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# How far are penal laws effective in protecting women

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## Introduction

The legal code of a nation ordinarily reflects, or should reflect, the values of the society that form that nation. It depicts the influence of its past history and its future aspirations or, at least, the aspirations of those in control. The structure, mode, content and intent of the code indicate the ethical concepts peculiar to that nation. All penal codes have ostensibly the same aims - to punish the offender, to prevent crime and to preserve the peace. Nevertheless, each country's penal code differs in its scope, its emphasis, its priorities and, ultimately, in its effectiveness.

Let us take the example of Pakistan. The Criminal and Penal Code of Pakistan is a part of its colonial heritage. Even today it stands almost intact. A few minor changes have taken place but, by and large, it remains a code conceived by the British according to British concepts of right and wrong with an attempt to adapt it to local conditions. However, recent years have witnessed attempts not to change the entire code, but to institute parallel forums and enact new laws which deal differently with crimes, evidence and procedure already covered by the criminal and penal codes. The result has been mass confusion and overlapping of powers and jurisdiction.

Today, for example, criminal acts can be tried by a military court or a criminal court. The latter adopts either procedures laid down under the Criminal Code or the Shariat Law, depending on the offence committed. Each forum has its own procedure, outlook, laws of evidence and punishment. This has left a vacuum in certain matters, and also created a number of loopholes which can only be mended when the entire penal and criminal code is examined as a whole.

Women as a special group require special protection of penal laws owing to their comparative physical weakness. They are likely to be physically overpowered and exploited more often if the act goes unpunished. So, the first question we have to ask ourselves is - Do we have adequate laws to protect the rights of women? Only after this can we go on to examine the effectiveness of the laws in existence. The factors that contribute towards making any written code effective are the procedures, the actual working of the courts, the laws of evidence the media pressures, the more effective pressure groups, the interpretations of the legal provisions by the courts and the policies of the administrator of law.

## Rape and Zina

Female citizens need to be adequately protected against sexual crimes or crimes where they are physically assaulted. Perhaps this is the most important safeguard penal laws can afford to the female sex. A guarantee that offenders will be fairly tried and fairly punished for these offences make such legislations effective. In Pakistan the statute that governs the laws of sexual violations is the Haddoo Ordinance 1979. Originally, the maximum punishment for rape was stoning to death, now conviction for it carries up to twenty-five years of imprisonment and a 100 stripes. (1) But evidence required to prove rape for maximum punishment is either ocular evidence of four adult male witnesses who have

actually seen the act, or confession of the accused throughout the trial period. (2) Therefore, the victim's own statement has no testimonial value. Even for a lighter punishment strong circumstantial evidence is required. Moreover, to allege rape is risky since the victim can be made an accused or co-accused in her own case, which can be converted to one of Zina. Zina, which is any sex outside marriage, is a cognizable offence. Punishment for it is 4 to 10 years of rigorous imprisonment and 30 lashes. (3) Even minors can be convicted of Zina though the sentence is lighter - upto 5 years plus 30 stripes. (4) A woman alleges rape and takes a medical examination. If the accused is acquitted the woman is convicted of committing a sexual act, the medical evidence being proof of the commission of the crime. Widows, unmarried girls and wives whose husbands are away have no other legal escape but to prove rape or be punished for Zina.

The victim must prove that she was definitely not a consenting party to her rape. If she is unable to convince the court, she is punished as a co-accused for Zina. This peculiarity of our statute and its interpretation was highlighted in the case of a blind girl, Safia Bibi. Safia Bibi was raped by her employer and his son. She worked as a domestic servant and out of fear did not tell any one of the rape. However, Safia confided in her mother when she discovered that she was pregnant. Safia's father filed a complaint of rape. The trial court acquitted the two accused but convicted Safia Bibi of Zina. The benefit of doubt was given to the accused.

Women in Pakistan staged demonstrations against this judgement, journalists wrote articles and women lawyers agitated in their Bar Association. The pressure was immense and the Shariat Court on its own suo motu powers took cognizance of this matter. Women lawyers appeared on behalf of Safia Bibi who got acquitted. The case of Safia Bibi invoked sympathy since a poor blind girl was victimised. Since then there have been many Safia Bibis and will be many more if the Zina Ordinance remains with its present interpretations.

There are numerous reported cases where a complaint lodged is of rape but the trial court has punished both parties for Zina. The sentence has often been upheld by the superior courts. (5) Even worse are cases where the accused is acquitted on benefit of doubt but the victim is punished for Zina owing to her medical report. Here I recourt only a few judgements which have blatantly violated all concepts of protection to woman.

The Supreme Court in a case brought before it on appeal, where the sentence of rape was converted to Zina, made the following observations. (6)

"With respect it is pointed out that the Federal Shariat Court failed to notice that the correct age of the victim was only 16 years as against the petitioner a fully grown up male in his mid-twenties. She had a frail body weighing only 94 pounds. She bore marks of violence on the backs of both forearms particular whereof are typical of use of brutal force. She was a virgin before the act. The fact that gagging of her mouth with a clean cloth did not produce an injury, was not indicative at all of either it being a false assertion or that it was unnatural".

An orphan abandoned child of 13 years was raped by her uncle and his son. This child Jehan Mina was doing domestic work for her ailing aunt. After a few days of the crime Jehan Mina narrated the incident to her family members. No one believed her initially. They physically thrashed her and threatened to kill her. However, she maintained her story. One of her uncles who now believed her, filed a complaint of rape. The accused were acquitted for want of evidence. Jehan Mina was punished with these remarks :

"The present case against Jehan Mina is, therefore, not a case where merely her statement can be regarded as the basis of

conviction but in fact the basis of the conviction is her unexplained pregnancy coupled with the fact that she is not a married girl.

...we sentence her to 3 years Rigorous Imprisonment, plus 10 stripes in view of her tender age and also on account of the fact that her father was dead and her mother had contracted another marriage and she was, therefore, a girl who lacked the benefit of parental affection. The stripes should be inflicted in accordance with the provisions of Section 5 of Execution of Punishment of Whipping Ordinance 1979. Since the appellant has given birth to a child and the rearing of the child is of utmost necessity, therefore, following the precedent of the Holy Prophet (P.B.U.H.) we have decided to suspend the execution of punishment of whipping and imprisonment till the child attains the age of two....and thereafter it will be carried out when the child has attained the age of two years.(7)

In a reported case (PLJ 1982 FSC 174) a young girl Mst. Taslim Bibi gave birth to a child and filed a complaint of rape. The trial court convicted both the complainant and the accused of Zina. The accused man appealed to the Federal Shariat Court and got acquitted. Taslim Bibi is still serving her 5 years of sentence. Her child died after 2 months in the jail.(8)

Two fifteen year old girls complained of rape. The trial court convicted the accused but the Shariat Court found it a case of consent and altered the sentence of Zina. On appeal filed by the accused man the Supreme Court observed that the view of the Federal Shariat court was without any cogent reason. But since the Supreme Court was not competent sua motu to either enhance the sentence or change the conviction the case remained one of Zina.(9)

Even twelve year old victims of rape have received punishment for Zina. (10) Consent of a minor should normally be immaterial in such case, especially where they are exploited by grown ups. Sometimes the courts apply their own concepts of decency and morality while giving weight to a woman's evidence. In the mind of the court the difference between a liberal and a promiscuous person does not exist in Pakistan. Women who show any independence are taken as a "shady character" or a person with loose morals.(11)

Attempt to rape is punishable with 12 years and 15 stripes.(12) However, preparation to rape is only punishable to two years, of rigorous imprisonment. The court have made distinction in the act of preparation and attempt of rape. A portion of a judgement on a case of attempted rape on a 14 year old girl is recounted.

"The case is proved to the hilt on merits. The only point that requires consideration in this case is whether in the circumstances of the case the removal of the Shalwar of the complainant preceded by a biting kiss in her cheek would amount to preparation or attempt. If it is held to be a case of preparation the appellant can be sentenced only under Section 354 Pakistan Penal Code to a maximum sentence of two years rigorous imprisonment".(13) Ultimately, this was held to be preparation, not attempt.

Penalty for victimless crimes such as Zina is normally not severe. However, in Pakistan it is a cognizable offence. Women have no protection from being implicated in a false Zina case. The complaint is made and the accused are taken into custody. The accused is subjected to medical examination. If a woman refuses to be examined, she takes the risk of being convicted. A study of the case-laws on Zina reveal cases where even married couples have been accused of Zina. In one case, the trial court convicted both husband and wife even when a valid marriage certificate was produced. In another case a married woman was convicted of Zina

by the trial court. The complainant was an anonymous letter written to a police officer alleging that the accused was pregnant while still unmarried. The woman was arrested and convicted at trial. What is even more amazing is the fact that a marriage certificate and the husband's testimony in favour of his wife were set aside by the trial court.(14)

### **Qazf ordinance**

The remedy for an innocent persons falsely accused of Zina or rape is to complain of Qazf. The Qazf Ordinance 1979 punishes anyone making a false imputation of rape or Zina with a maximum punishment of two years and whipping of eighty stripes.(15) Cases of Qazf are few. Anyone who has gone through one such legal process has probably had enough for a life time. In certain cases the superior courts have direct the acquitted person to make a complaint of Qazf yet no such complaint was made.(16) Moreover, the statute is vague. Evidence for maximum punishment is testimony of two adult male witnesses, confession of accused or accusation made before a court.(17) A husband accused a wife in a court proceedings of having illicit relations with another man. The wife made a complaint of qazf against her husband. The court held that illicit relations does not necessarily impute Zina and the case was dismissed. At present a matter on qazf is pending before the Shariat Court. The issue to be decided is whether a husband can be convicted of Qazf on the complaint made by this wife. The complainant in this case is a woman who was married to a Pir (religious leader) for many years. They had three children. The husband alleged before The Family Court that the woman was immoral and his children illegitimate. The trial court convicted the husband but the Shariat Court has granted him bail till decision of this case.(18)

The reason for interpreting this law is because of an Islamic procedure laid down for divorce in cases where a husband accuses his wife of adultery.(19) Here the accusation is made before a court. If the woman denies it, both parties repeat their accusation/denial on oath five times. Thus the marriage is dissolved. Yet a woman can be prosecuted for Zina. On the other hand a man cannot be prosecuted for Qazf. If the man refuses to take the oath, he is imprisoned for such time till he takes the oath. Where the woman refuses to take oath she is punished for 10 years of rigorous imprisonment and administered 30 stripes in public.

### **Protection throughout the legal procedure**

Women accused of an offence need to be protected throughout the legal procedures. Human rights of a defendant during the course of legal procedures prior to conviction are observed with concern and completely disregarded subsequent to conviction. Whereas criminal law comes into operation the minute an offence is committed and continues till either the accused is acquitted or released after punishment.

Police force everywhere is male dominated, therefore, women require protection regarding physical privacy. Laws are enacted where women suspects are searched by a female and examined by a female doctor. In Pakistan, the law gives women that protection and infact where a woman is in "purdah" women police force alone can raid places for her search. (20) In theory this is so, but no law and no authority can control the "police power" of a society, specially where the state is itself dependant on this power and misuses it for political reasons. The normal police practice is to suppress the weak. Where a suspect cannot be apprehended, the police takes his women relatives in custody. This is the simplest and the most efficient method to ensure apprehension of the wanted suspect. Police stations have no female constable or officer. Women are, therefore, kept in custody of male officers and are at their mercy.

Women prisoners in Pakistan live in practically subhuman conditions. Undertrials are subjected to physical labour although it is disallowed by law. Women convicts in Punjab are all housed in a single jail at Multan. There are altogether 4 women prisons in the country. This means that women convicts cannot serve their sentence in their own home districts and are cut off from their relatives. Conditions in these prisons are grave and even the government in a report regarding Female Crime made the following observation :

"An overwhelming majority of the convicts manifested an extremely negative perception of law enforcing agencies. The most severely attacked agency was the police force. They accused prison staff of being unfair and cruel".(21)

Recently, a number of cases where women were maltreated, tortured and made pregnant in women jails were reported. Cases of Zina were registered against these women prisoners. Women groups in Pakistan strongly protested against this injustice and presently an inquiry is being held by the Government (Annexure attached).

### **Right to abortion or a criminal act ?**

Even more difficult is to enact and enforce laws of morality. The universal problem in legislating morality is to determine whose idea of morality is to be enforced. Nowhere is this basic disagreement over moral issues more evident than in the controversy of abortion. There are those who feel that the right to have abortion on demand follows from a woman's right over her body; others consider it a form of murder. Liberal societies, who are accepting the concept of individual freedom, have granted women the right to abortion within weeks of pregnancy. In Pakistan, however, the person aborted and the person causing abortion can both be punished with rigorous imprisonment of up to 10 years.(22) In spite of these laws illegal abortions are carried out in Pakistan resulting in a high death rate. No one dares advocate the right to abortion and everyone is aware of quack abortion centres. Incidents of abandoned newborn infants are many. Fear of punishment and social pressures force unmarried mothers to throw away their infants. The society is not only contemptuous and unsympathetic towards the mother but also towards all children born outside of wedlock. A couple of years back a newborn who was left at the door of a mosque in Karachi was stoned to death. The local Maulvi (priest) incited the people to kill this infant which he said was the product of a devil. A case of murder was registered against these people, but no arrests were ever made.

Women activists are demanding the right of abortion for a victim of rape. Seminars on this issue were held and all shades of opinion did agree to it in principle. However, the matter was dropped since the time of the alleged abortion could not be determined. Women demanded that the alleged victim be given a right of abortion the minute she alleges rape. This was only acceptable to the fundamentalists if the women were prepared to risk punishment for Zina and abortion, in cases where rape was not proved.

### **Conclusion**

In Pakistan laws regarding women have changed from one extreme to another. In a male dominated society with feudal traditions and a colonial heritage, the laws themselves were very liberal in protecting women. In fact they went too far and discriminated positively in favour of women. Two such examples being the special right to bail for women and no punishment for the female partner in case of adultery.(23) However, in practice society remained male dominated and the status of women remained inferior. Recourse to protective legislation or even to legislation granting women equal rights was rare. But whenever invoked they were effective enough. The possibility of redress of grievances was there and was being increasingly utilized.

Ever since the Islamisation process has been brought in, the fundamentalists have taken over. Under the guise of religion they have enacted their own obscurantist laws which have been particularly detrimental for women. Even the constitutional provision granting complete equality to women has been suspended.(24) A number of laws enacted and proposed have relegated women to an inferior status.(25) This has taken away whatever remedy women enjoyed through legal process even in theory. Even worse is that such acts have fostered an inherent contempt for the status of women by certain sections of the society. This has resulted in glaring crimes against women duly protected or covered up by the law enforcing agencies. Such reactionary forces have obviously produced women's pressure groups agitating against discrimination. Their protests against extreme cases of excesses such as the Safia Bibi's (The blind girl) case have been met with temporary palliatives. In the case of Safia Bibi, laws were left intact but the individual case was dealt with by the Shariat Court. In other cases laws have been hastily amended in a drastic fashion and such unreasonably harsh punishment meted out that the credibility of the law itself is lost. This is done as a reaction to pressure of public opinion and women's groups along with the embarrassment caused by the attention of the international media and the world community. In 1984 an amendment was made in the Pakistan Penal Code, enhancing a two years sentence for outraging a woman's modesty to capital punishment.(26) This amendment was made following an incident in a village called Nawabpur. The reason for this vendetta was a trivial feud between the carpenter and the Town Committee member's wife. These women and minor girls were made to dance naked at pistol point in the presence of police constables and the local persons. The incident sparked off countrywide demonstrations by the women and some men. Newspapers gave a sympathetic coverage to the victims. Public morality was outraged. The penalty for such an offence under the Penal Code was only two years, therefore the punishment was enhanced to death penalty or life imprisonment. Tendency to overreact to public pressure is sometimes counter-productive. No one is willing to enforce laws where the penalty is out of proportion to the crime committed. Enforcing such regulations is always difficult. Not only the law maker but even the citizens realise that such laws are only enforced for a few unfortunate ones. Even the culprits of Nawabpur were not given death sentence or life imprisonment. In fact two months later they were released on bail and the carpenter's family left Nawabpur fearing another vendetta. Such crimes were repeated and the enhancement of punishment had no preventive effect.

In order to make protective legislation for women effective, it must be enacted after due consideration and debate like all other legislations. All shades of opinion must be thoroughly considered in the background of international norms of justice and equality. The laws must reflect not only the national aspirations but also the international strive for an end to the exploitation of women. Laws must protect women against genuine handicaps and not grant them special status generally, which makes a mockery of the law. These laws must not tilt hastily from one extreme to another in response to extreme pressures.

In societies like Pakistan special responsibility devolves around educated classes as a whole. In matters regarding women the responsibility rests particularly on educated women. They must develop a national awareness to the particular plight of a woman in society. Her weakness in face of centuries of male dominance and the unfairness of many of the prevalent social attitudes. Such efforts are not futile. We have seen the impact of even puny protests of a small segment of women in Pakistan. Their outcry against exploitation and discrimination have had tremendous impact even in the adverse conditions prevailing. Persistence is bound to bring about a social change where women are treated as

equal but different.

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  - a. Section 497 of the Criminal Procedure Code
    - (1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer incharge of a police station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life. Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.
  - b. Section 497 of the Pakistan Penal Code. Adultery : Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery and shall be punished with imprisonment of either description for a term which may extend to five years or with fine, or with both. In such case the wife shall not be punishable as an abettor.
    - 1) Woman not accused in this Section PLD 1974 Lah I
    - 2) Complaint necessarily by husband (NOW OMITTED)
  - c. Section 393 of the Criminal Procedure Code, 1898 - prohibiting whipping of women. (NOW OMITTED)
24. In Abeyance vide Chief Martial Law Order I of 1981, dated 24-3-81.
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# Zina: the Hudood ordinance and its implications for women

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On 7th November 1987 a court in Karachi sentenced a woman of twenty-five (Shahida Parveen) and a man of thirty (Mohammed Sarwar) to death by stoning. The heinous crime for which these two have been charged and have met such harsh punishment is that of *zina-bil-jabr* (which is considered close to the concept of rape). The case is not however so simple. The woman had been divorced by her first husband. Divorce papers had been signed in front of a magistrate. The document however had not been registered in the local council office by the husband as required by law, and was therefore not legally binding. Unaware of this Shahida, meanwhile, sat out her period of *iddat* (the traditional period of ninety-six days before which a woman cannot remarry following a divorce, as laid down in the Quran) with her parents in Lahore, then, subsequently remarried. Shahida had an affidavit attested by a magistrate in Lahore to confirm her status as an adult free to marry whosoever she wished. As far as she was concerned she was on safe ground.

Her first husband, rebounding from a failed attempt at a second marriage, decided he wanted his first wife, Shahida, back. Given that he had not had the divorce documents registered, his marriage to her was still legally binding. Hence, her second marriage to Sarwar was by definition *zina/zina-bil-jabr* (adultery/rape). Hence stoning to death.

Clearly, whatever the legal niceties of the case may be, there has obviously been a serious miscarriage of justice. Not only is the sentence reprehensible, but by all norms of social behaviour and justice, the woman and her second husband are innocent.

Sadly, such miscarriages of justice have been quite common since the then martial law government in Pakistan introduced the *Hudood Ordinance* in 1979 by a promulgation. The present elected government confirmed the law on the statute books on coming to power in 1985.

The background to the *Hudood Ordinance* lies in the desire of the Pakistani government to bring laws in Pakistan in conformity with the Quran and Sunnah (the sayings and deeds of the prophet). It is an integral part of the much heralded Islamization process presently taking place in this country.

The *Hudood Ordinance* deals with the offences of prohibition (consumption of drugs and alcohol), *zina* (rape, adultery, fornication), theft and *Qazf* (perjury). It is with regards to *zina*

that the *Hudood Ordinance* has been most controversial.

Prior to 1979, adultery and fornication were not crimes against the State. Under the *Hudood Ordinance* both are now serious offences liable for the heaviest of punishment death, and also by stoning.

*Zina* is defined as wilful sex between two adults who are not validly married to each other. Where sex takes place against the will or consent of a person (either man or woman), or by use of force, or where one person is falsely led to believe that his/her partner is validly married to him/her, is defined as *zina-bil-jabr*.

Both types of *zina* are liable to the *Hadd* punishment (stoning to death in public) if either a confession is obtained, or if the actual act of penetration is witnessed by four adult, pious, and forthright males. Failing this the lighter punishment of *Tazir* (rigorous imprisonment and whipping) applies. *Tazir* (rigorous imprisonment and whipping) applies. *Tazir* punishment is given when despite there being no witnesses, or confession, the court is convinced that *zina* or *zina-bil-jabr* took place.

The implications arising out of the *Hudood Ordinance* are severe, and its interpretation by the courts has led to serious miscarriage of justice for women. Whilst *zina* effectively applies to adultery or fornication and *zina-bil-jabr* to rape (either by the man or the woman), the onus of providing proof in a rape of a woman rests on the woman herself. If she is unable to convince the court, her allegation that she has been raped is in itself considered as a confession of *zina* (sex outside marriage) and the rape victim effectively implicates herself and is liable to punishment. Furthermore, the woman can be categorised as the rapist herself since it is often assumed that she seduced the man.

In fact, such cases have occurred where a rape victim is herself punished for *zina* while the rapists roam the streets. In July 1983, Safia Bibi, an eighteen year old blind girl, raped by her landlord and his son, and subsequently pregnant, was sentenced by the trial court to 15 lashes (to be administered publicly) plus 9 years imprisonment for *zina*. Unable to positively identify her assailants, the rapists were acquitted of the crime. Similarly, a thirteen year old orphaned girl was raped by her uncle and his son and became pregnant. Unable to convince the court that rape had occurred, she was instead awarded the *tazir* punishment of 100 lashes plus 3 years rigorous imprisonment for *zina*; the fact that she was pregnant being proof for the court that sex outside marriage had taken place.

Various other types of miscarriages occur in practice. A husband can file an FIR (First Information Report) with the police alleging that his wife has left him with another man. On the strength of this allegation the wife and her alleged lover are arrested and sent to jail to await trial. This is an extremely powerful lever of control that a man can, and often does, use to subjugate his wife.

For example, if a woman files for divorce against her husband and leaves her home (as required in law), her husband can file an allegation of *zina* against his wife if she moves into a household which has a man other than her blood relative. In early 1987 Roshan Jan (24 years) filed for divorce against her husband on the grounds of severe physical mistreatment, and moved into her neighbour's house. Her husband lodged an FIR alleging that she was committing adultery (*zina*) with the married neighbour. On the basis of this FIR Roshan Jan was arrested and has been in jail, without legal aid, awaiting trial for *zina*.

Even if a divorce document is attested by a magistrate, if the husband fails to register it with the chairman of the local council as legally required, the divorce is invalid. If the woman is unaware of this and subsequently remarries she can be prosecuted for *zina*. Furthermore, in such a case the woman can be accused of

"raping" her second husband (*zina-bil-jabr*) on the grounds that she misled him into believing that she was validly divorced. The Shahida-Sarwar case, mentioned above, is one such example.

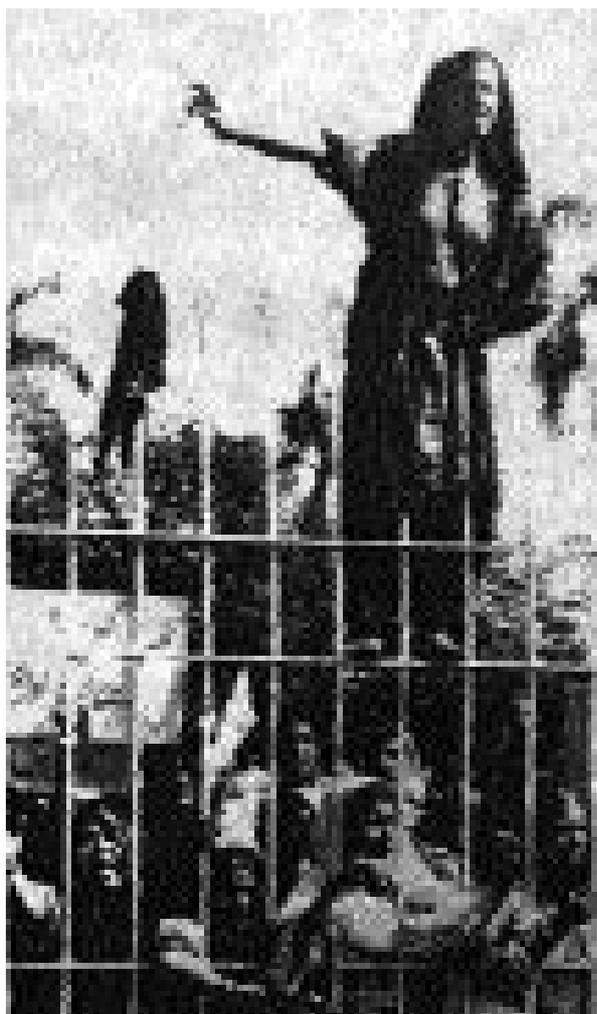
One of the most frequent circumstances under which *zina* is alleged to have occurred is in cases of elopement. Of the forty-four women in Karachi Jail charged with *zina*, over half are accused of having committed *zina* due to abduction. The assumptions being that with any couple who elope (or as is absurdly stated where a woman is abducted) sex must have taken place, and they are thereby liable to prosecution for *zina*.

Eighteen year old Zahida is one such case of being charged with *zina* on the grounds that she ran away with her fiance. Her step mother wanted her to marry an elderly man (who was willing to pay a higher bride price). Zahida refused and eloped with the intention of marrying her fiance secretly. Her father lodged an FIR of abduction the same day and the police picked them up at 4 a.m. They were charged with *zina*. Both are now in jail. Zahida's case is representative of many other cases with similar circumstances.

If the accused parties in a *zina* case cannot be found, it is quite common for the police to arrest close relatives (usually elderly parents) who are charged with being accomplices to *zina*. They

are thereby liable to the punishment of *tazir* (lashes and rigorous imprisonment). Naikan Bibi (sixty years) is an illustration of such an accusation. Her son ran away with an unmarried woman, the girl's family unable to trace the couple lodged a complaint against Naikan Bibi and her husband as accomplices to *zina*. Both she and her husband are now in jail, without legal support and under the threat of the punishment of whipping (despite being over sixty years old). Again it is assumed that the two who ran away have necessarily committed *zina*. There are at least 3 such cases in Karachi jail in which elderly parents have been accused of being accomplices to *zina*.

Of the forty-four women in Karachi jail accused of *zina*, at least thirty-six are cases with circumstances similar to those described above. Clearly, therefore, the present interpretation of the *Hudood Ordinance* leaves much to be desired. Furthermore, of these forty-four women at least seventeen have been in jail for over a year, some even for five years, awaiting trial. Bail in cases of *zina* is usually set at Rs. 20,000 - 30,000/- ( US \$ 1,000 - 1,500). A sum which is beyond the reach of most of the accused, given that they all come from low-income social backgrounds. As it is bail could realistically only be furnished by the husband or the father, and it is they who are often the complainants. Consequently, without the economic support of either the husband



*Demonstrations of Pakistani women in Karachi to protest against inaction of the authorities after the rape and murder of two young girls. (Libération - 3/02/87- Paris)*

or father, the women are left to fester in jail. In cases where bail has been furnished by the husband, it often becomes a powerful weapon to threaten their wives into submission. If the wife "steps out of line" they will withdraw the bail and she will be sent back to jail.

Parveen's (18 years) husband left her with her in-laws and took up a job in the Middle East. Her in-laws, in debt to a creditor, agreed to give her in exchange in order to clear the loan. Her husband, on returning filed a complaint of *zina*. Parveen was arrested. Her husband then furnished her bail, but at the time of returning to his job in the Middle East cancelled her bail, thereby sending her back to jail.

In Ghulam Sakina's (aged 55) case bail has been used as a weapon by her husband. Ghulam Sakina and her husband had been falsely arrested as accomplices in a *zina* case. Her husband obtained bail and, eventually, bailed Sakina out. In the time that lapsed between arranging for the bail and getting Sakina out, her husband had found himself a lover. Sakina says "this was nothing new for my husband ; he is always bringing women home, this time the difference was that he could avoid arguments with me by cancelling my bail". He did exactly that and Sakina was back in jail. Since Sakina doesn't have a lawyer it is unlikely that her case (in which as it is she has been falsely implicated) is going to come up for trial in the near future. As her husband is unlikely to bail her out (unless he bores of his new lover), Sakina is doomed to remain in jail.

According to the data collected in 1982 by the Women's Division, Government of Pakistan, there were a total of seventy female convicts in the whole of Pakistan. Today there are sixty-seven alone in Karachi jail and a further twenty-four in Sujjur jail (jails for which figures have been collected by independent observers). This rapid increase in numbers, and the development

of a new jail solely for women in Larkana, shows the increasing awareness amongst men of the powers that the *Hudood Ordinance* has placed in their hands.

Although the *Hudood Ordinance* was promulgated in 1979, it seems that now, 8 years later, men have become more confident of the manner in which they can get away with the sexual exploitation of women-rape-and the ways in which they can control the lives of their wives and daughters. Furthermore, men and women who have found that they are unable to make their choice concerning marriage, with the consent of their parents, have eloped and found themselves in jail facing the threat of the death punishment for *zina*.

It is also clear that all these women presently in jail share a low income social background. It is commonly acknowledged that women from low income communities face the greatest degree of sexual and social oppression. Most of them are unaware of their civil and legal rights, and for that matter the stipulations of the Hudood Ordinance. It is precisely because of their lack of awareness that women in jail are more vulnerable, weaker, and prone to harassment in every way. The jail authorities have in their own minds already convicted these women and they are treated like criminals. The ponderous legal system and lack of legal aid perpetuates these conditions for women under trial.

The *Hudood Ordinance* has without a doubt weakened the position of women in Pakistani society. It has taken from their dignity and their ability to decide their own lives and left them as pawns in the hands of an oppressive legal order. The manner in which it has been used coupled with the ambiguities within it clearly show that women's security and rights are far lower today than ever before. The *Hudood Ordinance* unquestionably hangs like the sword of Damocles over the head of all women in Pakistan. This repressive legislation must therefore be repealed and the evils perpetuated by it be rectified.

# Women's Resource Centre Shirkat-Gah

1, Bath Island Road, Karachi-4

"Shirkat Gah" is a non-hierarchical non-political organization of women who work to encourage, support and programme the participation of women in national development.

As an organization 'Shirkat Gah' grew out of the conferences that were held in 1975 International Women's Year. A number of young women met at these conferences, and dissatisfied with the structure of the existing women's organizations, decided to come together as a group to find answers to problems affecting women. Meetings were held first in Lahore and then in Karachi, Islamabad, Rawalpindi, Peshawar and Quetta where a core group of women was identified and the aims and structure of the organization formulated and constitutionalized. Today the organization functions from its office in Karachi but maintains close contact with members of its core group, and with the net-work of concerned men and women who formulate contribute to, and help implement the projects "Shirkat Gah" sponsors and initiates.

Shirkat Gah operates at two levels. On one level it is involved in research and data base projects, and at another level it promotes the development of women through economic and social programmes. In addition it acts as a pressure group concerned with women's issues.

## Research and data activities

At this level Shirkat Gah attempts to redress the balance in the neglected field of women's studies.

In 1978 it published a Bibliography on 'Women in Pakistan and other Islamic countries', which is an effort to define, describe and give structure to the existing body of literature... academic, periodical and popular ; and by doing so, to identify the still unexplored and unresolved areas of concern to women. It is also an attempt to provide a basic tool of research to validate the study of women as a legitimate scholarly pursuit. At present we are in the process of revising and updating this bibliography.

Simultaneously, research surveys have been carried out by members and associates of Shirkat Gah on housing for single women, and the work attitudes and career plans of University women and interviews and case histories of widowed and divorced women. A position paper was also submitted to the Women's Rights Committee, making recommendations and suggestions in response to their preliminary report.

A handbook on self-help health care has been serialized in a Karachi Urdu Women's Magazine. And material was collected for a literacy training book (Rehnumah) aimed at women to provide essential daily information which women in segregated orthodox societies do not have access to. Unfortunate inability to obtain funds for its printing prevented the production of the book.

Shirkat Gah also contains a library of newspaper articles dealing with women's issues covering the last ten years. This is available to student and non-members of Shirkat Gah for research purposes. In addition Shirkat Gah maintains contact with other women's research groups at the international level to promote communication and an exchange of ideas and material.

## Development activities

Shirkat Gah took as its first priority project the setting up of a hostel for single working women in Islamabad. A house was leased and is now being run as a hostel, which was opened on August 1, 1976. It functioned for two years and was then handed over to the Social Welfare Ministry.

In 1985, Shirkat Gah organized a social development workshop and field trips which introduced Canadian N.G.O's (non-governmental organizations) and members of South Asian Partnership Canada (S.A.P. Can) to grass root level Pakistani n.g.o's. The object of this introduction was to initiate development projects at the grass roots. Areas concerned included women's income generating activities, health, education and community development.

Although the organizations activities have been largely confined to research in recent years, it formed a Research & Project Cell in 1985 which intends to be involved in issues like the S.A.P./Pakistani N.G.O.s workshop in an attempt to expand its development activities.