

Zina

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Hadood Ordinance 1979

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Muhsan

It means a Muslim adult man, who is not insane and has had sexual intercourse with a Muslim adult woman who, at the time he had sexual intercourse with her, was married to him and was not insane or a Muslim adult woman, who is not insane and has had sexual intercourse with a Muslim adult man who, at the time she had sexual intercourse with him, was married to her and was not insane.



Zina

Willful committing of sexual intercourse without being validly married to each other.

Penetration is sufficient to constitute the sexual intercourse necessary to the offence of ZINA.

Conditions Required for Liability of Zina

- ❑ Zina must be proved by testimony of four Muslim eyewitnesses to the actual act of penetration, or a confession repeated four times and not retracted later
- ❑ The offenders must have acted of their own free will

Punishment of Zina

According to Sharia, the punishment for ZINA varies according to whether the offender is MUHSAN or NOT MUHSAN;

- ❑ The punishment for an offender WHO IS MUHSAN is **stoning to death** (rajm), at a public place
- ❑ The punishment for an offender WHO IS NOT MUHSAN is **100 lashes**, at a public place, including the sentence of death, as the court may decide to fit the circumstances

Punishment of Zina where Convict is Not an Adult

- ❑ Punished with imprisonment for a term which may extend to five years, or with fine, or with both, and may also be awarded the punishment of whipping not exceeding thirty stripes
- ❑ Provided that, in case of ~~ZINA-BIL-JABR~~, if the offender is not under the age of **15 years**, the punishment of whipping shall be awarded with or without any other punishment

Steps of Proof of Zina in Court

Islamic law requires evidence before a man or woman can be punished for Zina;

□ A **MUSLIM** confesses to **ZINA** four separate times. However, if the confessor takes back his words before the punishment, he/she will be released and set free. The confessor is encouraged to take back their confession

□ Four free adult Male witnesses of proven integrity must testify that they observed the couple engaged in unlawful sexual intercourse without any doubt or ambiguity. They are able to say that they saw their private parts meet **LIKE THE KOHL NEEDLE ENTERING THE KOHL BOTTLE**

□ Unlike witnesses in most other circumstances, they are neither legally nor morally obliged to testify, and infact legal texts state that it is morally better if they don't

- ❑ If any of the witnesses take back their testimony before the actual punishment is enforced, then the punishment will be abandoned, and the witnesses will be punished for the crime of false accusation(QAZF)
- ❑ The witnesses must give their testimony at the earliest possible
- ❑ If the offence is punished by stoning to death, the witnesses must throw the stones

Steps of Complaint in a Case of Zina

- 1) No court shall take cognizance of an offence under section 5 of offence of Zina(Enforcement of Hudood Ordinance 1979),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-SHUHOOD** , 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 – shuhood 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 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 judgement, no sufficient ground for proceeding and in such a case he shall record his reason for doing so.

The End.