

**IN THE FEDERAL SHARIAT COURT**

( Original/Appellate Jurisdiction )

**PRESENT**

MR.JUSTICE CH. EJAZ YOUSAF CHIEF JUSTICE  
MR.JUSTICE DR.FIDA MUHAMMAD KHAN  
MR.JUSTICE SAEED-UR-REHMAN FARRUKH

**SHARIAT PETITION NO.9/I OF 2005**

Moulvi Iqbal Haider, -- Petitioner  
Son of Late Sardar Haider,  
Resident of C-333,Block 6,  
F.B.Area, Karachi and  
Chairman of Awami Hammayat  
Tehreek Pakistan.

**Versus**

4 Federation of Pakistan -- Respondent  
Through Secretary  
Ministry of Law,Justice and  
Parliamentary Affairs,  
Government of Pakistan,  
Islamabad.

For the petitioner -- Moulvi Iqbal Haider,  
Petitioner in person  
With Mr.Muhamamd Ali-  
Bhatti,Advocate.

Date of institution -- 10.12.2005

Date of hearing -- 13.12.2005

Date of decision -- 15.12.2005



13.12.2005  
Islamabad

Maulvi Iqbal Haider, Petitioner in person.  
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The Petitioner, Maulvi Iqbal Haider, who has filed this Shariat Petition through Mr. Muhammad Ali Bhatti, Advocate under Article 203-D read with Article 227 of the Constitution of the Islamic Republic of Pakistan has challenged the vires of section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, hereinafter referred to as the Ordinance, as well as section 7 of the Anti-Terrorism Act, 1997, hereinafter mentioned as the Act, on the ground that these are repugnant to the injunctions of Quran and Sunnah as they carry the sentence of death as tazir without keeping in view the prescribed standard of Tazkiyatush-shuhud. He has prayed that the same be declared as repugnant to the injunctions of Islam. He has further



prayed that the sentences awarded by the learned trial Court to the convicts, mentioned hereinunder, on the basis of section 10(4) of the Ordinance and also under section 7 of the Act, be suspended.

2. It may be pertinent to highlight the background of filing the instant Shariat Petition. It transpires that Shahzad alias Shadoo son of Ghulam Rasool, Muhammad Ashraf alias Kaka son of Shah Muhammad, Mubarik Ali son of Niaz Ahmad and Umar Hayat son of Asghar Ali were tried by Anti-Terrorism Court, Faisalabad, who vide judgment dated 18.12.1999, held them guilty under section 10(4) of the Ordinance and section 7 of the Act and awarded death punishment to each, as tazir under each count. Being aggrieved by the said judgment, they filed appeal before High Court, Lahore where a Division Bench maintained the conviction and sentences awarded to them and



dismissed their appeal. Thereafter they preferred separate petitions against the said judgment before the Hon'ble Supreme Court but their petitions were dismissed. The instant Shariah petition also reveals that mercy petition addressed to the President of Pakistan was also declined and black-warrant has been issued for 21.12.2005 at 6.30 a.m.

3. We have heard the learned petitioner in person. He submitted that section 10(4) of the said Ordinance as well as section 7 of the Act is against the injunctions of Islam. The learned Petitioner contended that the punishment of death as Tazir without Tazkiya-tush-shuhud is against the Islamic injunctions as contained in the Holy Quran and Sunnah. He dwelt at large on the subject and further contended that all the penal offences were compoundable according to Islamic injunctions. In support of his contentions, he placed reliance on the following verses of the Holy Quran:-





”ومن يعص الله ورسوله ويتعد حدوده يدخله ناراً خالدًا فيها وله عذاب مهين“ -

”والتي ياتين الفاحشة من نسآئكم فاستشهدوا عليهن اربعة منكم فان شهدوا فامسكوهن فى البيوت حتى يتوفهن الموت اويجعل الله لهن سييلا“ -

والذان ياتينها منكم فاذوهما فان تابا واصلحا فاعرضوا عنها ان الله كان توابا رحيمًا“ -

”انما التوبة على الله للذين يعملون السوء بجهالة ثم يتوبون من قريب فاولئك يتوب الله عليهم وكان الله عليما حكيما“ -

(النساء: ١٤، ١٥، ١٦، ١٧)

"(And whosoever disobeys Allah and His Messenger ( Muhammad ﷺ), and transgresses His limits, He will cast him into the Fire, to abide therein for ever, and he shall have a disgraceful torment."

"And those of your women who commit illegal sexual intercourse, take the evidence of four witnesses from amongst you against them; and if they testify, confine them (i.e. women) to houses until death comes to them or Allah ordains for them some (other) way."

"And the two persons (man and woman) among you who commit illegal sexual intercourse, hurt them both. And if they repent and do righteous good deeds, leave them alone. Surely, Allah is Ever Forgiving (and) Most Merciful."

"Allah accepts only the repentance of those who do evil in ignorance and foolishness and repent soon after wards; it is they whom Allah will forgive and Allah is Ever All-Knower, All-Wise."



”والله يريد ان يتوب عليكم ويريد الذين يتبعون الشهوات ان  
تميلوا ميلاً عظيماً“ —  
”يريد الله ان يخفف عنكم وخلق الانسان ضعيفاً“ — — —  
”ومن يفعل ذلك عدواناً وظلماً فسوف نصليه ناراً وكان ذلك  
على الله يسيراً“ — (النساء: ٢٧، ٢٨، ٣٠)

"Allah wishes to accept your repentance, but those who follow their lusts, wish that you (believers) should deviate tremendously away (from the Right Path)."

"(Allah wishes to lighten ( the burden ) for you; and man was created weak "

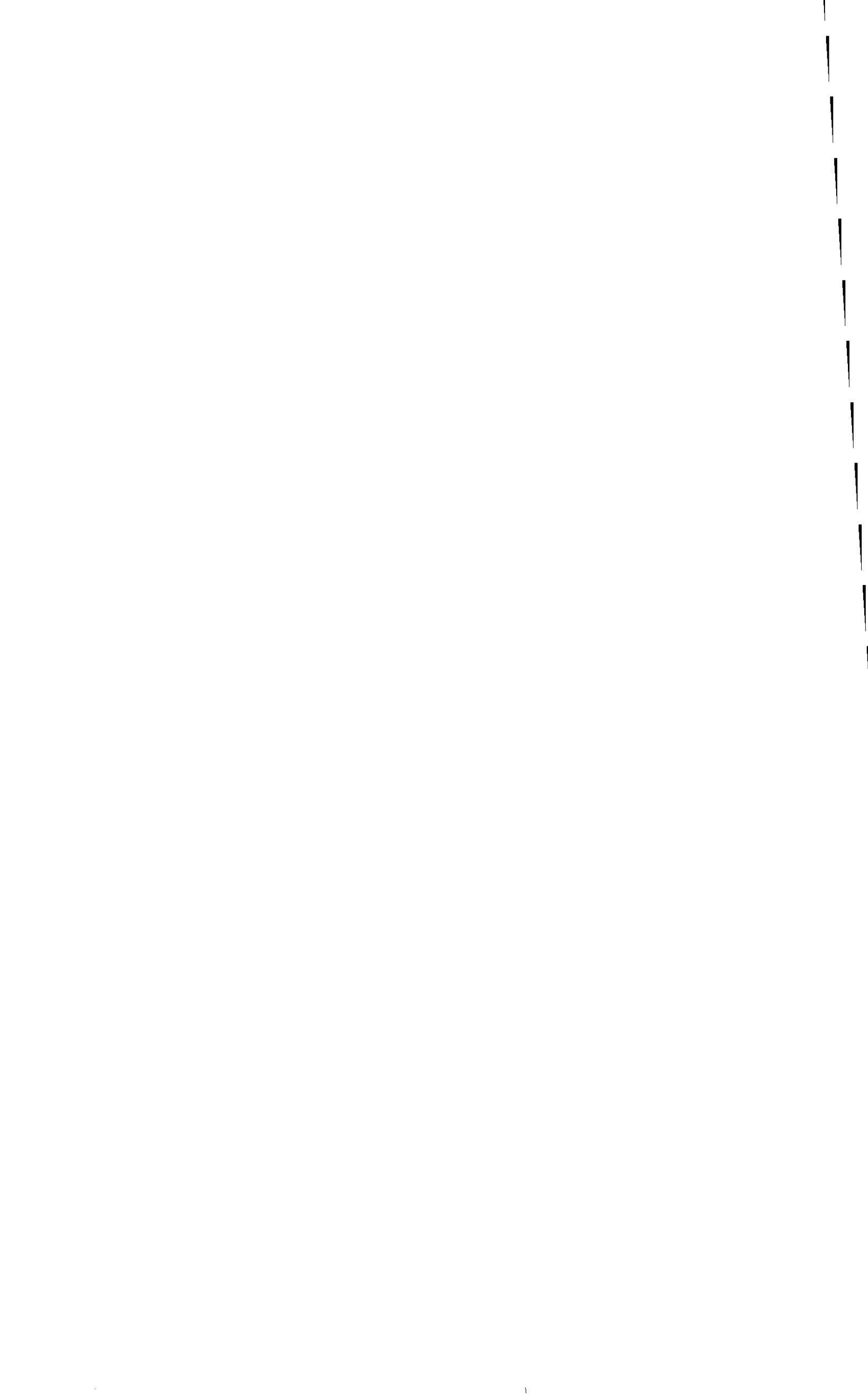
"(And whoever commits that through aggression and injustice, We shall cast him into the Fire, and that is easy for Allah."

”الزانية والزانى فاجلدوا كل واحد منهما مائة جلدة  
ولا تأخذكم بهما رافة فى دين الله ان كنتم تؤمنون بالله  
واليوم الاخر وليشهد عذابهما طائفة من المؤمنين“ (النور: ٢)

"The fornicatress and the fornicator, flog each of them with a hundred stripes. Let not pity withhold you in their case, in a punishment prescribed by Allah, if you believe in Allah and the Last Day. And let a party of the believers witness their punishment.

”ان الله لا يغفر ان يشرك به ويغفر ما دون ذلك لمن يشاء  
ومن يشرك بالله فقد افترى اثماً عظيماً“ — (النساء: ٤٨)

"Verily, Allah forgives not that partners should be set up with Him (in worship), but He forgives except that (anything else) to whom He wills; and whoever sets up partners with Allah in worship, he has indeed invented a tremendous sin."



4. We have given our anxious consideration to the contentions raised by the petitioner as well as the verses cited by him. Careful recitation of above verses and their translation, however reveals that the contentions raised by the learned petitioner are devoid of force as the verses quoted by him do not at all pertain to the issue under consideration. A bare perusal of the translation makes it quite clear that the <sup>said</sup> verses in no way deal, by any stretch of imagination, with the question of compoundability of punishment awarded under tazir by a court of law. When the learned petitioner was reminded of the fact whether the offence of zina if committed with mutual consent under section 10(2) of the Ordinance could be made compoundable, was not in position to give any convincing reply to the Court. Even the verse mentioned at serial No.3 requires

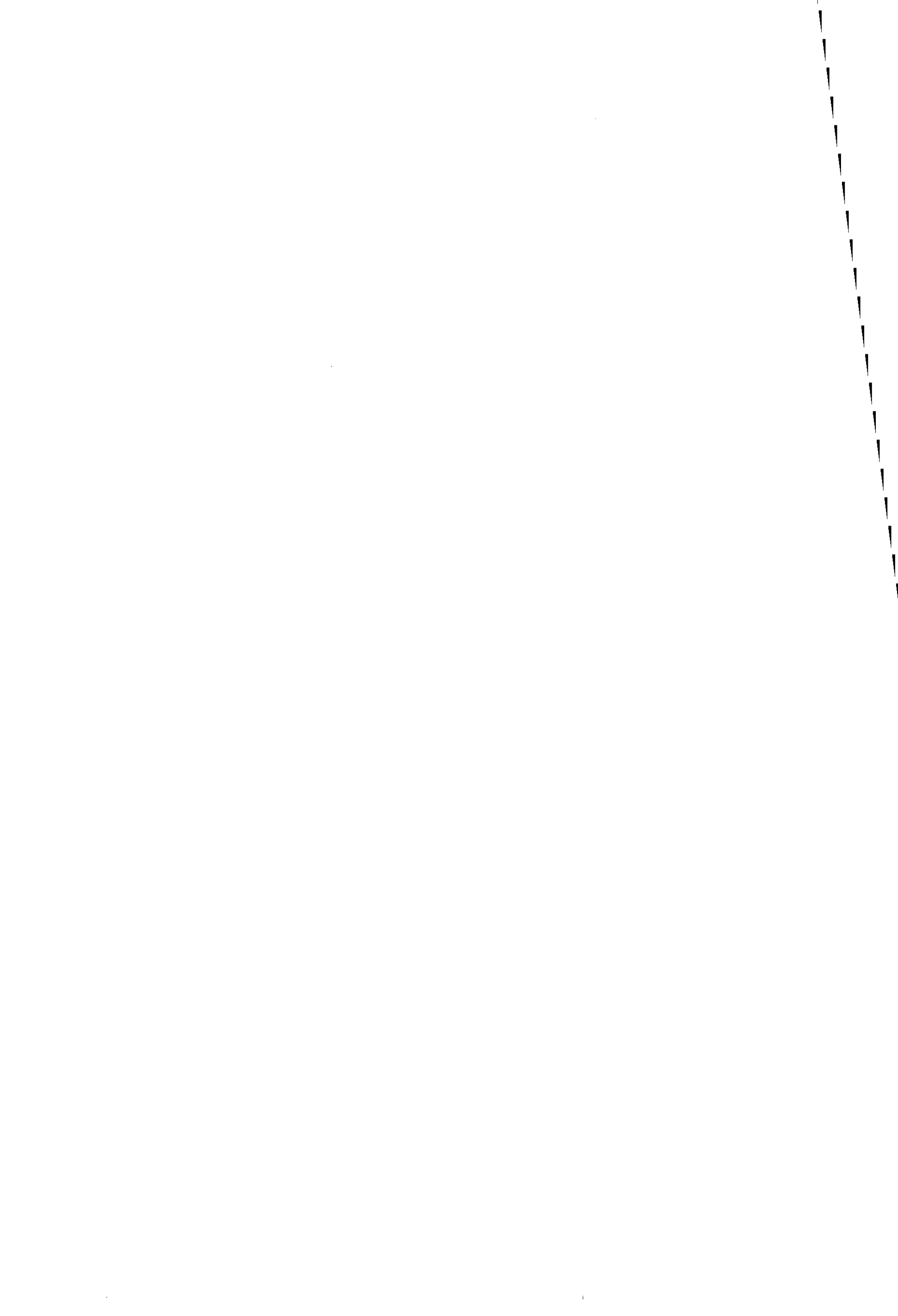


that no leniency is to be shown to those persons – male or female – who are found guilty of the commission of zina. So far as the question of awarding tazir punishment is concerned, it is not against the Islamic injunctions as contained in the Holy Quran and Sunnah of the Holy Prophet (Peace be upon Him). There are many instances wherein tazir punishment was awarded during the period of Holy Prophet (Peace be upon Him) as well as, thereafter, during the period of Orthodox Caliphate. Punishments awarded to the offenders in cases of drinking as well as in cases of zina, earlier to the prescription of Hadd punishments, are some of the admitted examples in this connection. We may mention that term "tazir" is used for the punishment which is not fixed in the Holy Quran and Sunnah of the Holy Prophet and is left to the discretion of the Head of the State, Majlis-e-Shura or Qazi and is based on the principles



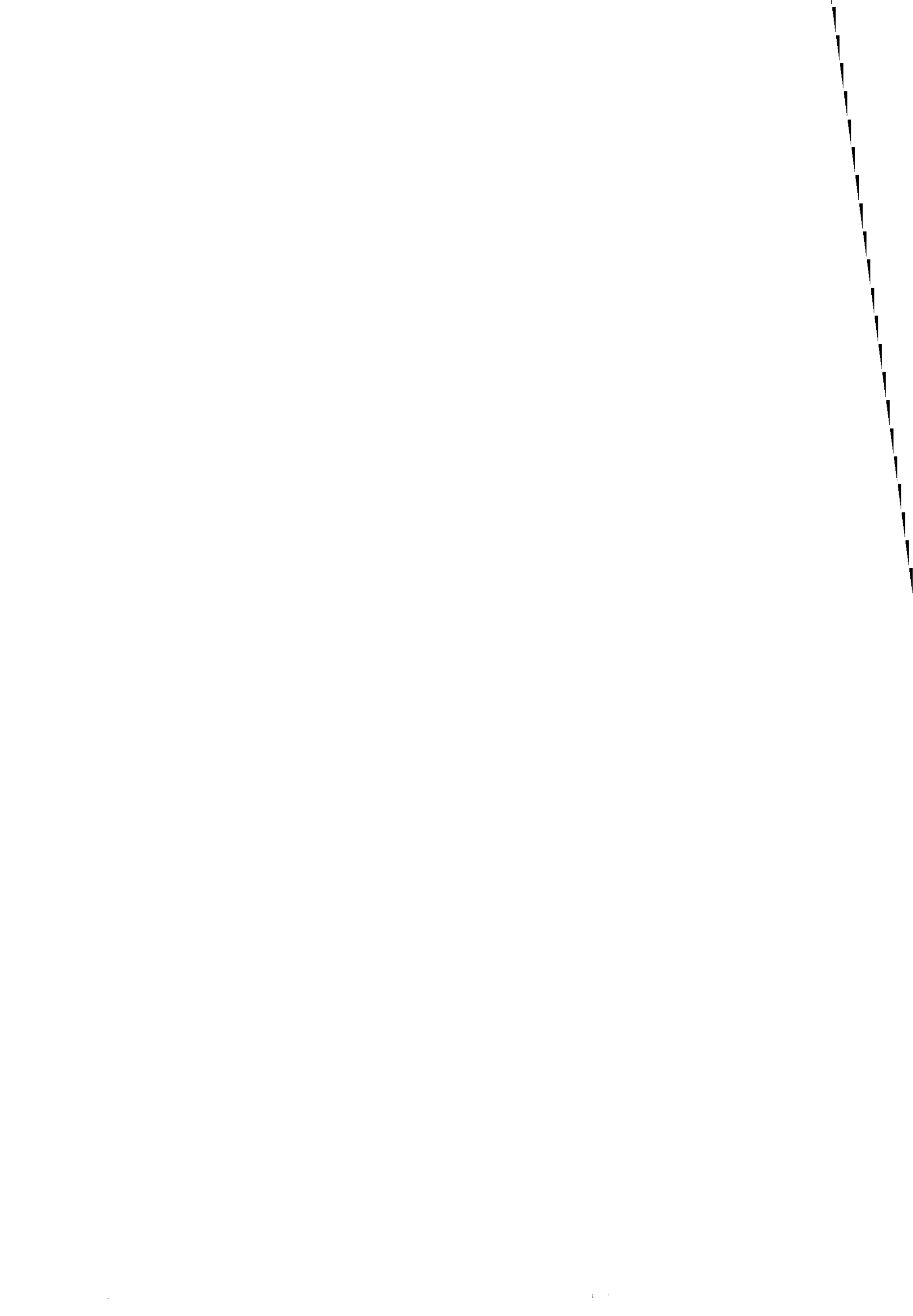


laid down by the Holy Quran and Sunnah. In fact it is a penal punishment which is actually a reformative, deterrent and punitive measure for those offences for which no Hadd punishment has been laid down in Shariah. In other words, it is punishment entailed by an offence for which shariah does not prescribe a fixed punishment. These punishments are considered by the Muslim jurists throughout, to be in harmony with Hadd so far as they aim at correction and eradication of various criminal/immoral acts or social evils prevailing in the society. We may add that even verses No.15 and 16 of Sura Al-Nisa, relied upon by the learned petitioner, pertaining to the cases of zina and sodomy, confirm that awarding of tazir punishment is not against the Islamic injunctions. It is pertinent to mention that tazkiya-tush-shuhud, though desired, is not a mandatory requirement for cases wherein Tazir punishment is



awarded. Even in cases of Qatl-e-Amd it has never been considered an obligatory condition. According to Islamic injunctions, it is required only for the awarding of Hadd punishment. This view receives support from the following reported judgments:-

- i) Muhammad Saleem & others Vs. The State  
2005 SCMR 849.
- ii) Amjad Javid Vs. The State  
2002 SCMR 1247.
- iii) Hamid Vs. The State.  
2003 SCMR 416.
- iv) Abdul Salam Vs. The State.  
2000 SCMR 338
- v) Riaz Ahmad Vs. The State.  
PLJ 1990, SC 105.
- vi) Ghulam Ali Vs. The State  
PLD 1986 SC 741.
- vii) Sana ullah Vs. The State.  
PLD 1991 FSC 186.
- viii) Mumtaz Ahmad & another Vs. The State.  
PLD 1990 FSC 38
- ix) Arshad Ali Vs. The State.  
1993 P.Cr.L.J. 2540.
- x) Arshad Pervez Vs. The State.  
2004 SD 323.
- xi) Gul Bahar Vs. The State.  
2004 SD 1026.



5. Admittedly, it is for the Courts to determine the credibility of the witnesses and properly appreciate the evidence on record before awarding any punishment to the accused. It is note worthy that practically all courts are conscious of the fact that the evidence which forms basis for conviction of an accused must be impeccable, trust-worthy, confidence-inspiring and credible. The Courts are well aware of the fact, while administering justice, that no person is convicted on unreliable testimony. They take every pre-caution, which is humanly possible, to consider and reconsider the facts of each case and, while sifting grain from chaff, very minutely go through the evidence before recording conviction and awarding sentence to any accused, and particularly so in cases involving capital punishment. This is always a question of fact and is followed invariably by the courts in each and every case.



6. It may be added that the learned petitioner could make no specific reference to any verse of the Holy Quran nor could cite any judgment from the Sunnah of the Holy Prophet (Peace be upon Him) to support his contentions. The verses relied upon by the learned petitioner, mentioned hereinabove above, are not at all relevant to the points under consideration and are general in nature. We may mention that verse mentioned at serial No.4 pertains to the discretion of Almighty Allah to grant pardon to whom He wills. The verse mentioned at serial No.2 clearly spells out that who ever follows lust through aggression and injustice shall be cast into the fire and in fact they tremendously deviate away from the right path. As mentioned above, verse mentioned at serial No.3 ordains that no pity should be shown by the believers while inflicting the

