

THE OFFENCE OF ZINA (ENFORCEMENT OF HUDOOD)
ORDINANCE, 1979.

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THE OFFENCE OF ZINA (ENFORCEMENT OF HUDOOD)
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‘ORDINANCE NO. VII OF 1979
[10" February, 1979]

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

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 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. I 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 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 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;

?(aa) “confession” means, notwithstanding any judgement 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)];

'This Ordinance has been applied to the Provincially Administered Tribal Areas of Baluchistan, by Baluch (46)/79, dated 29-4-1979, see Baluchistan Gazette. 1979, Ext. (Issue No. 58), dated 14-6-1979.

This Ordinance has been applied to the Federally Administered Tribal Areas by S.R.O. No. 362(1)/97, da 632.

This Ordinance has been applied to the Provincially Administered Tribal Areas of the N. W. F. P. by N. W.

(TA) III/79-H, dated 26th May, 1979, see N. W. F. P., Government Gazette Ext., 1979, p. 1101.

*Ins. by Act VI of 06, s. 10.

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(b) hadd” means punishment ordained by the Holy Quran or Sunnah;

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(d) “Muhsan” means

(i) a Muslim adult man is not insane and has had sexual inter-course with a

Muslim adult woman who, at the time he had sexual inter-course with her, was married to him and was not insane; or

(ii) a Muslim adult woman who is not insane and has had sexual inter-course

with a Muslim adult man who, at the time she had sexual inter-course with him, was married to her and was not insane; and

'e) * * * * *

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Zina. A man and a woman are said to commit ‘zina’ if they willfully have sexual inter-course without being ‘* married to each other.

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Ordinance:-

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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.

Whoever is guilty of zina liable to hadd shall, subject to the provisions of this

(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.

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.

2[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

'Omitted by Act VI of 06, ss. 10-11& 12.

7Ins. by Act VI of 06, s. 12-A.

fornication under section 468B 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.].

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8. Proof of zina '[* *]' liable to hadd. Proof of Zina '[* *]' 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 tazkiyah al-shuhood that they are truthful persons and abstain from major sins (kabir) 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-Muslim.

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’ '[* *]' is proved only by the confession of the convict, ‘hada’, or such part 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’ '[* *]' is proved only by testimony, hadd, or such part of it as is 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.

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‘Omitted by Act VI of 06, s. 13,14,15,16 & 17.

17. Mode of execution of punishment of stoning to death. The punishment of stoning to death awarded under section 5 [* *] 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 shot dead, whereupon stoning and shooting shall be stopped.

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:

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[Provided '[] 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 Sessions 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 relating to the confirmation of the sentence of death shall apply, mutatis mutandis, to confirmation of sentences under this Ordinance.

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(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) * * * * *

(6) in the Code, section 561 shall stand repealed.

21. 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.

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 offence, committed before such commencement.

'Omitted by Act VI of 06, ss. 16 and 18.

Added by Offence of Zina (Enforcement of Hudood)(Amdt) Ordinance, 1980 (20 of 1980),s.2.