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Analysis of the Protection of Women Act, 2006

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Abstract: *The study focuses on the Protection women Act, 2006. There are two perceptions about the PWA. The first perception is that this Act is compatible with Quran and Sunnah. The second opinion is that this Act is completely against Islam. In the view of the researcher, both opinions are not correct. Many provisions of this amendment act are correct, and these modifications are required to comply with the rules of Islamic law. On the other hand, a few clauses of this amendment act are objectionable. In this article, an analysis has been made of both positive and negative aspects of PWA.*

Key Words Zina Bil Jabr (Rape), Rajm (stoning to death), Lian

Introduction

Since their enactment in 1979, *Hudood* Laws have been the subject of controversies inside and outside the country. Under Pervez Musharraf (1999–2008), The Pro-Western NGO's activities intensified against *Hudood* Laws. His government, in collaboration with some media outlets, made it its primary goal to change the *Hudood* laws in order to gain the full and external support of his ideological supporters. Due to the one-sided propaganda of the media and some lobbies in the country, a law was passed by the Parliament of Pakistan, which not only contradicts Islam and the Constitution of Pakistan but also violates the cultural traditions and values of Muslim society ([Raja, n.d.](#)).

The original name of the bill was 'Criminal Amendment Bill 2006', but in order to win the sympathy of women, it was called 'Protection of women Act 2006' ([Yousuf, 2007](#)). However, the fact is that the whole bill revolves around the modification and reduction of the *Shariah* punishment for adultery (*Zina*) and slander (*qazf*). Through 29

amendments in the bill, 12 sections of *the Zina* Ordinance were repealed, and 6 were changed. The bill also proposed to repeal 8 of the 20 provisions of the *Qazf* Ordinance and delete or amend 6 of them, after which only 4 sections in *Zina* Ordinance and 6 sections in *Qazf* Ordinance have remained intact in their original form ([Madani, 2006](#)).

Positive Aspects of PWA

The Positive aspects of PWA are hereby mentioned as under:

Removal of *Tazirat* from *Zina* Ordinance and *Qazf* Ordinance

The provisions of the *Zina* Ordinance and *Qazf* Ordinance related to *tazir* punishments, were removed from the *Hudood* Ordinances and added to the PPC through Sections 2 to 9 of the Act. This cannot be objected to in terms of *Shariah*; even it is a good thing. In fact, the *taziri* punishments included in the *Hudood* laws were derived from the British formulated Penal Code (Pakistan Penal Code) rather than Islamic law; even in most cases,

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the provisions of the PPC have been recorded in exactly the same way [\(Ahmad, 2022\)](#).

In Pakistan, many people in the legislatures and the legal department are of the opinion that laws which are not "in conflict" with Quran and *Sunnah* are automatically correct, and this "non-confrontation" is considered to be synonymous with "compatibility" with Islam. Furthermore, the penalties imposed so far under the *Hudood* laws in Pakistan are all *taziri*, and almost all of these penalties have been taken out from PPC. So if there is an error that is in PPC, not in *Hudood* laws, still *Hudood* laws are accused. Therefore, it is better to keep the *taziri* punishments in PPC [\(Cheema & Mustafa, 2008\)](#).

Similarly, the double standard established by the *Hudood* laws by dividing the crime into 'liable to *hadd*' and 'liable to *tazir*,' is not based on the correct interpretation of Islamic law. For example, the interpretations of the Quran and *Sunnah* and the jurists show that *Zina* is either liable to *hadd*, or if it is not liable to *hadd*, then it is not *zina*. If A alleges that B has committed adultery (*Zina*), he will have to prove his guilt on the relevant curriculum of witness; otherwise, A will be liable to *qazf*. As verse No. 4 of Surah Noor clearly describes:

"And those who accuse honorable women but bring not four witnesses, scourge them (with) eighty stripes and never (afterwards) accept their testimony - They indeed are evil-doers".

Therefore, if A puts a heap of circumstantial evidence in the proof of his claim, then it will not prove the crime of adultery, but he will prove to be a liar and his claim and he will be charged with *qazf*. On the contrary, the *Zina* Ordinance states that in some cases, despite not producing four witnesses, the plaintiff may not be punished for *qazf*. In such cases, the court may impose appropriate *taziri* punishment on the defendant on the basis of the circumstantial evidence, as if this crime will be *zina* liable to *tazir*. In the cases of *Zina* liable to *tazir* mentioned by the Ordinance, the word '*zina*' does not apply in the terms of jurists, and the same is the case with *qazf* liable to *tazir*,

saraqah liable to *tazir*, *harrabah* liable to *tazir* and drinking liable to *tazir* [\(Ahmad, 2019\)](#).

In fact, even the drafters of the *Hudood* laws were so confused that it would not be possible under normal circumstances to fulfill the required curriculum for implementing *hadd* punishment, whereas under the common law of evidence, it is comparatively easier to prove that the defendant has committed a crime. In that case, the question arises: Will the culprit be released? Therefore, they set a double standard for the proof of guilt that if proved on one standard, *hadd* punishment will be implemented, and if proved on another standard, *taziri* punishment will be given [\(Arsalan, n.d.\)](#).

The correct way, on the other hand, is that the crime of adultery should be considered as liable to *hadd* only, and there should be a single standard of evidence for it. As for other types of obscenity, they should be declared as separate crimes, and separate standards of evidence should be set for them. But, if a person accuses someone of adultery and he fails to fulfil the required proof of evidence, i.e. four eyewitnesses, then no further evidence should be accepted from him; however, he should be found guilty of slander (*qazf*). The same principle applies to the other *hudood* as well [\(Ahmad, 2022\)](#).

A suspicion is being raised about the effect of abolishing penalties from the *Hudood* laws with the reason that it would open the way for obscenity in the society as the crime of adultery will no longer be liable to *tazir*, and the required syllabus for *hadd* punishment is usually not possible under normal circumstances. This suspicion is baseless. First of all, indecency is less than adultery. Under Section 294 of PPC, indecent acts can be punished, and this is a cognizable offence.

Secondly, the purpose of *Shariah* regarding *hudood* and especially *hadd-i-zina* is that these crimes should not even be mentioned; it should be covered up as much as possible. However, if a couple is so obscene that they commit open adultery (obviously, having four eyewitnesses is possible under normal circumstances only

when the adultery is committed openly), then they must be punished.

So the result of the abolition of *zina* liable to *tazir* will be such that nobody will dare to accuse anyone falsely, and that is the sole demand of *shariah* (Ahmad, 2022).

Therefore, the result of abolishing *zina* liable to *tazir* will be such that no one will dare to falsely accuse anyone of adultery. That is what the *shariah* requires. Thirdly, *taziri* offenses have been removed from the *Hudood* laws and included in the PPC, which means that these matters will continue to be crimes. However, the specific *Hudood* procedure will not apply to the proceedings. In addition, the definition of *qazf* in the *Qazf* Ordinance had to remove the exception of "accusation based on good intentions", because this exception has disrupted the whole system of *qazf*. The desired results have not been achieved.

Abolition of Flogging in *Tazirat*

Similarly, flogging has been abolished for crimes related to *taziri* punishments. This is also an exercise of a legitimate government authority. Because, according to s, the definitions of these crimes, the method of proving it and determining the punishment for it are all in the hands of the government (Khan & Shebar, 2014).

Declaring false Accusation of *Zina* as *Qazf*

Regarding *qazf*, it has been stated in section 22 of the Act, that if the allegation of adultery is proved wrong in the court, then there will be no need for a new prosecution for *qazf*, but *qazf* action will be taken against the accusers and witnesses of adultery. The inclusion of this clause in the *Qazf* Ordinance is also very important from the point of view of the jurists, according to our research.

The jurists have termed all the *hudood* except *qazf* as pure "*Haqq Allah*" (The right of Allah). *Qazf*, of course, is a "common right" (*Haqq-i-Mushtarak*), although the right of Allah prevails in it as well. Therefore, due to the supremacy of *Haqq Allah*, it has been declared as *Hadd*, and other attributes of *hadd* have been applied to it. However, since

the right of man (*haqq-al-'abd*) is also present in it in a subdued form, there are some effects of the right of the man on it. One of the main implications of this is that it is necessary for *maqzoo* to initiate proceedings for his trial, provided that *maqzoo* himself is alive. If someone accuses a dead person of adultery, his heirs will take action. If a person accuses a living person of adultery and he dies before starting the proceedings, then his heirs cannot initiate the proceedings (Usmani, 2006).

However, this principle is applicable in case the accuser (*qazif*) does not commit *qazf* before the judge. If he commits *qazf* before a judge, then a claim by *maqzoo* is not necessary for the action of *qazf*. Therefore, Imam Sarakhsi has clarified that if a person is accused of adultery and four witnesses are presented in the court, then the testimony of each of these witnesses is *qazf* but the testimony of all four together becomes a proof against the accused. Therefore, if this argument is not fulfilled, then the court will also punish the witnesses for slander (*qazf*) and for this it will not be necessary to re-register the case on behalf of the accused (Bhutta, 2005).

Dropping *hadd* Punishment in case of turning back from confession

Section 23 of the Act states that if the plaintiff withdraws the *qazf* case, the case will not be reopened, nor will the *taziri* punishment be imposed. Similarly, it has been stated that if the accused of adultery turns away from the confession, no *hadd* will be imposed on him even if some part of it has already been issued. In our view, this is in accordance with Quran and *Sunnah*. The reason for this is that in a case of *hadd*, the completion of the trial is not on the sentencing of the sentence, but on the enforcement of the sentence. Therefore, the trial will end only when the sentence is fully enforced. For this reason, if the witnesses withdraw from the testimony before the full execution of the sentence, or when the offence is proved only by the confession and the accused returns from the confession, then *hadd* punishment, or the rest of it will not be enforced. In such a case, the trial will not be resumed, but the trial of *hadd*

will end at that time, because in such a case 'doubt' arises and due to 'doubt' the sentence of *hadd* is dropped. To avoid *hudood*, punishment is based on a *hadith* that states "avert *hadd* punishment in case of *shubha*(doubt)" ([Qureshi, 2016](#)).

Changing the word "*Nikah-i-Sahih*"

Section 12 of the Act changed the word of "*nikah-i-sahih*" to "*nikah*" in *Zina* Ordinance. It is stated that this change seemed to be correct because of *nikah* is not even regular (*sahih*), the accused gets the benefit of the doubt.

The reason given for the amendment is that marriage and divorce are not generally registered in the villages under the Muslim Family Laws Ordinance; therefore, the ex-husband files an adultery suit against his wife. If this is indeed the case then amending the Muslim Family Laws Ordinance is a matter of time ([Hashmi, n.d.](#)).

Negative aspects of Protection Women Act

The negative aspects of PWA are hereby mentioned as under:

Removing *hadd* of *Zina bil-jabr*

Section 5 of the Act removed *Zina bil-jabr* (Rape) from *Zina* Ordinance and incorporated it into sections 375 and 376 of PPC ([Cheema & Mustafa, 2008](#)). Abolishing the *shari* punishment (*hadd*) of *Zina bil-jabr* is a clear violation of the rules of Quran and *Sunnah*. It is argued that *had* set by the Quran and *Sunnah* for adultery (*Zina*) applies only when a couple i.e. a man and a woman, have committed adultery by mutual consent; however, when a criminal commits adultery with a woman without her consent or by force, the Quran and *Sunnah* do not impose any *hadd* on this type of adultery. Let's first see how true this claim is.

The Holy Quran has stated the *hadd* of adultery in the second verse of Surah Noor:

"The (unmarried) woman or (unmarried) man found guilty of sexual intercourse - lash each one of them with a hundred lashes" (Al Quran).

In this verse, the word "sexual intercourse" is absolute, which includes all kinds of adultery. This includes both consensual adultery and forced adultery, but it is a common sense that the crime of forced adultery is a more serious crime than consensual adultery. Therefore, if *hadd* is being imposed in case of consent, then in case of force, it will be applied more forcefully.

Although the verse also mentions the "adulterous woman", in Surah Noor itself, women who have been raped are exempted from punishment. Therefore, Quran states in verse No. 33 of Surah Noor:

"If one compels them (women)(for adultery), then after their being compelled, Allah is Most-Forgiving, Very-Merciful".

From this it is clear that a woman who has been raped cannot be punished, however, the rapist will be punished under the mentioned verse No. 2 of Surah Noor.

The above mentioned punishment of hundred lashes is for unmarried persons. The *Sunnat-i-Mutawatir* (consecutive) adds that if the culprit is married, he/she will be stoned. And just as the Holy Prophet (ﷺ) imposed *hadd* of stoning on those who committed consensual adultery as well the perpetrators of forced adultery. Therefore, Wail bin Hajar (R.A) narrates that at the time of the Holy Prophet, a woman came out with the intention of offering prayer. On the way, a man forcibly committed adultery with her. The woman shouted so the man ran away. The man later confessed that he had raped the woman. Upon this, the Prophet (ﷺ) imposed *hadd* on that person while did not impose *hadd* on the woman. *Imam Tirmidhi* has narrated this *hadith* from two sources in his book and has declared the second source to be reliable ([Usmani, 2006](#)).

It is narrated in *Sahih Bukhari* that a slave committed adultery with a slave girl, and then Omar (R.A) imposed *hadd* on the man and did not punish the woman, because she was forced to do so.

Therefore, the Holy Quran, *Sunnah* and the decisions of the rightly guided caliphs, proved without any doubt that *had* of forced adultery is as much necessary as consensual adultery. So there is no justification for saying

that *hadd* punishment for adultery which has been prescribed by the Quran and *Sunnah*, is only applicable in case of consensual adultery while it will not apply in case of rape.

The question arises, why is there so much insistence on abolishing the *Sharai* punishment for rape? The reason for this is actually a very unjust propaganda that has been going on in some quarters since the enactment of the *Hudood* Ordinances. Propaganda is that under the *Hudood* Ordinance, if an oppressed woman files a case of rape against a man, she is required to produce four witnesses for rape, and when she cannot produce four witnesses, she will be arrested and imprisoned. This is something that has been repeated tirelessly for a long time and is being repeated with such intensity that well-educated people are beginning to believe it to be true. But the fact is totally different.

The fact is that, in 27 years, no victim of rape has been convicted on the ground that she could not produce four witnesses, and this was not possible under the *Hudood* Ordinance. The reason for this is that under the *Hudood* Ordinance, the condition of confession of the accused or four witnesses was only applied to *Zina bil-jabr* liable to *hadd*. But at the same time, section 10 (3) of *Zina* Ordinance was reserved for the punishment of *Zina bil-jabr* liable to *tazir* in which there was no condition of four witnesses, but the proof of guilt was also found in the report of a single witness, medical examination or any other circumstantial evidence. Therefore, most of the perpetrators of rape have always been punished under this section (Usmani, 2006).

One wonders that under which section of the *Hudood* Ordinances, if the victim who could not produce four witnesses was ever convicted? If it is said that she was convicted of *qazf* (false accusation of adultery), then it has been clearly stated in the explanation 2 of section 13 of the *Qazf* Ordinance that a person who lodges a complaint of *Zina bil-jabr* with the legal authorities, he/she could not be convicted of slander (*qazf*) for failing to produce four witnesses. No court can punish such a person.

Another possibility is that the same woman might be punished for consensual adultery, but if a court has done so, it is not possible that the woman could not produce four witnesses, but the only possible reason is that after examining the evidence, the court concluded that the woman's claim of *Zina bil-jabr* was false. A great example for this is *Surah Yousuf* where Zulaikha invited Yousuf (AS) to adultery and forced him, but later when she was caught, she put all the blame on Yousuf (AS). Obviously, if a woman accuses a man of *Zina bil-jabr* with her, and the evidence later proves that her claim was false and that she consented to it, then to punish her, is not against any requirement of justice. But, since there is usually not enough evidence to prove a woman to be a liar and such examples are rare. Otherwise, in 99% of cases, even if the court is not satisfied that the man has committed *Zina bil-jabr*, but since there is not enough evidence of the woman's consent, the woman is given the benefit of the doubt and she is waived (Usmani, 2006).

Since the enactment of the *Hudood* Ordinance, the rumor that innocent women are being punished has been circulating. An American scholar, Charles Kennedy, came to Pakistan to survey the cases. He reviewed the cases under the *Hudood* Ordinance, collected data and presented the results of his research in a report which has been published. The results of this report are also the same as the above mentioned facts. He writes in his report:

"Women fearing conviction under section 10(2) (*zina* liable to *tazir*) frequently bring charges of rape under 10(3) (*Zina bil-jabr*) against their alleged partners. The Federal Shariah Court finding no circumstantial evidence to support the latter charge, convict the male accused under section 10(3). The women are exonerated of any wrong doing due to reasonable doubt rule" (Kennedy, 1996). This is the observation of an impartial non-Muslim scholar who has no sympathy with the *Hudood* Ordinances. He and relates a story of a woman who consensually committed adultery, and then under the pressure of family members or due to any other reason filed a case of rape against the man. She was asked to provide circumstantial evidence, not of four witnesses, but she could not produce any

evidence which could prove forcible adultery. Despite this, the punishment was given only to the man, and in this case also she was not punished due to the benefit of the doubt.

Therefore, the fact is that there is nothing in the *Hudood* Ordinance that would allow a woman victim of rape to be punished in reverse for not producing four witnesses. However, it is possible that before the case reached the court, the police in the interrogation phase had done something against the law to a woman who had brought a complaint of *Zina bil-jabr*, but the police had arrested her in *Zina bil-Raza*. But, this Act of police has nothing to do with the Ordinance.

In a focus group discussion, the academicians elaborated that in our country the police continue to commit such atrocities in enforcing every law, because of which the law is not changed. It is a legal crime to possess heroin, but the police harass many innocent people by putting heroin on their heads. This does not mean that the ban on heroin should be abolished.

If in some cases, the police have committed such abuses against women victims of rape, the Federal Shariah Court has blocked its way through its rulings, and if there is still such a threat, a law can be enacted in which it should be decided that a rape victim cannot be arrested under any section of the *Hudood* Ordinance till the final verdict of the case. And whoever arrests such a victim, a law can be made to punish him, but there is no justification for abolishing *hadd* of *Zina bil-jabr*". Therefore, the abolition of the *hadd* of *Zina bil-jabr* is clearly against the Holy Quran and *Sunnah* and has nothing to do with the abuse of women.

Changes in the definition of Rape

By repealing Section 6 of *Zina* Ordinance under Section 5 of the Act, *Zina bil-jabr* was not only made a *taziri* offense under Sections 375 and 376 of the PPC but also a few changes were made in its definition. According to the section 375 of PPC, rape is defined as:

"A man is said to commit rape who has sexual intercourse with a woman under

circumstances falling under any of the five following descriptions,

- Against her will.
- Without her consent
- With her consent, when the consent has been obtained by putting her in fear of death or of hurt.
- With her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married; or
- With or without her consent when she is under sixteen years of age" ([Haq, 2021](#)).

The first thing that emerges from this amendment is that sexual acts committed against a woman's will or without her consent will be called 'forcible adultery' (rape). According to this definition, if a husband has intercourse with his wife without her consent, he will also be found guilty of rape. In section 6 of the *Zina* Ordinance, there was an exception of husband and wife in the definition of rape which has been deliberately omitted here ([Jami & Islam, 2013](#)).

In the case number 5 of the above definition, every kind of adultery (*Zina*) with a girl under the age of 16 will be considered as rape. Remember that in case of rape, a woman is exempt from punishment, which inevitably results in every girl under the age of 16 being exempt from punishment. This amendment is also against Islam because Islam has linked the punishment of adultery with the signs of physical puberty instead of age.

Such an amendment is also against the law because under section 83 of the PPC, a child between the ages of 7 and 12 is exempt from liability for a criminal offense. Older children do not get this privilege. Then what is the special distinction of the crime of adultery that a woman should be exempted from the crime of adultery for 16 years? Even so, adultery is primarily about physical puberty rather than mental puberty, which occurs at different ages for a variety of reasons. Setting an age for this will result in the law not being able to arrest adult girls

under the age of 16 despite their intentional adultery.

The result of this amendment would be that after girls are exempted from adultery for 16 years, immorality will spread among children, and children with such bad habits will continue to be victims of sexual misconduct in the future. There is no denying that girls under the age of 16 voluntarily engage in sexual activity, as reported in a March 4, 2005, Los Angeles Times survey of sixth-grade in the city. When published, 70% of children were found to be sexually abusive ([Madani, 2006](#)).

Removal of the 'Explanation' with the definition of *zina*

Section 12 of the Act stipulates that the explanation with the definition of *Zina* in section 4 of the *Zina* Ordinance will be removed. The explanation states that for the crime of adultery, mere penetration is sufficient. According to research, this explanation of the *Zina* Ordinance is in accordance with the Quran, *Sunnah* and the interpretations of the jurists of Islam. Obscenity, less than penetration cannot be considered as *zina* according to *shariah*. And if there is ejaculation after penetration or not, the crime of adultery takes place. Therefore, deleting this explanation will change the whole concept of *Zina* ([Ahmad, 2022](#)).

Removal of the overriding effect of *Hudood* Ordinances

The most objectionable part of the Act is that it seeks to remove the overriding effect of the *Hudood* Ordinances on other laws. Therefore, section 11 and 28 of the Act state that section 3 of the *Zina* Ordinance and section 19 of the *Qazf* Ordinance have been deleted. This amendment is unnecessary because, in spite of this, the *Hudood* laws will still have the status of special law and the general rule of interpretation of laws is that special law prevails over general law and in case of conflict, only special law is enforced. The question is that when it has been decided in the constitution that the legislation will be done in accordance with the Quran and *Sunnah*, then what is wrong with making *Hudood* laws superior to other laws? By doing

this, is the government accepting the possibility of change *in Hudood Ullah?* (The rights of Allah) ([Usmani, 2006](#)).

Proof of Adultery

The provisions of the *Zina* Ordinance were that if there are four witnesses to *zina* according to the *Shariah* principles the *hadd* punishment will be imposed on the offender under Section 5 of *Zina* Ordinance, and if there are not four witnesses but the crime is proved by other means then he will be punished under *tazir* ([Mukhtar, 2016](#)).

Now, in PWA, the *hadd* punishment of consensual adultery (*Zina bil-Raza*) has been retained under section 5 of *Zina* Ordinance, for which there are still four witnesses required, however section 8, 203 C (1) of the Act, made it a non-cognizable crime. It is now necessary to file a complaint in the court along with four witnesses. An FIR cannot be lodged with the police, thus the Act made the procedure for proving *Zina* more difficult ([Khan & Shebar, 2014](#)).

Similarly, in the absence of four witnesses, the punishment (*tazir*) in *Zina* Ordinance has been amended as follows:

The *Hudood* Ordinance called this crime a '*Zina* liable to *tazir*'. Under Section 7 of the PWA, it has been removed from the *Zina* Ordinance and added to PPC. This change is absolutely correct and welcomed because according to the Holy Quran and *Sunnah*, it was difficult to declare someone's crime as adultery in the absence of four witnesses, although it should have been given a name less than "adultery (*Zina*)". However, the word 'Fornication' (*Zina*) is still used in the Act. Therefore, in the new provision added to PPC under Section 496B fornication has been defined as follows:

"A man and a woman not married to each other are said to commit fornication if they willfully have sexual intercourse with one another" ([Siddique, n.d.](#)).

Under the *Hudood* Ordinance, the punishment for this crime could have been up to ten years, but in the Act, it has been reduced to five years. However, since this is a *taziri* punishment, this change cannot be said to be against the Holy Quran and *Sunnah*.

Under the *Hudood* Ordinance, "adultery" was a cognizable offense but the Act made it un-cognizable offence. Therefore, the FIR of this crime cannot be registered in the police station, but a complaint has to be lodged in the court and at the time of complaint, the witnesses have to be taken along, and their statement will be immediately recorded by the court. The court will then issue summons to the accused if it feels that there is sufficient reason for further action and will not seek any bail other than personal bond to ensure the presence of the accused in the next proceedings. And if assuming that there is no basis for action, the case will be dismissed immediately ([Lau, 2007](#)). Thus, the crime of "adultery" has been made so complex to prove that it is very difficult to punish anyone under it.

First of all, under Islamic law, adultery and fornication is a crime against society and the state, not just against any individual, so it should be a cognizable offence. Of course, when declaring this crime as cognizable, the aspect should be kept in mind that police should not harass innocent couples. For this kind of situations, laws could be formed like the crime could be investigated by an SP level police officer, and no one should be arrested without a court order. Such steps could end the threats ([Usmani, 2006](#)).

The second thing is that imposition of the obligation on the complainant to bring four eyewitnesses immediately, in case of a *hadd*, and two eyewitnesses in case of *tazir*, is a very rare example in our criminal law system. In our entire system of evidence, the number of witnesses for any case or evidence of a crime is not fixed except *hudood*, but decisions are made only on circumstantial evidence without any eyewitness ([Khan & Shebar, 2014](#)).

Therefore, the reports of medical examination and chemical analysis in the crime under view are a very important part of the evidence. According to *Sharia*, *tazir* can be issued even on a single credible witness and also on circumstantial evidence. Therefore, the condition of two witnesses when filing the complaint is an unnecessary protection to the perpetrators of obscenity.

In the same way, to make it mandatory for such an accused that no further bail can be sought from him except his personal bond, is tying the hands of the court. The circumstances of the case vary and therefore, the court has already been given the power under Section 496 of the Criminal Code to release the accused only on personal bond if it feels suitable in accordance to the case. And if it so desires, seek the guarantee of others, the court has this power even in the slightest crime, but it is not appropriate to deprive the court of this power for a crime like "obscenity". However, by saying that the court will dismiss the case if there is not sufficient reason to do so. The court already has this power under section 203 under the Code of Criminal Procedure. So the purpose of making it part of the Act is not clear.

No new case can be registered in case of acquittal from *zina* liable to *hadd*

Under *Zina* Ordinance, if a person is charged with adultery, and if the conditions of the *hadd* are not met in the case, but he is found guilty, he could be punished under section 10 (3), but under section 8 of the PWA, 203 C has been added to the Criminal Code, in the clause 6 of which it has been written that no case of obscenity can be registered against a person who has been acquitted from the case of '*Zina* liable to *hadd*'.

It is now clear that the strictest conditions for '*Zina* liable to *hadd*' are, sometimes, not met for technical reasons. In such a case, when obscenity is proved by strong evidence, the concerned court cannot pass any ruling on it, even no new obscenity complaint can be lodged against the culprit. This is nothing but protection against obscenity.

Giving power to the government to change or reduce *hadd* punishments

Section 20 (5) of the *Zina* Ordinance stated that under chapter 19 of the Criminal Code, the power conferred on the provincial government to suspend, reduce or change the sentence shall not apply to the *Hudood* punishment. Another important and serious change in the *Hudood* Ordinances has been made by the PWAis that section 20 (5) has

been abolished, which means it is possible for the government to change or reduce the sentence. This amendment contradicts the clear instructions of the Holy Quran and *Sunna* (Usmani, 2006).

The incident of the Prophet (ﷺ) in which he interceded in favor of a woman on whom the *hadd* had been decided, he warned his beloved companion Osama, and said that if the daughter of Muhammad (ﷺ) steals, I will cut off her hand (Sahih Muslim, Com, n.d.).

In focus group discussion, the *ulama* said that the consensus of the entire *Ummah* is that no government has the authority to pardon or reduce the *hadd* punishment. Therefore, this part of the bill is also clearly against Islam.

Amendments in *Lian*

In the section 14 of the *Qazf* Ordinance the method of *Lian* is mentioned in accordance with the teachings of the Holy Quran and *Sunnah*, i.e., if a man accuses his wife of adultery and fails to produce four witnesses, he will have to swear at the request of the woman, and after the vows of the spouses, the marriage between them will be annulled. The *Qazf* Ordinance states in section 14(3) that if the husband refuses to act on the procedure of *Lian*, he will be detained until he agrees to it. This part of the Ordinance has been deleted by the section 25 of the PWA, which means that if the husband is not willing to *lian*, then the wife will be left helpless. She will not be able to prove her innocence by *Lian*, nor will she be able to annul the marriage (Mukhtar, 2016).

It has also been stated in section 14 (4) of the *Qazf* Ordinance that if a woman confesses adultery during the proceedings, she will be punished for adultery. This part has also been deleted in the Act, although there is no point in not issuing the sentence of adultery after confession. While the proceedings of *lian* starts at the request of the woman and no one forces her to confess; therefore, this part of the Act is also against the rules of the Holy Quran and *Sunnah* (Mukhtar, 2016).

Removal of section 20 of *Zina* Ordinance

Section 20 of the *Zina* Ordinance stated that

if the evidence proved that the accused has committed an act which is an offense under any law other than the *Hudood* Ordinances, and the offense is within the jurisdiction of the court, she could convict him of this crime. This section was intended to eliminate the complexity of court proceedings, but the section 18 of the Act removed this jurisdiction of the court (Madani, 2007).

Conclusion

The above discussion can be concluded in the following points:

- i. The provisions of the *Zina* Ordinance and *Qazf* Ordinance were related to *tazir* punishments, were removed from the *Hudood* Ordinances and added to the PPC. This cannot be objected to in terms of *Shariah*, even it is a good thing because '*inalienable to tazir*' and '*qazf* liable to *tazir*' are against the teachings of Quran and *Sunnah*.
- ii. Abolition of the punishment of flogging in *taziri* punishments is also the legal authority of the government and can't be objected in terms of *shariah*.
- iii. The *head of "Zina bil-jabr"* has been abolished in the Act which is completely contrary to the rules of Quran and *Sunnah*. If there was a danger of police abuse of women, it could be prevented by arresting a rape victim under any section of the *Hudood* Ordinance until the trial is completed in a court of law, to be declared a crime.
- iv. Once the *hadd* of adultery has been decided, giving the provincial government the power to grant any kind of pardon or reduction in punishment is totally against the Holy Quran and *Sunnah*. Therefore, by removing section 20 (5) of the *Zina* Ordinance, the authority given to the government to reduce the punishment, is contrary to the Quran and *Sunnah*.
- v. By making '*Zina* liable to *hadd*' and 'fornication' as un-cognizable crimes, protection has been given to these

- crimes by making them practically unpunishable.
- vi.** Amending the *Qazf* Ordinance and giving a man the exemption to leave the woman suspended by refusing to participate in the *Lian* proceedings despite the woman's demand, is
- vii.** contrary to the command of the Holy Quran. The amendment in the "*Qazf* Ordinance" is also against the Quran and *Sunnah* that a woman will not be punished despite her voluntary confession of adultery during *Lian* proceedings.

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