



A COMPARATIVE STUDY BETWEEN HUDOOD ORDINANCE AND RELEVANT CRIMES UNDER PAKISTAN PENAL CODE

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Abstract:

Article 227 of the Constitution of Pakistan requires that laws in Pakistan must be Islamic in nature. Hudood laws were made to meet this constitutional obligation. However, they were objected to from the very inception. Some organizations have stated in their reports from time to time that Hudood laws in Pakistan are grossly unjust and therefore they should be abolished and instead of this, the punishments prescribed earlier under the Penal Code of Pakistan should be reinstated. This article has essentially investigated the narrative of these people that whether the laws prior to Hudood laws met this constitutional requirement. Were Pakistan's Penal Laws better than the Sharia Laws? Moreover, how far is the demand of these groups, to restore the prior punishment under PPC, is valid? For this purpose it is important to compare Hudood laws and penal laws in Pakistan.

Keywords: *Adultery, Laws of Rape, Qazaf, Defamation etc.*

INTRODUCTION

With the enactment of the *Hudood* Ordinances, there has been considerable criticism on them. Criticism on the *Hudood* Ordinances in recent years can be categorized into the following two categories:

- The opinions that really need attention.
- The opinions that are absolutely insignificant; however, these views have largely come from people associated with NGOs (Arsalan, n.d.).

The first opinion relates to the flawed aspects of the *Hudood* Ordinances. This is an area on which both proponents and critics agree that changes must be incorporated in it. Scientific research work can be done on such views. The second type of the opinion came largely from NGOs. In fact, these views are fixed and bound principles of a particular school of thought, on which there is no room for debate, nor can scientific arguments be helpful (Mukhtar, 2016).

In this regard, the National Commission on the Status of Women (NCSW) in Pakistan, established under a retired justice Majida Rizvi, a statutory body created by the government, can be seen which recommended repealing the *Hudood* Ordinances completely.

Following is a recommendation of a special committee set up by the NCSW:

“The special committee; therefore, wishes to record the committee members' unanimous participation in the conclusion that the *Hudood* ordinances, as enforced, are full of irregularities and that the imposition of ordinances is unjust, whereas justice should be the main purpose of enforcing Islamic law. Consequently, by a majority, this special committee recommends that all the *Hudood* Ordinances be revised and that the original rules regarding the crimes mentioned in these ordinances be restored” (Sham, n.d.).



The report called for the abolition of the *Hudood* laws and the restoration of the original provisions of the Pakistan Penal Code. Therefore, it is necessary to compare the *Hudood* Ordinances with the PPC.

Before comparing these two laws, it is important to understand the general structure of the *Hudood* Ordinances. The *Hudood* Ordinance lists two forms of each crime.

1. Crime liable to *hadd* (Fixed punishment)
2. Crime liable to *tazir* (Discretionary punishment) (Ahmad, 2020)

The basis for this distinction is the standard of proof of crime, which is either the confession of the crime or the eye witnesses who meet the standard of purification of witnesses (*tazkiyya tul shahood*). In both cases the crime will be liable to *hadd*. If the offense is not proved by confession or required evidence, but is proved by other means, for example, the number of witnesses for *hadd* was less, or circumstantial evidences etc, on which *hadd* cannot be imposed, but there are other clues by which the court can be satisfied that the crime has been committed. Consequently, the court will punish (*tazir*) the culprit instead of the *hadd* (Siddique, n.d.).

In this regard, instead of *hadd* punishments, *taziri* punishments have also been prescribed in *Hudood* Ordinances for *zina*, *qazf* and drinking intoxicating liquor. For theft (*saraqah*) and *Harrabah* (armed Robbery), the *Hudood* Ordinances explain that if the crimes were not proved by confessions or eye witnesses, the culprit will be punished according to the punishments mentioned in Pakistan Penal code (PPC).

In the following lines, a comparison between *Hudood* Ordinances and the relevant sections of PPC has been done:

Former Law of *zina* (Adultery) and *Zina* Ordinance

A comparative review of the definitions of the crimes mentioned in *zina* Ordinance and of the previous law regarding adultery will not be without interest. The definition of the word 'adultery' was defined in Section 497 of the Penal Code of Pakistan before the enactment of the existing laws as:

“Whoever has sexual intercourse with a person whom he knows, or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punished as an abettor” (Rahman, n.d.).

It is important to note that the above mentioned section 497 of the PPC was repealed with the enactment of the *Zina* Ordinance.

While Section 4 of *zina* ordinance defines this crime which can be seen in the following words:

“A man and a woman are said to commit *zina* if they willfully have sexual intercourse without being validly married to each other” (Siddique, n.d.).

A comparative study of past and present laws reveals the following points of difference between the two:

1. According to the previous law, if a woman had sexual intercourse with another person with the permission of her husband, she could not be considered guilty of adultery, but the *Hudood* laws have removed this exception. With or without the consent of the husband, adultery is now a crime in all cases.
2. In the previous law, only the husband of a woman who has committed adultery can file a case against her. No one else had this right but according to the *Hudood* laws, any citizen can become a plaintiff.
3. In the previous law, it was a crime to have intercourse only with a married woman. Adultery was not a crime in itself. Rather, it was a crime to interfere in the husband's favor. *Hudood* laws abolished this allocation (Kalanauri, n.d.).
4. In the previous law, sexual intercourse with an unmarried woman, a virgin girl, a widow or a divorcee was not considered adultery. According to *Hudood* laws, immoral intimacy with any married or unmarried woman other than one's wife is considered adultery.



5. Under the previous law, only a man could be found guilty of adultery. There was no penalty for woman for having adultery and she had an open leave to commit sexual acts. *Hudood* laws have removed this exception. Now both men and women who commit adultery by mutual consent are found guilty.
6. Under the previous law, adultery was a compoundable crime. If the plaintiff had pardoned the accused, the case would have been dismissed. *Hudood* laws have made this crime an uncompoundable crime.
7. Under the previous law, adultery was considered a bail able offense. The accused was entitled to bail immediately after his arrest. *Hudood* laws make this crime non bail able.
8. Under the previous law, adultery was punishable by up to five years imprisonment or a fine or both, whereas in the *Hudood* laws, the offence of *zina* is punishable by stoning to death or 100 lashes in the case of *hadd* while 10 years rigorous imprisonment in addition with 30 lashes and fine in case of *tazir*.

It is worthy to note here that Under the Protection Women Act 2006, *tazir* punishment for adultery has been removed from the *Hudood* laws and it has been made part of PPC under section 496B (Abbasi et al., n.d.).

Laws of rape

Prior to the *Hudood* Act, rape (*zina bil jabr*) was a punishable crime under sections 375 and 376 of the PPC. With the enactment of the *Zina* Ordinance, both these sections were repealed and rape was made a crime liable to *hadd* and *tazir*. But through the PWA, it was again removed from the *zina* Ordinance and inserted into Sections 375 and 576 of the PPC. The first section defines rape while the second section describes its punishment. The following lines compare the definitions and punishments of rape in the *Zina* Ordinance with Pakistan Penal Code:

Section 375 of the Pakistan Penal Code defines rape as follows:

“A man is said to commit rape who has sexual intercourse with a woman under circumstances falling under any of the five following descriptions,
against her will

without her consent

with her consent, when the consent has been obtained by putting her in fear of death or of hurt,

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 to be married; or

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” (Mahmood, 2006).

According to the section 376 of PPC, the punishment of rape is whoever commits rape shall be punished with death or shall be imprisoned for not less than ten year or more than twenty five years and fine also. It is also described that if two or more persons commit rape shall be punished with death or imprisonment for life.

While section 6 (1) of *zina* ordinance defines *zina bil jabr* (rape) in the following words:

“A person is said to commit *zina bil jabr* (rape) if he or she has sexual intercourse with a woman or man, as the case may be, to whom he or she is not validly married, in any of the following circumstances, namely;

- a. Against the will of the victim
- b. Without the consent of the victim
- c. With the consent of the victim, when the consent has been obtained by putting the victim in fear of death or of hurt; or
- d. With the consent of the victim, when the offender knows that the offender is not validly married to the victim and that the consent is given because the victim believes that the offender is another person to whom the victim believes herself or himself to be validly married.



Explanation: penetration is sufficient to constitute the sexual intercourse necessary to the offence of *zina bil jabr* (rape)”.

According to the section 6 (2) of the *zina* ordinance if the rape is committed in the circumstances mentioned in section 5 (1) shall be liable to *hadd*.

Section 6 (3) defines punishment for *hadd* in the following lines:

- a. The person who commits rape shall be stoned to death if he or she is *muhsan*; or
- b. Whipping of hundred lashes at a public place, and with such other punishment, as court may think fit including death sentence if he or she is not *muhsan*.

In article 10 of the *zina* ordinance, the causes of lessening the above mentioned penalties have been mentioned, the details of which are given below here:

- i. “Whoever commits *zina-bil-jabr* (rape) which is not liable to *hadd*, or for which proof is not available under section 8 of the same ordinance and the complainant has not been awarded the punishment of *qazf* liable to *hadd*, is liable to *tazir*.
- ii. The punishment of *tazir* shall be rigorous imprisonment up to ten years, 30 lashes and fine.
- iii. Whoever commits *zina-bil-jabr* liable to *tazir* shall be punished with imprisonment for a period of (not less than four years) twenty-five years, as well as thirty stripes of whipping.
- iv. 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”.

When one compares the Pakistan Penal Code with *zina* ordinance relating to rape, the following points emerge:

- i. Under the Pakistan Penal Code, only a man could be found guilty of rape. But, under the *Hudood* laws now either man or woman can be accused.
- ii. Under PPC rape can only be committed with a woman, whereas under the *Hudood* laws, sexual intercourse with a man, without his consent, is included in the category of rape.
- iii. According to PPC, consensual sexual intercourse with a woman under the age of 16 years is also called rape. However, no such condition was laid down in the *Hudood* laws. The *Hudood* laws set a maximum age of 18 years for an adult male and 16 years for a woman or puberty. Now, adultery with any minor girl will be called rape.
- iv. The *Hudood* laws provide for the death penalty by stoning to death (*rajm*) for a married woman or a man, and 100 lashes for an unmarried woman or man if he/she commits rape. However, any other punishment may also be given to an unmarried man/woman depending on the circumstances of the case. It can be a death sentence as well. While in under PPC, rape is punishable by death or imprisonment for up to 25 years and a fine.
- v. The *Hudood* Law also stipulates that if the rape cannot be proved on the basis of the testimony of four men or confession of the accused, then in the light of other circumstantial evidence of the case, imprisonment of 4 to 25 years may be imposed and the accused will also be whipped with 30 lashes. Similarly, if two or more persons commit this crime with same intention, then all such persons will be sentenced to death.
- vi. What the two laws have in common is that penetration was considered sufficient for sexual intercourse.

Zina* liable to *tazir

There were two types of adultery (*zina*) in the *Hadd-i-zina* Ordinance.

- *Zina* liable to *hadd*
- *Zina* liable to *tazir*

The criterion for imposing *hadd* punishment for the crime of *zina* has been provided in section 8 of the ordinance which is confession of the accused or the testimony of four Muslim adult men who meet the criteria of purification of witnesses (*tazkiya al-shuhood*). However, if the court is satisfied with the crime of adultery (like the number of the witnesses is lesser than four or in the presence of any other circumstantial evidences) but the stated evidence is not available, then the accused would be punished under *tazir*.

Under section 10 (2) of *zina* ordinance, whosoever commits *zina* liable to *tazir* shall be punished with rigorous imprisonment for up to ten years, and with whipping of 30 lashes and fine. However,



this section was omitted from the *zina* Ordinance through the PWA and added to the PPC under Section 496-B making it as a punishable crime for up to Five years imprisonment and fine up to ten thousand rupees.

Drinking intoxicant liquor

Prior to the enactment of the prohibition (enforcement of *hadd*) order, 1979, the country had laws in this regard, but all of them were repealed under section 33 of the said order.

Section 33 of the order declared that the following laws are hereby repealed, namely:

- i. The prohibition Act 1977;
- ii. The Baluchistan prohibition ordinance, 1978;
- iii. The NWFP prohibition ordinance, 1978;
- iv. The Punjab prohibition ordinance, 1978 and
- v. The Sind prohibition ordinance, 1978.

Now in the presence of the prohibition order, the Control of Narcotics Act of 1997 (CNSA) has come into existence. Although the purpose of combining these two laws is to discourage crime, wherever a case is registered under two different laws, then the law enacted recently will be applied.

Following is a comparison of prohibition order with Pakistan Penal Code:

Surprisingly, there is no section in the Pakistan Penal Code that criminalizes alcoholism. However, under section 510, if an intoxicated person harms a person in a public place, such person may be imprisoned for 24 hours or fined up to Rs. 30. In the criminal code adopted for this, this crime is a non-cognizable and a bail able.

Drinking intoxicating liquor, on the other hand, is a serious crime within the prohibition order (*hudood*), which is cognizable and non bail able. Section 8 of the order states that if a person who is an adult Muslim, drinks intoxicating liquor by mouth, he will be found guilty of drinking alcohol. And he will be punished with whips, the number of which will be eighty lashes.

The above section sets out the following conditions for the *hadd* punishment of drinking:

- Be a person (male or female)
- Be an adult
- Be a Muslim (this has been discussed in Chapter 3)
- Drinking alcohol by mouth (if drug enters into the body by any other way such as injection, etc., it will not be liable to *hadd* punishment).

So the punishment for such a person is 80 lashes..

There are also two types of penalties for drinking alcohol:

- Drinking liable to *hadd*
- Drinking liable to *tazir*

The Prohibition order has two ways of proving guilt:

- Confession of the accused
- Two male Muslim eyes witnesses

If the required criteria for proof of the crime are not available, then the offender will be punished under section 11 of the same order which may be imprisonment for up to 3 years or 30 lashes or both.

A comparative study of *Qazf* Ordinance and law of Defamation

The law of slander (*Qazf*) is based on Islamic *hudood* and is a new law in Pakistan. Therefore, it is wrong to say that any law for slander was found before this particular name. However, in sections 499 and 500 of the Pakistan Penal Code, there are laws for redressal of defamation. But as far as the *Qazf* Ordinance is concerned, it is a specific Islamic law that was enacted only to compensate for the accusation of adultery which nature is different from the defamation law of PPC. This law is part of the *hudood* laws. In the following lines, *qazf* ordinance is compared with the law of defamation of PPC:

According to the section 499 of PPC, "Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or published any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the



reputation or such person is said except in the cases hereinafter excepted to defame that person” (Mahmood, 2006).

According to the above section, the offence has the following elements:

- First: to accuse against a person
- Second: The accusation leveled
 - i. Pronounced or written with the intention of reading.
 - ii. Done with gestures
 - iii. Made with visible patterns.
- Third: Such an accusation is made with the purpose to harm someone's status or knowingly or believing that the accusation will harm that person's reputation.

Under section 500 of the PPC, this offense is punishable by up to two years imprisonment or fine or both.

On the contrary, the definition of *qazf* under section 3 of the *qazf* ordinance is the same as the definition of defamation in section 499 of the PPC. However, in PPC any slander or contempt is meant there, while the *qazf* ordinance is only for the accusation of adultery which is mentioned in the Quran. According to the verse No. 4 of *Surah Al-Noor*, anyone who accuses a chaste person of adultery will be found guilty of slander. If the accuser brings four witnesses, the *hadd* will be imposed on the adulterer and if not, the *hadd* will be imposed on the accuser (false accuser of adultery).

Under the *Qazf* Ordinance, there are two types of punishments for *Qazf*:

- *Qazf* liable to *hadd*
- *Qazf* liable to *tazir*

In section 5 of the same ordinance, *qazf* liable to *hadd* means that if an adult person intentionally and falsely accuses a person who is a *muhsan* (chaste, Muslim) and is capable of sexual intercourse, such *qazf* will be liable to *hadd*, the punishment for which is whipping numbering 80 lashes, and his evidence shall not be accepted in any court of law under section 7 (1) of the same ordinance (Siddique, n.d.).

Under section 6 of the *qazf* ordinance, *qazf* liable to *hadd* shall be proved by any one of the following forms:

- i. Confession of the accused before the court
- ii. Committing *qazf* in the presence of the court
- iii. Two Muslim male witnesses other than the victim.

Under section 10 of the ordinance, if any of the above forms are not available for the proof of *qazf* and the court is satisfied that *qazf* has taken place, then under section 11, the court may impose a *taziri* punishment (*qazf* liable to *tazir*) which carries imprisonment up to 3 years with thirty lashes and a fine.

The following points emerge from sections 499 and 500 of the PPC and sections 5, 6, 7 (1), 10 and 11 of the *Qazf* Ordinance:

- i. Law of Defamation is a general law that deals with any accusation or slander, while *qazf* ordinance is a specific Islamic law that is included in the *Hudood* laws that contain only a false accusation of adultery.
- ii. Under law of defamation, to defame anybody with intention is a crime for which the proof is general standards of evidence, while false accusation of adultery against an adult Muslim (male and female) is a crime under the *Qazf* Ordinance for which if the proof mentioned in section 6 are available, the crime will be liable to *hadd*, and if the said conditions do not exist, then the crime will be liable to *tazir*.
- iii. Under Section 18 of the *Qazf* Ordinance, a judge must be a Muslim. However, there is no such provision in the PPC.
- iv. Defamation is a compoundable crime while *qazf* is non compoundable crime.

Qazf liable to *tazir* has been removed from the *qazf* ordinance under the PWA and has been added to PPC. Now section 496 C of PPC deals *qazf* liable to *tazir*, under which anyone who



falsely accuses a person of adultery is liable to up to five years' imprisonment and a fine up to Five thousand rupees (Abbasi et al., n.d.).

Theft (*Saraqah*)

According to 'Offences against Property Ordinance 1979, following are two types of theft:

- i. Theft liable to *hadd*
- ii. Theft liable to *tazir*

It is adopted that theft liable to *hadd* shall be punished according to the rule prescribed in the ordinance, while theft liable to *tazir* shall be punished according to PPC.

Under section 5 of the 'Offences against property ordinance' theft liable to *hadd* has been defined as:

"Whoever, being an adult, surreptitiously commits, from any *hirz*, theft of property of the value of *nisab* or more not being stolen property, knowing that it is likely to be of the value of the *nisab* or more is, subject to provisions of this ordinance, said to commit theft liable to *hadd* (Siddique, n.d.)."

In order to constitute theft six variables are essential:

1. The offender must be an adult person
2. The offence must be committed surreptitiously
3. That the property must be removed from any custody (*hirz*).
4. The property must be of the value of *nisab* (i.e. 4.457 grams of gold) or more. The offender must have the knowledge that the property is or is likely to be of the value of *nisab* or more.
5. The property must not be already stolen property. If it is already stolen property, then *tazir* shall be implemented instead of *hadd* punishment.

Evidence of the theft liable to *hadd* must be in one of the following forms under section 7 of the same ordinance:

- i. The accused confesses to committing the theft, or
- ii. At least two adult Muslim male witnesses testify as eyewitnesses to the incident.

If the theft is not liable to *hadd*, i.e. for which the punishment prescribed in *Shariah* cannot be given or the components of the theft as mentioned above must not be formed, then such theft will come under the definition of section 378 of PPC.

According to the section 378 of PPC, theft has been defined as:

"Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft" (Mahmood, 2006).

Five ingredients of theft according to the mentioned section of PPC are as follows:

1. Dishonest deliberate to require property
2. The property must be moveable.
3. It ought to be taken out of the ownership of another person.
4. It ought to be taken without the consent of the owner.
5. There must be some removal of the property in order to achieve the taking of it.

Theft liable to *tazir* can be proved on the basis of general standards of evidence or any circumstantial evidence.

Punishment of theft liable to *hadd*, according to section 9 of the ordinance is amputation of right hand from the joint of the wrist for the first time, amputation of left foot up to the ankle and life imprisonment for committing theft for the third time.

If somebody commits theft, which is not liable to *hadd* or for which proof is not available under section 7 of same ordinance, or for which *hadd* may not be imposed under this ordinance, shall be liable to *tazir*. Section 14 of the ordinance does not create any new offence and provides that *tazir* shall continue to be dealt with and punished under PPC.

According to section 379 of PPC, whoever commits theft, shall be punished with imprisonment up to 3 years or fine or both.

Harrabah(Armed Robbery)



According to the article 15 of the offences against property (enforcement order) *harrabah* (armed robbery) is defined as “when any one or more persons, whether equipped with arms or not, make show of force for the purpose of taking away the property of another and attack him or cause wrongful restraint or put him in fear of death or hurt, person or persons are said to commit *haraabah*” (Robbery, Dacoity, Extortion) (Mahmood, 2006).

The standard of evidence for proving the *hadd* punishments to the committer of *harabah* is the same as that was of theft under section 7 of the same Ordinance, i.e. the accused confesses to the crime or the testimony of two eyewitnesses. Section 17 of the same ordinance proposes the following punishments of *Harrabah* liable to *hadd*:

1. Whoever being an adult commits *harrabah*, during which no murder has been committed or any property has been looted, he will be punished with whipping which will not exceed thirty lashes and will be imprisoned rigorously until the court is satisfied that he is about to repent.
2. Any adult who is guilty of *harrabah*, during which no property has been looted, but a person has been harmed, will be punished for causing harm in accordance with the PPC along with the punishment mentioned in point 1.
3. Whoever being adult is guilty of *harrabah*, during which no murder has taken place but the property, the value of which is equal to the *nisab* (4.457 grams of gold) or more, has been looted, his right hand up to the wrist and the left foot up to the ankle will be cut off.
4. Any adult who commits *harrabah* during which he has committed murder will be sentenced to death as *hadd*.

Under section 20 of the same ordinance, anyone who commits a crime which does not carry the punishment prescribed in section 17 or for which the standard of evidence mentioned in section 7 is not present, is liable to the punishments of robbery, dacoity and extortion under the PPC, as the case may be (Siddique, n.d.).

Under section 390 of the PPC, if a person's property is taken against his will with criminal intent by inciting violence or by terrorizing him, then such an act falls under the category of robbery which is under section 392, the perpetrator of the robbery will be liable to rigorous imprisonment (not less than three years and not more than 10 years) and fine. However, if the robbery is committed on a highway, the imprisonment can be extended up to 14 years (*Section 390 of Pakistan Penal Code (PPC) Robbery*, 2020).

Under section 391 of the PPC, when five or more persons commit robbery by force, it will be called dacoity and every person involved in such crime will be called to commit dacoity. Therefore, the element of terror, fear and violence is more serious and, therefore, it has been declared as a more serious crime. Furthermore, preparation and assembly for committing dacoity is also a punishable offence under sections 399 and 402. Under the section 395 of the PPC, dacoity is punishable by life imprisonment or severe imprisonment for a term not less than four years and not more than ten years and he will also be liable to a fine (Mahmood, 2006).

The laws related to extortion have been entailed in section 383 of PPC. The definition of extortion is given under section 383 of PPC whereas section 384 contains the penalty for extortion. As per section 383 of PPC, extortion is an act to put someone in fear of injury of any other harm to obtain his property or any other valuable item. The definition of extortion can be understood with the help of the following illustration:

A threatens B, that he will kill his wife, if B fails to pay Rs.1 Crore on his birthday. This is clear cut extortion case against A.

Section 384 contains the punishment for extortion, which reads as follow: “Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Conclusion:

A comparison of the PPC and the *Hudood* Ordinances reveal the following points:

- i. Prior to the *zina* ordinance, section 497 of PPC entitled ‘Adultery’ was against Islamic teachings, which explicitly stated that adultery is a punishable offense only if a married woman commits it against the will of her husband It means that the adultery of a virgin girl as if it was not a crime.



And even if the husband agrees, it is not a crime. With the enactment of the *Zina* Ordinance, this section revoked from PPC. However, from the time of Pakistan's independence until the enactment of *zina* ordinance, this section was a part of PPC. Article 227 of the Constitution of Pakistan states that all existing laws will be made in accordance with Islam; therefore, the repeal of the said section was obligatory under the Constitution.

- ii. Prior to the enactment of the *Zina* Ordinance, rape (*zina bil-jabr*) was part of PPC, but *Zina* Ordinance removed it from PPC and included it in the *Hudood ordinances* as a crime liable to *hadd*. However, if the conditions of the *hadd* punishment won't meet (i.e. four witnesses or confession of the accused), and if the crime would prove by other means, then the perpetrator of rape would get *taziri* punishment which could be up to 25 years imprisonment or death penalty. However, this crime has been taken out from *hudood* under the PWA and re-made part of the PPC, where the punishments of stoning and flogging were abolished. Furthermore, changes have been made in the definition of rape in PPC. In the *Zina* Ordinance, the perpetrator of rape could be both a man and a woman, while under PPC, only a man can commit rape. Under the *Zina* Ordinance, rape can be committed on both men and women, while under the PPC forced adultery, only with a woman, is considered as rape.
- iii. The research states that adultery will be proved either, which is punishable by stoning to death for *muhsan* (married) and 100 lashes for the non *muhsan*, or it will not be proved. In this case, the accusers of adultery will be punished (*hadd-i-Qazf*) and the accused will be considered innocent. However, under the *Zina* Ordinance, if *zina* is not liable to *hadd*, the court will punish the accused with ten years rigorous imprisonment, thirty lashes and a fine. The PWA removed the *taziri* punishment of adultery from *Zina* Ordinance and added it to the PPC, where it is punishable by imprisonment of up to five years and a fine of Rs. 10,000. Therefore, it is incomprehensible to reduce the punishment for a major crime like adultery.
- iv. The Holy Quran forbids drinking intoxicant liquor in various places. According to the narrations, there is *hadd* for drinking alcohol, which according to one tradition, is forty lashes, while according to another, it is eighty lashes. Prior to the *Hudood* Ordinance, there were no penalties for drinking intoxicant liquor. Under Section 510 of the PPC, if an intoxicated person commits misconduct in a public place, then it is a punishable offense which carries a penalty of 24 hours imprisonment and a fine Rs. 30. Under the *Hudood* Ordinance, drinking has been made a punishable offense under Islamic law, according to which any Muslim adult who drinks intoxicating liquor, whether intoxicated or not, will be entitled to *hadd* punishment.
- v. The law of *qazf* is purely an Islamic law, the ruling of which is contained in *Surah Al-Noor* of the Holy Quran. Prior to the enactment of the *Qazf* Ordinance, there was no specific law in the PPC for the accusation of adultery. However, sections 499 and 500 of the PPC contain a law of defamation under which defamation of a person is a punishable offense up to two years imprisonment or fine or both. Under the law of *qazf*, accusing a chaste man or woman of adultery is a heinous crime punishable by the eighty lashes and rejection as witness in any court of law afterwards. The standard of evidence for enforcing the *hadd* punishment is the confession of the accused or the testimony of two adult Muslim men. However, if the crime is proved by other means, the *hadd* will not be issued, but the court can impose a penalty which can be imprisonment for up to two years and fine and 30 lashes. Through the PWA, *qazf* liable to *tazir* has been removed from *Qazf* Ordinance and added to the punishment of PPC. *Hadd-i-qazf* is an Islamic punishment prescribed by the Quran and cannot be amended. We cannot call *qazf* liable to *tazir* an Islamic punishment because it is the prerogative of the state to amend the *taziri* punishments. However, its removal from *Qazf* Ordinance is incomprehensible as the crime could be punished according the general standards of evidence in the ordinance.
- vi. Similarly, before the enactment of the *Hudood* Ordinance, penalties for theft and *harrabah* (robbery, dacoity, extortion) already existed in the PPC. With the enactment of the *Hudood* Ordinance, the aforesaid offenses became punishable, for which, according to the Quranic injunctions, the punishment of cutting off the hands of a thief and cutting off the hands and



feet in the opposite direction for the perpetrator of *harrabah* was allotted. The standard of evidence for the *hadd* punishment was the confession of the accused or the testimony of two Muslim adult men. In the case of non-application of the *hadd* punishment (such as insufficient evidence to prove the crime or the stolen property is less than the *nisab* etc.) the ordinance states that the offenders will be punished in accordance with the punishments mentioned in the PPC. Therefore, there is no contradiction between the ordinance and the PPC.

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