

AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR
LAW AND PARLIAMENTARY AFFAIRS SECRETARIAT,
MUZAFFARABAD.

Dated the 27th October, 1985.

No. 2192-94/LD/Leg (A)/85, The following Act approved by the Azad Jammu and Kashmir Legislative Assembly at its meeting held on 5" October, 1985 and assented by the President on 23rd October, 1985, is hereby published for general information:-

(ACT XIV OF 1985)

AN
ACT

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;

It is hereby enacted as follows:-

1. Short title, Extent and Commencement.- (1) This Act may be called the Qazf (Enforcement of Hadd) Act, 1985.

(2) It extends to the whole of Azad Jammu and Kashmir.

(3) It shall come into force at once and shall be deemed to have taken effect on and from the 5" day of October, 1985.

2. Definitions.- In this Act, 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 Act shall have the same meaning as in the Penal Code (Act XLV of 1860), or the Code 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 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-I.- It may amount to qazf to impute zina to deceased person, if the imputation would harm the

reputation, or hurt the feelings, of that person if having, and is hurtful to the feelings of his family or other near relatives.

Explanation-I.- 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 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 in a court,- but fails to produce four witness in support thereof before the Court;

(b) Accordign 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.

Two kinds of qazf.- Qazf may be either qazf liable to hadd or qazf liable to tazir.

Qazf liable to hadd.- Whoever, being an adult, intentionally and without ambiguity commits of zina liable to hadd against a particular person who is a mushan and capable of performing sexual intercourse is, subject o the provisions of this Act, said to commit qazf liable to hadd.

Explanation-I.- In this Section "Mushan" 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-II.- If a person makes in respect of another person the imputation that such other person 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.

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 requirements of 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-Muslim;

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

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.

Who can file a complaint.- No proceedings under this Act 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 is alive, that person, or any person authorised by him; or

(b) If the person in respect of whom the qazf has been committed is dead, any of the ascendants or descendants of that person.

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 in respect of whom qazf against any of his descendants;

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14.

Volume VIII (1985-1988)

(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 disposed 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 of record.

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.

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.

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, all the punishments.

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 substances 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.

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 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.

(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 imprisonment 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.

Punishment for attempt to commit offence punishable under this Act.- Whoever attempts to commit an offence punishable

under his Act, or to cause such an attempt to be committed, and in such attempt does any act towards the 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.

Application of certain provisions of Penal Code (Act XLV of 1860).- (1) Unless otherwise expressly provided in this Act, the provisions of sections 34 to 38 of Chapter II, sections 63 to 72 of Chapter III and Chapter V and VA of the Penal Code (Act XLV of 1860), shall apply, mutatis mutandis, in respect of offence under this Act.

17.

19.

Volume VIII (1985-1988)

(2) Whoever is guilty of the abetment of an offence liable to hadd under this Act shall be liable to the punishment provided for such offence as tazir.

Application of the Code of Criminal Procedure, 1898(Act V of 1898).- (1) Unless otherwise expressly provided in this Act, 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 Act.

Provided that, if it appears in evidence that the offender has committed a different offence under any 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 offences, punishable under this Act shall be triable by a Tehsil Criminal Court except offences punishable under Section 7 or sub-section (4) of Section 14, which shall be triable by a District Criminal Court.

(2) An appeal from order of conviction of a person by the Tehsil Criminal Court shall lie to the District Criminal Court and an appeal from orders of the District Criminal Court under this Act shall lie to the Azad Jammu and Kashmir Shariat Court.

(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 Act.

(4) The provisions of Chapter XXIX of the said Code shall not apply in respect of punishment awarded under Section 7 of this Act.

(5) Notwithstanding anything contained in any other law for the time being in force if a member of the District Criminal Court or Tehsil Criminal Court as the case may be, is for any reason unable to attend the sitting, the other member of the Court may hear and decide bail applications or grant remand or adjournment under Section 167 and 344 of Criminal Procedure Code, 1898, respectively.

Application of the Azad Jammu_and Kashmir Islami (Tazirati) Qawanin Nafaz_ Act, 1974.- Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the provisions of section 23, Section 25, Section 28 and Section 31 of the Azad Jammu and Kashmir Islami (Tazirati) Qawanin Nafaz Act, 1974 (Act XI of 1974) shall apply, mutatis mutandis, in respect of cases under the Act.

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 Act, shall be a Muslim.

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Volume VIII (1985-1988)

Act to override other laws.- The provisions of this Act shall have effect notwithstanding anything in any other law for the time being in force.

Pending cases.- Nothing in this Act shall be deemed to apply to cases pending before any Court immediately before the commencement of this Act, or to offences committed before such commencement.

Savings.- Notwithstanding any judgment, decree or order of any court including High Court, every thing done, all actions taken, notifications issued, orders or appointments made, proceedings initiated, jurisdiction or powers exercised under the provisions of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance XXIX of 1979) or its succeeding Ordinances issued from time to time shall be deemed to have been validly done, taken, issued, made initiated or exercised under this Act.

Repeal.- The Offence of Qazf (Enforcement of Hadd) Ordinance, 1985 (Ordinance CXLIX of 1985) is hereby repealed.

Sd/-
(Syed Atta Mohy-du-Din Qadri)
Deputy Secretary, Law.