

AMENDMENT IN HUDOOD LAWS
The Protection of Women's Rights Bill
An Appraisal

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FOREWORD

With the passage of the Protection of Women’s Rights Bill by the Parliament on 15 November, 2006, the ongoing debate in Pakistan on Hudood Laws has entered a new phase. The official circles insist that the Bill is in conformity with the Qur’ān and the Sunnah and that the amendments made in the Hudood Laws would facilitate in providing justice to the oppressed womenfolk of Pakistan. The Government was supported in passage of the Bill by the Pakistan People’s Party MNAs from amongst the Opposition members, while Muttahida Majlis-i-Amal has been of the view that the Bill was in clear violation of the injunctions of the Holy Qur’ān and the Sunnah and as such they opposed it tooth and nail. What exactly is the true position? It may not be very easy even for the educated, what to say of the common man to fully grasp the legal nuances of such a legislation. Unfortunately, however, much dust has recently been raised on the Hudood Laws by a certain segment of our society in pursuance of its political agenda and with a well-conceived objective of complicating the entire issue. This has polluted the atmosphere and made objective evaluation even more difficult. Yet the challenge has to be faced.

Before the passage of the Bill, its text remained under review for nearly two months, first with the Select Committee of the National Assembly and then with the Ulama Committee formed by the leader of the ruling party and the leader of the opposition. During this entire process of debate, scrutiny and review, more than one draft was prepared and discussed. Hon’ble Justice (R) Maulana Muhammad Taqi Usmani was also a member of this Ulama Committee. He is thus an insider, who is well aware of the entire proceedings not only of the Committee, but also of the various drafts which were prepared and thoroughly examined by it.

The Institute of Policy Studies has earlier published the text of a lecture by Maulana Muhammad Taqi Usmani on “*Hudood Qawaaneen: Maujooda Bahs Aur Aaindah Laaihai-i-Amal*” (Hudood Laws: Current Debate and the Future Course of Action). We feel privileged to bring out the present tract as a follow-up of the earlier one.

It is based on an indepth review specially written for us by the learned Justice (R) Maulana Muhammad Taqi Usmani, in which he has discussed in a simple yet scientific and legal manner the Bill that the National Assembly passed on 15 November 2006. The Urdu Version of the write-up has since been released and published by the national press.

We are grateful to Maulana Taqi Usmani for the great service he has done in the supreme national interest by timely contributing to the national debate through this highly useful article. We hope and pray, it would help in clearing up many a cobwebs and enabling all seekers of truth to understand the whole issue in its true perspective.

Prof. Khurshid Ahmad
Chairman

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Introduction

The National Assembly of Pakistan has recently passed the Protection of Women's Rights Bill, amending the Hudood Laws. Only those qualified in legal nuances can rightly review the legal implications of the Bill. Well-calculated attempts are, however, being made to let the public believe that the Bill is intended to redress the injustices, which the Hudood Ordinance had allegedly caused to the womenfolk of Pakistan and now they would have all their rights restored. It is also being claimed that the Bill contained nothing repugnant to the Qur'ān and the Sunnah.

Let us sincerely and rationally examine the main points of the Bill and see how far reaffirm the assertions of its authors and protagonists can hold the ground. An analytical review of the text brings to fore its following two substantive aspects:

Zina bil-Jabr

- (i) The first important aspect is that the Bill has totally abolished the ultimate punishment that the Qur'ān and the Sunnah have decreed for Rape (*Zina bil-Jabr*) and for which the Qur'ān uses the term '*Hadd*'. According to the Bill, nobody accused of *Zina bil-Jabr* can be awarded the Shariah punishment, but his case would be handled under the penal laws (*Ta'azeer*) only.
- (ii) Secondly, the crime mentioned in the Hudood Ordinance as permissible under '*Ta'azeer*', has now been classified as 'Fornication' and its punishment reduced and it has been made difficult to prove.

Now, let us examine carefully each one of these two substantive aspects of the Bill in question.

Qur'ānic Injunctions

To totally do away with *Hadd*, the Shariah punishment of *Zina bil-Jabr*, is a clear violation of the injunctions of the *Qur'ān and Sunnah*. It is being claimed that the *Hadd* prescribed by the *Qur'ān and Sunnah* is applicable only when the man and woman have committed *Zina* (Fornication or Adultery) by mutual consent, but there is no *Hadd* punishment for the crime committed without

the woman's consent. Let us see how far this assertion is correct? In *Āyah* 2 of Surah: 24, *Al-Nūr*, the Book of God says:

الزانية والزاني فاجلدوا كل واحد منهما مائة جلدة

(Those who fornicate — whether female or male — flog each one of them with a hundred lashes).

The word 'Zina' used in this Āyah is absolute in its meaning and includes both 'Zina bil-Jabr', or Rape, as well as Zina bil-Ridha', or Fornication by mutual consent. In fact, the common sense demands that if the Qur'ānic punishment of Hadd is applicable in case of Fornication, it must also be awarded rather in a more severe manner, in case of Rape, which is a much more heinous crime.

The above *Āyah* also mentions the female who fornicates, but later on in the same Surah those women, who have forcibly been molested/raped have been exempted from the enforcement of *Hadd*. The Holy Qur'ān says:

ولا تكرر هوا فتيا تكم على البغاء ان اردن تحصنا لتبتغوا عرض الحيوۃ الدنيا و
من يكرههن فان الله من بعد اكرههن غفور رحيم.

(And do not force your maids to prostitution for the sake of the benefits of worldly life when they desire chastity. And if anyone compels them to prostitution Allah is the Most Pardoning, the Most Merciful) (Surah 24: *Al-Nur*, 33).

The above Āyah makes it absolutely clear that a woman who is a victim of forcible sexual act, or Rape, would not be punished, but the male, guilty of the crime, would face Hadd, or the punishment of one hundred lashes, as mentioned in Āyah 2 of Surah *Al-Nūr* above.

- (ii) The punishment of one hundred lashes has been prescribed for unmarried persons. As for married individuals found guilty of adultery, they are to face the punishment of '*Rajm*', or stoning to death. This has been decreed by the Sunnah of the Holy Prophet (PBUH) and reaffirmed by the consensus of the Muslim Jurists through the ages. The Holy Prophet (PBUH) had enforced this punishment both for those who committed adultery by mutual consent, as well as in case of the married man found guilty of forcibly dishonouring a married woman. The following Hadith (Tradition of the Holy Prophet) may be cited in this context:

**Prophetic
Traditions**

It has been narrated by Wā'il bin Hujr that during the life time of Sayyidna Rasūl Allah a woman set out of her home to perform regular Prayer. A person forcibly got hold of her in the way and committed adultery. As she raised hue and cry, the man fled away. Later on,

however, he admitted of his crime. **On this the Holy Prophet (PBUH) enforced *Hadd of Rajm* on him, while the woman was awarded no punishment.**

(*Jāmi'e Imām Tirmizi, Kitāb Al-Hudood*, Chapter 22, Hadith # 1453 & 1454).

- (iii) “A slave committed Rape with a slave woman. The Second Caliph Hadhrat Umar punished him with *Hadd* but spared the woman who was wronged without her consent”.
(*Sahīh Al-Bukharī, Kitāb Al-Ikrāh*, Chapter 6).

From the foregoing it is established without any doubt that in the light of the injunctions of the Holy Qur'an and Sunnah and the decrees of the Holy Prophet (PBUH) and his Rightly Guided Caliphs (*Khulafā Al-Rāshidūn*), the *Hadd* of *Zina* is effective as much in case of *Zina bil-Jabr* as it is in case of *Zina bil-Ridhā*. **It is, therefore, hardly justified to claim that the punishment of *Zina*, prescribed by Shariah is applicable only in case of Fornication with mutual consent and not in case of Rape.**

Now, the question arises why so much pain has been taken to do away with the *Hadd* for Rape? The basic reason for this is the highly misleading propaganda against the Hudood Ordinance which a particular section of our society has indulged in since the promulgation of the Ordinance. According to this propaganda, a woman against whom the crime of Rape has been committed is allegedly required under the Hudood Ordinance to produce four witnesses in the Court to prove her charge against the perpetrator of the crime and in case of her failure she is herself to be held guilty and would be put behind the bar. An absolutely false and mischievous propaganda like that has been made tirelessly and with all impurity against the Ordinance, which has led even those occupying positions of responsibility to succumb to this brazen lie. Even the President in his address to the nation mentioned this as the sole justification for the so-called ‘Protection of Women’s Rights Bill.

When something, howsoever rubbish and false, is repeated vociferously through the media and becomes the talk of the town, even a person of learning and intellectual integrity trying to dispel the wrong notion

**Abolition
of *Hadd*
and Its
Implications**

and present the real truth is not often heeded. With all sincerity I would like to invite the attention of those keen to dispassionately look into the matter to please ignore for a while the propaganda let loose by our national media and ponder a little over my submissions which follow.

The factual position is that in my capacity first as the Judge of the Federal Shariah Court and then as a Member of the Supreme Court's Shariah Appellate Bench, a position held for long seventeen years, I have been dealing with the cases and appeals lodged under the Hudood Ordinance. **For such a long period of time I came across not a single case in which a woman victim of *Zina bil-Jabr* might have been convicted because of her failure to produce four witnesses in support of her complaint.** That was simply not possible under the Hudood Ordinance, because the condition of four witnesses, or the admission of the guilt by the accused himself, has been provided for those found guilty of *Zina bil-Jabr* liable for *Hadd* punishment. No such condition is, however, there for *Zina bil-Jabr* punishable by *Ta'zeer* under Section 10(3) of the same Ordinance. **To prove the guilt even a single witness, plus medical examination and the report of the chemical examiner, would suffice under this Section to bring the male culprit to book and that is how most of those accused for Rape were always punished under Section 10(3). The victim (woman) was not punished at all.**

One wonders about the audacity of those spreading the lie that the female victims of Rape were punished under the Hudood Ordinance because of their failure to produce four witnesses! **Would they please let us know under which Section of the Ordinance those victims were punished?**

They couldn't have even been punished under the '*Qazf Law*', because its Section 3 (2) clearly states that a person approaching the law authorities with the complaint of *Zina bil Jabr* can not be punished under the '*Qazf Law*'

simply because he or she has failed to produce four witnesses in support of his/her petition. No court of law can be expected to be so irrational as to convict a petitioner on that account. Alternately, she can be convicted for the offence of *Zina bil-Ridha*, not due to her failure to produce four witnesses, but only because the court is convinced after examining the case and the available witnesses that she is guilty of falsely accusing someone of dishonouring her forcibly, while the crime has actually been committed by her consent. It is absolutely in keeping with the norms of justice and fairplay to punish a woman found guilty of falsely implicating a man for forcibly dishonouring her when it is established by the careful examination of the case that she was involved in *Zina* with her full consent. It has, however, been very rare even in such cases to punish the woman. In almost 99% of such cases, the court, though not fully convinced about the veracity of her claim about the use of force, has set her free giving her the benefit of doubt because of the lack of sufficient evidence justifying her conviction.

An impartial survey of the cases registered and decided under the Hudood Ordinance during the last 27 years would confirm that all the Hon'ble Judges, who presided over such cases, including myself, had generally awarded punishment to the male partners in spite of the dubious nature of the female characters involved. Women have always been given benefit of doubt.

The propaganda against the Hudood Ordinance was launched by a powerful lobby of the country from the day it was passed. It was repeatedly claimed that the Ordinance violated the women's rights and denied them justice. Impressed by such propaganda, Charles Kennedy, a US Scholar, visited Pakistan to ascertain the truth and meticulously examined all the cases decided under the Ordinance during the first five years of its enforcement. As a result of his painstaking labour he produced a well-researched Report. It was based on the data

of his survey of the Hudood cases decided till then. Charles Kennedy in his Report noted:

“ Women fearing conviction under section 10(2) frequently bring charges of rape under 10(3) against their alleged partners. The FSC, finding no circumstantial evidence to support the latter charge, convict the male accused under Section 10(2). the woman is exonerated of any wrong doing due to reasonable ‘doubt rule’.”

(Charles Kennedy, “Islamization of Laws and Economy: Case Studies on Pakistan”, P. 74).

The above findings of an impartial non-Muslim Scholar, who can't obviously be expected to have any soft corner for the Hudood Laws, relate to those women who were evidently guilty of wrong-doing with their consent, but under the pressure of their family members lodged the cases of Rape against their male partners. The Federal Shariah Court did not ask them to produce four witnesses, but demanded them to furnish circumstantial evidence in support of their claim. They failed even to do that and convince the FSC of their being victims of force. **In spite of this, they were allowed to go scot-free, while their male partners were convicted.**

This goes to prove that the much-maligned Hudood Ordinance had no provision whatsoever seeking the female victims of Rape to produce four witnesses in support of their case, or else face conviction.

Some exceptions may have been there, where the Police might have colluded with influential male culprits and tried to circumvent the law before the case could reach the court and registered a case of *Zina bil-Ridha* against the woman approaching it to lodge FIR for *Zina bil-Jabr*. But such police high-handedness has nothing to do with any flaw in the Hudood Ordinance itself. Our Police Department is known to commit such violations of the law in respect of almost all crimes and subvert the hapless victims' attempts to seek justice. We know that innocent victims are often put behind the bar on the false charges of

keeping Heroin in their possession and similar other charges. ***Does this mean that we must abolish the law banning drug trade, or similar other offences because of the corruption or misdemeanors of a few Police Officials?***

The Federal Shariah Court through its judgments had, nevertheless, tried its bit against such Police high-handedness. But to foreclose the chances of all such risks a law can be enacted to prevent the arrest of the female petitioner of *Zina bil-Jabr* under the Hudood Ordinance till the announcement of the final verdict. The law should also provide for exemplary punishment to anybody found guilty of apprehending the hapless petitioner. There can, however, be no justification whatsoever to abolish under any pretext the *Hadd* prescribed by the Qur'ān and Sunnah for *Zina bil-Jabr*.

As such it is established without any doubt that the way the Shariah Hadd for Zina bil-Jabr has been done away with in the so-called Protection of Women's Rights Bill is in total violation of the injunctions of the Qur'ān and the Sunnah. Moreover, this has no relevance with the redressal of the wrongs being committed against women.

**Amendments
Repugnant to
the Injunctions
of the Qur'ān
and Sunnah.**

Another significant aspect of the Bill in question relates to Sections included in it under the subhead 'Fornication'. Section 5 of Hudood Ordinance made the fulfillment of the Shariah condition of four witnesses compulsory to award the *Hadd* punishment for *Zina bil-Ridha*. In case, however, this precondition was not fulfilled but the offence was otherwise proved, the culprit was to be punished under *Ta'zeer*. The Bill in question, while retaining the Shariah punishment for *Zina* under Section 5 of the Ordinance, for which the condition of four witnesses was made compulsory, declares through its Section 8 the offence non-cognizable. It obligates the defendant to directly lodge her/his complaint in the court. As

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Regarding
Fornication
and Their
Implications**

the offence has been made non-cognizable, *no FIR can be lodged with the Police and that is how the crime of Zina bil-Ridha has safely been removed from the application of Hadd*. Similarly, the *Ta'zeer* punishment provided for *Zina* in the Hudood Ordinance (in case of the absence of four witnesses) has been diluted by the following amendments:

- (i) The Hudood Ordinance provided for imprisonment upto ten years for the offence of *Zina* punishable under *Ta'zeer*. **The current Bill has reduced that period to five years, which though not contrary to the Qur'ān and Sunnah, is tantamount to giving further relief to the perpetrators of the offence.**
- (ii) **Under the Hudood Ordinance, *Zina* was a cognizable offence. Under the Bill in question it has been made non-cognizable and hence the complainant of this heinous crime, have been denied the right to lodge FIR with the Police. They have further been burdened to produce two eye-witnesses while registering their complaint direct in the Court.** The court has been authorized to record their statement under Oath and if convinced that sufficient grounds existed justifying further action, can summon the culprits. But the culprit has been spared to provide any surety to ensure his presence in the court other than his personal undertaking. In the event no basis is available to proceed with the case further, the court can dismiss it then and there. **That is how the culprit has been provided the maximum facilities possible to avoid punishment. The offence of *Zina* (Fornication) has thus been made too difficult to prove and mild enough for the offender to feel secure, or rather encouraged.**

Those with even the rudimentary knowledge of the Qur'ān and the Sunnah are well aware that under the Islamic Law *Zina* and debauchery are crimes against the society and the state and not just against an individual. This means that these constitute cognizable offences. However, because of the lack of trust over the Police in our social set up, it is understandable that the innocent couples should have also been guaranteed full protection against any unwarranted Police harassment. The Federal Shariah Court, in a number of its judgments has actually made significant recommendations to effectively check such occurrences. ***Zina* had**

remained a cognizable offence during the last 27 years and due to the effective action by the FSC the rate of harassment by the Police had decreased many fold. In order to totally eliminate the chances of public harassment by the Police, the Bill in question could have further provided that *Zina* should not only be a cognizable offence, but also should be investigated by a senior Police Officer of the status of SP and no arrest should be made without the court's order. Such a provision could have served to totally eliminate the risk of Police harassment while ensuring better prospects of justice to the victims. **Unfortunately, however, instead of further strengthening the victims' hands against the offenders and the high-handedness of the Police, the crime has been made non-cognizable and the criminal awarded ample opportunities to go scot-free.**

Secondly, it is a cruel joke to impose on the petitioner the responsibility of producing four eye-witnesses in case of *Hadd* and two in case of *Ta'zeer*. **This new provision of the Bill is contrary to the norms of justice and sets a new precedence in the history of our Criminal Law.** Pakistan's entire system of evidence provides that in the absence of the eye-witnesses judgments are to be based on the basis of circumstantial evidence. That is why medical examination and the chemical examiner's report in such important cases form an integral part of our Witness System. **According to Shariah, punishment under *Ta'zeer* can be imparted on the basis of even a single reliable witness, plus the circumstantial evidence. It is, however, intriguing why the complainant has further been penalized to compulsorily produce two witnesses while lodging his or her complaint. Isn't it tantamount to providing further protection to the culprit?**

Similarly, it is like tying the hands of the court by giving the culprit the facility of providing his personal undertaking and no other

surety for ensuring his availability in the court. The situation differs from case to case and that is why Section (496) of Pakistan's Criminal Procedure Code authorizes the court either to bail out the culprit on personal undertaking if the circumstances so demand, or to ask him also to furnish guarantees from others. **The court has been given this option even in minor offences. It is, however, surprising to see that it has been denied the same option in case of a much more heinous crime like Fornication (*Zina*).**

As for the provision allowing the court to dismiss the case in the absence of sufficient ground, Section (203) of the Criminal Procedure Code already authorizes our courts in this respect. The same provision has, however, been inserted in the Bill for reasons best known to its authors.

- (iii) Under the Hudood Ordinance, a person proved guilty of Fornication, in the absence of the necessary preconditions justifying the award of the ultimate punishment of *Hadd*, could be punished under *Ta'zeer* according to Section 10(3) of the Ordinance. **According to the Bill in question, however, an addition has been made in Section (203) of the Criminal Procedure Code and its Clause (6) now provides that such an offender, though proved guilty of Fornication, could not be punished under *Ta'zeer*.**

The hard preconditions laid down by the Qur'ān and Sunnah for awarding *Hadd* punishment of Fornication, if not fulfilled, do not evidently allow the culprit to be spared even though strong circumstantial evidence may exist proving him guilty. The Shariah Law authorizes the court to award him punishment according to the severity of his crime. **Doesn't this mean that the Bill in question by absolving the culprit of all legal actions and preventing the court to proceed against him has strengthened the hands of the criminals, provided protection to crime and tried to promote promiscuousness and anti-women offences in the society?**

Similarly section 12A of the bill provides that no case where an allegation of rape is made shall at any stage be converted into a complaint of fornication u/s 496B of the Pakistan Penal Code.

Before the passage of the Hudood Ordinance, those accused of *Zina bil-Jabr* often tried to escape punishment by pleading that they did commit Fornication but with the consent of their female partners. If the court also suspected the claim to be true, it used to set them free. **The Hudood Ordinance had offered the much-needed respite to the women suffering the worst humiliation of Rape, and the man guilty of the crime was left with no room to claim that the heinous act was done with the consent of woman, as *Zina*, even if committed by mutual consent, remained a cognizable offence.**

Even if the accused pleaded that he had committed zina with the consent of the woman the court was authorized to punish him of zina liable to Taazir u/s 10(2) of the Hudood Ordinance 1979 because of his admission that he had committed the offence with the consent of the woman, while the woman would not be punished under the same section because her consent was not proved merely on the admission of the accused.

The amendment proposed in the recent bill has reversed the situation and restored the earlier position. Now if the culprit of rape declares with all impunity before the court that he had committed fornication but with the consent of the woman and creates some doubt in using force against the female he may well escape any punishment because section 12A of the bill prevents the court from being converted the charge against him from rape to fornication. The bill is though ambiguous about whether or not a fresh complaint of fornication may be lodged against him but even if it is legally possible to lodge a complaint of fornication against the culprit, it is practically impossible for the woman to pursue such a complaint because it will be an admission on her part to be a consenting party which is in reality against the fact. Similarly no one else can lodge such a complaint against the culprit because the bill requires him or her to produce two eye-witnesses at the time of lodging the complaint, while in the situation mentioned above there is only an admission of the accused and not the eye-witnesses that may prove his offence. Consequently, the man accused of doing her wrong will be spared to face a criminal case against him in a court of law.

One may ask the authors and the champions of the Protection of Women's Rights Bill the simple question: Whether Fornication is a crime or not? And if it is a crime, why have they inserted these strange provisions in support of the crime and offenders?

**Other
Amendments
in Hudood
Ordinance**

The Bill in question has brought about some more amendments in the Hudood Ordinance as briefly noted below:

- (i) According to an injunction of the Holy Prophet (PBUH), nobody is authorized to commute, or reduce the punishment of a person sentenced of *Hadd* by a court of law. The Hudood Ordinance under Section 2, Clause (5), had, therefore, provided that the powers given to the Provincial Government in Chapter 19 of the Criminal Procedure Code to change or reduce a punishment was not applicable in case of *Hadd*. The Bill in question ventures to make yet another significant and serious amendment by abolishing Section 2(5) of the Ordinance, which simply means that the government of the day has been empowered to commute or reduce the *Hadd* punishment awarded to any culprit by a court of law.

The above amendment is a clear violation of the following injunction of the Holy Qur'an:

و ما كان لمؤمن ولا مؤمنة اذا قضى الله ورسوله امراً ان يكون لهم الخيرة من امرهم و من يعص الله ورسوله فقد ضلّ ضلالاً مبيناً.

(It does not behove a believer, male or female, that when Allah and His Messenger have decided an affair they should exercise their choice. And whoever disobeys Allah and His Messenger has strayed to manifest error.).

(S.33: *Al-Ahzāb*, 36).

This should remind us of the famous incident when the Holy Prophet (PBUH) had reprimanded one of the closest and dearest of his Companions Hadhrat Usama bin Zaid for pleading mercy in case of a woman convicted under *Hadd*. The Holy Prophet had then declared: ***“Allah be the Witness! Even if Fātimah bint Muhammad is proved guilty of committing theft, I would implement the Hadd punishment by chopping her hand from the wrist.”***

(*Sahīh Al-Bukhārī, Kitāb Al-Hudūd*, Chapter 12, Hadith # 6788).

That is why there is a consensus of the Muslim Ummah that no government, or authority has the power to commute or reduce a sentence passed by the court of law under *Hadd*.

The above provision of the so-called Protection of Women's Rights Bill is also, therefore, repugnant to the injunctions of the Qur'ān and the Sunnah.

- (ii) Under Section 3 of the Hudood Ordinance, the provisions of the Ordinance were made supreme and binding and were to supercede any other law if found contrary to the Hudood Laws. **This provision was in fact a reiteration of the supremacy of the injunctions of the Qur'ān and the Sunnah. The Bill in question has done away with this Section also.**

The above provision of the Hudood Ordinance served to remove many legal complications and went specially in favour of the hapless women often dragged by their male tormentors in false cases to the court of law.

To cite an example, under the Family Laws Ordinance it is required that no divorce would be effective until its notice is given to the Chairman of the Union Council concerned. According to the Shariah, a woman divorced by her husband is free to enter into another marriage contract after completing the period of her *Iddat*. But in terms of the above provision of the Family Laws she was legally bound to live as the wife of the husband who had divorced her and was not permitted to marry another person without authentication of her divorce by the Union Council. There were cases when a woman after completing the period of her *Iddat* entered into marriage contract with another person Her former husband played twofold mischief against her. On the one hand, he did not send a notice to the Chairman Union Council as was due under the Family Law, and on the other hand he filed a complaint against the divorcee that she had married another person before the divorce could be effective, and therefore she has committed adultery. When such cases were brought to appeal before the Shariah Courts, the Appellate Bench came to her rescue by invoking Section 3 of the Hudood Ordinance, which gives it overriding effect. It was held that the Ordinance being based on the injunctions of Islam, the word "marriage" must be construed according to Shariah, and since the marriage of the woman is valid according to Shariah she could not be convicted regardless of the Family Laws.

Following the deletion of this Section and specially by removing the definition of Nikāh as provided in the Ordinance, the Bill in question has again dragged the women, whose rights it claims to protect, back to the same predicament of pre-Hudood Laws.

We had raised this issue in the Ulama Committee as well and it was finally agreed there to insert the following Clause in the Bill:

“In the interpretation and application of this Ordinance the injunctions of Islam as laid down in the Holy Quran and the Sunnah shall have effect, notwithstanding anything contained in any other law for the time being in force.”

The above Clause is, however, missing from the revised Bill passed by the National Assembly.

- (iii) Section 14 of *Qazaf* Ordinance explains the method of *Li'ān* as given in the Holy Qur'ān. *Li'ān* is a legal provision to annul marriage contract between the husband and wife. According to this law, if the husband accuses his wife of *Zina* and then fails to produce four witnesses, the wife would ask him to solemnly declare under oath, that his charge was correct and if he was a liar and was falsely implicating his wife in a heinous offence, God's curse (*La'nah*) may fall upon him. To prove herself innocent, the wife on the other side would also have to declare under oath that her husband has been telling lie and if she was actually guilty as claimed by him, she may be accursed by God. Following this proceeding of *Li'ān*, the court would annul their marriage. It was provided in the *Qazaf* Ordinance that in case the husband refuses to take part in the proceedings of *Li'ān*, he would be held in custody so long as he does not agree to cooperate. **The Bill in question omits this provision also, which simply means to give the husband the license to morally and emotionally torture his wife and allow her no avenue either to prove herself innocent or get her marriage contract annulled.**

The *Qazf* Ordinance further provides that in case of the woman admitting her guilt during the *Li'ān* proceedings, she would be awarded the punishment of *Zina*. The current Bill has removed this portion of the *Qazf* Ordinance as well, which means that even if a woman makes a voluntary confession, she may not be punished, while it is she who demanded the procedure of *Li'ān*.

- (iv) It was stated in Section 20 of *Zina* Ordinance that if the court is satisfied on the strength of the witnesses that the accused has committed an offence which was liable for punishment under any law other than the provisions

of the Hudood Ordinance, the court could convict the accused if the crime fell under its jurisdiction. **The above Clause was meant to simplify the legal proceedings. The Bill in question has also taken away this power from the court.**

The Bill in question has removed from the Hudood Ordinance all criminal offences punishable under *Ta'zeer* and shifted it to PPC and the crime of *Zina bil- Ridha* liable to Hadd alone has been left within the purview of the Ordinance. As a result of this amendment, if a man found guilty of *Zina* is proved to have committed Rape, or in case the offence of Fornication is not proved but it is established that he had abducted the woman, the court can now convict him neither for Rape nor for abduction and it would be compelled to set him free knowing fully well that he was guilty of abducting the woman and dishonoring her. Consequently, the culprit will either be let off totally, or a fresh complaint under PPC will have to be lodged against him which will make the complainant face the torture of commencing a fresh trial from the beginning.

Law making is a very sensitive process requiring a cool and dispassionate mind-set. The law-maker has to keep before himself all aspects of the matter, free from his personal biases and in an air of impartiality. But when the law-making is done under duress in an atmosphere vitiated by hostile propaganda and negative slogans, the result is obviously the same as evident in the present Bill. The courts are then compelled to get involved in a long and tortuous process of legal hairsplitting and consequently the cases continue being transferred from one court to the other much to the detriment of the aggrieved person, who is denied an easy access to justice.

CONCLUSION

To conclude, we may sum up below the major failings of the Protection of Women's Rights Bill, leaving aside the minor ones discussed in detail earlier:

- (i) **Under the Bill in question, the *Hadd* punishment of '*Zina bil-Jabr*' has been completely abolished, which is in total violation of the injunctions of the Qur'ān and the Sunnah.**
- (ii) **By removing Clause (5) of Section 2 of the Ordinance, which did not allow any government authority to reduce or commute the *Hadd* punishment once awarded by a court of law, the Bill violates the injunctions of the Qur'ān and the Sunnah.**
- (iii) **By making *Zina bil-Ridha* and Fornication non-cognizable offence and offering the criminals various safeguards they have been virtually rendered un-punishable.**
- (iv) **To compel the courts against awarding punishments to a culprit found guilty of other crimes as well is tantamount to encouraging the criminal and complicating the legal process.**
- (v) **By amending the *Qazf* Ordinance and allowing the husband to refuse to participate in the *Li'ān* proceedings the women's rights have been grossly violated which is totally against the clear injunctions of the Holy Qur'ān.**
- (vi) **Amendment in the *Qazf* Ordinance resulting in exemption from punishment of *Hadd* for the woman in case of confession of *Zina* is also a categorical violation of the clear injunctions of the Qur'ān and the Sunnah.**

In the light of these facts, I would earnestly request in the end all the members of Parliament and specially those wielding authority to kindly look into these and try to amend the said Bill in order to bring it in conformity with the injunctions of the Holy Qur'ān and the Sunnah and also to help the nation come out of the agony of confusion in which it has been cast.