II PAKISTAN TOWARDS AN ISLAMIC STATE (1977-84)
CHAPTER II

PAKISTAN TOWARDS AN ISLAMIC STATE (1977-84)

Ever since its inception in 1947, the political system in Pakistan has alternated between democracy and military rule. Democratically elected governments have been routinely overthrown by military dictators, and popular discontent against dictators has similarly led to the restoration of democracy. Military rule has always been unpopular, and need to rely on outside support, in particular USA, to suppress popular aspirations. Most military rulers have been supported by outside powers, in particular USA, but this only renders them even more unpopular. The military dictators often rely on the support of conservative and orthodox clerical groups, to shore up their regime. In the coup that led to Zia-ul Haq coming to power in 1977, there was even an attempt to create an Islamic state in Pakistan, based on the invocation of Shari'ā as the basis of governance in the state. The shift to puritan Islam and the move to make Shari'ā a state policy had crucial consequence for women and gender relations in Pakistan. This chapter looks the impact of the so-called 'Islamization drive' in Pakistan on the lives of women and gender relations.
Religious ideology was systematically incorporated into state policy during the military regime of president Zia-ul Haq (1977-88), who initiated the process of Islamization of Pakistan’s institutions. On 5th July 1977, Prime Minister Zulfiqar Ali Bhutto was arrested and martial law was imposed in a coup which put General Zia-ul Haq in power.¹ Nine months later, in March 1978, Zia announced his intention to ‘Islamize’ the panel code of Pakistan, and in a shift towards an extremist policy, allied his military rule with the religious extremist political parties, in particular the Muslim League² (Pagara Group) and Jamaat-e Islami.³ Members of these fundamentalist organizations were offered important ministerial positions in the cabinet.

The military regime of Zia (1977-88) imposed a series of discriminatory laws against women- the Hudood Ordinance,⁴ the Law of

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² PML is a right-of-centre-party of no particular ideological significance.
³ Jamaat-e Islami, is an extreme right wing political party and advocates inferior status and complete segregation of women.
⁴ The Hudood Ordinance deals with the offences of prohibition (consumption of drugs and alcohol), zina (rape, adultery, and fornication), theft and qazf (perjury).
Evidence\textsuperscript{5}, the Law of \textit{Qisas}\textsuperscript{6} and \textit{Diyaf}\textsuperscript{7} and Family Laws. Under the pretext of creating a \textit{Shari'ah} based order in Pakistan, the state systematically denied basic rights to women, including the right to equality, freedom and dignity.

These gender discriminatory laws served as a powerful weapon in the hands of the patriarchal forces in Pakistan to subjugate women. The so-called \textit{‘Shari’ah Laws’}, and their rigid interpretations, not only facilitated oppression and sexual violence against women to an alarming degree in Pakistan, but also seriously eroded women’s right to justice.

In his first address to the nation, Zia-ul Haq announcing his ‘Islamization drive’ insisted on the sanctity of the veil and segregation of women, coining the phrase \textit{‘chăddar aur chărdıvari’}\textsuperscript{8}, as constituting both

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\textsuperscript{5} The Law of Evidence states that the testimony of a female is considered half that of man’s in a Pakistan Court of Law.

\textsuperscript{6} \textit{Qisas} is Retaliation/Punishment by causing similar hurt to the same part of the body of the convict as he has caused to the victim or by causing his death if he has committed \textit{qatl-i amd} in exercise of the victim or a \textit{wali}.

\textsuperscript{7} \textit{Diyat}- blood money or compensation for murder or man-slaughter, or other injury. Compensation specified under the law payable to the heirs of the victim by the convict his family, or any other person liable for the payment thereof.

\textsuperscript{8} \textit{Chadar} means ‘veil’ and \textit{Chārdıvari} means within the ‘four walls’. The two terms together represent an identification of women with domesticity and segregation. See
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the chastity of women and the honor of the nation. The state moved to take control over the lives of women, their bodies and shape with the promulgation of ‘shariā laws’, the state had come to appropriate the right to decide what women should or should not wear, how they should conduct themselves, the jobs they could take, the sports they could play, and took it upon itself the authority to define and regulate women’s morality and all this was done through a series of legislative changes and directives such as dress code, acts prohibiting women from participating in spectator sports⁹, but mainly and more powerfully through a persistent ideology that proclaimed that women were not equal to man and that they must be regulated by men and the state.

In 1980, first series of directives was issued by the government ordering all women government employees to wear ‘Islamic dress’¹⁰ i.e., to

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⁹ By this the government meant that women could play sports only within the confines of their homes maintaining that it was un-Islamic for women to reveal their bodies before men. See Nighat Said Khan and Rubina Saigol, ‘Women’s Action Forum Debates and Contradictions’, in N.Said khan (ed.), Up Against the State, (Lahore, 2004), p. 152

¹⁰ There is no Islamic dress, and Shalvar Kameez is a national, not Muslim dress.
wear a chadar\textsuperscript{11} over whatever they were wearing, and cover their heads. The female anchors and news-readers on government controlled television were the first to be effected.\textsuperscript{12}

Next notice was sent to all educational institutions ordering female teachers to cover their head and wear proper \textit{dupattas}\textsuperscript{13} when they come to their institutions.\textsuperscript{14}

The government's attempt to 'Islamize dress' was obviously solely directed at women. The directives did not carry any dress code for male teachers. It is equally surprising that in an effort to 'Islamize' Pakistan, the state, as several women activist pointed out, made no effort to contain eve-teasing and harassment of women in public places.

In May 1982, the government launched a campaign against obscenity and pornography, but, as the activists in the Women Action Forum (WAF) pointed out, it was yet another attempt to reduce women's

\textsuperscript{11} A thicker covering worn by women over their dress to cover the head, shoulders and breast.

\textsuperscript{12} Said Khan and Saigol, 'Women Action Forum', p. 149

\textsuperscript{13} The \textit{dupatta} is a piece of cloth, worn by women over their garments to cover the upper body, and occasionally, also the head.

\textsuperscript{14} These rules could only be enforced in government colleges; private institutions were immune from these rules. See Mumtaz and Shaheed, \textit{Women of Pakistan}, p. 79
visibility in the public places\textsuperscript{15}. In 1980, with the supposed aim of curbing obscenity, the government issued a number of circulars to Pakistan Television concerning women and advertisements. Ostensibly claiming to ensure that ‘no attempt is made to exploit the fair sex for commercial purpose’\textsuperscript{16}, these directives eliminated women from the commercials advertising products having ‘little or no relevance to women’.\textsuperscript{17} The directive was followed by another which forbade female models to appear for more than 25 per cent of allotted time for commercial and during Ramadhan, commercials with an overwhelming projection of female were to be withdrawn.\textsuperscript{18} These directives were extended to national press, and special film supplements of newspaper were banned which often carried pictures of film actresses.

On 22\textsuperscript{nd} February, 1979, amidst much fanfare and media build up, the first concrete step towards Islamization was announced by the military government. This took the shape of the Hudood Ordinance 1979, which introduced the Shari‘a t Laws in matters of alleged sexual transgressions and ‘immoral’ activities, unlike the ordinance British Law which saw

\textsuperscript{15} Ibid., p. 81
\textsuperscript{16} Ibid.
\textsuperscript{17} Ibid.
\textsuperscript{18} Said Khan and Saigol, ‘Women’s Action Forum’, p. 150
adultery as a "personal offence", the Hudood ordinance made adultery, and all other cases of sexual transgressions, an offence against the state. The Hudood Laws, promulgated in 1979, and enforced in 1980, are a collection of five criminal laws, collectively known as the Hudood Ordinance. They are:

1. Theft
2. Drunkness
3. Adultery
4. Rape and
5. Bearing false witness

The 'offences against property ordinance', deals with the crime of theft and armed robbery. The offence of zina ordinance, relate to rape, abduction, adultery and fornication.19 The word zina covers adultery as well as fornication. The offence of Qazf relates to the false accusation of zina. 'The Prohibition Order' prohibits use of alcohol and narcotics. The last is the 'execution of punishment of Whipping Ordinance', which prescribes the mode of whipping for those connected under the Hudood

19 Zina: a man and a woman are said to commit 'zina' if they will fully have sexual intercourse without being validly married to each other. See, Asma Jahangir and Hina Jilani, The Hudood Ordinance: A Divine Sanction, (Lahore, Pakistan, 2003), p. 23.
Ordinance. The Hudood Ordinances were supposedly promulgated to bring the criminal justice system of Pakistan in conformity with the injunctions of Islam. Under the ordinance, two levels of punishment and correspondingly, two separate sets of rules of evidence are prescribed. The first level or category is called 'Hadd', and the other 'Tazir'. The Hadd or punishment for rape or zina committed by an adult married Muslim was stoning to death; for an adult non-Muslim and an adult single Muslim it was 100 lashes. Tazir is simply a fallback position from Hadd, and becomes applicable where Hadd is inapplicable. Lack of evidence for Hadd does not exonerate the accused of criminal liability the accused in still liable for Tazir.22

Although the Hudood Ordinance governs both genders, it is much more harsh and severe on women. It is also explicitly discriminatory, and prejudicial to women. This is, for example, borne out by the Law of Evidence. A women's evidence, under the Hudood Ordinance, is half in value to the evidence given by men. The testimony provided by a man was

20 Hadd is a kind of fixed punishment prescribed by God in the exercise of this exclusive right. Hadd is fixed punishment for the reason that this can neither be increased nor decreased by anybody.

21 Tazir- punishment other than Hadd.

22 Jahangir and Jilani, Hudood Ordinance, p. 24
considered higher than the testimony of women. Actually, the corroborative testimonies of two women were equal in value to the testimony of one man.\textsuperscript{23} That the main objective of the Hudood Ordinance was not to impose Islam, but to suppress women is also evident from the lack of distinction between \textit{zina} (adultery and or fornication) and \textit{zina-bil-jabr} (rape). Combined with the Law of Evidence, provisions concerning adultery and rape turned out to be legal devices that enabled men to suppress women.

In all cases of adultery, women were treated as the main suspect, and the ‘primary instigator’. The provisions concerning rape were even more draconian for women. A woman bringing the charge of adultery against a culprit needed to support it by at least two male or four female witnesses. If she failed to produce the required witnesses, she could be charged with adultery instead. Since cases of rape can scarcely be supported by witnesses, there did occur several instances where the court turned the victim of rape into a criminal, charged with adultery.\textsuperscript{24} Under the circumstances, rape victims were, under Zia-ul Haq’s regime, scared to

\textsuperscript{23} Mumtaz and Shaheed, \textit{Women of Pakistan}, p. 100

report the crime to the police, and the rapists had the protection of the state and its legal system.

The *Zina* Hudood Ordinance gave immense leverage for men, and disempowered women. A man, seeking to exit out of an unhappy marriage, could bring in the charge of adultery against his wife. Similarly if a woman filed a divorce against her husband and left her home, her husband could file an allegation of *zina* against his wife. In 1987, Roshan Jahan (24 years) filed for divorce against her husband on the grounds of severe physical abuse, and moved into her neighbour’s house. Her husband lodged an FIR, alleging that she had committed adultery (*zina*) with the married neighbor. On the basis of this FIR, Roshan Jahan was arrested and sent to jail.

Looking through newspapers and magazines\(^{25}\) of the period one notices that the law was welcomed by almost all religious and political parties. The Islamic Law of Evidence (*Qanun-e-Shahdat*), which was introduced by General Zia-ul Haq in 1984, was another measure of male control. In April 1987, the Council of Islamic Ideology (C-11) proposed a

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\(^{25}\) *Dawn*, daily newspaper, Karachi; *Herald* (News Magazine), Karachi, various issues 1983-85; *View Point*, weekly news magazine, Lahore; *The Pakistan Times*, daily newspaper; *Jang*, daily newspaper, Karachi, Lahore.
new Law of Evidence to replace the Evidence Act of 1972 to bring it into conformity with Islam.\textsuperscript{26}

The Law of Evidence states that, the testimony of two women is admissible only as one reliable source, i.e., the testimony of women is considered half that of a man’s in a Pakistani Court of Law. The law requires that two male witnesses, and in the absence of two male witnesses, one male and two female, would be required to verify a women’s claim to sexual penetration and consequent rape. Failure to produce witnesses would turn the rape victim guilty of fornication or adultery and she would be subjected to corporeal punishment, under the Zina Hudood Ordinance.

Based on a rigid interpretation of the Shari’â Laws, the Hudood Ordinance also makes no distinction as to whether a sexual act has been committed willfully or forcibly and makes no distinction between consensual sex and rape. Since both acts are indistinguishable from each

\textsuperscript{26} The advisory council of Islamic Ideology (C II) was provided for both in Ayub’s and Bhutto’s Constitutions. This body examines laws for their conformity or repugnance to Islam. It was conceived primarily as an advisory body with the power to make recommendations which the state may or may not accept. Its imitative in the Ayub and Bhutto years was very limited. C II was reconstituted by Zia and has been working with extreme favour during his regime.
other, the ordinance views the rape victim as an accused, 'a potential criminal'. The Hudood Ordinance in particular the provisions concerning acts of sexual transgressions, were deeply prejudicial to women.

Another discriminatory law, the Law of Qisas and Diyat drafted in December 1980, by the Council of Islamic Ideology, passed by Majlis-e Shoora (Federal Council) in 1984, covers all aspects of intentional and unintentional murders, bodily injuries and abortion.²⁷ The Qisas has been defined in the ordinance as punishment 'by causing similar hurt at the same part of the body of the convict as he has caused to the victim or by causing his death if he has committed qatl-i amd²⁸ in exercise of the right of victim or Diyat (blood money) payable to the heirs of the deceased victim.²⁹ The law states in Section 25 (b) that the compensation or Diyat for the female victim is half that of the men. The law state that 'blood money' for a man should be 30.63 kg of silver or an amount equal to it, and or a women half of the amount given to men. Another noticeable feature about this law is that woman would receive half of what was given to men as compensation for the same injury, but if woman was guilty of murder or

²⁷ Mumtaz and Shaheed, Women of Pakistan, p. 110
²⁸ Willful murder, homicide, intentionally causing death of a person.
caused injury, her punishment would be the same as is given to men. There was great resistance from women’s organizations on these blatantly discriminatory provisions in law. As far as Qisas in section 10 (b) of the proposed draft ordinance is concerned, for proof of murder liable to Qisas, the testimony of two male Muslim witnesses was necessary. Since women was considered inferior to man, her testimony in cases of murder or other crimes would be admissible for Tazir i.e., lesser punishment. The law rejected the right to abortion for women- section 96 and 97 of the law declared abortion illegal and there were severe punishments for both the one who performs it and the one who undergoes it.30

There was a lot of resistance from women’s organizations over these discriminatory laws. The so-called ‘Islamization’ of the legal system under the military rule was actually a device to strengthen the patriarchal forces. It did lead to the suppression of women and the denial of all rights for women. Women leased to have an autonomous legal entity and became to be seen, within the legal system, as dependent subject, over whom men have the absolute right to domination.

APPENDIX II.1

Offence of Zinā (Hudood) Ordinance, 1979

1. Short title, extent and commencement

(i) This ordinance may be called the offence of zinā (enforcement of Hudood) Ordinance, 1979

(ii) It extends to the whole Pakistan.

(iii) It shall come into force on the twelfth day of Rabi-ul Awwal, 1339 Hijri, that is, the tenth day of February, 1979.

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 Qur’an or Sunnah.

(c) ‘Marriage’ means marriage which is not void accordingly 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 had sexual intercourse with a Muslim adult woman
who, at the time he had sexual 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 Pakistan Penal Code (Act XI 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. **Zinā:** A man and a woman are said to commit 'zinā' if they have sexual intercourse without being validly married to each other.

5. **Zinā liable to Hadd:** (1) Zinā a is 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 zinā liable to hadd shall, subject to the provisions of this ordinance:

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

(d) if he or she is not muhsan be punished, at a public place, with whipping numbering 100 stripes.

(3) No punishment under subsection (2) shall be executed until it has been confirmed by the Court to whom an appeal from the order of conviction lies; 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.

When the offender is (adult) the offender muhsan be stoned to death at a public place. (Sub-sec. 2(a).)

When the offender is not a muhsan (adult) the offender at the public place be punished with whipping numbering 100 stripes (Sub-sec. 2(b).)
6. **Zinā -bil-jabr**: (1) A person is said to commit *zinā -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 the victim in fear of death or of hurt; or

(d) with the consent of the victim, when the offender knows that the offender is not validly married to the victim and that the consent is given because the victim believes that the offender is another person to whom the victim is or believes herself or himself to be validly married.

(2) *Zinā -bil-jabr* is liable to *had* if it is committed in the circumstances specified in sub-section (1) of Section 5.

(3) Whoever is guilty of *zinā -bil-jabr* liable to *had* 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 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 convictions lies; and if the punishment is of whipping, until it is confirmed and executed, the convict shall be dealt with in the same manner as if sentence to simple imprisonment.

(7) *Punishment for zinā or zinā -bil-jabr where convict is not an adult*: A person guilty of *zinā* or *zinā -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 30 stripes; provided that, in the
case of zinā -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.

**Evidence:** Prove (1) That the accused who has committed the offence if zinā or zinā -bil jabr is not an adult and the offence is not liable to hadd and does not fall under the category of zinā or zinā -bil jabr liable to tazir.

(2) That the complaint has not been punished for making false accusation (qasf)

(3) That hadd may not be enforced on accused under the provisions of the ordinance

**Procedure:** Cognizable-Warrant-Not-bailable-Not compoundable triable by court of sessions.

8. **Proof of Zinā -bil Jabr liable to Hadd:** Proof of zinā or zinā -bil jabr liable to shall be in one of the following forms, namely;

i. The accused makes before a court of competent jurisdiction a confession of the Commission of the offence or

ii. At least four Muslim adult male witnesses about whom the court it satisfied having regard to the requirements of tazkiyyah alsahud that they are truthful persons and abstain from major sins (kabair), give evidence as eye-
witnesses of the act of penetration necessary to the offence; provided that, if the accused is a non Muslim, the eye witnesses may be non-Muslims.

9. Cases in which Hadd shall not be enforced:

a. In a case in which the offence of zinā or zinā -bil jahr is proved only by the confession of the convict, hadd, or such part of it as is yet to be enforced shall be enforced if the convict retracts her confession before the hadd, or such part is enforced

b. In a case in which the offence of zinā or zinā -bil jahr is proved only by testimony, hadd or such part of it as is yet to be enforced shall not be enforced hadd or such part is enforced, so as to reduce the number of eye-witnesses to less than four

c. In the case mentioned in sub-sec (1) the court may order retrial
d. In the case mentioned in sub-sec (2), the court may award tazir on the basis of the evidence on record.
10. Zinā or Zinā -bil Jabr:

a. Subject to the provisions of sec. 7, whoever commits zinā or zinā -bil jabr which is not liable to hadd, or for which proof in either of the forms mentioned in section- 8, is not available and the punishment of the qazf liable to hadd has not been awarded to the complaint, or for which hadd may not be enforced under this ordinance, shall be liable to tazir.

b. Whoever commits zinā -bil jabr liable to tazir shall be punished with imprisonment for a term which shall not be liable to fine.

c. Whoever commits zinā -bil jabr liable to tazir shall be punished with imprisonment for a term which shall not be less than four years nor more than twenty five years and, if the punishment be one of imprisonment, shall also be awarded the punishment of whipping numbering thirty stripes.
11. Kidnapping, abducting or inducing woman to compel for marriage, etc.:

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it be likely that she may be compelled, on knowing it be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment for life and with whipping not exceeding thirty stripes, and shall also be liable to fine, and whoever by means of criminal intimidation as defined in the Pakistan Penal Code (Act XLV of 1860) or of abuse of authority or any other method of compulsion induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.

12. Kidnapping or abducting in order to subject to unnatural lust:

Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be
put in danger of being subjected, to the unnatural lust of any person, or knowing it to likely that such person will be so subjected or disposed of, shall be punished with death or rigorous imprisonment for a term which may extend to twenty five years, and shall also be liable to fine, and, if the punishment be one of imprisonment, shall be awarded the punishment of whipping not exceeding thirty stripes.

13. Selling person of purposes of prostitution etc:

Whoever sells, lets to hire, or otherwise disposes of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time punished with imprisonment for life and with whipping not exceeding thirty stripes, and shall also be liable to fine.

Explanation: (a) When a female is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such females, shall, until the contrary is proved, be presumed to have
disposed of her with the intent that she shall be used for the purpose of prostitution. (b) For the purposes of this section and sec. 18 'illicit intercourse' means sexual intercourse between persons not united by marriage.

14. Buying person for purposes of prostitution, etc:

Whoever buys, hires or otherwise obtains possession of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or sued for any such purpose, shall be punished with imprisonment for life and with whipping not exceeding 30 stripes, and shall also be liable to fine.

15. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage:

Every man who by deceit causes any women who is not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief, shall be punished with rigorous imprisonment for a term which may
extent to 25 years and with shipping not exceeding 30 stripes, and shall also be liable to fine.

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, where upon 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 of 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.

Evidence: Prove (1) that the accused attempted to commit some
offence punishable with imprisonment under this ordinance
or that he attempted to cause such offence to be committed,
(2) that in such attempt he did some act towards the
commission of that offence.

The court shall be satisfied that the offender had in his
mind the design to commit a certain offence, and that he had
begun to move towards an execution of its purpose; there
must also be proof of some act not of an ambiguous kind but
directly approximating to the commission of the offence.
When the offender’s design is made manifest by any such act,
it becomes an attempt cognizable as an offence, and
punishable under this section.
19. Application of certain provisions of Pakistan Penal Code (Act XLV of 1860) and amendment:

(1) Unless otherwise expressly provided in this ordinance, the provisions of Secs. 34 to 38 of Chapter II, Secs. 63 to 72 of Chapter III and Chapters V and V-A of the Pakistan 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 offence as tazir; (3) In the Pakistan Panel Code (Act XLV of 1960): (a) Sec. 366, Sec. 372, Sec. 373, Sec. 375 and Sec. 376 of Chapter XVI and Sec. 493, Sec. 497 and Sec. 498 of Chapter XX shall stand repeated; and (b) in Sec. 367, the words and comma “or to the unnatural lust of any person” shall 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 appears in evidence that the
offender had 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 on offence punishable under this ordinance shall be triable by a Court of Session and not by a magistrate authorized under Sec. 30 of the said code and appeal from an order of the Court of Session shall lie to the Federal Shariat Court: Provided further that a trial by a Court of Session under this ordinance shall ordinarily be held at the headquarters of the Tehsil in which the offence is alleged to have committed). (2) The provisions of Sec. 198, Sec. 199, Sec. 199-A or Sec. 199-B of the code punishable under Sec. 15 or Sec. 16 of this ordinance. (3) The provisions of sub-Sec. (3) of Sec. 391 or Sec. 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 Sec. 5 or Sec. 6 of this ordinance. (5) In the code, Sec. 561 shall stand repeated.
21. The presiding officer of the Court by which a case is tried, or an appeal is head, under this ordinance, shall be Muslim: Provided that, if the accused is a non-Muslim, the presiding officer may be a non-Muslim.
It was felt that a number of sections of this ordinance were defective and led to injustice against women. The main defects pointed out were as follows:

1. Exclusion of women’s evidence.

2. Exclusion of non-Muslim Pakistani citizen’s evidence.

3. Exclusion of non-Muslim judges from presiding - unless the accused is a non-Muslim.

4. Linkage of adulthood with puberty.

5. Proof of zinā (adultery & fornication) and zinā -bil jabr (rape) - same requirements.

6. Law provides that - an offender can retract his statement even at the last moment before implementation of that sentence. The courts become ‘functus officio’. No procedure/ forum is provided under the law to deal with such situation.

7. Requirements of witnesses based on religion, to be adjudged on Islamic principles of Tazkia-Shahood (adult, sane, devote, believing, practicing Muslim men who abstain major sins).
8. Punishment of *Rajm* (stoning to death), being given as *Hadd* Punishment, is against Qur'anic injunctions.

9. Even where women report rape, they are charged under *zina* ordinance, therefore the victim becomes the offender—vast majority of women in prison, awaiting trial for years, are booked under *Hudood* (*zina*) Law.

10. Complaints accusing women of alleged *zina*, without being tried for *QAZF* (false allegation), is against Islamic injunctions.

11. Pakistani Constitution guarantees that non-Muslims are to be governed by their respective personal laws, whereas Hudood Laws (1979), being part of *Tazir* (criminal law), are applicable to all citizens, including non-Muslim.