

**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 injunctions of Islam as set out in the Holy Qur'an and Sunnah;

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

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

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

(2) It extends to the whole of Pakistan.

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

2. Definition : In the Ordinance, unless there is anything repugnant in the subject or context-

(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

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

3. Qazf: Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes 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 hereinafter mentioned, it is not 'qazf' to refer in good faith an accusation of 'zina' against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation :-

(a) a complainant makes an accusation of 'zina' against another person in a Court, but fails to produce four witnesses in support thereof before the Court;

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

(c) 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 sexual intercourse is, subject to the provisions of this Ordinance, said to commit 'qazf' liable to 'hadd'.

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

Explanation 2: If a person makes in respect of another person the imputation that such other person is an illegitimate child, or refuses to 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 :--

- (a) the accused makes before a Court of competent jurisdiction a confession of the commission of the offence;
- (b) the accused commits 'qazf' in the presence of the Court; and
- (c) at least two 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-shahood', 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 sub-section (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 :-

- (a) when a person has committed 'qazf' against any of his descendants;

(b) when the person in respect of whom 'qazf' has been committed and who is a complainant has died during the pendency of the proceedings ; and

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

(a) the husband shall say upon oath before the Court:

"I swear by Allah the Almighty and say I am surely truthful in my accusation of 'zina' against my wife (name of wife)" and, after he has said so four times, he shall say:

"Allah's curse be upon me if I am 'liar' in my accusation of 'zina' against my wife (name of wife)"; and

(b) the wife shall, in reply to the husband's statement made in accordance with clause (a) say upon oath before the 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 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; or

(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.

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), 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-sections (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 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 mutates 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.

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

19. 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.