

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

Dated the 20th February, 1981

No.1099/SL /81. The following Ordinance made by the President on the 20th day of February, 1981, is hereby published for general information:-

(ORDINANCE XXXIX OF 1981)

AN

ORDINANCE

to bring in conformity with the Injunctions of Islam the Law relating to the offence of Zina.

WHEREAS it is necessary to modify the existing Law relating to zina 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 Zina (Enforcement of Hudood) Ordinance, 1981.
 - (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” means a person who has attained, being a male the age of eighteen years or, being a female, the age of sixteen years, or has attained puberty ;
 - (b) “hadd” means punishment ordained by the Holy Quran or Sunnah ;
 - (c) “unmarriage” means marriage which is not void according to the personal Law of the parties, and, “married” shall be construed accordingly ;
 - (d) “muhsan” means –
 - (i) A Muslim adult man who is not insane and has had sexual intercourse with a Muslim adult women, who at the time he had sexual

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intercourse with her, was married to him and was not insane; or

- (ii) A Muslim adult woman who is not insane and has had sexual intercourse with a Muslim adult man, who, at the time she had sexual intercourse with him, was married to her and was not insane ; and

- (e) “**tazir**” means any punishment other than **hadd**, and 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. **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.

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 a **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 intercourse with a woman or man, as the case

may be, to whom he or she is not validly married, in any of the following circumstances, namely :-

- (a) against the will of the victim ;
- (b) without the consent of the victim ;
- (c) with the consent of the victim, when the consent has been obtained by putting 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 intercourse 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 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 a **muhsan** be punished with whipping with 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(3) 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 strips:

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 had.-** Proof of **Zina** or **Zina-bil-Jabr** , liable to had 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 person and abstain from major sins (Kabair), given evidence as eye- witnesses of the act of penetration necessary to the offence;

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

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.

9. **Cases in which Hadd shall not be enforced.-** (1) In a case in which the offence of Zina or Zina-bil-Jabr is proved only by the confession of the convict, **hadd**, or such part of it as is yet to be enforced, shall not be enforced if the convict retracts his confession before the hadd or such part is enforced.

(2) In a case in which the offence of Zina or Zina-bil-Jabr is proved only by testimony, hadd, or such part of it as is yet to be enforced, shall not be enforced if any witness resiles from his testimony before hadd or such part is enforced, so as to reduced the number of eye-witnesses to less than four.

(3) If, at the time of execution of hadd, the authorised Medical Officer is of the opinion that the amputation of hand or foot may cause the death of the convict, the execution of had shall be postponed until such time as the apprehension of death ceases.

10. **Cases in which hadd shall not be imposed.-** Hadd shall not be imposed in the following cases, namely:-

- (a) When the offender and victim of the theft are related to each other as-
 - (i) spouses ;
 - (ii) ascendants, paternal or maternal ;
 - (iii) descendent, paternal or maternal;
 - (iv) brothers or sisters of father or mother: or
 - (v) brothers or sisters of their children;

- (b) When a guest has committed theft from the house of his host;
- (c) When a servant or employee has committed theft from the **hirz** of his master or employer to which he is allowed access;
- (d) When the stolen property is wild grass, fish, bird, dog, pig, intoxicant, musical instrument, or perishable food-stuffs, for the preservation of which provision does not exist;
- (e) When the offender has a share in the stolen property the value of which, after deduction of his share, is less than the **nisab**.
- (f) When the creditor steals his debtor's property the value of which, after deduction of the amount due to him, is less than the **nisab**.
- (g) When the offender has committed theft under **ikrah** or **iztirar**;

Explanation. In this clause.-

- (i) 'ikrah' means putting any person in fear of injury to the person, property or honour of that or any other person ;and
 - (ii) 'iztirar' means a situation in which a person is in apprehension of death due to extreme hunger or thirst.
- (h) When the offender, before this apprehension, has, on account of repentance, returned the stolen property to the victim and surrenders himself to the authority concerned.

11. **Cases in which hadd shall not be enforced.-** (1) Hadd shall not be enforced in the following cases, namely:-

- (a) When theft is proved only by the confession of the convict, but he retracts his confession before the execution of **hadd**;
- (b) When theft is proved by testimony, but before the execution of **hadd**, any witness resiles from his testimony so as to reduce the number of eye-witnesses to less than two;
- (c) When, before the execution of hadd, the victim withdraws his allegation of theft or states that the convict had made a false confession or that any of the eye-witnesses have deposed falsely, and the number of eye-witnesses is thereby reduced to less than two ; and

- (d) When the left hand or the left thumb or at least two fingers of the left hand or the right foot of the offender or either missing or entirely unserviceable.
- (2) In the case mentioned in clause (a) of sub-section (1) the Court may order retrial.
- (3) In a case mentioned in clause (b) or clause (c) or clause (d) of sub-section (1) the Court may award **tazir** on the basis of the evidence on record.
12. **Return of stolen property.-** (1) if the stolen property is found in the original or in an identifiable form, or in a form into or for which it may have been converted or exchanged, it shall be or caused to be returned to the victim whether it is in the possession of, or has been recovered from, the offender or any other person.
- (2) if the stolen property is lost or consumed while in the offender's possession and the **hadd** is enforced against him, the offender shall not be required to pay compensation.
13. **Theft liable to Tazir.-** Whoever commits theft which is not liable to **hadd**, or for which proof in either of the forms mentioned in Section 7 is not available, or which **hadd** may not be imposed or enforced under this Ordinance, shall be liable to tazir.
14. **Punishment for theft liable to Tazir.-** Whoever commits theft liable to tazir shall be awarded the punishment provided for the offence of theft in the Penal Code (Act XLV of 1860).
15. **Definition of Haraabah.-** When anyone or more person, whether equipped with arms or not, make show of force for the purpose of taking away the property of another and attack him or cause wrongful restraint or put him in fear of death or hurt, such person or persons are said to commit **haraabah**.
16. **Enticing or taking away or detaining with criminal intent a woman.-** Whoever takes or entices away any woman with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any woman, shall be punished with imprisonment of either description for a term which may extend to seven years and with whipping not exceeding thirty stripes, and shall also be liable to fine.
17. **Mode of execution of punishment of stoning to death.-** The punishment of stoning to death awarded under Section 5 or Section, 6 shall be executed in the following manner, namely :-
- Such of the witnesses who deposed against the convict as may be available shall start stoning him and, while stoning is

being carried on, he may be shot dead, whereupon stoning and shooting shall be stopped.

18. **Punishment for attempting to commit an offence.-** Whoever attempts to commit an offence punishable under this Ordinance with imprisonment or whipping, or to cause such an offence 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 or the longest term provided for that offence, or with whipping not exceeding thirty stripes, or with such fine as is provided for the offence, or with any two of, or all, the punishments.
19. **Application of certain provisions of Penal Code (Act XLV of 1860) and Amendment.-** (1) Unless otherwise expressly provided in this Ordinance, the provisions of Sections 34 to 38 of Chapter II, Section 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 an offence liable to **hadd** under this Ordinance shall be liable to the punishment provided for such offence as **tazir**.
- (3) **In the Penal Code (Act XLV of 1860).-**
- (a) Section 366, Section 372, Section 373, Section 375 and Section 376 of Chapter XVI and Section 493, Section 497 and Section 498 of Chapter XX shall stand repealed ; and
- (b) In Section 367, the words and comma “or to the unnatural lust of any person” shall be omitted.
20. **Application of Code of Criminal Procedure (Act V of 1898), and Amendment.-** (1) The provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), hereafter in this section referred to as the Code, shall apply, **mutatis mutandis**, in respect of cases under this ordinance :
- Provided that, if it appear 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:
- Provided further that an offence punishable under this Ordinance except Sections 7, 16 and 18 shall be triable by a **Zilae Adalat** and an appeal from an order of the Zilae Adalat shall lie to the Azad Jammu and Kashmir Shariat Court.

- (2) The Provisions of Section 198, Section 199, Section 199A or Section 199B of the Code shall not apply to the cognizance of an offence punishable under Section 15 or Section 16 of this Ordinance.
- (3) The provisions of sub-section (3) of Section 391 or Section 393 of the Code shall not apply in respect of the punishment of whipping awarded under this Ordinance.
- (4) The provisions of Chapter XXIX of the Code shall not apply in respect of punishments awarded under Section 5 or Section 6 of this Ordinance.
- (5) In the Code, section 561 shall stand repealed.
21. **Application of the Azad Jammu and Kashmir Islami (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 Azad Jammu and Kashmir Islami (Tazirati) Qawanin Nafaz Act, 1974,(Act XI of 1974) shall apply, mutatis mutandis, in respect of cases under the Ordinance.
22. **Presiding Officer of the Court to be 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 :
- Provided that, if the accused is a non-Muslim, the Presiding Officer may be a non-Muslim.
23. **Pending cases.-** Nothing in this Ordinance shall be deemed to apply to the cases pending before any Court immediately before the commencement of this Ordinance, or to offences committed before such commencement.
24. **Savings.-** Notwithstanding any judgment, decree or order of any court including High Court, everything done, all actions taken, notifications issued, orders or appointments made, proceedings initiated, jurisdiction or power exercised under the provisions of Zina (Enforcement of Hudood) Ordinances, 1979(Ordinance XXX of 1979), or its succeeding Ordinances issued from time to time shall be deemed to have been validly done, taken, issued, made, initiated or exercised under this Ordinance.

(Mohammad Hayat Khan)
President
Azad Jammu and Kashmir

Sd/- (Syed Mohammad Akram Shah)
Secretary Law