

A Review of Zina Laws in Pakistan

By
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Zinā is generally defined by Islamic Law as unlawful sexual intercourse, i.e. intercourse between a man and a woman who are not married to one another. This encompasses extramarital sex and premarital sex.

Zina falls under the Islamic sexual jurisprudence of Fiqh, which is an expansion of the Sharia code of conduct given in the Qur'an.

Across all four schools of Sunni practice and the two schools of Shi'a practice, the term Zina signifies voluntary sexual intercourse between a man and a woman not married to one another, regardless of whether one or both of them are married to other persons or not. It does not – in contrast with the usage prevalent in most Western languages - differentiate between the concepts of "adultery" (i.e., sexual intercourse of a married man with a woman other than his wife, or of a married woman with a man other than her husband) and "fornication" (i.e., sexual intercourse between two unmarried persons). Islamic law prescribes punishments for both Muslim and non-Muslim men and women for the act of Zina as interpreted from the Qur'an and the Hadith. In principle it is an extremely difficult offence to prove, requiring four respectable witnesses to the actual act of penetration.

Qur'an

Islam considers Zina a major sin. In this, Islam shares the same views as other Abrahamic religions, such as Judaism and Christianity. From the perspective of the Qur'an, the prophetic tradition, and Islamic law, sex uncoupled with a legally binding marital tie is considered Zina, and is equally punishable for *both* women and men.

The Qur'an deals with Zina in several places. First is the Qur'anic general rule that commands Muslims not to commit Zina:

“Nor come nigh to adultery: for it is a shameful (deed) and an evil, opening the road (to other evils).”— Qur'an, Sura 17 (Al-Isra), ayat 32

Most of the rules related to Zina, adultery, and false accusations from a husband to his wife or from members of the community to chaste women, can be found in Surat an-Nur (the Light).

The Sura starts by giving very specific rules about punishment for Zina:

"The woman and the man guilty of adultery or fornication, - flog each of them with a hundred stripes: Let not compassion move you in their case, in a matter prescribed by Allah, if ye believe in Allah and the Last Day: and let a party of the Believers witness their punishment."

— Qur'an, Sura 24 (An-Nur), ayat 2

It then turns to false accusations from members of the Muslim community to chaste righteous women:

“And those who accuse free women then do not bring four witnesses, flog them, (giving) eighty stripes, and do not admit any evidence from them ever; and these it is that are the transgressors. Except those who repent after this and act aright, for surely Allah is Forgiving, Merciful.”— Qur'an, Sura 24 (An-Nur), ayat 4-5

Hadith

Nearly all hadith collections include three hadiths that are central in the legal arguments about the punishment for Zina:

- One to the effect that the Prophet has enforced this punishment in a case of unlawful intercourse among Jews on the basis of the Torah;
- a second one, transmitted by Abu Hurairah states that the Prophet, in a case of intercourse between a young man and a married woman, sentenced the woman to stoning and the youngman to flogging and banishment for a year;
- and a third one in which Umar al-Khattab asserts that there was a revelation to the effect that those who are *muhsan* (i.e. an adult, free, Muslim who has previously enjoyed legitimate sexual relations in matrimony regardless of whether the marriage still exists) and have unlawful intercourse are to be punished with stoning.

The hadith related by Abu Hurairah has been the basis of the fiqh doctrine. The most accepted collection of Hadith Sahih al Bukhari has 4 entries (under 3829, 8804, 8805 and 8824) which refer to death by stoning. One case involved Jews who were stoned to death in accordance with the Law of the Torah (not the Qur'an). Another says: "*A married man from the tribe of Bani Aslam who had committed illegal sexual intercourse and bore witnesses four times against himself was ordered by Mohammed to be stoned to death*". These two hadiths clearly conflict as to who or what actually ordered the stoning. And in both entries, the narrator acknowledges his ignorance of whether the stoning to death was carried out before or after the revelation of Quranic Verse 24-2.

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Accusation process and punishment

Given the severity of punishment for the offense of Zina, the Qur'an requires solid proof beyond the shadow of doubt before convicting an individual, be it a man or a woman, of Zina. Muslim jurists have derived from the Sunnah of Muhammad very strict requirements for proving Zina. In fact, jurists unanimously agree on only two means of doing so:

1. A clear, free, and willful confession by the person guilty of the act of Zina. However, if that person retracts his/her confession, he/she is not punishable (barring the presence of witnesses,

as indicated below), because there would no longer be any proof of the occurrence of the prohibited act, and alternatively,

2. The testimony of four reliable Muslim male eye-witnesses, all of whom must have witnessed the *actual* intercourse at the same time.

It is pertinent to point out that the evidentiary requirement for Zina was initially intended to protect men and women from frivolous charges. This intention derives directly from Asbab alnuzul (reasons of revelation) relating to the Qur'anic verse that establishes the hadd of Zina.

Therefore it is believed that the requirement of four witnesses (with all its restrictions and specifications) is considered a merciful measure from God in order to not only avoid incriminating innocent people, but also to preserve the privacy of Muslims, which is one of the most valued principles in Islam.

The Zina Ordinance, 1979

The Zina Ordinance (also referred to as the Zina laws) is part of the Hadood Ordinances, promulgated in 1979 by General Zia-ul-Haq, President of Pakistan as a first step towards Islamization. The text states:

“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 Qur'an and Sunnah”.

With the adoption of Zina laws, for the first time in Pakistan's history, fornication became a crime against the state and along with adultery, made non-compoundable, non-bailable and punishable by death. Moreover, the legal definition of Zina blurs the line between adultery, fornication and rape. For the purpose of the ordinance, Zina is defined as "sexual intercourse without being validly married." Zina-bil-jabr, rape, is defined as "sexual intercourse without being validly married" when it occurs without consent. Legally this means that if it cannot be proved that sex occurred without consent (rape), the sex itself becomes a crime against the state. Although to date no woman convicted under these laws has been stoned to death in Pakistan, Zina laws allow for greater control of women within state sanctioned interpretations of the sacred books of Islam.

Under the Zina Ordinance the provisions relating to adultery were replaced as that the women and the man guilty will be flogged, each of them, with a hundred stripes, if unmarried. And if they are married they shall be stoned to death. It was argued that the section 497 of the Pakistan Penal Code dealing with the offence of adultery provided certain safeguards to the offender in as much as if the adultery is with the consent or connivance of the husband, no offence of adultery was deemed to have been committed in the eye of law. The wife, under the prevailing law, was also not to be punished as abettor. Islamic law knows no such exception.

Women bore much of the burden of Zia's Islamization and its inconsistencies. The Zina Ordinance prompted bitter international criticism about the perceived injustices and miseries brought about by the Zina Ordinance. Women's rights groups helped in the production of a film

titled "*Who will cast the first stone?*" to highlight the oppression and sufferings of women under the Hudood Ordinances. In September 1981, the first conviction and sentence under the Zina Ordinance, of stoning to death for *Fehmida* and *Allah Bakhsh* were set aside under national and international pressure.

In many cases, Zia-ul-Haq, put more than 15,000 rape victims in jail because they could not comply with the Islamic condition requiring them to have numerous male witnesses of their victimization. They were charged with fornication and their rapists were let go free, a woman who made an allegation of rape was convicted for adultery whilst the rapist was acquitted. This led to a growing demand by jurists and women activists for repealing the Ordinance. In 1983, *Safia Bibi*, a 13-year-old blind girl, who alleged rape by her employer and his son was convicted for adultery under the Zina Ordinance whilst, the rapists were acquitted.

The decision attracted so much publicity and condemnation from the public and the press that the Federal Sharia Court of its own motion called for the records of the case and ordered that she should be released from prison on her own bond. Subsequently, on appeal, the finding of the trial court was reversed and the conviction was set aside.

In early 1988, another conviction for stoning to death of *Shahida Parveen* and *Muhammad Sarwar* sparked bitter public criticism that led to their retrial and acquittal by the Federal Sharia Court. In this case the trial court took the view that notice of divorce by Shahida's former husband, *Khushi Muhammad* should have been given to the Chairman of the local council, as stipulated under Section-7(3) of the *Muslim Family Laws Ordinance*, 1961. This section states that any man who divorces his wife must register it with the Union Council. Otherwise, the court concluded that the divorce stood invalidated and the couple became liable to conviction under the Zina ordinance.

The International Commission of Jurists mission to Pakistan in December 1986 asked for repealing of certain sections of the Hudood Ordinances relating to crimes and "Islamic" punishments which discriminate against women and non-Muslims. The commission cited an example that a Muslim woman can be convicted on the evidence of a man, and a non-Muslim can be convicted on the evidence of a Muslim, but not vice versa.

Mechanics of Zina Laws

Depending on the religion and marital status of the accused, the witness, and the evidence on which the conviction rests, there are two types of punishment under Zina laws: Hadd and Tazir.

Hadd

In the case of fornication and adultery:

1. if the accused (male or female) is a muslim
 - a) confesses or
 - b) there are four adult, "pious", male muslim witnesses to the act of penetration (four female witnesses' testimony will not suffice for Hadd punishment), and
 - c) the accused is married, then the accused must be sentenced to death by stoning.
2. If the accused is a non-muslim or unmarried and

- a) confesses or
- b) the crime is witnessed as described above, the accused must be sentenced to 100 lashes with a whip.

The maximum Hadd punishment for fornication, adultery or rape is identical. Although Hadd punishments have been imposed, none have been carried out to date. Although the structure of the laws and the nature of evidence required establishing guilt makes the lesser punishment of Tazir more likely, if convicted, Hadd or the maximum sentence is mandatory.

Tazir

If the evidence falls short of what is required for maximum punishment but the case is still proven, then the accused is charged under a lesser class of punishment known as Tazir. – Here (unlike in the case of Hadd) women may testify on their own behalf if the judge should so allow it.

- Punishment for adultery or fornication is up to ten years in prison, thirty lashes with a whip and a fine of an indeterminate amount.

-Punishment for rape is up to twenty-five years in prison and thirty lashes. (The amount of punishment is up to the discretion of the judge.)

-For the purposes of Tazir, no distinction is made between a married and unmarried offender.

-Insufficient evidence to impose a Hadd punishment may still result in conviction under Tazir. (That is, when women are unable to prove rape under Hadd or even Tazir they can be charged with illicit sex under Tazir)

The Zina laws, indeed the entire Hadood Ordinances seek to define and reinforce the notion of a "*pure and chaste*" Pakistani citizen. The material reality of the laws are quite different in a society where police corruption and violence go unpunished, male violence against women has no legal sanction, and the majority of the population is increasingly impoverished. The legal system is so backlogged that often incarcerated persons waiting trial are held longer than the sentence they would receive if convicted. The Parliamentary Commission of Inquiry of Women (1977) charged that the Zina Laws are subject to widespread misuse, with 95% of the women accused of Zina being found innocent either in the court of first instance or on appeal.

According to advocates Asma Jahangir and Hina Jilani of the Human Rights Commission of Pakistan, Tazir punishments or public whippings occur frequently. They argue that prior penal laws, even though they gave a secondary status to women, protected them somewhat. Previously, only a husband could file a charge of adultery against his wife and he could revoke it any time. With the Hadood laws, rape is subsumed under the category Zina so that if coercion cannot be proved, the victim becomes an offender who has enjoyed illicit sexual activity. The raped victim has no right to testify on her own behalf.

Resistance to the Hudood Laws

In 2003, the National Commission on the Status of Women in Pakistan, a statutory body created by the government, recommended repealing the Hudood Ordinances. They pointed out several errors—a minor could be punished for *Zina* instead of being considered a victim of statutory rape; witnesses' testimony was evaluated based on gender and piety instead of on their credibility; stoning is not mentioned in the Quran.

In 1997, the Commission of Inquiry of Women asked for repeal, saying the laws violate both the UN Convention on the Elimination of Discrimination Against Women (ratified by Pakistan in 1996) and Article 25 of the Pakistani constitution guaranteeing women and men equal rights.

In 2006, a new body of the Council of Islamic Ideology recommended serious amendments to the Hudood Ordinances. The voices representing support for the laws have remained on the fringes, lumping together all resistance to Hudood as part of a conspiracy between Western interests and local NGOs.

The Women's Protection Bill of 2006

In November 2006, women in Pakistan and around the world celebrated the passage of the Women's Protection Bill, a rare instance of positive legislative reform offering some relief from Pakistan's infamous "*Hudood Ordinances*"—a set of religious-based laws that includes extreme restrictions and punishments for women. While celebration is justified, the women's movement in Pakistan has a long way to go.

While one dictator passed the infamous Hudood Ordinances, another, delivered the Women's Protection Bill. But by all indicators, women have much to achieve. Sixty-four percent of Pakistani women are illiterate. Most work in the unregulated, informal sector, and play a limited role in governance. Elements of the Muslim right wing have developed strong ties with the military, and most governments have to take the Muslim right wing into account when making decisions. For many women's rights activists, while the new legislation does amend the Hudood laws to a limited extent, its greater significance is that it shows that persistent work by the Pakistani women's rights movement can make a difference.

In 2006, Media initiated a debate on the controversial nature of the Hudood laws and presented its audience with the views of diverse religious scholars, thus further normalizing criticism of the laws. In the wake of this event, the Women's Protection Bill was passed. It does not repeal the Hudood Ordinances, but makes some significant changes to the Zina sections. The Bill passed on November 23 in the Senate. Many abstained from voting and many staged a walkout. The women's movement was split; while some ardently favored a complete abrogation of the laws, others were pleased with the semblance of a shift, the first in 27 years. The Hudood Ordinances had survived despite efforts to repeal them by Prime ministers Nawaz Sharif and Benazir Bhutto. Their existence had seemed to be etched in stone.

Since the passage of the Bill, rape and other crimes whose punishment is not prescribed by the Quran will be covered by the Pakistan Penal Code and be punishable under tazir. The complaint

process is amended to discourage the filing of false accusations of Zina. The complainant must take four male eye-witnesses to a Sessions Judge. To issue a summons, the judge must then ensure that the witnesses meet Islamic standards of morality and truthfulness and that a prima facie case exists. Lying witnesses may be punished. The term "confession" is amended to be an explicit and voluntary admission in court before a judge. Zina defendants are now eligible for bail. Most importantly, complaints of rape can no longer be turned against the victim.

The Women's Protection Bill does function as a safety valve—easing off some of the most intense international and domestic pressure against Pakistan's anti-woman laws—but it does not really change the balance of power (mullah-military versus women). The Hudood Ordinances' provisions for crimes against person and property, and their corporal punishments, still stand. Zina and false accusations are still punishable by stoning. Arguments that the high evidentiary standard provides a safeguard do not give solace. A woman at the Karachi Jail said her husband filed a Zina complaint against her. He conjured up sixteen witnesses, mostly family members, who claimed to have known about the affair. Under the current complaint process—even since the passage of the Women's Protection Bill—if he is able to produce four "*eyewitnesses*," she could still be sentenced to death by stoning.

Activist and lawyer Asma Jehangir writes that "*the level of morality in Pakistan was better prior to the promulgation of the Hudood laws in 1979.*" An appeal to "*morality*" appears hypocritical in a country where the state immorally denies women political and economic rights, yet one can see its pragmatism. Pakistan is a place where a vibrant, urban women's movement, a largely tolerant civil society, and a liberal higher court system co-exist with the powerful Islamic Religious Parties, a robust system of right-wing religious education, and a misogynist police force. A lot of work has to be done ground-up to tip the balance toward equality. Working for women's health, education, and economic autonomy is the only way.

Narratives of Women

Following interviews were conducted in the years 1999/2000 at two sites. The first site was Kot Lakpat Jail where women were incarcerated for Zina related offenses. The second site was and Darul-Aman, a shelter run by the Anjuman - Hayat - Islam. Both sites are in Lahore.

The narratives of the women identify their struggles. Although the Zina laws affect the lives of all Pakistanis, impoverished women are particularly adversely affected. This is not because the law targets these women but because the women's circumstances make them more vulnerable to the law. Families with little means to cope with increasing inflation and chronic unemployment often find that their daughters' sexuality is a valuable asset, a commodity commanding a high price. Marrying her to the highest bidder in exchange for a "gift" frequently becomes one method of paying off debts. Many women are sold into marriage to sustain alcohol and drug habits of their male relatives.

GULBADEN BIBI AGE 17, FROM PESHAWAR. SHE HAS BEEN IN DARUL AMAN FOR 22 DAYS.

My father sold me in marriage for 20,000 rupees when I was fifteen to Akram who is fifty years old and a zamidar (landlord). He used to beat me and yell at me and call me names. So my father

helped me obtain a divorce and paid back the 20,000 to Akram. Then I married my cousin and father consented. Father drinks alcohol and gambles and takes opium and has a lot of debt. So he now wants me to divorce my cousin and marry a man in Karachi who is willing to pay for me. This way father can pay off his debt. I refused. I want to stay with my husband Qamar. Father said that there is no marriage between my cousin and myself as I no longer have his permission to be married to Qamar. So he charged me with Zina. I want to stay married to Qamar. I came to Darul Aman voluntarily. I was afraid of what my father would do to me.

GUL BANO, AGE 15. SHE IS STUDYING IN TENTH CLASS AND HAS BEEN IN DARULAMAN FOR 6 MONTHS.

Father married me to a man who I like and am happy with and he is close in age to me he is twenty-two years old. Father and mother used to fight. He left the family and the country. I don't know where he is. No one knows where he is. Now mother wants me to divorce my husband. She says that I am only fifteen and a minor and that she has authority over me. She wants me to marry someone who has promised her money. So my mother has charged us with Zina and my husband with abduction. My marriage has been registered and my husband has the nikhanama. I am happy with my husband and I do not want to leave him. Twice I have been to court. In the Court I was told that I am a minor and should go and live with my mother and do as she says. But I refused. Finally I came to Darul Aman, I am afraid.

SALIMA AGE 20, NO FORMAL SCHOOLING. SHE HAS BEEN AT DARUL-AMAN FOR 6 MONTHS.

My step father was thrown out of house by my mother and brothers. They also used to beat me and emotionally and verbally abused me. They wanted to marry me to a man who already had two children. But they owed money to him and so they wanted me to marry him so he would forgive their debt. But I refused. And they beat me more. So I ran away and stayed with a friend for four days. I hid in her balcony and her parents did not know I was in the house. In those days I had no food only what my friend was able to sneak in, mostly tea and some bread. My friend was afraid of her family finding out.

Then I went and stayed with some cousins. They did not keep me either. They are afraid of my mother and brothers and did not want to get involved. But they did give me five hundred rupees and sent me here to Darul Aman. I don't want to go home. I want to live with my aunt (father's sister) and she says that she will take me. My mother and brothers have told me that if I don't come home, they will charge me with theft and Zina. Mother has already made comments about the brother of my friend who sheltered me. She says that maybe I did Zina with him. As yet they have not formally charged him, but I won't be surprised if they do that. My mother says that maybe I also did Zina with my step father and Zina with my cousin. I have no lawyer and I have no money. If I go home they will kill me. I am happy here and I will live out my life in Darul Aman if I have to. I will show my family that I can survive.

NAUSHEEN AGE 20, COMPLETED NINTH CLASS. SHE HAS BEEN AT KOT LAKHPAT THREE MONTHS AND IS EXPECTING HER FIRST CHILD THIS MONTH

I married against my parents will and they accused my husband of abducting me. And both of us are in jail. My husband is my cousin [son of mother's brother]. I had asked my parents for

permission to marry him but they said no. I got married anyway. And my parents registered a case of Zina against me. My husband and I worked for a zamidar (landlord). The person who got us the job collected thirty thousand rupees for our labour which the zamidar said was one year's salary in advance. We got nothing. We had worked for nine months when we were arrested. The zamidar has our nikahnama (marriage certificate) and we need it to prove that we are married. He wants some of his money back before he will give over our nikahnama. We don't have the money to give him.

Husbands also find that these laws work in their favour. They can use them to intimidate and subjugate their wives. Otherwise they can always charge them with Zina.

RASHIDA BIBI AGE 18, NO FORMAL EDUCATION. SHE HAS BEEN AT DARUL-AMAN 4 MONTHS.

Father owed money to an old man. And he married me again to the old man. My new "husband" not only slept with me but also made me commit Zina with six other men in exchange for money which he kept. And he also beat me and broke my arm. He had a first wife who was also involved in prostituting me and she also beat me. I registered case of rape against old man and his wife with the police. I am in Darul Aman because the old man's son-in-law has threatened me. My father also used to beat me.

Poor women with little resources also provide ideal victims for the police who want a tidy conclusion to cases. Hina Jilani argues that once a case has been initiated and an First Investigative Report (FIR) lodged, police are *"under pressure to tie up the investigation and send the case for prosecution."* Police performance is evaluated annually. And unresolved cases she points out reflect on poor police performance, so often they are looking for a victim.

NASEEM JEHAN, AGE 49, WIFE OF ASIF, NO FORMAL EDUCATION. SHE HAS BEEN AT KOT LAKPAT SEVEN MONTHS.

My neighbour (who is also my relative), well, her daughter in law ran away. And I was accused of helping her run away. I was accused by the mother-in-law of the girl for being an accomplice. She wanted money from me. I have been accused of a crime that I have not committed. They (the Courts) are asking three lakhs for bail. I have sold everything even my jewelry to support my case. My eldest daughter is sixteen and she is alone at home with my husband. My husband has a bad temper and I am afraid for her. My bail has been raised three times and is now three lakhs. Because the judge also wants money. I am against judges please write against judges.

NAHEED, AGE 25, FROM OKARA DISTRICT, NO FORMAL EDUCATION. SHE HAS BEEN IN PRISON FOR SEVEN MONTHS.

I had a fruit shop in Lahore. I had employed a boy to work for me. He abducted his cousin and I got charged with helping in the abduction. There is no one to bail me as my husband has also been charged and is also in jail. The police said that he gave the couple a ride in his vehicle. I have been told that the abducted girl testified against my husband and me. I do not know what was said in the police station. I do not understand. I have no lawyer. I have four children; their

ages are four years, six years, and nine years. They are with my uncle right now. Sometimes I write letters to them. And sometimes I get letters from them.

SAIMA PARVEEN, AGE 20. SHE HAS NEVER BEEN TO SCHOOL BUT KNOWS HOW TO READ AND WRITE URDU. SHE IS MARRIED WITH A SEVEN YEAR OLD SON AND HAS BEEN AT KOT LAKPAT FOR NINETEEN DAYS.

My brother Mustafa is married to Razia and Razia has a sister, Rukaya. Now Rukaya and her husband fought a lot. He used to bring home other women and when Rukaya complained he beat her. At one time Rukaya jumped into the river with her daughter and attempted suicide. A man who was passing by saw them and pulled them out. When her husband beat her Rukaya went home to her parents and sometimes she went to her sister Razia's house.

When Rukaya finally ran away, she came to Razia's house. And Razia told her that "Although others close their doors against you I will always keep my door open for you." We were afraid, my parents were afraid and I was afraid. And [we] suggested to Mustafa that he leave Rukaya with her parents. We were afraid that there would be trouble. But he refused and allowed Rukaya to stay in their home. Rukaya was also afraid that her husband would come looking for her to Razia's house so she ran away from there [as well]. And her husband did come looking for her. He said that Razia her husband and his family had abducted his wife. So now the whole family is charged with abduction and helping Rukaya run away. They are all in jail, my father, and my three brothers. I am in jail. Razia is also in jail. Rukaya has disappeared and Razia fears that her in-laws have abducted her, otherwise she would be in touch with Razia. Rukaya's brother and husband say that they will kill her if she turns up. We are poor and they are rich. Razia's husband does not want to blame his wife. But the rest of the family blames her. I blame her for bringing so much misfortune to our family. Rukaya disappeared a year ago; she is either dead or in hiding. Razia thinks she is dead or she would have been in touch. This case was registered two months ago and I have been in jail nineteen days. The police took my brothers and me into the lock up and beat us up. They beat us a lot and I have a lot of bruises. They took money from us. I have no one to bail me out, all my three brothers are in jail, and my father is in jail. I don't know where my husband is. My son is with my mother and I have left everything to Allah.

SAIIDA, AGE 40, NO FORMAL EDUCATION. SHE HAS FOUR CHILDREN, AGES TWENTY-ONE, EIGHTEEN, FOURTEEN, AND SIXTEEN AND SHE HAS BEEN IN PRISON EIGHT AND A HALF MONTHS.

A lady doctor lived near us who did abortions. She said to me if you bring me clients I will do free treatment for you and give free medicine (to you). I have kidney and asthma problems and do not have the money for medical treatment. So I brought her clients. I brought her an unmarried girl who was pregnant and who wanted an abortion. She ran away after the abortion and her family registered a FIR and blamed me as an accomplice. Now the police have accused me of abducting the girl.

Conclusion

Islamisation was sometimes used as a political process. Zia's interpretation of Islam may have contributed to the rise of fundamentalism, obscurantism and retrogression. Since the death of General Zia in 1988, inconsistency and instability has prevailed in Pakistani laws.

Instability means that the law is frequently changing or is under threat of change because of differences of opinion among the ruling factions. Three of the most obvious inconsistencies in Zia's Islamic law are:

- Those between legal norms and socially observed norms;
- Those between statutory legal norms and the norms applied in practice in the courts (e.g. Hadd is difficult to implement as confession, retraction of confession and strict standards of proof make it difficult to execute);
- Those between different formal legal norms (e.g. non-compliance with the *Muslim Family Laws Ordinance* is compromised by the courts but is strictly punished under the *Zina Ordinance*). Another example of this contradiction is that the constitution assures women equal status on the one hand but, on the other hand, they are greatly discriminated in criminal law.

For twenty-five years Pakistan's women have suffered under the Zina Ordinance. No precise statistics for the whole period are available, but Khalid Masud's report gives numbers for the past four years: the number of accusations rose from 3,291 in the year 2001 to 3,817 in the year 2004. The majority of charges ended in an acquittal.

Promulgated in the name of Islam, the Zina Ordinance became a tool of oppression at the hands of vengeful husbands and parents intent on punishing their wives or daughters for disobedience. Roundly condemned both domestically and internationally by human rights groups and women's NGO, successive governments had failed to repeal or amend the law. Whenever even small changes were proposed, religious groups and political parties staged large scale demonstrations in Pakistan: there is little doubt that most Pakistani politicians lacked the stomach to face the religious fundamentalists.

In the context of contemporary Pakistan, where both the legal system as well as politics are infused with appeals to Islam, the Protection of Women (Criminal Laws Amendment) Act must be regarded as very progressive piece of legislation. The ground for its enactment had been carefully prepared, with the Council of Islamic Ideology playing an important role in recommending drastic changes to the existing law. The involvement of the Council was important, because the changes could only succeed if it could be shown that they were in accordance with Islam. The Council was able to provide this assurance. To what extent the orthodox religious establishment is prepared to follow the pronouncements of the Council on Islamic law remains to be seen: After all, it had been the same institution which had prepared the very laws now under review.

The Protection of Women (Criminal Laws Amendment) Act does not repeal the Zina Ordinance.

A repeal might have been seen as one step too far, exposing Musharraf's government to a serious backlash. Instead, the Zina Ordinance has been hollowed out to its barest essentials. It only deals with one offense, namely adultery liable to a hadd punishment.

The likelihood of such a prosecution succeeding is remote indeed. Fornication remains an offense, but is now governed by the Pakistan Penal Code. Procedural and evidential requirements are such that a prosecution is unlikely to succeed. The offense of rape has also been removed from the ambit of the Zina Ordinance, and is now governed solely by the Pakistan Penal Code. Changes to the Code of Criminal Procedure make it impossible to convert an unsuccessful complaint of rape into a charge of adultery or fornication.

The strengthening of the offense of qazf, the making of false accusations of adultery, means that anyone who makes an accusation of adultery faces a very real risk of punishment if his complaint does not result in a conviction.

Incidentally, it remains punishable by eighty lashes of the whip. There is little doubt that much needs to be done in order to make Pakistani law responsive to the needs of women. Nevertheless, the Protection of Women (Criminal Laws Amendment) Act cannot be dismissed as a mere window dressing undertaken to satisfy a Western audience. The Zina Ordinance has now been reduced to a largely symbolic measure, unlikely to wreak havoc with women's lives. Removing this last vestige of Islamic law from the area of sexual offenses would be difficult.