

THE OFFENCE OF QAZF (ENFORCEMENT OF HADD)
ORDINANCE, 1979

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THE OFFENCE OF QAZF (ENFORCEMENT OF HADD) ORDINANCE, 1979
'ORDINANCE No. VIII OF 1979

[10 February, 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, THEREOF, 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 Qazf (Enforcement of Hadd) Ordinance, 1979.

(2) It extends to the whole of Pakistan.

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

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

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

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

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

'This Ordinance has been applied to the Provincially Administered Tribal Areas of Baluchistan, by Baluchistan Ordinance No. (46)/79, dated 24-4-1979, 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)/79, dated 14-6-1979, PL IL, p. 632.

This Ordinance has been applied to the Provincially Administered Tribal Areas of the N.W.F.P. by N. W. F. P. Government Ordinance No. (TA. III/79-11 dated 26th May, 1979, see N. W. F. P. Government Gazette, Ext., 1979, p. 1101.

*Subs. by Act VI of 06, s. 19.

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 Amputation in the form of an alternative or expressed ironically, may amount to gazf-

First exception (imputation of truth which public good requires to be made or published). It is not gazf 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 gazf to prefer in good faith an accusation of zina against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation.

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

(b) According to the finding of the Court, a witness has given false evidence of the commission of zina or zina-bil-jabr.

(c) according to the finding of the Court, a 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 gazf 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 gazf liable to hadd.

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

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

6(1). Proof of gazf liable to hadd.—[(1)] Proof of gazf 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 gazf in the presence of the Court; and

‘Omitted and renumbered by Act VI of 06, ss. 20 & 21.

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

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

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

1[(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 Haddood) 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.]

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

(2) After a person has been convicted for the offence of gazf 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 within the same manner as if sentenced to simple imprisonment.

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

(a) if the person in respect of whom the gazf has been committed by alive, that person, or any person authorized by him; or

(b) if the person in respect of whom the gazfhas been committed by 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 gazf in any of the following cases, namely:—

(a) when a person has committed gazf against any of his descendants:

(b) when the person in respect of whom gazf 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.

ladded & Omitted by Act VI of 06, ss. 21 & 22.

1[(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.]

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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 /ian 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 and 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.

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17. Application of the Code of Criminal Procedure, 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:

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'[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.]

'Subs. & Omitted by Act VI of 06, s. 23-27.

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

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

(3) The provisions of 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.

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20. Savings. Nothing in this Ordinance shall be deemed to apply to 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, s. 28.