

ACT No. VI of 2006

An Act further to amend the Pakistan Penal Code, the code of Criminal Procedure and other laws

WHEREAS it is necessary to provide relief and protection to women against misuse and abuse of law and to prevent their exploitation;

AND WHEREAS Article 14 of the Constitution ensures that dignity of man and, subject to law, the privacy of home, shall be inviolable;

AND WHEREAS Article 25 of the Constitution guarantees that there shall be no discrimination on the basis of sex alone and that the State shall make provisions for the protection of women;

AND WHEREAS Article 37 of the Constitution encourages promotion of social justice and eradication of social evils;

AND WHEREAS the objective of this Bill is to bring in particular the laws relating to zina and qazf in conformity with the stated objectives of the Constitution and the injunctions of Islam,

AND WHEREAS it is expedient for the aforesaid objectives further to amend the Pakistan Penal Code (Act XLV of 1860), the Code of Criminal Procedure, 1898 (Act V of 1898, the Dissolution of Muslim Marriages Act, 1939 (VIII of 1939), the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (VII of 1979), and the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979) and for the purposes hereinafter appearing,

It is hereby enacted as follows:-

1. Short title and commencement.- (1) This Act may be called the Protection of Women (Criminal Laws Amendment) Act, 2006.

(2) It shall come into force at once.

2. Insertion of new section, Act XLV of 1860. In the Pakistan Penal Code (Act XLV or 1860), hereinafter referred to as the said "Code", after section 365A, the following new section shall be inserted, namely:-

3. Insertion of new section, Act XLV of 1860.- In the said Code, after section 367, the following new section shall be inserted, namely:-

"367A. Kidnapping or abducting in order to subject person 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 be 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."

4. Insertion of new sections, Act XLV of 1860 . In the said Code, after section 371, the following new sections shall be inserted, namely:-

"371A. Selling person for purposes of prostitution, etc. Whoever sells, lets to hire, or otherwise disposes of any person with intent that such a 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 shall at any time be employed or used for any such purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine.

Explanations:- (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 female 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 section 371B, "illicit intercourse" means sexual intercourse between persons not united by marriage.

371B. 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 used for any such purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine.

Explanation: Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution."

5. Insertion of new sections, Act XLV of 1860. In the said Code, after section 374, the following new sections 375 and 376 under sub-heading "Rape", shall be inserted, namely:—

"375. Rape:-A man is said to commit rape who has sexual intercourse with a woman under circumstances falling under any of the five following descriptions,

- (i) against her will.
- (ii) without her consent
- (iii) with her consent, when the consent has been obtained by putting her in fear of death or of hurt,

- (iv) with her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married; or
- (v) With or without her consent when she is under sixteen years of age.

Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

376. Punishment for rape.- (1) Whoever commits rape shall be punished with death or imprisonment of either description for a term which shall not be less than ten years or more, than twenty-five years and shall also be liable to fine.

(2) When rape is committed by two or more persons in furtherance of common intention of all, each of such persons shall be punished with death or imprisonment for life."

6. Insertion of new section, Act XLV of 1860.- In the said Code, in Chapter XX, the following new section shall be inserted, namely:-

"493A. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.---Every man who deceitfully causes any woman 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 extend to twenty-five years and shall also be liable to fine."

7. Insertion of new sections, Act XLV of 1860. In the said Code, after section 496, the following new sections shall be inserted, namely:

"496A. 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 shall also be liable to fine.

496B. Fornication: (1) A man and a woman not married to each other are said to commit fornication if they willfully have sexual intercourse with one another.

(2) Whoever commits fornication shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine not exceeding ten thousand rupees.

496C. Punishment for false accusation of fornication. Whoever brings or levels or gives evidence of false charge of fornication against any person, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine not exceeding ten thousand rupees.

Provided that a Presiding Officer of a Court dismissing a complaint under section 203C of the Code of Criminal Procedure, 1898 and after providing the accused an opportunity to show cause if satisfied that an offence under this section has been committed shall not require any further proof and shall forthwith proceed to pass the sentence."

8. Insertion of new sections, Act V of 1898. In the Code of Criminal Procedure, 1898 (Act V of 1898), after section 203, the following new sections shall be inserted, namely:—

"203A. Complaint in case of Zina.- (1) No court shall take cognizance of an offence under section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (VII of 1919), except on a complaint lodged in a Court of competent jurisdiction.

(2) The Presiding Officer of a Court taking cognizance of an offence on a complaint shall at once examine, on oath, the complainant and at least four Muslim, adult male eye-witnesses, about whom the Court is satisfied having regard to the requirement of tazkiyah-al-shahood, that, they are truthful persons and abstain from major sins (kabair), 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.

Explanation: In this section "tazkiyah-al-shahood" means the mode of inquiry adopted by a Court to satisfy itself as to the credibility of a witness.

(3) The substance of the examination of the complainant and the eye-witnesses shall be reduced to writing and shall be signed by the complainant and the eye-witnesses, as the case may be, and also by the Presiding Officer of the Court.

(4) If in the opinion of the Presiding Officer of a Court, there is sufficient ground for proceeding, the Court shall issue summons for the personal attendance of the accused.

(5) The Presiding Officer of a Court before whom a complaint is made or to whom it has been transferred may dismiss the complaint, if, after considering the statements on oath of the complainant and the four or more eye-witnesses there is, in his judgment, no sufficient ground for proceeding and in such case he shall record his reasons for so doing.

203B. Complaint in case of Qazf.- (1) Subject to sub-section (2) of section 6 of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979), no Court shall take cognizance of an offence under section 7 of the said Ordinance, except on a complaint lodged in a Court of competent jurisdiction.

- (2) The Presiding Officer of a Court taking cognizance of an offence on a complaint shall at once examine on oath the complainant and the witnesses as mentioned in section 6 of the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979) of the act of Qazf necessary to the offence.
- (3) The substance of the examination of the complainant and the witnesses shall be reduced to writing and shall be signed by the complainant and the witnesses, as the case may be, and also by the Presiding Officer of the Court.
- (4) If in the opinion of the Presiding Officer of a Court, there is sufficient ground for proceeding the Court shall issue summons for the personal attendance of the accused.
- (5) The Presiding Officer of a Court before whom a complaint is made or to whom it has been transferred may dismiss the complaint, if, after considering the statements on oath of the complainant and the witnesses there is, in his judgment, no sufficient ground for proceeding and in such case he shall record his reasons for so doing.

203C. Complaint in case of fornication. (1) No court shall take cognizance of an offence under section 496A of the Pakistan Penal Code, except on a complaint lodged in a Court of competent Jurisdiction.

- (2) The Presiding Officer of a Court taking cognizance of an offence shall at once examine on oath the complainant and at least two eyewitnesses to the act of fornication.
- (3) The substance of the examination of the complainant and the eyewitnesses shall be reduced to writing and shall be signed by the complainant and the witnesses, as the case may be, and also by the Presiding Officer of the Court.
- (4) If in the opinion of the Presiding Officer of a Court, there is sufficient ground for proceeding the Court shall issue a summons for the personal attendance of the accused:
 Provided that the Presiding Officer of a Court shall not require the accused to furnish any security except a personal bond, without sureties, to ensure attendance before the Court in further proceedings.
- (5) The Presiding Officer of a Court before whom a complaint is made or to whom it has been transferred may dismiss the complaint, if, after considering the statements on oath of the complainant and the witnesses there is, in his judgment, no sufficient ground for proceeding and in such case he shall record his reasons for so doing.
- (6) Notwithstanding the foregoing provisions, or anything contained in any other law for the time being in force no complaint under this section shall be entertained against any person who is accused of zina under section 5 of the Offence of Zina (Enforcement of Hudood)

Ordinance, 1979 (Ordinance No. VII of 1979) and against whom a complaint under section 203A of this Code is pending or has been dismissed or who has been acquitted or against any person who is a complainant or a victim in a case of rape, under any circumstances whatsoever."

9. Amendment of Schedule II, Act V of 1898.---In the Code of Criminal Procedure, 1898 (Act V of 1898), in Schedule II,

- (i) after section 365A in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely:

1	2	3	4	5	6	7	8
365B	Kidnapping abducting or inducing woman to compel for marriage etc.	Ditto	Ditto	Ditto	Ditto	Imprisonment for life and fine.	Ditoo.

- (ii) after section 367 in columns 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely:—

1	2	3	4	5	6	7	8
367A	Kidnapping or abducting in order to subject person to unnatural lust.	Ditto	Ditto	Ditto	Ditto	Death or rigorous imprisonment which may extend to twenty-five years and fine.	Ditto.

- (iii) after section 371 in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely:—

1	2	3	4	5	6	7	8
371A	Selling person for purposes of prostitution, etc.	Ditto	Ditto	Ditto	Ditto	Imprisonment which may extend to twenty-five years and fine.	Ditto.
371B	Buying person for purposes of prostitution, etc.	Ditto	Ditto	Ditto	Ditto	Imprisonment which may extend to twenty-five years and fine.	Ditto;

- (iv) after section 374 the sub-heading "Of Rape" shall be inserted;

(v) for the existing entries relating to section 376 in columns 1 to 8, the following shall be substituted, namely :—

1	2	3	4	5	6	7	8
376	Rape	May arrest without warrant	Warrant	Not bailable.	Not compoundable.	Death or imprisonment not less than ten years or more than twenty-five years and fine. Death or imprisonment for life, if the offence committed by two or more persons in furtherance of common intention.	Court of Sessions ; Ditto;

(vi) after section 493 in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely:—

1	2	3	4	5	6	7	8
493 A	Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.	May arrest without warrant	Warrant	Not bailable.	Not compoundable.	Rigorous imprisonment which may extend to twenty-five years and fine.	Ditto;

(vii) in section 494 in column 1, in column 3, for the word “Ditto” the words “shall not arrest without warrant” shall be substituted;

(viii) after section 496 in column 1 and entries relating thereto in columns 2 to 8, the following shall be inserted, namely:—

1	2	3	4	5	6	7	8
496 A	Enticing or taking away or detaining with criminal intent a woman.	May arrest without warrant	Ditto	Not bailable.	Ditto	Imprisonment of either description which may extend to seven years and fine.	Court of Sessions or Magistrate of the first class;
496 B	Fornication	Shall not arrest without warrant.	Summons	Bailable	Not compoundable	Imprisonment which may extend to five years and fine not exceeding ten thousand rupees.	Magistrate of the first class;
496 C	False accusation of Fornication	Shall not arrest without warrant.	Summons	Bailable	Not compoundable	Imprisonment which may extend to five years and fine not exceeding ten thousand rupees.	Magistrate of the first class; and

(ix) under the heading, “OFFENCES AGAINST OTHER LAWS” after the last entry in column 1 and entries relating thereto in columns 2 to 8, the following shall be added, namely:—

1	2	3	4	5	6	7	8
Section 5 of Ordinance VII of 1979	Zina	Shall not arrest without warrant.	Summons	Bailable	Not compoundable	Stoning to death in case of Muhsan and if not Muhsan whipping not exceeding one hundred stripes.	Court of Sessions
Section 7 of Ordinance VIII of 1979	Qazf	Shall not arrest without warrant.	Summons	Bailable	Not compoundable	Whipping numbering eighty stripes.	Court of Sessions

10. Amendment of section 2, Ordinance VII of 1979. In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), in section 2:

(i) after clause (a), the following new clause (aa) shall be inserted, namely:

"(aa) "confession" means, notwithstanding any judgement of any court to the contrary, an oral statement, explicitly admitting the commission of the offence of zina, voluntarily made by the accused before a court of sessions having jurisdiction in the matter or on receipt of a summons under section 203A of the Code of Criminal Procedure, 1898 (Act V of 1898)."; and

(ii) clauses (c) and (e) shall be omitted.

11. Omission of section 3, Ordinance VII of 1979. In the Offence of Zina (Enforcement of Hudood) Ordinance 1979 (Ordinance No. VII of 1979), section 3 shall be omitted.

12. Amendment of section 4, Ordinance VII of 1979. In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No VII of 1979), in section 4, the word "validly" and the explanation at the end of the section shall be omitted.

12A. Insertion of new, section, Ordinance VII of 1979:--In the Offence of Zina (Enforcement of Hudood Ordinance, 1979 (Ordinance No. VII of 1979), after section 5, the following new section shall be inserted, namely:-

"5A. No case to be converted, lodged or registered under certain provisions:- No complaint of zina under section 5 read with section 203A of the Code of Criminal Procedure, 1989 and no case where an allegation of rape is made shall at any stage be converted into a complaint of fornication under section 496A of the Pakistan Penal Code (Act XLV of 1860) and no complaint of fornication shall at any stage be converted into a complaint of zina under section 5 of the Offence of Zina (Enforcement of Hudood) Ordinance 1979 (Ordinance No. VII of 1979) or an offence of similar nature under any other law for the time being in force."

13. Omission of sections 6 and 7, Ordinance VII of 1979. In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), sections 6 and 7 shall be omitted.

14. Amendment of section 8, Ordinance VII of 1979. In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), in section 8,

(i) the words and comma "or zina-bil-jabr" shall be omitted; and

(ii) in the marginal note, the words "or zina-bil-jabr" shall be omitted.

15. Amendment of section 9, Ordinance VII of 1979. In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), in section 9,

- (i) the words "or zina-bil-jabr" shall be omitted;
- (ii) in sub-section (2) the words "or zina-bil-jabr" shall be omitted; and
- (iii) sub-sections (3) and (4) shall be omitted.

16. Omission of sections 10 to 16, 18 and 19, Ordinance VII of 1979. In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), sections 10 to 16 and 18 and 19 shall be omitted.

17. Amendment of section 17, Ordinance VII of 1979. In the Offence of Zina (Enforcement of Hooded) Ordinance, 1979 (Ordinance No. VII of 1979), in section 17, the words and figure "or section 6" shall be omitted.

18. Amendment of section 20, Ordinance VII of 1979. In the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance No. VII of 1979), in section 20,-

- (i) in sub-section (1), the first proviso shall be omitted and in the second proviso, the word "further" shall be omitted;
- (ii) sub-section (3) shall be omitted; and
- (iii) sub-section (5) shall be omitted.

19. Amendment of section 2, Ordinance VIII of 1979. In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), for clause (a) the following shall be substituted, namely:-

- "(a) "adult", "hadd" and "zina" have the same meaning as in the Offence of Zina (Enforcement of Hudood) Ordinance, 1979; and".

20. Amendment of section 4, Ordinance VIII of 1979. In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), section 4 shall be omitted.

21. Amendment of section 6, Ordinance VIII of 1979. In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (VIII of 1979), section 6, shall be renumbered as sub-section (1) thereof and after sub-section (1) renumbered as aforesaid, the following new sub-section (2) shall be added, namely:

- "(2) The Presiding Officer of a Court dismissing a complaint under section 203A of the Code of Criminal Procedure, 1898 or acquitting an accused under section 5 of the Offense of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance VII of 1979), If satisfied that the offence of qazf liable to hadd has been committed, shall not require any proof of qazf and shall proceed to pass sentence under section 7."

22. Amendment of section 8, Ordinance VIII of 1979. In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), in section 8, the words, "a report made to the police or" shall be omitted.

23. Amendment of section 9, Ordinance VIII of 1979. In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), in section 9, for subsection (2), the following shall be substituted, namely:

"(2) In a case which, before the execution of hadd, the complainant withdraws his allegation of qazf, or states that the accused had made a false confession or that any of the witnesses had deposed falsely, hadd shall not be enforced."

24. Amendment of sections 10 to 13 and 15, Ordinance VIII of 1979. In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), sections 10 to 13 and 15 shall be omitted.

25. Amendment of section 14, Ordinance VIII of 1979. In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), in section 14, subsections (3) and (4) shall be omitted.

26. Omission of section 16, Ordinance VIII of 1979. In the Offence of Qazf (Enforcement of Hand) Ordinance, 1979 (Ordinance No. VIII of 1979), section 16 shall be omitted.

27. Amendment of section 17, Ordinance VIII of 1979. In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), in section 17,

- (i) the first proviso shall be omitted;
- (ii) for the second proviso, the following shall be substituted, namely:

Provided that an offence punishable under section 7 shall be triable by a Court of Sessions and not by or before a Magistrate authorized under section 30 of the said Code and an appeal from an order of the Court of Sessions shall lie to the Federal Shariat Court."

28. Omission of section 19, Ordinance VIII of 1979. In the Offence of Qazf (Enforcement of Hadd) Ordinance, 1979 (Ordinance No. VIII of 1979), section 19 shall be omitted.

29. Insertion of new section, Dissolution of Muslim Marriages Act, 1939 (VIII of 1939). In the Dissolution of Muslim Marriages Act, 1939 (VIII of 1939), in section 2, after clause (vii), the following new clause shall be inserted, namely:-

(viii) lian

Explanation: Lian means where the husband has accused his wife of zina and the wife does not accept the accusation as true".