

(ISSUE No. (k))  
**DECLARATION**

117. In view of the reasons recorded in this judgment under different issues it is hereby declared:

i. That all those offences whose punishments are either prescribed or left undermined, relating to acts forbidden or disapproved by Holy Quran, Sunnah, including all such acts which are akin, auxiliary, analogous, or supplementary to or germane with *Hudood* offences as well as preparation or abetment or attempt to commit such an offence and as such made culpable by legislative instruments would without fail be covered by the meaning and scope of the term *Hudood*.

ii. The extent of jurisdiction of Federal Shariat Court in matters relating to *Hudood* under Article 203DD is exclusive and pervades the entire spectrum of orders passed or decisions given by any criminal court under any law relating to the enforcement of *Hudood* and no other Court is empowered to entertain appeal, revision or reference in such cases. No legislative instrument can

control, regulate or amend this jurisdiction which was mandated in Chapter 3A of Part VII of the Constitution of Pakistan.

iii. An order granting or refusing bail before conclusion of trial in all categories of offences within the ambit of *Hudood* is covered by the word *proceedings*, as used in Article 203DD, and hence within the exclusive jurisdiction of the Federal Shariat Court and can be impugned only in this Court.

iv. The following ten offences are covered by the terms

*Hudood* for the purpose of Article 203DD of the Constitution:

1. Zina = Adultery, Fornication and Rape.
2. Liwatat= Sexual intercourse against the order of nature;
3. Qazaf= Imputation of Zina;
4. Shurb = Alcoholic drinks/Intoxicants/Narcotics etc;
5. Sarqa = Theft simplicitor;
6. Haraba = Robbery, Highway Robbery, Dacoity. All categories of offences against property as mentioned in Chapter XVII of Pakistan Penal Code.
7. Irtdad= Apostacy;

8. Baghy = Treason, waging war against state; All categories of offences mentioned in Chapter VI of the Pakistan Penal Code and
9. Qisas = Right of retaliation in offences against human body. All these offences are covered by definition Hadd because penalty therein has been prescribed by *Nass/Ijma*. Abdul Qadir Audah, has discussed to some extent the scope of Hadd in his treatise *Tashree ul Janai al Islam*, volume 1 at page 119.
10. Human Trafficking.

The declaration in the above four items shall take effect immediately because all the learned counsel representing the respondents, the jurisconsult as well the *amicus curiae* have, as mentioned in paragraph 17 of this judgment agreed on the four issues which are reflected in the above declaration. These conclusions having been consented to by the parties need nothing more to be done.

v. That sections 11 and 28 of the Protection of Women (Criminal Laws Amendment) Act, 2006 (Act VI of 2006) are hereby declared violative of Article 203DD of the Constitution because these provisions annul the overriding effect of *Hudood Ordinances VII and VIII of 1979*;

vi. That the portions of sections 48 and 49 of The Control of Narcotic Substances Act, 1997 (Act XXV of 1997) whereby the High Court has been empowered to:

- a) entertain appeals against the order of a Special Court consisting of a Session Judge or an Additional Sessions Judge and
- b) transfer within its territorial jurisdiction any case from one Special Court to another Special Court at any stage of the proceedings, are violative of the provisions contained in Chapter 3A of Part VII of the Constitution because the offences envisaged by Act XV of 1997 are covered by the term *Hudood*. Both the sections are consequently declared violative of Article 203DD of the Constitution. The portion which contains the words High Court should be deemed to be substituted by the words Federal Shariat Court in both the above mentioned sections.

vii. Section 25 of the Protection of Women (Criminal Laws Amendment) Act, 2006 (Act VI of 2006) is declared violative of Article 203DD of the Constitution as it omits sub-sections (3) and (4) of section 14 of The Offence of Qazf

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(Enforcement of Hadd) Ordinance, 1979 with the result that it has adversely affected the operation of Injunctions of Islam relating to *Lian*. Consequently section 29 of Act VI of 2006 is also declared violative of Article 203DD as it adds clause (vii a) *Lian* in section 2 of the Dissolution of Muslim Marriages Act, 1939. This addition in the latter Act also becomes invalid on account of repugnancy with the Injunctions of Islam relating to *Lian*.

viii. Section 25 of the Anti-Terrorism Act, 1997 (Act No.XXVII of 1997) does not make provision for filing an appeal before the Federal Shariat Court in cases where the Anti-Terrorism court decides a case relating to some of the **Hudood** offence included in the Schedule as from 21.08.1997. This omission is violative of Article 203DD. The Federal Government should rectify this error by the target date fixed by this Court otherwise the following rider shall be read at

the end of clause (i) of section 25 of Act XXVII of 1997 after omitting  
the full stops.

“but where a private complaint or a First Information Report or information, as stipulated in section 190 of the Code of Criminal Procedure, relating to an offence falling within the purview of above mentioned ten categories of *Hudood* Offences, is decided by any court exercising criminal jurisdiction under any law of the land, the appeal therefrom shall lie to the Federal Shariat Court.”

ix. The declaration relating to Protection of Women (Criminal Laws Amendment) Act, 2006 (Act VI of 2006), The Control of Narcotics Substance Act, 1997 mentioned at serial No. vi as well as Anti-Terrorism Act, 1997 shall take effect as from 22<sup>nd</sup> June, 2011 by which date necessary steps be taken by the Federal Government to amend the impugned laws in conformity with this declaration whereafter the impugned provision shall cease to be effective and this judgment of the Federal Shariat Court will be operative as on 22.06.2011. The other items of the Declaration become operative forthwith.

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118. The office is hereby directed to send copies of this judgment to the Federal Government as well as four Provincial High Courts and the Islamabad High Court for information, necessary action and compliance.

### **SUPPLICATION**

رَبَّنَا لَا تُؤَاخِذْنَا إِنْ نَسِينَا أَوْ أَخْطَأْنَا رَبَّنَا وَلَا تَحْمِلْ عَلَيْنَا إِصْرًا كَمَا حَمَلْتَهُ عَلَى الَّذِينَ مِنْ قَبْلِنَا رَبَّنَا وَلَا تُحَمِّلْنَا مَا لَا طَاقَةَ لَنَا بِهِ وَاعْفُ عَنَّا وَارْحَمْنَا أَنْتَ مَوْلَانَا فَانصُرْنَا عَلَى الْقَوْمِ الْكَافِرِينَ-

“(Believers! Pray thus to your Lord): “Our Lord! Take us not to task if we forget or commit mistakes. Our Lord! Lay not on us a burden such as You laid on those gone before us. Our Lord! Lay not on us burdens which we do not have the power to bear. And overlook our faults, and forgive us, and have mercy upon us. You are our Guardian; so grant us victory against the unbelieving folk.”(2:286)

JUSTICE SYED AFZAL HAIDER

JUSTICE AGHA RAFIQ AHMED KHAN  
Chief Justice

JUSTICE SHAHZADO SHAIKH

Announced in open Court  
on 22-12-2010 at Islamabad  
*Mujeeb-ur-Rehman/\**

***Fit for reporting***

JUSTICE SYED AFZAL HAIDER