

The Offence of Qazf (Enforcement Of Hadd) Ordinance, 1979.

Ordinance No. VIII of 1979

February 9th, 1979

An Ordinance to bring in conformity with the Injunctions of Islam the law relating to the offence of qazf.

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

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

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

1. Short title, extent and commencement

- (1) This Ordinance may be called the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979.
- (2) It extends to the whole of Pakistan.
- (3) It shall come into force on the twelfth day of Rabi-ul-Awwal, 1399 Hijri, that is, the tenth day of February, 1979.

2. Definitions

In this Ordinance, unless there is anything repugnant in the subject or context:

- ¹[(a) "adult", "hadd" and "zina" have the same meaning as in the Offence of Zina (Enforcement of Hudood) Ordinance, 1979; and"]¹
- (b) all other terms and expressions not defined in this Ordinance shall have the same meaning as in the Pakistan Penal Code or the Code of Criminal Procedure, 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 hurtful to the feelings of his family or other near relatives.

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

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

Second Exception (Accusation preferred in good faith to authorized person):- Save in the cases hereinafter mentioned, it is not qazf to prefer in good faith an accusation of zina against any person to any of those who have lawful authority over that person with respect to the subject matter of the 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, the complainant has made a false accusation of zina-bil-jabr

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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 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

- (1) Proof of qazf liable to hadd shall be in one of the following forms namely:-
 - (a) the accused makes before a Court of competent jurisdiction a confession of the commission of the offence;
 - (b) the accused commits qazf in the presence of the Court; and
 - (c) at least two 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.

³[(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 Offense of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance 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.]³

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 of 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 provisions of the Code of Criminal Procedure, 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 ⁴[]⁴ 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.

⁵[(2) In a case 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.]⁵

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

17. Application of the Code of Criminal Procedure, 1898.

- (1) Unless otherwise expressly provided in the Ordinance, the provisions of the Code of Criminal Procedure, 1898, hereinafter referred to as the said Code, shall apply mutatis mutandis, in respect of cases under this Ordinance: ¹⁰ [] ¹⁰

¹² [
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.

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¹⁴ [
Provided further that an appeal 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.

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- (2) The provisions of the said Code, relating to the confirmation of the sentence of death shall apply, mutatis mutandis, to the confirmation of a sentence under this Ordinance.
- (3) The provisions of sub-section (3) of section 391 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 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:

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20. 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.

Source:: Manual of Hudood Laws in Pakistan, Kausar Brothers, Law Publishers, Lahore

Notes

¹ Substituted by Protection of Women (Criminal Laws Amendment) Act, 2006 (Act VI of 2006), Section 19 for : :

(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

² The following was omitted by Protection of Women (Criminal Laws Amendment) Act, 2006 (Act VI of 2006), Section 20 : :

4. Two kinds of Qazf.

Qazf may either be qazf liable to hadd or qazf liable to tazir.

³ Inserted by Protection of Women (Criminal Laws Amendment) Act, 2006 (Act VI of 2006), Section 21.

⁴ The following was omitted by Protection of Women (Criminal Laws Amendment) Act, 2006 (Act VI of 2006), Section 22 : "report made to the police".

⁵ Substituted by Protection of Women (Criminal Laws Amendment) Act, 2006 (Act VI of 2006), Section 23 for : :

(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.

⁶ The following was omitted by Protection of Women (Criminal Laws Amendment) Act, 2006 (Act VI of 2006), Section 24 : :

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, 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.

⁷ The following was omitted by Protection of Women (Criminal Laws Amendment) Act, 2006 (Act VI of 2006), Section 25 : :

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

⁸ The following was omitted by Protection of Women (Criminal Laws Amendment) Act, 2006 (Act VI of 2006), Section 24 : :

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 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 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.

⁹ The following was omitted by Protection of Women (Criminal Laws Amendment) Act, 2006 (Act VI of 2006), Section 26 : :

16. Application of certain provisions of Pakistan Penal Code.

(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 VA of the Pakistan Penal Code, 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.

¹⁰ The following was omitted by Protection of Women (Criminal Laws Amendment) Act, 2006 (Act VI of 2006), Section 27(i) : :

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 therefor, be convicted for that offence ¹¹[:] ¹¹

¹¹ Substituted by Offence of Qazf (Enforcement of Hadd) (Amendment) Ordinance, 1980 (Ordinance 21 of 1980), Section 2 for : ".".

¹² Substituted by Protection of Women (Criminal Laws Amendment) Act, 2006 (Act VI of 2006), Section 27(ii) for : "

¹³[
Provided further that an offence punishable under section 7 or 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 30 of the said Code and an appeal from an order of the Court of Session shall lie to the Federal Shariat Court:

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¹³ Inserted by Offence of Qazf (Enforcement of Hadd) (Amendment) Ordinance, 1980 (Ordinance 21 of 1980), Section 2.

¹⁴ Inserted by Offence of Qazf (Enforcement of Hadd) (Amendment) Ordinance, 1980 (Ordinance 21 of 1980), Section 2.

¹⁵ The following was omitted by Protection of Women (Criminal Laws Amendment) Act, 2006 (Act VI of 2006), Section 28 : :

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.

http://www.pakistani.org/pakistan/legislation/zia_po_1979/ord8_1979.html