

# Voices from Prison and a Call for Repeal: The Hudood Laws of Pakistan

February 21, 2010

IN 1979, THERE WERE SEVENTY WOMEN in prisons all over Pakistan. By 1988, this figure was six thousand. The reason — the Hudood Ordinances. Promulgated in 1979 by military dictator Zia-ul-Huq in an effort to Islamize the laws of the country, these have been the subject of much controversy and debate. In addition to offenses against person and property — offenses that were already proscribed by the Pakistan Penal Code (PPC) — the Hudood Ordinances cover five areas: Zina (non-marital sex) and rape; theft and armed robbery, qazf (i.e., false accusation of Zina); prohibited use of alcohol and narcotics, and the procedure for whipping.

Many feminist/progressive organizations were born during the initial years after the Hudood Ordinances. In 1983, feminists had protested when Zia-ul-Huq introduced the discriminatory evidence laws — their protest memorialized in famous 1983 photographs showing the police beating women protesters in Lahore[1] However, democratic or military, liberal or moderate — no regime has been able to repeal these discriminatory laws, primarily due to pressure from right-wing religious parties.

"Zina," defined under the Hudood Ordinances as willful sexual intercourse between a man and a woman not validly married to each other, criminalized any and all non-marital sex and conflated rape with sex between consenting adults. Adultery was prosecutable under previous laws which, in a protectionist framework, allowed only for husbands to file charges against other males. Under the Hudood's Zina laws, anyone, including the state, could file such a case and women, too, were now punishable.

The jails filled up fast with poor women, migrants from rural areas to urban centers. In 2004, eighty-eight of the two hundred and forty-six women at the Karachi Central Jail were held under the Hudood Ordinance's Zina laws. Almost all were working class, factory and domestic workers, and almost all were there because of a complaint filed by a family member saying they had committed Zina: a husband claiming he had never divorced an ex-wife who was now married to someone else, a mother complaining her daughter was kidnapped by someone for sex. They were charged under one or more of the five sections of the Zina laws: Zina itself and offenses where Zina may have occurred, such as kidnapping, abducting or inducing a woman to compel her marriage; buying and selling for prostitution; detaining, enticing or taking away a woman for criminal intent; and attempt to commit a crime.[2]

"Hudood" is plural for the word "Hadd," which means "limit" or maximum punishment. Offenses covered under the Hudood Ordinances are punishable by maximum punishment. The Hadd Punishment for Zina is stoning to death. However, it is enforceable only if the accused is a Muslim, he or she confesses, or four, adult, pious, male witnesses testify as to the act of sex. If the evidence falls short, which it usually does, the accused is subject to "tazir" or lesser punishment, which is rigorous imprisonment for a term not less than four years and not more than ten years, and with whipping and a fine.

Yet no one has ever been stoned to death in Pakistan under the Hudood Ordinances. Out of a total of twenty-five Hadd sentences in Pakistan, twenty-three were during Zia's martial law regime between 1980 and 1985.[3] Lawyers Asthma Jehangir and Hina Jilani argue that superior courts go out of their way to overturn Hadd sentences as they expose the glaring injustices and absurdities of

the Hudood laws. Pakistanis would not tolerate such barbaric punishment. According to Jilani and Jehangir, had a Hadd sentence ever been carried out, Zia's Islamization would have faced much more severe resistance.[4] Unfortunately, tazir punishment is itself quite harsh, and these laws *have* survived twenty-six years, and they have overwhelmed the feminist movement as many resources have been expended fighting these laws at the expense of serious issues of poverty, health, education, and violence affecting rural and urban women.

### **A Feel for the Jail**

ACCOMPANIED BY VOLUNTEERS of local organizations, I visited the Karachi Central Jail in March and April of 2004 several times to meet with women accused of Zina under the Hudood Ordinances. Being associated with Zina can be a source of great shame among women in jail. Quickly we caught on to the moral divide in Zina cases; there were those that were "wedding" related and those that were associated with organized prostitution. The former were worthy of compassion; the guards (known as matrons) wanted us to help women with wedding cases. "The other ones get bailed out by the pimps."

Although newspapers claimed that the police vans do not show up to take the detainees to court, most women reported that the police arrive more or less regularly, and women are scheduled for hearings at an average of two hearings a month. The real concern is that not much happens once they are in court. Most cases are continued without matters advancing for two to three months at a time. Excuses vary. At times it is the co-accused (male) who is not brought from the men's jail, the evidence is not produced, the complainant or the lawyer is a no show, or the judge disappears.

When cases drag on, it becomes an additional ordeal for those accused of Zina as such offenses are non-bailable. Under the law, one cannot be released on bail if charged with crimes punishable by death, life imprisonment, or ten years or more in prison. These are punishable under Hadd by stoning to death, and under tazir by up to ten years imprisonment, thirty lashes, and a fine. For such offenses, a bail request may be granted if the defendant is sixteen years old or younger, if the person is aged, if someone has an illness untreatable in prison, or if more investigation is needed on the case. When we visited, only twenty women at the jail had final convictions; the rest were awaiting trial — some for as long as two to three years — and had been denied bail, were unable to post it, or not sure where their bail cases stood. It is well known that most women are ultimately acquitted in Hudood cases on appeal.[5] However, by the time a woman goes through her trial and exhausts her appeals, she may already have spent significant time in jail.[6]

The foreigners at the prison are ineligible for bail as well; many told me they plead the very first time they appear before a judge. About fifty of the prisoners were foreigners. A Malian woman had smuggled 650 grams of drugs she had swallowed in capsules. She was promised a thousand dollars for the mission. She tells me she has three children in Mali; the thousand dollars were appealing. She pled right away so she could commence her three-year sentence, which inflates to three years and nine months if she isn't able to pay a hefty fine.

The jail had an open space in the middle with four living quarters on the sides. The women went about their washing and cooking; their children stayed nearby. A prisoner squatting on the floor counted a two-foot high pile of chapatis (bread) placed on the ground. The jail distributes food to the prisoners, but relatives often bring meat, fruits, vegetables, and soaps for them, treats they otherwise would not have access to. The foreign prisoners receive visits and extra food from their consulates on Fridays. A prisoner who goes by the alias Huma Jaffrey served us tea, biscuits, and chips. Winking at us, she promised to make her very best tea that day. On my third visit to the jail, the matrons and Huma Jaffrey prepared lunch. The matrons were glad to have guests and shared workers' woes. They are paid only Rs. 3,000 (\$60) per month with no health benefits or housing.

Their male counterparts at the men's prisons are provided living quarters, they complain. To add a smattering of insult, the women pay for their own uniforms. "Why do you work here then?" I asked them. They shrugged. Not all matrons are literate; jobs are not easy to find. A matron with a seventeen-year service sits at her desk with her leg propped up. Her foot was swollen and she seemed to be in pain. "The pension?" I suggest. "Even for that you're given the runaround as if it is a favor," replied the senior matron, her eyes shut tightly as she rested her foot.

Jails may appear communal, a place where women and children reside in a particular harmony, but there is a palpable tension. There are power plays and politics. Women live in constant struggle for resources and privileges and under day-and-night stress of supervision and reprimand. Their letters are opened and read by the matrons, who keep a close check on their correspondences. "Checking the envelopes for smuggled goods should suffice?" I suggest. And they tell me the practice is essential to maintain peace. By reading the letters, they make sure women weren't writing to other women's husbands and planning to secure bail from and run off with them after release. "It's happened before. A girl in Number 1 ran off with Number 2's boy." Goods from the outside are much sought after. An African prisoner looks like she will burst into tears as threads she has asked for by paying a matron Rs. 200 (\$4) have not arrived, and she wants to weave them in her hair before her much awaited embassy visit the next day.

A few of the prisoners are held in high regard here. Incidentally they are literate. One, Sumera, the official secretary at the jail, has the face of a fashion model and manages a bit of English. Another, Huma Jaffrey, was a small-time journalist outside and writes feminist poetry in Urdu and tells me she complains directly to the Superintendent, Sheeba Shah, if there is a problem in jail. A third, with short-cropped hair and clad in a masculine shalwar kameez, cruises in and out but gets an earful from the matrons occasionally. Other women remain in their quarters or in the kitchen, in the silent arrangement of an invisible hierarchy. All are locked down just prior to an official "round" by jail authorities, nongovernmental organizations (NGOs), or other groups. A prisoner who arrived in jail on my first visit hasn't understood the format. She appears mentally unstable and strolls in, much to the matron's annoyance, and forces me to hear her as I balance a pile of notes in my lap. "I washed corpses in Riyadh for thirty years," she informs me. A matron drives her away and I am grateful.

Although the jail does not conduct literacy classes or rehabilitation sessions for prisoners, there are several NGOs that provide such services on a limited basis. The prisoners themselves run a school for the children at jail, their teacher a young Pakhtun woman charged with kidnapping. In addition, a few charity groups, including the British Women's Association and Jamaat-e-Islami, a major religious-political party in Pakistan, show up regularly with food and clothes. Jamaat-e-Islami women appeared on the first of April, fully veiled, and with an army of workers who brought about forty- to-fifty bags of rice, flour, sugar, lentils, and hygiene items for women who attend Dars or religious lecture. At the end of the roll call, a French prisoner recited the qalma (Quranic verse) and, much to everyone's delight, the dark blonde-haired woman was handed the last bag. Even the matrons, at the end of the school day for inmates, cover their heads and sit with a sipara (section of Quran) before the Jamaat women. They are deferential, and two are barely able to read the Arabic alphabet. "My faith is intact and I don't subscribe to their vision of Islam" says Huma, who isn't impressed with their neatly packaged gifts. They do the same at the men's jail.

### **The Wedding Cases**

WE INTERVIEWED about fifty women charged under the Hudood Ordinance's Zina provisions. After a couple of meetings, the narratives flowed. Saman, an 18-year-old of the Northern village of Parachinar, told us that she had married a man against her parent's wishes. Her parents had her husband arrested on Zina charges, and she was arrested a few days later. Her parents then

produced a fake nikahnama (marriage certificate) and claimed that she had been married before. Therefore, her "new" marriage was allegedly invalid and a crime against the state. Her green eyes and pale skin, typical of her ethnic background, seem paralyzed in fear. Her parents hired a lawyer for her, but she knows they do not have her interest in mind; they show up in jail and in court and pressure her to leave her husband.

More than seventy percent of the women interviewed reported having suffered verbal abuse, and regular or occasional beatings from their husbands, mothers-in-law, or other members of their husbands' families. In addition to beatings, the violence extended to being turned out of the house at odd hours, threatened continually with spontaneous divorce or separation from their children, locked in the house, or prevented from continuing work or maintaining contact with friends and family. A fair number of women reported that their husbands pressured them to sleep with other men for money and threatened to divorce them if they didn't. Many said that their husbands were heroin addicts and did not provide any financial support.

"Women in jail are only a third of the Zina related complaints lodged at police stations," said Ms. Sheeba Shah, Superintendent at the women's jail.[7] Human Rights Watch writes that in "blatant overstepping" of their responsibilities police officers often force parties to a dispute into a settlement (sulahnama).[8] Several women reported that police officers at certain notorious police stations slapped them, cast verbal abuses at them, and threatened to, in one instance, "set rats loose in their clothing," when coercing them to confess or give in to their complainant's demands.

Katherine's husband, Waris, filed a complaint against her, claiming that she had committed Zina with his nephew. She told me he produced sixteen witnesses, most of whom are family members who claim to have known about the affair. Katherine, a Christian by faith, complained that her husband and her stepson beat her regularly. She suffered their beatings for seven years. On one occasion, her husband thrashed her with a metal pipe. She lifted her kameez to show me a three-inch scar on her side from the beating. "I left one day. I had suffered him long enough. I took refuge at my brother's house in Malir Cantt." She said her husband has a dispute with his nephew concerning money and killed two birds with one stone, getting them both implicated in a Zina case.

Zarina Parveen, a thirty-year-old resident of Benares Colony, lived with her second husband, Falak Sheikh. Her first husband, Hanif, got her arrested on Zina charges, claiming she went into a second marriage without ever obtaining a divorce from him. Her stepbrother had coerced her into marrying Hanif, who was about thirty to forty years older than she was. She suspects he received a payment for the transaction. "Hanif was impotent, and soon after I married him, he begged me to sleep with other men so I could get pregnant. He wanted a child desperately as he had no offspring." She refused to sleep with anyone else. She had other complaints as well. "Money was always an issue. He hardly ever worked, abused drugs, and would beat me when he was in a drug-induced stupor." She complained to her brother about the domestic violence. "But why would he help me? He was the bastard who sold me to this old man," she shrugs. About three years ago, she took matters into her own hands, left her husband and married Falak, a carpenter. She has a daughter with this man, a child she has held onto preciously in jail. Her ex-husband got a police officer involved in the case. "When I appeared before the magistrate I told him everything, how he threatened me, how he abused me. I was still sent into jail custody." She says that each time she sees Falak in court, he threatens her with designs to grab her daughter, as he is still childless. She also states that, in fact, she had legally divorced Falak, but with the help of her brother, he stole her divorce decree. Now she's in a fix as she can't prove divorce from her first husband in court. Her second husband, Hanif, is in Karachi Central Jail on the same Zina charges.

Although it is primarily used as a weapon against women, men too are caught in the whirlwind. For a conviction under Zina, the rule established by the Federal Shariat Court is that it is a joint

offense and requires positive identification of a man and a woman, distinctly, both of whom are consenting parties to illicit sex.[9]

## Repeal

IN 2003, the National Commission on the Status of Women in Pakistan, a statutory body created by the government of Pakistan with only recommendatory powers, reviewed the laws. Writing about the continual resistance to them by women's and other groups, they stated, "instead of remedying social ills, these Ordinances led to an increase in injustice against women, and in fact, became an instrument of oppression against women." [10] A majority of the commission concluded these laws must be repealed. They also found legal defects within the laws. Many argue the Zina laws are not in conformity with Islamic law, stating that that Surah Noor, the main Quranic verse on which Zina law is based, does not mandate jail time (tazir) for adultery at all; and, while it does allow for punishment of a hundred lashes when a case of adultery is proven, the standard of proof is actually much higher (impossible almost), requiring the testimony of four pious, male *eyewitnesses* to the act of Zina, or confession.

A serious criticism of the Hudood Ordinance, one for which it gained worldwide notoriety, is its conflation of Zina with Zina-bil-jabr (rape).[11] When a victim of rape is unable to convince the court of the charge, often her allegation of rape is itself considered as a confession of Zina, and she becomes liable to punishment.[12] Two 1983 cases that, through the media, came to symbolize this injustice, were those of Safia Bibi, a blind, eighteen-year-old female laborer who was raped by the sons of a wealthy landowner, and Jehan Mina, a fifteen-year-old raped by her uncle and cousin. Both women were convicted of Zina. More recently, in 2002, Zafran Bibi, 28, was raped by her brother-in-law and became pregnant. She was convicted and sentenced to stoning to death. But in June 2003, in what was considered a landmark judgment, the Federal Shariat Court acquitted Zafran Bibi, saying that a rape victim should not be considered to have committed a sexual offense and should not be punished.[13]

Not only are the laws discriminatory towards women, and applied in ways that have perverse results (as in the case of Zafran Bibi), such prosecutions are a waste and misallocation of precious government and judicial time and resources. Forces that align themselves with the religious groups like the Jamaat- e-Islami suggest that it is foreign-funded NGOs that complain about the Hudood Ordinances and that their motives are suspect. They argue that the laws do not discriminate against women as qazf laws allow for prosecution of people who falsely accuse others of Zina.[14]

They fail to see that qazf laws are hardly ever used, and that it isn't about a vested agenda but about the welfare of women who are not involved with decision making. Evidently many of the women in jail are victims of domestic violence. Most are from the bottom-most economic wrung of society, and politically and socially disempowered. Resources should be invested in addressing the needs of these women by educating and raising awareness about domestic violence and drug abuse, by building hospitals, homes, and schools. Instead, the state subjects them to further legal and socioeconomic violence by arresting them and prosecuting acts which are wholly private. Although most of these women will be acquitted at some point in the future, the complete breakdown of their families, and the degradation of their lives and those of their children who are forced to live in jail, can never be reversed by an acquittal.

## Footnotes

1. The Laws of Evidence introduced in 1983 met with significant protest. Under these laws, the testimony of one male would be equal to two females. This never passed, and in 1984 a newer

version allowed for such testimony only in hadd or maximum punishment cases. See Asthma Jehangir, Hina Jilani, *The Hudood Ordinances: A Divine Sanction* (Sang-e-Meel, 2003), 31.

2. Many of the eighty-eight women charged under Zina laws at the Karachi Jail were charged with multiple offenses.

3. Jehangir & Jilani, 48.

4. Jehangir & Jilani, 67.

5. According to Zia Awan, president of Lawyers for Human Rights and Legal Aid (Karachi), about 93 percent of women were exonerated in Hudood cases. *Dawn*, March 7, 2004, "Hyderabad: Repeal of Hudood Ordinance demanded." Ex- Chief Justice of Pakistan Supreme Court Nasir Aslam Zahid says that "About 150 women out of 200 are ultimately acquitted by the courts." Author interview, March 17, 2004.

6. Zohra Yusuf, (August 8, 2003), "A Time to Repeal," *Dawn Review*. The author argues for reparations for the many women acquitted in Zina cases who have lost a precious period of their life in jail facing trial. She says women's groups have not made this part of their campaign against the Ordinance.

7. Author interview of Superintendent Sheeba Shah, Karachi Central Jail, March 2004.

8. Human Rights Watch: *Crime or Custom, Violence against Women in Pakistan* (1999), 57.

9. *The News*, Sohail A. Warraich, May 5, 2002, "Keep it, Amend it, or Repeal it?" In 1999, out of 76 Zina cases appealed in the Shariat Court, 66 were appeals made by men, and 9 by women. See Amna Bano, *The News*, June 25, 2002, "Distorting the Hudood Ordinance."

10. Report on Hudood Ordinance 1979, 2003, Government of Pakistan, National Commission on the Status of Women (NCSW ) (2003), 36-39.

11. 40 percent of women interviewed in 1988 from a pool of 82 had been charged with Zina. 20 percent had originally complained of rape. Jehangir & Jilani, 138.

12. Shahnaz Khan, (December 1999), *Mediating the Hudood Ordinance in Pakistan: A Canadian Re-Telling*, 10; see also Brig (Retd) Hayat A.A., (2002), *Women: Victims of Social Evils* (Press Corporation of Pakistan), 18.

13. Amnesty International, AI Report 2003, "In the Name of Honor," Abdul Sami Paracha, *Dawn*, May 23, 2002.

14. See, for example, an Urdu language publication of the conservative, religious organization, Women Aid Trust, *Hudood Ordinances 1979: The Truth about the Problems with the Hudood Ordinance (Aitarazaat ki Haqiqat)*.