

Author: The hudood laws don't tell police officers to rape women. As I told you before, the hudood ordinance isn't associated with this issue and on top of all, even the CrPC doesn't tell police to do such things. It is a defect & corruption in our police system and not criminal laws.

Person: Okay... but, you have to agree that the WPB has provided relief to women here.

Author: No, my friend. Where did you come to know this?

Person: What do you mean?!

Author: I mean that women still have to go to the same police to lodge FIRs of rape. Nothing has changed here. And police will still refuse to lodge FIRs, as well as rape women regularly!

Person: So, for what is everyone cheering about then? Are they gone mad?

Author: No, they aren't mad. I will tell you some other time as to why are they cheering so much.

(FND OF PART ONE.....)

عالم بنو عالم بناؤ..... ملک و قوم اور دین بچاؤ

بغیر علم کے اللہ کی معرفت حاصل نہیں ہو سکتی ،

دنیاوی علم اللہ کی معرفت عطا نہیں کرتا ،

یہ دینی علم ہی کی شان ہے کہ وہ اللہ سے ملاتا ہے۔

دنیاوی علم محض وسیلہ روزگار ہے۔

علماء کی قدر کیجئے..... عالم بنئے..... جاہل رہنے پر قناعت مت کیجئے۔

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 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)*.

This means that all expressions, terms and explanations given in the PPC are equally applicable in the Qazf Ordinance too. With this prologue, we quote here, Section 8 of the Pakistani Penal Code:

8. Gender

The pronoun 'he' and its derivatives are used of any person, whether male or female.

So, you can simply deduce from this fact, the amount of honesty & literacy in our lawyers, as well as, MNAs and all.

Person: Thank God that you met me & clarified these misconceptions. Otherwise, I would have been strayed by such idiots as well.

Author: Don't rely on the media. Research yourself! But, let me ask one simple question: do you still think that the WPB has provided any relief or protection to women?

Person: After all the above discussion, I don't find anything. But, wait! I am reminded of something...

Author: Of what?

Person: Previously, women would go to police stations and lodge FIR of rape there. Many a times it happened that the police officials will either not lodge FIR or rape the women themselves! This was a big defect.

فقہیہ واحد اشد علی الشیطان من الف عابد ☆ ایک فقہیہ شیطان پر ہزار عابدوں سے زیادہ بھاری ہے

Author: Because, a majority of the Members of National Assembly consist those who don't understand the laws. They are just like you, relying on media sources blindly and ignorant of the truth. I give you one simple example to illustrate this fact.

Section 8 of the old Qazf Ordinance states:-

Who can file a complaint:

No proceedings under this Ordinance 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 be alive, that person, or any person authorized 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.

I highlighted the word 'him' in the above section. Justice (R) Shaiq Usmani, who was a member of the Special Committee of the NCSW & also, associated with *Aurat foundation*, commented on the above section:-

Justice (R) Shaiq Usmani observed that the exclusion of the term "her" [in the above section] means that it is only a man against whom Qazf is committed is eligible to file a complaint.

Probably relying on the above sources, Ms. Kashmala Tariq, an MNA, proposed in her recommendations:^{[2][2]}

In Section 8, it was proposed that the word 'him' should be changed with "that person."

Before removing off this misconception, I would like to quote Section 2 of the respective ordinance:

2. Definitions

In the Ordinance, unless there is anything repugnant in the

unless non-bailable arrest warrants are issued by an authorized court of competent jurisdiction. Furthermore, zina cases will not be investigated by a police officer lower in rank than a SP

This means that women, languishing in jail before the WPB, were those whose non-bailable arrest warrants were issued by the court. Now, in this bill, zina has been declared a *non-cognizable offence*, for which no person can ever be arrested.

Due to this WPB, only those women will escape jail whose non-bailable arrest warrants were issued. Probably, 99.99% of them will consist of guilty women, not innocent ones!

Person: Uhh... what?! I don't believe this! But, you will still have to agree that the hudood ordinance had tormented women for at least 26 years.

Author: Again, you have made a mistake pal. Go & have a look at the original ordinance. It consists of 22 sections only and it deals with judiciary & courts. It only gives judges the authority to punish the wrong-doers. It does not deal with police & arresting people before trial. It is the *Code of Criminal Procedure (Act V of 1898)* which deals with arrest, police, etc. In fact, it was due to the hudood ordinance that after lying in jail for several years, these women were acquitted by the court. The Hudood Ordinance had relieved women from the torments of the police for 26 years!!!

(For a more detailed discussion, see *Lies & Distortions by the Media about Hudood Ordinance*.)

Person: Man! I don't believe how much misconceptions I had in my mind about the hudood laws.

Author: Yes, the media is responsible for staining the name of hudood ordinance with black spots. If you find time, read the article: *Lies & Distortions by the Media about Hudood Ordinance*. It pin-points the lies spread by various news sources, NGOs, etc.

Person: I don't get it that if the hudood laws don't torment women, why the National Assembly has passed this WPB? Why is everyone cheering as if women have been saved from hell or something of the like?

confirmed on oath the legitimacy of the child Hadd sentence on such score awarded to the accused was not maintainable and was set aside. [Annual Report of the FSC, 2002, pp.61-62]

As you might have guessed already, the conviction of Zafran Bibi was against the law. In that case, the police, judge and even her defence lawyer were corrupted! The government took no action against anyone; neither the judge nor the police. Why was it so? (For a more detailed discussion, see *Lies & Distortions by the Media about Hudood Ordinance*.)

As for your saying that the WPB has added a new provision, explaining the word "confession", then I would like to say that we don't need to write in the Ordinance that $2 + 2 = 4$. That was just an odd excuse for enforcing other un-Islamic provisions of the bill. In fact, if a definition of "confession" is added to the *zina ordinance*, it should have also been added to the remaining hudood ordinances as well as other laws. This is not the case which proves that it was an odd excuse and to provide base for a bogus provision.

I would like to challenge you as well as any person on earth, to bring forth any English dictionary which includes *allegation* or *pregnancy*, in the meaning of the term 'confession', if ye are truthful!

Person: Hmm... you are damn right. Confession is not an ambiguous word.

Author: Yup, a confession is a confession and nothing else. Had there been any explicit provision in the hudood ordinance, then it might make any sense to add a new definition of confession. Presently, this will have no impact at all.

Person: But, still I think that the WPB has provided relief to women by amending the law pertaining to zina. Women will not languish in jails for years, due to this WPB. According to previous laws, they would have dwell in jail for years. You will surely agree with me...

Author: No! The WPB has got nothing to do with women in jail. Gen. Musharraf had promulgated the *Law Reforms Ordinance, 2006* earlier this year which added Section 156-B to the CrPC. According to this section, no person can be arrested for 'zina'

[Annual Report of the FSC, 2002, p.49]

Mst. Bakhan vs. The State (PLD 1986 FSC 274)

MR. JUSTICE GUL MUHAMMAD KHAN

1. Principle for recording of confession in cases of offence of zina.
2. Four times confession is necessary for a proof of offence of zina.
3. A plea of guilty is not a confession. Ultimate aim of Islamic law is correction and reformation & heavy punishment is provided only for incorrigible cases. Appeal accepted.

[Annual Report of the FSC, 2002, p.49]

Person: Okay... But, what about cases like Zafran Bibi case where court convicted her for adultery, only because she did not had witnesses to support rape? The WPB has added a clear-cut provision explaining that confession does not mean allegation, but, an actual confession.

Author: I had quoted the text of a judgment, just a minute ago i.e. *Safia Bibi vs. The State* (PLD 1985 FSC 120). In this judgment, it was cleared up by the FSC that even if no evidence is available for rape than the self-exculpatory statement of the victim, then she cannot be convicted of adultery. This judgment was of 1985.

The Zafran Bibi case was of 2002, where she was convicted by trial court, but even then, the FSC had reversed the judgment & acquitted her.

Mst. Zafran Bibi vs. The State (PLD 2002 FSC 1)

MR. JUSTICE DR. FIDA MUHAMMAD KHAN

Pregnancy and subsequent birth of a child by the accused lady whose husband had been convicted about nine years before in a murder case, and confined in jail: imprisoned husband had submitted an affidavit and made statement on oath, before this Court (FSC) wherein *inter alia*, he owned legitimacy of the child born during trial. Such being a highly pertinent aspect of the whole case it was certainly noticeable that who else could better testify and be a better judge of the pregnancy legitimacy of a child of a married lady than that of her husband. Accused lady also

8. Proof of *zina* or *zina-bil-jabr* liable to hadd

Proof of *zina-bil-jabr* 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:

Furthermore, take a look at Section 9(1), which states the following:

9. Case in which hadd shall not be enforced

- (1) In a case in which the offence of *zina* or *zina-bil-jabr* is proved only by the confession of the convict, *hadd*, 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.

This is sufficient for a sane guy to understand that the hudood ordinance in unequivocal terms, excludes allegation from confession. In fact, there is nothing more meaningless & illogical than to consider allegation or pregnancy as rape. How can someone 'retract confession' if the confession is an allegation or pregnancy???

Furthermore, the following judgments prove that allegation or pregnancy was never taken to mean "confession."

Mst. Safia Bibi vs. The State (PLD 1985 FSC 120)

MR. JUSTICE SH. AFTAB HUSSAIN

Status of self-exculpatory statement in *zina-bil-jabr*:

Zina was committed with a blind girl and she was convicted by trial court. She gave birth to an illegitimate child. The Court held that: "In the present case, it is clear that except the self-exculpatory statement of the girl and the statement of her father, who also maintained that she had been subjected to *zina-bil-jabr*, there is no other evidence. In Shariah, if a girl makes a statement as made in the present case, she cannot be convicted of Zina."

☆ ما صح للضرورة بقدر بقدرها ☆ جو چیز ضرورتاً مباح کی گئی ہو اس کی مقدار کا تعین بھی اسی کے مطابق ہوگا ☆

<i>Hadd punishment for non-Muhsan criminals</i>	Whipping numbering hundred stripes	Whipping numbering 100 stripes alongwith any punishment including death penalty
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The only thing common between the two is the punishment of *Rajm* for *Muhsan* criminals and the proof required for proving the crime, and these things are common between the two, only because God himself has decided so.

(For a more detailed discussion, see my article *Lies & Distortions by Geo TV about Hudood Ordinance*.)

Person: Oh... I see... But, again, under hudood ordinance, a woman who accuses a person of rape will get subjected to qazf, if she can't bring four witnesses.

Author: No, my friend. You have been fooled again. The word "qazf" is defined in Section 3 of the *Offence of Qazf (Enforcement of Hudood) Ordinance, 1979*. In the whole section, the word "zina" has been used, not zina-bil-jabr. The only case where qazf will be awarded for zina-bil-jabr is when the accusation is *proved to be false*.

- (c) according to the finding of the Court, a complainant has made a false accusation of 'zina-bil-jabr'.

When a complaint of rape is filed, it will either be proved to be true or it will be proved to be false. Sometimes, the complaint is neither proved true nor false; this is due to lack or loss of evidence. In this case, the woman is not punished for complaining zina-bil-jabr. She is only punished if the court found out that the accusation was a white lie e.g. intercourse did not occur at all or the hymen of the vagina is intact, etc.

Person: But, previously, if women reported rape, it was taken as a confession of adultery. Without four witnesses, rape case would be converted to adultery. This has been reformed in the WPB.

Author: This is totally false! Under the hudood ordinance, allegation was not taken as confession. Take a look at Section 8 of the old ordinance for yourself:

☆ لعین لایزول بالعک ☆ لعین شک کی وجہ سے ذاکل نہیں ہوتا ☆ (فقہی ضابطہ)

Conviction of father for committing zina-bil-jabr with his teen-aged daughter: defence plea that he was substituted for real culprit, could not be accepted in circumstances of case. Conviction of the appellant s/10(3) of the Offence of Zina (E.O.H.) Ordinance and sentence of 25 years R.I. (rigorous imprisonment) awarded was proper to meet the ends of justice.

[Annual Report of the FSC, 2002, p.57]

Personal Note: It should be noted that no witnesses were available in the above case.

(For a more detailed discussion, see *Lies & Distortions by the Media about Hudood Ordinance.*)

Person: I have heard of tazir, but, I have got a bit confused. Actually, tazir has just gone behind the curtains, due to the repetition of the above lie, over and over again, in the media.

Author: Yes, you are absolutely right.

Person: But, under the hudood ordinance, no difference has been made between zina and zina-bil-jabr.

Author: This is again wrong. There are many differences between zina and zina-bil-jabr in the original ordinance. Here is a summary of the differences:-

Difference	Zina	Zina-bil-Jabr
<i>Definition</i>	Intercourse with will as well as consent & without any deceitful belief, etc.	Intercourse without will or consent or by inducing g deceitful belief, etc.
<i>Criminal Responsibility</i>	Definition reads: "A man and woman are..." which shows that both are criminals	Definition reads: "A person is..." which shows that only the rapist is a criminal
<i>Tazir punishment</i>	Rigorous imprisonment not exceeding 10 years, thirty stripes alongwith fine	For gang rape, death penalty; for ordinary rape, 4 to 25 years rigorous imprisonment & 30 lashes; for kidnapping, life imprisonment, etc.

The following cases further corroborate my claim:-

Gulsher etc. vs. The State (2004 SD 159) MR. JUSTICE S.A. MANAN

Sole testimony of victim of zina would be sufficient to prove zina case against accused when defence was not able to shatter the veracity of victim's statement.

[*Annual Report of the FSC, 2003, p.24*]

Personal Note: It should be noted that no witnesses were available in the above case.

Muhammad Zafar Naeem vs. The State (2004 SD 352) MR. JUSTICE ZAFAR PASHA CHAUDHARY

Statement of victim of zina-bil-jabr who is a young girl of 11/12 years which is confidence inspiring would be sufficient for recording conviction/sentence under S.10 (3). Omission to produce shalwar, qameez and dopatta of victim of zina-bil-jabr would not be fatal to prosecution case under S.10 (3), which cannot be thrown away for such omission by prosecution. [*Annual Report of the FSC, 2003, p.24*]

Personal Note: It should be noted that no witnesses were available in the above case

Shabbir alias Kakku & other vs. The State (SBLR 2004 FSC 35) MR. JUSTICE SAEED-UR-REHMAN FARRUKH

It is well-settled that conviction can be based, in rape case, on the solitary statement of the victim if the same is found truthful and confidence inspiring.

[*Annual Report of the FSC, 2003, p.24*]

Personal Note: It should be noted that no witnesses were available in the above case

Muhammad Ashraf vs. The State (NI P 1007 SLD 1)

MR. JUSTICE KHALIL-UR-REH

Zina-bil-jabr by father with his daughter:-

☆ ماجاز لعذر باطل بزوالہ ☆ جس کا استعمال عذر کی وجہ سے جائز ہو عذر ختم ہوتے ہی جواز بھی ختم ہو جائے گا

punishment of *qazf* liable to *hadd* has not been awarded to the complainant, or for which *hadd* may not be enforced under this Ordinance, shall be liable to tazir.

- (2) Whoever commits *zina* liable to tazir shall be punished with rigorous imprisonment for a term which may extend to ten years and with whipping numbering thirty stripes, and shall also be liable to fine.
- (3) Subject to the provisions of Section 4, whoever commits *zina-bil-jabr* liable to tazir shall be punished with rigorous imprisonment for a term which shall not be less than four years nor more than twenty-five years and shall also be awarded the punishment of whipping numbering thirty stripes.
- (4) When *zina-bil-jabr* liable to tazir is committed by two or more persons in furtherance of common intention of all each of such persons shall be punished with death. [1111]

Take a closer look at Section 10(1). This section states that the crime of *zina* or *zina-bil-jabr* is liable to tazir, in any one of the following cases:-

- (a) Proof in either of the forms mentioned in Section 8 (i.e. four witnesses or confession by the accused) is not available. It may be noteworthy that the punishment of *qazf* liable to *hadd* cannot be awarded to the prosecutrix if tazir is awarded to the accused.
- (b) Crime is not liable to *hadd* i.e. *zina* or *zina-bil-jabr* is committed, but, not in the circumstances listed in Section 5(1), e.g. an insane person committing the crime.
- (c) *Hadd* cannot be enforced in accordance with Section 9, e.g. a person retracts confession.

The court itself shall decide whether the crime is proved on the basis of evidence on record or not; *any form of evidence is applicable in deciding this like DNA test, MLR (medicolegal report), testimony of women, etc.*

☆ العادة محكمة ☆ عادت کو حکم بنایا گیا ہے یعنی فیصلہ عرف کے مطابق ہوگا

An Interesting FAQ About

The Protection Of Women Act 2006

In the name of Allah, the Most Merciful & Most Graceful

The *Protection of Women (C.L.A.) Act, 2006* has, since it was tabled in the National Assembly, attracted endorsement from the media, as well as the NGOs, government and many others beside them. It has been repeatedly labeled as a relief to women and as an “end to tyranny” by many. But, this claim is pretty shallow & bogus, as the following discourse explains.

[We have made the following treatise into the form of a dialogue between the author and a common person, to captivate the attention of the reader.]

Person: The WPB has been finally passed! Women have finally been provided relief!

Author: The *Criminal Law Amendment (Protection of Women) Act, 2006* has been passed by the National Assembly and Senate. What relief has been brought to women?

Person: The WPB has finally provided relief to women. Previously, women had to produce four witnesses for proving rape or the rapist will be left scot-free.

Author: This is not true pal! You have been fooled. The President of the state had also reiterated the same lie during his address. There were two types of punishments in the old ordinance:-

Hadd: A punishment fixed by the Quran and Sunnah. This is awarded only in the most stringent circumstances, when certain conditions are fulfilled—as a deterrent.

- ii. **Tazir:** A punishment awarded when the conditions required for hadd are not fulfilled, but, the crime stands proved beyond doubt on the basis of any form of evidence.

If you don't believe me, look at Section 10 of the *Offence of Zina (Enforcement of Hudood) Ordinance (VII of 1979)*.

10. Zina or zina-bil-Jabr liable to tazir.

- (1) Subject to the provisions of section 7, whoever commits zina or *zina-bil-jabr* which is not liable to *hadd*, or for which proof in either of the forms mentioned in section 8 is not available and the