



Bill on Protection of Women (Criminal and Family Laws) (Amendment) Act, 2006

Analysis by Shirkat Gah- Women's Resource Centre¹

A. General Comments

1. The "Bill Protection of Women (Criminal and Family Laws) (Amendment) Act, 2006" recognizes the vast injustices stemming from the Hudood Ordinances (1979) and, noting that these are not in conformity with Islam or the constitution, it proposes to address these. The Bill covers a number of key issues to address "the misuse of the law [that] has made it an instrument of oppression in the hands of vengeful husbands and other members of society," as stated in Statement of Objects and Reasons. To eliminate the chances of any future misuse of the law and to ensure that that the objectives are fully met, the Bill requires some further amendments.
2. Some of the proposed new sections to be inserted deal with matters already covered under existing PPC sections; others are identical (or virtually identical) to previous PPC sections that were replaced by the Hudood Ordinances. Some proposed omissions need to be reconsidered. Some clauses rendered redundant by the Bill need to be omitted. These are specified below.
3. There is no provision to deal with offenders who are minors; this needs to be rectified.
4. Certain critical definitions are missing such as the offence of 'zina;' this needs to be provided.
5. The offence of zina liable to hadd has been retained. The Bill's intention being to bring the law into conformity with the injunctions of Islam; it needs to be highlighted that the offence of zina and punishment for this are both prescribed in Verse 2 of Surah-al-Nur (100 lashes). The Verse makes no distinction between the offenders on the basis of their marital status. Consequently, the sentence of stoning to death (rajm) for Muhsans (men and women) as provided for in Section 5 of the Zina Ordinance must be deleted to bring it into conformity with the Quranic Verse; only the sentence of 100 lashes may be retained.

¹ The comments and suggestions made in this analysis do not detract from Shirkat Gah's position that the Hudood Ordinances (1979) need to be repealed in their entirety.

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B. Specific suggestions for draft Bill

Page 2: Point 2 of Bill: Insertion of new Section 365B of PPC Kidnapping, abducting or inducing a woman to compel for marriage etc.

There is no need for a new section since this matter is covered in the pre-zina ordinance section 366 of the PPC of the same heading (displaced by Section 11 of the Hudood Ordinances 1979). Section 366 of the PPC should be reinserted and amended to specify a minimum sentence of imprisonment. The Bill's proposal of only retaining a 'life imprisonment' makes this a non-bailable offence. This is too harsh and may lead to courts being extremely careful about convictions. It is therefore suggested that:

Insertion of pre-zina ordinance section 366 of the PPC, Act XLV of 1860 with the following new addition: "with imprisonment of ***not less than 3 and*** upto 10 years"

Page 2: Point 3 of Bill Insertion of Section 367A Kidnapping or abducting in order to subject person to unnatural lust:

Unnatural acts are already an offence (Section 377 PPC) for which the minimum sentence provided is 2 years and not exceeding 10 years rigorous imprisonment. By suggesting a greater punishment (death or rigorous imprisonment up to 25 years) for enticement/ abducting, the Bill makes the act of enticement/abducting a greater crime than the act itself. It is therefore suggested that:

This point of the Bill be deleted; Section 377A be inserted and for kidnapping the offences of 377 PPC be specified as a maximum of 10 years rigorous imprisonment. In any case the punishment for enticement be revised to not exceed that of the more serious offence of the unnatural offence itself.

Pages 2-3: Point 4 of Bill: Insertion of new Section 371A Selling of person for the purpose of prostitution etc. and new Section 371B Buying of person for the purpose of prostitution etc.

These matters are dealt with under the previous Sections 372 and 373 of the PPC. To facilitate the legal processes in court it is therefore suggested that:

1. The proposed insertion ***371A be changed to 372 retaining the text of the Draft Bill with the addition of*** a minimum sentence specified as 7 years.
2. The proposed insertion ***371B be changed to 373 retaining the text of the Draft Bill with the addition of*** a minimum sentence specified as 7 years.

Page 4: Point 5 of Bill: Insertion of Section 375 Rape and 376 Punishment for Rape

Several categories of rape have not been covered, it is therefore suggested that:

1. In addition to those mentioned in the Bill other forms of rape should be included

such as statutory marital rape for child brides under 16 years, intercourse with wife during legal separation where legal separation exists under personal status law, and custodial rapes of any sort. Suggestions as provided for in the Indian Penal Code are attached as appendix 1.

2. Under 376 Punishment for rape: the sentence of death for gang rape be deleted; instead a minimum sentence of 14 years be inserted.

Page 4: Point 6 of Bill: Insertion of Section 493A Cohabitation caused by a man deceitfully inducing a belief of lawful marriage

The previous Section 493 PPC covered this offence, it is therefore suggested that the Bill provide for:

The insertion of section 493 of the PPC with the content as suggested for 493A with the addition of a minimum sentence of 5 years.

Page 5: Point 7 of Bill: Insertion of new Section 496A Enticing or taking away or detaining with criminal intent a woman

This new insertion is redundant. The issue of enticement for unlawful purposes of minors (under 16 years for girls and under 14 for boys) is already covered under the extant Section 361 of the PPC (treated as kidnapping). As acknowledged by the Statement of Objectives of the Bill, the previous Section 16 of the Zina Ordinance was being misused to harass couples and other citizens. It is therefore suggested that:

This new proposed section 496A be deleted.

Pages 5-6: Point 9 of Bill: Insertion of new Section 203A Complaint in case of Zina

To avoid any possibility of misuse of the law it is suggested that:

Under subsection (5) it be added: "There shall be no revision or appeal against the order of dismissal of complaint."

Page 7: Point 11 of Bill: Amendment of Schedule II Act V of 1989

This point needs to be amended according to the suggestions made above.

Page 10: Point 14 of Bill: Amendment of section 4, Ordinance VII of 1979 in the Offence of zina

There is no explanation defining 'zina.' This needs to be reinserted as:

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

Page 11: Point 20 of Bill: Amendment of Section 2, Ordinance VIII of 1979 (Offence of

qazf)

To further clarify the definition it is suggested that **“as amended by the 2006 Bill”** be added; the draft to read:

“(a) “adult”, “hadd’ and “zina” have the same meaning as...., and **as amended by the 2006 Bill**

Page 11: Prior to Point 21 of the Bill: re Qazf:

To give full effect to the concern expressed by the Draft Bill regarding the misuse of the current law to defame innocent women, and in view of the omission of Sections 12 & 13 of the Zina Ordinance, **Section 3 of the Offence of Qazf needs to be amended** as follows:

1. In Section 3 of Offence of Qazf after the words: “or by signs or visible representations, makes” **add the words “publishes, sells, or distributes in any other fashion”**
2. **“First Exception” to Offence of Qazf be omitted** since it is in fundamental contradiction to the principles of qazf and there is no definition of either “truth” or “public good” provided in the ordinance or the penal code
3. **“Second Exception” to Offence of Qazf be omitted** as its sub-clause (a) now stands redundant with the insertion of Section 203A in Cr. PC; sub-clause (b) stands redundant with insertion of 17B in Qanun-e-Shahadat Order 1984 and insertion of 375 PPC; sub-clause (c) is no longer required.

Page 11: Point 25 of Bill: Omission of Section 15

Section 15 (punishment for attempt to commit offence of qazf) be retained and modified in keeping with the suggested amendments to Section 3 as given above.

Page 12: Point 30 of Bill: Insertion of new Article, Qanun-e-Shahadat Order, 1984

Note: **As stated above, the explanation of the offence of zina must be clearly provided as:** *Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of zina.*