

CONTENTS

Main News
National
Islamabad
Karachi
Lahore
Briefs
Foreign
Editorial
Business
Sport
Infotainment
Advertise



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CONTROVERSY: A good end to a bad law — *Feisal Naqvi*

The Hudood Ordinance has now been limited to cover only those crimes for which punishment is specified in the Quran itself. All other crimes, such as rape, have been taken out of the Hudood Ordinance and moved into the Pakistan Penal Code, where normal criminal and evidentiary procedure will apply. This means that in rape cases, the evidence of a woman will now be worth the same as that of a man

For most of the past three decades, "Repeal the Hudood Ordinance" has been the rallying cry for Pakistan's feminists. If all goes according to the government's plan, much of what is undesirable in the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (to give the law its full name) will be quietly gutted through the proposed Protection of Women's Act. That should make General Pervez Musharraf very popular with the liberal community. But instead of being welcomed, his efforts have been attacked as "grossly inadequate."

Unfortunately, the liberals have gotten it wrong. The only thing "grossly inadequate" about the Protection of Women's Act is the response it has received so far. The proposed law marks the absolute limit of what is possible in terms of today's political climate. More importantly, the Protection of Women's Act is not a whitewash job: instead, it addresses and fixes the major sources of women's oppression under the Hudood Ordinance.

Since its introduction in 1979, the Hudood Ordinance has been criticised mainly for two main reasons. Firstly, women who complained or alleged that they had been raped risked facing the danger of being convicted on fornication charges, if they failed to prove their innocence. In one case, a blind girl, Safia Bibi, who had been raped, was convicted on charges of zina because she could not identify her attacker! Many rape victims therefore preferred to suffer in silence, rather than take the risk of



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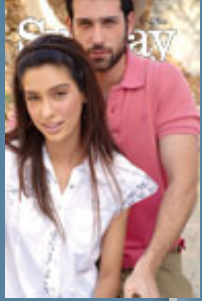
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CONTROVERSY: [A good end to a bad law — Feisal Naqvi](#)

VIEW: [Tony Blair's long goodbye — Christopher Hitchens](#)

LETTERS:

ZAHOOR'S CARTOON:



further undeserved punishment and social ostracism.

The second major problem under the Hudood Ordinance arose from the fact that the law defined zina as sex between two people, who were not 'legally' married. Most people in Pakistan, especially those in the rural areas, are ignorant of the formalities regarding divorce. For example, no marriage is legally dissolved until a certificate of confirmation of divorce is issued. In practice, however, husbands often simply send their wives away after pronouncing the words 'talaq' three times. When these women subsequently remarry, their former husbands will often file charges of zina against them on the grounds that the earlier marriage was not legally dissolved. Such women often end up spending years rotting in jail, before they are cleared of the charges. By then, their marriages and their lives are ruined.

The most important reason for the problems caused by the Hudood Ordinance is that it covered certain crimes for which the appropriate punishment was provided in the Quran (hadd punishments) as well as other crimes, for which the punishment's were provided by common law, or statutory law (tazir punishments). Thereby the ordinance provided hadd punishments for certain crimes (such as rape), even though there is no specific punishment identified for them in the Quran.

The problems arising from this fundamental confusion were then exacerbated by the very broad view taken by certain judges, regarding what constituted a 'confession'. In some cases pregnancy, by itself, was deemed to be a confession. In other cases the presence of two people in a room was deemed as a 'confession'. Finally, under the current procedures, any person can accuse another person of zina and if the accusation was recorded as an FIR by a local SHO, the accused would be arrested. Considering that the ostensible penalty for zina is death, the accused essentially had little chance of bail, for at least the next two years.

The Women's Protection Act addresses each and every one of these problems. The Hudood Ordinance has now been limited to cover only those crimes for which punishment is specified in the Quran itself. All other crimes, such as rape, have been taken out of the Hudood Ordinance and moved into the Pakistan Penal Code, where normal criminal and evidentiary procedure will apply. This means that in rape cases, the evidence of a woman will now be worth the same as that of a man.

Most importantly, there will no longer be any tazir punishment for zina. In other words, a person can only be convicted of zina if, and only if, there are either four eyewitnesses to the actual act of penetration or if the accused voluntarily confesses in open court. Over the past 27 years, no conviction on that basis has ever been upheld.

With respect to the rights of divorced women, the definition of zina has been amended so as to exclude cases in which people reasonably believe themselves to be married. Divorced women will now no longer need to

live in fear of their former husbands.

Furthermore, a number of procedural protections have been added. Confession has been defined to mean confession in court and all previous judgments defining confession have been specifically excluded. The accused cannot be asked to 'confess' unless and until a sessions court issues a summons (not a warrant) asking them to appear. No sessions court can issue a summons until the judge is first satisfied after having examined the evidence of the four eyewitnesses concerning whether or not the act of zina has, prima facie, occurred. Further, no case can be registered unless and until the sessions court concludes that a case is actually made out and if the sessions court comes to the conclusion that the complaint is unjustified, it can immediately sentence the complainant to a punishment of 80 lashes (for qazf). Finally, even if a case of zina is registered, zina has now been defined as a bail-able offence. This means the accused have the right to bail and women will no longer be forced to spend time in jail on zina charges unless and until they are actually convicted. Over the last 27 years, no conviction of zina has ever been maintained on the evidence of four eye-witnesses.

As noted earlier, the response from women's groups to the proposed Women's Protection Act has either been hostile or at best, tepid. Instead of supporting the bill, women's groups have only reiterated their demand for the complete repeal of the Hudood Ordinance. What these groups forget is that politics is the art of 'the possible'. The Women's Protection Act may not be perfect but it will certainly bring relief to millions of oppressed women. In any event, the fight for repeal can always be carried on later.

Those who believe in women's rights must fight for this bill. To stay silent now, or to insist upon an impossible goal, is to betray all those women who have suffered under an evil law.

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