts, the Council also prepared general recommendations for the reform of Judicial system and other matters.

Consultation

In the preparation of these drafts, the Council sought assistance and consultation with Dr. Ma'ruf al-Dawalibi, a jurist of international fame, formerly Prime Minister of Syria, President of the World Muslim League and an Advisor to the His Majesty Khalid b. Abd al-Walid, the King of Saudi Arabia. The drafts laws about Hudud were first prepared in Arabic language. Later they were translated into English and Urdu.

A special Committee consisting of Mir Muhammad Ali (Draughtsman), and Sheikh Asadullah (Joint Secretary), later replaced by Justice (R) Amjad Ali was appointed to edit it in the modern legal language and to make necessary amendments.

1979: ENFORCEMENT

The drafts had been completed in 1978, and General Ziaul Haq decided to enforce them on 10 February 1979 as an Ordinance. He delivered a speech in the National Assembly Hall addressing the nation. This speech was later published under the title: Introduction of Islamic Laws. In this speech he introduced the following six laws:

- 1. Zakat and Ushr ordinance
- 2. Offences against property (Enforcement of Hudood) Ordinance no. Vi of 1979)
- 3. Offence of Zina (Enforcement of Hudood) Ordinance no. VIII of 1979
- 4. Offence of Qazf (Enforcement of Hadd) Ordinance n0. Vii of 1979
- 5. The Prohibition (Enforcement of Hadd) Order no. 4 of 1979
- 6. Execution of Punishment of Whipping Ordinance no. XI of 1979

The Zakat... Ordinance was declared to be effective from July 1979 while others were enforced immediately. 10 February 1979 coincided with 12 Rabi al-Awwal. General highlighted this coincidence saying:

Today is Eid-e-Milad-un-Nabi, birthday of the Holy Prophet (peace be on Him) which is an important milestone in our religious and national life. Although this day is celebrated by the nation every year, it is for the first time that its celebrations on a gigantic scale have been organized officially.

SOURCE MATERIAL OF THE HUDOOD ORDINANCE 1979

Sources mean the Qur'an and Sunnah which are the sources for finding the laws. The methods of Qiyas and Ijtihad are employed to find a law in the light of these sources when a law is not given in the Qur'an and Sunna. The legal position of a law deduced on the basis of Qiyas and Ijtihad varies, depending on whether they agree or differ on the validity of a deduced law. The weakness and the strength of this validity are categorized accordingly into Fard, Wajib and Sunna.

Offence against Property (Enforcement of Hudood) Ordinance, VI, of 1979

- 1. As to the thief, male or female, cut off his or her hands: a punishment by way of example, from Allah, for their crime: and Allah is Exalted in power (Qur'an 5:38).
- 2. The punishment of those who wage war against Allah and His Messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: that is their disgrace in this world, and a heavy punishment is theirs in the Hereafter (Qur'an 5:33).

- 3. Aisha, may God be pleased with her, narrates the Prophet saying, "The people before you destroyed themselves because whenever an influential person committed a theft they left him alone, and when a person from the lower classes stole they cut his hands. I swear to God, if Fatima (my daughter) steals Muhammad would cut her hand". (Hadith)¹
- 4. The Prophet sentenced amputation of hand for a theft committed for quarter of a dinar or more. (Hadith).

Consensus

Since the days of the Prophet there is a consensus on this punishment.

Offence of Zina (Enforcement of Hudood) Ordinance, of 1979

- 1. If any of your women are guilty of lewdness, Take the evidence of four (Reliable) witnesses from amongst you against them; and if they testify, confine them to houses until death do claim them, or Allah ordain for them some (other) way (Qur'an 4:15).
- 2. The woman and the man guilty of adultery or fornication, flog each of them with a hundred stripes: Let not compassion move you in their case, in a matter prescribed by Allah, if ye believe in Allah and the Last Day: and let a party of the Believers witness their punishment (Qur'an 24:2).
- 3. Let no man guilty of adultery or fornication marries and but a woman similarly guilty, or an Unbeliever: nor let any but such a man or an Unbeliever marries such a woman: to the Believers such a thing is forbidden (Qur'an 24:3).

¹ Bukhari and Muslim

- 4. Ubadah b. al-Samit relates that when this verse was revealed the Prophet said, "Take it from me, take it from me. God has provided for them a way out. In case of unmarried with an un-married, one hundred lashes, and in case of married with a married, one hundred lashes and stoning to death (Hadith).²
- 5. Once a boy who committed zina with the wife of his employer. The boy was unmarried. The Prophet sentenced him to exile and one hundred lashes. The punishment for the woman, if she confessed, was stoning to death (Hadith).³
- 6. The story of Ma'izz (Hadith)
- 7. The story of the woman from the Ghamidiyya tribe (Hadith).
- 8. Consensus of the community. With the exception of the Khawarij all jurists agree on the punishment of stoning to death.

Offence of Qazf (Enforcement of Hadd) Ordinance, VIII, of 1979

1. And those who launch a charge against chaste women, and produce not four witnesses (to support their allegations), - flog them with eighty stripes; and reject their evidence ever after: for such men are wicked transgressors (Qur'an 24: 4).

The Prohibition (Enforcement of Hadd) Order 1979

1. O ye who believe! Intoxicants and gambling, (dedication of) stones, and (divination by) arrows, are an abomination, - of Satan's handwork: eschew such (abomination), that ye may prosper (Qur'an 5:9).

Appendix 1: TEXT OF HUDOOD ORDINANCES

The

² Musnad Ahmad and Muslim

³ Bukhari, Muslim

Offences against Property (Enforcement of Hudood) Ordinance (VI OF 1979)

[10th February, 1979]

An Ordinance to bring in conformity with the injunctions of Islam the law relating to certain offences against property

Preamble: Whereas it is necessary to modify the existing law relating to certain offences against property, so as to bring it in conformity with the injunctions of Islam as set out in the Holy Our' an and Sunnah:

And whereas the President is satisfied that circum-stances 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:-

PRELIMINARY

- 1. Short title, extent and commencement:
- (1) This Ordinance may be called the Offences against Property (Enforcement of 'Hudood') 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" means a person who has attained the age of eighteen years of puberty;
- (b) "authorised medical officer" means a medical officer, whosoever designated, authorised by Government
- (c) "hadd" means punishment ordained by the Holy Qur'an or Sunnah;
- (d) "hirz" means an arrangement made for the custody of property:

Explanation 1: Property placed in a house, whether its door is closed or not or in an almirah or a box or other Container or in the custody of a person, whether he is paid for such custody or not is said to be in "hirz".

Explanation 2: If a single family is living in a house the entire house will constitute a single 'hirz' but if two or more families are living in one house severally, the portion in the occupation of each family will constitute a separate 'hirz'.

- (e) "imprisonment for life" means imprisonment till death;
- (I) "nisab'. means the 'nisab' as laid down in section 6
- (g) "ta'zir" means any punishment other than 'hadd' and 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.** Ordinance to override other laws: The provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force.
- 4. Two kinds of theft: Theft may be either theft liable to 'hadd' or theft liable to 'tazir',
- 5. Theft liable to hadd: Whoever, being an adult, surreptitiously commits, from any 'hirz', theft of property of the value of the 'nisab' or more not being stolen property, knowing that it is or is likely to be of the value of the 'nisab' or more is, subject to the provisions of this Ordinance, said to commit theft liable to 'hadd.'

Explanation 1: In this section "stolen property" does not include property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed.

Explanation 2: In this section, "surreptitiously" means that the person committing the theft commits such theft believing that the victim of theft does not know of his action, For surreptitious removal of property it is necessary that, if it is day-time, which includes one hour before sunrise and two hours after sunset, surreption should continue till the completion of the offence and, if it is night, surreption need not continue after commencement of the offence.

6. *Nisab:* The 'nisab' for theft liable to 'hadd' is four decimal four five seven (4.457) grams of gold, or other property of equivalent value, at the time of theft.

Explanation: If theft is committed from the same 'hirz' in more than one transaction, or from more than one 'hirz' and the value of the stolen property in each case is less than the 'nisab', it is not theft liable to 'hadd' even if the value of the property involved in all the cases adds up to or exceeds, the 'nisab',

Illustrations

- (a) A enters a house occupied by a single family and removes from various rooms property the value of which adds up to, or exceeds the 'nisab'. Such theft is liable to 'hadd' even' though the value of the property removed from any of the rooms does not amount to the 'nisab'. If the house is occupied by more than one family and the value of the property removed from the 'hirz' of anyone f8milv is less than the 'nisab', then the theft is not liable to 'hadd' even though the value of the properties removed adds up to, or exceeds, the 'nisab'.
- (b) A enters a house several times and removes from the house on each occasion property the value of which does not amount to the 'nisab', Such theft is not liable to 'hadd' even though the value of the properties removed adds up to. or exceeds the 'nisab'.
- 7. *Proof of theft liable to hadd:* The proof of theft liable to 'hadd' shell be in one of the following forms, namely:-

the accused pleads guilty of the commission of theft liable to 'hadd'; and .

(b) at least two Muslim adult male witnesses, other than the victim of the theft, about whom the Court is satisfied, having regard to the requirements of 'tazkiyah-alshuhood', that they are truthful persons and abstain from major sins (kabair), give evidence as eye-witnesses of the occurrence;

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

Provided further that the Statement of the victim of the theft or the person authorized by him shall be recorded before the statements of the eye-witnesses are recorded.

Explanation: In this section "tazkiyah al shuhood' means the mode of inquiry adopted by a Court to "satisfy itself as to the credibility of a witness

- 8. Commission of theft liable to 'hadd' by more than one person: Where theft liable to 'hadd' is committed by more than one person and the aggregate value of the stolen property is such that if the property is divided equally amongst such of them as have entered the 'hirz' each one of them gets a share which amounts to or exceeds, the 'nisab' the 'hadd' shall be imposed on all of them who have entered the Hirz, whether or not each one of them has moved the stolen property or any part thereof.
- **9. Punishment of theft liable to 'hadd'**: (1) whoever commits theft liable to 'hadd' for the first time shall be punished with amputation of his right hand from the joint of the wrist.
- (2) Whoever commits theft liable to 'hadd' for the second time shall be punished with amputation of his left foot up to the ankle.
- (3) Whoever commits theft liable to 'hadd' for the third time, or any time subsequent thereto, shall be punished with imprisonment for life.
- (4) Punishment under sub-section (1) or sub-section (2) shall not be executed unless it is confirmed by the Court to which an appeal from the order of conviction lies, and, until the punishment is confirmed and executed the convict shall be dealt with in the same manner as if sentenced to simple imprisonment.
- (5) In the case of a person sentenced to imprisonment for life under sub-section (3), if the⁴ [Appellate Court] is satisfied that he is sincerely penitent, he may be set at liberty on such terms and conditions as the Court may deem fit to impose.
- (6) Amputation shall be carried out by an authorized medical officer.
- (7) If, at the time of the execution of 'hadd' the authorised medical officer is .of the opinion that the amputation of hand or foot may cause the death of the convict, the execution of 'hadd' shall be postponed until such time as the apprehension of death ceases.

⁴ 1. Words subs. for the 'High Court' by the Offences Against Property (Enforcement of Hudood) (Amendment) Ordinance. XIX of 1980, Sec. 2.

10. Cases in which Hadd shall not be imposed:

'Hadd' shall not be imposed in the following cases, namely: -

- (a) when the offender and victim of the theft are related to each other as-
 - (i) spouses;
 - (ii) ascendants paternal or maternal;
 - (iii) descendants, paternal or maternal;
 - (iv) brothers or sisters of father or mother; or
 - (v) brothers or sisters or their children;
- (b) when a guest has committed theft from the house of his host;
- (c) when a servant or employee has committed theft from the 'hirz' of his master or employer to which he is allowed access;
- (d) when the stolen property is wild-grass fish, bird, dog, pig, intoxicant. musical instrument or perishable foodstuffs for the preservation of which provision does not exist;
- (e) when the offender has a share in the stolen property the value of which; after deduction of his share, is less than the 'nisab';
- (f) when a creditor steals his debtor's property the value of which after deduction of the amount due to him, is less than the 'nisab';
- (g) when the offender has committed theft under 'ikrah' or 'iztirar'

Explanation: In this clause-

- (i) "Ikrah" means putting any person in fear of injury to the person, property or honour of that or any other person; and
- (ii) "Iztirar" means a situation in which a person is in apprehension of death due to extreme hunger or thirst;
- (h) when the offender before his apprehension, has, on account of repentance, returned the stolen property to the victim and surrenders himself to the authority concerned.

11. Cases In which Hadd shall not be enforced:

(1) 'Hadd' shall not be enforced in the following cases namely:-

- (a) when theft is proved only by the confession of the convict but he retracts his confession before the execution of 'hadd'
- (b) when theft is proved by testimony, but before the execution of 'hadd' any witness resiles from his testimony so as to reduce the number of eye-witnesses to less than two
- (c) when, before the execution of 'hadd' the victim withdraws his allegation of theft or states that the convict had made a false confession or that any of the eyewitnesses have deposed falsely, and the number of eye-witnesses is thereby reduced to less than two; and
- (d) when the left hand or the left thumb or at least two fingers of the left hand or the right foot of the offender are either missing or entirely unserviceable.
- (2) In the case mentioned in clause (a) of sub-sec. (1) the Court may order retrial
- (3) In a case mentioned in clause (b), or clause (c), or clause (d) of sub section (1) the Court may award 'tazir' on the basis of the evidence on record.
- 12. Return of stolen property: (1) If the stolen property is found in the original or in an identifiable form or in a form into or for which it may have been converted or exchanged, it shall be caused to be returned to the victim whether it is in the possession of, or has been recovered from, the offender or any other person.
- (2) if the stolen property is lost or consumed while in the offender's possession and the 'hadd' is enforced against him the offender shall not be required to pay compensation.
- 13. Theft liable to Tazir: Whoever commits theft which is not liable to 'hadd' or for which proof in either of the form mentioned in Section 7 is not available, or for which 'hadd' may not be imposed or enforced under this Ordinance, shall be liable to Tazir.
- 14. Punishment for theft liable to Tazir: Whoever commits theft liable to 'tazir' liable to 'tazir' shall be awarded the punishment provided for the offence of theft in the Pakistan Penal Code (Act XLV of 1860).

- 15. **Definition of Haraabah'**: When any one or more persons whether equipped with arms or not, make show force for the purpose of taking away the property of another and attack him or cause wrongful restraint or put him in fear of death or hurt such person or persons, are said to commit 'haraabah'.
- **16. Proof of Haraabah**': The provisions of Section 7 shall apply mutates mutandis for the Proof of haraabah.
- 17. Punishment of Haraabah': (1) Whoever being and adult, is guilty of haraabah in the course of which neither any murder has been committed not any property has been taken away shall be punished with property has been taken away shall be punished with whipping not exceeding thirty stripes and with rigorous imprisonment until the Court is satisfied of his being sincerely penitent:

Provided that the sentence of imprisonment shall in no case be less than three years.

- (2) Whoever, being an adult, is guilty of haraabah in hurt has been caused to any person shall, in addition to the punishment provided in sub-section (1), be punished for causing such hurt in accordance with such other law as may for the time being are applicable.
- (3) Whoever, being an adult, is guilty of haraabah in the course of which no murder has been committed but property the value of which amounts to or exceeds, the nisab has been taken away shall be "punished with amputation of his right hand from the wrist and of his left foot from the ankle:"
 - Provided that, when the offence of haraabah" has been committed conjointly by more than one person, the punishment of amputation shall be imposed only if the value of share of each one of them is not less than the nisab:
 - Provided further that, if the left hand or the right foot of the offender is missing or is entirely unserviceable, the punishment of amputation of the other hand or foot, as the case may be, shall not be imposed, and the offender shall be punished with rigorous imprisonment for a term which may extend to fourteen years and with whipping not exceeding thirty stripes.

- (4) Whoever, being" an adult, is guilty of haraabah in the course of which he commits murder shall be punished with death imposed as hadd.
- (5) Punishment under sub-section (3), except that under the second proviso thereto, or under sub-section (4) shall not be executed unless it is confirmed by the Court to which an appeal from the order of conviction lies, and if the punishment be of amputation, until it is confirmed and executed, the convict shall be dealt with in the same manner as if sentenced to simple imprisonment.
- (6) The provisions of sub-section (6) and sub-section (7) of Section 9 shall apply to the execution of the punishment of amputation under this section.
- 18. Cases in which punishment of amputation or death for 'haraabah' shall not be imposed or enforced: The punishment of amputation or death shall not be imposed or enforced for the offence of haraabah in cases in which hadd may not be imposed for theft liable to hadd and the provisions of Section' O and Section 11 shall apply mutatis mutandis to such cases.
- 19. Return of property taken away during 'haraabah': The provisions of Section 12 shall apply mutatis mutandis for return of the property taken away during haraabah so, however, that sub-section (2) of the said section shall have effect as if, for the word Hadd therein, the words "punishment of amputation of death" were substituted.
- 20. Punishment for 'haraabah' liable to tazir: Whoever commits haraabah which is not liable to the punishment provided for in Section 17, or for which proof in either of the forms mentioned in Section 7 is not available, or for which punishment of amputation or death may not be imposed or enforced under this Ordinance, shall b-e awarded the punishment provided in the Pakistan Penal Code (Act XLV of 1860) for the offence of dacoity, robbery or extortion, as the case may be.
- 21. Punishment for "Rassagiri', or "Patharidari": (1) Whoever extends patronage, protection or assistance in any form to, or harbours, any person or group of persons engaged in the theft of cattle, on the understanding that he shall receive one or

more of the cattle in respect of which the offence is committed, or a share in the proceeds thereof, is said to commit "Rassagiri" or "Patharidari".

- (2) Whoever commits "Rassagiri", or "Patharidarj" shall be punished with rigorous imprisonment for a term, which may extend to fourteen years, or with whipping not exceeding seventy stripes, and with confiscation of all his immovable property and with fine.
- 22. Punishment for attempt to commit offence punishable by this Ordinance: Whoever attempts to commit an offence punishable under this Ordinance, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall where no express provision is, made by this Ordinance for the punishment or such attempt, be punished with imprisonment of either description for a term which may extend to ten years.

Illustrations

- (a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box that there is no jewel in it. He can done an act towards the commission of theft, and therefore, is guilty under this section.
- (b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

23. Application of certain provisions of Pakistan Panel Code (Act XLV of 1860):

- (1) Unless otherwise expressly provided in this Ordinance, the provisions of Sections 34 to 38 of Chapter II, Section 71 and Section 72 of Chapter III and Section 149 of Chapter-VIII of the Pakistan Penal Coda (Act XIV of 1860), shall apply, mutatis mutandis in respect of offences under this Ordinance.
- (2) Whoever is guilty of the abetment of an offence liable to Hadd under this Ordinance shall be liable to the punishment provided for such offence as 'tazir'.

24. Application of Code of Criminal Procedure, 1898 (Act V of 1898): (1) The provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), shall apply mutatis mutandis in respect of cases under this Ordinance:

Provided that, if it appears in evidence that the offender has committed a different offence under any other law, he may, if the Court is competent to try that offence and to award punishment therefore, be convicted and punished for that offence:

⁵[Provided further that an offence punishable under Section 9 or Section 17 shall be triable by a Court of Session and not by a Magistrate authorised under Section 30 of the said Code and an appeal from an order under either of the said sections ⁶ [or from an order under any other provisions, of this ordinance which imposes a sentence of imprisonment for a term exceeding two years] shall lie to the Federal Shariat Court:

Provided further that a trial by a 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].

- (2) The provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), relating to the confirmation of the sentence of death, shall apply, mutatis mutandis to confirmation of sentences under this Ordinance.
- (3) The provisions of subsection (3) of Section 391 or Section 393 of the Code of Criminal Procedure, 1898 (Act V of 1898), shall not apply in respect of the punishment of whipping awarded, under this Ordinance.
- (4) The provisions of Chapter" 'XX IX"' of the Code of Criminal Procedure, 1898 (Act V of 1898), shall not apply in respect of punishments awarded under Section 9 or Section 1 7 of this Ordinance

⁵ Provisos added by the Offences Against Property (Enforcement of Hudood) (Amendment) Ordinance, XIX of 1980, S. 3.

⁶ Words inst. by the Offences Against Property (Enforcement of Hudood) (Amendment) Ordinance, II of 1982, S. 2.

- **25. 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: Provided that, if the accused is a non-Muslim, the Presiding Officer may be a non-Muslim.
- **26. 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.

The Offence of Zina (Enforcement of Hudood) Ordinance ⁷ (VII OF 1979)

(10th February, 1979)

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

Preamble. Whereas it is necessary to modify the existing law relating to Zina 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, 1979, 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:-

⁷ This Ordinance has been applied to the Provincially Administered Tribal Areas of Baluchistan vide Baluchistan Government Note No. S. 0. (TA}-3 (46),79, dated 29th April, 1979. This Ordinance has been applied to the Federally Administered Tribal Areas, vide S.R.O. No.362. (1)/79, dated 23rd April. 1979.

- Short title, extent and commencement: (1) This Ordinance may be called the Offence of Zina (Enforcement of Hudood) 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" means a 0 person who has attained, being, a male, the age of eighteen years or, being a female; the age of sixteen years, or has attained puberty.
- (b) "hadd" means punishment ordained by the Holy Qur'an or Sunnah.
- (c) "marriage" means marriage which is not void according to the personal law-of the parties, and "married" shall be construed accordingly.
- (d) "muhsan" means-
 - (i) A Muslim adult man who is not insane and has had sexual intercourse with a Muslim adult who, at the time he had sexual intercourse with her, was married to him and was not insane; or
 - (ii) a Muslim adult woman who is not insane and has had sexual intercourse with a Muslim adult man, who at the time she had sexual intercourse with him, was married to her and was not insane; and
- (e) "tazir" means any punishment other than hadd, and 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. Ordinance to override other laws:** The provisions of this Ordinance shall have effect not with standing anything contained in any other Jaw for the time being, in force.

4. Zina: A man and a Woman are said to commit "Zina' if they willfully have sexual intercourse without being validly marriage each other.

Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of Zina.

- 5. Zina liable to hadd: (1) Zina is zina liable to hadd if-
 - (a) it is committed by a man who is an adult and is not insane with a woman to whom he is not, and does not suspect himself to be married; or
 - (b) it is committed by a woman who is an adult and is not insane with a man to whom she is not, and does not suspect herself to be, married.
 - (2) Whoever is guilty of zina liable to hadd shall, subject to the provisions of this Ordinance-
 - (a) if he or she is a muhsan, be stoned to death at a public place; or
 - (b) if he or she is not a muhsan, be punished, at a public place, with whipping numbering one hundred stripes.
 - (3) No punishment under sub-section (2) shall be executed until it has been confirmed by the Court to which an appeal from, the order of conviction lies; and if the punishment be of whipping, until it is confirmed and executed, the convict shall be dealt with in the same manner as if sentenced to simple imprisonment.
- **6. Zina-bil-jabr:** (1) A person is said to commit zina-bil-jabr if he or she has sexual intercourse with a woman or man, as the case may be, to whom he or she is not validly married, in any of the following circumstances,

namely:

- (a) against the will of the victim;
- (b) without the consent of the victim;

- (c) with the consent of the victim, when the consent has been obtained by putting the victim in fear of death or of, hurt; or
- (d) with the consent of the victim, when the offender knows that the offender is not validly married to the victim and that the consent is given because the victim believes that the offender is another person to whom the victim is or believes herself or himself to be validly married:

Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of zina-bil-jabr.

- (2) Zina-bil-jabr is zina-bil-jabr liable to hadd if, it is committed in the circumstances specified in sub-section (1) of Section 5.
- (3) Whoever is guilty of zina-bil-jabr liable to hadd shall subject to the provisions of this Ordinance-
 - (a) if he or she is not muhsan, be stoned to death at a public place; or
 - (b) if he or she is not muhsan, be punished with whipping numbering one hundred stripes, at a public place, and with such other punishment, including the sentence of death, as the Court may deem fit having regard to the circumstances of the case,
- (4) No punishment under sub-section (3) shall be executed until it has been confirmed by the Court to, which an appeal from the order of conviction lies; and if the punishment be of whipping, until it is confirmed and executed, the convict shall be dealt, with in the same manner as if sentenced to simple imprisonment,
- 7. **Punishment for zina or zina-bil-jabr where convict is not an adult:** A person guilty of zina or zina-bil-jabr shall, if he is not an adult, be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both, and may also be awarded the punishment of whipping not exceeding thirty stripes:

Provided that, in the case of zina-bil-jabr, if the offender is not under the age of fifteen years, the punishment of whipping shall be awarded with or without any other punishment.

8. Proof of zina or zina-bil-jabr liable to hadd:

Proof of zina or zina-bil-jabr 1rable 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; or
- (b) at least four Muslim adult male witnesses about whom the Court is satisfied, having regard to the requirements of tazkiyah-al-shuhood, that they are truthful persons land abstain from major-sins (kabair), give-evidence as eye-witnesses of the act of penetration necessary to the offence

Provided that, if the accused is a non-Muslim the eyewitnesses may be non-Muslims.

Explanation: In this section 'tazkiyah-al-shuhood.' means the mode of inquiry adopted by a Court to satisfy itself as to the credibility of a witness.

9. Cases in which Hadd shall not be enforced:

- (1) In a case in which the offence of zina or zina-bil-jabr is proved only by the confession of the convict, hadd, or such of it as is yet to be enforced, shall not be enforced if the convict retracts his confession before the hadd or such part is enforced.
- (2) In a case in which the offence of zina or zina-bil-jabr is proved only be testimony, hadd, or such part of it as it yet to be enforced, s-hall not be enforced if any witness resiles from his testimony before hadd or such part is enforced, so as to reduce the number of eye, witnesses to less than four.
- (3) In the Case mentioned in sub-section (1), the Court may order retrial.

- (4) In the case mentioned in sub-section (2), the Court may award tazir on the basis of the evidence on record.
- 10. Zina or zina-bil- jabr: (1) Subject to the provisions of Section 7, whoever commits zina or zina-bil-jabr which is not liable to hadd, or for which proof in either of the forms mentioned in Section 8 is not available and the punishment of 'qazf' liable to hadd has not been awarded to the complainant, or for which hadd may not be enforced under this Ordinance, shall be liable to tazir.
- (2) Whoever commits zina liable to tazir shall be punished with rigorous imprisonment for a term which *[shall not be less than four years nor more than] ten years and with whipping numbering thirty stripes, and shall also be liable to fine.
- (3) Whoever commits zina-bil-jabr liable to tazir shall be punished with imprisonment for a term which may extend to twenty-five years and shall also be awarded the punishment of whipping numbering thirty stripes.
- 11. Kidnapping, abducting or inducing women to compel for marriage etc. Who ever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment for life and with whipping not exceeding thirty stripes, and shall also be liable to fine; and who-ever by means of criminal intimidation, as defined in the Pakistan Penal Code (Act XLV of 1860) or of abuse: of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, or seduced to illicit intercourse with another shall also be punishable as a foresaid.
- 12. Kidnapping or abducting in order to subject person to unnatural lust: Whoever kidnaps or abducts any person in order that such person may be subjected, or may, be so disposed of as to be put in danger of being subjected, to the unnatural lust of any person, or knowing it to be likely that such person will be, so subjected or disposed

of, shall be punished with death or rigorous imprisonment for a term which may extend to twenty-five years, and shall also be liable to fine" and, if the punishment be one of imprisonment, shall also be awarded the punishment of whipping not exceeding thirty stripes.

13. Selling person for purposes of prostitution, etc: Whoever sells. lets to hire, or otherwise disposes of any person with intent that such person shall at anytime be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful, and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment for life and with whipping not exceeding thirty stripes, and shall also be liable to fine.

Explanations: (a) When a female is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the, purpose of prostitution

- (b) For the purposes of this section, and, section 14,"illicit intercourse", means sexual intercourse between persons not united by marriage.
- 14. Buying person for purposes of prostitution, etc: Whoever boys, hires or otherwise obtains possession of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person 'will at any time be employed or, used for any such purpose, shall be punished with imprisonment for life and with whipping not exceeding thirty stripes and shall also be liable to fine.

Explanation: Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

- 15. Cohabitation cased by a man deceitfully inducing a belief of lawful marriage: Every man who by deceit causes any woman who is not lawfully married to him to belief that she is lawfully married to him and to cohabit with him in that belief, shall be punished with rigorous imprisonment for a term which may extend to twenty-five years and with whipping not exceeding thirty stripes and shall also be liable to fine.
- 16. Enticing or taking away or detaining with criminal intent a woman: Whoever takes or entices away any women with intent that she may have illicit intercourse with any person or conceals or detains with that intent any woman, shall be punished with imprisonment of either description for a term which may extend to seven years and with whipping not exceeding thirty stripes, and shall also be liable to fine.
- 17. Mode of execution of punishment of stoning to death: The punishment of sloning to death awarded under Section 5 or Section 6 shall be executed in the following manner; namely:-

Such of the witnesses who deposed against the convict as maybe available shall start stoning hi,"8nd,while stoning is being carried on, he may be shot dead, where upon stoning and shooting shell be stopped

- 18. Punishment for attempting to commit an offence: Whoever attempts to commit an offence punishable under this Ordinance with imprisonment or whipping, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall be punished with imprisonment for a term which may extend to one-half or the longest term provided for that offence, or with whipping not exceeding thirty stripes, or with such fine as is provided for the offence, or with any two of, or all, the punishments.
- 19. Application of certain Provisions of Pakistan Penal Code (Act XI V of 1860) and Amendment:
- (1) Unless otherwise expressly provided in this Ordinance, the provisions of Sections 34 to 38 of Chapter II, Sections 63 to 72 of Chapter III and Chapters V and V of the

- Pakistan Penal Code (Act XLV of 1860), shall apply, mutatis mutandis, in respect of offences under this Ordinance.
- (2) Whoever is guilty of the abetment of an offence liable to 'hadd' under this Ordinance shall be liable to the punishment provided for such offence as 'tazir'.
- (3) In the Pakistan Penal Code (Act XLV 01.1860): (a) Sec. 366, Section 372, Section 373, Section 375 and Section 376 of Chapter XVI and Section 493, Section 497 and Section 498 of Chapter XX shall stand repealed; and (b) in Section 367, the words and comma "or to the unnatural lust of any person" shall be omitted.
- **20.** Application of Code of Criminal Procedure, 1898, and amendment: (1) The provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) hereafter in this section referred to as the Code, shall apply, mutatis mutandis, in respect of cases under this Ordinance

Provided that, if it appears in evidence that the offender has committed a different offence under any other law, he may, if the Court is competent to try that offence and award punishment therefore be convicted and punished for that offence.

⁸[Provided further that .an offence punishable under this Ordinance shall be triable by a Court of Session and not by a Magistrate authorised 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 a Court of Session under this Ordinance shall ordinarily be held at the headquarter, of the Tehsil in which the offence is alleged to have been committed.

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

⁸ Provisos added by the Ordinance of Zina (Enforcement of Hudood (Amendment) Ordinance, XX of 1980, S. 2.

- (3) The provisions of Section 198, Section 199, section 199-A or Section 199-8 of the Court shall not apply to the cognizance of an offence punishable under Sec. 15or Section-16 of this Ordinance.
- (4) The provisions of subsection (3) of Section 391or Section 393 of the Code shall not apply in respect of the punishment of whipping awarded under this Ordinance.
- (5) The provisions of Chapter XXIX of the Code shall not apply in respect of punishments awarded under Sec. 5or Section 6 of this Ordinance.
- (6) In the Code, Section 561 shall stand repealed.

21. Presiding Officer of Court to be 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: Provided that, if the accused is a non-Muslim, the Presiding Officer may be a non-Muslim.

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

The Offence of Qazf (Enforcement of Hadd) Ordinance (VIII OF 1979)

[10th February 1979]

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

Preamble: 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 circum-stances 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, 1917 (C. M. L. A. Order No.1of 1971), 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. Definition**: In the Ordinance, unless there is anything repugnant in the subject or context---
 - "adult", "hadd", "tazir", "zina" and 'zina-bil-jabr" 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: Who ever by words either "spoke" or intended to be read, or by signs or by, visible representations, makes or publishes an 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 authorised person): Save in the cases herein after 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 complainant makes an accusation of 'zina' against another person in a Court, but fails to produce four witnesses in support thereof before the Court;

according to the finding of the Court, a witness has given false evidence of the commission of 'zina' or 'zina-bil-jabr';

according to the finding of the Court, a complainant has made a false accusation of 'zina-bil-jabr'.

- 4. Two kinds of qazf: 'Qazf' may be either 'qazf' liable to 'hadd' or 'qazf' liable to 'tazir'.
- 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 sex1Jal inter-course 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 inter-course 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 recognise 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: Proof of 'qazf' liable to 'hadd' shall be in one of the following forms, namely:-

the accused makes before a Court of competent jurisdiction a confession of the commission of the offence

the accused .commits 'qazf' in the presence of the Court; and

at least two Muslim 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 authorised by him shall be recorded before the statements of the witnesses are recorded.

- 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 with in 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 report made to the police or 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 authorised 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:-, when a person has committed 'qazf' against any of his descendants; when the person in respect of whom 'qazf' has been committed and who is a complainant has died during the pendency of the proceedings; and when the imputation has been proved to be true.
- (2) In a case in which, before the execution of 'hadd' the complainant withdraws his allegation of 'qazf, or states that the accused had made a false confession or that any of the witnesses had deposed falsely and the number of witnesses is thereby reduced to less than two 'hadd' shall not be enforced, but the Court may order retrial or award 'tazir" on the basis of the evidence on record.
- 10. Qazf liable to Tazir: Whoever commits 'qazf' which is not liable to 'hadd' or for which proof in any of the forms mentioned in Section 6 is not available, or for which 'hadd' may not be imposed or enforced under Section 9, is said to commit 'qazf' 1i8ble to 'tazir'.
- 11. **Punishment for 'Qazf' liable to 'Tazir':** Whoever commits 'qazf' liable to 'tazir' shall be punished with imprisonment of either description for a term which "'-may extend

to two years and with whipping not exceeding forty stripes, and shall also be liable to fine.

- 12. Printing or engraving matter known to be of the nature referred to in Section 3: Who ever prints or engraves any matter knowing or having good reason to believe that such matter is of the nature referred to in Section 3, shall be punished with imprisonment of either description for a term which may extend to two years, or with whipping not exceeding thirty stripes, or with fine, or with any two of, or all, the punishments.
- 13. Sale of printed or engraved substance containing matter of the nature referred to in Section 3: Whoever sells or offers for sale any printed or engraved substance containing matter of the nature referred to in Section 3, knowing that it contains such matter, shall be punished with imprisonment of either description for a term which may extend to two years, or with whipping not exceeding thirty stripes, or with fine or with any two of, or all, the punishments.
- 14. **li'an:** (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 'li'an' 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 \\life)" 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 Courts: "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 sub-section (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) Where the husband or the wife refuses to go through the procedure specified in subsection (1), he or, as the case may be, she shall be imprisoned until: in the case of the husband, he has agreed to go through the aforesaid procedure; or in the case of the wife, she has either agreed to go through the aforesaid procedure or accepted the husband's accusation as true.
- (4) A wife who has accepted the husband's accusation as true shall be awarded the punishment for the offence of 'zina' liable to 'hadd' -under the imposition of Hudood for the Offence of 'Zina' Ordinance, 1979,

15. Punishment for attempt to commit offence punishable under this Ordinance: Whoever attempts to commit an offence punishable under this Ordinance, or to cause such an attempt to be committed, and in such attempt does any act towards the commission of the offence, shall be punished with imprisonment for a term which may extend to one-half of the longest term provided for the offence, or with such whipping or fine as is provided for the offence or with any two of, or all, the punishments.

16. Application of certain provisions of Pakistan Penal: Code (Act XLV of 1860):

- (1) Unless otherwise expressly provided in this Ordinance, -the provisions of Sections 34 to 38 of Chapter II, Sections 63 to 72 of Chapter III and Chapters V and V -A of the Pakistan Penal Code (Act XLV of 1860), shall apply mutatis mutandis, in respect of offences under this Ordinance.
- (2) Whoever is guilty of the abetment of an offence liable to 'hadd' under this Ordinance shall be liable to the punishment provided for such offence as 'tazir'.

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), herein after referred to as the said Code, shall apply, mutatis mutandis, in respect of cases under this Ordinance: Provided that if it appears in evidence that offender has committed a different

offence under any other law, he may, if the Court is competent to try tnaloffence and award punishment there for, be convicted and punished for that offence:

¹[Provided further that an offence punishable under Section 7 of sub-section (4) of Section 14, shall be triable by, and proceedings under sub-section (1) and (2) of the latter section shall be held before a Court of Session and not by or before a Magistrate authorised under Section 30of the said Code and an appeal from an order of the Court of Session shall lie to the Federal Shariat Court:

⁹[Provided further that a trial by, or proceeding before, the Court of Session undt3r 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 sen1ence of death shall apply mutates mutandis of the confirmation of a 'Sentence under this Ordinance.
- (3) The provisions of sub-section (3) of Section 391or 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.

⁹ Provisos added by the Offence of Qazf (enforcement of Hadd)(Amendment) Ordinance, XXI of 1980, S. 2.

- *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.
- *Ordinance to override other Laws*: The provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force.
- **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.

The Prohibition (Enforcement of Hadd) Order (4 OF 1979)

[10th February, 7979]

Preamble: Whereas it is necessary to modify the existing law relating to prohibition of intoxicants so as to bring it in conformity with the injunctions of Islam' as, set out in the' Holy Qur'an and Sunnah:

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 of1977), and in exercise of all powers enabling him in that behalf, the President and Chief Martial Law Administrator is pleased to make the following Order:

CHAPTER I

PRELIMINARY

1. Short title extent and commencement: (1).

This Order may be called the Prohibition (Enforcement of Hadd) Order, 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 10th day of February 1979.
- **2. Definitions:** In this Order, unless there is any-thing repugnant in the subject or context-

"adult" means a person who has attained the age of eighteen years of puberty;

"authorised medical officer" means a medical officer, howsoever designated, authorised by the Provincial Government;

"bottle" or "bottling' means to transfer intoxicating liquor from a cask or other vessel to a bottle, jar, flask, pot or similar receptacle for the purpose of sale, whether any process of manufacture be employed or not, and includes rebottling;

"buy" or "buying" includes any receipt by way of gift or otherwise;

"Collector" means any person appointed under1his Order to exercise or perform all or any of the powers or functions of a Collector under this order

'hadd' means punishment ordained by the Holy Qur'an or Sunnah;

'intoxicant" means an article specified in the Schedule and include intoxicating liquor and other article or any substance which the Provincial Government may by notification in the official Gazette declare to be an intoxicant for the purposes of this Order;

"intoxicating liquor" includes today spirits of wine, beer and all liquids consisting of or containing alcohol normally used for purposes of intoxication, but does not include a solid intoxicant even if liquefied;

manufacture includes every process, whether: natural or artificial by which any intoxicant is produced, prepared or blended, and also redistillation and every process for the rectification of intoxicating liquors;

'place" includes a house, shed, enclosure building, shop, tent, vehicle vessel and aircraft

"Prohibition Officer' means the Collector or any officer appointed or invested with powers under Article21;

"public place means a street road, thoroughfare, park, garden "or other place, to which the public have free access and includes a hotel, restaurant, motel, mess and' club, but does not include' the residential room of a hotel in the occupation of some person;

"rectification" includes every process where by intoxicating liquors are purified, coloured or flavoured by mixing any material therewith;

"sale" or "selling" includes any transfer by way of gift or otherwise;

"ta'zir" means any punishment other than 'hadd' and

"transport" means to move from one place to another.

CHAPTER II

Prohibition and Penalties

Prohibition of manufacture etc. of intoxicants: ¹⁰[(1) Subject to the provisions 3. of Clause (2) whoever]: -

imports, exports. [transports manufactures or processes any intoxicant; or bottles any intoxicant; or, sells or serves any' intoxicant; or allows any of the acts aforesaid upon premises owned by him or his immediate possession; .shall be punishable with imprisonment of either description for a term which may, extend to five years and with, whipping not exceeding thirty stripes, and shall also be liable to fine.

11 [(2) Whoever-

- (i) imports, exports, transports. Manufactures or traffics in, opium or coca leaf or opium or coca derivatives; or
- (ii) finances the import, export, transport, manufacture, or trafficking of, opium of coca leaf or opium or coca derivatives; shall be punishable with imprisonment for life or with imprisonment which is not less than .two years and with whipping not exceeding three, stripes; and shall also be liable to fine.]
- 4. Owning or possessing intoxicant: - Who ever owns, possesses or keep in his "custody" any intoxicant shall be published with imprisonment of, either description for a term which may extend to two years, or with whipping not exceeding thirty stripes, and shall 4150 be liable to, fine:

Provided that nothing contained in this Article shall apply to a non-Muslim foreigner or to a non-Muslim citizen of Pakistan who keeps in his custody at or about the time of

¹⁰ Arti. 3 renumbered as Clause (1) by the Prohibition (Enforcement of Hadd) (Amendment) President Order. 12 of 1983. S. 2(a).

11 Clause (2) added Ibid. S.2(b).

ceremony prescribed by his religion. a reasonable quantity of intoxicating liquor for the purpose of using it as a part of such ceremony:

¹² [Provided further that, if the intoxicant in respect of which the offence is committed is herein, cocaine, ¹³[...] opium or coca leaf, and the quantity. exceeds ten grams in the case of heroin or cocaine or one kilogram in the case of ¹⁴[...] opium or, coca leaf, the offender shall be punishable with imprisonment for life or with imprisonment which is not less than two years and with whipping note exceeding thirty stripes, and shall also be liable to fine.]

- 5. Article 3 or Article 4 not to apply to certain acts: Nothing contained in Article 3 or Article 4 shall apply to any act done under, and in accordance with the provisions of this Order, or the terms of any rule, notification, order or license issued there under.
- **6. Drinking:** Whoever, intentionally and without 'ikrah or 'iztirar' takes an intoxicant by any means what so ever, whether such taking causes intoxication or not, shall be guilty of drinking.

Explanation: In this Article: -

'ikrah' means putting any person in fear of injury to the person, property or honour of that or any other person; and, 'Iztirar' means a situation in which a person is in apprehension of death due to extreme hunger or thirst or serious illness.

7. Two kinds of drinking: Drinking may be either drinking liable to 'Hadd' or drinking liable to 'Tazir'.

¹² Proviso added by the Prohibition (Enforcement of Hadd) (Amendment) President Order, 12 of 1983, S. 3.

¹³ word 'raw' omitted by the Prohibition (Enforcement of Hadd)

¹⁴ word 'raw' omitted by the Prohibition (Enforcement of Hadd)

8. **Drinking, liable to 'Hadd':** Whoever being an adult Muslim1takes'intoxicating liquor by mouth is guilty of drinking liable to, 'hadd' and shall be punished with whipping numbering eighty stripes:

Provided that the punishment shall not be executed unless it is confirmed by the Court to which an appeal from the order of conviction 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 with in the same manner as if sentence to simple imprisonment.

Proof of drinking liable to Hadd: The proof of drinking liable to 'hadd' shall be in one of the following forms, namely: -

the accused makes before a Court of competent jurisdiction a confession of the commission of drinking liable to 'hadd"; and.

at least two Muslim adult male witnesses, about whom the Court is satisfied, having regard to the requirement of 'tazkiyah-al-shuhood', that they are truthful persons and abstain from major sins(kabair) give evidence of the accused having committed the offence of drinking liable to hadd.

In this Article; 'Tazkiyah-al-shuhood' means the mode of inquiry adopted by a Court to satisfy itself as to the credibility of a witness.

10. Cases in which Hadd shall not be enforced:

(1) "Hadd' shall not be enforced in the following cases, namely: -

when drinking is proved only by the confession of the convict but he retracts his confession before the execution of "hadd"; and(b) when drinking is proved by testimony, but before ,the execution of 'hadd", and

when drinking is proved by testimony, but before the execution of "hadd" any witness resiles from his testimony so as to reduce the number of witnesses to less than two.

In a case mentioned in (1), the Court may order retrial in accordance with the Code of Criminal Procedure, 1989 (Act V of 1898)

11. **Drinking liable to Tazlr:** Whoever- being a Muslim, is guilty of drinking which is not liable to 'hadd' under Article 8 or for which proof in either of the forms mentioned in Article 9 is not available and the Court is satisfied that the offence stands proved by the evidence on the record;

being a non-Muslim citizen of Pakistan is guilty of drinking .except as a part of a ceremony prescribed by his religion; or

being a non-Muslim who is not a citizen of Pakistan, is guilty of drinking ,at public place; shall be liable to tazir and shall be punished with imprisonment of either description for a term which may extend to three years or with whipping not exceeding thirty stripes, or with both.

- 12. Arrest on suspension of violation of Article8 or Article 11: (1) No police officer shell detain or arrest any person on suspicion that he has taken an intoxicant in violation of Articles 8 or 11 unless he has asked such person to accompany him to an authorized medical officer for examination and such person either refuses to so accompany him or having been examined by the medical practitioner is certified by him to have taken an intoxicant.
- (2) Whoever contravenes the provisions of clause (1) shall be Punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.
- 13. Punishment for vexatious delay: Any officer or person exercising Powers under this Order who vexatiously and unnecessarily delays forwarding to a Prohibition Officer any person arrested or any article seized under this Order shall be punishable with fine which may extend to one thousand rupees.

- 14. Things liable to confiscation: In any case in which an offence has been committed under this Order the intoxicant still ostensible implement or apparatus in respect or by means of which the offence has been committed shall be liable to confiscation along with the receptacles, packages, coverings, animals, vessels Carts or other vehicles used to hold or carry the same.
- 15. Confiscation how ordered: (1) In any case involving anything liable to confiscation under this Order, the Court deciding the case may order such confiscation despite the acquittal of the person charged.
- (2) When can offence under this Order has been committed but the offender is not known or cannot be found, or when anything liable to confiscation under this order and not in the possession of any person cannot be satisfactorily accounted for the case' shall be inquired into and determined by the Collector or other Prohibition Officer in-charge of the District or any other officer8uthorised by the Provincial Government in this behalf who may, order such confiscation:

Provided that no such order shall be made until the expiration of fifteen days from the date of seizure of the things intended to be confiscated or without hearing the persons, if any, claiming any right thereto and evidence, if any, which they produce in support of their claims.

16 Cognizance of certain offence. (1) The following offences shall be cognizable namely:

an offence punishable under Article 3; and an offence punishable under Article 4, Article 8 or Article 11, if committed at a public place.

(2) No Court shall take cognizance of an offence punishable under:

Article 12 or Article' 3, save on a complaint made by the person in respect of whom the offence has been committed; and.

Article 20, save on a complaint made by or under, the authority of, a Prohibition Officer.

CHAPTER III

LICENCES FOR MEDICINAL OR SIMILAR OTHER PURPOSES

17. Licenses for 'Bona Fide' medicinal or other purposes: The Provincial Government or, subject to the control of the Provincial Government., the Collector, may issue licenses to any person in respect of any institution whether under the management of Government or not:-

for the manufacture, import, transport, sale or possession of any intoxicant or article containing intoxicating liquor on the ground that such intoxicant or article is required by such person in respect of such institution" for a bona fide medicinal scientific, industrial or similar other purpose or for consumption "by a on-Muslim citizen of .Pakistan as a part of a religious" ceremony or by a non-Muslim foreigner; or

for the export of any intoxicant or article containing intoxicating liquor.

- 18. Forms and conditions of licenses: Every license issued under this order shall:-be granted on payment of such fee, if any, for such period and on such condition: and be in such form aria contain such particulars, as the Provincial Government may direct, either generally or in any particular case
- 19. Power to cancel or suspend licenses: (1) The Collector may cancel or suspend a license:

if any fee payable by the holder thereof be not duly paid, or ,:

in the event of any breach by the holder there of or by his servant or by any one acting with his express or implied permission on his behalf of any of the terms or conditions of the license.

- (2) The Collector shall cancel a license ifthe holder thereof is convicted of any offence under this Order; or the purpose for which license is granted ceases to exist.
- (3) As and when any license is cancelled under clause (1) or clause (2), the holder thereof shall at once declare to the Collector the stock of intoxicating liquor or

articles containing such liquor lying with him, and dispose of such stock to such authorised person as the Collect or may specify.

20. Penalty for the breach of conditions of license: In the event of any breach by the holder of a license or by his servant or by anyone acting with his express or implied permission on his behalf, of any of the terms and conditions of the license, such holder shall in addition to the cancellation or suspension of the license, and in addition to any other punishment to which he may be liable under this order, be punishable with imprisonment ¹⁵[for life or with imprisonment which is not" less than two years] and with fine, unless he proves that he exercised a" due diligence to prevent such breach; and any person who 'commits any such breach shall, whether he acts with or without the permission of the holder of the license, also be liable to, the same punishment.

CHAPTER IV

ESTABLISHMENT AND CONTROL

21. "Appointment of officers: The Provincial Government may, from time to time, by notification in the official Gazette: -

appoint an officer to exercise all the powers of Collector under this Order in any area specified in the notification and to have the control of the" 'administration of the provisions of this Order in, such area;

appoint officers with such designations power sand duties as the Provincial Government may think fit to assist the Collector or other Prohibition Officer; and

delegate to any Prohibition Officer all or any of its powers under this Order.

¹⁵ Words subs. for the words 'of either description for a term which may extend to one year by the Prohibition (Enforcement of Hadd) (Amendment) President Order. 12 of 1983, S.4

CHAPTER V

POWERS, DUTIES AND PROCEDURE OF OFFICERS, ETC.

- 22. Issue of search warrants: (1) If any Collector, Prohibition Officer or Magistrate, upon information obtained and after such inquiry as he thinks necessary, has reason to believe that an offence under Article 3, Article 4, Article 8 or Article 11 has been committed, he may issue a warrant for the search for any intoxicant, material still, utensil, implement or apparatus in respect of which the alleged offence has been committed.
- (2) Any person has been entrusted with the execution of such a warrant may detain and search and, if he thinks proper, but subject to the provision of clause (1) of Article 12, arrest any person found in the place searched if he has reason to believe such person to be guilty of an offence under Article 3, Article 4, Article 8 or Article 11.
- **23. Powers of Prohibition Officer:** In addition'10 the powers conferred on him by the foregoing provisions of this Order, a Prohibition Officer shall have all the powers conferred on the officer-in-charge of a police station while conducting investigation into: a cognizable offence.
- 24. Enhanced Punishment for certain offence after previous, conviction: Whoever, having been convicted by a Court of in offence shall, in addition to the punishment provided for that offence, awarded for every such subsequent offence the punishment of imprisonment provided for that offence
- 25.Punishment for attempt to commit offence punishable under this Order: Whoever attempts to commit an offence punishable under this Order or to 'cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall be punished in the case of an offence punishable under Article 8, with rigorous imprisonment for 8 term which may extend to two years, and in other cases, with imprisonment for a term which may extend to one-half of the longest term provided for

that offence, or with such whipping or fine as is provided for the offence or with any two of or all, the punishments.

26. Application of certain provisions of the Pakistan Penal Code (Act XLV of 1860):

- (1) Unless otherwise expressly provided in this Order, the provisions of Sections 34 to 38 of Chapter II, sections 63 to 72 of Chapter III, and Chapters V and V-A of the Pakistan Penal Code (Act XLV of 1860), shall apply, mutatis mutandis, in respect of offences under this Order.
- (2) Whoever is guilty of the abetment of an offence liable to 'Hadd' under this Order shall be liable to the punishment provided for such offence as 'Tazir,'
- 27. Application of the Code of Criminal Procedure, 1898 (Act V of 1898): Unless otherwise expressly provided in this Order, the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), here in after referred to as the said Code, shall apply mutates mutandis in respect of cases under this Order:

Provided that, if it appears in evidence that the offender has committed a different offence under any other law, he may, if the Court is competent to try that offence and to award punishment therefore, be convicted and punished for that offence:

¹⁶[Provided further that an offence punishable under Article 8 shall be triable by a Court of Session and not by a Magistrate authorised under Sec. 30 of the said Code and on appeal from -an order under that Article¹⁷ [or from an order under any other provision of this Order which imposes a sentence of imprisonment for a term exceeding two years] shall lie to the Federal Shariat Court:

Provided further that a trial by a Court of Session under this Order shall ordinarily be held at the headquarters of the Tehsil in which the offence is alleged to have been committed].

¹⁶ Provisos added by the Prohibition (Enforcement of Hadd) Amendment) President Order, 6 of 1980, S. 2.

¹⁷ Words inst. by the Prohibition (Enforcement of Hadd) (Amendment) President Order, 6 of 1982, S. 2.

- (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 Order.
- (3) The provisions of sub-section (3) of Section 391 or Section 393 of the said Code shall not apply in respect of the punishment of whipping awarded under this Order.
- (4) The provisions of Chapter XXIX of the said Code shall not apply in respect of the punishment awarded under Article 8.
- **28. Indemnity:** No suit, prosecution or other legal proceeding shall lie against a Provincial Government, a Police Officer, a Prohibition Officer or any other officer in respect of anything which is in good faith done under this order or the rules made there under.
- **29. Order to override other Laws:** This Order shall have effect no withstanding anything contained in any other law for the time being in force.
- 30. Presiding officer of Court to be a Muslim: This Presiding Officer of the Court by which a case is tried or an appeal is heard, under this Order shall be a Muslim:Provided that if the accused is a non-Muslim, the Presiding Officer may be a non-Muslim.
- 31. Power to make Rules: (1) The Provincial Government may, by notification in the official Gazette make rules for the purpose of carrying Into effect the provisions of this Order.
- (2) In particular and without prejudice to the generality of the foregoing provisions, .the Provincial Government may make rules: for the issue of licenses and the enforcement of the condition thereof; prescribing the powers to be exercised and the duties to be performed by Prohibition Officers in furtherance of the object of this Order;

determining the local jurisdiction of Prohibition Officers in regard to inquiries and investigations authorising any officer to exercise any power or perform any duty under this Order;

regulating the delegation by the Collector or other Prohibition Officers of any powers conferred on them by or under this Order;

declaring in what cases or classes of cases and to what authorities appeals shall lie from orders, whether original or appellate passed by an authority other than a Court under this Order or under any rules made there under or by what authorities such order may be revised, and prescribing the time and manner of presenting appeal sand procedure for dealing therewith;

for the disposal of articles confiscated and of the proceeds thereof; and examination of persons referred to in Article 12.

- *Saving*: Nothing in this Order shall be deemed to apply to cases pending before any Court immediately before the commencement of this Order or to offences committed before such commencement.
- 33. Repeal: The following laws are hereby repealed, namely: the Prohibition Act, '977 (XXIV of 1977);
 the Baluchistan Prohibition Ordinance 1978 (Baluchistan Ordinance No. XI of 1978);
 the North-West Frontier Province Prohibition Ordinance, 1978 (N.W.F.P Ordinance No. VI of 1978)

the Punjab Prohibition Ordinance, 1978 (Punjab Ordinance No. VI of 1978); and the Sind Prohibition Ordinance, 1978 (Sind ordinance No. IV of 1978)

THE SCHEDULE

- 1. The leaves, small stalks and flowering or fruiting tops of the Indian hemp plant (Cannabis Sativa L.) including all forms known as Bhang, Siddhi Of Ganja.
- 2. Charas, that is, the resin obtained from the Indian hemp plant, which has not been submitted to any manipulations other than those necessary for packing or transport.
- 3. Any mixture, with or without natural materials, of any of the articles mentioned in entries 1 and 2, or any drink prepared there from.
- 4. Opium and opium derivatives as defined in the Dangerous Drugs Act, 1930 (II of 1930).
- 5. Coca leaf and coca derivatives as defined in the aforesaid Act.
- 6. Hashish.

Appendix 2: List of Leading Judgments Relating Hudood Ordinance 1979

Federal Shariat Court

OFFENCES AGAINST PROPERTY (ENFORCEMENT OF HUDOOD)

- 1. Atta Ullah Khan V/s The State, Shariat decision 2002 PP 66-68
- 2. Abdul Ali V/s Haji Bismillah State Shariat decision 2002 PP 169-178
- 3. Amjad Pervez V/s The State Shariat Decisions, 2004 PP 323-329
- 4. Gul Bahar V/s The State, Shariat Decisions, 2004, PP. 1026-1030

OFFENCES OF ZINA (ENFORCEMENT OF HUDOOD)

- 1. Muhammad Ashraf V/s THE STATE, Shariat decisions 2002 PP I-6
- 2. Aamir Ahmad V/s The State Shariat decisions 2002 PP 6-10
- 3. Allah Rakha V/s The State Shariat decisions 2002 PP 10-16
- 4. Nawaz Alias Batta V/s The State Shariat decisions 2002 PP 86-88
- 5. Khushal Khan Alias Baju V/s The State Shariat decisions 2002 PP 112-118
- 6. Rana Shahbaz Ahmed V/s The State Shariat decisions 2002 PP 118-112
- 7. Qurban Ali V/s The State Shariat decisions 2002 PP 126-128
- 8. Qurban Ali V/s The State Shariat decisions 2002 PP 255-260
- 9. Mst. Zafran Bibi V/s The State Shariat decisions 2002 Vol-4 PP 1-18 (FSC)
- 10. Begum Rashida Patel V/s Fed. Of Pakistan PLD 89 Vol. PP 95-142 (FSC)

OFFENCE OF QAZF (ENFORCEMENT OF HUDOOD)

- 1. Muhammad Riaz etc. V/s The State Shariat decisions 2002 PP 552-555'
- 2. Begum Rashida Patel V/s Fed. of Pakistan PLD 89 Vol I PP 95 -142 (FSC)

PROHIBITION (ENFORCEMENT OF HADD)

- 1. Ghulam Shabbir Khan (2) Waheed Khan V/s The State S.D. PP 625-630
- 2. Nosher Rustam Sidhwa VS The Federation of Pakistan PLD 1981 FSC 245

SUPREME COURT OF PAKISTAN (SHARIAT APPELLATE BENCH)

OFFENCES AGAINST PROPERTY (ENFORCEMENT OF HUDOOD)

1. Rehmat Ali V/s Mushtaq Ahmad PLD 1989 Vol-I PP 593-596

OFFENCES OF ZINA (ENFORCEMENT OF HUDOOD)

- 1. Muhammad Abbas on other V/s The State PLD 2003 Vol I PP 863-877
- 2. Noor Jamal V/s The State PLD 1990 Vol I PP 656-660

ON PROHIBITION (ENFORCEMENT OF HADD)

- 1. Tasleem Khan V/s The State PLD 1990 Vol.-PP 1088 1091
- 2. Syed Muhammad V/s The State PLD 1990 Vol-PP 1176-1186
- 3. Zaid Ullah Urf Hazaria V/s The State, PLD 1990 Vol-I PP 1186-1191
- 4. Rab Nawaz and others V/s The State, PLD Vol-I PP 858-867



DISCOURSES ON HUDOOD ORDINANCES IN PAKISTAN (1980 - 2006)

This section offers an overview of the debate and controversy on the Hudood Ordinance in Pakistan. A summary of the diverse views is presented at the end of this section.

1. DEBATES IN THE LITERATURE

The following is an annotated list of the literature during 1980 and 2000 that led a discourse on Hudood Ordinance in Pakistan.

- Bayyinat, Jumada al-Ukhra, 1401 H., a monthly journal of the Bannuria Madrasa presents details of the progress on Hudood Ordinance.
- 2. Yusuf Ludhyanawi, *Shahbun Mubin li rajm al-shiyatin, Rajm ki shar'i Haythiyat* (Karachi: Maktaba Ludhyanawi). Claims consensus of all schools of thought on stoning to death as a punishment. This punishment is supported by the Qur'an and Sunna, Only the Khawarij, the Qadiyanis and Munkirin Hadith deny it.
- Nur Ahmad Shahtaz, Tarikh nifadh Hudud (Karachi 1998). A history of the enforcement of Hudud in Pakistan and a defense against critique of the Hudud.
- 4. Muhammad Rafiq Chaudhri, *Hadd rajm* (Lahore, 1988). Refutes Amin Ahsan Islahi's claim that Rajm is not a Qur'anic punishment.

- 5. Muhammad Inayatullah Subhani, *Haqiqat rajm* (Peshawar, n.d.). The author argues that Islam does not distinguish between the married and unmarried as far as the punishment of zina is concerned. In both cases the punishment is one hundred lashes, not stoning.
- Matin Hashimi, *Islami Hudud awr un ka Falsafa* (Lahore, 1999). Aims
 to dispel doubts about the Hudud laws and to explain the social
 advantages of the enforcement of Hudud.
- 7. Anwar Mahmud Yusuf Dayur (Tr. S. Nazirul Hasan Gilani), Nifadh Hudud men Shubhat ka aasar. The book argues that in the presence of doubts, Hudud cannot be enforced. Islam has not only fixed the punishments but also suggested rules and regulations to enforce them.
- 8. Tanzilur Rahman, *Islami Qawanin Hudud Qisas, Diyat wa Tazirat* (Lahore). Detailed description of rules in the various schools.
- 9. Khurshid Nadim, *Islam ka Tasawwur-i Jurm-o Saza* (Islamabad: Islamic Research Institute, 1997).

The book sums up the discussions and diverse views about Hudud, Qisas and Islamic rules of evidence. The first volume deals with crimes, their classification, and procedure. The second deals with punishment and the divergent views about them. These two volumes conclude that there is a consensus among Muslim scholars today that Hudud punishment must be applied. They however differ on details. Regarding the punishment of Rajm (stoning) the book mentions three viewpoints.

First view holds that Rajm is not an Islamic punishment.

Second view is that Rajm is not a punishment for Zina, but a punishment for prostitutes who are regarded as Muharibin, outlaws against community and state. The punishment for zina is only lashes and there is no distinction between married and un-married. Mawlana Amin Ahsan Islahi professed this view. Umar Ahmad Usmani, Javed Ahmad Ghamidi and some other scholars hold similar views.

Third is the majority view that argues that Rajm is a punishment for the married persons who commit zina.

- 10. Muhammad Farooq Khan, Hudud -o-Qisas--o-Diyat Ordinance ka tanqidi ja'iza, Quran-o-Sunnat ki roshani men (Peshawar: Awrat Foundation, 2004). The book argues that Hudud laws suffer from some serious flaws and therefore must be repealed.
- 11. Justice Javed Iqbal, Qanun-i Zina par Ek nazar (Awrat Foundation). The book argues that Hudud laws are defective and must be repealed.
- 12. *Hudood Ordinance ki mansukhi kion zaruri hai* (Shirkat gah), calls for the repeal of the Ordinance.
- 13. Dr. Muhammad Tufail Hashimi, Hudood Ordinance, Kitabo Sunnat ki Roshani men (Awrat Foundation, 2004). The book offers a detailed analysis of the Ordinance and argues that the Hudood Ordinance is not based on the Quran and Sunna. The book offers the following as conclusions.
 - Hudood Ordinance does not distinguish between Hudud and Ta'ziart, it treats them both as Ta'zir.

- b. The punishments prescribed as hadd for theft and zina is for the habitual offenders; a lesser punishment be prescribed for the nonhabitual.
- c. The Crimes can be classified as Hudud crimes only if there is a consensus among all school. Where there is a difference of opinion, or where there is a doubt, those laws should be removed from the list of crimes of Hudud.
- d. Repentance must be given legal validity, and a person who repents must not be subjected to punishment.
- e. Non-Muslims cannot be subjected to Hudud laws.
- f. The age of majority must be clearly fixed; The jurists agree that it is 19 years.
- g. Ihsan must be re-defined according to the Qur'an and Sunna.
- h. Zina must be re-defined according to the Qur'an and Sunna and in the light of Jurists' explanations.
- i. The punishment of Zina as prescribed in Section 5 (2) (a) and (b) applies also to a person who is not subject to these laws according to Islamic jurisprudence (ghayr mukallaf). Also, the Qur'an does not distinguish between the punishment for married and unmarried.

- j. Rajm is a death penalty that was given to rebels (Muharaba), regardless whether they had committed zina or not. Thus Rajm sentence be awarded only in case of rape. The requirement of four witnesses for rape is contrary to the Quran and Sunna.
- k. The rule that women do not qualify as witness in Hudud is not supported by the Qur'an and Sunna.
- 1. The section 9 in the Zina Ordinance must be deleted. A person accusing another of zina without any valid proof must be charged by the state for qazf; it should not wait for the other party to claim.
- m. The role of Police in Zina crimes must be eliminated. The plaintiff and the accused both allowed approaching the court directly. The police should take action only after the accusation has been supported by evidence.
- n. The law of Zina and Qazf must be combined as one ordinance.
- o. Tuhmat, unfounded accusation, willful or not is qazf. Any section that maintains that distinction must be repealed.
- p. Qazf is based on a private right to defend one's honor. Non-Muslims cannot be denied this right. Section 5 is thus contrary to the Quran and Sunna.
- q. Section 7 also be deleted, as it prescribes conditions of right belief etc., for a witness.

- r. As soon a witness is proven to be unreliable, he/she must be immediately subjected to qazf law. No new claim, as prescribed in Sections 3 and 8, is required.
- s. Sections 1 to 8 in the Qazf ordinance are contrary to Quran and Sunna.
- t. The ordinance on theft does not define theft.
- The jurists on the basis of Ijtihad fixed the minimum for the theft.
 It should be left to the discretion of the judge.
- v. Requirement of Muslim male witness for theft is contrary to the Qur'an and Sunna.
- w. Section 8 of the Ordinance on theft provides a leeway to the criminals committing crime as a group. It must be removed.
- x. The Ordinance on Sariqa and haraba is totally contrary to the Qur'an and Sunna.
- y. The ordinance against drugs and intoxicants does not belong to the crime of Hudud; it must be classified as Tazirat.

14. Dr. Farida Ahmad Siddiqi, *Hudood Ordinance* (n.d. n.p.)

The author says that the Ordinance was the outcome of carefully prepared recommendations by the Council of Islamic Ideology. The people of learning were satisfied that these laws will provide protection to life, property and honor and the society will be free from evils. It is a

law of God that eliminates injustive and evils in society. Unfortunately, however, the society could not benefit from the merits and blessings of the Zina Ordinance due to certain administrative flaws in the law. The women suffered on account of some procedural errors in its implementation. The author recommends that these flaws can be corrected easily by amending these laws to provide relief to suffering women. The author opposes the demand for the repeal of Hudood Ordinance and has argued in detail how the Ordinance is based on the Qur'an and Sunna.

2. Media: News Papers, Journals And Magazines

Since 1979 controversy about the Hudood Ordinance continued in Pakistani press and magazines. The following is a list of some of the persons whose statements, views and comments appeared on the subject.

IN FAVOR OF STATUS QUO

Sayyid Muhammad al-Hasani

Anisur Rahman

Mufti Jamil Ahmad Thanawi

Mawlana Yusuf Ludhyanawi

Mawlana Rafi Uthmani

Khalid Ishaq, Advocate

Dr. Fazlur Rahman, Karachi

Ameer Bakhsh Bhutto

Dr. S. M. Zaman, former Chairman, CII

Madam Bilqis Saif, MMA, MNA, Baluchistan

Madam Jamila Ahmad, MMA, MNA, Frontier

Dr. Mahmood Ahmad Ghazi, former Minster for religious Affairs

Madam Farida Ahmad, MMA, MNA

Mawlana Said Ahmad Jalalpuri

Qazi Hussain Ahmad, Amir Jamaat Islami

IN FAVOR OF REFORM/ amendment OF HUDOOD ORDINANCE

[Dr. Fazlur Rahman, Chicago]

Rafiullah Shahab

Dr. Muhammad Farooq

Awrat Foundation

Mueed Pir Bhoy

Fareeha Rafique, Columnist

Asma Jahangir, Advocate, HR

Majida Rizwi, Justice R

Nasir Aslam Zahid, Justice R

Sheri Rahman, MNA PPP

Shaiq Usmani, Justice R

Namoos Zaheer, Columnist

Hilda Saeed, Columnist

Beena Sarwar, Columnist

Dr. Aslam Khaki, Advocate

Farzana Bari, Columnist

SUMMARY OF THE DISCOURSES

1 ARGUMENTS FOR THE STATUS QUO

A) Divine Nature of Hudud

- Islamic injunctions based on clear statements in the Qur'an and Sunnah can't be challenged. Others can be looked into and amended depending on the requirement of time". Dr. S. M Zaman
- "Hudud Laws are Hudud Allah, Divine law; they protect religion and tradition. They are against Western obscenity. They ensure the women rights that Islam gave". Bilgees Saif, MMA, MNA from Baluchistan.
- Hudood and Blasphemy both are an integral part of Islam and they are not man-made". Dr. Fazlur Rahman, Karachi.
- "Hudood Ordinance cannot be repealed. It is strictly based on the teachings of the Qur'an and Sunnah". Dr. Fareeda Ahmad. MMA MNA from Frontier.
- "Hudood are ordained by God. Human laws of punishment change times and again. How can they be equal to God's Hudud"? Take the example of Saudi Arabia where crime rate is so low and America which is the greatest centre of sins and crimes". Sayyid Muhammad al-Hasani, Al-Haqq, Akora Khatak, 1979.
- "Law of reward and punishment is necessary to end injustice and violence". .. "There is no place for Ijtihad in Hudud and Qisas laws. They are clear injunctions of the Qur'an and Sunna." Saeed Ahmad Jalalpuri, Urdu Daily Jang, 9 April 2004.
- "Zina is Zina, regardless whether committing willingly or against one's will". Mahmood A. Ghazi, Fikro Nazar, 1992.

B) Status Quo Rationalized

- "Hudud are not contrary to human dignity. They contain strict conditions. The Hadith 'Avoid Hudud as much as you can' recommends lenient view". Saeed Ahmad Jalalpuri, Urdu Daily Jang, 9 April 2004.
- "Islam has respect and honor of women equal to the man but their responsibilities are different. Some vested interests on the desire of the West are urging the women against the Hudud and they should be stopped at once". Qazi Hussain Ahmad, Amir Jamaat Islami. The Nation Nov, 2003.
- "During the period between the Prophet and the four rightly guided caliphs, hands of only 6 persons were amputated. In Saudi Arabia, for years now, there has been no hand amputated". Muhammad Anisur Rahman, Al-Haqq, 1979.

C) Call for change is under Western Influence/NGOs/ and a Conspiracy

- "The protest against Hudood ordinance is under Western influence, the objection is not against punishment, but Shari'a itself". Mahmood A. Ghazi.
- Move to reopen a settled matter is a handiwork of NGO funded institutions. Dr. Fareeda Ahmad. MMA MNA from Frontier.
- "Ijtihad in these matters means ideas produced in Western moulds, aiming at creating a society that is totally promiscuous, committed openly to sex, violence and destruction". ... "The demand for repeal is by rebels against the Qur'an, Sunna and Shari'a. They are enemies of

- the oppressed". Saeed Ahmad Jalalpuri, Urdu Daily Jang , 9 April 2004.
- "NCSW recommendations are conspiracy against Islam". MMA
 Women Demonstrating in front of NWFP Assembly. (Dawn report)
- "Certain women sitting in Islamabad wanted to destroy the Pakhtun and Islamic culture". MMA minister in the Frontier
- "Foolish attempt to wipe out centuries old customs to appease Westernized sensibilities and perceptions of the Clifton cavalry". "There is undeniably a need to bring ancient tribal customs and beliefs in line with progressive and modern perceptions of morality and justice... The process of evolving a modern progressive morality can be somewhat expedited by greater emphasis on education and enlightenment... Ameer Bakhsh Bhutto, Dawn (letter 27 May 2004).
- "Morality, social beliefs and cultural values cannot be legislated or imposed by law". ..." Laws reflect the values that are held supreme in that society. It is social values that dictate laws. Las crystallize and emerge out of cultural norms and customs". Ameer Bakhsh Bhutto, Dawn 9 Feb. 2004.

2. ARGUMENTS FOR CHANGE/ AMENDMENT/ REPEAL

- Some procedural changes can be suggested where inevitable. Dr. Fareeda Ahmad. MMA MNA from Frontier.
- "Social constructions of honor are intricately intertwined with Pakistan's cultural make-up and as such the population's consciousness. Convoluted constructs of honor have been internalized and propagated for our rigid patriarchy". Namoos Zaheer. Dawn, 29Oct. 2003.

- "This law is used mostly for revenge. Most cases are registered by parents against their daughters who have married of their own choice, or husbands whose wives remarry after divorce". Parveen Parvez, Karachi Lawyer.
- "The present forms of Hudud are determined by the jurists". Rafiullah Shahab, Fikro Nazar, 1966
- "The term Hudud has been mentioned in the Qur'an quite differently from how it is used in Hadith and Fiqh". .. Dr Fazlur Rahman, Fikro Nazar, 1966.
- In the Qur'an, Had/Hudud does not refer to any punishment, not even to any law". Dr Fazlur Rahman, Fikro Nazar, 1966.
- "The crimes punishable under Hudud are only those committed against the society as a whole. If offence relates to the violation of the rights of God, no human individual or group has a right to punish such offences". Dr Fazlur Rahman, Fikro Nazar, 1966.
- "Greater reliance must be placed on secularizing the state's basic outlook and [on attacking] on archaic social traditions that are rooted in feudalism, ignorance and poverty"... Human Rights Commission of Pakistan; report 2004.
- "Religious right labels everything that suits them as divine. Political parties are held hostage by religious opposition". Editorial, The News. 14 September 2003.

2. DEBATES IN MEDIA:

GEO TELEVISION DEBATE 2006

The Hudood Ordinance was promulgated in 1979 during the regime of Gen. Zia ul Haq. The initiative was taken to bring the laws of Pakistan in conjunction with the principles laid down in the Quran and Sunnah. However, from the day these laws were announced 27 years ago, they have been the subject of immense debate and criticism from all walks of life. Criticism on the Ordinances has not only come from the legal community and human rights activists as being discriminatory and unjust, but many Islamic scholars assert that the laws are an incorrect interpretation of the Shariat and do not fulfill the requirements they set out to. Hence, *Zara Sochieye* was launched with the following premise and question, "No Debate on Hudood Allah (Allah's Laws as prescribed in Quran and Sunnah) - Is the Hudood Ordinance (Man's Interpretation of Allah's Law) Islamic?"

Zina Ordinance (which covers rape, adultery and fornication) has been deemed the most controversial part of the Hudood Ordinance. It is a law that is openly misused, lamented upon and criticized. Most Islamic scholars are of the opinion that the Zina Ordinance misinterprets the injunctions of the Quran and Sunnah, therefore, must be corrected to bring it in conformity with the principles laid out for us by our religion.

Leading religious scholars and ulema, belonging to different schools of thought are divided over many issues, but stand united in recommending the following changes to the Hudood Ordinance. {See the section on Amendments}

Long discussions with various Islamic scholars have led us to believe that Iitihad is possible and should be undertaken on the following issues:

ISSUE 5 (Registration Of A Zina Case):

When the evidence to support and accusation of Zina (not Zina bil Jabr) does not fulfill the requirements of maximum punishment as prescribed by Shariat, the Ordinance suggests moving to the Tazeer punishments. Because of this complication, even when the Islamic condition of four witnesses is not met, many people have to serve long jail sentences for a crime that has not been proved 100% without doubt. This goes against the Islamic principle of adl (justice).

Recommendations 5: According to the Shar5iat, requirement for registration of Zina case (not Zina bil Jabr) is 4 witnesses. Therefore Zina (Not bil Jabr) cannot be proved - let alone registered - for trial unless 4 witnesses are present. Thus if a crime has not been proven, you can't issue punishment, whether Allah's maximum punishment (Hudd), or man's lesser punishment (Tazeer).

ISSUE 6 (Conditions of the crime and the circumstances of the criminal for punishments):

While mentioning the hudood Allah and the prescribed Hudd punishments, Hudood Ordinance does not reduce or increase the extent of punishment on the basis of "conditions" in which crime is being committed or the "circumstances of the criminal. According to the Quran this is a requirement that should be fulfilled. For example, while mentioning this punishment for slaves, the Quran is explicit about not giving them this punishment at all because they may not be taught religion or morality (Surah Nissah 4:25**). In fact, Quran mentions that even if they are married and have been given the best atmosphere to understand religion and the teachings of morality, they should still be given 50% Hudd punishment, which is 50 lashes.

Recommendation 6: In Hudood Allah, the punishment of 100 lashes is the maximum punishment and shall be given when the crime is being committed at its fullest and the circumstances of the criminal leave no excuse for mitigation. Hudd is the maximum punishment Allah allows, once the crime has been established. Tazeer can be the reduction of the maximum punishment, based on the accused's circumstances and the conditions in which the crime is committed. Here the Hudood Ordinance defies existing juristic principles, including Islamic, and aims to punish on the basis and degree of evidence or lack thereof, and not the circumstances of the criminal.

ISSUE 7 (Victim's statement not to be taken as a confession):

A woman who claims to have been raped, the cannot provide sufficient evidence as required by the hudood Ordinance, can be accused of having accepted committing the act of Zina and, therefore, astonishingly, a victim of a rape crime can be treated as a Zina offender. In the name of an Islamic law, such flagrant injustice is totally unacceptable.

Recommendation 7: Common sense, jurisprudence and Shariat all require we differentiate between the accuser and victim. Following Islamic principles, the victim can not be accused. This principle is evident in the wisdom behind Allah's law of Qazf. Qazf applies to someone who wrongly accuses another person and causes slander and defamation. A victim of a crime cannot be excused of Qazf. This is why Qazf applies in cases where there is a wrong accusation of Zina but not for Zina bil Jabr where the complaint is filed by the victim herself. Qazf for Zina bil Jaqbr will not be automatic, and when the accused is acquitted, a separate case has to be filed to prove that ill intent was involved.

ISSUE 8 (Difference between Evidence requirement for Zina and Zina bil Jabr):

No rapist has, till now, ever been given a Hudd punishment. This is because the courts have yet to find a rape case that can be proved by four, pious, honest and upright witnesses. The requirement of four witnesses is stated in the Quran for cases of Zina (not Zina bil Jabr). It is evident now from theory and experience that rape cannot be proved in a similar manner. A law in the name of Islam cannot be allowed to be used in a manner where the criminal of such a heinous crime is not brought to justice.

Recommendation 8: Since it is not possible to find four witne4sses to an act of Zina bil jabr who meet the requirements of tazkiya al shahud and are willing to give evidence in a court of law, scientific and medical evidence should be used as proof of Zina bil Jabr and to identify the culprit. Upon proving the crime using scientific evidence, a Hudd punishment must be announced against the criminal. If this does not happen, victims of rape will not get justice and rapists will be get the punishments they deserve. Surely, Allah cannot tolerate such blatant injustice in society.

ISSUE 9 (Difference between Punishment for Zina and Zina bil Jabr):

The Hudood Ordinance doesn't differentiate between Zina and Zina bil Jabr, for both, the evidence require and the punishment. For example, the Hudd punishment for an unmarried man who commits adultery is the same as that for the unmarried man who commits rape (i.e. 100 lashes). Hudood Ordinance, therefore, differentiates on the basis of the martial status of the culprit, rather than the nature of the crime, and, in doing so, equates adultery to rape. This is an assumption made by those who drafted the Ordinance and in no way can be seen as conforming to the Shariat. Zina bil Jabr is a more heinous crime, deserving a

more severe punishment and requiring a different form of evidence compared to Zina. Whether the culprit is married or unmarried is a secondary debate and one that may become irrelevant especially for Zina bil Jabr. A quick question we can ask ourselves is: to a rape victim, does it matter whether the rapist is married or unmarried?

Recommendation 9: The Quran is clear about the Hudd punishment (100 lashes) and evidentiary requirements (4 witnesses) of Zina, however, it does not specify exact requirement of evidence for Zina bil Jabr. The punishment can be found in the verses concerning Hiraba (which mentions maximum and minimum punishments for crimes which create Fisad Fil Arz or war against society). The severity of punishment should be based on the circumstances of the culprit. Allah in His infinite wisdom has allowed man the right to determine the procedure of proving and punishing a crime. All Fiqh experts agree the except for the crimes specifically ordained by Allah (where the evidence requirements are specifically described - and Zina is the only such crime), all other crimes should be tried as per the common procedural law. Ijtehad is required for wherever Quran has left details for humans to arrive at through consensus so that the principles of natural justice are not trampled upon. Such Ijtehad is needed to verify that Adultery and Rape are two separate crimes as indeed proven by the issues and recommendations above.

ISSUE 10 (Non Muslims and the Hudood Allah):

The Hudood Ordinance forces an Islamic Law on non Muslims when Shariat allowed non Muslims, in the land of the Ummah, to practice their own religion and be tried by its own laws.

Recommendation 10: Quran's laws can only be applicable to those who follow and believe in the Holy Book. If these laws are applied to those who don't believe in Allah, it will include compulsion in religion which Islam doesn't allow. Following the Shariat, the Hudood Ordinance should be amended so that, as per Islam's traditions, we don't encourage and promote intolerance as well as

compulsion towards religion. Non Muslims can be tried against non religious law/general law, i.e. Pakistan Penal Code.

ISSUE 11 (Criteria of Witnesses):

The Hudood Ordinance, not Shariat, discriminates on the basis of 'gender'** and 'religion' in evaluating the criteria of witnesses.

Recommendation 11: The real criteria to evaluate witnesses should be reliability, good character and honesty, in addition to the fact that the witnesses should bear no personal grudges or enmity against the victim or the accused, nor be in favor of either i.e. the witnesses should be reputed to be honest, upright and unbiased. The Quran does not discriminate against women or Non Muslims as witnesses as it is understood that the qualities demanded of a witness are not determined by gender or religion. To follow Hudood Allah in their true spirit, we must also not make the difference. It must also be remembered that when a crime is being committed the choice of witnesses is not in the hands of man, it depends on circumstances.

^{*} Wherever Zina is mentioned, it refers to Zina bil Raza. Zina bil Jabr is addressed separately.

Similarly, about the slave women who were present in the Prophet's times, the Quran says that they also cannot be administered this punishment because of improper unbringing and

similarly, about the slave women who were present in the Propiet's times, the Quran says that they also cannot be administered this punishment because of improper upbringing and education and because of lack of family protection - so much so that if their husbands and masters have done all they can to keep them chaste and in spite of this they commit the crime, they shall be given only half this punishment i.e., fifty stripes. The Qur'an says: "And then when they are kept chaste and they commit fornication, their punishment is half that for three women." (4:25).

^{**} Wherever the Quran talks about witnesses, it does not differentiate between the two genders. The only place (Surah Baqarah) where the Quran talks about 2 females in place of one male witness is to undertake business transactions and in signing business contracts etc. Here took, there is actually just one female witness. The other women is only expected to provide morel support, but does not act as a witness. The whole idea of not accepting women's evidence to be equal to that of men's, is a patriarchal interpretation of the Quran and Sunnah.



PROPOSED AMENDMENTS

The following is a brief list of the amendments recommended by different institutions in Pakistan in the Hudood Ordinance 1979.

1. AMENDMENTS PROPOSED BY COURTS

Hazoor Bakhsh [FSC judgment on 20 June 1981/21 March 1981]

By a majority of four to one it is declared that the provisions of sentence of Rajm as hadd in sections 5 and 6 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, are repugnant to the injunctions of Islam and that the only Hadd is one hundred stripes. Necessary amendments are recommended to be made in the sections noted above by the 31st July 1981¹⁸.

Hazoor Bakhsh [Review] FSC judgment

"I have no doubt that for a married person who has committed zina, stoning to death is the shar punishment. It is abiding for all times. According to Shari'ah, no judge, ruler or legislature is authorized to change it. Thus Offence of zina (Enforcement of Hadd) Ordinance 7, 1979 sections 5, sub-section 2 A and

¹⁸ PLD 1981, FSC 243.

Section 6, subsection 3 A, there is nothing contrary to the Qur'an and Sunna. The judgment of 21 March is withdrawn.¹⁹

Begum Rashida Patel vs. Federation of Pakistan, 25 July 1989 FSC recommended the following amendments;

- 1. Offence of Zina, Section 8, and the requirement of evidence for Rape punishable by Hadd may be amended to two adult Muslim males, in place of "four adult Muslim males".
- 2. The following words may be added at the end of Section 9 (4): "...for any offence i.e. lewdness etc., other than zina."
- 3. To remove ambiguity in the Offence of Qadhf, the section 6 (b) be replaced as follows:
- 4. "Qazf has been established as is mentioned in clause (a), (b), (c), of the second exception to section 3 and demand for punishment has been duly made by the victim of Qazf ".

An appeal against this FSC judgment is pending before the Supreme Court (Shariat Appellate Bench).

Nosher Rustam Sidhwa VS The federation of Pakistan 1981

FSC ruled that the section 17 of the Prohibition (Enforcement of Hadd) Order was repugnant to the Qur'an and Sunna.

"When an accused is charged by a female for Zina-bil-jabr then, notwithstanding delay, pregnancy or any other reason, the female accused should not be, in the first instance, charged under section 10(2) of the ordinance for zina-bil-raza (sexual intercourse by consent) unless material/evidence is available on record". FSC Chief Justice Chaudhry Ejaz Yusuf. (*Dawn*, February 1, 2006)

¹⁹ FSC 1983 (1-A), pp. 479, 480.

2. AMENDMENTS PROPOSED IN NATIONAL ASSEMBLY

1980

Offence of Zina Ordinance 1979 amended the section 10, sub-section (3) to suggest the minimum period of imprisonment to be not less than four years.

1997

Section 10, the following subsection (4) was added:

When Zina-bil-jabr liable to tazir is committed by two or more persons in furtherance of common intention of all such, each of such persons shall be punished with death"

2003

In a Cabinet meeting the sub-section (4) was proposed to be amended as follows.

"When Zina-bil-jabr liable to tazir is committed by two or more persons in furtherance of common intention of all such, each of such persons shall be punished with death, or to an imprisonment for a specific period which may extend to 25 years, but not less than 10 years, and they will also be subject to a fine not exceeding 100, 000 Rupees. This amount will be paid to the victim of the offence".

The proposed amendment was sent to the CII who examined it in its 152 meeting and recommended the following:

"The commission of zina-bil-jabr by more than one person is gang-rape and is extremely abominable crime. There is no need for separate amendment bill for this crime. The Council recommended deletion of the words "in furtherance of common intention" in subsection (4) of the section 10, and the minimum period of imprisonment in sub-section (3) of section 10 should be 10 years.

3. AMENDMENTS PROPOSED BY THE COMMISSION OF INQUIRY FOR WOMEN, AUGUST 1997

The Commission made the following recommendations about the Hudood Ordinance:

The Commission is convinced that all the Hudood laws were conceived and drafted in haste. They are not in conformity with the injunctions of Islam.

Secondly, these laws have come into direct conflict both with the country's Constitution (such as Article 25) and its international commitments (as made at the World Conference at Beijing and under the UN Convention on the Elimination of All Forms of Discrimination Against Women).

Thirdly, in practical terms too, these laws have demonstrably failed to serve their purpose. They have not been any deterrent against crimes. And they have only led to proliferation of complaints in the courts, which, as it happens, have mostly been false or unjustified and have caused undue hardship.

It is necessary therefore that:

- 1. The Hudood laws are repealed.
- 2. The repealed provisions of the Pakistan Penal Code, 1860, are reenacted with an amendment to make marital rape a penal offence and to impose a severer punishment for rape on a minor wife.
- 3. If the Parliament considers it necessary to make any further laws in this area, it should do so after serious debate and by reaching a consensus that the proposed laws are in accordance with the injunctions of Islam.²⁰

²⁰ Report Of The Commission Of Inquiry For Women, August 1997, p. 75.

4. AMENDMENTS PROPOSED BY THE COUNCIL OF ISLAMIC IDEOLOGY IN 2002

The Council in its 147th meeting held on 5-6 June 2002, observed that the Council is preparing a detailed report on Hudood Ordinances based on section by section review. The meeting recommended the following amendments in Zina (Enforcement of Hudood Ordinance 1979:

- 1. In the title (1), the word Hudood be amended to read Hadd, because the Ordinance relates to only one Hadd (punishment).
- 2. Under definitions (2) (a) be amended as follows: "(a) "adult" means a person who has attained puberty, or the age of eighteen years being a male, or the age of sixteen years being a female".
- 3. The Urdu version of 2(b) about the definition of Hadd needs to be amended to convey the meaning that Hadd is a punishment the quantity of which has been fixed in the Qur'an and Sunna.
- 4. 2 (c) the Urdu translation of marriage may be amended to read "shadi", instead of "nikah".
- 5. 2(e) the definition of "Tazir" needs to be amended to convey the following meanings: (1) Tazir is not a fixed punishment. (2) The minimum of Tazir is also not fixed. (3) If Tazir consists of the same punishment as ruled in Had, its quantity must be less than that prescribed in Hadd.
- 6. Definition of Zina (4) must be amended as given in Fiqh books: "Zina means a person's willfully committed illicit act of entering into the vagina of a living and desirable woman with whom he is neither married nor is there a shibh-i-nikah".
- 7. 6 (1) (d) be amended as follows: " (d) with the consent of the victim, when the offender knows that the offender is not validly

- married to the victim and the consent is given because the victim believes that the offender is <u>the</u> person to whom the victim is or believes herself or himself to be validly married".
- 8. 6(2) must be deleted to remove the confusion between zina bil-raza and zina –bil-jabr.
- 9. 8 (a) the clause may be amended as follows: "(a) the accused makes before a court of competent jurisdiction at four different times a confession of the commission of the offence; or".
- 10. The following proviso be added to 8 (b): "Provided that where the crime is committed in a place which excludes the presence of male witnesses the offender be awarded a sentence .."
- 11. The Council recommended that the schedule for Tazkiyat alshuhud as recommended by the Council in its Draft for the "Muswadda Qanun Shahadat" be appended as a schedule to this Ordinance.
- 12. 9 (5) be amended as follows: "In the case mentioned in sub-section (2), the court may award the sentence of qazf to the resiling witness as well as the other witnesses."
- 13. Section 10 be deleted.
- 14. Section 12, the words "rigorous imprisonment" be amended as "ten years rigorous imprisonment".
- 15. Section 377 of the Pakistan Penal Code be inserted as sub-section (1) of this Section so that the penalty for the offence of unnatural sexual act is imprisonment for 25 years or death..
- 16. Sections 11 to 16 may be deleted or they may be placed in the Pakistan Penal Code where they are suitable; they do not directly belong to this offence.

The Council questioned the Section 17 (Mode of Execution of Punishment of Stoning to Death) whether the mode of punishment suggested in this section is in accordance with the Shari'a.

5. AMENDMENTS PROPOSED BY NATIONAL COMMISSION FOR THE STATUS OF WOMEN, 2003

The Offence of Zina (Enforcement of Hudood) Ordinance, 1979

- The name of "Offence of Zina (Enforcement of Hudood)
 Ordinance requires to be changed to "The Offence of Zina
 (Enforcement of Hadd) Ordinance".
- 2. In the definition of the term "marriage" [S. 2©], the use of the term "void" has led to anomaly.
- 3. S.2 (a) the definition of the term "adult" was discriminatory between men and women when there was no basis for it.
- 4. The fact that S. 3 empowers this Ordinance to override other laws leads to anomaly.
- 5. S. 4 the definition of the term "Zina" is inadequate and defective.
- 6. S. 5 (1) (a) was found to be ambiguous as sexual intercourse with a minor girl would also be Zina when it should be Zina-bil-Jabr.
- 7. S. 5 (2) (a) and 6 (3) (a) was found to be ambiguous. A number of participants had great objection to the punishment of Rajam as there is no mention of it in the Quran and reference to it in Sunnah is open to controversy and debate.
- 8. S. 7 is ambiguous.
- 9. In S. 8, qualification of a witness should not be religious faith but his/her credibility.

- 10. S. 8 (b) was found to be defective because of the provision for of only male witnesses eligible to testify.
- 11. A number of participants felt that this Ordinance should not be applicable to non-Muslims.²¹

Offence of Qazf (Enforcement of Hadd) Ordinance, 1979

- The term "Mohsan" and "Mohsana" need to be defined clearly
 while taking each and every aspect and perspective into account,
 which also includes the possibility of non-Muslim minorities being
 able to benefit from this law.
- 2. The definition of Qazf, as given in Section 3 of the Ordinance was found to be defective.
- 3. The conditionality of "two male Muslim witnesses" a given in S.6(C) was found to be discriminatory. It was felt that the evaluation of witness under stringent conditionalities of "Tazkiayah –ul-Shahood" was uncalled for and illogical.
- 4. Taking away the right to appear as a witness and give evidence for those accused and punished for the offence of Qazf, as provided in S. 7 (2) of the Ordinance, needs a careful review and re-drafting.
- 5. Section 8 was found to be ambiguous.
- 6. Section 9 was found to lead to injustice as it protects a person from being charged with the offence of Qazf liable to hadd if the person commits the offence against his/her descendent.
- 7. The Ordinance on Qazf was not necessarily required to be independent of the Zina Ordinance.²²

²² Ibid, p. 15.

²¹ NCSW, Report on Hudood Ordinances 1979 (2003), p. 11

- 1. Section 2 (a) is discriminatory against women.
- 2. The term "theft" should be defined and Section 5 (C) needs to be re-drafted.
- 3. The Nisab figure of 4.457 grams of gold in section 6 was too low to determine theft liable to hadd, therefore, it should be revised. The Committee was of the view that there must be a nexus between this amount and what the Holy Prophet, peace be on him, prescribed.
- 4. There was no need for the witness to be Muslims or males, and what was required basically was that the offence of theft should be proved to the satisfaction of the Court of Law.
- The offence against property/theft was a crime and is enforced as a general law in every religion and hence should be applicable to all citizens.
- 6. Section 8 dealing with commission of offence of theft liable to hadd by more than one person should be re-drafted.
- 7. In section 9 the provision regarding the punishments need to be reviewed in the light of Sura Al-Maida, Verses 39 and 40, and the tradition in Sunnah.
- 8. The list of exemptions in section 10 was variable according to the prevailing circumstances in a society and hence should be modified in the light of the Quran and Sunnah.
- 9. The term Iztirar as given in section 10 should be redefined and broadened to include cases of extreme poverty.

- 10. The majority of the Committee was of the view that section 11 was poorly drafted and needed to be revised.
- 11. Section 12 (2) dealing with the return of the stolen property needs to be reviewed and re-drafted in order to accommodate the victims of thefts and robberies.
- 12. The definition of the word "Harrabah" as given in Section 15 needs to be redefined in the light of the quoted Verse of Sura Al-Maida.
- 13. The punishments as listed in Section 17 should be reviewed in the light of recommendations of the Committee as given in section 15 of this Ordinance with regard the definition of Harrabah.
- 14. Section 18 dealing with cases in which the punishment of amputation or death for Harrabah shall not be imposed or enforced, need to be reviewed in the light of the Quran and Sunnah and redrafted while taking into account all related perspectives.
- 15. The possibility of prescribing fine/compensation should be explored to be implemented as a punishment for Harrabah liable to Tazeer (Section 20).
- 16. In Section 21 the words" on the understanding that he shall receive one or more cattle" should be deleted and the punishment should also be reduced to 5 years rigorous imprisonment and 30 stripes.²³

The Prohibition (Enforcement of Hadd) Order 1979

1. The definition of "intoxicating liquor" as given in S. 2 (h), should be revised and re-drafted.

²³ Ibid. p. 27.

- 2. This Ordinance comes under Tazeer and not Hadd, hence the possibility of putting it under Tazeer should be considered.
- Section 3 had overlapping elements with the Control of Narcotics Substance Act 1997, therefore, this duplication needs to be reviewed and perhaps deleted.
- 4. The proviso in S. 4 was redundant and already exist in the Control of Narcotics Substance Act 1997, therefore this duplication needs to be removed.
- 5. The prescribed punishment for drinking, as given in this Ordinance, was not a part of the Qur'an or Sunnah, and therefore, the punishment of 80 stripes a prescribed should be revised and put under Tazeer (S. 7).
- 6. The provision of "Muslim Male" witness as given in S.9 was unnecessary, hence it should be revised.
- 7. S. 10 (2) needs to be revised and re-drafted in order to address all issues concerning a re-trial.
- Drinking liable to Tazeer S. 11 (b) and (c) should go under Tazeer and be dealt with accordingly as there seemed no reason to bring it under Hadd laws. Since these two sub-sections dealt with non-Muslims.
- 9. The Committee agreed that either S. 16 should go under Tazeer in its entirety or else S. 16 (2) (a) be deleted.
- 10. Sections 17 to 28 should go under Tazeer.
- 11. There is a need to review the Narcotics and Customs laws in comparison with the Prohibition Ordinance so as to remove redundancies.

12. It is unnecessary to have a Muslim judge to try cases of Drinking²⁴.

Recommendations of the Special Committee to Review the (Enforcement of Hudood) Ordinances, 1979

An examination of the minutes of all five meetings which have been summarized in this report, as well as the considered opinion of the members of the Committee, including the Chairperson, would reveal that out of fifteen (15) members, who have actively participated in the deliberations regarding the Hudood Ordinances and have given their views in person and in writing, twelve (12) members have recommended that the Hudood Ordinances should be repealed, while only two (2) members have recommended that these should not be repealed but amended with a view to removing lacunae and defective parts of it, and one (1) member has stated that the recommendations of the Committee should be given effect to.²⁵

6. AMENDMENTS PROPOSED BY WOMEN AID TRUST 2003²⁶

The Trust made the following recommendations:-

 To apprise the judges, lawyers, Ulama, representatives of women organizations, members of the parliament and police officers of the objectives and true spirit of the Hadd Zina Ordinance, workshops, seminars and refresher courses must be organized, in order that the real targets of this Ordinance be achieved and so that it could not be exploited against any segment of society.

²⁴ Ibid, p. 34

²⁵ ibid, p.39.

²⁶ Women Aid Trust, *Hadd Zina Ordinance 1979, Itirazat ki haqiqat* (Islamabad, 2003).

- 2. Separate courts be constituted under the supervision of the federal Shariat Court to hear cases registered under the Hadd Zina Ordinance. Until it is not possible, such Session or Additional Judges may be authorized to hear the said cases that have completed the required training in this respect. Further, the number of cases assigned to these courts should be in small numbers so that the courts could pay hear them properly and in view of the sensitivity of the subject they could settle them in short time.
- 3. Until a revolutionary change is brought in our Police system, authority to deal with cases, starting from registration to investigation, registered under this Ordinance be withdrawn from the Police. All the cases be registered in the Court directly as complaints and the Court should on its own should carry investigations. Only in extreme cases should a case be sent to an agency for investigation. However ensuring that the concerned officer in the agency is well-known for his honesty and trustworthiness. Further, a duration of time must be fixed for the investigation and hearing of the case.
- 4. Hadd harabah, in stead of Hadd Zina be enforced in cases of offence of Zina-bil-jabr. The standard of proof prescribed for hadd haraba be required for the proof of Zina bil-jabr. In this regard, necessary amendments be made in the law in the light of the federal Shariat Court judgment.
- 5. Under this Ordinance, the punishment of imprisonment be made secondary, instead of primary punishment. Corporal punishment of lashes be made primary punishment, in order that the pressure on jails be decreased and so that the jails are able to play their true role in the reform and education of the prisoners more efficiently and effectively.

- 6. All cruel customary form of marriages, including Watta Satta, marriage with the Quran, marriage in exchange of cash payment, marrying as a fine the sisters and daughters of the person who committed murder with the heirs of the victim be forbidden, and such marriages be declared offences liable to Tazeer.
- 7. For a marriage lacking the permission of a marriage guardian, a judicial procedure be adopted in order that on the one hand the right of an adult sane girl(to marry the person of her choice) is protected, and on the other hand the parents are saved from disgrace and embarrassment. In our view, in case of a conflict between a sane adult girl and the marriage guardian a District session Judge be authorized to hear the case in camera. He should decide such cases as early as possible. The girls must be provided full protection during the trials. For this purpose government should establish institutions like Darul Aman in each district. If the Court is satisfied that the girl is in her right the court should organize the marriage. Complete ban on reporting such cases in the news papers be declared.
- 8. The accused in case under Sections 5 and 10 of the Zina Ordinance should not be acquitted simply awarding benefit of doubt. The court must be responsible for ascertaining the fact that the accusation was false. In this case the court should on its own initiative, punish the accuser under Qazf not waiting for the acquitted to complaint in the court. A punishment for those who register false cases under other sections may also be prescribed.
- Arrangement must be made to educate all citizens about law; especially
 the women must be made aware of the laws about marriage and
 divorce.

10. The role of media must be brought in conformity with Islamic values.²⁷

7. AMENDMENTS PROPOSED BY THE AWRAT FOUNDATION, 2004

Dr. Muhammad Tufail Hashimi (Hudood Ordinance, Kitabo Sunnat ki Roshani men (Awrat Foundation, 2004) recommends the following amendments:

- The punishments prescribed as hadd for theft and zina is for the habitual offenders; a lesser punishment be prescribed for the nonhabitual.
- 2. Repentance must be given legal validity, and a person who repents must not be subjected to punishment.
- 3. Non-Muslims cannot be subjected to Hudud laws.
- 4. The age of majority must be clearly fixed; The jurists agree that it is 19 years.
- 5. Ihsan must be re-defined according to the Qur'an and Sunna.
- 6. Zina must be re-defined according to the Qur'an and Sunna and in the light of Jurists' explanations.
- 7. The punishment of Zina as prescribed in Section 5 (2) (a) and (b) applies also to a person who is not subject to these laws according to Islamic jurisprudence (ghayr mukallaf). Also, the Qur'an does not distinguish between the punishment for married and un-married.
- 8. Rajm is a death penalty that was given to rebels (Muharaba), regardless whether they had committed zina or not. Thus Rajm sentence be awarded only in case of rape. The requirement of four witnesses for rape is contrary to the Quran and Sunna.

²⁷ Ibid, pp. 57-58.

- 9. The rule that women do not qualify as witness in Hudud is not supported by the Qur'an and Sunna.
- 10. The section 9 in the Zina Ordinance must be deleted. A person accusing another of zina without any valid proof must be charged by the state for qazf; it should not wait for the other party to claim.
- 11. The role of Police in Zina crimes must be eliminated. The plaintiff and the accused both allowed approaching the court directly. The police should take action only after the accusation has been supported by evidence.
- 12. The law of Zina and Qazf must be combined as one ordinance.
- 13. Tuhmat, unfounded accusation, willful or not is qazf. Any section that maintains that distinction must be repealed.
- 14. Qazf is based on a private right to defend one's honor. Non-Muslims cannot be denied this right. Section 5 is thus contrary to the Quran and Sunna.
- 15. Section 7 also should be deleted, as it prescribes conditions of right belief etc., for a witness.
- 16. As soon a witness is proven to be unreliable, he/she must be immediately subjected to qazf law. No new claim, as prescribed in Sections 3 and 8, is required.
- 17. Sections 1 to 8 in the Qazf ordinance are contrary to Quran and Sunna.
- 18. The ordinance on theft does not define theft.
- 19. The jurists on the basis of Ijtihad fixed the minimum for the theft. It should be left to the discretion of the judge.
- 20. Requirement of Muslim male witness for theft is contrary to the Qur'an and Sunna.

- 21. Section 8 of the Ordinance on theft provides a leeway to the criminals committing crime as a group. It must be removed.
- 22. The Ordinance on Sariqa and haraba is totally contrary to the Qur'an and Sunna.
- 23. The ordinance against drugs and intoxicants does not belong to the crime of Hudud; it must be classified as Tazirat.

8. OBSERVATIONS BY JUSTICE DR. JAVID IQBAL, A CRITIQUE OF THE ZINA ORDINANCE (ISLAMABAD, 2006)

- It was never laid before the National Assembly or Senate as a Legislative Bill
- 2. There is no such record from which is can be determined as to which individuals were consulted while making this law.
- 3. The basic rule of modern criminal jurisprudence "Autrefois Acquit", with propounds that when a person accused of a crime is found innocent after the examination of eyewitness and other evidence, the court is bound to acquit him and he cannot be punished for the same crime on the basis of lesser evidence regarding the same offence. The Hudood laws provide a duel standard of evidence, which is contrary to this principle, since they stipulate that if there is not sufficient evidence to apply Hadd (Divine different punishment under Tazeer on the basis of lesser evidence regarding the same offence.
- 4. The administration of justice in Islam is based on the "Inquisitional System" rather than the "Adversary System". Under the Inquisitional System, the *qazi* has to simultaneously perform the duties of an investigator and judge. But, Pakistan has been following the "Anglo-

- Saxon" or Adversary System inherited from the British. Under this system, the position of a judge is like a referee in a tennis match.,
- 5. The duty of the judge is not to fine the truth by thoroughly investigating the matter, but rather to declare judgment in favour of the party having more "Evidential Points". The training of our judges and lawyers is not based on inquisitional System, therefore, they are not familiar with its intricacies.
- 6. The superior courts of Pakistan through numerous recent decisions have held that if an adult Muslim woman and an adult Muslim man state before the court that they are married and if there is no impediment in the way of their contracting marriage, then the court will declare such a marriage as valid without requiring strict presence of witnesses, *Nikah Khawan, Wali* (guardian) or marriage registrar, and will quash the case of "zina" registered against them.
- 7. There is no mention of zina-bil-jabr in the Holy Quran where zina has been used as a general or omnibus term. Under the Pakistan Penal Code and the Evidence Act, if a woman's statement was corroborated by medical evidence and chemical report, it was considered sufficient to convict the accused.
- 8. According to the Zina Ordinance and the Qanoon-e-Shahadat, the definition of adulthood of a woman is that the age of the girl is 16 years or she should have attained puberty. Under the Zina Ordinance a physically adult girl is not considered a competent witness for the purpose of evidence in a Hadd case, although rape has been committed with the girl.
- 9. There is distinction between the evidence of male Muslim and male non-Muslim witnesses and the evidence of woman is unacceptable.

- 10. Since the commission of zina is a non-bailable offence, the women implicated in zina cases are not allowed bail by the lower courts.
- 11. Zina Ordinance is its incompatibility with the provisions of the Muslim Family Laws Ordinance, 1962. The Muslim Family Laws Ordinance, 1962 requires the registration of *Talaq*/divorce by the husband with the Union Council.
- 12. the first husband, would get an FIR registered, under the Zina Ordinance, against his former wife on the pretext that her divorce was not registered with the Union Council, and her second marriage tantamount to commission of the act of zina with another man.
- 13. Frequent misuse of the Zina Ordinance.

9. AMENDENTS PROSED BY THE GEO TELEVISION DEBATE

The Geo debate made the following recommendations:-

- 1. Zina cases (not Zina bil Jabr) FIR should not be registered or made, UNTIL and UNLESS the person who accuses brings with him/her 4 witnesses and all of them (accuser(s) and witnesses) give, in person, the declaration of the accusation and the verification of having witnessed the crime and sign a document stating the same at a police station, in the presence of a police officer. This conforms to the principles of Islam as it protects the innocent and creates conditions that discourage perpetrators from abusing an Islamic law made to protect women.
- 2. Women accused of Zina will not be sent to jail. They will be summoned to the court for their trials. They will appear in court regularly for their trials and if found guilty, will be given the Hudd punishment.

- 3. When a woman and/or a man is accused of Zina (not Zina bil Jabr) and found not guilty after a fair trial, the court should automatically act against the person(s) who accused the innocent and those who gave false evidence. When the court finds the accused innocent, it automatically has found the accuser(s) guilty of committing Qazf. The accusers should then be given the Qazf punishment (as stated in Surah Noor of the Holy Quran) of 80 lashes without a separate case being filed against him/her. This will indeed work as a deterrent and prevent false cases as the Qur'an intended.
- 4. A pregnant women can't be accused of Zina, if she claims rape. This to say that pregnancy is not a sufficient proof of Zina. In its 2002 ruling over the Zafran Bibi case, even the Federal Shariat Court established the principle that pregnancy cannot be seen as evidence that Zina (not Zina bil Jabr) or adultery has been committed.

10. PROTECTION OF WOMEN ACT, 2006

Taking all these debates into consideration the Government of Pakistan amended in 2006 the Ordinances about Zina and Qazf in the Hudood Ordinance, 1979. This enactment further amended the relevant laws in the Pakistan Penal Code, Code of Criminal Procedure and other laws.

The text of the Act is reproduced in the next chapter.

^{*} Wherever Zina is mentioned, it refers to Zina bil Raza. Zina bil Jabr is addressed separately.

^{*} Glossary of Terms: Shariat: Divine Law; Hudd: Maximum punishments as prescribed by Allah; Tazeer: Punishments prescribed by an Islamic State; Qazf: Wrongly accusing someone of fornication/adultery; Zina/ Zina bill Raza: Fornication/adultery; Zina bil Jabar: Rape



PROTECTION OF WOMEN ACT, 2006

ACT No. VI OF 2006

AN ACT FURTHER TO AMEND THE PAKISTAN PENAL CODE, THE CODE OF CRIMINAL PROCEDURE AND OTHER LAWS*

WHEREAS it is necessary to provide relief and protection to women against misuse and abuse of law and to prevent their exploitation;

AND WHEREAS Article 14 of the Constitution ensures that dignity of man and, subject to law, the privacy of home, shall be inviolable;

AND WHEREAS Article 25 of the Constitution guarantees that there shall be no discrimination on the basis of sex alone and that the State shall make provisions for the protection of women;

AND WHEREAS Article 37 of the Constitution encourages promotion of social justice and eradication of social evils;

AND WHEREAS the objective of this Bill is to bring in particular the laws relating to zina and qazf in conformity with the stated objectives of the Constitution and the Injunctions of Islam;

^{* [}Insertions and additions to PC, PCP and other laws have been marked in bold font, and omissions have been placed at the footnote of the relevant page, CII].

AND WHEREAS it is expedient for the aforesaid objectives further to amend the Pakistan Penal Code (Act XLV of 1860), the Code of Criminal Procedure, 1898 (Act V of 1898), the Dissolution of Muslim Marriages Act, 1939 (VIII of 1939), the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (VII of 1979), and the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979) and for the purposes hereinafter appearing;

It is hereby enacted as follows:-

- I. **Short title and commencement.** (1) This Act may be called the Protection of Women (Criminal Laws Amendment) Act, 2006.
 - (2) It shall come into force at once.
- 2. *Insertion of new section, Act XLV of 1860.* In the Pakistan Penal Code (Act XLV of 1860), hereinafter referred to as the said Code, after section 365A, the following new section shall be inserted, namely:-
 - "365B. Kidnapping, abducting or inducing woman to compel for marriage etc.-Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced, or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment for life, and shall also be liable to fine; and whoever by means of Criminal intimidation as defined in this Code or of abuse of authority or any other method or compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid."

3. *Insertion of new section, Act XLV of 1860.*— In the said Code, after section 367, the following new section shall be inserted, namely:-

"367A. Kidnapping or abducting in order to subject person to unnatural lust.— Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with death or rigorous imprisonment for a term which may extend to twenty-five years, and shall also be liable to fine.".

4. *Insertion of new sections, Act XLV of 1860.-* In the said Code, after section 371, the following new sections shall be inserted, namely:-

"37IA. Selling person for purposes of prostitution, etc.— Whoever sells, lets to hire, or otherwise disposes of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine.

Explanations.— (a) when a female is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

(b) For the purposes of this section and section 371 B, "illicit intercourse" means sexual intercourse between persons not united by marriage.

371B. Buying person for purposes of prostitution, etc,— Whoever buys, hires or otherwise obtains possession of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine.

Explanation.— Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution."

- **5.** *Insertion of new sections, Act XLV of 1860.* In the said Code, after section 374, the following new sections 375 and 376 under sub-heading "Of. Rape", shall be inserted, namely:—
 - "375. Rape.— A man is said to commit rape who has sexual intercourse with a woman under circumstances falling under any of the five following descriptions,—
 - (i) against her will;
 - (ii) without her consent;
 - (iii) with her consent, when the consent has been obtained by putting her in fear of death or of hurt;
 - (iv) with her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married; or

(v) with or without her consent when she is under sixteen years of age.

Explanation.— Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

- 376. Punishment for rape.—
 - (1) Whoever commits rape shall he punished with death or imprisonment of either description for a term which shall not be less than ten years or more than twenty-five years and shall also be liable to fine.
 - (2) When rape is committed by two or more persons in furtherance of common intention of all, each of such persons shall be punished with death or imprisonment for life.".
- 6. *Insertion of new section, Act XLV of 1860.* In the said Code, in Chapter XX the following new section shall be inserted, namely:—
 - "493A Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.— Every man who deceitfully causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief, shall be punished with rigorous imprisonment for a term which may extend to twenty-five years and shall also be liable to fine.".
- 7. *Insertion of new sections, Act XLV of 1860.* In the said Code, after section 496, the following new sections shall be inserted, namely:-
 - "496A Enticing or taking away or detaining with criminal intent a woman.— Whoever takes or entices away any woman with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any woman, shall be punished with

imprisonment of either description for a term which may extend to seven years, and shall also he liable to fine.

- 496B Fornication.— (1) A man, and a woman not married to each other are said to commit fornication if they will fully have sexual intercourse with one another.
 - (2) Whoever commits fornication shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine not exceeding ten thousand rupees.
- 496C Punishment for false accusation of fornication.— Whoever brings or levels or gives evidence of false charge of fornication against any person, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine not-exceeding ten thousand rupees:

Provided that a Presiding Officer of a Court dismissing a complaint under section 203C of the Code of Criminal procedure, 1898 and after providing the accused an opportunity to show cause if satisfied that an offence under this section has been committed shall not require any further proof and shall forthwith proceed to pass the sentence.".

- **8.** *Insertion of new sections, Act V of 1898.* In the Code of Criminal Procedure, 1898 (Act V of 1898), after section 203, the following new sections shall be inserted, namely:—
 - 203A Complaint in case of Zina.— (1) No court shall take cognizance of an offence under section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (VII of 1979), except on a complaint lodged in a Court of competent jurisdiction.

(2) The Presiding Officer of a Court taking cognizance of an offence on a complaint shall at once examine, on oath, the complainant and at least four Muslim, adult male eye-witnesses, about whom the Court is satisfied having regard to the requirement of tazkiyah-al-shahood, that they are truthful persons and abstain from major sins (kabair), of the act of penetration necessary to the offence:

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

Explanation.— In this section "tazkiyah-al-shahood" means the mode of inquiry adopted by a Court to satisfy itself as to the credibility of a witness.

- (3) The substance of the examination of the complainant and the eyewitnesses shall be reduced to writing and shall be signed by the complainant and the eye-witnesses, as the case may be, and also by the Presiding Officer of the Court.
- (4) If in the opinion of the Presiding Officer of a Court, there is sufficient ground for proceeding, the Court shall issue summons for the personal attendance of the accused.
- (5) The Presiding Officer of a Court before whom a complaint is made or to whom it has been transferred may dismiss the complaint, if, after considering the statements on oath of the complainant and the four or more eye-witnesses there is, in his judgment, no sufficient ground for proceeding and in such case he shall record his reasons for so doing.

203B. Complaint in case of Qazf.-

(1) Subject to sub-section (2) of section 6 of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979), no Court

shall take cognizance of an offence under section 7 of the said Ordinance, except on a complaint lodged in a Court of competent jurisdiction.

- (2) The Presiding Officer of a Court taking cognizance of an offence on a complaint shall at once examine on oath the complainant and the witnesses as mentioned in section 6 of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979) of the act of Qazf necessary to the offence.
- (3) The substance of the, examination of the complainant and the witnesses shall be reduced to writing and shall be signed by the complainant, and the witnesses, as the case may be, and also by the Presiding Officer of the Court.
- (4) If in the opinion of the Presiding Officer of a Court, there is sufficient ground for proceeding the Court shall issue summons for the personal attendance of the accused
- (5) The Presiding Officer of a Court before whom a complaint is made or to whom it has been transferred may dismiss the complaint, if, after considering the statements on oath of the complainant and the witnesses there is, in his judgment, no sufficient ground for proceeding and in such case he shall record his reasons for so doing.
- 203C. Complaint in case of fornication.— (1) No court shall take cognizance of an offence under section 496B of the Pakistan Penal Code, except on a complaint lodged in a Court of competent jurisdiction.

- (2) The Presiding Officer of a Court taking cognizance of an offence shall at once examine on oath the complainant and at least two eyewitnesses to the act of fornication.
- (3) The substance of the examination of the complainant and the eyewitnesses shall be reduced to writing and shall be signed by the complainant and the witnesses, as the case may be, and also by the Presiding Officer of the Court.
- (4) If in the opinion of the Presiding Officer of a Court, there is sufficient ground for proceeding the Court shall issue a summons for the personal attendance of the accused:

Provided that the Presiding Officer of a Court shall not require the accused to furnish any security except a personal bond, without sureties, to ensure attendance before the Court in further proceedings.

- (5) The Presiding officer of a Court before whom a complaint is made or to whom it has been transferred may dismiss the complaint, if, after considering the statements on oath of the complainant and the witnesses there is, in his judgment, no sufficient ground for proceeding and in such case he shall record his reasons for so doing.
- (6) Notwithstanding the foregoing provisions or anything contained in any other law for the time being in force no complaint under this section shall be entertained against any person who is accused of zina under section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979) and against whom a complaint under section 203A of this Code is pending or has been dismissed or who has

been acquitted or against any person who is a complainant or a victim in case of rape, under any circumstances whatsoever".

- 9. *Amendment of Schedule II, Act V of 1898.* In the Code of Criminal Procedure, 1898 (Act V of 1898), in Schedule II,–
 - (i) after section 365A in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely:—

1	2	3	4	5	6	7	8
365B	Kidnapping abducting or inducing Woman to compel for Marriage etc	Ditto	Ditto	Ditto	Ditto	Imprisonme nt for life and fine	Ditto

(ii) after section 367 in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely:—

1	2	3	4	5	6	7	8
367A	Kidnapping or abducting in order to subject person to unnatural lust	Ditto	Ditto	Ditto	Ditto	Death or rigorous imprisonment which may extend to twenty-five years and fine	Ditto

(iii) after section 371 in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted namely:-

1	2	3	4	5	6	7	8
371A	Selling person for purposes of prostitution, etc	Ditto	Ditto	Ditto	Ditto	Imprisonment which may extend to twenty-five years and fine.	Ditto
371B	Buying person for purposes of prostitution, etc.	Ditto	Ditto	Ditto	Ditto	Imprisonment which may extend to twenty-five years and fine.	Ditto

(iv) after section 374 the sub-heading "Of Rape" shall be inserted:

(v) for the existing entries relating to section 376 in columns 1 to 8, the following shall be substituted, namely;-

the following shall be substituted, namely;-							
1	2	3	4	5	6	7	8
376	Rape	May arrest without warrant	Warrant	Not bailable	Not compoundable	Death or imprisonme nt not less than ten years or more that twenty-five years and fine. Death or imprisonme nt for life, if the offence committed by two or more persons in furtherance of common intention	Court of Sessions

(vi) after section 493 in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely: –

1	2	3	4	5	6	7	8
493A	Cohabitatio n caused by a man deceitfully inducing a belief of lawful marriage	May arrest without warrant	Warrant	Not bailable	Not compou- ndable	Rigorous imprisonment which may extend to twenty-five years and fine	Ditto

(vii) in section 494 in column 1, in column 3, for the word "Ditto" the words "Shall not arrest without warrant" shall be substituted;

(viii) after section 496 in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely:-

1	2	3	4	5	6	7	8
496A	Enticing or taking away or detaining with criminal intent a woman	May arrest without warrant	Ditto	Not bailable	Ditto	Imprisonme nt of either description which may extend to seven years and fine	Court of Sessions or Magistrate of the first class:
496B	Fornication	Shall not arrest without warrant	Summo ns	Bailable	Not compou- ndable	Imprisonme nt which may extend to five years and fine not exceeding ten thousand rupees	Magistrate of the first class
496C	False accusation of Fornication	Shall not arrest without warrant.	Summo ns	Bailable	Not Compou -ndable	Imprisonme nt which may extend to five years and fine not exceeding ten thousand rupees	Magistrate of the first class; and

(ix) under the heading, "OFFENCES AGAINST OTHER LAWS" after the last entry in column 1 and entries relating thereto in columns 2 to 8, the following shall be added, namely:—

1	2	3	4	5	6	7	8
Section 5 of Ordinan ce VII of 1979	Zina	Shall not arrest without warrant	Summo ns	Bailable	Not compou ndable	Stoning to death in case of Muhsan and if not Muhsan whipping not exceeding one hundred stripes	Court of Sessions
Section 7 of Ordinan ce VIII of 1979	Qazf	Shall not arrest without warrant	Summo ns	Bailable	Not compou ndable	Whipping numbering eighty stripes	Court of Sessions

- 10. Amendment of section 2, Ordinance VII of 1979.—(1) In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), in section 2,—
- (i) after clause (a), the following new clause (aa) shall be inserted, namely:-
 - "(aa) "confession" means, notwithstanding any judgment of any court to the contrary, an oral statement, explicitly admitting the commission of the offence of zina, voluntarily made by the accused before a court of sessions having jurisdiction in the matter or on receipt of a summons under section 203A of the Code of Criminal Procedure, 1898 (Act V of 1898)"; and
- (ii) clauses (c) and (e) shall be omitted. $\frac{28}{}$
 - 11. Omission of section 3, Ordinance VII of 1979.— In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), section 3 shall be omitted.²⁹
 - 12. Amendment of section ³⁰,4 Ordinance VII of 1979.— In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), in section 4, the word "validly" and the explanation at the end of that section shall be omitted.
 - (4) Zina: A man and a woman are said to commit 'Zina' if they have sexual intercourse without being married to each other.

²⁸ 2(c) "marriage" means marriage which is not void according to the personal law of the parties, and "married" shall be construed accordingly.

e) "tazir" means any punishment other than hadd, and 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).

^{29 3.} Ordinance to override other laws: The Provisions of this Ordinance shall have effect notwithstanding any thing contained in any other laws for the time being in force.

^{30 (4)} Zina: A man and a woman are said to commit 'Zina' if they willfully have sexual intercourse without being validly married to each other.

Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of Zina.

- 12A. *Insertion of new section, Ordinance VII of 1979.* In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979); after section 5, the following new section shall be inserted, namely:—
 - "5A. No case to be converted, lodged or registered under certain provisions.— No complaint of zina under section 5 read with section 203A of the Code of Criminal Procedure, 1898 and no case where an allegation of rape is made shall at any stage be converted into a complaint of fornication under section 496B of the Pakistan Penal Code (Act XLV of 1860) and no complaint of fornication shall at any stage be converted into a complaint of zina under section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979) or an offence of similar nature under any other law for the time being in force."
- **13. Omission of sections 6 and 7, Ordinance VII of 1979.** In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), sections 6 and 7 shall be omitted. 31

Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of zina-bil-jabr.

^{31 6.} Zina-bil-jabr: (1) A person is said to commit zina-bil-jabr if he or she has sexual intercourse with a woman or man, as the case may be, to whom he or she is not validly married, in any of the following circumstances, namely:

⁽a) against the will of the victim;

⁽b) without the consent of the victim;

⁽c) with the consent of the victim, when the consent has been obtained by putting the victim in fear of death or of hurt; or

⁽d) with the consent of the victim, when the offender knows that the offender is not validly married to the victim and that the consent is given because the victim believes that the offender is another person to whom the victim is or believes herself or himself to be validly married.

⁽²⁾ Zina-bil-jabr is zina-bil-jabr liable to hadd if it is committed in the circumstances specified in sub-section (1) of section 5.

⁽³⁾ Whoever is guilty of zina-bil-jabr liable to hadd shall subject to the provisions of this Ordinance,-

⁽a) if he or she is not muhsan, be stoned to death at a public place; or

⁽b) if he or she is not muhsan, be punished with whipping numbering one hundred stripes, at a public place, and with such other punishment, including the sentence of death, as the Court may deem fit having regard to the circumstances of the case.

- 14. Amendment of section 8, Ordinance VII of 1979.— In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), in section 8,— 32
 - (i) the words and comma "or zina-bil-jabr," shall be omitted; and
 - (ii) in the marginal note, the words "or zina-bil-jabr" shall be omitted.
- **15. Amendment of Section 9, Ordinance VII of 1979.**–(1) In the offence of Zina (Enforcement of Huduod) Ordinance, 1979 (Ordinance No. VII of 1979); in section³³ 9,-
 - (4) No punishment under sub-section (3) shall be executed until it has been confirmed by the Court to which an appeal from the order of conviction lies; and if the punishment be of whipping, until it is confirmed and executed, the convict shall be dealt with in the same manner as if sentenced to simple imprisonment.
 - 7. Punishment for zina or zina-bil-jabr where convict is not an adult: A person guilty of zina or zina-bil-jabr shall, if he is not an adult, be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both, and may also be awarded the punishment of whipping not exceeding thirty stripes: Provided that, in the case of zina-bil-jabr, if the offender is not under the age of fifteen years, the punishment of whipping shall be awarded with or without any other
- ³²8. Proof of zina or zina-bil-jabr liable to hadd: Proof of zina or zina-bil-jabr 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: or
 - (b) at least four Muslim adult male witnesses, about whom the Court is satisfied, having regard to the requirements of tazkiyyah-al-shuhood, that they are truthful persons and abstain from major sins (khabir)[kabair), give evidence as eye-witnesses of the act of penetration necessary to the offence:

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

Explanation: In this section 'tazkiyah-al-shuhood" means the mode of inquiry adopted by a Court to satisfy itself as to the credibility of a witness.

Cases in which Hadd shall not be enforced:

punishment.

- (1) In a case in which the offence of zina or zina-bil-jabr is proved only by the confession of the convict, hadd, or such of it as is yet to be enforced, shall not be enforced if the convict retracts his confession before the hadd or such part is enforced.
- (2) In a case in which the offence of zina or zina-bil-jabr is proved only be testimony, hadd, or such part of it as it yet to be enforced, shall not be enforced if any witness resiles from his testimony before hadd, or such part is enforced, so as to reduce the number of eye-witnesses to less than four.
- (3) In case mentioned in sub-section (1), the Court may order retrial,

- (i) the words "or zina-bil-jabr" shall be omitted:
- (ii) in sub-section (2) the words, "or zina-bil-jabr" shall be omitted; and
- (iii) sub-sections (3) and (4) shall be omitted.
- 16. Omission of section 10 to 16, 18 and 19, Ordinance VII of 1979.— In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), section 10 to 16 and 18 &19, shall be omitted.³⁴

- (2) Whoever commits *zina* liable to *tazir* shall be punished with rigorous imprisonment for a term which *[shall not be less than four years nor more than] ten years and with whipping numbering thirty stripes, and shall also be liable to fine
- (3) Whoever commits *zira-bil-jabr* liable to *tazir* shall be punished with imprisonment for a term which may extend to twenty-five years and shall also be awarded the punishment of whipping numbering thirty stripes.
- 11. Kidnapping, abducting or inducing women to compel for marriage, etc.: Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment for life and with whipping not exceeding thirty strips, and shall also be liable to fine; and who-ever by means of criminal intimidation as defined in the Pakistan Penal Code (Act XLV of 1860) or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, or seduced to illicit intercourse with another shall also be punishable as aforesaid.
- 12. Kidnapping or abducting in order to subject person to unnatural lust: Whoever kidnaps Or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with death or rigorous imprisonment for a term which may extend to twenty-five years, and shall also be liable to fine, and, if the punishment be one of imprisonment, shall also be awarded the punishment of whipping not exceeding thirty stripes.
- 13. Selling person for purposes of prostitution, etc.: Whoever sells, lets to hire, or otherwise disposes of any person with intent that such person shall at any time be

⁽⁴⁾ In the case mentioned in sub-section (2), the Court may award tazir on the basis of the evidence on record.

³⁴ 10.Zina or zina-bil- jabr: (1) Subject to the provisions of Section 7, whoever commits zina or zina-bil-jabr which is not liable to hadd, or for which proof in either of the forms mentioned in Section 8 is not available and the punishment of 'qazf' liable to hadd has not been awarded to the complainant, or for which hadd may not be enforced under this Ordinance, shall be liable to tazir.

employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment for life and with whipping not exceeding thirty stripes, and shall also be liable to fine.

Explanations: (a) When a female is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

- (b) For the purposes of this section and Section 14, "illicit intercourse" means sexual intercourse between persons not united by marriage.
- 14. Buying person for purposes of prostitution. Etc.: Whoever buys. hires or otherwise obtains possession of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment for life and with whipping not exceeding thirty stripes and shall also be liable to fine.

Explanation: Any prostitute or any person keeping or managing a brothel, who buys. hires or otherwise obtains possession of a female shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

- 15. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage: Every man who by deceit causes any woman who is not lawfully married to him to belief that she is lawfully married to him and to cohabit with him in that belief, shall be punished with rigorous imprisonment for a term which may extend to twenty-five years and with whipping not exceeding thirty stripes and shall also be liable to fine.
- 16. Enticing or taking away or detaining with criminal intent a woman: Whoever takes or entices away any woman with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any woman, shall be punished with imprisonment of either description for a term which may extend to seven years and with whipping not exceeding thirty stripes, and shall also be liable to fine.
- 18. Punishment for attempting to commit an offence: Whoever attempts to commit an offence punishable under this Ordinance with imprisonment or whipping, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall be punished with imprisonment for a term which may extend to one-half or the longest term provided for that offence, or with whipping not exceeding thirty stripes, or with such fine as is provided for the offence, or with any two of, or all, the punishments.
- 19. Application of certain Provisions of Pakistan Penal Code (Act XLV of 1860) and Amendment: (1) Unless otherwise expressly provided in this Ordinance, the provisions of Sections 34 to 38 of Chapter 11 Sections 63 to 72 of Chapter III and Chapters V and V-A of the Pakistan Penal Code (Act XLV of 1860), shall apply, *mutatis mutandis*. in respect of offences under this Ordinance.
- (2) Whoever is guilty of the abetment of an offence liable to 'hadd' under this Ordinance shall be liable to the punishment provided for such offence as 'tazir'.
- (3) In the Pakistan Penal Code (Act XLV of 1860):

- **17. Amendment of section 17, Ordinance VII of 1979.** In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No.VII of 1979), in section 35 17, the words and figure "or section 6" shall he omitted.
- **18.** Amendment of section **20, Ordinance VII of 1979.** In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), in section 36/20,—
 - (a) Sec. 366, Section 372, Section 373, Section 375 and Section 376 of Chapter XVI and Section 493, Section 497 and Section 498 of Chapter XX shall stand repealed; and
 - (b) in Section 367, the words and comma "or to the unnatural lust of any person" shall be omitted.
- 35 17. Mode of execution of punishment of stoning to death: The punishment of stoning to death awarded under Section 5 or section 6 shall be executed in the following manner: namely:-
 - Such of the witnesses who deposed against the convict as may be available shall start stoning him and, while stoning is being carried on, he may be short dead, whereupon stoning and shooting shall be stopped.
- ³⁶ 20. Application of Code of Criminal Procedure, 1898, and amendment:
 - (1) The provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) hereafter in this section referred to as the Code, shall apply, *mutatis mutandis*, in respect of cases under this Ordinance:
 - Provided that, if it appears in evidence that the offender has committed a different offence under any other law, he may, if the Court is competent to try that offence and award punishment therefore, be convicted and punished for that offence:
 - Provided further that an offence punishable under this Ordinance shall be triable by a Court of Session and not by 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 a Court of Session under this Ordinance shall ordinarily be held at the head-quarters of the Tehsil in which the offence is alleged to have been committed.
 - (2) The provisions of the Code relating to the confirmation of the sentence of death shall apply, *mutatis mutandis*, to confirmation of sentences under this Ordinance.
 - (3) The provisions of Section 198, Section 199, Section 199-A or Section 199-B of the Court shall not apply to the cognizance of an offence punishable under Sec. 15 or Section 16 of this Ordinance.
 - (4) The provisions of sub-section (3) of Section 391 or Section 393 of the Code shall not apply in respect of the punishment of whipping awarded under this Ordinance.
 - (5) The provisions of Chapter XXIX of the Code shall not apply in respect of punishments awarded under Sec. 5 or Section 6 of this Ordinance.
 - (6) In the Code, Section 561 shall stand repealed.

- (i) in sub-section (1), the first proviso shall be omitted and in the second proviso, the word "further" shall be omitted;
- (ii) sub-section (3) shall be omitted; and
- (iii) sub-section (5) shall be omitted.
- **19. Amendment of section**³⁷ **2, Ordinance VIII of 1979.** In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), for clause (a) the following shall be substituted, namely:-
 - 2"(a) "adult", "hadd" and "zina" have the same meaning as in the Offence of Zina (Enforcement of Hudood) Ordinance, 1979; and".
- **20. Amendment of section 4, Ordinance VIII of 1979.** In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), section 4 shall be omitted. 38
- 21. Amendment of section 6, Ordinance VIII of 1979. In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979), section 6, shall be renumbered as sub-section (1) thereof and, after sub-section (1) renumbered as aforesaid, the following new sub-section (2) shall be added, namely:–
 - "(2) The Presiding Officer of a Court dismissing a complaint under section 203A of the Code of Criminal Procedure, 1898 or acquitting an accused under section 5 of the Offence of Zina (Enforcement of Hadood) Ordinance, 1979 (Ordinanc1e VII of 1979), 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.".

³⁷ 2(a) "adult", "hadd", "tazir", "zina" and "zina-bil-jabr" have the same meaning as in the Offence of Zina (Enforcement of Hudood) Ordinance, 1979; and

^{4.} Two kinds of qazf: 'Qazf' may be either 'Qazf' liable to 'hadd' or 'qazf' liable to 'tazir'.

- **22. Amendment of section 8, Ordinance VIII of 1979.** In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No.VIII of 1979), in section 8, the words, "a report made to the police or" shall be omitted. ³⁹
- **23. Amendment of section 9, Ordinance VIII of 1979.** In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No.VIII of 1979), in section 9, for sub-section (2), the following shall be substituted⁴⁰, namely:–
 - "(2) In a case in which, before the execution of hadd the complainant withdraws his allegation of qazf, or states that the accused had made a false confession or that any of the witnesses had deposed falsely, hadd shall not be enforced.".
- **24. Omission of sections 10 to 13 and 15, Ordinance VII of 1979.-** In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), sections 10 to 13 and 15 shall be omitted.⁴¹

^{39 8.} Who can file a complaint: No proceedings under this Ordinance shall be initiated except on report mad to the police or 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.

^{40 9(2)} In a case in which, before the execution of 'hadd' the complainant withdraws his allegation of qazf, or states that the accused had made a false confession or that any of the witnesses had deposed falsely and the number of witnesses is thereby reduced to less than two, 'hadd' shall not be enforced, but the Court may order retrial or award 'tazir' on the basis of the evidence on record.

⁴¹.10. Qazf liable to Tazir: Whoever commits 'qazf' which is not liable to 'hadd' or for which proof in any of the forms mentioned in Section 6 is not available, or for which 'hadd' may not be imposed or enforced under Section 9, is said to commit 'qazf' liable to 'tazir'.

^{11.} Punishment for 'Qazf' liable to 'Tazir': Whoever commits 'qazf' liable to 'tazir' shall be punished with imprisonment of either description for a term which may extend to two years and with whipping not exceeding forty stripes, and shall also be liable to fine.

^{12.} Printing or engraving matter known to be of the nature referred to in Section 3: Whoever prints or engraves any matter knowing or having good reason to believe that such matter is of the nature referred to in Section 3, shall be punished with

- **25. Amendment of section 14, Ordinance VIII of 1979.** In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), in section 14, sub-sections (3) and (4) shall be omitted. ⁴²
- **26. Omission of section 16, Ordinance VIII of 1979.** In the Offence of Qazf (Enforcement of Hadd) Ordinance,1979 (Ordinance No. VII of 1979), section ⁴³ 16 shall be omitted.

imprisonment of either description for a term which may extend to two years, or with whipping not exceeding thirty stripes, or with fine, or with any two of, or all, the punishments.

- 13. Sale of printed or engraved substance containing matter of the nature referred to in Section 3: Whoever sells or offers for sale any printed or engraved substance containing matter of the nature referred to in Section 3, knowing that it contains such matter, shall be punished with imprisonment of either description for a term which may extend to two years, or with whipping not exceeding thirty stripes, or with fine or with any two of, or all, the punishments.
- 15. Punishment for attempt to commit offence punishable under this Ordinance: Whoever attempts to commit an offence punishable under this Ordinance, or to cause such an attempt to be committed, and in such attempt does any act towards the commission of the offence, shall be punished with imprisonment for term which may extend to one-half of the longest term provided for the offence, or with such whipping or fine as is provided for the offence, or with any two of, or all, the punishments.
- 12 14 (3) Where the husband or the wife refuses to go through the procedure specified in sub-section (1), he or, as the case may be, she shall be imprisoned until:
 - (a) in the case of the husband, he has agreed to go through the aforesaid procedure;
 - (b) in the case of the wife, she has either agreed to go through the aforesaid procedure or accepted the husband's accusation as true.
 - (4) A wife who has accepted the husband's accusation as true shall be awarded the punishment for the offence of 'zina' liable to 'hadd' under the imposition of Hudood for the Offence of 'Zina' Ordinance, 1979.
- 43 16. Application of certain provisions of Pakistan Penal Code (Act XLV of 1860):
 (1) Unless otherwise expressly provided in this Ordinance, the provisions of Sections 34 to 38 of Chapter II, Sections 63 to 72 of Chapter. III and Chapters V and V-A of the Pakistan Penal Code (Act XLV of 1860), shall apply *mutatis mutandis*, in respect of offences under this Ordinance.
 - (2) Whoever is guilty of the abetment of an offence liable to 'hadd' under this Ordinance shall be liable to the punishment provided for such offence as 'tazir'.

- 27. **Amendment of section 17, Ordinance VIII of 1979.** In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), in section 44 17,
 - (i) the first proviso shall be omitted; and
 - (ii) for the second proviso, the following shall be substituted, namely:-

"Provided that an offence punishable under section 7 shall be triable by a Court of Sessions 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 Sessions shall lie to the Federal Shariat Court."

28. Omission. of section 19, Ordinance VIII of 1979. – In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No.VIII of 1979), section 19 shall be omitted. 45

⁴⁴ 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 if it appears in evidence that the offender has committed a different offence under any other law, he may, if the Court is competent to try that offence and award punishment therefore, be convicted and punished for that offence:

Provided further that an offence punishable under Section 7 of sub-section (4) of Section 14, shall be triable by, and proceedings under sub-section (1) and (2) of the latter section shall be held before 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* of the confirmation of a sentence under this Ordinance.

⁽³⁾ The provisions of sub-section (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.

29. Insertion of new section, Dissolution of Muslim Marriages Act, 1939 (VIII of 1939). – In the Dissolution of Muslim Marriages Act, 1939 (VIII of 1939), in section 2, after clause (vii), the following new clause shall be inserted, namely:-

"(viia) lian;

Explanation: – Lian means where the husband has accused his wife of zina and the wife does not accept the accusation as true.".

Sd/-RAJA MUHAMMAD AMIN, Secretary.

⁴⁵ **19. Ordinance to override other laws:** The provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force.

COUNCIL'S REVIEW OF THE HUDOOD ORDINANCE 1979

The Constitution of the Islamic Republic of Pakistan requires the Council of Islamic Ideology to "make recommendations as to the measure for bringing existing laws into conformity with the Injunctions of Islam" [Article 230(1)].

Previously, the Council had revised the laws since 1836 and had submitted more than 70 reports containing its recommendations on the subject. The previous Council under the chairmanship of Dr. S.M. Zaman had completed revising the laws until 1977, and then from 1999 to 2002. The present Council, constituted on 16 June 2004, continues this revision. Since reviewing the existing laws included the year 1979 in which Islamic Criminal Laws were enforced as Hudood Ordinances 1979, it demanded a thorough and comprehensive study of these laws. The Council took three steps to perform this function efficiently:

- Broader Consultation on the subject that included an international consultation workshop of international experts on Islamic law organised in May 2005. It culminated in the constitution of an International Consultative Network in June 2005.
- Constitution of Legal Committee of the Members of the Council who are experts in legal matters and in Islamic law in March 2005. The Committee submitted its recommendations on Hudood Ordinance 1979 in June 2006.

- Delegations of the Members of the Council were sent to Muslim countries in June 2006 to consult scholars and experts in these countries and to collect relevant legal material on the subject.
- 4. The Council began the process of consultation with the experts in the field.

1. INTERNATIONAL CONSULTATIVE WORKSHOP AND NETWORK

The Council of Islamic Ideology organized an International workshop on May 26-28, 2005, Islamabad. It was inaugurated by the President of Pakistan.

OBJECTIVES STATEMENT

Muslims take pride in a rich, diverse and complex heritage of legal and moral thought. For centuries Muslim laws and ethics informed judicial, social, political, commercial cultural practices of individuals, institutions and organizations. Despite the continuous enrichment of Islamic law by the Muslim jurists responding to varying social needs, Muslims have experienced unusual challenges in their legal practices in the nineteenth and twentieth centuries. In part it had to do with the way in which many colonial states marginalized Shari'a in Muslim societies and relegated it to the status of a personal law, but mostly it was due to the globalising environment of the movement of modernity in the world.

One of the significant developments in the twentieth century has been the advent of human rights. With the adoption of the Universal Declaration of Human Rights, Muslim states and communities have become partners with citizens around the world, many of them non-Muslims, in a number of global systems and bureaucracies. This situation has posed as many challenges as it offers opportunities for the imaginative engagement with the Islamic legal tradition. Often the fear and anxiety about their future in this new world order make Muslims suspicious about this environment and sometimes generate extreme and incommensurably diverse reactions to the idea and practices of human rights. These reactions have given rise to growing concerns about Muslim thinking about human rights both within the Muslim world as well as beyond it. Contemporary debates about the role and place of Shari'a, particularly, the Hudud laws, in Pakistan reflect this extreme diversity that hamper constructive responses to very critical concerns and issues in society.

In order to address some of these critical concerns the Council of Islamic Ideology is hosting an international workshop to discuss these concerns. It will place the spotlight on Pakistan's legislative experience and address contemporary debates about the role of Shari'a in globalising world. The workshop will focus on issues relating to Islamic criminal laws (Hudud, Qisas, and Ta'zir) but address these questions in the light of the variety of Islamic human rights debates. Part of the exercise is to share legislative experiences, debates and academic studies of Islamic law elsewhere and how these play out on a global stage of scrupulous media attention.

The workshop invites discussion of the impact of these laws in Muslim societies. It will particularly address the challenges as experienced in implementing Islamic criminal laws. The goal will be to map and understand the concerns of Muslim and non-Muslim, perceptions and experiences in the application of these laws. The workshop seeks thoughtful exchange of views. The goal will be to evaluate limitations and opportunities by identifying new and promising directions for development of Muslim societies in the global era. The

workshop aims to develop guidelines for an effective implementation of Islamic criminal laws in a globalising era.

THEMES

A variety of restraints, political, moral, economic and cultural, pose challenges to the responsiveness and efficacy of Islamic law in the lives of the Muslims worldwide. At the same time they provide opportunities for the Muslim jurists to offer new perspectives on the role and contribution of Islamic law to the advancement of diversified international law, especially with respect to universal ethics and human rights. In the following areas we require some serious discussion and debate about Islamic criminal law within the current international human rights order. The discussion will be contextually related to the legislative experience in the Muslim world. We have divided these questions into four themes for the workshop.

- Islamic Criminal Law (Hudud, Qisas and Ta'zir) and Ethics in relations to existing notions of human rights and global ethics, with particular reference to the following:
 - a. Crime and Punishment [Corporal punishments/ Capital punishment, imprisonment, fine and extradition as punishments, Jurisprudence of crime and philosophies of punishment.
 - b. Equality [Gender, religious, ethnic]
 - c. Justice
 - d. Freedom
 - e. Sense of Moral responsibility [individual consciousness, fear of God]
 - f. Secularity

2. Islamic Criminal Law and Globalism

- a. International Relations [Treaties]
- b. Human Rights as Standard
- c. Sovereignty of state, Freedom and Democracy
- d. Legislative authority of the State
- e. Personality of Islamic laws
- f. Non-Muslim and Muslim minorities
- 3. Islamic Legal Methodology relating to criminal laws

a. Criminal Procedures

- Crimes against State, privatization of criminal law, compounding of criminal laws
- ii. Methods of proof: evidence, forensic evidence, confession, torture
- iii. Witnesses: Islamic traditional requirements and modern situations

b. Ijtihad and legal reasoning

- Repugnancy clause in the Constitution of Pakistan (No law contrary to the injunction of the Qur'an and Sunna)
- ii. Conflicting doctrines in Islamic criminal law
- iii. Public interest, public reason

c. Discourses on Islamic Criminal Laws

- a. Fears and anxieties about Globalization
- b. Law, religion and Ethics
- c. Rationalization of Islamic Criminal laws
- d. Legislating Islamic Criminal Laws

Papers

- Professor Ruud Peters, Amsterdam University, The Netherlands, "Globalization, Human Rights and Re-enforcement of Islamic Criminal Laws, A Model Proposal"
- Dr. Syed Khalid Rashid, Malaysia, "Propagation of Basic Islamic Values for the Prevention and Correction of Criminal Behavior".
- Dr. Tahir Mahmood, INDIA, "Islamic Criminal Law, Experiences and Apprehensions".
- Dr. Ibrahim Naiya Sada, Nigeria , "Enforcement of Islamic Criminal Laws in Nigeria".
- Prof. Dr. Masykuri Abdillah, Indonesia, "Enforcement of Islamic Criminal Law in a Contemporary Islamic State"
- 6. Dr. Hassan Hanafi, Cairo-Egypt, "Penal Codes in the Globalised World and Human Rights: Islamic Perspective".
- Dr Manzoor Ahmad, Karachi, "An Alternative Paradigm for Law Making: A Proposal for Discussion
- 8. Dr. Muhammad Farooq Khan, Mardan , "Pakistan men nafidh kardah Hudud Qawanin ka Ja'izah"
- Maulana Mohsin Naqvi, Karachi, "The Need for Adopting New Methodology of Ijtihad".

- Prof. Dr. Muhammad Akhtar S. Siddiqi, Karachi , "Islamic Law in the Globalised World".
- 11. Prof. Dr. Abdul Rashid, Karachi, "Islamic Criminal Law and Globalism".
- 12. Justice (r) Haziqul Khairi, Karachi, "Human Rights in Islam"

Conclusions of the Consultation

During this workshop the following points emerged.

1. The process of globalization has created some misunderstandings which need to be analyzed. Certain segments of the society are expressing reservations that in this process Muslims are especially under tremendous pressure. The participants, however, felt that this process is also providing Muslims intellectuals opportunities to come together and think collectively how to present Islamic perspective on globalism. Workshop stressed that the whole Muslim world and Muslim scholars, experts on law, and intellectuals must revive the process of mutual consultation, dialogue and discussion. The non-Muslim intellectuals must also be invited to participate in these discussions in order that the issues could be discussed and analyzed from all possible perspectives. Islamic legal tradition, especially Islamic jurisprudence is particularly so rich that it can make valuable contributions toward contemporary legal and juridical problems. Islam stresses on the legal as well as ethical aspects and lays the foundation of legal system on the principle of social justice. Muslim intellectuals can play a significant role by contributing these principles to contemporary debates on law.

- 2. The participants of the workshop unanimously recognised the role of Ijtihad. They stressed on the need for the reconstruction of Ijtihad and Islamic legal methodology. They called for its reactivation, in order to highlight its significance in the modern global conditions. They recommended the publication of the papers presented in the workshop and to keep them in view when Council's deliberates on legislation of Islamic laws.
- 3. The workshop viewed the issue of codification of Islamic law, especially Islamic criminal laws including Hudud, Qisas and Diyat and their efficient enforcement a highly complicated process and requires serious academic and scientific studies. The opinions on most points in this regard are divided. An extremely careful and scholarly effort is required to develop consensus and reconciliation. No superficial survey can successfully achieve this goal. In the light of the recommendations of the workshop the Council must continue the process of consultation on wider level with different segments of the society. The reservations ad fears of some segments of the society need also be addressed.
- 4. The participants unanimously approved the constitution of an International Consultative Network. The participants volunteered to be the initial members of this Network. Membership should be further expanded in coming years.
- 5. In order to achieve the objectives of the Network, the members of the Council of Islamic Ideology will visit several Islamic countries to learn and discuss their experiences in the process of Islamic legislations. They will also contact the institutions responsible for Islamic legislation and find out the ways for cooperation and

- exchange of documents and literature between these institutions and the Council. They will also explore the possibility of extending this Network with the membership of these institutions.
- 6. The workshop also reviewed the various viewpoints in Pakistan about the Islamic Criminal laws in Pakistan. Twenty years have passed since the Hudood Ordinances were enforced in this country. Since the introduction of these ordinances, voices in favor and against these laws have been expressed. Gradually, the discussions have taken more extreme stands both on its negative and positive aspects. Consequently there have emerged three viewpoints: (1) Those who call for repeal of the Hudood Ordinances. (2) Who those who insist on status quo. (3) Those who call for amendments in those laws which have led to injustice or to achieve the true objectives of Islamic teachings.

2. CONSTITUTION OF LEGAL COMMITTEE

In its 156th meeting held in Islamabad on 16-18 March, 2005, the Council decided to constitute a Legal Committee to continue the task of reviewing the existing laws. It was decided to complete the revision of laws for the missing period as well. For this purpose a Legal Committee consisting of the following members was constituted:

Justice (r) Haziqul Khairi	Convenor
Justice Dr. Rashid Ahmad Julludhri	Member
Justice (r) Dr. Munir Ahmad Mughal	Member
Professor Mazhar Saeed Kazimi	Member
Haji Haneef Tayyeb	Member
Mr. Ghulam Murtaza, Research Assistant, CII	Secretary

The Committee was assigned the following tasks:

- 1. To review the laws enforced during the decade between August 5, 1977 and 31st December 1987.
- To examine all queries about legal matters received in the Council and to advise the Council to prepare and finalize its recommendations.
- 3. To supervise the project of indexing and digesting the Council Reports.

The Legal Committee under the convenorship of Justice R. Haziqul Khairi held several meetings and completed a review of about 800 laws until 1994. In its fourth and fifth meetings held in Karachi respectively on 21-23 January 2006 and on ---- the Committee deliberated on the four Hudood Ordinances 1979. The Legal Committee with a majority view recommended that Huddod Ordinances in their present form have raised numerous legal, constitutional and Islamic issues. It is therefore necessary for the National Assembly reviews these laws and if necessary, includes these laws in the Pakistan Penal Code as its part. One learned member of the Committee wrote a note of dissent. He recommended that to form an opinion on these laws they must be examined in details.

Legal Committee's recommendation was discussed in the Council's 160^{th} and 161^{st} sessions in Islamabad, held respectively on March 27-28 March 2006 and 27-28 June 2006. The members discussed the various options and expressed their views.

In its 161st meeting the members attending the meeting on 27 June unanimously approved the following recommendation:

"The laws must be rewritten based on the concepts of punishments/Hudud fixed by the Qur'an, Sunna and the immaculate Shari'a and they may be included as part thereof in the Pakistan Penal Code and the Code of Criminal Procedure accordingly'.

The Council also recommended that the Islamic principles of justice demand that women may not be kept in jails. Women in jails under Hudood Ordinance may be released on bail.

3. DELEGATIONS TO ISLAMIC COUNTRIES

The Council sent the following delegations to discuss cooperation for Islamic legal materials on Hudud and relevant matters.

- A. Justice (R) Haziqul Khairi (assisted by Dr. Ghulam Murtaza Azad,D.G. Research) Malaysia (May 30- June 3, 2006.
- B. Allama Aqeel Turabi and Syed Daman Ali Shah (assisted by Hafiz Khalid Saif, Senior Research Officer) Qatar and Iran (June 9 15, 2006).
- C. Haji Muhammad Haneef Tayyab, Maulana Abdullah Khilji, Justice (r) Dr. Munir Ahmad Mughal, Prof. Dr. Said Bibi (assisted by Mr. Ilyas Kahn, Chief research Officer) Saudi Arabia and Egypt (June 16-23, 2006).

The delegations visited the following institutions with the following objectives:

- (i) Collecting information, documents and data on Islamic legislation in the Muslim world
- (ii) Sharing findings, data of research work done as well as text of laws enacted in the respective countries involving Islamic system of justice.

(iii) Dilating upon, reactivating Islamic Legal Methodology and the doctrines of Ijtihad in the light of problems and challenges confronting Muslim Umma in the contemporary environment of a globalized world order.

The delegations visited following institutions

MALAYSIA

- (i) Department of Islamic Development, Federal Government, Putrajaya.
- (ii) Institute of Islamic Understanding, KL.
- (iii) Institute of Islamic thought and Culture, IIUI
- (iv) International Islamic University, KL

QATAR

- (i) Center for Research and Studies, Directorate of Islamic Affairs
- (ii) Islamic Relations department

IRAN

- (i) Ministry of Culture and Guidance
- (ii) Center for Islamic Studies
- (iii) Research Institutions in Qum

SAUDI ARABIA

- (i) Islamic Fiqh Complex, Jeddah
- (ii) King Faisal Center for Research and Islamic Studies

EGYPT

- (I) Jami'ah al-Azhar
- (II) Supreme Council for Islamic Affairs
- (III) Ministry of Awqaf

4. CONSULTATIONS

The Chairman, Council of Islamic Ideology held consultation meetings with Journalists, Women Rights Groups, Human Rights, Lawyers, Policemen and the Ulama, consultation meeting was held on June 24, 2006 with members of the Islamabad Bar. During the discussions the following recommendations emerged;

- 1. Hudood Ordinances must be recodified as one Act instead of the present form of several ordinances.
- 2. The Shari'at supports the concept of Afw and mercy, it should be made part of the Hudud laws.
- 3. The following amendments in the law of Shahadt are necessary:
 - a. In the section 4, the minimum qualification should be at least the ability to exercise Ijtihad
 - b. Punishment of qazf for false evidence
 - c. The standard of witness must be strictly maintained.
- 4. One person must not be subjected to two laws; Islamic law and PPC must be made into one law.
- One person must not be tried twice under the same offence; if one is acquitted under Hadd, he may not be tried for Ta'zir under the same offence.
- 6. Afw be included under Section 229.
- 7. If a person is not in a position to pay Diyat, the Bayt al-Mal or Behbud Fund may be directed to pay it.
- 8. The lawyers have vowed not to plead the cases of Blasphemy law. This is contrary to law and the teachings of the Qur'an and Sunna.
- 9. The Hudud laws should not be applicable to non-Muslims.
- 10. Lahore High court has ruled that DNA test is not acceptable as evidence in Hudud cases.
- 11. The investigation in Hudud cases must be undertaken by a police officer of at least ASP rank.

- 12. The requirement of tazkiyyat al-Shuhud must be strictly followed in the courts.
- 13. Special cells of investigation in Hudud cases be instituted with female officers responsible.
- 14. Female witnesses must be accepted in Hudud cases.
- 15. A distinction must be made between Zina and Zina bil jabr, in definition as well as in punishment.
- 16. The standards prescribed in Tazkiyyat al-shuhud need to be reviewed.
- 17. In Hudud cases qazf is applicable only to women, this discrimination must be removed.
- 18. The role of police in Hudud cases must be reviewed.
- 19. Necessary arrangement must be made to familiarize the lawyers and judges about the Hudud laws.
- 20. Care should be taken that the family and the children are not involved in the investigation and the punishment and other consequences of these offences do not affect them.
- 21. The influential persons do not let the ordinary people approach the court. Any interference in the process of law must be legally punishable.

5. AN INTERIM BRIEF REPORT 2006 ON HUDUD ORDINANCE4 1979

Based on the information received in response to these measures the Council published an *An Interim Brief Report on Hudood Ordinance, 1979* in 2006. It was widely distributed. It was welcomed by public general. Comments on this report appeared in daily Islam, Nawai Waqt and other esteemed newspapers. An extensive analytical study of this report was Published by Muhammad Mushtaq Ahmad from Mardan: *Hudud Qawanin, Islami Nazriyati Council ki uburi Report ka Tanqidi Ja'iza* (123 pages). Idara Isha'at Madrarul Ulum, Mardan, 2006.



ANALYTICAL STUDY OF HUDOOD ORDINANCE, 1979

1. THE CONCEPT AND DEFINITION OF HADD/HUDUD

The Hudood Ordinances justifies its introduction saying that modification of the existing laws was necessary "so as to bring it in conformity with the injunctions of Islam as set out in the Holy Qur'an and Sunnah". The Ordinance defines Hadd (singular of Hudud) as follows: "'hadd' means punishment ordained by the Holy Qur'an or Sunnah" (Section 2 Definitions (c)).

We have not been able to find this definition in the standard books of Islamic law. Since the justification of the Ordinance is premised on this definition it is imperative to analyze and review this definition in detail. In this section we will review this definition in the light of the Qur'an, Hadith and Fiqh literature.

 This definition differs from the preamble which says "Qur'an and Sunnah", implying that the injunction must exist in both the Qur'an and Sunna, whereas this definition regards only one of them as a source, implying that it is not necessary that the injunction of punishment is found in both sources; it is equally binding if it is found in either of the two source. It equates the position of Sunna with that of the Qur'an. (See below, amendment recommended by the Council of Islamic Ideology).

- This definition differs also from the prevalent definitions in the Figh texts. We do not know exactly from where has this definition of Hadd has been taken. We will come back to this point later in the section on Figh texts.
- 3. It is quite obvious that the concept of hadd has its origins in the discussion of Fuqaha in early Islam and its definitions developed as a consequence of the differences among these fuqaha about the concept of crime and punishment and about how far the state should or not interfere in Shari'a. Briefly, the definitions by the jurists varied because their criteria of classification differed from one another.

In the following lines, an attempt has been made to explore the use of the word Hadd/Hudud in the Islamic legal tradition.

ARABIC LANGUAGE

In Arabic language, the word Hadd is used in several different meanings, e.g., edge, border, extremity, terminus, limit. An associated meaning of edge and limit is to prevent or forbid⁴⁶. Following the Qur'anic usage, it also came to mean Divine ordinance. Later, probably influenced by Fiqh usage it also acquired the meaning of punishment. By the end of the second century, lexicographers had recognized the semanteme of 'punishment' in the semantic field of the word Hadd. Describing the meaning of Hadd, Khalil Ahmad al-Farahidi (d. 175 H) comments as follows: the term "Hudud Allah" means the

Abu'l Husayn Ahmad b. Faris Zakariyya (d. 395 H), Mu'jam maqayis al-lugha, vol. 2, p.
 wa hadd al- 'asi summiya haddan li annahu yamna 'uhu 'an al-mu'awada (The punishment for the offender is called hadd because it prevents him to repeat the offence).

matters that Allah has defined clearly and ordained that no one should trespass them. Hadd, (for instance *hadd al-qadhif* and so on) pertain to the requital/punishment for what he has done.⁴⁷ It must, however, be noted that 'punishment' is not the primary meaning of Hadd.

1. LOGIC

Logicians distinguish between two types of definitions. One that is clear, concise and conclusive is called Hadd and the other which is simply descriptive is called Rasm. In logic, therefore, hadd is not an ordinary language word; it means a technical term, distinguished from the literal and descriptive meanings⁴⁸.

2. QUR'AN

The word Hudud (plural) is used in the Qur'an 10 times; 9 times in the meaning of "limits" (set by God), and once in the meaning of 'commands'. Hudud or hadd in the Qur'an is not used in the meaning of punishment. The Qur'an mentions several crimes and their punishments but does not use the word Hudud in that context. The word Hudud is used in the following verses.

1. 002.187: Permitted to you, on the night of the fasts, is the approach to your wives. They are your garments and ye are their garments. Allah knoweth what ye used to do secretly among yourselves; but He turned to you and forgave you; so now associate with them, and seek what Allah Hath ordained for you, and eat and drink, until the white thread of dawn appear to you distinct from its black thread; then complete your fast Till the night appears; but do not associate with your wives

⁴⁷ Farahidi, Kitab al-'ayn, vol.1, p. 355.

⁴⁸ A'la Thanawi, Kashaf Istilahat al-Funun (Lahore: Suhayl Academy, 1993), Vol. 1, p. 286.

- while ye are in retreat in the mosques. Those are Limits [*Hudud*] (set by) Allah: Approach not nigh thereto. Thus doth Allah make clear His Signs to men: that they may learn self-restraint.
- 2. 065.001: O Prophet! When ye do divorce women, divorce them at their prescribed periods, and count (accurately), their prescribed periods: And fear Allah your Lord: and turn them not out of their houses, nor shall they (themselves) leave, except in case they are guilty of some open lewdness, those are limits [Hudud] set by Allah: and any who transgresses the limits of Allah, does verily wrong his (own) soul: thou knowest not if perchance Allah will bring about thereafter some new situation.
- 3. 002.229: A divorce is only permissible twice: after that, the parties should either hold Together on equitable terms, or separate with kindness. It is not lawful for you, (Men), to take back any of your gifts (from your wives), except when both parties fear that they would be unable to keep the limits ordained by Allah. If ye (judges) do indeed fear that they would be unable to keep the limits ordained by Allah, there is no blame on either of them if she give something for her freedom. These are the limits ordained by Allah; so do not transgress them if any do transgress the limits [*Hudud*] ordained by Allah, such persons wrong (Themselves as well as others).
- 4. 002.230: So if a husband divorces his wife (irrevocably), He cannot, after that, re-marry her until after she has married another husband and He has divorced her. In that case there is no blame on either of them if they re-unite; provided they feel that they can keep the limits ordained

- by Allah. Such are the limits [*Hudud*] ordained by Allah, which He makes plain to those who understand.
- 5. 004.013: Those are limits [Hudud] set by Allah: those who obey Allah and His Messenger will be admitted to Gardens with rivers flowing beneath, to abide therein (for ever) and that will be the supreme achievement.
- 6. 004.014: But those who disobey Allah and His Messenger and transgress His limits [*Hudud*] will be admitted to a Fire, to abide therein: And they shall have a humiliating punishment.
- 7. 009.097: The Arabs of the desert are the worst in Unbelief and hypocrisy, and most fitted to be in ignorance of the command [*Hudud*] which Allah hath sent down to His Messenger: But Allah is All-knowing, All-Wise.
- 8. 009.112: Those that turn (to Allah) in repentance; that serve Him, and praise Him; that wander in devotion to the cause of Allah,: that bow down and prostrate themselves in prayer; that enjoin good and forbid evil; and observe the limit [*Hudud*] set by Allah;- (These do rejoice). So proclaim the glad tidings to the Believers.
- 9. 058.004: And if any has not (the wherewithal), he should fast for two months consecutively before they touch each other. But if any is unable to do so, he should feed sixty indigent ones, this, that ye may show your faith in Allah and His Messenger. Those are limits [*Hudud*] (set by) Allah. For those who reject (Him), there is a grievous Penalty.

10. 065.001: O Prophet! When ye do divorce women, divorce them at their prescribed periods, and count (accurately), their prescribed periods: And fear Allah your Lord: and turn them not out of their houses, nor shall they (themselves) leave, except in case they are guilty of some open lewdness, those are limits set by Allah: and any who transgresses the limits [*Hudud*] of Allah, does verily wrong his (own) soul: thou knowest not if perchance Allah will bring about thereafter some new situation.

These are the only verses in the Qur'an where the term Hudud Allah has been used. Examined carefully, none of these verses refer to the offences that Fiqh classifies as crimes of Hudud. These verses relate to the ritual of I'tikaf 2: 187), divorce (2: 229-30, 60:1), inheritance (4:11-14), laws of God abrogating tribal customs (9:97, Zihar (a pre-Islamic form of divorce), 58:4), and Jihad (9:111-112).

The Qur'an does not treat these Hudud Allah lightly; it denounces them severely and warns the perpetrators with a painful punishment. The question is: why do the Muslim jurists exclude these Hudud Allah in the Hudud crimes?

Next, let us examine the verses referring to the crimes which have been classified as Hudud by the Hudood Ordinance/Fugaha.

a. Sariqa (Theft).

Now as the man who steals and the woman who steals, cut off the hand of either of them in requital {jaza'}or what they have wrought, as a deterrent ordained by God: for God is almighty, wise. But as for him who repents after having thus done wrong, and makes amends, behold, God will accept his repentance; verily, God is much for-forgiving, a dispenser of Grace (5: 38-39).

b. Harabah

It is but a just recompense {jaza'} for those who make war on God and His apostle, and endeavor to spread corruption on earth, that they are being slain in great numbers, or crucified in great numbers, or have, in result of their perverseness, their hands and feet cut off in great numbers, or are being [entirely] banished from [the face of] the earth; such is their ignominy in this world. But in the life to come [yet more] awesome suffering awaits them –save for such [of them] as repent ere you [O believers] become more powerful than they: for you must know that God is muchforgiving, a dispenser of Grace. (5: 33-34).

c. Zina

As for the adulteress and the adulterer – flog each of them with a hundred stripes, and let not compassion with them keep you from [carrying out] this law of God, if you [truly] believe in God and the Last Day; and let a group of the believers witness their chastisement. (24: 2)

d. Qazf

And as for those who accuse chaste women [of adultery], and then are unable to produce four witnesses [in support of their accusation], flog them with eighty stripes; and ever after refuse to accept from them any testimony – since it is they that are truly deprayed! –excepting [from this interdict] only those who afterwards repent and made amends; for behold, God is muchforgiving, a dispenser of grace. And for those who accuse their

own wives [of adultery], but have no witness except themselves, let each of these [accusers] call God four times to witness that he is deed telling the truth, and the fifth time that God's curse be upon him if he is telling a lie. But [as for the wife, all] chastisement shall be averted from her calling God four times to witness that he is indeed telling a lie, and the fifth [time], that God's curse be upon her if he is telling the truth. (24:4-8).

e. Prohibition (Shurb al-Khamr)

O You who have attained to faith! Intoxicants, and games of chance, and idolatrous practices, and the divining of the future are but a loathsome evil of Satan's doing; shun it, then, so that you might attain to a happy state! By means of intoxicants and games of chance Satan seeks only to sow enmity and hatred among you, and to turn you away from the remembrance of God and from prayer. Will you not, then, desist? Hence, you pay heed unto God, and pay heed unto the Apostle, and be ever on your guard [against evil]; and if you turn away, then know that Our Apostle's only duty is a clear delivery of the message [entrusted to him]. (5: 90-92).

It is quite obvious that none of these verses uses the term Hadd. If ever, the term Jaza' (requital) is used, not Hadd. The verses also stress on the repentance and God's forgiveness. Thus punishment by itself and retribution are not the objective. It is rather self correction and shunning the evil ways. Further, Jaza' is mentioned only in case of theft and Haraba; in case of Zina and Qazf, punishment is mentioned without calling it hadd or jaza'. In case of drinking Khamr, no punishment is prescribed.

Comparing the above analysis of the Qur'anic verses with the concept of Hadd in the Ordinance and the identification of Hudud crimes a few questions arise.

- 1. Why was the crime of Haraba limited to offences against property in the Hudood Ordinance? Is it the only crime against God and the Prophet, or in modern parlance, against the society and the state?
- 2. The Qur'an (2: 279) describes practice of Riba as violation of the injunctions of God and a war with God and His Apostle.

 O you who have attained to faith! Remain conscious of God, and give up all outstanding gains from usury, if you are [truly] believers; for if you do not, then know that you are at war with God and His Apostle. But if you repent, then you shall be entitled to [the return of] your principal: you will do no wrong and neither will you be wronged. If, however, [the debtor] is in strained circumstances, [grant him] a delay until the time of ease; and it would be for your own good—if you but knew it to remit [the debt entirely] by way of charity] (2: 278-79).

 Why is this offence not classified as Haraba?
- 3. In the Qur'anic verse about drinking, there are three other practices mentioned. Why they are not counted as crimes?

Apparently, the jurists must have taken such questions into consideration. A historical-critical study of such questions can really shed some light on the great contribution that jurists have made in the development of Islamic criminal law. By treating the Islamic criminal

laws as Divine discourages studying these laws as a jurist's law and to improve upon them.

3. HADITH

In Hadith literature, the term Hadd has been used in the following senses.

- 1. In the sense it is used in the Qur'an, namely God's laws relating to for instance divorce. For example: "Why is it that the people play with the laws of God (Hudud Allah)? One says, "I have divorced you. I have revoked the divorce. I have divorced you." (Sunan Ibn Majjah).
- 2. In a general non-technical sense of boundary as for instance in the following hadith: "If some one dedicates a land as waqf and does not define the boundaries (hudud), it is allowed". [Bukhari, *Sahih*, Kitab Wasaya, 26].
- 3. In the meaning of 'punishment for an offence'. The use of this term in Hadith literature is not limited to the punishments for the crimes that later came to be known in figh as Hudud.
- 4. In Hadith, the word Hadd, where it has been used in the meaning of punishments, has two types of usages.

First, where it simply means punishment; without reference to the crimes that later came to be known Crimes of Hudud. For instance, statements such as the following illustrate the technical use: "Penalty for a person who practices magic is a strike by the sword (darb bi al-sayf, decapitation)". The practice of magic is not counted as crime of Hudud in the Fiqh literature.

Second, it uses the word in the meaning of fixed punishments for specific crimes. For instance, "Avert the punishments (Hudud) from Muslims as much as possible". 49 "Whenever a weak person stole something they punished him." 50

We examined the use of the term Hudud in Sahih Bukhari, and found its 34 occurrences in the following books: Iman/ faith (1), Hajj (1), Sawm/fasting (1), Buyu' /sale contracts (2) Shuf'a/ preemption (2), wakala/ agency (3), shahada /evidence (2), Shurut/ formulation of the contract (1), wasaya /will (1), Jihad (1), Anbiya/ Prophets (1), maghazi/ wars (1), Talaq/ divorce (2), Tibb /medicine (1), Hudud/ punishments (9), Diyat/ compensation for murder (1), Hiyal/ legal devices (1), Ahkam/ judgments (4). Among these 34 occurrences, ten times it is mentioned in the titles of the chapters. Among the 46 chapters, only 14 chapters use the term Hudud, in 6 chapters only in the title, not in the texts of hadith. There are three chapters where the word is not used in the title but it occurs in the texts of hadith in those chapters. On 6 places, mostly referring to Shuf'a, hadd is used in its literal meaning of 'boundary'; here the term is not Hudud Allah. On 4 places, the term is used with reference to the Qur'an relating to the subjects of I'tikaf, Jihad, Khul' and divorce. There are only 6 places where it is used with reference to punishment for crimes. At three places, it is clearly mentioned that for offences other than specified as Hudud, punishment cannot accede more than ten lashes.

⁴⁹ Tirmadhi, Kitab al-Hudud, 3.

⁵⁰ Bukhari, Kitab al-Hudud, 11, 12, Muslim, Hudud, 8, 9, 37.

4. FIQH TEXTS

In Fiqh books, the term Hudud came to be used very early in the meaning of "fixed punishment". However, the jurists' opinions continued to vary on two points; first what are the crimes of Hudud and how to classify them. Secondly, they differed on the details of the execution of punishment and under what conditions they were to be executed.

The focus on these punishments, rather than crime, informed the problematics of Islamic criminal law for the Muslim jurists. Since the jurists regarded these punishments as ultimate they took utmost care that these punishments are awarded in extreme cases. Studying the Sunna of the Prophet and his companions from this perspective they prescribed a strict standard of proof and conditions. For instance, the condition of Hirz (protective study) for the property and its Nisab (minimum amount) in the crime of theft were introduced to restrict the punishment for theft mentioned in the Qur'an in exceptional cases, and not to each case of theft. These conditions are not meant to define theft in general. Taking someone else's property knowingly is not allowed by Shari'a. The Qur'an forbids dishonest misappropriation of property, cheating, fraud and other offences against property.

The Fuqaha did not elaborate in detail on these offences and left them to the discretion of the Qadis. Consequently, the jurists did not develop the criminal laws in Islam in details as they did in case of 'ibadat and family laws. They discussed only the five or seven crimes as Hudud offences whose punishments were fixed in the Qur'an, Sunna or decided by the consensus of the Companions of the Prophet. There also, their focal attention was to the questions about punishments. The rest of the crimes and offences were left undefined

under the category of Ta'zir. The jurists left Tazir uncodified because in their opinion the qadis could take care of it. The distinction between Hadd and Ta'zir was understandable in the judicial system in which Muslim jurists worked. In that system, a qadi had a delegated authority from the head of state, be it Amir, Sultan, Khalifa or King, who could choose one of the opinions in case of conflict among the jurists, intervene in the judgments of the Qadis, and restrict the jurisdiction of a qadi, and bind him to a certain mad Ahab. In this system, the doctrine of Siyasa authorized the ruler, to issue his code and amend criminal laws in the best interest of the state and community. Such a distinction between Hadd and Tazir is harmful in modern legal systems.

The Qadi judicial system also operated in a different social environment. The qadi was responsible not only for judging the cases but was also authorized to investigate. The procedure of oath and witness was suitable in that social set up, because a qadi could rely on the piety and honesty of the litigants and the witnesses. Later when the qadis faced difficulties they introduced the institution of Tazkiyyat al-shuhud (investigation and examination of the witnesses). Eyewitness was the basic principle of witness as the term Shahid literally indicates, but since it was hard to obtain, the conditions for witnesses focused more on piety and reliability, rather than on eyewitness. Methods of proof often were reduced to confession. Other forms of evidence such as Qiyafa, firasa and qarina were used for the satisfaction of the court but were considered as circumstantial evidence. Even written documents were not easily accepted. Under these circumstances pre-Islamic procedures like Qasama, or compurgation, had to be employed.

These are only a few examples to show the difficulties of the judicial system in which the Muslim jurists worked. An appreciation of their

contribution requires that a modern Muslim jurist should be guided by the objectives and goals of the jurists to review their doctrines.

The jurists quite meticulously developed distinctions between Hudud and Ta'zir, Hudud and Qisas, and Hudud and Siyasa to distinguish the jurisdiction of the Qadi and the state and between individual and collective rights with reference to compensation and retribution. The following three points of emphasis in their discussion of punishments (Hudud) illustrates our point.

- The nature of punishment: The jurists developed a classification of offences/crimes on the criterion of punishment. If the punishment was fixed (defined), the offence would be classified as a crime of Hudud. If the punishment is not given, fixed or defined, the offence would not be a crime of Hudud and it was left to the Qadi (judge) to decide the nature of its criminality and to award a punishment called Ta'zir.
- 2. The nature of offence: Some jurists developed a further distinction in the crimes of Hudud as defined above. Is it an offence against God (violation of the rights/laws of God) or of the collective rights of men. In case it is a right of man, the right to accuse, punish or to forgive would belong to the aggrieved person. These jurists who differentiated offences on this basis, called crimes against God as Hudud and against persons as Qisas. Those who disregarded this difference classified all crimes, against person or God, where punishment was fixed as Hudud.
- 3. The source: During the formulative period of Fiqh, local practice was recognized as a source for the definition and classification of

crime and also for the punishment. Therefore, Hadd was not defined with reference to sources. For instance, Rajm (stoning to death) as a punishment for Zina practiced by the Prophet was not mentioned in the Qur'an. It was a pre-Islamic Jewish law. Similarly, the punishment of eighty lashes for the offence of drinking was prescribed by the companions of the Prophet. These historical facts are particularly noted in most of the Figh texts.

The question of sources was problematized probably in the third century of Islam. That is the period when the issue of abrogation in the Qur'an became a subject of controversy because supporters of Rajm argued that the Qur'anic verse prescribing this punishment was abrogated but its legal validity continued; the text was abrogated (mansukh al-tilawa), not the law (hukm). These repots are quite ambiguous. Most probably, the debate was about the validity of the laws revealed before the Qur'an. Since according to the reports, when the Prophet applied the sentence of Rajm to the Jewish couple who had committed zina, he explained that it was the law in Torah. The question, then, arose if the ancient laws revealed before the Quran were still legally valid. One of the arguments would have been that such laws have been abrogated by the Qur'an; the texts of these laws, not the laws, have been abrogated. These debates might have produced a compromise definition of Hadd referring to sources; namely defining it as a punishment prescribed in the Qur'an and/ or Sunnah. This definition, however, excluded the punishment for drinking, which as the Fiqh texts explain, was established by the consensus of the companions of the Prophet.

The classical definitions do not refer to the sources. The Hanafi definitions underscore two elements of the concept of Hadd: that the punishment is fixed (specifically prescribed) and that this particular punishment belongs to the rights of God. The jurists of other schools focus on only one component: its fixed nature. Reference to the sources appeared later.

The closest description of Hadd to the definition in the Ordinance that we have been able to find is in Ibn Abidin's (d. 1258/1842) *Radd al-Muhtar* (Beirut: Dar al-Ma'rifah, 2000, Vol. 6, p. 5). Ibn Abidin at this point refers to Muhammad b. Husam al-Din al-Quhistani (d. 962/1555), the author of *Jami' al-rumuz*), who explained that "fixed" meant "the quantity specified by the Book or the Sunna or by the Consensus". Clearly, this definition is not classical. Also, it is given to explain the term fixed. It cannot serve as a legal definition.

One of the unfortunate consequences of this definition is a shift of focus in the concept of Hadd and the classification of Hudud crimes. Hudud came to be believed as revealed and divine and the great contribution of the Muslim jurists in this development was completely ignored. It is in this context some questions such as the following remain unanswered.

1. What is the criterion of the jurists for recognizing some violations of the injunctions of the Qur'an as crimes and not others? For instance, bribery is forbidden in the Qur'an and it is known that the Prophet and the Companions punished the offenders, but bribery is not a crime of Hadd according to the jurists. Simply, because the jurists focus on the fact whether the punishment is fixed. If it is not, it is an offence but its

- punishment is left to the discretion of the Qadi. In modern legal system, its criminality and punishment is decided by state legislation.
- 2. How has the criteria for differentiating the offences as Hudud, Qisas and Ta'zir been developed? The jurists developed these distinctions for a better dispensation of justice in their days. Distinction between rights of God (state/society) and rights of men (citizens) ensured peaceful settlement of cases of murder and injury.
- 3. Why was ta'zir left to the discretion of the Qadi? Was this discretion available to the state? Discretion of the Qadi was necessary in the absence of legal codes. The notion of Siyasa allowed similar discretion to the ruler (state).

A general view of the Islamic law on Hudud crimes can be summarized as follows.

2. IDENTIFICATION OF HUDUD CRIMES AND PUNISHEMENTS

1. HUDUD CRIMES

Hudud crimes are defined generally as crimes against God. They may be described as crimes against community or state. The following are regarded, generally, as Hudud crimes.

- 1. Zina, illicit sexual relations
- 2. Qadhf, wrongly accusing a person for illicit sexual relations
- 3. Sariga, theft
- 4. Haraba, robbery
- 5. Baghy, rebellion
- 6. Shurb, drinking intoxicants

HUDUD PUNISHMENTS

- 1. Stoning to death,
- 2. Amputation of hands,
- 3. Exile,
- 4. Flogging /whipping
- 5. Crucification

Qisas Crime

Some jurists distinguish Qisas crimes from the Hudud crimes as crimes against individuals; they may be described as private rights. They are the following.

- 1. Qatl (Murder and its various types),
- 2. Jarh (Injury)

Punishments/Retribution for Qisas Crimes

- 1. Qisas (Retaliation),
- 2. Diyat (Blood money, compensation),
- 3. Afw (remission),
- 4. Sulh (settlement)

Ta`zir:

All offences/crimes other than Hudud and Qisas are classified as Ta'zir. Punishment for these offences and crimes are discretionary. They include fine, imprisonment, etc. Discretion belongs to the judge and the state

Siyasa:

Siyasa is a general term used for the prerogatives of the state to punish crimes against the state. Siyasa came to be known as punishments in addition to Hudud, Qisas and Ta'zir.

3. IDENTIFICATION AND CLASSIFICATION OF HUDUD CRIMES IN FIGH TEXTS

The following brief survey illustrates how the number of crimes included under Hudud varies between eighth and twentieth centuries. It is also important to note that all the crimes which are now known as Hudud crimes were not always classified as Hudud; some of them were included under other categories.

Malik b. Anas (d. 795), al-Muwatta, identifies three offences under Hudud.

- 1. *Kitab (book) on Hudud* mentions only the following: Zina, Qadhf, Sariqa.
- 2. Hadd for drinking is mentioned in *Kitab of Ashriba* (Drinks).
- 3. Murder and Injuries are dealt with in Kitab of Diyat.

Muhammad b. Idris al-Shafi'i (d. 820), *Al-Umm*, identifies five offences under Hudud, omitting one from Malik's list and adding three more offences to this list.

- 1. *Kitab al-Hudud* includes the following crimes: Theft, zina, drinking of khamr, robbery, and apostasy.
- 2. Kitab al-Jarah deals with murder and injuries.

Abu Bakr Muhammad al-Sarakhsi (d. 1097), *Al-Mabsut* identifies two offences under Hudud, omitting one from Malik's list, adopting only one from Shafi'i's list and classifying the rest under other subjects.

1. Kitab al-Hudud mentions only zina and qadhf crimes.

- 2. Theft and robbery are included in *Kitab al-Sariga*.
- 3. Kitab al-Shurb forms a separate chapter.
- 4. Apostasy is discussed in *Kitab al-siyar*.
- 5. Kitab al-Diyat includes murder and injuries.
- 6. Kitab al-Janayat deals with ma'aqil.

Burhanuddin Marghinani (d. 1196), *Al-Hidaya* identifies three offences under Hudud, adding one to Sarakhsi's list, and classifying the rest, like Sarakhsi under different subjects.

- Kitab al-Hudud includes the following: Zina (Adultery/ Fornication), Shurb (Consumption of liquor), and Qadhf (slander)
- 2. Theft and robbery are included in Kitab al-Sariqa.
- Kitab al- Siyar includes the following: Irtidad (Apostasy), and Baghy (Rebellion).
- 4. Separate chapters on Janayat and Diyat deal with murder and injury.

Ibn Rushd (d. 1198), Bidayat al-Mujtahid does not have a separate chapter on Hudud.

Kitab al-Janayat classifies crimes into the following four categories:

- a. Offences against human body include murder and injuries.
- b. Offence against sex deals with zina.
- c. Offences against property include theft and robbery.
- d. Offences against honor include qadhf and shurb (drinking).

Wahba al-Zuhayli, *Al-Fiqh al-Islami wa adillatuhu* identifies 8 offences under Hudud, adding four more to this list.

1. Kitab al-Hudud includes the following crimes: (1) Zina, (2) Qadhf, (3) Sariqa, (4) Haraba (robbery and murder), (5) Qat al-tariq (highway

- robbery), (6) Bughat (rebellion), (7) Muskir (drinking), and (8) radda (apostasy).
- 2. Qatl (Murder), Jarh (Injuries) are discussed under Kitab al-Janayat.
- Zuhayli has also added discussions on the following crimes in the list of Hudud: sodomy, sex with a corpse, sex with a beast, and use of drugs.
- 4. In Janayat, he has included abortion, and cruelty to animals.

4. CRIMES IDENTIFIED AS HUDUD UNDER HUDOOD ORDINANCE 1979

- 1. Theft
- 2. Robbery
- 3. Fornication
- 4. Adultery
- 5. Rape
- 6. Homosexuality
- 7. Kidnapping/Abducting or Enticing Women
- 8. Prostitution
- 9. False allegation of fornication, adultery or rape
- 10. Li'an: A husband's allegation of adultery against his wife
- 11. Offence of drinking (consumption of alcohol)

OTHER THAN HUDUD CRIMES WITH CAPITAL PUNISHMENT

- Derogatory Remarks Against the Prophet of Islam, His Family and Quran,
- 2. Qatl-i Amd
- 3. Qatl Shibh Amd
- 4. Qatl-i Khata
- 5. Qatl bi sabab

- 6. Attempt to Qatl-i-Amd
- 7. Attempt to commit suicide
- 8. Thugry
- 9. Exposure of child under twelve years by parents or person having care of it
- 10. Concealment of birth by disposal of dead body
- 11. Hurt
- 12. Jurh
- 13. Isqat-i hamal
- 14. Isqat-i janin

HUDUD AS STATE LAW IN ISLAMIC COUNTRIES

An analytical history of the law in practice, namely as practiced by the state is yet to be written. The voluminous work on Islamic law by the Muslim jurists was certainly a source for the Qadis, and also for the rulers. It is therefore generally presumed that Hudud laws as defined in the Fiqh books also served as the criminal law of the state. The evidence of the laws issued by the rulers suggests that rulers often used their discretion and prerogatives to issue farmans about the crimes and prescribed punishments that often differed from those prescribed in Fiqh. During the colonial period, the European penal laws largely replaced Hudud laws, sometimes, totally. In a very limited sense the penal codes introduced by the colonial powers took into consideration the view of the Muslim jurists. After the end of colonial rule, independent Muslim states introduced reforms in their legal systems. Generally, however, they retain the penal codes introduced by the European colonial powers. Only a few countries chose to re-Islamize the criminal laws.

5. ENFORCEMENT OF HUDUD IN CONTEMPORARY MUSLIM COUNTRIES

TABLE 1

MUSLIM COUNTRIES WHERE HUDUD /QISAS LAWS ARE IN FORCE

- 1. Saudi Arabia
- 2. Yemen
- 3. Libya
- 4. Pakistan
- 5. Iran
- 6. Sudan
- 7. Malaysia (proposed IN some states)
- 8. Nigeria (enforced in most Northern states)
- 9. Somalia

TABLE 2

MUSLIM COUNTRIES WHERE EUROPEAN CODES ARE SOURCE OF CRIMINAL LAWS

- 1) Turkey
- 2) Egypt
- 3) Syria
- 4) Jordan
- 5) Oman
- 6) Gulf States
- 7) Algeria
- 8) Tunisia

6. SUMMARY

The definition of Hudud in the Hudood Ordinance is not found in standard fiqh texts. The technical definition of Hadd that the jurists developed is not found in the Qur'an and Hadith; it is developed by the jurists for technical reasons. Credit must be given to the Muslim jurists who developed technical

definitions, identified the crimes, and refined the distinctions between Hudud and other crimes. The diversity in their views reflects their utmost efforts toward systematizing Islamic criminal laws.

The Schools of law differ in their identification of Hudud crimes. According to Hanafi School, Hudud refer to only those crimes which belong to the rights of God and whose punishment is fixed. Ibn Humam defines Hadd as fixed punishment as a right of God. The jurists of other schools use this term in more general sense for all the punishments. Regardless whether they belong to rights of God or to rights of men. Hadd is a punishment fixed by Shari'a. Reference to sources is not part of the definition in the classical period. It is in the later period that phrase are added to explain the fixed nature of Hadd punishment. Hanafi sources for instance, mention the Qur'an, Sunna and Ijma' as the sources that have specified the punishment of Hadd. These explanations do not support the definition of Hadd given in the Ordinance.

Hudud/Ta`zir

The Fiqh texts distinguish different punishments in three groups. First, as mentioned above, there is a distinction between Hudud and Qisas. Qisas applies to homicide, injury or to punishments applied to crimes against the life of person/s. Hudud are punishments for other crimes mentioned in the Qur'an and Sunna. The jurists have identified the crimes to which these punishments apply variably. The distinction between crimes and punishments of Qisas and Hudud is mainly that the former are private, i.e. rights of men and the latter are state, or the rights of God.

⁵¹ Sharh Fath al-Qadir, Vol. 5, p.3.

⁵² Wahba Zuhayli, Al-Fiqh wa adillatuhu, vol.6, p. 12.

All other crimes for which punishment is not fixed in the Qur'an and Sunna are called Ta'zir. Fixing of punishment, according to the jurists, for those crimes is lefts to the discretion of the Qadi and the state. Naturally, no punishment higher than Hudud and Qisas can be prescribed for other offences.

Hudood Ordinance

The Hudood Ordinance defines the term as follows: A punishment ordained in the Qur'an or Sunna". The definition in the Ordinance differs from the above definitions, first it does not distinguish between Hudud and Ta'zir, it includes them both. Second, Qisas is not included in the Hudood Ordinance, it was introduced separately. Apparently, Hudood Ordinance follows Hanafi distinction.

⁵³ Majmu'a Ta'zirat Pakistan, p. 525.



THE RECOMMENDATIONS OF THE COUNCIL OF ISLAMIC IDEOLOGY ON HUDUD LAWS

Council's Legal Committee, constituted in the 156th meeting on 16-18 March, 2005, headed by Justice (R) Haziqul Khayri began deliberation on Hudood Ordinance, 1979 as part of the process of review of existing laws. Later when Justice Khayri was appointed as Chief Justice, Federal Shariat Court, Allama Javed Ahmad Ghamidi headed the Legal Committee.

The Legal Committee took the various views into consideration and finalized its deliberations in its meeting on 12-13 May, 2006, which was endorsed by the Council in its 161 meeting on 27-28 June, 2006.

COMPREHENSIVE REVIEW OF HUDOOD ORDINANCE, 1979

The Council recommended "Hudood Ordinances have generated a number of constitutional, legal and religious issues. National Assembly must review these laws once again and if considered necessary, these laws must be made part of Pakistan Penal Code. If state contemplates legislation on these matters, the Council would be pleased to review them and offer recommendations."

"The Council recommends further that laws of justice and fairness demand that women should not be kept in jails. Those women who are in prison on account of Hudood law must be released on bale. (*Annual Report*, 2005-2006, p.275).

The Council decided to continue deliberations on the penalties prescribed in the Hudood Ordinance, 1979, Pakistan Penal Code and Code of Criminal Procedure in the light of Shari'a and Islamic Jurisprudence. Not going into details, the Legal Committee explored the basic issues in the penal law, and proposed some basic principles to amend these laws.

Legal Committee's report was thoroughly discussed in three meetings of the Council in the 162nd meeting (20-21 September, 2006), 163rd meeting (20-21 December, 2006), and 164th meeting (30-31 March, 2007).

Recommendations were finalized in the 164th meeting on 27th June, 2007, which was attended by the following members.

- 1. Prof. Said Bibi
- 2. Justice (R) Munir Ahmad Mughal
- Justice Rashid Ahmad Jalandhari
- 4. Pir Syed Daman Ali Shah
- Syed Zakir Hussain Shah Sialvi
- 6. Dr. Manzoor Ahmad
- 7. Allama Javed Ahmad Ghamidi
- 8. Dr. Muhammad Khalid Masud (Chairman)

Allama Aqeel Ahmad Turabi could not attend the meeting due to his illness.

Most of the recommendations were adopted by majority of opinions, others by unanimous view, as indicated in case of each recommendation.

1. Penalty of Zina and Theft

The maximum penalty for the offence of *Zina* is 100 lashes and the maximum penalty for theft is imputation of hand. These penalties are awarded when the offender does not deserve any concession. If the court considers that offender desires concession in view his personal and social conditions, it can award lesser penalty [majority view].

2. Distinction Between Zina Bil-Raza and Zina Bil-Jabr (Rape)

Zina Bil-Raza and Zina Bil-Jabr are two separate and distinct crimes. If a woman complains of Zina bil-Jabr committed against her, four evidences would not be required from her. In this case she is a complainant, and the State is obliged to investigate about the crime committed against her, arrest the culprit and to penalize him if the crime is proved. [Unanimously adopted]

3. Tazir (Lesser) Punishment in case of Incomplete Evidence

In case of Zina bil-Raza, if four witnesses are not produced the accused is acquitted honourably. The acquitted cannot be punished under any other law for the same offence in which he is acquitted. The Qur'an teaches adopting the procedure of advice and education in this case. The penalty may only be awarded where at least four witnesses appear in the court declaring on oath that this offence was actually committed by the accused. However, in case of "Li'an" (compurgation) if the accused refuses to take oath or confesses the commission of the crime or his commission becomes evident under specific circumstances, then he is liable for the penalty. [Unanimous view]

4. Haraba (waging war against Allah and the Prophet) and Fasaḍ fi'l-Arz (mischief and disorder in the land).

Haraba and Fasad Fi'l-Arz should not be restricted only to robbery. If murder turns into terrorism and Zina turns into Zina Bil-Jabr, these crimes should also be treated as Haraba. Those persons who commit these crimes should be awarded penalties as are available in Sura-Maida for Haraba, and Fasad-Fi'l-Arz keeping in view the conditions of the offender. [Majority view]

5. Death Penalty

Death penalty should be given only in case of murder and Fasaq-Fi'l-Arz. The Qur'an specifically provides death sentence only in these crimes and does not allow death sentence in other crimes. [Majority view]

6. The Consent of Wali in Qisas

The consent of the heirs in case of *Qisas* has no legal validity. The *Qisas* may be enforced even if the *Wali* has pardoned the murderer. However, if a concession to the murderer is under consideration, consent of the *Wali* is essential. No concession may allowed without the consent of the *Wali*. [*Majority view*]

7. *Diyat* (compensation) and *Aqila* (clan committed to pay the compensation).

In *Qatal-e-Khata* (murder by mistake) and *Qatal-e-Amad* (intentional murder), payment of *Diyat* is obligatory according to Islamic law. However, the Qur'an advises to abide by the prevailing custom in a given community regarding the amount and other specifications.

According to this Qur'anic rule, every community is obliged to follow its customs. It is also evident that laws based on customs change keeping in view the changing condition of the society. Debates on *Aqila* is now irrelevant. Muslim social system can legislate in this matter in accordance to their social conditions and interests. [*Majority view*]

8. Penalties for other than the Prescribed Offences

These are the only five crimes where the Sharia has determined the penalty i.e., *Zina*, *Qazf*, *Qatal wa jarahat*, *Muharaba and Sariqa*. All other crimes relate to the social system of the Muslim communities. They can prescribe suitable penalty for them. [*Majority view*)

9. Male, Female, Muslim and non-Muslim Witnesses

Regarding witnesses in crimes, there is no discrimination on the basis of gender and faith. Women, Muslim and non-Muslim all can be valid witnesses. Except in case of allegation of *Zina;* Islam has not prescribed specific number of witnesses in any crime. Therefore, the same methods proof are prescribed in Hudood crimes as they are required the present penal laws or in future. Muslim social system is not restricted in this respect. [*Majority view*]

10. Non-Muslim Judge

The requirement for a Judge to be Muslim is not obligatory after the laws have been duly codified. A non-Muslim judge can adjudicate on any matter after he has acquired full and thorough understanding of laws. [Unanimously adopted]



STATISTICS: DATA ABOUT HUDUD CASES

Note: The information in this chapter related to various districts of Punjab was obtained through Session Judges. Information regarding Islamabad Capital Territory was obtained through Session Judges of Islamabad.

TABLE 1: CASES REGISTERED UNDER HUDOOD ORDINANCE, 1979

2002 – 2004 (Summary)

	OFFENCE	2002	2003	2004
A	THE OFFENCES OF ZINA (ENFORCEMENT OF HUDOOD ORDINANCE 1979)			
	i. Zina	177	155	140
	ii. Kidnapping / Abduction	486	476	485
В	THE OFFENCES AGAINST PROPERTY (ENFORCEMENT OF HUDOOD ORDINANCE 1979)			
	i. Theft	1132	1136	1074
	ii. Harrabah	314	242	288
	iii. Rassagiri / Pathadaries	-		-
	iv. Other Offences	593	582	531
С	THE PROHIBITION (ENFORCEMENT OF HUDOOD ORDINANCE 1979)	26364	23033	25309
D	THE OFFENCES AGAINST QAZF (ENFORCEMENT OF HUDOOD ORDINANCE 1979)		-	-
	TOTAL:-	29066	25624	27827

Table 2: TOTAL HUDOOD LAWS CASES REGISTEREDDURING 2001

Offence		Cases pending in court at the beginning	Case registe red during the	Cases sent to the court during the year	ye Convict	during the ear Acquitt	Cases pending in the court at the end
		of the year	year		ed	ed	of the year
Offences of Zina	Zina	3291	2073	1710	356	1123	3522
(Enforcement of Hudood Ordinance 1979)	Kidnapping/Abd uction	5839	5375	4183	701	2157	7164
1979)	Other offences	1555	1393	1052	219	679	1709
Offences against	Theft	5069	5415	4442	979	2211	6321
Property (Enforcement of	Harrabah	2389	3374	2788	184	558	4435
(Enforcement of Hudood Ordinance 1979)	Rassagiri/Pathard ari	746	759	730	70	431	975
1777)	Other offences	1884	1987	1795	138	39	3202
The Prohibition (Enfo Hudood Ordinance 19		44559	55546	58048	44865	5761	51981
The Offences against (Enforcement of Hudo 1979)	-	13	21	17	6	7	17

Table 3: TOTAL HUDOOD LAWS CASES REGISTEREDDURING 2002

	Offence	Cases pending in court at the beginning of the year	Case registered during the year	Cases sent to the court during the year	Decided du	ring the year	Cases pending in the court at the end of the year
Offences of Zina	Zina	3522	817	1827	Convicted 388	Acquitted 1320	3641
(Enforcement of Hudood	Kidnapping/Abduction	7164	5350	3809	585	2231	8157
Ordinance 1979)	Other offences	1709	1470	1132	198	772	1871
Offences against Property	Theft	6321	5537	4115	1307	1491	7638
(Enforcement of Hudood	Harrabah	4435	3698	3072	156	589	6762
Ordinance 1979)	Rassagiri/Pathardari	975	732	700	69	435	1171
Ordinance 197)	Other offences Enforcement of Hudood	3202 51981	2091 56654	1850 56406	268 43989	545 5359	4239 59130
The Offences agai Hudood Ordinanc	inst Qazaf (Enforcement of e 1979)	17	26	16	5	11	17

Table 4. TOTAL HUDOOD LAWS CASES REGISTERED DURING 2003

	Offence	Cases pending in court at the beginning of the year	Case registered during the year	Cases sent to the court during the year	Decided d	uring the year	Cases pending in the court at the end of
					Convicted	Acquitted	the year
Offences of Zina (Enforcement of	Zina	3641	2404	1810	316	1318	3817
Hudood Ordinance 1979)	Kidnapping/Abduction	8157	6724	4513	554	3068	9048
	Other offences	1871	1666	1244	173	787	2155
Offences against Property	Theft	7638	5607	4737	1091	2158	9126
(Enforcement of Hudood Ordinance 1979)	Harrabah	6762	4032	3297	1024	1528	7507
	Rassagiri/Pathardari	1171	356	335	76	354	1076
	Other offences	4239	2087	1835	303	455	5316
The Prohibition (F Ordinance 197)	Enforcement of Hudood	59130	53157	52639	40603	6793	64373
	inst Qazaf (Enforcement of e 1979)	17	30	25	6	17	19

Table 5. TOTAL HUDOOD LAWS CASES REGISTEREDDURING 2004

	Offence	Cases pending in court at the beginning of	Case registered during the year	Cases sent to the court during the year	Decided du	Cases pending in the court at the end of	
		the year			Convicted	Acquitted	the year
Offences of Zina (Enforcement of	Zina	3817	2341	1756	345	1093	4135
Hudood Ordinance 1979)	Kidnapping/Abduction	9048	7381	5006	715	2868	10471
Offences against	Other offences Theft	2155 9126	2098 5513	1335 4039	169 1122	804 1607	2517 10436
Property (Enforcement of Hudood Ordinance	Harrabah	7507	4066	3421	245	798	9885
1979)	Rassagiri/Pathardari	1076	439	424	58	273	1169
The Prohibition (En:	Other offences forcement of Hudood	5316 64373	1902 53651	1653 53265	258 33593	549 5212	6162 78833
,	st Qazaf (Enforcement of 1979)	19	29	27	6	8	32

Table 6. TOTAL HUDOOD LAWS CASES REGISTERED DURING 2005

		Cases pending in court at the	Case registered during the	Cases sent to the court during the	Decided du	Cases pending in the court at	
	Offence	beginning of the year	year	year	Convicted	Acquitted	the end of the year
Offences of Zina (Enforcement of	Zina	4135	1313	812	127	533	4287
Hudood Ordinance 1979)	Kidnapping/Abduction	10471	4336	2305	174	947	11655
,	Other offences	2517	1167	626	86	366	2691
Offences against Property	Theft	10436	4110	2704	523	634	11983
(Enforcement of Hudood	Harrabah	9885	2961	2508	47	418	11928
Ordinance 1979)	Rassagiri/Pathardari	1169	323	210	13	96	1270
	Other offences	6162	1214	1109	30	35	7206
The Prohibition (En	nforcement of Hudood	78833	32620	30621	17776	2875	88803
The Offences agair Hudood Ordinance	nst Qazaf (Enforcement of 1979)	32	21	11	0	0	43

Table 7: CONSOLIDATED STATEMENT SHOWING THE DETAILED DATA OF HUDOOD CASES BEFORE THE DISTRICT AND SUBORDINATE COURTS IN SINDH FOR THE PERIOD

FROM 01-01-2000 TO 31-07-2005

	2002 2003																				
		9		_			Disp	posal		_		9		_			Dis	posal		=	
Sr. No.	Categories	Last Balance	Institution	Received by Tr.	Total for Disposal	Acquittal	Conviction	Dormant file	Others	Transfer Out	Balance	Last Balance	Institution	Received by Tr.	Total for Disposal	Acquittal	Conviction	Dormant File	Others	Transfer Out	Balance
Sess	sions Trail																				
1	Offence of Zina (Enforcement of Hudood) Ordinance 1979	1574	561	369	2505	538	63	62	73	236	1555	1555	558	483	2542	513	53	21	28	308	1668
2	Offence against Property (Enforcement of Hudood) Ordinance	2373	1078	700	4151	938	92	86	115	529	2391	2391	1138	685	4214	835	59	39	62	666	2553
3	Prohibition (Enforcement of Hadd) Order 1979	341	118	136	595	120	36	8	0	62	369	369	112	119	600	153	20	4	1	74	377
4	Offence Qazaf (Enforcement of Hadd) Order 1979	137	1	52	191	41	2	7	0	6	135	135	22	66	223	56	2	3	1	22	139
	Sub Total:-	4222	1758	1194	7174	1583	193	158	188	827	4247	4247	1790	1263	7246	1469	133	61	91	1033	4537
	Magistrate Trail																				
5	Offence Against property (Enforcement of Hudood) Ordinance 1979	1265	613	68	1887	427	187	28	9	347	948	948	742	46	1735	389	146	32	64	152	952
6	Prohibition (Enforcement of Hudood) Order 1979	3781	2866	410	7057	1476	1341	226	160	683	3170	3170	3237	356	6762	1430	1121	87	174	770	3163
	Sub Total:-	5109	3459	504	9014	1923	1522	252	169	1014	4192	4192	3965	446	8602	1847	1255	120	238	929	4196
	GRAND TOTAL:-	9087	5170	1635	15833	3447	1709	391	355	1778	8234	8234	5676	1638	15494	3225	1373	173	325	1909	8550

2004 2005

				Ŀ			Disp	osal						2			Disp	osal			
Sr. No.	Categories	Last Balance	Institution	Received by Tr.	Total for Disposal	Acquittal	Conviction	Dormant file	Others	Transfer Out	Balance	Last Balance	Institution	Received by Tr.	Total for Disposal	Acquittal	Conviction	Dormant File	Others	Transfer Out	Balance
	Sessions Trail																				
1	Offence of Zina (Enforcement of Hudood) Ordinance 1979	1668	573	397	2632	670	53	35	36	284	1605	1605	262	283	2150	297	38	10	18	286	1501
2	Offence against Property (Enforcement of Hudood) Ordinance	2553	963	702	4215	898	218	62	70	523	2504	2504	588	746	3580	555	39	42	20	528	2633
	1979 Prohibition																				
3	(Enforcement of Hadd) Order 1979	377	124	50	557	151	20	5	20	68	293	293	34	52	379	102	21	4	1	30	221
4	Offence Qazaf (Enforcement of Hadd) Order 1979	139	20	49	208	72	0	3	1	3	129	129	4	32	163	31	1	5	0	0	128
	Sub Total:-	4537	1652	1137	7323	1685	291	99	125	877	4537	4537	881	1079	6057	941	98	54	39	844	4320
	Magistrate Trail																				
5	Offence Against property (Enforcement of Hudood) Ordinance 1979	1155	1109	74	2337	633	235	60	35	173	1183	1183	628	91	1901	313	101	30	42	66	1350
6	Prohibition (Enforcement of Hudood) Order 1979	2960	2896	275	6131	1111	935	125	122	697	3159	3159	1559	100	4617	747	481	79	104	189	3195
	Sub Total:-	4196	3987	393	8575	1782	1153	186	158	862	4433	4433	2164	218	6614	1074	580	114	146	253	4625
	GRAND TOTAL:-	8550	5561	1484	15592	3375	1426	279	282	1697	8629	8629	3012	1270	12451	1967	674	163	185	1095	8783

TABLE 8: CONSOLIDATED STATISTICS OF HUDOOD CASES (PUNJAB AND ISLAMABAD) 2002 TO 2005*

(SUMMARY)

Previous Pendency	5489
Cases Instituted	23775
Total	31882
Acquittals	4894
Convictions	286
Pending	6656

^{* 31} August 2005

Table 9: DISTRICT WISE DATA OF HUDOOD CASES 2002-2005

						Disposed Off		Pending	
Year	District	Previous Pendency	Cases Instituted	Total	Acquittal	Conviction	Disposed (Total)		
2002	Attock		92	92	61	14	75	17	
2003	Attock		61	61	39	9	48	13	
2004	Attock		75	75	51	4	55	20	
2005	Attock		42	42	21	0	21	21	
2002	Bahawalnagar		248	248			221	37	
2003	Bahawalnagar		209	209			164	45	
2004	Bahawalnagar		388	388			359	29	
2005	Bahawalnagar		199	199			225		
2002	Bahawalpur		291	291					
2003	Bahawalpur		318	318					
2004	Bahawalpur		347	347					
2005	Bahawalpur		151	151					
2002	Bhakkar	77	109	186			116	70	

2003	Bhakkar	70	92	162	106	56
2004	Bhakkar	56	118	174	138	36
2005	Bhakkar	36	88	124	95	29
2002	D.G. Khan		79	79	131	
2003	D.G. Khan		183	183	117	66
2004	D.G. Khan		138	138	140	
2005	D.G. Khan		118	118	117	1
2002	Gujranwala		246	246		
2003	Gujranwala		326	326		
2004	Gujranwala		332	332		
2005	Gujranwala		217	217		
2002	Jhelum	12	88	100	80	20
2003	Jhelum	20	95	115	91	24
2004	Jhelum	24	57	81	69	12
2005	Jhelum	12	31	43	41	2
2002	Lahore	674	1174	1848	414	634
2003	Lahore	634	1337	1971	585	692
2004	Lahore	692	1321	2013	435	808

2005	Lahore		1292	1292	457	
2002	Multan		246	246		
2003	Multan		308	308		
2004	Multan		212	212		
2005	Multan		211	211		
2002	Muzaffargarh	200	205	405	151	216
2003	Muzaffargarh	216	745	961	706	255
2004	Muzaffargarh	255	530	785	566	219
2005	Muzaffargarh	219	551	770	264	215
2002	Mandi Bahauddin		89	89	53	36
2003	Mandi Bahauddin		76	76	61	15
2004	Mandi Bahauddin		241	241	138	103
2005	Mandi Bahauddin		121	121	105	16
2002	Norowal	61	109	170	79	56
2003	Norowal	45	80	125	54	61
2004	Norowal	55	106	161	82	65
2005	Norowal	59	68	127	62	63

2002-5	Chakwal		241	241	160	9		
2002-5	Faisalabad	461	1475	1936			1465	471
2002	Gujrat		28	28			26	2
2003	Gujrat		17	17			13	4
2004	Gujrat		31	31			28	3
2005	Gujrat		17	17			5	12
2002-5	Hafizabad	36	370	406			373	
2002-5	Islamabad		252	252	100	11		
2002-5	Jhang		681	681				
2002	Kasur	4	282	286			15	6
2003	Kasur	6	230	236			34	10
2004	Kasur	10	200	210			21	28
2005	Kasur	28	186	214			22	57
2002-5	Khushab		636	636	226	151		259
2002-5	Layyah	4	367	371	258	19		
2002	Lohdran		26	26				
2003	Lohdran		40	40				
2004	Lohdran		41	41				

2005	Lohdran		8	8			
2002	Pakpattan		114	114			
2003	Pakpattan		267	267			
2004	Pakpattan		183	183			
2005	Pakpattan		163	163			
2002	Rajanpur		89	89	50	8	
2003	Rajanpur		94	94	66	5	
2004	Rajanpur		147	147	69	2	
2005	Rajanpur	82	59	141	10		
2002-5	Rawalpindi			670			
2002	Sahiwal	88	207	295			
2003	Sahiwal	86	214	300			
2004	Sahiwal	77	233	310			
2005	Sahiwal	59	155	214			
2002	Sargodha			262			
2003	Sargodha			262			
2004	Sargodha			283			
2005	Sargodha			231			

2002	Sheikhupura	113	497	610	397			213
2003	Sheikhupura	213	285	498	361			137
2004	Sheikhupura	137	717	854	632			222
2005	Sheikhupura	222	300	522	391			131
2002	Sialkot		243	243	211			301
2003	Sialkot		186	186	306			181
2004	Sialkot		189	189	252			118
2005	Sialkot		113	113	130			101
2002	Toba Tek Singh	109	117	226	102			121
2003	Toba Tek Singh	121	105	226	121			105
2004	Toba Tek Singh	105	140	245	134			111
2005	Toba Tek Singh	111	70	181	70			111
2002	Vehari			193	126	11		
2003	Vehari			281	223	7		
2004	Vehari			246	198	17		
2005	Vehari			190	129	19		
2002	Okara		290	290			218	
2003	Okara		382	382			214	

2004	Okara		459	459			417	
2005	Okara		302	302			282	
2002	Rahim Yar Khan		68	68				
2003	Rahim Yar Khan		200	200				
2004	Rahim Yar Khan		203	203				
2005	Rahim Yar Khan		103	103				
2002	Mianwali		74	74				
2003	Mianwali		88	88				
2004	Mianwali		70	70				
2005	Mianwali		30	30				
2002	Kanewal		181	181				
2003	Kanewal		256	256				
2004	Kanewal		278	278				
2005	Kanewal		178	178				
Total		5489	23775	31882	4894	286		6656

Table 10: DATA OF HUDOOD CASES 2002-2005

(Year-wise Data)

2002

Year	District	Previous	Cases Instituted	Total		Disposed Off		Pending
70	District	Pendency	Cuses Instituted	10001	Acquittal	Conviction	Disposed (Total)	20 63- 210 30
2002	Bhakkar	77	109	186			116	7
2002	D.G. Khan		79	79			131	
2002	Gujranwala		246	246				
2002	Jhelum	12	88	100			80	20
2002	Lahore	674	1174	1848			414	63
2002	Multan		246	246				
2002	Muzaffargarh	200	205	405			151	21
2002	Mandi Bahauddin		89	89			53	30
2002	Norowal	61	109	170			79	5
2002	Gujrat		28	28			26	
2002	Kasur	4	282	286			15	
2002	Lohdran		26	26				
2002	Pakpattan		114	114				
2002	Rajanpur		89	89	50	8		

		1338	4561	6354	886	19	1283	1675
2002	Kanewal		181	181				
2002	Mianwali		74	74				
2002	Rahim Yar Khan		68	68				
2002	Okara		290	290			218	
2002	Vehari			193	126	11		
2002	Toba Tek Singh	109	117	226	102			121
2002	Sialkot		243	243	211			301
2002	Sheikhupura	113	497	610	397			213
2002	Sargodha			262				
2002	Sahiwal	88	207	295				

						Disposed Of	f	Pending
Year	District	Previous Pendency	Cases Instituted	Total	Acquittal	Conviction	Disposed (Total)	
2003	Bahawalnagar		209	209			164	45
2003	Bahawalpur		209	318				
2003	Bhakkar	70	92	162			106	56
2003	D.G. Khan		183	183			117	66
2003	Gujranwala		326	326				
2003	Jhelum	20	95	115			91	24
2003	Lahore	634	1337	1971			585	692
2003	Multan		308	308				
2003	Muzaffargarh	216	745	961			706	255
2003	Mandi Bahauddin		76	76			61	15
2003	Norowal	45	80	125			54	61
2003	Gujrat		17	17			13	4
2003	Kasur	6	230	236			34	10
2003	Lohdran		40	40				
2003	Pakpattan		267	267				

		1411	6024	8087	1077	12	2145	1651
2003	Kanewal		256	256				
2003	Mianwali		88	88				
2003	Rahim Yar Khan		200	200				
2003	Okara		382				214	
2003	Vehari			281	223	7		
2003	Toba Tek Singh	121	105	226	121			105
2003	Sialkot		186	186	306			181
2003	Sheikhupura	213	285	498	361			137
2003	Sargodha			262				
2003	Sahiwal	86	214					
2003	Rajanpur		94	94	66	5		

		Previous	Cases			Disposed Off	•	Pending
Year	District	Pendency	Instituted	Total	Acquittal	Conviction	Disposed (Total)	
2004	Bahawalnagar		388	388			359	29
2004	Bahawalpur		347	347				
2004	Bhakkar	56	118	174			138	36
2004	D.G. Khan		138	138			140	
2004	Gujranwala		332	332				
2004	Jhelum	24	57	81			69	12
2004	Lahore	692	1321	2013			435	808
2004	Multan		212	212				
2004	Muzaffargarh	255	530	785			566	219
2004	Mandi Bahauddin		241	241			138	103
2004	Norowal	55	106	161			82	65
2004	Gujrat		31	31			28	3
2004	Kasur	10	200	210			21	28
2004	Lohdran		41	41				
2004	Pakpattan		183	183				

		1411	6681	8621	1285	19	2393	1754
2004	Kanewal		278	278				
2004	Mianwali		70	70				
2004	Rahim Yar Khan		203	203				
2004	Okara		459	459			417	
2004	Vehari			246	198	17		
2004	Toba Tek Singh	105	140	245	134			111
2004	Sialkot		189	189	252			118
2004	Sheikhupura	137	717	854	632			222
2004	Sargodha			283				
2004	Sahiwal	77	233	310				
2004	Rajanpur		147	147	69	2		

						Disposed Off	i	Pending
Year	District	Previous Pendency	Cases Instituted	Total	Acquittal	Conviction	Disposed (Total)	
2005	Bahawalnagar		199	199			225	
2005	Bahawalpur		151	151				
2005	Bhakkar	36	88	124			95	29
2005	D.G. Khan		118	118			117	1
2005	Gujranwala		217	217				
2005	Jhelum	12	31	43			41	2
2005	Lahore		1292	1292			457	
2005	Multan		211	211				
2005	Muzaffargarh	219	551	770			264	215
2005	Mandi Bahauddin		121	121			105	16
2005	Norowal	59	68	127			62	63
2005	Gujrat		17	17			5	12
2005	Kasur	28	186	214			22	57
2005	Lohdran		8	8				
2005	Pakpattan		163	163				

		828	4731	5980	730	19	1675	738
2005	Kanewal		178	178				
2005	Mianwali		30	30				
2005	Rahim Yar Khan		103	103				
2005	Okara		302	302			282	
2005	Vehari			190	129	19		
2005	Toba Tek Singh	111	70	181	70			111
2005	Sialkot		113	113	130			101
2005	Sheikhupura	222	300	522	391			131
2005	Sargodha			231				
2005	Sahiwal	59	155	214				
2005	Rajanpur	82	59	141	10			

Table 11: Miscellaneous Data

1. Appeals in the Federal Shariat Court 1980 – 1987⁵⁴

Filed	3399
Accepted	1254
Partially accepted	701
Dismissed	1174
Remanded	111
Returned	24
Disposed off	18
Judgment Reversed	4
Pending	13

1. Women prisoners in Punjab 1988⁵⁵

Married	534
Have Children	131
No Lawyer	142
Charged under Zina	306
Total	657

Prisoners in Pakistan Jails 2002⁵⁶

Total number of Jails in Pakistan	86
Capacity	36290
Actual number of prisoners	82352

Cases registered under S. 16 Hadd Zina Ordinance, in Rawalpindi and Islamabad⁵⁷

Total cases	222
Cases relating marriages without the permission	
of the marriage guardian	85

<sup>Source: RCIW 1997, p. 67.
Source: RCIW 1997, p. 68
Source: Women Aid Trust Report, p. 32.
Source: Women Aid Trust Report, P. 37.</sup>

Women in Pakistan Jails September 2003 (sample of three jails: Kot Lakhpat Lahore, Central Jail Karachi and Adiala jail Rawalpindi)⁵⁸

Miscellaneous	87
Hudood cases	159
Narcotics	139
Homicide cases	117
Total number	502

Women in NWFP Jails, July 2003⁵⁹

Total	172
Homicide	30
Narcotics	72
Hudud Cases	56
Miscellaneous	14

Source: Women Aid Trust Report. P. 39
 Source: Women Aid Trust Report. P. 39