

**THE AZAD GOVT. OF THE STATE OF JAMMU & KASHMIR,
LAW & PARLIAMENTARY AFFAIRS SECRETARIAT,
MUZAFFARABAD.**

Dated the October 22, 1979.

No. 5095/SL/79. The following Ordinance made by the President on the 20th day of October, 1979, is hereby published for general information.

(ORDINANCE CLI OF 1979)

AN

ORDINANCE

to bring in conformity with the Injunctions of Islam the law relating to the offence of qazf

WHEREAS it is necessary to modify the existing law relating to qazf so as to bring it in conformity with the Injunctions of Islam as set out in the Holy Quran and Sunnah;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of Section 41 of the Azad Jammu and Kashmir Interim Constitution Act, 1974, the President is pleased to make and promulgate the following Ordinance :-

1. **Short title, extent and commencement.**- (1) This Ordinance may be called the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979.
 - (2) It extends to the whole of Azad Jammu and Kashmir.
 - (3) It shall come into force at once.
2. **Definitions.**- In this 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 Penal Code (Act XLV of 1860) or the Code of Criminal Procedure, 1898 (Act V of 1898).
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** 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 to a deceased person, if the imputation would harm the reputation, or hurt the feelings, of that person if living, and is hurtful 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** 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 authorised person).- Save in the cases hereinafter mentioned, it is not qazf to prefer in good faith an accusation of **Zina** 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** 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**.

4. **Two kinds of qazf.-** Qazf may be either **qazf** liable to **hadd** or **qazf** liable to **tazir**.

5. **Qazf liable to hadd.-** Whoever, being an adult, intentionally and without ambiguity commits **qazf** of **zina** liable to hadd against a particular person who is a **muhsan** and capable of performing sexual intercourse it, subject to the provisions of this Ordinance, said to commit qazf liable to hadd.

Explanation 1.- In this section, "**muhsan**" means a sane and adult Muslim who either has had no sexual intercourse or has had such intercourse only with his or her lawfully wedded spouse.

Explanation 2.- If a person makes in respect of another person the imputation that such other person is an illegitimate child, or

refuses to recognize such person to be a legitimate child, he shall be deemed to have committed **qazf** liable to **hadd** in respect of the mother of that person.

6. **Proof of qazf liable to hadd.**- Proof of **qazf** 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 ;
- (b) the accused commits qazf in the presence of the Court; and
- (c) at least two Muslim adult male witnesses, other than the victim of the qazf, about whom the Court is satisfied, having regard to the requirements of tazkiya al-shuhood, that they are truthful persons and abstain from major sins (kabair) give direct evidence of the commission of qazf;

Provided that, if the accused is a non-Muslim, the witnesses may be non Muslims;

Provided further that the statement of the complainant or the person authorised by him shall be recorded before the statements of the witnesses are recorded.

7. **Punishment of qazf liable to hadd.**- (1) Whoever commits **qazf** liable to **hadd** shall be punished with whipping numbering eighty stripes.

(2) After a person has been convicted for the offence of **qazf** liable to **hadd**, his evidence shall not be admissible in any court of law.

(3) A punishment awarded under sub-section (1) shall not be executed until it has been confirmed by the Court to which an appeal from the Court awarding the punishment lies; and, until the punishment is confirmed and executed, the convict shall, subject to the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) relating to the grant of bail or suspension of sentence, be dealt with in the same manner as if sentenced to simple imprisonment.

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 authorised 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.
9. **Cases in which hadd shall not be imposed or enforced.-** (1) Hadd shall not be imposed for qazf in any of the following cases, namely :-
- (a) when a person has committed qazf against any of his descendants :
 - (b) when the person in respect of whom qazf has been committed and who is a complainant has died during the pendency of the proceedings ; and
 - (c) when the imputation has been proved to be true.
- (2) In a case in which, before the execution of **hadd** the complainant withdraws his allegation of **qazf** or slates that the accused had made a false confession or that any of the witnesses had deposed falsely and the number of witnesses is thereby reduced to less than two, **hadd** shall not be enforced, but the Court may order retrial or award **tazir** on the basis of the evidence on record.
10. **Qazf liable to tazir.-** Whoever commits **qazf** which is not liable to **hadd**, or for which proof in any of the forms mentioned in section 6 is not available, or for which **hadd** may not be imposed or enforced under section 9, is said to commit **qazf** liable to **tazir**.
11. **Punishment for qazf liable to tazir.-** Whoever commits **qazf** liable to **tazir** shall be punished with imprisonment of either description for a term which may extend to two years and with whipping not exceeding forty stripes, and shall also be liable to fine.
12. **Printing or engraving matter known to be of the nature, referred to in section 3.-** Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is of the nature referred to in section 3, shall be punished with imprisonment of either description for a term which may extend to two years, or with whipping not exceeding thirty stripes or with fine, or with any two of, or all, the punishments.
13. **Sale of Printed or engraved substance containing matter of the nature referred to in section 3.-** Whoever sells or offers for sale any printed or engraved substance containing matter of the nature referred to in section 3, knowing that it contains such matter, shall be punished with imprisonment of either description

for a term which may extend to two years, or with whipping not exceeding thirty stripes, or with fine, or with any two of, or all, the punishments.

14. **Lian.**- (1) When a husband accuses before a Court his wife who is muhsan within the meaning of section 5, of **zina** and the wife does not accept the accusation as true, the following procedure of lian shall apply, namely :-
- (a) the husband shall say upon oath before the Court: "I swear by Allah the Almighty and say I am surely truthful in my accusation of zina against my wife (name of wife) and, after he has said so four times, he shall say: "Allah's curse be upon me if I am a liar in my accusation of zina against my wife (name of wife): and
 - (b) the wife shall, in reply to the husband's statement made in accordance with clause (a), say upon oath before the Court: "I swear by Allah the Almighty that my husband is surely a liar in his accusation of **zina** against me and, after she has said so four times, she shall say: "Allah's wrath be upon me if he is truthful in his accusation of zina against me."
- (2) When the procedure specified in sub-section (1) has been completed, the Court shall pass an order dissolving the marriage between the husband and wife which shall one rate as a decree for dissolution of marriage and no appeal shall lie against it.
- (3) Where the husband or the wife refuses to go through the procedure specified in sub-section (1), he or, as the case may be, she shall be imprisoned until –
- (a) in the case of the husband, he has agreed to go through the aforesaid procedure ; or
 - (b) In the case of the wife, she has either agreed to go through the aforesaid procedure or accepted the husband's accusation as true.
- (4) A wife who has accepted the husband's accusation as true shall be awarded the punishment for the offence of zina liable to **hadd** under the Imposition of Hudood for the Offence of **Zina** Ordinance, 1979.
15. **Punishment for attempt to commit offence punishable under this Ordinance.**- Whoever attempts to commit an offence punishable under this Ordinance, or to cause such an attempt to be committed, and in such attempt does any act towards the

commission of the offence, shall be punished with imprisonment for a term which may extend to one-half of the longest term provided for the offence, or with such whipping or fine as is provided for the offence, or with any two of, or all, the punishments.

16. **Application of certain provisions of Penal Code (Act XLV of 1860).**- (1) Unless otherwise expressly provided in this Ordinance, the provisions of sections 34 to 38 of Chapter II, sections 63 to 72 of Chapter III and Chapters V and VA of the Penal Code (Act XLV of 1860), shall apply, **mutatis mutandis**, in respect of offences under this Ordinance.

(2) Whoever is guilty of the abetment of an offence liable to **hadd** under this Ordinance shall be liable to the punishment provided for such offence as **tazir**.

17. **Application of the Code of Criminal Procedure, 1898 (Act V of 1898).**- (1) Unless otherwise expressly provided in this Ordinance, the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), hereinafter referred to as the said Code, shall apply, **mutatis mutandis**, in respect of cases under this Ordinance :

Provided that, if it appears in evidence that the offender has committed a different offence under any other law, he may, if the Court is competent to try that offence and award punishment therefore, be convicted and punished for that offence.

(2) The provisions of sub-section (3) of section 391 or section 393 of the said Code shall not apply in respect of the punishment of whipping awarded under this Ordinance.

(3) The provisions of Chapter XXIX of the said Code shall not apply in respect of a punishment awarded under section 7 of this Ordinance.

18. **Application of the Azad Jammu and Kashmir Islamic (Tazirati) Qawanin Nafaz Act, 1974.**- Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the provisions of Section 23, Section 25, Section 28 and Section 31 of the Azad Jammu and Kashmir Islamic (Tazirati) Qawanin Nafaz Act, 1974 (Act XI of 1974) shall apply, **mutatis mutandis**, in respect of case under the Ordinance.

19. **Presiding Officer of Court to be a Muslim.**- The Presiding Officer, of the Court by which a case is tried, or an appeal is heard, under this Ordinance, shall be a Muslim.
20. **Ordinance to override other laws.**- The Provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force.
21. **Pending cases.**- Nothing in this Ordinance shall be deemed to apply cases to pending before any Court immediately before the commencement of this Ordinance, or to offences committed before such commencement.
22. **Savings.**- Notwithstanding any judgment, decree or order of any court including High Court, every thing done, all actions taken, notifications issued, orders or appointments made, proceedings initiated, jurisdiction or powers exercised under provisions of the Offence of **Qazf** (Enforcement of Hadd) finance 1979 (Ordinance XXIX of 1979) or its succeeding finances issued from time to time shall be deemed to have been validly done, taken issued, made, initiated or exercised under this Ordinance.

(Brigadier Mohammad Hayat Khan)
President
Azad Jammu & Kashmir.

Sd/- (Khalil Ahmed Qureshi)
Secretary Law.