Lies & Distortions By The Media About Hudood Ordinance

By Abdul Rahman

1. Crime Never Proved

The very first misinformation being propagated through Zara Sochieye is that under the Hudood Ordinance, rape is never proved unless there are four witnesses. There are two advertisements in which this idea has been promoted:

(a) In an advertisement showing a physical balance, in the background of which, a person says: “Can it happen under an Islamic law that a crime is never proved? Can Islam tolerate such an injustice?”

(b) In the Experts Commentary, Dr. Fazal Ahmed, a learned scholar, said: “If a woman is abducted at night and raped, from where will she bring four witnesses and from where will four witnesses be available? Therefore, the scholars should think regarding this situation.”

In both cases, no one came forward to rectify that under the Hudood Ordinance, a rapist can be punished with tazir, if the crime stands proved on any other evidence, for example, on the basis of medical evidence only, even if no witnesses are available.

It will be pertinent to study Section 10 of the Offence of Zina (E.O.H.) Ordinance (VII of 1979) in this regard:

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 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.

Let us 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:-

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1[1] The text of the Zina & Qazf Ordinances, as well as the Protection of Women Act, can be found at the following website: http://www.haqeeqat.org/

2[2] This section was not present in the original Ordinance, but, came into being as a result of a judgment given by the Federal Shariah Court in a case: Rashida Patel vs. The State (PLD 1989 FSC 95). In this judgment, the court ruled that gang rape is covered by verse 33 of Surah al-Maida (5).
(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 (medico legal report), testimony of women, etc.

The following cases further prove that the notion of ‘crime never proved’ is a fallacy:

---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.


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.


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.


3[3] All the cases mentioned in this article have been quoted from the Annual Report of the Federal Shariat Court, 2002 & 2003, published by the Law & Justice Commission of Pakistan.
**Personal Note:** It should be noted that no witnesses were available in the above case.

---Muhammad Ashraf vs. The State (NLR 1997 SLD 1)

MR. JUSTICE KHALIL-UR-REHMAN

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

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 u/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.


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

---Muhammad Abid vs. The State (PLD 1988 FSC 111)

MR. JUSTICE GUL MUHAMMAD KHAN

**Evidentiary value of Police Officials as witnesses:**

The police officers who are also Muslims, if they make a statement on oath, it has to be accepted unless it is shown from context that they are telling a lie or they have been declared as unreliable by a Court of competent jurisdiction.


---Mumtaz Ahmed vs. The State (PLD 1990 FSC 38)

MR. JUSTICE GUL MUHAMMAD KHAN

**Scope and condition of Tazkiyah-al-Shuhood:**

Generally, every Muslim is a competent witness. He is ordained to speak the truth and should give evidence in favour of Allah & no one else, be it his parents, children, relatives or friends. No reason was stated for witness to have falsely involved accused persons. Involvement of accused in the offence thus stood fully proved.


**Personal Note:** A very important judgment as it removes the common misconception that a person who missed even a single Salah does not fulfill the requirements of tazkiyah al-shuhood; this is inaccurate.

It is pertinent to note at this point that in Section 8, the respective ordinance defines tazkiyah al-shuhood as follows:

Explanation: In this section, “tazkiyah al-shuhood” means the mode of inquiry adopted by a court to satisfy itself as to the credibility of a witness.
2. No Difference between Zina and Zina bil Jabr

Another misconception being spread on a wide scale is that Hudood Ordinance makes no difference between zina and zina bil Jabr. A person who never saw the Ordinance may believe in such a connotation, but, anyone who has the slightest of knowledge of the Ordinance knows that it has drawn a big line of distinction between the two crimes.

The allegation that the hudood ordinance does not differentiate between zina and zina-bil-jabr is prima de fací incorrect, as there are two separate sections (i.e. section 4 and 6), which clearly define the two crimes separately. There are different punishments for the two crimes and thus the Ordinance has placed them in separate categories. The text of sections 4 to 8 is given below for reference:-

4. Zina

A man and a woman are said to commit ‘zina’ if they willfully have sexual intercourse without being validly married to each other.

Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of Zina.

5. Zina liable to hadd

(1) Zina is zina liable to hadd if:-

(a) it is committed by a man who is an adult and is not insane with a woman to whom he is not, and does not suspect himself to be married; or

(b) it is committed by a woman who is an adult and is not insane with a man to whom she is not, and does not suspect herself to be, married.

(2) Whoever is guilty of Zina liable to hadd shall, subject to the provisions of this Ordinance:-

(a) if he or she is a muhsan, be stoned to death at a public place; or

(b) if he or she is not muhsan, be punished, at a public place; with whipping numbering one hundred stripes.

(3) No punishment under sub-section (2) shall be executed until it has been confirmed by the Court to which an appeal from the order of conviction lies; and if the punishment be of whipping; until it is confirmed and executed, the convict shall be dealt with in the same manner as if sentenced to simple imprisonment.

6. Zina-bil-jabr

(1) A person is said to commit zina-bil-jabr if he or she has sexual inter-course 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 is or believes herself or himself to be validly married.

**Explanation:** Penetration is sufficient to constitute the sexual inter-course necessary to the offence of zina-bil-jabr.

(2) Zina-bil-jabr is zina-bil-jabr liable to hadd if it is committed in the committed in the circumstances specified in sub-section (1) of section 5.

(3) Whoever is guilty of zina-bil-jabr liable to hadd shall subject to the provisions of this Ordinance:-

(a) if he or she is a muhsan, be stoned to death at a public place; or

(b) if he or she is not muhsan, be punished with whipping numbering one hundred stripes, at a public place, and with such other punishment, including the sentence of death, as the Court may deem fit having regard to the circumstances of the case.

(4) No punishment under sub-section (2) shall be executed until it has been confirmed by the Court to which an appeal from the order of conviction lies; and if the punishment be of whipping; until it is confirmed and executed, the convict shall be dealt with in the same manner as if sentenced to simple imprisonment.

7. **Punishment for zina or zina-bil-jabr where convict is not an adult**

A person guilty of zina or zina-bil-jabr shall, if he is not an adult, be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both, and may also be awarded the punishment of whipping not exceeding thirty stripes:

**Provided** that, in the case of zina-bil-jabr, if the offender is not under the age of fifteen years, the punishment of whipping shall be awarded with or without any other punishment.

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

Proof of zina or 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; or

(b) at least four Muslim adult male witnesses, 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 evidence as eye-witnesses of the act of penetration necessary to the offence:

**Provided** that if the accused is a non-Muslim, the eye-witnesses may be non-Muslims.

Explanation: In this section, “tazkiyah ul-shuhood” means the mode of inquiry adopted by a court as to satisfy itself to the credibility of a witness.

Only an objective analysis of the above sections is sufficient for any unbiased person deduce that the ordinance has clearly distinguished between zina and zina-bil-jabr. If the evidence required for proving the two crimes is similar, this does not mean that the ordinance has equalized the two crimes.
and dissolved all differences. For most (not all) crimes punishable by way of hadd, at least two Sharī witnesses are necessary. Can anyone reasonably argue that God has dissolved the differences between all these crimes?!

These guys and some other fellows spread this misconception on the basis that the evidence is same for both crimes. But, these people themselves tell others that the Ordinance has differentiated between Muhsan and non-Muhsan criminals. It is indeed amazing that when the definitions, evidence, etc. is the same, yet they agree that there is a difference, but, when it comes to zina and zina-bil-jabr, all differences are dissolved!

The differences that the Ordinance has made between the two crimes are listed in the following table:

<table>
<thead>
<tr>
<th>Difference</th>
<th>Zina</th>
<th>Zina-bil-Jabr</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition</td>
<td>Intercourse with will as well as consent &amp; without any deceitful belief, etc.</td>
<td>Intercourse without will or consent or by inducing deceitful belief, etc.</td>
</tr>
<tr>
<td>Criminal Responsibility</td>
<td>Definition reads: “A man and woman are...” which shows that both are criminals</td>
<td>Definition reads: “A person is...” which shows that only the rapist is a criminal</td>
</tr>
<tr>
<td>Tazir punishment</td>
<td>Rigorous imprisonment not exceeding 10 years, thirty stripes along with fine</td>
<td>For gang rape, death penalty; for ordinary rape, 4 to 25 years rigorous imprisonment &amp; 30 lashes; for kidnapping, life imprisonment, etc.</td>
</tr>
<tr>
<td>Hadd punishment for non-Muhsan criminals</td>
<td>Whipping numbering hundred stripes</td>
<td>Whipping numbering 100 stripes along with any punishment including death penalty</td>
</tr>
</tbody>
</table>

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. (Not the ordinance!)

**Note:** The strict evidence of four male Muslim truthful witnesses is required only for the punishment of Hadd. If the court is convinced that the crime stands proved on other forms of evidence like DNA test, etc. then tazir can be awarded as stated in Section 10 of the concerned Ordinance.

The above extract has provided enough material to refute the flawed assumption that the “Hudood Ordinance places zina and zina-bil-jabr in the same category.”

Now, we must also see whether zina and zina-bil-jabr are two forms of the same crime or two different crimes. For this purpose, we will take help from some other writings:

“The Special Committee of the National Commission on the Status of Women (NCSW), to review the hudood laws, observes in its draft report:-

While the majority of the Committee members agreed with the arguments of Syed Afzal Haider, Dr. Fareeda Ahmad and Mr. Shahtaj disagreed and were of the view that Surah Noor, verse 2 covers both offences of Zina and Zina-bil-Jabr along with the pre-requisite criterion of four witnesses to prove these offences ... Dr. Fareeda Ahmad, Mr. Noor Muhammad Shahtaj and Dr. S.M. Zaman held that the provisions of the Ordinance on the offence of Zina-bil-Jabr, as reflected in Section 8, were in accordance with the Shariah. [NCSW Report, p.9]
I appreciate these members on this issue and they were undoubtedly right in pointing out that four witnesses are required for proving rape liable to hadd; but, their argument seems to have been disfigured by the one who prepared these conclusions. Their actual argument was:

However, FA (Dr. Farida Ahmed) and NMS (Noor Muhammad Shahtaj) disagreed with that and were of the opinion that it does fall under Hadd and FA relied on a Hadith of Tirmidhi Sharif, according to which bil Jabr if the offence of Zina is proved as per rules of evidence laid down for Zina then the punishment should be Hadd. If not then the punishment could be as per Tazir. [NCSW Report, p.57] (Highlighted text has been distorted by the one who prepared the report.)

It seems most likely that the one who prepared this report was biased, because, he completely distorted the sentence to give a strange picture of the hadith.

The actual sentence if corrected is:

FA relied on a Hadith of Tirmidhi Sharif[4], according to which if the offence of Zina bil Jabr is proved as per rules of evidence laid down for Zina then the punishment should be Hadd. If not then the punishment could be as per Tazir.

Did you see what the actual sentence is?!?

It is quite clear from numerous ahadith[5], including the one that has been quoted above that if Zina bil Jabr is proved according to requirements of Hadd-e-Zina, the punishment of Hadd will be awarded to the rapist only, not to the woman[6].

It is reported in many ahadith that Muhsan persons, who committed zina-bil-jabr, were stoned to death. The point to be noted here is that Rajm is a hadd and moreover, it is NOT mentioned in verse 33 of Surah al-Maida (5).

It is pertinent to note down a few things regarding Zina-bil-Jabr in the Ordinance; in Section 6, sub-section (1), it is written:

A person IS said to commit zina-bil-jabr... (Emphasis ours)

Contrast the above with Section 4:

A man and a woman ARE said to commit zina... (Emphasis ours)

So, according to the Ordinance, the woman is not a criminal & is innocent if she has been raped. The differences between the two crimes, as implemented in the Ordinance, have already been discussed before.

There is an issue which is usually discussed & debated viz. whether Zina and Zina-bil-Jabr are two forms of the same crime or not. Actually, this debate is usually heated to exclude or include rape within the ambit of verse 2 of Surah Noor. But, the proof from Sunnah & Ijma is too clear and sticking with this ambiguous discussion is like running in a never-ending circuit.

Similarly, it must also be noted that in Surah Noor, the term ‘zina’ is used. In fiqh and Arabic lexicons, it is taken to mean illicit intercourse. There is no reference to consent or will and thus it is a general

4[4] Jam’ai Tirmidhi, Kitab al-Hudood, Ch.22, Hadith No. 1453 & also, 1454
5[5] For example, Sahih Bukhari, Kitab al-Ikrah, Ch.6 and Sunan Abu Daw’ud, Kitab al-Hudood, Hadith No. 4366
term. With this definition in mind, zina may be consensual i.e. zina-bil-raza or forced i.e. zina-bil-jabr. But, both these terms will be covered by the general term ‘zina’.

However, in the ordinance, the word ‘zina’ is defined in the meaning of ‘zina-bil-raza.’ So, the term zina, in the ordinance, excludes zina-bil-jabr. Thus what the ordinance designates as zina is known in the fiqh as zina-bil-raza. This thin difference must be kept in mind, otherwise, confusions & ambiguity may arise.

Coming back to the original issue; to settle this issue we shall consult a dictionary & find the meaning of crime. Merriam-Webster Dictionary, provided with Britannica Encyclopedia 2002 Deluxe Edition, describes the word ‘crime’ as:

An act or the commission of an act that is forbidden or the omission of a duty that is commanded by a public law and that makes the offender liable to punishment by that law.

In the light of the above definition, if we view zina-bil-raza and zina-bil-jabr, it is quite clear that the two acts are completely different crimes, just like they are dealt in by the Hudood Ordinance. They can never, on earth, be considered to be the same crimes! This is because of the fact that in zina-bil-raza, both the man and woman are not only punished, but, are also involved in the commission of the crime. Whereas, in zina-bil-jabr, only one person is involved in the offence and the woman is not only innocent, but, is also not punished.

Some people forward the argument that just like theft is theft, whether it is with force or not, same is the case here. But, this argument is fallacious on the face of it, because, in theft, the thief is the criminal in both the cases and the one whose money has been stolen is the victim. Whereas, in zina-bil-raza, both are criminals and involved in the offence, but, in zina-bil-jabr, only one is involved in the offence and is liable to punishment.

Furthermore, this issue can be approached in one more way: in zina, both men and women consensually commit an illegal act, whereas, in zina-bil-jabr, only the man commits an illegal act, whose victim is the woman. Therefore, in zina, neither the man nor the woman is a victim—rather both are the offenders. Whereas, in zina-bil-jabr, only the woman is a victim of an illegal act and the man is the offender.

Here, I must remind again that we need to keep the definition of ‘zina’ in mind. If we take ‘zina’ to mean fornication or adultery, then ‘zina-bil-jabr’ is a very different thing. But, if we take ‘zina’ to simply mean illicit intercourse, then fornication/adultery come under the flag of zina-bil-raza, whereas, rape comes under zina-bil-jabr. According to the latter definition of ‘zina’, both zina-bil-raza and zina-bil-jabr are covered by the term zina.

**To sum up then, in view of the above arguments, we fully adhere to the view that the proof required for zina or zina-bil-jabr liable to hadd is the same, because, it is a requirement of Shari’ah, proved from Sunnah and Ijma. But, from the point of view of general understanding, zina and zina-bil-jabr are two different crimes, as provided in the Hudood Ordinance.**

It is noteworthy here that one of the experts has indeed pointed out this mistake made by the Zara Sochiye team:7[7]

**Hafiz Yousuf Salahuddin**

Advisor Federal Shariat Court

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[7][7] The statement can be read at the following URL: http://www.geo.tv/zs/quickstop.asp
As far as my limited knowledge is concerned, there is no such thing in the Hudood Ordinance that it does not differentiate between zina and zina bil jabr. These are undoubtedly two different things. So, first of all, the Ordinance does not treat them in a similar way.

Geo TV never pointed out that in the Hudood Ordinance, there are separate sections for zina and zina-bil-jabr; separate definitions, punishments, etc. If the evidence for hadd punishment is same, this does not mean that there is no difference between the two. Furthermore, Hafiz Salahuddin’s statement was not shown completely; rather, only a small part was shown. Relying on the false information provided by Zara Sochieye, many scholars gave their statements against the ordinance—never knowing what the actual ordinance was!

3. Women’s Testimony Not Taken

This is yet another misconception being spread by Zara Sochieye. In one of their advertisements, they show a woman being raped in front of 5-10 women. The feet of these women are locked in chains, while a person is commenting:

"According to the Hudood Ordinance, testimony of a woman is not acceptable ... Although, a woman is being raped in front of these women, but, their testimonies are not acceptable."

In the program Jawab Deyh, the host went to extreme when he said the following:-

"Some of 50 women witness a rape then there won't be any convictions as there were no four male witnesses?"

These are only two sources; this argument is spread by a large number of sources. In fact, even educated persons, including legal experts, forward this argument. But, is it really so?

In the whole Hudood Ordinance, there is not even a single article which enshrines that the testimony of women is not acceptable. If four Muslim adult male witnesses who are pious & God fearing, testify of having seen the crime of zina or zina-bil-jabr, then the deterrent punishment i.e. hadd will be awarded to the accused. If this condition is not fulfilled, but, there is evidence from other sources like medical evidence, circumstantial evidence, testimony of women etc. then the rapist will be punished under tazir, for 4-25 years rigorous imprisonment [henceforth, R.I.] alongwith any number of strokes of lashes, provided in no case shall the whipping exceed 30 stripes.

In fact, a judgment of the Federal Shariah Court will be enough to shatter the veracity of this claim:

**Rashida Patel vs. The State (PLD 1989 FSC 95)**

**Shariat Petition No. 10/K of 1983 to 14/K of 1983 & 2/L of 1985**

To prove the crime of Zina, the condition of four witnesses was necessary. However, if four male witnesses are not available, **women can appear before the Court as witnesses**, but in the light of their evidence, Hadd punishment shall not be awarded; only Tazir punishment shall be awarded.


4. Four Witnesses Required For Punishing a Rapist

Another mountainous lie being spread about the Ordinance by Geo TV is that the rapist will not be punished unless four witnesses are brought forward by the victim of rape. We have clarified this issue
under the very first heading, Crime never proved, and also cleared up that severe punishment—without any witnesses, even on the solitary statement of the victim—can be awarded as tazir.

5. Women in Jail

Another false accusation being made against the Hudood Ordinance is that it is due to this Ordinance that many women are dwelling in jails. The NCSW established a Special Committee to review the Hudood Ordinances in 2002, which wrote in its report, on page 3 that 80% of the women, languishing in jail, are due to the Hudood Ordinance. Geo TV also re-iterates the same; in fact, several leading newspapers do the same.8

Are women resting in jail for several years due to Hudood Ordinance? Can this be fixed by repealing Hudood Ordinance? The answer is a big NO!

The Hudood Ordinance neither deals with the lodging of FIRs, nor does it deal with how the cases are to be heard. Therefore, connecting these issues with the Hudood Ordinance or to label it as a ‘torment’ of the Hudood Ordinance is nothing but ignorance!

The Hudood Ordinance merely deals with the following issues:

(a) Definition of sexual crimes
(b) Prescribing punishment for these sexual crimes
(c) Proof required for these crimes

It does NOT deal with the following issues:

(a) Lodging of FIRs
(b) Keeping women in jail or five star hotels or anywhere else
(c) Slow judicial process
(d) Hearing of pending cases, or hearing being too slow, etc.

It may be pertinent to note here that this issue of women lying in jail is a ‘blessing’ of the Code of Criminal Procedure (Act V of 1898) which was not made by a ‘revengeful’ Zia-ul-Haq or ‘idiot’ ulema. This was made by the British in 1898 themselves and today, channels like BBC, CNN, etc. and of course, various Muslim channels are blaming the Hudood Ordinance for this.

Someone may stand up to ask that before 1979, women were not languishing in jails, so, the Hudood Ordinance must be connected with this issue. The answer to this argument is that the only thing which the Hudood Ordinance did was to declare zina a crime, because, in the original PPC, zina bil raza was NOT considered a crime!!! Neither was zina bil raza considered a crime, nor was there any punishment for drinking wine and/or intoxicating liquor.

These women are languishing in jails for so many years because of the outdated slow judiciary process, due to which the cases are never heard. At the beginning of 2005, there were 123,640

8 For example, see The Daily Dawn, Vol. LX, No. 275, Issue of Saturday, October 7, 2006, p.5; How Hudood Law Is Hurting Society by Roshaneh Zafar
pending hudood cases; out of which, more than 78,833 cases were that of the Prohibition Order alone! It is due to the Code of Criminal Procedure (henceforth, CrPC) and some other defects in our judicial system, which has caused the hearing of cases to become overly slow. Thus these women are lying in jails because they were arrested, but, the cases have not been heard; they consist of both—innocent and guilty.

I would also like to ask my friends that there are several prisoners, men as well as women, lying in jails for years, because, their cases have not been heard until now. In fact, in a few cases, even after freeing the prisoners, they still remain in prison. If a person is being held in jail, because, the police arrested him/her for a cognizable offence, punishable under any section of the PPC: will these people repeal the PPC for solving that problem?

In fact, suggesting a repeal of the Hudood Ordinance as a remedy for the problem of women lying in jail, which is actually due to the corrupt police, can rightly be explained with the following example. A person got infection in a certain organ of his body; instead of curing the infection, he thought that cutting off the whole organ will solve the ‘infection problem’ for good! Only a fool & ignorant will be happy with such a solution, because, doing so will cause him to lose a vital part of his body & even cause his death—along with the elimination of the infection.

Surprisingly enough, this is what the NGOs and the media has been asking for i.e. to solve the problem of slow judiciary process, stop lodging cases unless in rare cases—in Zina, don’t lodge an FIR unless four male Muslim truthful witnesses are available. This is akin to saying that in 90% of the cases, the adulterers and fornicators should be given an ‘open sex’ environment.

Their recommendation is further that if any of the four witnesses do not qualify ‘tazkiyah al-shuhood’ or if the judge is not satisfied with the testimonies, he may acquit the accused & subject all witnesses and the complainant to a punishment of 80 strokes of lashes! A deep analysis of this recommendation reveals that this is aimed at discouraging people from even reporting the remaining 10% cases, by terrorizing them of being subject to qazf. For example, if four people saw the heinous act, they will still abstain from testifying of having seen it, because, if even a single witness did not qualify the requirements of ‘tazkiyah al-shuhood,’ all of them will be punished with 80 stripes!

I would also like to shed light on a very oft-repeated argument that 80% of the women languishing in jail, are due to Zina Ordinance. We already discussed that the Hudood Ordinance is not responsible for this, but, let me warn you further. **Don’t get confused by this figure!**

Firstly, it does NOT reveal anything about the number of women in jail; it only shows the cause of being in jail. Furthermore, it is still wrong to say that 80% of the women inhabiting jail are waiting trial for zina ordinance. In the NWFP jails, during July 2003, the number of women languishing in jail for trial for narcotics cases was 72, whereas, the number of those for trial under all four hudood ordinances was 56.9[9] From even the hudood cases, a major portion is that of the prohibition cases and furthermore, the total number of women in jail was 172. **This means that less than 20% (not 80%) of the women languishing in jail were waiting trial under zina ordinance.** [Source of these statistics is a report prepared by the Women Aid Trust; see footnotes.]

Similarly, during 1988, the number of women prisoners in various jails of Punjab, was 657; out of these, 306 were languishing for zina cases.10[10] This, again, gives a figure of 46%, which is nearly half of the figure claimed by feminist NGOs!

**Note:-**


10[10] Ibid, p.175
Gen. Musharraf promulgated the *Law Reforms Ordinance, 2006* this year, which added a new section 156-B to the CrPC. According to this section, *zina* (not *zina-bil-jabr*) cases will **not** be investigated by a police officer who is lower in rank than a SP (superintendent.) Furthermore, no person shall be arrested for *zina* by the police until an arrest warrant has been issued by the magistrate of a court of competent jurisdiction.

**6. Case of rape converts to case of adultery**

*BBC* reported regarding the Hudood Ordinance:11[11]

If a rape victim fails to present four male witnesses to the crime, she herself could face punishment and be prosecuted for adultery. The government says that makes it almost impossible to prosecute a rape case.

The *Telegraph* published a similar report:12[12]

These [hudood laws] place an almost impossible burden of proof on women by compelling them to produce four ‘pious’ male witnesses to prove rape or risk being convicted of adultery and face 100 lashes or death by stoning.

*CBC* news observed:13[13]

According to General Zia’s law, if a woman is raped she needs four eyewitnesses to prove that she was raped. But if she files a complaint of rape and fails to produce four eye witnesses then she has confessed to adultery and must be punished for the crime of adultery.

*WL UML* noted:14[14]

Under section 8 of the Ordinance, a rape victim is required to produce at least four adult male Muslim eyewitnesses, who have physically seen the act of rape against the victim, in order to prove her case ... But if a woman who claims she was raped fails to prove her claims she can be convicted of adultery, which is punishable by death in the most stringent circumstances.

A similar thing was found on the *ONLINE* International news network:15[15]

They [hudood laws] require a female rape victim to produce four male witnesses to corroborate her account, or she risks facing a charge of adultery.

*The Hindu* magazine says:16[16]

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Under this law, if a woman is raped, and reports it, the onus is on her to prove that she was raped. She has to bring along four male eyewitnesses. Only then will the law consider her case. On the other hand, if she cannot prove that she was raped, then she could be charged with adultery, a non-bailable offence that can even invite the death penalty under certain circumstances.

ABC news also adhered to the same view:17[17]

The widely criticized Hudood Ordinance law, based on Islamic tenets, requires a woman, who claims she’s been raped, to produce four witnesses ... A woman who claims she was raped, but fails to prove her case, can be convicted of adultery, punishable by death.

The Australian observes the same:18[18]

Under the ordinances, unless the complainant in a rape case produces four male witnesses to support her claims, she will herself face punishment.

Zee News says:19[19]

As per this ridiculous ordinance, a woman to prove that violence has indeed been committed on her must be armed with at least 4 witnesses ... According to this ordinance which claims to be inspired by Islam, if a woman is raped then the onus of proving the same rests with her and if she is unable to prove it then she is tried for adultery and imprisoned while her rapist is left scot-free.

The Times (London) published:20[20]

Hundreds of women have been jailed under the laws which made a rape victim liable to prosecution for adultery if she failed to produce four male witnesses.

The Independent notes:21[21]

The law also makes prosecution in rape cases virtually impossible as rape victims must produce four male witnesses to prove the charge.

Al-Jazeera aired the following, regarding the Ordinance:22[22]

The law makes prosecution in rape cases virtually impossible as a rape victim must produce four pious, male Muslim witnesses in court to prove the charge. If the woman fails to provide proof, she faces the charge of adultery and imprisonment ...

The New York Times is a disciple of the same:23[23]

20[20] See: http://www.timesonline.co.uk/article/0,,3-2356656,00.html
21[21] Source: http://news.independent.co.uk/world/asia/article1173241.ece
22[22] URL: http://english.aljazeera.net/NR/exeres/02CF3395-7BAF-4ABF-A808-DC934585C905.htm
... Pakistan’s hudood ordinance, which requires either a confession by the rapist or the eyewitness testimony of four Muslim adult males to the act of penetration. A woman who brings a charge of rape without either of these proofs herself risks punishment for adultery.

The NCW's Special Committee's draft report observes on pages 9 to 10:[24]

The basic concern is that where the victim of zina bil jabr is unable to produce the required number of witnesses, she is often booked under the offence of Zina, and her complaint is erroneously and negatively viewed and determined as sexual intercourse that was consensual. Hence, despite being a victim of rape, she is charged with the offence of Zina.

Geo TV did not remain behind in spreading this misconception. In the Experts Commentary section of Zara Sochieye, Dr. Tufail Hashmi, said:25[25]

If a woman has been raped, and she cannot produce four pious, male eye witnesses, then not only is she punished for accepting that she has been involved in the act of zina, she also become guilty of Qazf (false accusation) because she has wrongly accused someone. She, therefore, becomes charged with two crimes. On the one hand, she is a victim and has turned to a court to seek justice, while on the other she is charged with two crimes and is subjected to double punishment.

All of these sources are spreading rumors, without knowing the actual ordinance or even a few real cases. I have already discussed that a rapist can be punished on the basis of medical evidence, circumstantial evidence, less than four witnesses, female testimony, etc. under the current Hudood Ordinance!!

It may be pertinent to quote here an important ruling of the Federal Shariat Court, regarding this matter:-

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

_MR. JUSTICE SH. AFTAB HUSSAIN_

_Status of self-exculpatory statement in zina-bil-jabr:-_

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.”

_[Annual Report of the FSC, 2002, p.49] (It could hardly be clearer!)_

_(It could hardly be clearer!)_

Under the Ordinance, if a case of zina-bil-jabr has been lodged and enough evidence is not available to prove this (e.g. due to loss of evidence), then the case simply ends without punishing the woman, as in the above case. The woman is NOT charged for zina. The woman can only be booked under the offence of Zina, if there is evidence available to prove this and the court is satisfied. If there is not enough evidence available to show whether it was Zina or Zina bil Jabr, the judge simply ends the case without punishing anyone.

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It is noteworthy here that an American (non-Muslim) legal expert, Charles Kennedy, carried out a survey of hudood cases in Pakistan. His unbiased research, based on material facts, concludes the following:26

Women fearing conviction under Section 10(2) frequently bring charges of rape under 10(3) against their alleged partners. The FSC finding no circums tantial evidence to support the latter charge, convict the male accused under Section 10(2). The woman is exonerated of any wrong doing due to reasonable doubt.

Now, we quote such a case in which a complaint of rape was converted to adultery, not because the girl had no evidence, but, because of the fact that solid evidence was available to prove that she was a consenting party to the immorality:-

*Muhammad Asghar vs. The State (2004 P.Cr.L.J. 201)*

**MR. JUSTICE ZAFAR PASHA CHAUDHARY**

Statement of the victim regarding her having been subjected to sexual intercourse was supported by medical report. Vaginal swabs of the victim were found stained with semen. Victim girl did not appear before the Investigating Officer for more than six days and no marks of violence were found on any part of her body. No weapon was recovered from the accused. Cumulative effect of the said facts and circumstances could lead to the only inference that the victim was a consenting party to the commission of zina and she having attained puberty was adult within the meaning of S.2 (a) of the said Ordinance. During course of investigation, a number of Investigating Officers found the victim to be a consenting party. Conviction of accused under S.10 (3) of the said Ordinance was consequently altered to S.10 (2) and his sentence was reduced to the imprisonment already undergone by him in circumstances which was more than two years.


When it is proved beyond doubt that zina, not zina-bil-jabr, had taken place, then it is against the canons of morality, justice & law to leave the woman scot-free. In fact, punishing her, in this case, will be mandatory to meet the ends of justice. The Qur'an enshrines:-

"Let not compassion withhold you in their (fornicators') case..."[Surah an-Noor 24:2]

Furthermore, the provision of converting of rape cases to adultery—on the basis of solid evidence, is based on intellect & wisdom. On this issue, instead of saying something based on my own thoughts, I will turn to the experts in the respective field for help.

Bernard Knight, a renowned Professor of Forensic Pathology at the University of Wales, College of Medicine, writes:27

**The genuineness of allegations of sexual assault**

This is an extremely difficult topic, with strong emotive, social and feminist overtones. The fact is that a significant proportion of allegations of rape and indecent assault *reported to the police* are found to be untrue. *This is often hotly denied by women's groups, but is an indisputable fact, proven by*

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many subsequent admissions by girls that no such attack took place. (Emphasis ours)

The examining doctor must be aware of false allegations and not necessarily believe in everything that he is told. This is not to say that he or she should begin with a suspicious attitude, but must be impartial and arrive at a decision on objective aspects of the history and examination.

False stories may be due to delusions or even drugs—the author has met two such instances in female medical staff where mental abnormality led to unjustified accusations against innocent males. Another more common reason is where a girl gives consent to intercourse then later denies that she agreed and accuses the man of rape or other sexual misbehaviour. This may be due to fear of pregnancy, venereal infection, but more often to a break-down in the relationship (such as being 'jilted'), where motives of revenge or mischief are present.

This is absolutely correct and in fact, Dr. K.C. Parikh, an eminent professor of India and Editor of the famous Journal of Medical Profession in India (Bombay), wrote in explicit terms:28[28]

**False Accusations:** The possibility of false accusation must be kept in mind. In reality, if it were not for the fact that rape can take place from fear, the problem might be fairly easy to solve for “a fully conscious woman of normal physique will resist having her legs separated by one man against her will.” (Emphasis ours)

One girl who had connection several times with her fiancée became alarmed at some blood on her garments. She therefore alleged that after he had left her, she was attacked and had amnesia till she regained consciousness to find her underclothes blood stained. As her fiancé had left her in the passage outside her house where they had been talking from 1.00 a.m. till 2.00 a.m.; it seemed unrealistic to incriminate a third party. Suspicion was strengthened by her repeated statements that her fiancé would never do such a thing and she could trust him anywhere. She finally admitted her involvement with him, and then asked what she was to tell her mother!

A girl alleged victim of rape, was asked if she struggled to her utmost to which she said she did. She was asked if she shouted to which she said she did not. When asked, why not, she stated that she was afraid of waking up her mother who slept in the next room!

Vulval and vaginal injuries may be maliciously produced in children by instruments or fingers and a false charge of rape brought against an individual with a view to take revenge or extort money from him. Artificial bruises may be produced by using marking nut juice. The vagina may be irritated by using chillis. Sometimes, frog’s or fowl’s blood may be used for staining the clothes and private parts. Solutions of starch or egg albumin may be used to stain the clothes and such stains simulate seminal stains.

Sometimes, the girl is a consenting party, and it is only after the act that she

becomes frightened and brings a charge to save her reputation.

When a woman’s husband is away and she becomes pregnant, she may claim rape to help cover up her activities during his absence.

Often, the victim’s story gives a strong indication of the falsity of the charge. The girl who tells of a cloth smelling of chloroform being placed over her mouth after which she immediately became unconscious and on recovering her senses found her clothes in disorder, and complains that she has been raped, is likely to be an hysterical one, rather than a victim of rape. The statement of a woman who presents no signs of struggle and who appears to have offered no resistance to her assailant that she was under the influence of a drug must be accepted with great caution. Probably, she is making an attempt to clear herself at the expense of her partner. In such a case, a close inquiry must be made into the history of the case, the manner in which the drug was given, whether in food or in drink, the amount taken, the special taste if any noted, the time elapsing before symptoms arose, and the nature of the symptoms. The complainant must be pressed for details and the story may be so clear that drugging may be ruled out!

Blood and urine should be preserved for chemical examination if deemed necessary.

By all these extracts, we don’t want to accuse anyone of committing any crime or the like. All these excerpts have been given to prove that sometimes, a case maybe a de jure case of rape, but, a de facto case of adultery. **Of course, this—in no way—justifies the corroboration that “a woman is charged with adultery if rape is not proved.” Nothing can be more changed from the truth!**

7. Misconceptions about Qazf

Geo TV, inter alia, is spreading a lot of misconceptions about Qazf i.e. false accusation of zina. Let us deal with them serially.

First of all, I would like to answer off a common misconception about the Offence of Qazf (E.O.H.) Ordinance (VIII of 1979) that it does not allow women to file a complaint of Qazf.

The Christian Post (Pakistan) objects:29[29]

The application for Qazf proceedings could be filed only by men even if the wronged person was a woman.

Section 8 of the relevant ordinance may be quoted here:

8. 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.

Justice (R) Shaiq Usmani, a member of the Special Committee, established by the NCSW, also argued 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 compliant.

Ms. Kashmala Tariq, an MNA, had also proposed:

In Section 8, it was proposed that the word ‘him’ should be changed with “that person.”

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

2. Definitions

In the Ordinance, 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 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 important thing in mind, we quote here, Section 8 of the Pakistan Penal Code:

8. Gender

The pronoun ‘he’ and its derivates are used of any person, whether male or female.

The argument is dead already!

Another widespread misconception is that a woman, who reports rape but cannot prove it, is convicted for qazf. Dr. Tufail Hashmi, in his statement to Zara Sochieye, said:

If a woman has been raped, and she cannot produce four pious, male eye witnesses, then not only is she punished for accepting that she has been involved in the act of zina, she also become guilty of Qazf (false accusation) because she has wrongly accused someone. She, therefore, becomes charged with two crimes. On the one hand, she is a victim and has turned to a court to seek justice, while on the other she is charged with two crimes and is subjected to double punishment.

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31[31] Please refer to this page: http://www.geo.tv/zs/quickstop.asp
This argument is completely meaningless to say the least; quoting Section 3 of the original ordinance will suffice:

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’ [not zina-bil-jabr] concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation, or hurt the feelings, of such person, is said except in the cases hereinafter excepted, to commit ‘qazf’.

Explanation 1: It may amount to ‘qazf’ to impute ‘zina’ [not zina-bil-jabr] to a deceased person, if the imputation would harm the reputation, or hurt the feelings, of that person if living, and is harmful to the feelings of his family or other near relatives.

Explanation 2: 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’ [not zina-bil-jabr] 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 authorized person): Save in the cases hereinafter mentioned, it is not ‘qazf’ to refer in good faith an accusation of ‘zina’ [not zina-bil-jabr] 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’ [not zina-bil-jabr] against another person in a Court, but fails to produce four witnesses in support thereof before the Court;

(b) according to the finding of the Court, a witness has given false evidence of the commission of ‘zina’ or ‘zina-bil-jabr’;

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

From the above section, it is crystal-clear that the only situation, in which, a complainant of zina-bil-jabr, will receive the punishment of qazf, is when he or she, as the case maybe, falsely accuses someone; in other words, that person (the complainant) tells a lie.

In some cases, an imputation of zina-bil-jabr is neither proved, nor disproved; in such cases, there is a lack of evidence, or there has been a loss of evidence. In such cases, only complainants of zina are said to have committed qazf; complainants of zina-bil-jabr, have not committed qazf, if they fail to prove. They can only be convicted for qazf if their accusation is a lie, e.g. if the hymen (of vagina) is intact & no intercourse took place.

The above discussion proves that Dr. Tufail Hashmi’s statement is a white lie!

The last argument forwarded against the respective ordinance is that if complainants fail to prove their accusation of zina against someone else, the accused will have to file a separate case against the complainant. It is usually said that such a thing is un-Islamic and unjust.
To refute this argument, I would request the reader to read my FAQ about the Qazf Ordinance32[32], paralleled by another writing33[33] which contains the Qazf Ordinance alongwith a small commentary & relevant sections of the PPC.

8. Statements of Scholars

In some cases, Geo TV has distorted the meanings of the statements of scholars, while, in other cases, they fooled them by giving false information about the Ordinance. Such scholars, not knowing well about the Ordinance, were deceived by Geo TV and gave their statements on the basis of fallacious information about the Ordinance. For more information, see the article entitled Commentary on the Experts’ Commentary.34[34]

9. Mufti Muneeb-ur-Rehman’s Statement & Incorrect Conclusions

It is important to discuss a statement made by Mufti Muneeb-ur-Rehman during the Zara Sochireye Debate on Geo TV. He said:

Punishing a man or woman, in advance, with imprisonment before hearing of the case i.e. keeping them in Police’s custody, is un-Islamic and unjust.

Firstly, it must be noted that an arrest warrant does not contain a commandment to “punish the accused with imprisonment till hearing of the case.” Arrest warrants issued by feminist NGOs and Geo TV might contain such provisions. Will someone explain which court has punished an accused with imprisonment till hearing of the case, before the case is even heard?

The definition of arrest can be understood easily by the Urdu word ‘Giraftaar’ which means to take something in one’s custody/security. This means that the police arrests people, on the basis of a report (i.e. FIR—First Information Report) or some other solid evidence, for example, the police arrested a person showing weapons to terrorize others or two people committing fornication in front of a police officer. They have to keep these arrested people somewhere and the prescribed place is jail. If the people of this country do not like it and if they have enough resources, they may put them wherever they like. Clearly, this keeping in jail, is not a ‘punishment of imprisonment!’

It should be noted here that crimes are divided into two categories: (a) cognizable offence; and (b) non-cognizable offence. Cognizable offence is an offence for which the police can arrest a person without an arrest warrant, on the basis of evidence or a credible report. Some cognizable offences are bail-able, whereas, others are not. Non-cognizable offences are those for which, the police does not have the authority to arrest anyone until an arrest warrant has been issued by an authorized court of magistrate.

By now, the argument that keeping arrested people in jail is unjust, has been cleared up. Mufti sahib (probably) arrived incorrectly at this conclusion, because, he equalized the police station with a court of magistrate (Qazi ki Adalat) and lodging of FIR with hearing of the case. This was apparent when he said: “If four witnesses have come/arrived to a Qadi, this in itself is the registration of a case.” (God knows better!)

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32[32] It is available at: http://jsmawais.googlepages.com/FAQ2.htm
33[33] Read at: http://jsmawais.googlepages.com/Qazf_Ordinance.htm
34[34] Note from the original author: The article will be completed soon. (Insha Allah)
It is also pertinent to note here that Geo TV has deduced a totally incorrect & absurd conclusion from the above statement, which is included in their Declaration Statement i.e. women should not be put in jail at all. Firstly, it is not related with the Hudood Ordinance and secondly, this is a distortion of Mufti Muneeb-ur-Rehman’s statement!

Mufti Muneeb-ur-Rehman’s statement, if correct and acceptable, would mean that men and women BOTH should not be arrested for ANY CRIME WHATSOEVER. It is important to note that his edict dealt with keeping people in jail, before conviction by a court. The impact of this edict, if accepted, would be that all people which were arrested by the police, would be left free of charge to ruin public peace! One can easily approximate from this fact, the authenticity of his statement.

35[35] He seems to be flawed in his understanding of criminal law and judicial system; to err is human.

10. Injustice to Women

Another lie being spread about the Hudood Ordinance is that it is responsible for enormous injustice to women. As we have already discussed, tazir can be awarded even in the absence of witnesses. A case of rape is not converted to a case of adultery, due to lack of evidence, and most importantly, women languishing in jails are not a ‘victim’ of the zina ordinance.

With these things in mind, a natural question arises that if this is the truth, then what about cases like the Zafran Bibi case? Let us take up the Zafran Bibi case and try to locate the real cause behind her unjust conviction.

Instead of writing the history of the case myself, I rely on another article:

Zafran Bibi was married 13 years ago to Naimat Khan of Karri Sher Khan village in Kohat, two kilometers away from her own village of Chorlaki. About a decade ago, her husband was convicted of murder and awarded 25-years imprisonment in Haripur jail. Zafran Bibi continued to live with her in-laws. According to her, she was harassed on numerous occasions by her husband’s brother, Jamal Khan. With nowhere else to turn, she complained about his behaviour to her mother-in-law Zar Bibi, who instead laid the blame squarely on the young woman’s shoulders and ordered Zafran to mend her ways. A few days later, the harassment turned into violence when Zafran Bibi was raped by Jamal Khan. Zafran, now demanded that something be done, otherwise, she would seek help elsewhere. Her father-in-law intervened at this point and assured her of his support. The matter was once again brushed under the carpet, arising only when it was suspected that Zafran had become pregnant.

Meanwhile, Zafran Bibi’s sister-in-law, her husband’s sister, had received a proposal from a man named Akmal Khan, some time back. According to reports, there were differences between the two families and the proposal was refused. These differences had since developed into personal enmity. When Zafran Bibi’s pregnancy came to light, her in-laws allegedly saw the opportunity to kill two birds with one stone: implicate Akmal Khan in a case of adultery with Zafran Bibi, which would get their son off scot free and Akmal Khan thrown into jail; their daughter-in-law, Zafran Bibi’s life, was obviously of no account.

Oblivious to the scheming going on behind the scenes, Zafran Bibi, accompanied by her father-in-law, Zabita Khan, went to the police station to file a First Information Report (FIR). According to records, FIR No. 85 was registered on March 26, 2001, at 8:35 A.M. by Zabita Khan, Zafran’s father-in-law, to which Zafran had affixed her thumb impression. The FIR states that about 11 to 12 days back, when Zafran Bibi was cutting grass on a hill known as Khulqai of Moza Kerri Sheikhan district, a short distance from her house when Akmal Khan grabbed hold of her and raped her. After the registration of the FIR, a medical examination of the victim was carried out at the ‘Women Hospital Singarh’ by a lady doctor named Robina Yasmin, who recorded Zafran Bibi to be at least seven to eight weeks pregnant. The police then arrested both Zafran Bibi and Akml Khan for adultery on the grounds that

35[35] It may be pertinent to quote here a hadith: Narrated Mu‘awiyah al-Qarshi (R.A.A.) that the Prophet (S.A.W.) imprisoned a person on suspicion. [Sunan Abu Daw’ud, Kitab al-Hudood, Hadith No. 3623]
if she had indeed been raped, as she said some 12 days ago, her approximately two-month pregnancy could only be explained by the commission of zina (adultery) rather than zina-bil-jabr (rape).

Zafran Bibi, in her statement in court, under oath under section 340 CrPC, said it was her brother-in-law, Jamal Khan, who had raped her and not Akmal Khan. Zafran denied that she had ever accused him of the crime. For his part, Akmal Khan repeatedly denied having anything to do with Zafran and pleaded not guilty, accusing Zabita Khan of trying to frame him. While he was acquitted, Zafran Bibi was even denied bail.

The Additional Sessions Judge, at the time, was Yaqoob Khan Khattak. During the course of the trial, he was replaced by Anwar Ali Khan. Meanwhile, Zafran Bibi’s lawyer, Sher Haider Khan, instead of defending his client, portrayed her in court as a woman of low character involved in a sexual relationship with Akmal Khan, who was now trying to implicate her innocent brother-in-law, Jamal Khan. Zafran Bibi, therefore, requested a change in her lawyer, suspecting that Haider Khan was in collusion with her in-laws. When another lawyer took up her case, Zafran again repeated her earlier statement that she was not guilty of adultery and had been raped by Jamal Khan. However, at no point was Jamal Khan produced in court for questioning.

On April 17, 2002, Additional Sessions Judge, Anwar Ali Khan, pronounced her guilty as charged, sentencing her to death by stoning at a public place “subject to confirmation of this judgment by Federal Shariat Court of Pakistan.”

In the nine-page judgment, he says that Zafran Bibi’s two statements alleging zina “coupled with the presence of an illegitimate female child, amounts to confession of offence as envisaged by section 8 of the offence of Zina (Enforcement of Hudood) Ordinance 1979.”

The conviction provoked expressions of outrage from several lawyers and human rights activists, claiming that Zafran Bibi has not only been wrongly convicted, but that, her conviction does not meet the demands of justice. Proof of rape or adultery liable to hadd punishment can, as stated in section 8, be in either of two forms. One is a confession of the offence by the accused before a court of competent jurisdiction on this basis. However, to take Zafran Bibi’s statements—that had in any case alleged zina-bil-jabr, rather than confessing to zina—and the existence of her illegitimate baby as proof that “amounts to a confession” is clearly an extension of the law.

[THIS IS THE POINT WHERE THE NGO’S UNJUSTLY CONNECT THE HUDOOD ORDINANCE TO THIS ISSUE; WE DISCUSS THIS IN A MOMENT.]

“Either by adultery or by rape, this woman is now the mother of a child. The courts have acquitted the accused Akmal Khan and have not even tried the man Zafran claims is responsible, Jamal Khan,” said Ansar Burney, who has appealed to various quarters—including the president and the Federal Shariat Court—to prevent this cruel punishment from being carried out.

Others have also voiced their criticism of the verdict. Chief Executive of Aurat Foundation, Rakhshanda Naz, said at a news conference that the court heard the case very briefly. “The accused never confessed to the crime nor were there four eye-witnesses (tazkiyah al-shuhood) produced in the court and in her statements Zafran clearly stated that she was raped.” Besides Ansar Burney, two other prominent lawyers, Barrister Masud Kausar and Zafrullah, have filed an appeal in the Federal Shariat Court on Zafran Bibi’s behalf. The Federal Shariat Court expressed their acceptance of Ansar Burney’s appeal in a letter dated April 27, stating that “subsection (3) of section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance, inter alia, provides that no punishment shall be executed until it has been confirmed by the court to which an appeal from the order of conviction lies.”

A new twist was added to the story when Zafran’s husband, Naimat Khan, upon his release from Haripur Jail on account of good conduct told Ansar Burney Trust representative Jan Afzal, that he is the father of Zafran’s child. Naimat Khan explained that while behind bars, he had, as a model
prisoner been made a ‘mushaqati’ (a prisoner who, while serving time, is assigned work outside the jail premises—for instance, at the homes of higher security personnel). Almost two years ago, he said that he was working at the superintendent’s house when his wife paid him a visit and they shared intimate moments together, which probably resulted in Zafran’s pregnancy.

**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 confirmed on oath, the legitimacy of the child. Hadd sentence, on such score, awarded to the accused was not maintainable and was set aside.


Now, let me clarify some issues:

1. Zafran Bibi’s lawyer started defaming her, instead of defending her; this is not a problem of the respective ordinance.

2. According to records, the FIR which was filed had accused Akmal Khan and not Jamal Khan. It carried Zafran Bibi’s thumb impression too, but, I think that the police officer might have taken bribes for doing an ulterior work. (Only God knows!) Recall that it is the CrPC, which deals with lodging of FIRs, and not the Hudood Ordinance. Furthermore, this is not a defect in the law; it is a problem in the law-enforcing agencies. Consequently, the law does not require to be changed; the police needs to be corrected.

3. Jamal Khan was not called in the court; although, this is not an issue of the zina ordinance, but still, it needs to be pointed out that the judge acted dishonestly and against law.

The only thing in this whole case which is related with the Hudood Ordinance is the judgment passed by the Additional Sessions judge:-

In the nine-page judgment, he says that Zafran Bibi’s two statements alleging zina “coupled with the presence of an illegitimate female child, amounts to confession of offence, as envisaged by Section 8 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979.”

The NGOs raise protest against the Hudood Ordinance and bring arguments against it from, inter alia, Zafran Bibi case, by saying things similar to this one:-

However, to take Zafran Bibi’s statements—that had in any case alleged zina-bil-jabr rather than confessing to zina—and the existence of her illegitimate baby as proof that “amounts to a confession” is clearly an extension of the law.

Anyone who understands the English language knows that only a subjective analysis of Section 8 and 9(1) of the concerned ordinance is sufficient to prove the fallacy of this statement; a confession of the commission of the offence is extremely different from an allegation. The judge was no doubt corrupt and his statement was not in accordance with the relevant ordinance. The FSC also said the same thing in its judgment that “this is not a defect in the hudood laws.”
We would like to challenge anyone right here, to bring forth such a dictionary, in which 'allegation' or 'pregnancy' is included in the ambit of 'confession'.

A confession is a confession and nothing else. Had there been some explicit provision in the ordinance, stating the contrary, then the verdict might be justifiable. But, no such thing exists and writing something in the ordinance, along the lines, \(2 + 2 = 4\), is useless.

Let’s not get involved in hair-splitting and abstract discussion. The simplest method to settle the issue is to see as to how Section 8 was interpreted before this judgment by other courts.

We enumerate here a few judgments which are related with confession under Section 8 of the respective ordinance:

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

*MR. JUSTICE SH. AFTAB HUSSAIN*

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

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.**”


**Conclusion:** This judgment clearly expounds the principle that if a woman accuses someone else of zina-bil-jabr, but, no other evidence is available, then she cannot be convicted of zina. This judgment was of 1985, whereas, in the case under discussion, the sentence of stoning was passed in 2002. This alone is a sufficient proof that the judge misinterpreted the law.

**Ghulam Ali vs. The State (PLD 1981 FSC 224)**

*MR. JUSTICE ZAKAULLAH LODHI*

**Confessional statement of woman against co-accused:**

Prosecution case resting only on confession of woman co-accused, confession of co-accused does not occupy position of a statement on oath before court of law. Such confession cannot be made good ground to support conviction of another co-accused. Appeal accepted.


**Arif Nawaz Khan vs. The State (PLD 1991 FSC 53)**

*MR. JUSTICE TANZIL-UR-REHMAN*

**Confession of an accused person against co-accused:**

In Islamic law, the confession of an accused against the co-accused is not acceptable and if there is no other proof against him, he will not be punished on the said confession. Thus a confession only implicates the accused, but not the co-accused. If a person retracts from his confession, his retraction shall be accepted and he shall be absolved from hadd punishment, unless the Hadd punishment is proved by evidence.

Conclusion: The above two judgments answer off the common objection raised by people that a rapist confesses his crime as zina before the court and the woman also gets convicted; this is a fallacy. The above two judgments clearly say that confession of one cannot be made ground for the conviction of co-accused. This is also proved from several ahadith e.g. a hadith found in Kitab al-Hudood of Sunan Abu Dawud.

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]

Muhammad Sarwar and another vs. The State (PLD 1988 FSC 42)

MR. JUSTICE GUL MUHAMMAD KHAN

When a person wants to confess his guilt in accordance with the Offence of Zina (E.O.H.) Ordinance, 1979, the court should record his statement four times at intervals and each time accused should be asked to go out of the view of the court. Order of the trial court was set not supported by law and the same was, therefore, set aside. [Annual Report of the FSC, 2002, p.50]

At this point, I appeal the readers to ask their own self: Did the Additional Sessions Judge follow the above judgments in Zafran Bibi’s case? How could he follow the above procedures? Will he ask her to accuse someone four times or will Zafran Bibi have to retract her ‘pregnancy,’ in order to fulfill the provisions of retraction of confession, as laid in Section 9(1)?

The above discussion gives a conclusive proof that the zina ordinance is far away from even the shores of being related with this case & causing injustice to Zafran Bibi!

One important aspect of this case, which is usually not discussed or debated, is that Mst. Zafran Bibi was acquitted by the FSC, on the fact that she became pregnant as a result of having intercourse with her husband. She was not acquitted because Jamal Khan had raped her.

The million-dollar question here is: Why didn’t Zafran Bibi tell others that she had “intimate moments” with her husband??? Did she deliberately try to conceal her pregnancy & take advantage of it?

Only God knows the exact answer to this question. I surely would not like to bear the burden of accusing a chaste lady of a heinous sin, but still, this fact adds a grain of skepticism to the whole case.

Lastly, I would like to clarify that I am not narrow-minded and have no problems in appreciating, as well as praising those NGOs, which raised protest against this unjust judgment. Unfortunately, most of these NGOs, as well as Geo TV itself, try to give the impression to the lay public as if such things are the result of some provision of the ordinance under discussion. This is a heinous allegation against the hudood laws.
I would like to end up this issue by quoting here a recent case:

**Rape victim booked for adultery: SC Orders Inquiry**

ISLAMABAD, Oct 12: The Supreme Court on Thursday took serious notice of a case in which a woman was raped but she was booked by police for zina bil raza (adultery).

A bench comprising Chief Justice Iftikhar Muhammad Chaudhary and Justice Muhammad Nawaz Abbasi ordered a judicial inquiry into the matter.

Complainant Nasreen Mai was kept in illegal confinement for 11 months by Iqbal, a relative of her father and her father's landlord Ali Muhammad Saamtia. During this period, she was raped by Iqbal as a result of which she became pregnant and gave birth to a child. The two culprits stole her one-month-old child and murdered.

“The Offence of Zina (Enforcement of Hudood) Ordinance, 1979 is getting criticism and objections only because of handling of hudood cases by police in such a manner,” the chief justice observed during suo motu hearing of the complaint of Nasreen Mai.

During the hearing, the court was told that 46 rape cases registered under the hudood laws in District Layyah were awaiting investigation for months for want of a senior police officer.

DPO Layyah Nazim Shahid informed the bench that under the law, hudood cases, especially rape matters, could not be investigated by a police officer less than the rank of an SP. He stated a request was sent to the inspector-general Punjab police on July 6, 2006, for appointment of a senior police officer in the district but so far no step had been taken.

“Therefore, Iqbal is still a free man,” the DPO said, adding that being a junior officer, he could not take up the inquiry.

Additional Advocate-General Punjab Syed Azhar Hussain informed the court that Nasreen Mai was married to one Allah Dita but for seven years she remained issueless. After some domestic dispute, she was asked by her father to leave her husband and stay with him.

But Iqbal and Din Mohammad Saamtia, the AAG said, took her away and kept her in illegal detention for eleven months during which she was raped by Iqbal. When she became pregnant and subsequently gave birth to a child, the family members of the landlord killed the baby, the AAG added.

When asked: ‘Why was an adultery case registered against Nasreen?’ The DPO explained that the police registered the case on the basis of the finding of the District and Sessions judge Layyah.

However, the bench noted that the DJ Layyah, while compiling his report, had relied upon the investigation of police instead of conducting an independent judicial inquiry.

The bench remanded the case back to the DJ Layyah with instructions to conduct fresh inquiry and ordered police to register a new case on the basis of new findings of the DJ Layyah.

The bolded out sentences of the above extract, especially, the CJ's comments on the issue, clearly lay bare the truth that the police & the judges are responsible for the injustice; not the hudood ordinance!

11. Availability of Four Witnesses is Impossible

Another lie being spread by Geo TV on a wide scale is that the condition of four witnesses is impossible and will never be fulfilled. The basic argument is similar to the statement of Syed Razi Jaffer Naqvi, as found in the Experts Commentary section:37[37]

The truth is that if we think at length about zina bil jabr then it seems impossible that someone can commit this crime in front of four pious and trustworthy people. If a person will want to use force against a woman, then these four people would use their strength to stop such a thing from happening. The perpetrator would not dare to do something like this, and if he is that daring then because these witnesses are expected to be pious, they would use their strength and stop the crime.

First of all, the foremost thing to be kept in mind is that tazir can always be awarded, so neither the criminals will get a free hand, nor will injustice be caused to women by the condition of four witnesses. Thus the hadd for zina or zina-bil-jabr is there as a rare & hard punishment and consequently, removing it will not have any effect on the status of women whatsoever.

Furthermore, if the above argument is accepted, then it applies equally well for zina, too; since, the four pious persons will not stand to get entertained by a Hollywood movie! Moving further, in case of rape, the woman will shout and some people may gather. The rapist may also have a weapon to keep witnesses away. But, how on earth will four witnesses be available in case of zina, if the above argumentation is acceptable?

On the above issue, there is a golden and well-settled principle of Fiqh: the application of a law depends on the Illat and not on the Hikmat. I quote here an extract from paragraphs 119-121 of Mufti Taqi Usmani’s 1999 judgment on Riba, in the Supreme Court of Pakistan:-

It is a well settled principle of Islamic jurisprudence that there is a big difference between the Illat and the Hikmat of a particular law. The Illat is the basic feature of a transaction without which the relevant law cannot be applied to it, whereas the Hikmat is the wisdom and the philosophy taken into account by the legislator while framing the law or the benefit intended to be drawn by its enforcement. The principle is that the application of a law depends on the Illat and not the Hikmat. In other words, if the Illat (the basic feature of a transaction) is available in a particular situation while the Hikmat (the wisdom) behind is not visualized, the law will still be applicable. This principle is recognized in the secular laws also. Let us take a simple example: The law has made it compulsory for the vehicles running on the roads to stop when the red street light is on. The Illat of this law is the red light, while the Hikmat is to avoid the chances of accident. Now, the law will be applicable whenever the red light is on; its application will not depend on whether or not there is an apprehension of an accident. Therefore, if the red light is on, every vehicle is bound to stop, even though the roads of both sides have no other traffic at all. In this particular case, the basic wisdom (Hikmat) of the law is not discernable, because there is no apprehension of any accident in any way. Still the law will be applicable in its full force, because the red light which was the real Illat of the law is present. To cite another example, the Holy Quran has prohibited liquor. The Illat of the prohibition is intoxication but the Hikmat of this prohibition has been mentioned by the Holy Quran in the following words:

“The Satan definitely intends to inculcate enmity and hatred between you by means of liquor and gambling, and wants to prevent you from remembering Allah. So would you not desist?” (5:91)

37[37] Source: http://www.geo.tv/zs/quickstop.asp
The philosophy of the prohibition of Liquor and gambling given by the Holy Quran in this verse is that liquor inculcates enmity and hatred between people and it prevents them from remembering Allah. Can one say that he has been using liquor for a long time but it never resulted in having enmity with any one, and therefore, the basic Illat of prohibition being not present, he should be allowed to use liquor? Or can one reasonably argue that drinking wine has never prevented him from offering prayers at their due times, and therefore, the basic cause of prohibition mentioned by the Holy Quran being absent, the drinking should be held as permissible. Obviously, one can not accept these arguments because the enmity and hatred referred to by the Holy Quran in the above verse is not intended to be the Illat of prohibition. It simply spells out some bad results which the liquor and gambling often produce. They have been mentioned as a Hikmat and the philosophy of the prohibition, but the prohibition itself does not depend on these results.

Thus the wanting of Hikmat behind a commandment of the Shari’ah, in a particular scenario, is no base for dissolving that commandment.

We know, by this time that removing hadd and the condition of four witnesses, will not have any effect on the status of women. It will only add one more to our account of sins that we removed a Quranic law from the statuary books!

Still, some may say that the implementation of hadd on any criminal is ‘impossible,’ because of the strict evidence requirements. They may argue that having a law which would ‘never’ be enforced is stupidity. Let’s discuss this issue of availability of witnesses for zina and zina-bil-jabr.

First of all, we should note that punishments are of four types:-

1. Deterrent
2. Retributive
3. Preventive
4. Reformatory

Hudood for zina and zina-bil-jabr are deterrent punishments for hardened criminals, which will rarely be awarded. In one of the hadiths, the Prophet ( ) is reported to have said: “Enforcement of a single hadd in the land of Allah is better than rainfall for 40 days (in it).”

Furthermore, hadd is not awarded everyday. During the era of the Prophet ( ) and the four pious caliphs, the hands of only five thieves were amputated. In the same way, four witnesses will not be available everyday, but, it is also wrong to say that they would ‘never’ be available. Such a thing is but conjecture!

In case of zina-bil-jabr, there have been many cases in Pakistan where feudalists and Vadera would rape girls openly in streets! Here, many times, MORE THAN FOUR witnesses are available. I still remember a case of Multan, which was reported by Geo TV, in which a woman was stripped of her clothes right in the street; the styleless criminal went on further to do the unethical act in public! He even dragged the woman’s naked body through the streets of the village! Similarly, there have been cases where, when a rapist is raping a girl, she starts screaming and four or more persons gather in the place (usually neighbors.) There have been many such incidents in various cities of Pakistan—including Karachi.

In case of zina, the strict punishment is not for people doing such actions in public, since, no one would ever do such a thing. Even if they tried to do that, most likely they would be stopped by
people. A few may say that four persons would thus have seen them doing such a thing, but, it's still too illogical to believe in such a thing.

_Hadd_ in case of zina acts as a deterrent for perverted people, who frequently visit ‘free-sex places’ such as brothels, etc. Many a times, it happens that the police, who may be sometimes accompanied by journalists, visit the place by surprise. Many people are thus caught red-handed doing shameless acts and four or even more people are available as witnesses. [Recall that the FSC ruled in *Muhammad Abid vs. The State* (PLD 1988 FSC 111) that police officials can be witnesses in cases of zina & zina-bil-jabr.]

I still remember a case of such nature myself; it was reported by GEO's program _FIR_ (First Information Report). The case was not only reported, but, various clips from the brothel were also included. The brothel was camouflaged under the label of _Bisma Beauty Parlour_. When the police and the Geo FIR team broke in, they caught several people red-handed, in actions! EVEN A TV MODEL NAMED _NEHA_ WAS ARRESTED FROM THE BROTHEL, WHO CAME THERE AS A PROSTITUTE.

Probably, it was due to the above reasons that the Parliamentary Select Committee, consisting of Sher Afgan Khan Nyazee and others, which was reviewing the _Protection of Women (C.L.A.) Bill, 2006_, restored the enforcement of hadd upon testimony of four witnesses in case of rape.

12. A Law of One Man Imposed on Others

One of the most widespread misconceptions in our country is that the hudood ordinance was a law made by a ‘horrible’ Zia-ul-Haq, as a political weapon and to impose his distorted Islam on the hapless nation. At the outset, it is indeed amazing that the media & NGOs themselves yell not to politicize this issue and yet, they themselves present such an objection!

Gen. Zia-ul-Haq is no more between us, but, these laws are. These laws are composed of sections & articles and do not think or feel; so, we have to discuss these laws and not who promulgated them. Whatever were the motives for enforcing these Ordinances, Allah alone knows best (since we can’t peep into anyone’s heart) & above all, it does not matter now.

After refuting the above argument, we now come to unveil the most widespread rumor i.e. hudood laws were made by a single man. After the third military takeover in the history of Pakistan, Gen. Zia-ul-Haq was destined to be the ruler of Pakistan. He reconstituted the CII (Council of Islamic Ideology) in 1977, after which, it consisted of the following members:

1. Justice (R) Muhammad Afzal Cheema [Chairperson]
2. Justice (R) Salahuddin Ahmed
4. Khalid M. Ishaque, Advocate
5. Maulana Mohammad Yousaf Binori (d. October 4, 1977)
6. Khuwaja Qamar-ud-din Siyalwi
7. Mufti Muhammad Hussain Naeemi

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38[38] For example, see The Daily Dawn, Vol. LX, No. 247, Issue of Monday, August 14, 2006, p.6; Amendments to Hudood Ordinance by Maheen A. Rasheed.
Later, a Committee consisting of the following members was established to prepare the draft of the hudood laws:

**Ulema**

1. Mufti Muhammad Taqi Usmani (Chair-person of the O.I.C. Fiqh Council)
2. Maulana Zafar Ahmed Ansari (RA)
3. Pir Karam Shah Al-Azhari (RA)
4. Dr. Mehmood Ahmed Ghazi

**Law Experts**

5. Khalid M. Ishaque
6. Sharif-ud-din Pir Zada
7. A. K. Burohi

**Retired judges**

8. A. K. Samdani
9. Muhammad Afzal Cheema
10. Justice (R) Salahuddin Ahmed

After holding 15 meetings in different cities of the country during 29 September 1977 and 20 December 1978, the Committee prepared the drafts of the four hudood ordinances. Gen. Zia-ul-Haq was far away from even the shores of preparing these drafts!

In the preparation of these drafts, the Council sought assistance and consultation with Dr. Ma’aroof al-Dawalibi, a jurist of international fame, formerly Prime Minister of Syria, President of the World
Muslim League and an Advisor to the His Majesty, Khalid bin Abdul Walid, the King of Saudi Arabia. **The drafts laws about Hudood were first prepared in Arabic language;** later, they were translated into English and Urdu. *Gen. Zia-ul-Haq did not understand Arabic; at least as far as I know!*

A special Committee consisting of Mir Muhammad Ali (Draughtsman), and Sheikh Asadullah (Joint Secretary), later replaced by Justice (R) Amjad Ali was appointed to edit it in the modern legal language & to make necessary amendments. The drafts had been completed in 1978, and General Zia ul Haq decided to enforce them on 10 February, 1979 as an Ordinance.

The above brief discourse on the history of the ordinances sheds light on various important aspects and refutes many common arguments, namely:-

(a) The Hudood Ordinances were made by one man;

(b) The Hudood Ordinances have never been discussed rationally;

(c) The Hudood Ordinances were Zia-ul-Haq’s distorted interpretation of the Quran and Sunnah.

The Ordinances did not remain as such forever. **On 11 November, 1985, the National Assembly passed an Act (i.e. by two-third majority) whose name was The Constitution (Eight Amendment) Act, 1985 (XVIII of 1985).** This Act modified Article 270-A to the Constitution, which provides affirmation to the five Hudood Ordinances. Thereafter, the National Assemblies of 1988, 1990, 1992, 1995, 1998 and 2002 never raised on objection these Ordinances!

*We will be justified here to pause for a minute and ask our friends that do you still call this a law pasted by a single man on others?*

A few others say that the Ordinances were not made by parliamentary debate and should be repealed for the same reason. The answer to this argument can be twofold. The passing of an act by the 1985 National Assembly in support of it & no objections by the successive National Assemblies will implode this argument on its own feet.

Secondly, these Hudood Ordinances cannot be singled out for this reason, as a major part of the laws of our country are ordinances, for example, to name a few:-

(1) Police Order, 2002

(2) Income Tax Ordinance, 2002

(3) Legal Framework Order, 2002

(4) Pakistan Arms Ordinance, 1965

(5) Muslim Family Laws Ordinance, 1961

(6) Microfinance Institutions Ordinance, 2002

(7) Microfinance Banking Ordinance, 2001

(8) Banking Companies Ordinance, 1962
Punjab Usurious Loans Ordinance, 1959

Punjab Urban Rent Ordinance, 1959

... and this list can fill whole volumes!

From the above discussion, we have refuted a lot of arguments raised on the hudood ordinance as well as exposed many fake facts, being spread at a large scale, by the media.

13. Hudood Laws Presume The Existence of Justice

Some people forward the argument that “these hudood laws presume the existence of an Islamic society based on justice and social & economic equality.”[39] Anwar Syed, a columnist, extending from the above premise, said that ‘this is akin to postponing the hudood laws indefinitely.’

The above argument has got undue popularity even among sincere & educated persons; some ulema even forward this argument. Now’s the time to trash this argument!

This argument itself is usually based on the presumption and forwarded by those who think that unless there are four witnesses, a rapist cannot be punished; since, this is a fallacy, it is fairly simple to dispose off this argument.

Furthermore, no person in Pakistan can guarantee or even suggest that in the coming years, the Islamic Shari’ah will be fully implemented in the society, or that all obscenity, immodesty, etc. will end & Islamic dress code, etc. shall be obeyed by all. Thus ending the Ordinances will only facilitate the further corruption of society.

But, the above two points are not enough as the absurdity of this argument is not unveiled yet!

To proceed to analyze this argument, we restate it here.

These hudood laws presume the existence of justice...

If I ask you as to what do the hudood laws constitute? Your reply will surely be that these laws are a part of the criminal law. Thus the argument becomes:-

A part of the criminal law presumes the existence of justice.

If I ask: what is the criminal law for? Your reply might be that it is for punishing the evil-doers, etc. If I ask you further, you will surely state that the criminal law is for providing justice to the citizens of a state. In other words, the criminal law is a source of justice.

Putting this in the original argument, we get:-

The source of justice presumes the existence of justice.

This argument thus is based on the following general principle:-

The source of x presumes the existence of x.

And if that didn’t quite take you away, take a look at a more familiar & specific application of the principle:-

[39] For example, see The Daily Dawn, Issue of Sunday, 12 March, 2006, p.5; Sterile Public Debate by Anwar Syed
This light bulb (source of light) presumes the existence of light in a room.

We will be justified here to ask as to when do people use light bulbs or turn them on? Yes! In dark conditions i.e. where there is a deficiency of light. When there is a deficiency of $x$, you turn on the source of $x$ to eliminate the deficiency.

This is a natural example; we see everywhere that light bulbs, lamps, etc. which are sources of light are used when there is less light. Street lights are turned on at night and not at day.

Going the other way around, it means that if $x$ exists in adequate amounts, then there is no need for a source of $x$. If there is enough light in the room, we need not turn on the lights.

In the same way, if justice already exists in a society, then there is no need for a source of justice. If Islamic norms are being followed by almost each and every person, then there are almost no crimes or criminals and consequently, there would be no need of a criminal law.

To sum up then, if these hudood laws presume the existence of justice, then this is one of the most absurd arguments, the world has ever witnessed.

14. Hudood Ordinance is Defaming Islam

Many people are worried today that the hudood laws are defaming Pakistan & Islam in the eyes of the international community. They argue that the image of Islam has been stained with black spots due to this 'un-Islamic' law. Many cases have been renowned in this regard like Mukhtara Mai case & Dr. Shazia Case.

Let us peep into the reality of this argument; we quote here an extract from Dr. Abdullah’s article on the ordinance:40[40]

This is further strengthened by another fact, quoted by Dr. Abdullah, in the same article:41[41]

I don’t believe in everything which I read and therefore, I decided to do some research on my own. I WAS SHOCKED TO FIND THAT HE WAS NOT LYING!!!

By doing a brief search on the net, I came across the donor’s website.42[42] Searching on their website, I found a document43[43] entitled EN final report IPC 02 juli 03 inside which, *inter alia*, a list of various organizations, which participated for evaluation for funding, was given. I was shocked to find the name of Aurat Foundation as given on page 26.

I continued my research and contacted the relevant person44[44] from their website, to provide me with details of the funding given to Aurat foundation. He did not reply back.

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42[42] URL: http://www.icco.nl/

43[43] Source: http://www.icco.nl/documents/pdf/EN final report IPC 02 juli 03.doc

44[44] His email address, as provided on the website, was: Desh@icco.nl
By doing more research, I found from the CII’s Interim Report on the Hudood Ordinances that the Aurat Foundation had, since then, prepared the following books:-

1. **Hudood Ordinance, Kitab-o-Sunnah ki Roshni mein** by Dr. Muhammad Tufail Hashmi

2. **Hudood-o-Qisas-wa-Diyat Ordinance ka Tanqidi Jaiza, Quran-o-Sunnah ki Roshni mein** by Dr. Muhammad Farooq Khan (Aurat Foundation, Peshawar : 2004)

   
   Thus one has to indeed confess that the Aurat Foundation received funds in late 2002 from the Western donor, ICCO, for nothing other than criticizing the Hudood laws. (God knows better!)

Here a question arises as to why are the Western countries objecting the hudood laws? The answer, at the very base, is for paving path for their unipolar world, imperialism, etc. under the veil of a New World Order. For establishing this new world order, they want a clash of civilizations & also spread Islamophobia to justify the invasion of sovereign Muslim states, to get a million troops on their land, to rob away their oil resources, to commit a Muslim holocaust and make it appear like sectarian violence & finally, establish a puppet government to control the states remotely.

According to an article, written by Professor Edwards of Lebanon, which appeared in The Times (London), April 1979: “In a span of just 150 years, 60,000 books were written against Islam.” If we calculate, this means that on average, every day more than one book is written against Islam. This is an article of 1979 when there was no 9/11, Al-Qaeda, Osama, etc. Now-a-days, the figures would be even mind-blowing!

This missionary nature of the West is also seen from the fact that on minimal things related to hudood, special attention is given by European and US media. One example as already described was that of the Mukhtara Mai Case.

Similarly, when Gen. Musharraf passed the Law Reforms Ordinance, 2006, BBC earnestly reported this “international event” of “utmost importance.” Even a minimal Zara Sochive Debate on Geo TV was such an “important development” that the newspaper New York Times gave it special attention. Surprisingly, it was titled “After TV debates, Pakistan may ease laws regarding reporting rape.”

How could these people be so sure that Pakistan would ease laws when it hadn’t done so after the recommendations of NCSW & so many other NGOs? Did they know in advance about this development or did they themselves draw the map for this development? (God knows better!)

What is even more interesting is the fact that those Western countries which are involved in criticizing this Ordinance are those who completely deprive women of their modesty, respect, economic security etc. They were involved in publishing blasphemous caricatures of a Prophet of Allah and the status

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**45[45]** Details at: [http://news.bbc.co.uk/2/hi/south_asia/5159556.stm](http://news.bbc.co.uk/2/hi/south_asia/5159556.stm)

of women in their countries in nothing more than that of a commodity for fulfilling sexual desires. With every third marriage ending in a divorce, women wearing nothing at all, free sex in every hotel room & park, lesbianism & sodomy legalized and common, one can approximate the amount of modesty and morality possessed by them. They criticized other countries while forget what is happening in their own countries: tens of thousands of women being sentenced to death, hanged till death, frozen in freezing chambers and receiving electric shocks. On the contrary, in Pakistan, no woman, up till now, has ever been hanged till death.

The love for humanity in the hearts of such people can be seen by their attitude towards the Asians, Muslims, Africans and blacks; testing their nuclear deterrents by murdering tens of thousands of innocent women, children, old, patients, disabled ones & other citizens of Hiroshima and Nagasaki; sitting on their cruise missiles & electromagnetic bombs and talking about world peace is enough joke. Issuing executive orders for Iraqi POW abuse[47] and making Iraqi prisoners chew the private parts of others is enough justice. Attacking Iraq when Hans Blix—the head of UNMOVIC—pointed out in his report of 27 January, 2003 that no evidence is available to prove that WMDs exist in Iraq, reflects their love of Muslims. Planning out 9/11[48] to justify invasion of Muslim countries[49] and stopping public investigations when cross-intelligence reports reveal that two of the 7/7 terrorists were under MI-5 surveillance[50], unveils the reality of their war on terror.

Their atrocities are innumerable, especially, in the case of Palestine:51[51] violating the Sykes-Picot agreement, shattering Sherif-McMahon correspondence, passing a Balfour Declaration to sell out a piece of Ottoman Empire—without having any sovereign rights or consulting the people—adding this declaration—which was illegal—in their Mandate, ignoring the rights given to Palestinians by the Sykes-Picot agreement, ignoring the Joint Anglo-French Declaration, ignoring the King-Crane commission report, ignoring the Peel Commission Report, allotting 57% of the land of Palestine to 5.6% of illegally immigrated population without the consent of the Palestinians—at the expense of 1.5 million Palestinians being converted into refugees ...ah. And there are many other stories which can be narrated here, but, time does not permit, so, we should ignore the criticism of such people.

I would also like to refute those Muslims here, who are spending their energies in pleasing the West.

The Qur'an says:

"Never will the Jews, nor the Christians, be pleased with you (Muslims) till you follow them..." [Al-Baqarah 2:120]

"This day, those who disbelieved have given up all hope of your religion, so fear them not, but fear Me." [Al-Maida 5:3]

In other words, Muslims should stop spending their energies in pleasing the West; all of us should please Allah, The Al-Mighty God!

15. New Interpretation is Not Misguidance


[48] There are tones of articles, videos, books & all kinds of other stuff, available in this regard; for a list of websites, visit: http://www.physics911.net/resources.htm

[49] We at Defending-Islam.com think that the original author of this piece may have gotten carried away with some conspiracy theories about the truth of some acts that have occurred both in the Muslim world as well as the non-Muslim world.

[50] See: http://groups.yahoo.com/group/wrh/message/4329

[51] A good book is available online on this issue: http://domino.un.org/unispal.nsf/0/aeac80e740c782e4852561150071fdb07/OpenDocument
This view is being preached at a wide scale in our society, but, is completely wrong. Geo TV is also very active in spreading this view. Here is one of their advertisements being shown for preaching this view:

What do they want to say if not that Tafseer bil Ra’y is permissible and blessing? Let us discuss this issue in a little detail.

The Holy Qur'an says:-

“Then, it is on Us (Allah) to explain it (i.e. Tafseer of the Qur'an).” (Surah Qiyamah 75:1)

This explanation is not given to us directly, but, to the Prophet who described the actual Tafseer of the Holy Qur'an. The Qur'an says:

And We have sent down unto you ( ) the reminder and the advice (the Qur'an), that you may explain clearly to men what is sent down to them, and that they may give thought. (Surah An-Nahl 16:44)

From this ayah, two things are clear:

1. The Holy Prophet knows and describes the correct explanation of the Qur'an;
2. Giving thought and using one’s own intellect, in Tafseer, comes after the Prophet’s sayings.

That’s why anyone, without having knowledge of Usul-e-Tafseer (i.e. the Science of Interpretation of the Holy Qur'an), if starts interpreting the Qur'an, will end up astray. Specifically, these ahadith should be kept in mind:

**Whoever says anything about the Qur'an without knowledge then he should make his abode in Hell.** [Al-Itqan fil Ulum al-Qur'an 2/179]

**Narrated Jundub that the Prophet said: If anyone interprets the Book of Allah in the light of his own opinion, even if he is right, he has erred.** [Sunan Abu Daw'ud, Mishkat-ul-Masabih]

After the Prophet, the sayings and actions of the Companions (RAA), Tabi’een and Tabi’ Tabi’een are also a source of interpretation. Thus if I enumerate the sources of interpretation of the Holy Qur’an, these are:

(a) The Holy Qur’an itself
(b) The Sayings of the Prophet
(c) The Reports of the Companions (RAA)
(d) The Reports of the Successors (Tabi’een)
(e) The Arabic Language
(f) Deliberation and Deduction
Late Grand Mufti of Pakistan, Mufti Muhammad Shafi Usmani (R.A.) wrote in one of his articles that:

So, should a person, while explaining the Qur’an, come out with a subtle point or independent judgment which is contrary to the Qur’an and Sunnah, Consensus (Ijma’), Language, or the statements of Companions (RAA) and Successors, or stands in conflict with another principle of Shari’ah, that will then have no credence.

From the above explanation, it is clear that if a person is doing a “new” interpretation of the Qur’an which is repugnant to that of the Prophet, Companions (RAA) and Tabi’een and Tabi’ Tabi’een, then he is completely deviant.

**NOTE:** The above explanation only applies to Ayat-ul-Ahkamaata & ‘Aqaid i.e. the verses dealing with commandments of Shari’ah and fundamental beliefs. Verses which deal with, for example, scientific knowledge, may be interpreted in a manner which is different from that of the previous scholars.

It is forbidden to even listen to a person who is doing Tafseer bil Ra’y. It is useful to quote here an extract from *Ma’ariful Qur’an*:

From the saying of Ibn Abbas (RAA), it is abundantly clear that coining a new interpretation of any verse of the Qur’an—which deals with the commandments of the Shari’ah—and which stands in conflict with the interpretation of the Prophet, Companions (RAA), Tabi’een, Tabi’ Tabi’een, Consensus of Ummah or any other well-settled principle of Shari’ah, “then it will have no credence” and it will be open deviance.

It is noteworthy here that one of the reasons why the previous nations earned the torment of Allah was that they did scripture twisting i.e. *Tehreef*.

We would also like to point out here that Ijtihad is not done to change the Shari’ah according to one’s carnal desires. The objective of Ijtihad is to find the commandment of Allah and *not* to change the commandments of Allah to fit our needs. The slogan of “re-interpretation of the Islamic Shari’ah, according to the space-time forces” is nothing more than a sugar coating for a bitter toffee of Tehreef. The previous Ummah viz. the Jews or Children of Israel, used to do scripture-twisting, as the Qur’an points out:-

They (Jews) change the words from their (right) places. [Surah al-Maida 5:13]

AND

And their (Jews’) taking of Riba (interest) though they were forbidden from taking it... [Surah an-Nisa 4:161]

We are doing the same, as the Prophet had prophesized; we do scripture-twisting, but, label it as reinterpreting the text according to the space-time conditions prevailing. As our Prophet has taught, we should not be driven away by space-time forces; rather we should stand like a rock and control the space-time forces, according to our will!”

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53[53] Ma’ariful Qur’an (Urdu), Mufti Muhammad Shafi Usmani (RA), Vol.2, p.584
Changing the Shari'ah as one deems fit also comes under following the desires of one’s Nafs and is strictly prohibited by the Shari'ah. There are many verses and sayings which can be found in this regard.

16. Other Rumors

It must be noted here that the above rumors were only a few selected ones. The total number of lies being spread by Geo TV and other feminist NGOs is more than difficult to accumulate in a single article.

References

The following is a list of resources, other than the Holy Qur’an and authentic hadith books, consulted and referred to, during the preparation of this article. This list also includes a few resources which will be helpful to those interested & seeking more information about the issue.

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