

**A
BILL**

further to amend the Pakistan Penal Code, the Code of Criminal Procedure and other laws

WHEREAS Article 14 of the Constitution ensures that dignity of man and, subject to law, the privacy of home, shall be inviolable;

WHEREAS Article 37 of the Constitution encourages promotion of social justice and eradication of social evils;

WHEREAS it is necessary to provide relief and protection to women against misuse and abuse of law and to prevent their exploitation;

WHEREAS the objective of this Bill is to bring in particular the law relating to zina and qazf in conformity with the stated objectives of the constitution and the Injunctions of Islam;

AND WHEREAS it is expedient further to amend the Pakistan Penal Code (Act XLV of 1860), the Code of Criminal Procedure, 1898 (Act V of 1898), the Dissolution of Muslim Marriages Act, 1939 (VIII of 1939), the Family Courts Act, 1964 (W.P. Act XXXV of 1964), the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (VII of 1979), the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979) and the Qanun-e-Shahadat Order, 1984 (P.O. No. X of 1984) for the purposes hereinafter appearing.

It is hereby enacted as follows:

1. **Short title and commencement.**- (1) This Act may be called the Protection of Women (Criminal and Family Laws) (Amendment) Act, 2006.

(2) It shall come into force at once.

2. **Insertion of new section, Act XLV of 1860.**- In the Pakistan Penal Code (Act XLV of 1860) hereinafter referred to as the said "Code", after section 365A, the following new section shall be inserted, namely;-

"365B. Kidnapping, abducting or inducing woman to compel for marriage etc.-Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced, or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment for life, and shall also be liable to fine; and whoever by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.

3. **Insertion of new section, Act XLV of 1860.**- In the said Code, after section 367, the following new section shall be inserted, namely;-

"367A. Kidnapping, or abducting in order to subject person to unnatural lust,- Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with death or rigorous imprisonment for a term which may extend to twenty five years, and shall also be liable to fine."

4. **Insertion of new sections, Act XLV of 1860.**- In the said Code, after section 371, the following new sections shall be inserted, namely:-

"371A. Selling person for purposes of prostitution, etc.:- Whoever sells, lets to hire, or otherwise disposes of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine.

Explanations.- (a) When a female is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

(b) For the purposes of this section and section 371B, "illicit intercourse" means sexual intercourse between persons not united by marriage.

371B. Buying person for purposes of prostitution, etc.:- Whoever buys, hires or otherwise obtains possession of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, which may extend to twenty-five years, and shall also be liable to fine.

Explanation.- Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution."

5. **Insertion of new section, Act XLV of 1860.-** In the said Code, after section 374, under the sub-heading "Rape" the following new sections shall be inserted, namely:-

"375. Rape.- A man is said to commit rape who except in the cases hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions,-

- (i) against her will,
- (ii) without her consent,
- (iii) with her consent, when the consent has been obtained by putting her in fear of death or of hurt,
- (iv) with her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself or himself to be married; or
- (v) with or without her consent when she is under sixteen years of age.]

Explanation.- Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

"376. Punishment for rape.-(1) Whoever commits rape shall be punished with death or imprisonment of either description for a term which shall not be less than ten years or more than twenty-five years and shall also be liable to fine.

(2) When rape is committed by two or more persons in furtherance of common intention of all, each of such persons shall be punished with death or imprisonment for life."

6. **Insertion of new section, Act XLV of 1860.-** In the said Code, in Chapter XX, the following new section shall be inserted, namely.

"493A Cohabitation caused by a man deceitfully inducing a belief of lawful marriage:- Every man who deceitfully causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief, shall be punished with rigorous imprisonment for a term which may extend to twenty-five years and shall also be liable to fine."

7. **Insertion of new section, Act XLV of 1860.-** In the said Code, after section 496, the following new section shall be inserted, namely:-

“496A. Enticing or taking away or detaining with criminal intent a woman.- Whoever takes or entices away any woman with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any woman, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

8. **Insertion of new section, Act XLV of 1860.-** In the said Code, after section 502, the following new section shall be inserted, namely:-

“502A.- Publicising identity of a woman in case of zina or rape.- Whoever publicises any case of zina or rape whereby the identity of any woman accused of zina or victim of rape is disclosed without her consent or in case she is a minor without consent of her guardian shall be punished with imprisonment which may extend to six months or with fine or with both”.

9. **Insertion of new section, Act V of 1898.-** In the Code of Criminal Procedure, 1898 (Act V of 1898) after section 203, the following new sections shall be inserted, namely,-

"203A.Complaint in case of Zina.- (1) No court shall take cognizance of an offence under section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (VII of 1979), except on a complaint lodged in a Court of competent jurisdiction.

(2) The Presiding Officer of a Court taking cognizance of an offence on a complaint shall at once examine the complainant and at least four adult eye-witnesses, upon oath, of the act of zina necessary to the offence.

(3) The substance of the examination of the complainant and the eye-witnesses shall be reduced to writing and shall be signed by the complainant and the eye-witnesses and also by the Presiding Officer of the Court.

(4) If in the opinion of the Presiding Officer of a Court, there is sufficient ground for proceeding the Court shall issue a summons for the personal attendance of the accused.

(5) The Presiding Officer of a Court before whom a complaint is made or to whom it has been transferred may dismiss the complaint, if, after considering the statements on oath of the complainant and the four or more eye-witnesses there is, in his judgment, no sufficient ground for proceeding and in such case he shall record his reasons for so doing.

10. **203B.Complaint in case of Qazf.**- (1) Save as provided in clause (2) of Article 17B of Qanun-e-Shahadat Order, 1984 (P.O. No. X of 1984) no court shall take cognizance of an offence under section 7 of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979), except on a complaint lodged in a Court of competent jurisdiction.

(2) The Presiding Officer of a Court taking cognizance of an offence on a complaint shall at once examine the complainant of the act of qazf necessary to the offence.

(3) The substance of the examination of the complainant shall be reduced to writing and shall be signed by the complainant and also by the Presiding Officer of the Court.

(4) If in the opinion of the Presiding Officer of a Court, there is sufficient ground for proceeding the Court shall issue a summons for the personal attendance of the accused.

(5) The Presiding Officer of a Court before whom a complaint is made or to whom it has been transferred may dismiss the complaint, if, after considering the statements on oath of the complainant there is, in his judgment, no sufficient ground for proceeding and in such case he shall record his reasons for so doing.

II. Amendment of Schedule II, Act V of 1898.- In the Code of Criminal Procedure, 1898 (Act V of 1898), in Schedule II, the following shall be added namely;-

Schedule II, -

- (i) after section 365A in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely :-

1	2	3	4	5	6	7	8
365B	Kidnapping, abducting or inducing woman to compel for marriage etc.	Ditto	Ditto	Ditto	Ditto	Imprisonment for life and fine.	Ditto;

- (ii) after section 367 in column I and entries relating thereto in columns 2 to 8, the following shall be inserted, namely:-

1	2	3	4	5	6	7	8
367A	Kidnapping or abducting in order to subject person to unnatural lust.	Ditto	Ditto	Ditto	Ditto	Death or rigorous imprisonment which may extend to twenty-five years and fine.	Ditto;

- (iii) after section 371 in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely:-

1	2	3	4	5	6	7	8
371A	Selling person for purposes of prostitution, etc.	Ditto	Ditto	Ditto	Ditto	Imprisonment which may extend to twenty-five years and fine.	Ditto
371B	Buying person for purposes of prostitution, etc.	Ditto	Ditto	Ditto	Ditto	Imprisonment which may extend to twenty-five years and fine.	Ditto;

- (iv) after section 374 the sub-heading “of Rape” shall be substituted by “of Zine-bil-Jabr” ;
- (v) for section 376 in column 1 and entries relating thereto in columns 2 to 8, the following shall be substituted, namely : -

1	2	3	4	5	6	7	8
376	Rape	May arrest without warrant.	Warrant	Not bailable.	Not compoundable.	Death or imprisonment not less than ten years or more than twenty-five years and fine. Death, if the offence committed by two or more persons in furtherance of common intention.	Court of Sessions;

- (vi) after section 493 in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely: -

1	2	3	4	5	6	7	8
493A	Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.	May arrest without warrant.	Warrant	Ditto	Not compoundable	Rigorous imprisonment which may extend to twenty-five years and fine.	Ditto; and

- (vii) after section 496 in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely: -

1	2	3	4	5	6	7	8
496A	Enticing or taking away or detaining with criminal intent a woman.	May arrest without warrant.	Ditto	Not bailable.	Ditto	Imprisonment of either description for seven years and fine.	Court of Sessions or Magistrate of the first class.

(viii) after section 502 in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely: -

1	2	3	4	5	6	7	8
502A	Publicising identify of women in case of zina or rape.	Shall not arrest without warrant.	Summons	Ditto	Not compoundable	Imprisonment of either description for six months and fine.	Ditto

(ix) under the heading, "OFFENCES AGAINST OTHER LAWS" after the last entry in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely: -

1	2	3	4	5	6	7	8
Section 5 of Ordinance VII of 1979	Zina	Shall not arrest without warrant.	Summons	Bailable	Not compoundable.	Whipping not exceeding one hundred stripes.	Court of Sessions.
Section 5 of Ordinance VIII of 1979	Qazf	Shall not arrest without warrant.	Summons	Bailable.	Not compoundable.	Whipping numbering eighty stripes.	Court of Session;

12. Amendment of section 2, Ordinance VII of 1979.- (1) In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979) in section 2,-

(i) for clause (a) the following shall be substituted, namely:-

“(a) “*adult*” means a person who has attained the age of eighteen years;”, and

(ii) clauses (c) and (e) shall be omitted.

13. Omission of section 3, Ordinance VII of 1979.- In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979) section 3 shall be omitted.

14. Amendment of section 4, Ordinance VII of 1979.- In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979) in section 4 the word, “validly” and the explanation at the end of that section shall be omitted.

15. Omission of sections 6, 7 and 8, Ordinance VII of 1979.- In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979) sections 6, 7 and 8 shall be omitted.

16. Amendment of section 9, Ordinance VII of 1979.- (1) In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979) in section 9,-

- (i) the words “or zina-bil-jabr” shall be omitted;
- (ii) in sub-section (2) the words “or zina-bil-jabr” shall be omitted; and
- (iii) sub-sections (3) and (4) shall be omitted.

17. Omission of sections 10 to 16, 18 and 19, Ordinance VII of 1979.- In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979) sections 10 to 16 and 18 and 19 shall be omitted.

18. Amendment of section 20, Ordinance VII of 1979.- (1) In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), in section 20,-

- (i) in sub-section (1), the first proviso shall be omitted;
- (ii) sub-section (3) shall be omitted; and
- (iii) sub-section (5) shall be omitted.

19. Omission of section 21, Ordinance VII of 1979.- In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), section 21 shall be omitted.

20. Amendment of section 2, Ordinance VIII of 1979.- In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979) for clause (a) the following shall be substituted, namely:-

“(a) “adult”, “hadd” and “zina” have the same meaning as in the Offence of Zina (Enforcement of Hudood) Ordinance, 1979; and”

21. Omission of section 4, Ordinance VIII of 1979.- In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979) section 4 shall be omitted.

22. Omission of section 6, Ordinance VIII of 1979.- In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979) section 6 shall be omitted.

23. Amendment of section 8, Ordinance VIII of 1979.- In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979) in section 8, the words, “a report made to the police or” shall be omitted.

24. Amendment of section 9, Ordinance VIII of 1979.- In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), in section 9, for sub-section (2), the following shall be substituted, namely:-

“(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.”.

25. Omission of sections 10 to 15, Ordinance VIII of 1979.- In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979) sections 10 to 15 shall be omitted.

26. Amendment of section 16, Ordinance VIII of 1979.- In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), in section 16, sub-section (2) shall be omitted.

27. Amendment of section 17, Ordinance VIII of 1979.- (1) In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), in section 17,-

- (i) the first proviso shall be omitted;
- (ii) for the second proviso, the following shall be substituted, namely:-

“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.”

28. Omission of sections 18 and 19, Ordinance VIII of 1979.- In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979) sections 18 and 19 shall be omitted.

29. Amendment of Article 17, Qanun-e-Shahadat Order, 1984 (P.O. No. 10 of 1984).- In the Qanun-e-Shahadat Order, 1984 (P.O. No. 10 of 1984), in Article 17, for clause (2) the following shall be substituted, namely:-

“(2) Unless otherwise provided in this Order or any other special law the Court may accept, or act on the testimony of one man or one woman or such other evidence as the circumstances of the case may warrant.”

30. Insertion of new Article, Qanun-e-Shahadat Order, 1984 (P.O. No. 10 of 1984).- (1) In the Qanun-e-Shahadat Order, 1984 (P.O. No. 10 of 1984) after Article 17, the following new Articles shall be inserted, namely;-

"17A. Proof of Zina.- Proof of zina shall be in one of the following forms, namely:-

- (a) the accused voluntarily makes before a court of competent jurisdiction a confession of the commission of the offence; or
- (b) the complainant and at least four adult witnesses, give evidence as eye-witnesses of the act of zina necessary to the offence."

"17B. Proof of qazf.- (1) Proof of qazf 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) the accused commits qazf in the presence of the Court; or
- (c) the complainant gives such evidence of the commission of qazf as the Court may accept or act on under Article 17;

(2) Notwithstanding anything contained in sub-section (1) 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 7 of the Offence of Zina (Enforcement of Hadd) 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 of the Offence and Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance VIII of 1979).

31. Amendment of Article 151, Qanun-e-Shahadat Order, 1984 (P.O.No.10 of 1984).- In the Qanun-e-Shahat Order, 1984 (P.O.No.10 of 1984), in Article 151, clause (4) shall be omitted.

32. Insertion of new section, Dissolution of Muslim Marriages Act, 1939 (VIII of 1939).- In the Dissolution of Muslim Marriages Act, 1939 (VIII of 1939), in section 2, after clause (vii), the following new clause shall be inserted, namely:-

“(viiia) lian;

Explanation: Lian means where the husband has accused his wife of zina and the wife does not accept the accusation as true.”

33. Insertion of new section, Family Courts Act, 1964 (W.P. Act XXXV of).- In the Family Courts Act, 1964 (W.P. Act XXXV of 1964), after section 12A, the following new section shall be inserted, namely:-

"12B. Procedure in lian.- (1) In a case for dissolution of marriage on the ground of lian, , the following procedure 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)".
- (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.

STATEMENT OF OBJECTS AND REASONS

One of the avowed constitutional objectives of the Islamic Republic of Pakistan is to enable Muslims to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as laid down in the Holy Qur'an and Sunnah.

The Constitution, accordingly, mandates that all existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Qur'an and Sunnah.

The object of this Bill is to bring the laws relating to zina and qazf, in particular, in conformity with the stated objectives of the Islamic Republic of Pakistan and the constitutional mandate and in particular to provide relief and protection to women against misuse and abuse of law.

The offences of zina and qazf are mentioned in the Qur'an. The two ordinances relating to zina and qazf, however, make a number of other acts punishable in spite of the

fact that the Qur'an and Sunnah neither define these offences nor has any punishment for these been prescribed. On no principle of qiyas can the punishments for zina and qazf or the procedure identified for their proof can be extended to these offences.

Any offence not mentioned in the Qur'an and Sunnah or for which punishment is not stated therein is Ta'zir which is a subject of State legislation. It is for the State both to define such offences and to fix punishments for these. The exercise of such authority by the State is in consonance with Islamic norms, which the State is authorized to both define and punish. Accordingly, all these offences have been removed from the two Hudood Ordinances and inserted in their proper places in the Pakistan Penal Code, 1860 (Act XLV of 1860) hereinafter "PPC".

The offences listed in sections 11 to 16 of the Offence of Zina (Enforcement of Hadd) Ordinance, 1979 (VII of 1979) hereinafter "Zina Ordinance" are Ta'zir offences. All these are being inserted as sections 365B, 367A, 371A, 371B, 493A and 496A of the Pakistan Penal Code, 1860 (Act XLV of 1860). Sections 12 and 13 of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 hereinafter "Qazf Ordinance" are being omitted. This is being done as the definition of qazf in Section 3 of that Ordinance is wide enough to cover the qazf committed by printing or engraving or sale of printed and engraved material.

No change is being made in the language of the statutory definition of any of these Ta'zir offences or the punishment provided for these, save one. The punishment of whipping is being deleted for these Ta'zir offences. As the Qur'an and Sunnah do not provide for any punishment with regard to these offences the State is authorized to make this change in conformity with the Islamic concept of justice. This is in accordance with the scheme of the PPC and the evolving standards of decency which mark the progress of a maturing society.

The Zina and Qazf Ordinances have been a subject of trenchant criticism by citizens in general and scholars of Islam and women in particular. The criticisms are many. These include the lumping of the offence of zina with zina-bil-jabr (rape) and subjecting both to the same kind of proof and punishment. This has facilitated abuse. A woman who fails to prove rape is often prosecuted for zina. The requirement of proof for

the maximum punishment of zina-bil-jabr (rape) being the same as that for zina, it has been made absolutely impossible to prove the former.

Where a prosecution for rape against a man fails but sexual activity is confirmed by medical examination or on account of pregnancy or otherwise the woman is punished for zina not as Hadd – four eye witnesses not being available – but as Ta'zir. Her complaint is, at times, deemed a confession. This is in spite of the fact that there is a consensus amongst the scholars of Islam that zina cannot be punished as Ta'zir.

The Ta'zir punishment for Zina is not a requirement of the Quran and Sunnah. It is based on the peculiar views of those who drafted the Ordinance. The Tazir punishments for the offences of zina and qazf are not only repugnant to the Islamic norms but have also become vehicles for exploitation and injustice. These are being omitted.

A penal statute must be clear and unambiguous. It must mark the boundaries between the permitted and the prohibited with clarity. The citizens are, thus, put to notice. They can order their life and conduct by following these bright guidelines and steer clear of trouble. The vague definitions in these and related laws are, therefore, either being clarified and wherever that is not possible, omitted. The object is to protect the unwary and unsuspecting citizens from unwittingly falling foul of penal laws.

The Zina Ordinance also defines "marriage" as a valid marriage. In rural areas, in particular, nikahs generally and divorces particularly are not registered. It becomes difficult for a person charged with zina to establish "valid marriage" as a defence. Non-registration has its civil consequences. These are sufficient. Failure to register a nikah or have a divorce confirmed should not entail penal consequences. This is in consonance with the Islamic norm that Hadd should not be imposed whenever there is any doubt about the commission of the offence. The misuse of the law in such cases has made it an instrument of oppression in the hands of vengeful former husbands and other members of society.

A triple talaq is pronounced. The woman returns to her parental home. She goes through her period of iddat. After a while the family arranges another match and she gets married. The husband then claims that sans the confirmation of divorce by the local authorities the marriage is not over and launches a zina prosecution. It is necessary to delete this definition to shut this door.

There is no hadd for the offence of zina-bil-jabr (rape). It is a Ta'zir offence. The definition and punishment of rape is, therefore, being incorporated in the PPC in sections 375 and 376 respectively. The gender neutral definition is being amended to clearly provide that rape is an offence committed by a man against a woman. As consent of the woman is a defence to the charge of rape it is being provided that such consent would not be a defence if the woman is less than 16 years of age. This accords both with the need to protect the weak, which the Qur'an repeatedly emphasizes, and the norms of international legal obligations.

The punishment for gang rape is death. No lesser punishment is provided. The courts hearing such cases have observed that in many situations they are of the opinion that a person cannot be acquitted while at the same time imposing the death penalty is not warranted in the facts and circumstances of the case. The result is that they feel obliged to acquit the accused in such cases. To address this concern, the lesser sentence of life imprisonment is being added as an alternative to the death penalty.

The procedure for the prosecution of Ta'zir offences of zina bil jabr (rape) and gang rape, like that for all other Ta'zir offences under the PPC, is to be regulated by the Code of Criminal Procedure, 1898 (Act V of 1898) hereinafter "Cr.P.C."

The Qanun-e-Shahadat Order, 1984 (P.O. No. 10 of 1984) hereinafter "Order" repealed the Evidence Act, 1872 (Act 1 of 1872). It was made to "revise, amend and consolidate the law of evidence so as to bring it in conformity with the injunctions of Islam as laid down in the Holy Qur'an and Sunnah". The proof of all these Ta'zir offences will be governed by the provisions of the Order.

Clause (4) of Article 151 of the Order is not a new clause. It was a part of the now repealed Evidence Act, 1872 (1 of 1872) and reflected the legal and social views of the

colonial rulers of the time. It permits scandalous probes into the life and character of a woman. It is abused to subject a victim of rape to an ordeal which is at times no less traumatic than the offence committed against her. This provision was not based on any injunction of the Qur'an and Sunnah. Its omission is, in fact, in consonance with the Islamic conception of justice. With the passage of time this provision has been omitted from the statute books of most civilized countries and no justification for allowing it to remain a part of the Order can be offered.

Lian is a form of dissolution of marriage. A woman who is accused of adultery by her husband and denies the charge can seek dissolution of her marriage. Section 14 of the Qazf Ordinance refers to lian and also provides a procedure for it. A form of dissolution of marriage has no place in a penal statute. Accordingly, lian has been introduced as a ground for divorce under the Dissolution of Muslim Marriages Act, 1939 (VIII of 1939) and the procedure for lian has been incorporated in the Family Courts Act, 1964 (Act XXXV of 1964).

The definitions of zina and qazf remain the same as in the Zina and Qazf Ordinances. For both zina and qazf the same punishments have been retained, as well.

Insofar as the requirement of four witnesses for zina is concerned, the Qur'an indeed requires four eye-witnesses but does not discriminate on the basis of gender or faith. Discrimination on these grounds is not in accord with the Qur'an. In qazf cases, as well, discrimination on the basis of religion or gender is not permissible according to the Qur'an.

→ Punishment, by itself, is not the objective of Qur'an and Sunnah. The objective is to build a just and crime-free society. Restrictions based on gender and faith introduced by the Zina and Qazf Ordinances are not mandated by the Qur'an and Sunnah. These are based on the views of the then draftsmen of the two Ordinances. As these restrictions impede the Qur'anic objectives of justice and social harmony, they are being omitted.

Zina is a heinous crime that corrupts public morals and destroys the sense of modesty. The Qur'an regards zina an offence against public morality. The requirement of

four eye-witnesses is not solely an evidentiary burden of extra-ordinary weight. It is also an assertion that if contrary to the hadith, "Allah loves those who hide their sins", one commits an act in so blatant a fashion that four people see it, the harm to society must be serious indeed. At the same time, the Qur'an protects privacy, prohibits baseless assumptions and inquisition and forbids interference in the life of others. It is for this reason that a failure to prove zina entails punishment for qazf (false accusation of zina). The Quran requires the complainant to bring four eye-witnesses to prove the accusation of zina. The complainant and the witnesses must be conscious of the seriousness of this offence and must know that if they make a false accusation or cannot prove the charge beyond doubt they will be punished for qazf. The conviction will follow the failure of the zina prosecution and will not be contingent on the initiation of fresh legal proceedings.

Article 17 of the Order is being amended to bring it in conformity with the Qur'an and Sunnah and eliminate discrimination against women. Articles 17-A and 17-B are being inserted in the Order to stipulate the requirements of proof for zina and qazf respectively. It has also been provided that failure to prove zina will result in punishment for qazf without any need for bringing a separate and independent prosecution. The Qanun-e-Shahadat Order, 1984, was introduced with the object of consolidating all laws relating to evidence and to bring these laws in conformity with the Injunctions of Islam as laid down in the Qur'an and Sunnah. It is, therefore, appropriate that the evidentiary requirements for the proof of zina and qazf be also regulated by this Order.

The Zina Ordinance has been abused to persecute women, to settle vendettas and to deny basic human rights and fundamental freedoms. To check such abuse both in the case of zina and qazf the Cr.P.C. is being amended to provide that only the Court of Sessions, on a complaint, may take cognizance of such cases. The offence has been made bailable so that the accused do not languish in jail during trial. The police will have no authority to arrest any one in such cases unless so directed by the Court of Sessions and such directions cannot be issued except either to compel attendance in court or in the event of a conviction. A new offence has also been added in the Pakistan Penal Code (502A) which provides that in case of zina or rape the identity of woman shall not be

publicized and violation thereof shall be punishable with six months imprisonment or fine or both.

The primary object of all these amendments is to make zina and qazf punishable only in accordance with the injunctions of Islam as laid down in the Holy Qur'an and Sunnah, to prevent exploitation, curb abuse of police powers and create a just and egalitarian society.

Minister-in-Charge